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10/24/16

VIA FEDERAL EXPRESS

Hon. Mayor Drew Fixell and  
and Hon. Members of the Board of Trustees  
One Depot Plaza  
Tarrytown, NY 10591

Re: Montefiore Medical Center – OB/MU Zoning Amendments

Dear Hon. Mayor Fixell and Hon. Members of the Board of Trustees:

This letter is respectfully submitted on behalf of Montefiore Medical Center (“Montefiore”), as the owner of property located at 555 South Broadway, in the Village of Tarrytown, New York (the “Premises”). As you are aware, the Premises was previously occupied by Kraft Foods, Inc., which will be vacating the Premises in the near future. The Premises is comprised of three tax parcels. Tax parcel 1.221-129-6 (“Lot 6”) and 1.140-88-8 (“Lot 8”) are currently improved with office buildings and related parking and classified in the Office Building “OB” Zoning District. Tax parcel 1.221-129-5 (“Lot 5”) is currently unimproved and is classified in the Historic Commons “HC” Zoning District. *See Exhibit A [Tax Map].*

We respectfully submit this letter in furtherance of the proposed zoning amendments being contemplated by the Village of Tarrytown, which amendments we understand will expand the uses within the OB Zoning District and the Mixed Use “MU” Zoning District. This letter also seeks to offer a few recommendations that will provide much needed clarity in the Village of Tarrytown Zoning Code (the “Zoning Code”). As you may expect, while no specific development plans have been contemplated, Montefiore has a large interest in the proposed zoning amendments given Montefiore’s ownership of a significant lands that may be impacted by any rezoning. As such, Montefiore offers the following zoning recommendations, which will clear up inconsistencies in the current version of the Zoning Code and help avoid inconsistencies associated with any new zoning amendments.



The following recommended zoning amendments serve to clarify various aspects of the current Zoning Code and allow developers to make investments in the Tarrytown community with more certainty as to their developments rights and obligations under the Zoning Code. As you can imagine, having a clear picture of development rights pursuant to the Zoning Code is vital to spark economic development, which will benefit all Tarrytown residents.

### **Medical and Dental Offices**

There is no doubt that the healthcare industry is expanding. For instance, many of the major New York City medical providers are expanding into Westchester County, which results in great economic and social benefits for the local community, e.g. Montefiore's affiliation with White Plains Hospital, Burke Rehabilitation Hospital, and separately Memorial Sloan Ketterings facility in the Town of Harrison. Aside from the economic benefits gained by the location of a major healthcare facility, residents enjoy localized healthcare and avoiding lengthy travel for first class healthcare and/or treatment.

The Village of Tarrytown is in a great position to benefit from the healthcare industry's expansion into Westchester and as such should permit Medical and Dental Offices in the OB District, which may include lands owned by Montefiore. Currently, Medical and Dental Offices are not permitted in the OB District. By permitting Medical and Dental Offices in the OB District, Tarrytown can take advantage of Montefiore's location and provide first class healthcare for Tarrytown residents. Further, and most importantly, Montefiore's location and expansion in Tarrytown will attract visitors and increase Tarrytown jobs that are being lost through the closing of the Kraft Foods facility.

Accordingly, the Village Board of Trustees should permit "Medical and Dental Offices" in the OB Zoning District. In doing so, the Board must also clarify what uses may be encompassed within Medical and Dental Offices. Such clarity will encourage the healthcare industry to invest in the Village of Tarrytown. Montefiore is pleased to have the opportunity to work with the Village in formulating such a definition, which will allow Montefiore to provide critical medical care to Village residents and visitors.

The current Zoning Code does not provide for "Medical and Dental Offices" and therefore does not define the use. The only use defined in the Zoning Code related to the healthcare industry is "Hospital," which is defined as:

## Hospital

Unless otherwise specified, includes sanatorium, preventorium, clinic and any other place for the diagnosis, treatment or other care of ailments and shall be deemed to be limited to places for the diagnosis, treatment or other care of human ailments.

*See Zoning Code 305-5.* Hospital uses are defined broadly and are not permitted in the OB District. Thus, if Medical and Dental Offices are specifically defined and permitted in the OB District, a distinction can be made when compared to a “Hospital”. The broad definition of “Hospital” should be contrasted with the future Medical and Dental Offices developed in Tarrytown and therefore a specific definition of Medical and Dental Offices is needed.

We encourage the Board of Trustees to add a definition for Medical and Dental Offices that is separate and apart from the definition of a Hospital. After reviewing several Westchester municipalities, we offer the following definition:

## Medical and Dental Offices

A place where medical care is provided to persons solely on an out-patient basis by one or more members of the medical professions, including chiropractors, dentists, doctors, osteopaths, podiatrists, therapists or other licensed medical service providers. Medical establishments may, subject to any applicable state or federal regulatory requirements, also include but are not limited to, medical testing labs or offices, offices for X-ray, sonograms, MRI, CAT scans and other medical imaging services, offices for the administration of nuclear medicine, radiation therapy, infusion, dialysis and similar medical treatments, and offices for out-patient surgical and nonsurgical procedures.

This definition will allow for orderly development and use of Medical and Dental Offices in the Village of Tarrytown and ensure that Tarrytown residents receive excellent local healthcare.

**Senior Housing and Institutional Housing**

We would be remiss if we did not seek to clarify a few inconsistencies in the current version of the Zoning Code related to Senior Housing, Assisted Living Facilities and/or Institutional Housing. Similar to the Medical and Dental Offices, such uses are associated with the healthcare industry and therefore their treatment in the Zoning Code may directly correlate with the healthcare industry’s desire to invest in Tarrytown.

Currently, Institutional Housing is permitted by a Compatible Use Permit in the OB District and includes “Assisted Living Facilities”. *See* Zoning Code §§ 305-34(C)(2) and 305-127. However, in the HC District, which is adjacent the OB District on the Premises, Senior Housing is permitted but specifically excludes Institutional Housing and as such also excludes Assisted Living Facilities (see above). *See* Zoning Code § 305-38. Therefore, these two adjacent districts have very conflicting permitted uses considering that Senior Housing and Assisted Living Facilities are typically permitted in tandem and would benefit from close proximity to medical treatment facilities if permitted in the OB District (e.g. Medical and Dental Offices). In addition to this conflict, the Zoning Code and Village of Tarrytown Comprehensive Plan definitions for Senior Housing and Assisted Living Facilities are contradictory and must be clarified.

Accordingly, the below chart illustrates the contradictions currently present in the Zoning Code:

<b>Zoning District</b>	<b>Compatible Uses Permitted</b>	<b>Definitions</b>
<b>OB</b>	Institutional Uses by Compatible Use Permit. <i>See</i> Zoning Code § 305-34(C).	Institutional Housing is described as including “Assisted Living Facilities” <i>See</i> Zoning Code § 305-127(A).  “Assisted Living Facilities” are defined as:  A facility designed to provide housing for residents that may include apartments with kitchens or bedrooms with congregate eating/socializing facilities, office space, laundry and ancillary medical services for residents only. Any such facility shall be licensed by the New York State Department of Health.”  <i>See</i> Zoning Code § 305-5.

<p><b>HC</b></p>	<p>Senior housing, excluding institutional uses as defined in § 305-127 (see above). <i>See</i> Zoning Code § 305-38(E)(2).</p>	<p>Senior Housing is <u>only</u> defined in the Comprehensive Plan and includes facilities that “meet New York State Office for the Aging, New York State Department of Health, or New York State Department of Social Services definitions for...<i>Assisted Living Program</i>[.]” <i>See</i> Village of Tarrytown Comprehensive Plan, 4-6 (emphasis added).</p>
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In short, the Comprehensive Plan’s definition of Senior Housing, which includes Assisted Living Facilities, contradicts the express prohibition against Institutional Uses in the HC Zoning District. Indeed, because no definition of Senior Housing is expressly in the Zoning Code, an applicant must look to the Comprehensive Plan for clarity. This conflict must be addressed.

This conflict could be resolved by adopting the Comprehensive Plan’s definition of Senior Housing, and additional language to more globally rectify the above noted confusion (underlined is language in addition to the Comprehensive Plan definition of Senior Housing):

Senior Housing

A facility designed to provide housing for senior citizens that may include apartments with kitchens or bedrooms with congregate eating/socializing facilities, office space, laundry, and ancillary medical and personal services for residents only.” Permitted Senior Housing facilities include those that meet New York State Office for the Aging, New York State Department of Health, or New York State Department of Social Services definitions for “Retirement Residence,” “Assisted Living Program,” “Enriched Housing Program,” “Residential Health Care Facility,” or “Continuing Care Retirement Community”.

A Senior Housing community may include one or both of the following:

- A. Assisted Living – A facility designed to provide housing for residents that may include apartments with kitchens or bedrooms with congregate eating/socializing facilities, office space, laundry, personal services, and ancillary medical

services for residents only. Any such facility shall be licensed by the New York State Department of Health. [taken from existing Assisted Living Facility definition expect underlined portions].

- B. Independent Living – Dwelling units with individual kitchens and bathrooms, reserved for residents over 55 years of age, where one or more of the following services may be provided to residents within the dwelling unit or in common facilities on site: one meal per day, laundry, security, housekeeping and other personal services.

We also suggest striking Assisted Living Facilities from the list of Institutional Housing examples in Zoning Code Section 305-127. As noted above, it makes little sense for Senior Housing dwelling units to be permitted in the HC District while Assisted Living Facilities are prohibited, which often are accessory to a Senior Housing proposal.

If Medical and Dental Offices are to be permitted in the OB District for the healthcare and treatment of Tarrytown residents, it is only logical to permit Senior Housing and Assisted Living Facilities nearby such care. Thus, for instance, if Montefiore were to utilize the existing Premises for Medical and Dental Offices, it would make perfect sense for Senior Housing and Assisted Living Facilities to be situated in close proximity. Such a design represents responsible land use planning and would facilitate traditional land use planning associated with Senior Housing and Assisted Living Facilities, e.g. emergency services.

Accordingly, and as noted above, the “Declaration of Policy” for Institutional Housing, reflected in Zoning Code Section 305-127, should be amended to focus on housing outside of care for the aging, which should be permitted in districts nearby Medical and Dental Office uses, e.g. the HC and OB Zoning Districts.

Zoning Code Section 305-127(A)

Declaration of policy. The Board of Trustees finds that all areas of the Village now zoned residential should be stabilized at currently legislated densities in accordance with existing residential land use recommendations which are hereby accepted and approved. It further finds that socioeconomic and demographic phenomena,

conditions and changes are such that it is appropriate for the Village of Tarrytown to accommodate certain institutionally related housing designed and constructed to care for and accommodate ~~the aged and~~ the mentally and physically infirm. Such institutional housing facilities shall be limited to the following housing types, each as defined in § 305-5: ~~assisted living facilities~~, congregate housing, adult homes and group homes.

### **Parking For Medical and Dental Offices, Senior Housing and Assisted Living**

Zoning Code Section 305-63(D) only provides off-street parking requirements for nursing homes, hospitals, convalescent homes or homes for the aged, offices for business or professional use, and research offices. The Zoning Code does not provide parking requirements for Medical and Dental Offices, Senior Housing, and Assisted Living Facilities.<sup>1</sup> Where a use does not have a parking requirement specifically proscribed, the Planning Board (or the ZBA) has the ability to proscribe the applicable parking requirements during the permitting process. *See* Zoning Code § 305-63(C) and (D)(2).

Here, because Medical and Dental Offices, Senior Housing and Assisted Living Facilities are not regulated by the off-street parking schedule, the Planning Board (or the ZBA) would have the ability to legislate parking requirements for Medical and Dental Offices on a case-by-case basis. We submit that the Village Board should enact corresponding parking regulations for Medical and Dental Offices, Senior Housing and Assisted Living Facilities (as discussed above) to provide certainty during the planning process, which will encourage developers to invest their money in Tarrytown with a better understanding of the permitted size of development. In doing so, it is reasonable for the Board to examine other municipalities and guidance from land use and planning think tanks, such as the Urban Land Institute (“ULI”).

#### *Medical and Dental Office – Parking Regulations*

The City of Yonkers requires that all “Medical Establishments” provide 1 off-street parking space per 300 square feet of gross floor area. *See* City of Yonkers Zoning Code § 43-128. This requirement is in line with the ULI’s suggested requirement for medical offices, which is 4.5 off

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<sup>1</sup> For example, for “Office for business or professional use” required “2 spaces for each separate office, sublet office or suite of offices of a given tenancy, plus 1 space per employee, but not less than 1 space for each 300 square feet of gross floor area.” In addition, “research or office laboratory” requires “1 spaces per employee, but not less than 1 space per 600 square feet of gross floor area.” *See* Zoning Code § 305-63(D).

street parking spaces per 1,000 square feet of gross floor area. See *The Dimensions of Parking*, Urban Land Institute, Fifth Edition, 2010 at 30.

In this instance, we suggest that the Village Board follow the ULI recommendation, which, again, suggests 4.5 off street parking spaces for every 1,000 square feet of gross floor area devoted of medical office. Such a requirement, is more conservative than surrounding municipalities and thus will adequately provide for Medical and Dental Offices in the Village of Tarrytown. Furthermore, the ULI requirement is consistent with the increased number of patients that would be accessing a medical offices as compared to other forms of professional offices. More importantly, the ULI recommendation for Medical and Dental Offices is consistent with our experiences in permitting and developing medical offices. As noted above, by adding a more specific parking regulation to the Zoning Code for Medical and Dental Offices, developers will be more willing to invest in Tarrytown because of the assurances provided by the Zoning Code and leaving less uncertainties.

#### *Senior Housing and Assisted Living Facilities – Parking Regulations*

During the current Zoning Code amendment process, the Village Board should also consider enacting parking requirements related to Senior Housing and Assisted Living because their parking needs are unique when compared with traditional multifamily housing. The Zoning Code requires 2.5 parking spaces for each “multifamily” dwelling unit, which “multifamily” use is wholly distinct and separately permitted from Senior Housing and/or Assisted living (see below). Thus, during the permitting of a Senior Housing or Assisted Living facility the Planning Board (or the ZBA) would determine the appropriate amount of parking leaving developers uncertain about their rights and obligations and skeptical to invest. Similar to the Medical and Dental Offices parking suggestion noted above, the Village Board should enact parking regulations to coincide with the Senior Housing and Assisted Living Facilities.

Per the ULI recommendations for Senior Housing and Assisted Living and based on our own past experiences in representing and developing these facilities, we respectfully submit that the Village should enact the following standards:

0.5 Parking Spaces per Senior Housing dwelling Unit

0.35 Parking Spaces per Assisted Living dwelling Unit

See *The Dimensions of Parking*, Urban Land Institute, Fifth Edition, 2010 at 29.



Few Westchester communities have legislated exact parking requirements for Senior Housing and Assisted Living Facilities and therefore the Village of Tarrytown, through enacting such standards, will attract the desired developments and allow for comprehensive planning of such facilities.<sup>2</sup>

### **Floor Area Calculations**

We also suggest addressing vagueness related to permitted density. All zoning districts require a certain “Floor Area per dwelling unit”. For instance, in the HC Zoning District, the minimum “Floor Area” per dwelling unit is noted as 1,500 SF. *See* Zoning Schedule 305 Attachment 9 (enacted December 18, 2008). However, the current Zoning Code only provides a definition for Gross Residential Floor Area and not “Floor Area”.

This is a common vagueness throughout the Zoning Code that can be easily corrected by adding the following definition of “Floor Area” to allow for an applicant to properly calculate the abovementioned “Floor Area” per dwelling unit requirement.

#### Floor Area

The sum of the gross horizontal areas of all floors of a building measured to the exterior of the outside walls of the building, but excluding any floor area devoted to housing building and mechanical equipment, basement storage, parking areas, and vehicle storages or garages, but inclusive of communal areas or floor area devoted to accessory uses within the building.

Importantly, this definition of Floor Area is consistent with the calculation of “gross floor area” noted in the OB District. In the OB District, gross floor area, used for calculating building size, is described as excluding floor area devoted to “parking within the structure”. *See* Zoning Code § 305-34(B)(2).

The above recommended definition of Floor Area is common in Westchester communities and encompasses areas of multifamily developments that should be included within the Floor Area calculation, such as indoor recreation areas, etc. The real estate market has moved towards

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<sup>2</sup> Our research has demonstrated that the ULI standards noted above are consistent with Senior Housing parking requirements in the cities of Yonkers and New Rochelle (0.5 spaces per dwelling unit), and the Assisted Living parking requirements in White Plains (0.4 spaces per dwelling unit).

“amenity rich”, which is not expected by tenants. Tenants are no longer simply utilizing their personal dwelling units but the entire building and its related amenities. As such, including this amenity space in the Floor Area per dwelling unit calculation corresponds with the current real estate market trends and other Westchester municipal regulations.

#### *Senior Housing and Assisted Living Facilities – Floor Area Per Dwelling Unit*

In line with the above, the Floor Area per dwelling unit for Senior Housing and Assisted Living facilities should be reduced and different from that of multifamily residences. Inherently, because of their more intensive residential uses, multifamily uses would require more Floor Area per dwelling unit, i.e. larger units and/or more amenity space. Conversely, Senior Housing and Assisted Living dwelling units require less floor area than multifamily developments due to the inherent nature of senior uses. Accordingly, and based on typical Assisted Living and Senior Housing developments in the area, we suggest enacting a Floor Area per dwelling unit standard for mixed developments comprising both Senior Housing (1,300 square foot) and Assisted Living units (800 square foot).

#### **Buildable Site Area / Lot Area Clarification**

Throughout the Zoning Code, certain lot area, building coverage, and buildable site area requirements apply. During the instant review process, the Village may consider clearing up a few inconsistencies in the Zoning Code related to the permitted coverage calculations.

#### *Lot Area Definition*

In most sections of the Zoning Code building coverage is a permitted percentage of the overall “Lot Area”, which Lot Area is defined as:

The total horizontal area included within reasonably regular lot lines, excluding all areas periodically inundated, or contained in any street or right-of-way or that projects into adjoining land a distance greater than its width at the base of such projection.

See Zoning Code § 305-5. In the OB District, building coverage is calculated by a percentage of the “Buildable Site Area”, which is defined as the “Lot Area” minus deductions for steep slopes and wetlands (as noted below). See Zoning Code 305 Attachment 7 (Exhibit B). Thus, at all times building coverage is dependent on what lands are included within the definition of “Lot Area”.

As an applicant seeks to calculate the permitted coverage on a specific property, they must start with an analysis of the property. Many of the properties between Route 9 and the Hudson River are encumbered by easements for the Metro North rail line and also the Old Croton Aqueduct Trail. For instance, the portion of the Premises located in the HC District, Lot 5, is dissected to the west by the Metro North rail line and to the southeast by the Old Croton Aqueduct Trail. See Exhibit A [Tax Map]. As noted in Exhibit A, the Old Croton Aqueduct Trail separates the main buildable portion of Lot 5 from the triangular parcel located southeast of the Old Croton Aqueduct Trail.

It is not entirely clear from the current definition of Lot Area whether such parcels that are separated from the “main” lot should be included in the overall “Lot Area”. Thus, we offer the following suggested amendment to clarify this point (underline represents recommended language and ~~brackets~~ language to be removed):

#### Lot Area

The total horizontal area included within the boundaries of the lot,<sup>3</sup> inclusive of lands separated by easement or right-of-way but not divided by streets [within reasonably regular lot lines], excluding all areas periodically inundated, or contained in any street or right-of-way or that projects into adjoining land a distance greater than its width at the base of such projection, but inclusive of all lands that may otherwise be separated by easement or right-of-way.

This amended definition of lot area will take into account the various easements and recreational rights-of-way that cut through several properties in the Village of Tarrytown. Most importantly, the amended Lot Area definition will provide developers and residents with the certainty they need when contemplating to invest in the Village of Tarrytown and utilization of their lands.

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<sup>3</sup> The Zoning Code defines “Lot” as “[l]and occupied or to be occupied by a building and its accessory buildings or by a dwelling group and its accessory buildings, together with such open spaces as are required under the provisions of this chapter, having not less than the minimum area and width required by this chapter for a lot in the district in which such land is situated and having its principal frontage on the street or on such other means of access as may be determined in accordance with the provisions of law to be adequate as a condition of the issuance of a building permit for a building on such land. This definition shall include the term ‘zoning lot’ as differentiated from ‘tax lot.’” See Zoning Code § 305-5.

### *Lands Under Water*

In conjunction with the above “Lot Area” definition, the current Zoning Code provides certain deductions from the “Buildable Site Area” within the OB District. *See* Zoning Code 305 Attachment 7 (Exhibit B). For instance, the existing zoning in the OB District has a 25% deduction from the Buildable Site Area for steep slopes and a 50% deduction for wetlands. *Id.* In other words, only those percentages of property that are steep slope and wetlands can count towards the Buildable Site Area, regardless other whether a building can actually be sited in those locations. However, the Zoning Code does not permit any lands under water to be included the Buildable Site Area calculation, not even a percentage. *See* Zoning Code § 305-45(H).

A review of the tax map reveals that, many waterfront parcels in the Village of Tarrytown include lands under the Hudson River. *See* Exhibit A [Tax Map]. Further, such lands are classified in the Waterfront “WD” Zoning District or the HC District and therefore capable of waterfront uses (i.e. recreation, marinas, yacht clubs, mass transit, etc.). *See* Exhibit C. With this in mind, it is illogical to forbid even a percentage of the lands under water to be included for the Lot Area and Buildable Site Area calculation.

We respectfully submit that such lands under water should be held to the same standard as the above mentioned wetlands deduction. There should be no distinction between the calculation of wetlands and lands underwater for the purposes calculating Lot Area and/or Buildable Site Area.

Therefore, we recommend that the Zoning Code be amended to permit 50% of lands under water to be counted towards the Lot Area and Buildable Site Area. This only makes sense considering that these lands can be utilized for waterfront uses in accordance with the WD and HC Zoning District regulations. While the abovementioned current deductions only apply within the OB District, we respectfully submit that the proposed 50% deduction for lands under water, should be applied to every zoning district that has property along the waterfront. Therefore, we recommend amending Zoning Code Section 305-45 as follows (underlined language to be added):

No land currently under water may be included in calculations of allowable density or unit count for any property not under water, except that 50% of land area under the Hudson River shall be included in any density calculation for waterfront properties so long as such lands are under ownership of the applicant and are included within the applicable Lot Area of the subject Lot.

Thus, specifically tailoring this 50% deduction to Hudson River properties will ensure that only waterfront properties will benefit from this provision and not lands that comprise ponds, streams or lakes. Further, only including Hudson River waterfront properties also ensures that only those lands in the WD and HC Districts will benefit from the deduction, because such districts permit uses into the Hudson River and therefore should not be unduly penalized by owning lands under the Hudson River.

### **Principal and Accessory Building Coverage**

#### *Parking Structures – Building Coverage*

As you are aware, the Zoning Code also regulates the percentage of “building coverage” permitted on a buildable lot. The current Zoning Code defines Building Coverage as “[t]he percentage of the lot area that is covered by a *building or buildings*.” See Zoning Code § 305-5 (emphasis added). Therefore, Building Coverage can only be calculated by first determining the amount of lot area covered by buildings. To make this calculation, the applicant must look to the definition of building in the Zoning Code. “Building” is defined by the current Zoning Code as:

Any structure, either temporary or permanent, *having walls and a roof*, designed for the shelter of any person, animal, or property, and occupying more than 100 square feet of area.

See Zoning Code § 305-5 (emphasis added). Thus, for a structure to be identified as a “Building” for zoning purposes, it must have “walls and a roof”. Accordingly, parking structures that do not have walls (open walls) or roofs (open tops) are not included as a “Building” for purposes of calculating the Building Coverage. To make this clear and avoid the need for costly interpretations, we respectfully submit that the definition of “Building Coverage” should be amended to exclude “parking garages without walls or roofs.” To this end, the Village Board might consider amending the “Definitions” section of the Zoning Code or simply adding a footnote to the various zoning schedules noting that “parking garages without walls or roofs” are excluded from the Building Coverage calculation.

There is no doubt that Medical and Dental Office uses will require a large amount of parking spaces. Indeed, parking garages are the most efficient way to provide adequate parking and therefore an applicant should not be penalized, in the form of Building Coverage additions, for constructing parking garages on the Premises, which actually lower the amount of impervious surfaces and expand open spaces on a lot.

### *Westchester River Walk – Impervious Surface Coverage*

The Village of Tarrytown has done an excellent job in maintaining the Westchester Riverwalk throughout the Village and along properties adjacent the Hudson River. As you are aware, the Westchester Riverwalk is a paved walkway that winds through riverfront properties connecting all Westchester river communities. As such, the Riverwalk is calculated in the total impervious surface coverage for any development. For instance, if Montefiore was to develop on the Premises, the Riverwalk sections would be calculated towards its overall permitted impervious surfaces. The Riverwalk serves a great recreational purpose in the Village and should be maintained and improved accordingly without any worry that improvements to the Riverwalk would violate the Zoning Code's impervious surface requirements. Thus, we propose that the Village Board exempt the impervious surface resulting from the Riverwalk from the impervious surface requirements of the Zoning Code, which will allow developers to make improvements to the Riverwalk, if needed, without worrying about sacrificing any developments rights or violate the Zoning Code. This exemption would encourage developers to improve the Riverwalk to the benefit of the Village of Tarrytown and its residents as a whole.

### **Single Family and Multifamily Density Requirements – HC District**

The current Zoning Code provides specific density requirements for “single-family” and “multifamily” uses in the HC Zoning District. In the HC District, the following restriction applies, “[s]ingle-family and multifamily residential density[] maximum one unit per five acres”. Zoning Code Section 305-38(G)(6). It is important to note that single-family and multifamily uses are separate distinct uses and each separately permitted and defined within the HC District. Therefore, the “one unit per five acres” density maximum applicable in the HC District should only be applied to “single-family” and “multifamily” uses and not to Senior Housing, because Senior Housing is permitted separately from single-family and multifamily uses.

In New York, where a zoning code lists restrictions for certain uses, those uses not mentioned are specifically excluded from such restrictions. *See e.g. Inc. Vill. of Old Westbury v. Alljay Farms, Inc.*, 100 A.D.2d 574, 575, 473 N.Y.S.2d 505, 507 (2d Dep’t 1984) *aff’d as modified*, 64 N.Y.2d 798, 476 N.E.2d 315 (1985); *see also People v. Island Wide Ins. Brokerage, Inc.*, 177 Misc. 2d 668, 669, 676 N.Y.S.2d 860, 861 (Nassau Co. Dist. Ct. 1998). Accordingly, while the current Zoning Code must be interpreted to not include Senior Housing in the abovementioned density restriction, this should be clarified in the current zoning amendments being considered.<sup>4</sup>

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<sup>4</sup> Please note that in New York, it has been firmly held that zoning ordinances must be strictly construed in favor of property owners and against municipalities because zoning regulations are in derogation of common-law property rights. *See Raritan Development Corp. v. Silva*, 91 N.Y.2d 98, 667 N.Y.S.2d 327



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In furtherance of the above, Senior Housing facilities cannot be subject to the “one unit per five acres” because, unlike single-family homes and multifamily developments (i.e. cooperatives), Senior Housing facilities are often times managed by a property management company that requires more units to feasibly operate. By their very nature, Senior Housing units are smaller in size than multifamily or single family homes. Potential Senior Housing tenants are downsizing and seeking smaller more convenient living spaces. As such, the dwelling per lot area requirement noted above is not reasonable for the smaller Senior Housing living units that would be proposed by a Senior Housing company.

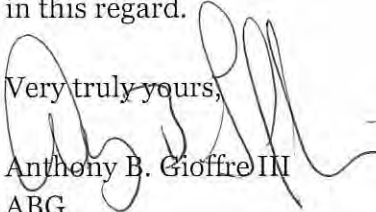
Although no specific lot area per dwelling unit requirement exists for Senior Housing, the size and scale of any development in the HC District is governed by the other applicable area and bulk regulations, i.e. building coverage, setbacks, etc. We encourage the Village Board to clarify this minor point in the Zoning Code, which will afford senior housing developers the opportunity to invest in Tarrytown with a better degree of certainty on their pro forma.

### **Conclusion**

We are encouraged that the Village Board of Trustees, the Planning Board and Planning Staff have begun the process of reviewing the Zoning Code to expand the uses in the OB Zoning District. As the real estate market changes it will be important for the Village Board to constantly review its Zoning Code and ensure that the Zoning Code is consistent with the trends of growth in Westchester County. Through the expansion of uses in the OB District, and the inclusion of the above noted zoning recommendations, the Village of Tarrytown will set an example for other municipalities and attract appropriate development to the benefit of its residents.

We look forward to more information on the proposed zoning amendments and would be happy to discuss any of the foregoing with your Board in more detail. Thank you for your consideration in this regard.

Very truly yours,

  
Anthony B. Gioffre III  
ABG

Enclosures

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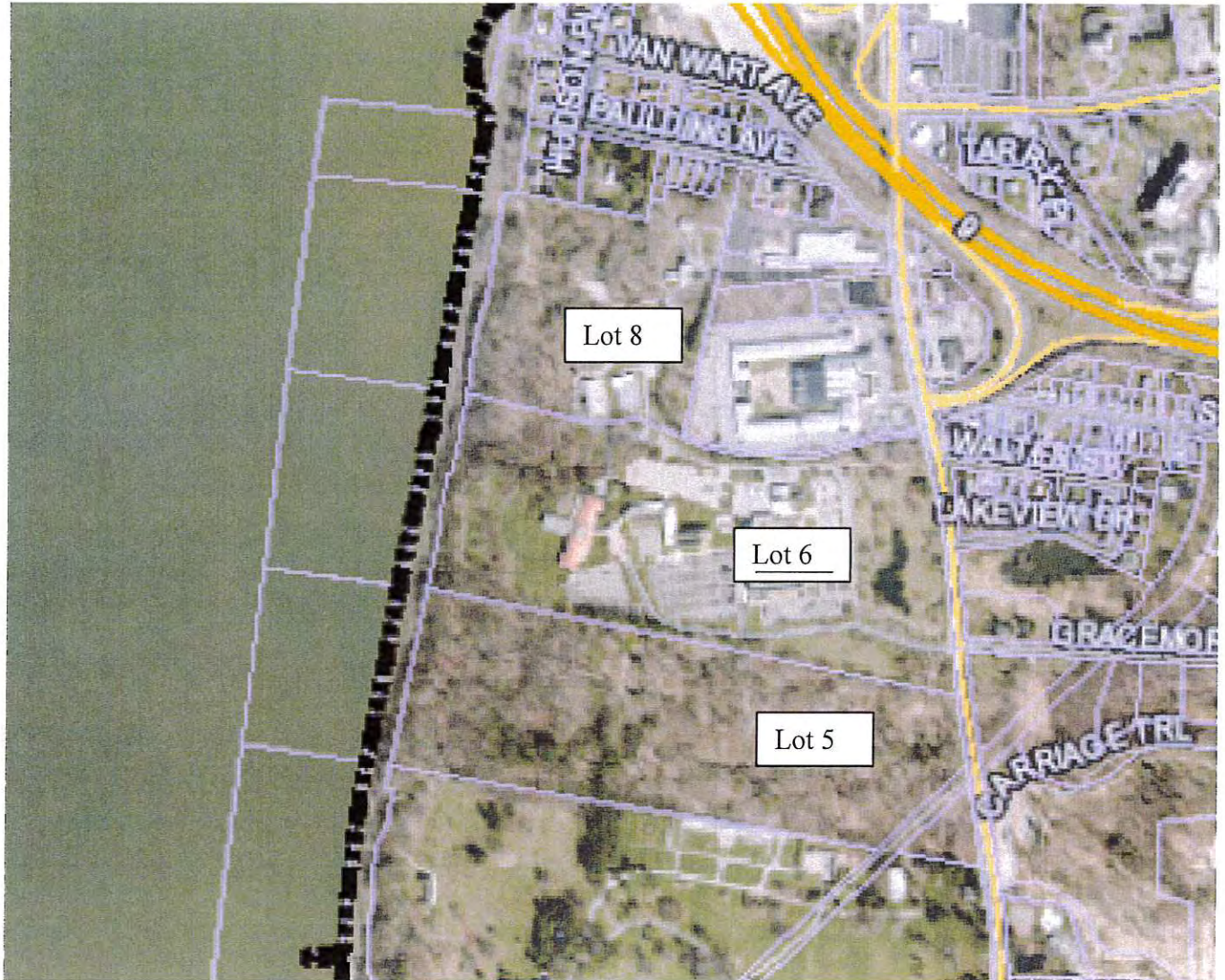
(1997); Chrysler Realty v. Howard Orneck, 196 A.D.2d 631, 601 N.Y.S.2d 194 (2d Dep’t 1993). Furthermore, any ambiguity in the language of a Zoning Code must be resolved in favor of the property owner. See Allen v. Adami, 39 N.Y.2d 275, 277, 347 N.E.2d 890, 892 (1976).

cc: Michael S. Blau, Village Administrator, Steven M. Silverberg, Esq., Silverberg Zalantis LLP,  
David Friedman, Montefiore Health System, Richard J. Pearson, PE, PTOE, JMC.



# EXHIBIT A

# The Premises – Village of Tarrytown Tax Map



## **EXHIBIT B**

ZONING

305 Attachment 7

Village of Tarrytown

Zoning Schedule  
OB District

5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21
<b>Zone</b> OB	<b>Minimum Lot Size (square feet)</b> 435,600	<b>Width of Building (feet)</b> 400	<b>Principal Building Coverage (percent)</b> 45% of building coverage for each building, structures and paved areas: Buildable site area shall be determined by subtracting from the total lot area 50% of the area of the wetlands and steep slopes (25% or greater) on the site. Maximum total coverage of all buildings and structures: 12% of the buildable site area, as defined above. Building coverage may be increased up to 17% at a ratio of an additional 1% of building coverage for each additional 5% of parking enclosed in garages exceeding the minimum of 20%, as shown below:	<b>Accessory Building Coverage (percent)</b> 12%	<b>Total Coverage (all buildings)</b> 13%	<b>Minimum Front Yard (feet)</b> Minimum setback of all permitted buildings, structures and paved areas from the right-of-way of any public street or any residential zoning district: 100 feet. Minimum setback of all permitted buildings, structures and paved areas from any nonresidential zoning district and from other property boundaries: 50 feet. Minimum setback of buildings and structures from the right-of-way of the New York State Thruway or the Administrative Headquarters of the New York State Thruway: 50 feet.	<b>Minimum Side Yard (feet)</b> Minimum setback of all permitted buildings, structures and paved areas from the right-of-way of any public street or any residential zoning district: 100 feet. Minimum setback of all permitted buildings, structures and paved areas from any nonresidential zoning district and from other property boundaries: 50 feet. Minimum setback of buildings and structures from the right-of-way of the New York State Thruway or the Administrative Headquarters of the New York State Thruway: 50 feet.	<b>Minimum 2 Side Yards (feet)</b> Minimum setback of all permitted buildings, structures and paved areas from the right-of-way of any public street or any residential zoning district: 100 feet. Minimum setback of all permitted buildings, structures and paved areas from any nonresidential zoning district and from other property boundaries: 50 feet. Minimum setback of buildings and structures from the right-of-way of the New York State Thruway or the Administrative Headquarters of the New York State Thruway: 50 feet.	<b>Minimum Rear Yard (feet)</b> Minimum setback of all permitted buildings, structures and paved areas from the right-of-way of any public street or any residential zoning district: 100 feet. Minimum setback of all permitted buildings, structures and paved areas from any nonresidential zoning district and from other property boundaries: 50 feet. Minimum setback of buildings and structures from the right-of-way of the New York State Thruway or the Administrative Headquarters of the New York State Thruway: 50 feet.	<b>Minimum Distance From Accessory Building to Principal Building (feet)</b> Minimum setback of all permitted buildings, structures and paved areas from the right-of-way of any public street or any residential zoning district: 100 feet. Minimum setback of all permitted buildings, structures and paved areas from any nonresidential zoning district and from other property boundaries: 50 feet. Minimum setback of buildings and structures from the right-of-way of the New York State Thruway or the Administrative Headquarters of the New York State Thruway: 50 feet.	<b>Minimum Distance From Accessory Building to Building on Side Lot Line (feet)</b> Minimum setback of all permitted buildings, structures and paved areas from the right-of-way of any public street or any residential zoning district: 100 feet. Minimum setback of all permitted buildings, structures and paved areas from any nonresidential zoning district and from other property boundaries: 50 feet. Minimum setback of buildings and structures from the right-of-way of the New York State Thruway or the Administrative Headquarters of the New York State Thruway: 50 feet.	<b>Minimum Distance From Accessory Building to Rear Lot Line (feet)</b> Minimum setback of all permitted buildings, structures and paved areas from the right-of-way of any public street or any residential zoning district: 100 feet. Minimum setback of all permitted buildings, structures and paved areas from any nonresidential zoning district and from other property boundaries: 50 feet. Minimum setback of buildings and structures from the right-of-way of the New York State Thruway or the Administrative Headquarters of the New York State Thruway: 50 feet.	<b>Maximum Height (stories)</b> 3.0	<b>Maximum Height (feet)</b> 35	<b>Minimum Floor Area Per Dwelling Unit (square feet)</b> The gross floor area permitted shall not exceed the product of the buildable site area and the following floor area ratios:	<b>Zone</b> OB

OB Training schools for training of management, sales, research, financial or other executive office personnel and for the performance of historical, economic and other research not of a biological or technical character

Permitted Building Coverage*	Permitted Height (stories)	Maximum Floor Area Ratio**
12%	3	0.36
13%	3	0.39
14%	3	0.42
15%	3	0.45
16%	3	0.48
17%	3	0.51

OB Telephone exchanges and electric substations

NOTES:

- \* See coverage requirements.
- \*\* Floor area ratio = gross floor area/buildable site area

Buildable site area = total lot area - 50% [wetlands + steep slopes (25% or greater)]

ZONING

305 Attachment 8

Village of Tarrytown

Zoning Schedule  
MIU District

5	6	7	8-10	11-17	18	19														
Zone	Minimum Lot Size (square feet)	Width at Front of Building (feet)	Coverage Requirements	Setback Requirements	Maximum Height (stories)	Maximum Height (feet)														
MIU	0	0	<p>Maximum total coverage of all buildings, structures and impervious surfaces: 45% of the total lot area.</p> <p>Maximum total coverage of all buildings and structures: 12% of the total lot area. Building coverage may be increased up to 17%, at a ratio of an additional 5% of parking enclosed in garages exceeding the minimum of 20% as shown below.</p> <table border="1"> <thead> <tr> <th>Percentage of Parking Enclosed</th> <th>Permitted Building Coverage</th> </tr> </thead> <tbody> <tr> <td>20%</td> <td>12%</td> </tr> <tr> <td>25%</td> <td>13%</td> </tr> <tr> <td>30%</td> <td>14%</td> </tr> <tr> <td>35%</td> <td>15%</td> </tr> <tr> <td>40%</td> <td>16%</td> </tr> <tr> <td>45%</td> <td>17%</td> </tr> </tbody> </table> <p>Maximum total coverage of all impervious surfaces (excluding buildings): 33%.</p>	Percentage of Parking Enclosed	Permitted Building Coverage	20%	12%	25%	13%	30%	14%	35%	15%	40%	16%	45%	17%	<p>Minimum setback of all permitted buildings and structures from the right-of-way of the New York State Thruway: 50 feet.</p> <p>Minimum setback of all permitted buildings and structures from the right-of-way of New York State Route 119: 100 feet.</p> <p>Minimum setback of all permitted buildings and structures from all other property lines: 75 feet.</p> <p>Minimum setback of any permitted building or structure from any other permitted building or structure: 50 feet.</p> <p>Minimum setback of all paved areas from the right-of-way of the New York State Thruway: 25 feet.</p> <p>Minimum setback of all paved areas from the right-of-way of New York State Route 119: 50 feet.</p> <p>Minimum setback of all paved areas from any residential zoning district: 75 feet.</p> <p>Minimum setback of all paved areas from other property lines: 50 feet.</p> <p>Minimum setback of all permitted buildings, structures and impervious materials from all wetlands: 75 feet.</p>	6.0	0
Percentage of Parking Enclosed	Permitted Building Coverage																			
20%	12%																			
25%	13%																			
30%	14%																			
35%	15%																			
40%	16%																			
45%	17%																			

**Maximum Gross Floor Area**  
The gross floor area permitted shall not exceed the product of the total lot area and the permitted building coverage (see coverage requirements) multiplied by the number of stories permitted by the height regulation.

A minimum of 40% of the permitted gross floor area shall be retained for office use. A minimum of 40% and a maximum of 55% shall be retained for residential use.

# EXHIBIT C





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March 14, 2018

**BY HAND DELIVERY**

Chairman Stanley Friedlander and  
Members of the Planning Board  
Village of Tarrytown  
One Depot Plaza  
Tarrytown, NY 10591

Re: Artis Senior Living, LLC – Petition for a Zoning Text Amendment

Dear Chairman Friedlander and Members of the Planning Board:

This letter is respectfully submitted on behalf of Montefiore Medical Center (“Montefiore”), as the owner of property located at 555 South Broadway, in the Village of Tarrytown, New York (the “Premises”). The Premises is currently improved with office buildings and related parking and is classified in the Office Building “OB” Zoning District.

We respectfully submit this letter as it relates to the pending Petition for a Zoning Text Amendment submitted by Artis Senior Living, LLC (“Artis”). We understand the Petition proposes to expand the uses within the OB Zoning District to permit “small facilities for Alzheimer’s care”. As you may expect, while no specific development plans have been contemplated for the Premises, Montefiore has a large interest in Artis’ proposed Zoning Text Amendment given Montefiore’s ownership of significant lands that may be impacted by any changes to the Zoning Code and the OB District specifically. As such, Montefiore offers this correspondence for your consideration.

There is no doubt that the healthcare industry is expanding. For instance, many of the major New York City medical providers are expanding into Westchester County resulting in great economic and social benefits for the local community, e.g. Montefiore’s affiliation with White Plains Hospital, Burke Rehabilitation Hospital, and separately Memorial Sloan Kettering’s facility in the Town of Harrison. Aside from the economic benefits gained by the location of a major healthcare facility, residents enjoy localized healthcare and avoid lengthy travel for first class healthcare and/or treatment. As you can imagine, having a clear picture of development rights pursuant to the Zoning Code is vital to spark economic development, which will benefit all Tarrytown residents.

Artis’ pending Petition is an attempt to address the foregoing, yet we respectfully submit it is overly narrow in its scope, obviously intended to ultimately address a specific project for a specific parcel. To address this one situation, the Petition proposes a new defined term “Alzheimer’s/Dementia Care Housing” and allowing such use as a principally permitted use





March 14, 2018

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subject to certain conditions. Including a requirement of compliance with certain criteria or conditions by its very nature dictates that such use should be permitted subject to the issuance of a compatible use permit, rather than a principally permitted use. Notwithstanding whether the Alzheimer's/Dementia Care Housing use is permitted as a principal use or a specially permitted use, we urge the Village to consider a broader use classification(s) so as to not restrict a use that might otherwise be compatible or appropriate and not different in its impacts.

The Petition however has implications that extend beyond Artis' specific parcel in question to the entire OB District and a more comprehensive approach is warranted given the uses involved and significant other lands that may be impacted. The Planning Board may be aware that the Board of Trustees contemplated more comprehensive zoning text amendments in late 2016/early 2017 including the expansion of permitted uses in the OB Zoning District (including Medical and Dental Offices) and also addressing certain bulk regulations.<sup>1</sup> We suggest that the Village evaluate the current Village of Tarrytown Zoning Code more broadly and consider a more comprehensive approach to a proposed zoning text amendment that would not only include the request of the Petitioner, but also address certain Zoning Code inconsistencies and a more complete approach to the permitted/specially permitted uses in the OB District.

We are encouraged with the continued interest in reviewing the Zoning Code to consider the expansion of the uses permitted in the OB Zoning District and update to applicable bulk regulations. As the real estate market changes, it will be important for the Village to constantly review its Zoning Code and ensure that the Zoning Code is consistent with the trends of growth in Westchester County. Through the expansion of uses in the OB District, and the inclusion of the above (and attached) noted zoning recommendations, the Village of Tarrytown will set an example for other municipalities and attract appropriate development to the benefit of its residents.

We look forward to participating in the continued dialogue relative to any proposed zoning amendments and would be happy to discuss any of the foregoing with your Board in more detail.

Thank you for your consideration in this regard.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Anthony B. Gioffre III', is written over the typed name. The signature is fluid and cursive.

Anthony B. Gioffre III

Enclosure

cc: Mayor Drew Fixell and the Board of Trustees; Richard Slingerland, Village Administrator; Steven M. Silverberg, Esq./Katherine Zalantis, Esq., Silverberg Zalantis LLP; John B. Kirkpatrick, Esq.; Montefiore Health System; Richard J. Pearson, PE, PTOE, JMC.

<sup>1</sup> Please see enclosed copy of the correspondence we submitted in this regard dated October 24, 2016.