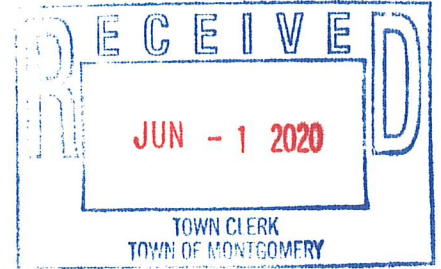


Law Office Of  
CHARLES T. BAZYDLO, P.C.  
Attorney and Counselor at Law  
5 Howard Seely Road  
Thompson Ridge, N.Y. 10985



---

(845) 361-3668  
FACSIMILE (845) 361-3669

May 29, 2020

*Via email to [tstickles@townofmontgomery.com](mailto:tstickles@townofmontgomery.com)*

*And Overnight Mail to 845-457-2660*

Hon Tara Stickles

Montgomery Town Clerk

Town of Montgomery Government Center

110 Bracken Road

Montgomery, New York 12549

Re: Application of National Builders, LP /134 Neelytown Road Warehouse  
Project For Variance From Local Law No.2 of 2020

Dear Ms. Stickles:

My office represents National Builders, LP in their application for Site Plan Approval and Special Exception Permit for a 312,500 square foot warehouse facility to be constructed on an approximately 42.29 acre vacant land parcel located in the Interchange Commercial and Industry zone on Neelytown Road. National Builders, LP is the contract vendee for the purchase of the parcel identified on the tax maps of the Town as S/B/L 33-1-39.62.

We have prepared this correspondence to serve as our application to the Town Board of the Town of Montgomery for the granting of a Variance from the requirements of Local Law No. 2 of 2020 (herein referred to as "Warehouse Moratorium"). Section 7 of Local Law No. 2 of 2020 as adopted provides a mechanism by which the Town Board may grant a variance from the strict compliance of the Local Law upon the showing of a "unnecessary and extraordinary hardship" by an impacted property owner. We believe that as demonstrated by the information provided herein that National Builders, LP as contract vendee for parcel S/B/L 33-1-39.62 satisfies the requirements for the granting of a variance from the Warehouse Moratorium local law.

By way of review the efforts that have been taken by National Builders, LP to satisfy the requirements for Site Plan Approval and issuance of the Special Exception Use

Permit as well as the review process that has been completed by the Planning Board and its professional consultants are summarized below:

- 10/2017 applicant appears at Planning Board work session for a pre-application presentation of the project
- 3/2018 applicant submits full application for Site Plan Approval / SEU Permit including site development plan and grading set / SWPPP / Long Form EAF
- 3/26/18 Planning Board meeting / review Board consultants comments on submitted application / Board declares intent to serve as Lead Agency for compliance with the State Environmental Quality Review Act (“SEQRA”) and authorizes circulation of the Lead Agency Notice to Involved and Interested Agencies.
- 6/6/2018 applicant attends Planning Board work session to further review project and status of addressing Boards consultant comments
- 10/3/18 applicant attends Planning Board work session / decision made by Board to hold an “informational” public hearing to gauge concerns and any issues to be addressed as part of project SEQRA review. Board directs that notice of hearing be sent by applicant to all properties within 500 feet instead of typical 300 feet so as to include more properties within Village of Maybrook
- 10/29/18 Board holds “informational” public hearing. Less than 10 individuals present comments or questions regarding the project
- 11/7/18 Boards engineering consultants issues second set of comments on application site plan design
- 11/30/18 Board Member Bill Kelly (now consultant for lighting matters) issues letter approving the site lighting plan
- 5/1/19 applicant attends Planning Board work session to further review project and status of addressing Boards consultant comments
- 7/3/19 applicant attends Planning Board work session to further review project and status of addressing Boards consultant comments
- 8/7/19 applicant attends Planning Board work session to further review project and status of addressing Boards consultant comments
- 11/6/19 applicant attends Planning Board work session to introduce A. Duie Pyle as potential end user / discuss potential plan modifications

- 12/4/19 applicant attends Planning Board work session to further review plan modifications associated with A. Duie Pyle as potential end user. Board sets date for Public Hearing on project as modified
- 1/13/20 Planning Board opens Public Hearing on project. Some general objections to warehouse development in the Town are raised and only two individual property owners from Conklin Lane present specific comments / questions on project
- 1/14/20 Board engineer consultant issues further review letter
- 2/5/20 applicant attends Planning Board work session / review issues raised at Public Hearing / discuss potential closing of hearing and issuance of SEQRA Negative Declaration
- 2/10/20 Planning Board continues Public Hearing on project / no new or additional issues are raised by commenting public. Board votes to keep Public Hearing open to February 24<sup>th</sup> meeting
- 2/24/20 Planning Board continues Public Hearing on project / no new or additional issues are raised by commenting public. Board votes to keep Public Hearing open to March 9<sup>th</sup> meeting and request applicant to provide additional clarification on site drainage design
- 3/9/20 Planning Board continues Public Hearing on project / no new or additional issues are raised by commenting public. Board votes to keep Public Hearing open to March 23<sup>rd</sup> meeting and request applicant to provide additional clarification on site drainage design
- 3/30/20 Planning Board holds first on-line virtual meeting for purpose on re-scheduling continuance of Public Hearing until April 13<sup>th</sup>.
- 4/13/20 Planning Board adjourns Public Hearing until April 15<sup>th</sup> due to weather concerns.
- 4/15/20 Planning Board continues Public Hearing on project / no new or additional issues are raised by commenting public. Planning Board review applicants responses to previous Board comments and votes to keep Public Hearing open to April 27<sup>th</sup> for consideration of SEQRA Negative Declaration.
- 4/27/20 Planning Board closes Public Hearing on project and adopts SEQRA Negative Declaration as Planning Board was under the belief that Local Law No. 2 of 2020 was not yet in effect as of the time of the Planning Boards meeting.

As summarized above the project has been known to the Planning Board and under the review of the Boards consultants since fall of 2017. Although modifications to the

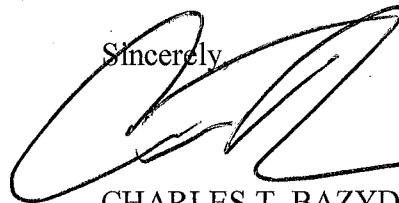
site development plan were necessary as a result of the identification of an end user of the facility, the operation proposed by end user will result in less hours of operation and less traffic impacts than the previous plan. As such after considering the comments from the public and the responses provided by the applicant during the extensive review process, the Planning Board closed the Public Hearing and concluded that the project would not have a significant environmental impact.

Section 5 of Local Law No. 2 of 2020 provides for Specific Exemptions from the requirements of the Local Law. In particular Section 5A exempts from the Local Law those projects that have "*received a Negative Declaration (Notice of Determination of Non-Significance) from the Lead Agency charged with reviewing the proposed project*". As demonstrated above the 134 Neelytown Road project was extensively reviewed by the Planning Board as SEQRA Lead Agency and found by the Board and its professional consultants to satisfy the criteria for the issuance of a SEQRA Negative Declaration. The fact that the Planning Board adopted the SEQRA Negative Declaration at its meeting of April 27<sup>th</sup> rather than one meeting sooner creates an "unnecessary and extraordinary hardship" to the applicant National Builders, LP qualifying it for the granting of a variance from the requirements of Local Law No. 2 of 2020.

As discussed above National Builders, LP is the contract vendee for the project parcel under a purchase agreement that is set to expire on July 15<sup>th</sup> and the Seller is under no obligation to renew or extend the agreement. To date National Builders, LP has expended in excess of \$750,000 on hard money deposits, site design cost and payment of property taxes on the 134 Neelytown Road project all of which would be lost with the expiration of the purchase contract. As such application of restrictions contained in Local Law No. 2 of 2020 will result in substantial monetary loss and creates an "unnecessary and extraordinary hardship" to the applicant National Builders, LP.

At this point we are hopeful that the Town Board will agree that based on the extensive review conducted by the Planning Board on the project, the location of the project in an Interchange Commercial and Industry zone on Neelytown Road that has long been associated with similar types of development, as well as the particular circumstances of this application, satisfies the criteria for the issuance of a variance from the requirements of Local Law No. 2 of 2020 to allow the Planning Board to conclude its approval of the 134 Neelytown Road project.

Sincerely,



CHARLES T. BAZYDLO