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Town of New Lebanon
Zoning Board of Appeals
14755 Route 22
New Lebanon, NY 12125

Re: Tilden Commons – Area Variance Application

To: Members of the Zoning Board of Appeals

Our firm represents Tilden Project LLC (Applicant) in connection with its efforts to develop the Tilden Commons (the Project) at 538 Route 20 New Lebanon, New York 12125 (Tax Map ID 19.2-1-69) (Property) in the Town of New Lebanon, New York (Town). The Project will replace the abandoned building currently on the Property with a grocery store, 41 affordable housing apartment units, and a community park. The Property is located in the Central Commercial (CC) District. The Applicant submitted an area variance application (Application) to the Town of New Lebanon Zoning Board of Appeals (ZBA) on May 19, 2025, requesting relief from the requirement in Section 205-13(E)(10)(a) of the Zoning Law of the Town of New Lebanon, New York (Zoning Law) that multifamily dwellings be sited on property with a minimum lot size of 5,000 square feet per dwelling unit. This letter is in support of the Application.

I. The Project meets the area variance test under New York Town Law and the Zoning Law.

Pursuant to New York Town Law § 267-b(3) (McKinney 2013), and reiterated in Zoning Code § 205-12(C)(3), the ZBA performs a balancing test when considering an area variance application, taking into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety, and welfare of the neighborhood or community if the variance is granted. *See* Zoning Code § 205-12(C)(3)(b). In doing so, the ZBA shall also consider the following factors: “Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance;” “[w]hether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;” “[w]hether the requested area variance is substantial;” “[w]hether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district;” and “[w]hether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the [ZBA] but shall not necessarily preclude the granting of the area variance.” *Id.* For the reasons outlined below, the Applicant respectfully requests that ZBA grant the area variance.

- a. **Granting the area variance will not result in an undesirable change to the character of the community or impose a detriment to nearby properties.**

The Project will not create an undesirable change to the character of the community, since it is a specially permitted use in the CC District, as Mixed Uses and Multifamily Dwellings are specially permitted, and Retail Uses, including grocery stores, are permitted with site plan approval. *See* Zoning Law Use Table. The Town Board made a very specific legislative determination when it enacted the Zoning Law that these land uses are appropriate in this district and in harmony with the character of this area of the Town. *See North Shore Steak House, Inc. v. Bd. of Appeals of Incorporated Vill. of Thomaston*, 30 N.Y.2d 238, 243 (1972) (“[i]nclusion of the permitted use in the ordinance is tantamount to a legislative finding that the permitted use is in harmony with the general zoning plan and will not adversely affect the neighborhood.”). The Project will blend well into this mixed-use neighborhood, consisting of restaurants, stores, a brewery, strip malls, a barbershop, a church, a self-storage facility, a gas station, an auto parts store, and residences. The Project is also fully consistent with the stated goals for the CC District, *i.e.*, the “Town Center,” including creation of “vibrant, customer intensive commercial activity in order to attract residents and visitors” and “[r]esidential and community-oriented uses.” Zoning Law § 205-4(B)(3). Further, rather than an undesirable change, the Project will *enhance* the character of the community. The Property and the existing building thereon are currently abandoned. This building will be removed, and the Property will be improved with a brand new, mixed-use building with 41 apartments and a grocery store and landscaping, making the Property significantly more attractive than its current state. The Project will also include a park for use by the entire community, adding a resource to the neighborhood. The building has been designed to incorporate Shaker-style architectural elements, consistent with the architecture in the Town and surrounding area.

Moreover, the Project meets several goals as stated in the Town of New Lebanon Comprehensive Plan Update 2021 (Comp Plan). One of the stated weaknesses in the Town is the lack of a grocery store and limited affordable rental housing, and one of the stated opportunities is that “[v]acant commercial spaces can be repurposed to meet resident needs.” *See* Comp Plan at 13-14; *see also* Comp Plan at 19 (“Survey respondents and focus group members identified a grocery store as the single most important need for the Town. Despite considerable efforts over several years, it has not been possible to attract a store ... Focus group members envisioned a smaller, independent grocery as a more likely possibility.”). Some of the housing concerns include a desire to attract younger residents as well as the need to support an aging population and low-income families. *See id.* at 16-17; *see also id.* at 55 (“Sub-goals ... Expand housing options for seniors ... Expand housing options in order to retain and attract younger and low income individuals and families”). Another major goal in the Comp Plan is to increase economic development “through constructive growth of existing businesses and attracting appropriate new businesses[.]” *Id.* at 52. This includes using “un- and under-utilized properties, in commercial zones[.]” *Id.* at 53. The Project consists of renovating an abandoned property in the center of Town with a newly constructed mixed-use building with a new business—a highly desired grocery store—and much needed affordable housing and a community park. The park also fulfills the Town’s goal to “[e]xpand recreation opportunities[.]” *Id.* at 65.

The Project will also not adversely affect any nearby properties. There will be no significant impacts from the Project (*e.g.*, erosion, wetlands impacts, glare, etc.) on surrounding properties that would result from granting the area variance. The Applicant is seeking to turn an abandoned building on a main road in the Town into a well-designed, well-maintained mixed-

use building with affordable apartments and grocery store, enhancing the curb appeal of a major thoroughfare in the Town. *See* Comp Plan at 19 (“the Routes 20/22 corridor, which has been considered the ‘center of Town’ for the last few decades.”). The Project will be sited in a mixed-use area, with commercial and residential land. As provided in the Full Environmental Assessment (FEAF) Part I, the Project will not impact any wetlands or streams in the area, include any stationary source of air emissions once the building is constructed, produce odors, use or dispose of hazardous wastes, create flooding in the area, impact any protected species or habitats, nor impact any archaeological or historic resource.

During construction of the Project, any erosion or stormwater impacts will be fully mitigated through the Project’s stormwater control design as well as by following the measures in the New York State Department of Environmental Conservation (NYSDEC) Stormwater Design Manual and NYSDEC Standards and Specifications for Erosion and Sediment Control (*i.e.*, The Blue Book) and the Project’s approved Stormwater Pollution Prevention Plan (SWPPP). Construction noise will be temporary and will not be different from any other type of construction noise generated by civil construction projects in the Town. Following construction, the increased traffic from residents and patrons of the grocery will be managed given the design of entrances and exits from Route 20 and Tilden Road as well as the intentional design of the parking area to accommodate all necessary parking. The demand for water for the new building will be met with the existing well on the Property—it will not require use of public water or another well. There will not be any noise generated beyond ambient levels, as the Property is located in a commercial district, on a local highway. The noise of residents in apartments or customers shopping in the grocery store will largely blend into the current level of ambient noise in this area. There will be an increase in sanitary wastewater generated from the building; however, it will not present any adverse impacts offsite, since the Project includes a treatment system with a conventional septic tank, an Orenco Advantex treatment system for secondary treatment, and UV disinfection before discharge. The exterior lighting to be installed onsite will be dark sky compliant and will not produce any glare or light exposure onto neighboring properties.

As such, granting the area variance will not create an undesirable change to the community, but will instead enhance this area of the Town. Nor will the Project produce any negative impact on neighboring properties.

b. There is no other feasible method for the Applicant to pursue.

Evaluation of this factor requires consideration of whether an applicant can achieve its objective without the requested area variance. As indicated to the ZBA previously, the building must have 41 apartments in order to be viable. With fewer apartments, the Project will not receive the necessary funding from the State, which is critical to how the Project will be financed. The Project could be larger, with more units, but it cannot be made smaller with fewer units. The Applicant cannot change this about the State’s process or request it be waived. The funding for these types of projects is extremely competitive, and if this Project does not meet all of the requirements, the funding simply will not be allocated to this Project. Thus, without the area variance, this Project cannot go forward. And an alternative that does not allow the applicant to achieve the desired benefit is not truly a feasible alternative to obtaining an area variance. *See Baker v. Brownlie*, 248 A.D.2d 527 (2d Dep’t 1998) (granting an area variance where the board’s

determination that the applicant had alternative means of achieving the benefit was “clearly erroneous,” because the applicant’s objective was to face the proposed patio toward the water, not merely to build a patio). Ultimately, there is no other feasible option for the Applicant to develop the Project than to seek this area variance.

c. The area variance is not substantial.

As noted, Zoning Law § 205-13(E)(10)(a) requires that multifamily dwellings be sited on property with a minimum lot size of 5,000 square feet per dwelling unit. This would require 205,000 square feet for 41 units. The Property is approximately 3.2 acres, or 140,000 square feet. As a result, the Applicant is requesting an area variance for a lot size deviation of roughly 47 percent. This is not a significant deviation. This is particularly true given the fact that the maximum lot coverage in the CC District is 75 percent, while the Project will have approximately 20 to 25 percent lot coverage. In other words, although the Project requires a deviation from the minimum required lot *size*, the lot *coverage* is well below the maximum allowed. It must also be noted that the requirement for a minimum lot size of 5,000 square feet per dwelling unit was created when the setback requirements were larger, and the maximum building height requirement was lower. At the time, buildable area on a given lot was smaller due those restrictions, leading to the requirement for a minimum amount of lot area per dwelling unit. Now, there is more building area as a building can be sited closer to the lot lines and can be taller, including additional stories with more units. This allows for more units on less land.

In any event, a variance that will not produce a detrimental impact to the health, safety, and welfare of the community will not be considered substantial, even if the deviation is significant. *See Corporation of Presiding Bishop of Church of Jesus Christ of Latter Day Saints v. Zoning Bd. of Appeals of Town/Village of Harrison*, 296 A.D.2d 460 (2d Dep’t 2002) (overturning denial of variance that requested 77% increase over the maximum height permitted by code—a much more significant deviation than what is being requested here—as there was no evidence in the record indicating that the variance would be detrimental to the health, safety, and welfare of the neighborhood or community.). Additionally, the totality of relevant circumstances must be evaluated in determining whether the variance sought is, in actuality, a substantial one. This is a fact-based determination. *See 2 N.Y. ZONING LAW & PRAC. § 29:15 (2021)*; *see also Wambold v. Vill. of Southampton Zoning Bd. of Appeals*, 140 A.D.3d 891 (2d Dep’t 2016) (where the court upheld the Zoning Board of Appeal’s grant of the area variance even though it was substantial since the court found no evidence that the variance would have a detrimental effect on the character of the neighborhood, or physical and environmental conditions, nor would the variance impose a detriment to the health, safety, or welfare of the community.”) (emphasis added).

Here, given the location of the Property in a mixed-use area and the lack of negative impacts on the neighborhood and surrounding properties, the requested area variance is not substantial. As discussed above, there will be no significant impacts from the Project on surrounding properties. Instead, the Project will *improve* the neighborhood as the Applicant is seeking to convert an abandoned property on a main road in the Town to a newly built mixed-use building with a grocery store and 41 affordable apartment units as well as a community park. The Project is proposed to be sited in a mixed-use area of commercial and residential land, and the Project will not impact any wetlands or streams in the area, include any stationary source of air

emissions, produce odors, use or dispose of hazardous wastes, impact floodways or floodplains in the area, impact any protected species or habitats, or impact any archaeological or historical resource. And potential impacts resulting from light, wastewater, and stormwater generation, traffic, and noise will all be fully mitigated through design and best management practices, as noted above. As such, even if the requested area variance was substantial (which it is not), given the complete lack of significant negative impact on the surrounding properties or on the overall character or condition of the community, the requested area variance should still be deemed insubstantial and granted.

d. The area variance will not have any negative impact on the physical or environmental conditions of the neighborhood, and will instead have a net beneficial impact.

The granting of the area variance will not have a significant undesirable effect or impact on the physical conditions in the neighborhood or district. As explained above, it would not change the allowable use. The Property is zoned in the CC District, which permits Mixed Uses, Retail Uses, including grocery stores, and Multifamily Dwellings. Further, the Project does not pose any significant environmental impacts to the community and, instead, presents opportunities for *positive* impact. The Applicant will be turning an abandoned property into a grocery store in a central location of the Town, affordable housing that is desperately needed in the area, and a community park for all residents to enjoy. This Project will also blend seamlessly into this area of the Town, which is mixed-use commercial and residential.

And, as noted above, adding a mixed-use building to this neighborhood will not present a significant impact on the physical or environmental conditions of the neighborhood. This area of the Town is a high-density area, with various types of commercial and residential uses. Noise from residents, patrons, and daily delivery trucks will not be significant as it will be sited on a highway that generates the same type of noise; wastewater will be treated onsite; any potential erosion or stormwater impacts will be fully mitigated with the proposed stormwater design and adherence to the approved SWPPP; adequate parking and vehicle entrances are included in the design to address traffic and parking concerns; and there will be no impacts related to wetlands or streams, emissions, odors, use or disposal of hazardous wastes, flooding, protected species or habitats, or archaeological or historical resources. Thus, granting the area variance would not adversely impact the physical or environmental conditions in the neighborhood, and the Project will present a significant benefit to the Town.

e. The alleged difficulty was not self-created.

Although the difficulty in meeting the 5,000 square feet per unit minimum lot size requirement is self-created in the sense that the Applicant is choosing to pursue the Project on this specific property, the requirement that there be 41 units in order to be financeable is beyond the Applicant's control. The Project is simply not viable without the State funding, which cannot be granted without at least 41 units included in this Project.

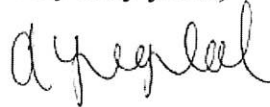
Here, strict application of the Zoning Law here will not serve a valid public purpose because it does not outweigh the injury to the Applicant—namely, that without the area variance,

the Project cannot be developed. No valid public purpose would be served by the denial of the area variance, particularly given the overwhelming benefit this Project would bring to the Town. And regardless, even if the ZBA found this hardship to be self-created, given the overwhelming weight of the first four factors in favor of the Applicant, such a finding would not preclude the ZBA from granting the area variance. *See Conley v. Town of Brookhaven Zoning Board of Appeals*, 40 N.Y.2d 309, 315 (1976). Finally, the ZBA, “shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.” N.Y. TOWN LAW § 267-b(3)(c). As noted above, the area variance is the minimum necessary to develop the Project—41 units is the fewest number of units the Project can accommodate while remaining financially viable. Without the area variance, the Project cannot go forward.

II. Conclusion

Given the facts presented above, the Applicant respectfully requests the ZBA grant the requested area variance as it meets the variance standard under New York law and the Zoning Law. We thank you for your consideration of this letter and request.

Very truly yours,



Alicia R. Legland

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cc: Courtney Potter, *Zoning Board of Appeals Clerk*, Town of New Lebanon
Stephanie Ferradino, Esq., *Attorney*, Town of New Lebanon
Joshua Young, Tilden Project LLC