



BOARD OF TRUSTEES  
INCORPORATED VILLAGE OF ROSLYN

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In the Matter of the Application of

45 LUMBER ROAD LLC

**DECISION**

For a Special Permit pursuant to Chapter 470, Section 470-20C(2) of the Code of the Incorporated Village of Roslyn, to construct a 33 unit residential rental building upon the property located at 45 Lumber Road, Roslyn, New York, known and designated on the Nassau County Land and Tax Map as Section 6, Block 53, Lot 1031.

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- NAME OF APPLICANT: 45 Lumber Road LLC
- SUBJECT PROPERTY: Section 6, Block 53, Lot 1031
- ZONING DISTRICT: WMU Waterfront Mixed-Use District
- RELIEF REQUESTED: Application For a Special Permit pursuant to Chapter 470, Section 470-20C(2)
- PUBLICATION & POSTING: All in accordance with applicable laws, rules and regulations.
- DATE OF HEARINGS: June 16, 2020, July 21, 2020 and September 15, 2020
- APPEARANCES: Thomas V. Pantelis, Applicant’s Attorney  
Ian Zwerling, On behalf of Applicant  
Kevin Dursunyan, On behalf of Applicant  
John Patrick Winberry, Applicant’s Architect  
Adam Wanaselja, Applicant’s Architect  
Michael Rant, Professional Engineer  
Sean P. Mulryan, Professional Engineer

45 Lumber Road LLC (hereinafter, “Applicant”) appeared before this Board pursuant to Chapter 470, Section 470-20C(2) of the Municipal Code of the Incorporated Village of Roslyn (hereinafter, the “Village”) for a special use permit to construct a four-story residential rental

apartment building containing 33 apartments (27 two-bedroom units and 6 one-bedroom units) upon the real property located at 45 Lumber Road, Roslyn, New York (known and designated on the Nassau County Land and Tax Map as Section 6, Block 53, Lot 1031) (hereinafter, the "Property").

Applicant submitted to the Village Building Department a Building Permit Application (Building Permit No. 7839, Application No. 1906), sworn to on February 18, 2020, by Ian Zwerling, as Member of 45 Lumber Road, LLC, stamped received by the Village of Roslyn on February 19, 2020, an accompanying letter, dated February 18, 2020, to the Board of Trustees requesting consideration under the WD-O Overlay District and proposed amenities for the project, a revised Notice of Disapproval, dated February 7, 2020, issued by the Village Superintendent of Buildings, a Full Environmental Assessment Form, dated February 17, 2020, a Traffic Study prepared by Mulryan Engineering, dated February 13, 2020, a Survey prepared by Gallas Surveying Group, dated October 10, 2018, a Radius map identifying property owners located within 300 feet of the property, a Preliminary Site Plan, dated January 15, 2020, prepared by Northcoast Civil Land Surveying & Civil Engineering, and Floor Plans and Elevation Sheets A-002 to A-008, dated January 17, 2020, prepared by DH Murray Architecture.

The Superintendent of Buildings determined that the application required the following zoning relief:

(1) 17 residential apartment units [16 allowed, 33 proposed] See Village Code Section 470-16B [1][a], (2) 1.5 stories [2.5 stories allowed, 4 stories proposed] See Village Code Section 470-5, (3) 1.08% for the total Floor Area Ratio [.40% maximum, 1.48% proposed] See Village Code Section 470-5, and (4) 23.7 feet for the total height [35 ft. maximum allowed, 58.7 ft. proposed] See Village Code Section 470-5.

Applicant seeks relaxation of the Village's Zoning regulations with respect to density, building height (including stories), floor area ratio, and parking. Applicant also seeks site plan

approval for the site layout of the residential apartment building and architectural approval for the building design. Applicant was entitled to seek relief before the Zoning Board of Appeals for the necessary variances. In the alternative, Applicant was permitted to seek the same relief from the Board of Trustees pursuant to Chapter 470, Section 470-20C(2) under the Village's development incentive bonus law. This latter course of action was chosen by Applicant.

Applicant made an application to the Board of Trustees for the required relief pursuant to the Village's development incentive bonus law and presented its application at public hearings held on June 16, 2020, July 21, 2020 and September 15, 2020. By Resolution, dated June 16, 2020, the Board of Trustees declared itself lead agency pursuant to SEQRA and determined that the application was an Unlisted Action. An expanded Environmental Assessment Form was prepared by the Applicant. The expanded Environmental Assessment Form contained the Traffic Engineering Report prepared by Mulryan Engineering, P.C., dated February 13, 2020. Applicant submitted a revised WDO-Amenities Request, dated August 12, 2020, an accompanying letter, dated August 12, 2020, a Supplemental Amenities Letter, dated August 18, 2020, a revised Full Environmental Assessment Form, dated August 17, 2020, and the White Paper on Market Rate School Aged Children Study prepared by the Real Estate Institute at Stony Brook University College of Business, dated April 2019. The Board of Trustees, after careful review of all relevant documents and testimony, issued a Negative Declaration under SEQRA, dated September 15, 2020, and a supporting Resolution on that same date.

A referral of the project application was made to the Nassau County Planning Commission. The Nassau County Planning Commission by Resolution No. 10381-20, adopted on July 16, 2020, recommended that the Village Board of Trustees take whatever action it deemed appropriate.

In consideration of the Board's approval of this application, the Applicant has offered the following public amenities which are set forth set in correspondence from Thomas V. Pantelis, Esq., dated February 18, 2020 (Revised August 12, 2020) and August 18, 2020, which are made a part of this Decision:

1. Applicant shall reserve twenty (20%) percent of the units for affordable workforce housing.
2. Applicant shall contribute to the Village the sum of \$10,000.00 per unit for the entire thirty-three (33) units proposed. This will result in a total contribution of \$330,000.00. This contribution shall be paid by Applicant contemporaneously with the issuance of the building permit.
3. Applicant shall repair or replace as needed the two hundred fifty (250) feet of bulkhead contiguous to the Property.
4. Applicant shall construct two hundred fifty (250) feet of waterfront walkway with brick pavers, benches and lighting, which is intended for public use at an approximate cost of Two Hundred Fifty Thousand (\$250,000.00) Dollars.
5. Applicant shall obtain approvals from Nassau County to make road improvements to the intersection of Lumber Road and Old Northern Boulevard as may be approved by Nassau County and the Village of Roslyn.
6. Applicant shall, prior to issuance of a certificate of occupancy for the Project, deliver to the Village a perpetual and unobstructed easement over and across the boardwalk referenced in Paragraph 4 above. The purpose of the easement shall be for perpetual and unobstructed public use throughout the entire easement area and

shall include, inter alia, a ten and one-half foot (10 1/2') wide public way upon a walkway of pavers (to be approved by the Board of Trustees) along the waterfront and to be constructed by Applicant as set forth in the Site Plan. The public use of the easement shall be subject to regulation by the Board of Trustees. The maintenance of the improvements in the easement, including, inter alia, all walkways of pavers, lighting fixtures, rip rap, bulkhead and landscaping shall be in accordance with the directives from time to time of the Board of Trustees and shall be the responsibility of Applicant, its successors and assigns and any transferee of the Property. The maintenance obligation herein shall also include repair and replacement of the improvements and amenities within the easement area. Applicant shall be required to provide liability insurance covering the easement in the minimum amount of One Million (\$1,000,000.00) Dollars and shall name the Village as an additional insured on the policy. The policy shall additionally provide that written notice to the Village must be given not less than sixty (60) days prior to cancellation. In the event that Applicant fails to maintain the aforementioned liability insurance, the Village shall pay all unpaid premiums and declare such amount to be a lien upon the Property and assess same against the Property as additional real estate taxes. The terms and conditions of the easement and the maintenance obligations of Applicant, its successors and assigns will be incorporated in a written instrument to be drafted by Applicant (the "Easement with Covenants") in a form acceptable to the Village Attorney, which instrument shall be recorded by the Applicant in the Office of the Nassau County Clerk.

7. Applicant shall, prior to the issuance of a certificate of occupancy for the Project, deposit with the Village the sum of Fifty Thousand (\$50,000.00) Dollars to insure the maintenance of the easement property and the improvements and amenities as set forth in this Decision, which sum may be used by the Village to provide maintenance of the said easement property, improvements and amenities in the event that Applicant or any successors or assigns shall, after thirty (30) days written notice to cure delivered by the Village, fail to correct a condition complained of. Additionally, any further funds expended by the Village for the maintenance of the easement, improvements or other amenities located therein shall be paid to the Village within ten (10) days of written demand therefor and the failure of Applicant, its successor and assigns to make such payment shall entitle the Village to declare such sum to be a lien upon the Property and to assess same against the Property as additional real estate taxes. The amount of the deposit as stated above shall in no way be deemed to place a limitation or cap upon the obligations of Applicant with respect to its obligations hereunder. The amount of Fifty Thousand (\$50,000.00) Dollars shall remain on deposit at all times and shall be replenished upon demand in the event that any of the funds shall have been utilized by the Village in accordance with this Decision.
8. Applicant shall repair any damage to any Village roads caused by Applicant during the course of construction.
9. Applicant shall comply with the Village's Stormwater Management Plan and in the event that its construction activities shall cause the redirection of underground

water flow such that it impacts any adjoining property, Applicant shall be responsible for remedying such condition.

10. Applicant shall acknowledge that the conditions set forth in this Decision are reasonable, fair and equitable. In the event that any legal action or proceeding shall be instituted by the Village in order to enforce any condition herein, the Village shall be entitled to an award of attorney's fees in the event that it shall prevail in any such action or proceeding.

During the public hearings, there was community support for this application. The subject zoning district, the WMU Waterfront Mixed Used District, was rezoned by this Board in 2010 for the stated purpose to allow residential apartments "to enhance the traditional Village character and spur economic development." Our Village Land Use Planners, Phillips Preiss Grygiel Leheny Hughes LLC, who have been advising the Village of Roslyn continuously since 1995, have recommended the inclusion of residential developments close to our downtown to provide additional customers to our local businesses who have been so negatively impacted by the advent of e-commerce and to create a beneficial synergy between our residents and our businesses. The Village's efforts over the past several years have been successful as is demonstrated by the townhouses immediately north of Old Northern Boulevard known as Roslyn Landing and the residential apartment building at 17 Lumber Road. We believe that the project that has now been proposed for 45 Lumber Road will continue the positive trend that was started by these two developments. We are also strongly encouraged by the Applicant's commitment to reserve twenty (20%) percent of the units for affordable workforce housing. While this Board's Decision rested on a totality of all the factors considered during the three (3) public hearings, the Board would be remiss if it did not emphasize in this Decision that the provision of twenty

(20%) percent of the units for affordable workforce housing was a substantial factor in our consideration of this application.

There was some opposition to this application submitted by the Roslyn School District in a series of letters, dated September 17, 2019, July 21, 2020, and September 11, 2020. All of the School District's letters were written by Allison Brown, as Superintendent of Schools. In general, the concerns expressed by the School District were twofold. First, that the project would increase the number of school aged children attending the Roslyn Schools. Second, that the project would negatively impact traffic in the area (the Roslyn High School is approximately 1.1 miles from the proposed project). Noticeably absent from the School District's presentation was any empirical data from experts supporting any of their claims. In contrast, the Applicant demonstrated through experts' reports that the traffic impacts of this relatively small thirty-three (33) unit apartment complex would be negligible and that the perceived avalanche of school-aged children into the District was completely without merit. Mulryan Engineering, P.C. concluded in its extensive traffic report that "the granting of this application will not have an adverse impact on the surrounding roadway network." The White Paper prepared by the Real Estate Institute at Stony Brook University in April 2019 which considered "the probable enrollment effect that new residential developments on Long Island might have on local school districts" concluded that on average each apartment unit would generate .09 students. Applying this figure to the subject project, a total of three (3) school-aged children can be expected to reside in this complex ( $33 \text{ units} \times .09 = 2.97$ ). This finding by the Real Estate Institute is consistent with our experience in Roslyn. In fact, testimony at the public hearing showed that at 17 Lumber Road located a few doors down from the subject property, the 25-unit apartment house has generated one (1) school-aged child. This Board would be acting in an arbitrary and



capricious manner were it to blindly accept the arguments of the School District which are categorically refuted by expert testimony. The School District had ample opportunity to submit expert reports to substantiate their claims, but chose to not do so. Instead, when queried about the expert reports that did not support their position, the School District fell back on the curious argument, "But what if those studies are wrong?" This Board accepts the findings of the experts in their reports which are consistent with our experience in the Village of Roslyn. Moreover, we do not think the goal of our School District should be to exclude children from our educational system.

The Project as proposed by Applicant was contemplated by the Village's Zoning Code and Comprehensive Master Plan. It will contribute to the vibrancy and the economic stability of the Village's Downtown. The proposed project will not create a material conflict with the community's current plans or goals. The location of the project provides convenient pedestrian access to downtown Roslyn. Importantly, the project will provide affordable workforce housing to the Village of Roslyn.

Based upon the above findings, it is hereby determined that the granting of the application requesting a special use permit pursuant to Section 470-20C(2) of the Village Code for development incentive bonuses according to which the Applicant offers certain community benefits and amenities and payment in lieu thereof in exchange for the Board of Trustees granting relief from certain zoning code regulations shall advance the Village's specific physical, cultural and social policies in accordance with the Village's Comprehensive Master Plan and in coordination with community planning mechanisms and land use techniques. Further, it is hereby determined that the special use permit will provide a desirable facility to the area, will promote the revitalization of the Village's Downtown and will not be incongruous to the neighborhood by

reason of excessive traffic (particularly compared to traffic which would be generated by as-of-right uses).

**IT IS THEREFORE RESOLVED**, as follows:

- 1) The application for a special use permit to construct and maintain a residential rental apartment building containing 27 market rental units and 6 affordable workforce housing units at the Property is **GRANTED**.
- 2) The request to construct and maintain a residential rental apartment building of 4 stories with maximum height of 58.7 ft. is **GRANTED**.
- 3) The request to construct and maintain a residential rental apartment building with a maximum Floor Area Ratio of 1.48% is **GRANTED**.
- 4) The parking spaces at the Property shall be code complaint.
- 5) Final site plan approval for the Project is hereby **GRANTED**.
- 6) Architectural approval for the Project is hereby **GRANTED**.

**ALL OF THESE ENUMERATED GRANTS AND APPROVALS ARE CONDITIONED UPON THE FOLLOWING:**

- 1) Applicant shall reserve twenty (20%) percent of the units for affordable workforce housing which shall be of a quality equal to the market rate units. The affordable workforce housing units shall represent the distribution of apartments in the buildings (i.e. 1 one-bedroom unit and 5 two-bedroom units) and be distributed randomly throughout the building. For purposes of this Decision, "affordable workforce housing" means housing for individuals and families at or below 120% of the median income for the Nassau-Suffolk primary metropolitan statistical area as defined by the federal Department of Housing and Urban Development ([www.huduser.gov](http://www.huduser.gov)). Rent, including

utilities, for each affordable workforce housing unit shall be no more than 30% of that household's income. Affordable workforce housing units shall be of consistent design to those of the rest of the development. The applicant and its successors shall annually submit a certification to the Village that it is in compliance with this requirement. Each applicant is required to engage in affirmative marketing to ensure outreach to racially and ethnically diverse households, including those who are least likely to apply. The applicant shall enter into a contract with a local housing group to administer the affordability of the housing units, and to monitor the rental of all units for compliance with the Village Code and New York State laws. A covenant setting forth the requirements of this Paragraph shall be in recordable form and shall be executed by the applicant and filed by the applicant in the Office of the Nassau County Clerk. The covenant shall be prepared by the applicant and submitted to the Village Attorney for approval as to form and content. This condition shall not in any way relieve applicant of its requirement to comply with other applicable provisions of the New York State General Municipal Law § 699-b.

- 2) Applicant shall contribute to the Village the sum of \$10,000.00 per unit for the entire thirty-three (33) units proposed. This will result in a total contribution of \$330,000.00. This contribution shall be paid by Applicant contemporaneously with the issuance of the building permit. The failure of the Applicant to make this payment shall result in an automatic acceleration of all other outstanding payments. The failure to make a required payment shall authorize the Village, in addition to all other legal remedies, to place the outstanding accelerated payment amount on the tax bill for the Property and such shall be

a lien upon the Property. The election of any remedy shall not preclude the Village from pursuing any other legal remedy.

- 3) Applicant shall immediately repair or replace as needed the two hundred fifty (250) feet of bulkhead contiguous to the Property. This obligation shall be a continuing obligation of the Applicant.
- 4) Applicant shall immediately construct two hundred fifty (250) feet of waterfront walkway with brick pavers, benches and lighting, which is intended for public use at an approximate cost of Two Hundred Fifty Thousand (\$250,000.00) Dollars. Applicant shall keep these amenities in good repair.
- 5) Applicant shall obtain approvals from Nassau County to make road improvements to the intersection of Lumber Road and Old Northern Boulevard as may be approved by Nassau County and the Village of Roslyn.
- 6) Applicant shall, prior to issuance of a certificate of occupancy for the Project, deliver to the Village a perpetual and unobstructed easement over and across the boardwalk referenced in Paragraph 4 above. The purpose of the easement shall be for perpetual and unobstructed public use throughout the entire easement area and shall include, inter alia, a ten and one-half foot (10 1/2') wide public way upon a walkway of pavers (to be approved by the Board of Trustees) along the waterfront and to be constructed by Applicant as set forth in the Site Plan. The public use of the easement shall be subject to regulation by the Board of Trustees. The maintenance of the improvements in the easement, including, inter alia, all walkways of pavers, lighting fixtures, rip rap, bulkhead and landscaping shall be in accordance with the directives from time to time of the Board of Trustees and shall be the responsibility of Applicant, its successors and assigns and

any transferee of the Property. The maintenance obligation herein shall also include repair and replacement of the improvements and amenities within the easement area. Applicant shall be required to provide liability insurance covering the easement in the minimum amount of One Million (\$1,000,000.00) Dollars and shall name the Village as an additional insured on the policy. The policy shall additionally provide that written notice to the Village must be given not less than sixty (60) days prior to cancellation. The terms and conditions of the easement and the maintenance obligations of Applicant, its successors and assigns will be incorporated in a written instrument to be drafted by Applicant (the "Easement with Covenants") in a form acceptable to the Village Attorney, which instrument shall be recorded by the Applicant in the Office of the Nassau County Clerk.

- 7) Applicant shall, prior to the issuance of a certificate of occupancy for the Project, deposit with the Village the sum of Fifty Thousand (\$50,000.00) Dollars to insure the maintenance of the easement property and the improvements and amenities as set forth in this Decision, which sum may be used by the Village to provide maintenance of the said easement property, improvements and amenities in the event that Applicant or any successors, assigns or transferees shall, after thirty (30) days written notice to cure delivered by the Village, fail to correct a condition complained of. Additionally, any further funds expended by the Village for the maintenance of the easement, improvements or other amenities located therein shall be paid to the Village within ten (10) days of written demand therefor and the failure of Applicant, its successor and assigns to make such payment shall entitle the Village to declare such sum to be a lien upon the Property and to assess same against the Property as additional real estate taxes.

The amount of the deposit as stated above shall in no way be deemed to place a limitation or cap upon the obligations of Applicant with respect to its obligations hereunder. The amount of Fifty Thousand (\$50,000.00) Dollars shall remain on deposit at all times and shall be replenished upon demand in the event that any of the funds shall have been utilized by the Village in accordance with this Decision. In addition to the above obligation, Applicant shall be required to post with the Village a performance bond for the project in an amount to be determined by the Village Superintendent of Buildings for the public improvements associated with this project.


- 8) Applicant shall repair any damage to any Village roads caused by Applicant during the course of construction.
- 9) Applicant shall comply with the Village's Stormwater Management Plan and in the event that its construction activities shall cause the redirection of underground water flow such that it impacts any adjoining property, Applicant shall be responsible for remedying such condition.
- 10) The Applicant shall be required to execute and deliver to the Village a Host Community Benefit Agreement in a form acceptable to the Board of Trustees.
- 11) The representations made by Applicant on the record in this proceeding have been deemed material to this Application and have been relied upon by the Board of Trustees in its deliberations and decisions. Said representations are deemed to be part of the conditions of this special use permit.
- 12) Violation of a condition set forth in this Decision shall be deemed a violation of the Village Zoning Law and shall subject the owner or occupant of the premises to all penalties set forth in the Zoning Law.

13) Applicant shall acknowledge that the conditions set forth in this Decision are reasonable, fair and equitable. In the event that any legal action or proceeding shall be instituted by the Village in order to enforce any condition herein, the Village shall be entitled to an award of attorney's fees in the event that it shall prevail in any such action or proceeding. All of the terms, conditions and obligations contained in this Decision shall be binding upon the Applicant, its heirs, successors and assigns.

This constitutes the Decision of the Board of Trustees. Applicant shall, within ten (10) days of the date of filing of this Decision, consent in writing to the conditions contained herein. Failure to so consent shall render this Decision null and void.

Dated: Roslyn, New York  
October 20, 2020

Filed in the Office of the Village Clerk  
on the 21<sup>st</sup> day of October, 2020

  
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DEBBIE CANTILENO  
Deputy Village Clerk