EASTERN LLC RESPONSE TO PROPOSED PLAN FOR 1362 PLANDOME ROAD

Dear Honorable Members of the Board of Zoning Appeals,

We are writing regarding the detrimental impacts to the Leeds Pond ecosystem (including the quality of the water, diverse wildlife and their habitat), the surrounding watershed and on neighboring properties as a result of approval of any variance to allow the proposed "compromise" 300 cubic yard fill plan, or the 500 cubic yards of unpermitted fill that currently exists on the 1362 Plandome Road Property. The Leeds Pond ecosystem is considered a highly diverse, sensitive and valuable community resource[1] [2] [3] [4] [5] on the north shore of Long Island, and is also identified as an important area by the Village of Plandome Manor[6] [7]. The subject property is located approximately just 900 feet away from Manhasset Bay[8] in the FEMA floodplain[9].

Unfortunately, great harm has already been done to the ecological integrity of the riparian zone around Leeds Pond by the removal of mature trees and vegetation by this developer during redevelopment at the 1362 Plandome Rd. and other properties around Leeds Pond. Although these other activities are not presently before the BZA for approval (as part of the pending application for this 300 cubic yard fill variance) it is important to note that the approval being requested for fill 6 to 10 times the 50 cubic yard maximum amount set forth in the Village Code, allegedly for a "play area," with a steep drop off.

The stability of the dirt plateau has already been compromised by the removal of trees and vegetation. There are multiple negative consequences to Leeds Pond which already shows evidence of negative impacts from the silt and erosion. The Leeds Pond ecosystem will be further negatively impacted if the dirt plateau is allowed to remain but will also create a dangerous precedent to our protective Village Code.

In addition, to exceeding the 50 cubic yard maximum the dirt plateau also violates several laws. The "Clean Water Act" of 1972[10] protects water bodies like Leeds Pond. In addition, the Residents of the Village of Plandome are also protected against the Village's approval of fill that will detrimentally cause damage to our water and healthy environment by the Amendment to the New York State Constitution's Bill of Rights providing that: "Each person shall have the right to clean air and water, and to a healthful environment". There are sixteen other current constitutional guarantees in the state Bill of Rights that also includes: equal protection under the law, security against unreasonable searches and seizure, trial by jury,

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[1] Leeds Pond Watershed Update 1992 Olson et al.
[2] TTPW Public Comment
[3] See https://ebird.org/hotspot/L1413893 last accessed June 29 2023
[4] See Leeds Pond Aquatic Sand Removal -Sidney B Bowen & Son - August 2014 at https://northhempsteadny.gov/filestorage/16281/16525/17476/22790/Attachment_1_Aug_2014_Bowne_Report_reduced_size.pdf last accessed June 29 2023
[5] See Manhasset Bay Educational & Information Sharing Presentation at https://drive.google.com/drive/folders/19wgxt3-hS2m0uxeyUJBk8l7yUH_gxjiW?usp=drive_link last accessed June 29 2023
[6] See www.plandomemanorny.gov/about-the-village/
[7] Reference-37 –Village Of Plandome Manor -Mayor's letter to residents
[8] Reference-3
[9] Reference-4
[10] 33 U.S.C. §1251 et seq. (1972)

religious liberty, freedom of speech, compensation for taking of private property and habeas corpus. The landfill at 1362 Plandome Road Property violates both laws.

Leeds Pond is a significant natural resource[11] [12]. The 500 cubic yards of fill currently on the 1362 Plandome Road Property was never approved and should be removed immediately. The fill does not conform to the original submitted plan and is in violation of the original NYDEC permit (as set forth below). The new 300 cubic yard proposal causes the same unacceptable environmental harms to the Leeds Pond ecosystem, surrounding watershed and neighboring properties, only to a lesser degree than the original proposal.

The applicant suggested that dry wells, retaining walls, ditches or other measures could prevent harm to Leeds Pond. They fail to understand that water carrying phosphorus and nitrogen will go into Leeds Pond[13]. The dirt plateau has nitrogen and phosphorus in the dirt itself that will directly adversely impact the pond when carried with the water that percolates directly through the dirt, despite the dirt being successfully retained. A hydraulic gradient beneath the property will increase the rate at which nutrients are leached from the dirt and then fertilizers, pesticides, and herbicides will all be carried by percolating ground water into Leeds Pond.

In addition to not obtaining a prior permit for the 500 cubic yards of fill, the developer has engaged in other deceptive practices. Despite multiple communications with the Village about work hour violations this developer has escaped any fines, sanctions or punishment[14].

The 1362 Plandome Road Project has already subjected the Leeds Pond ecosystem to prohibited clearing and ground disturbances, including damaging deforestation, loss of vegetation and tree destruction, as well as destabilization resulting in erosion and silt directly entering into Leeds Pond. The runoff contributes to the growth of cyanobacteria that produce both sides of saxitoxin and microcystin in the Pond. All of these are violations of important stated concerns of the New York State Department of Environmental Conservation (NYDEC) in its original permit for this project. The NYDEC issued a notice of violation for the excessive fill, clear-cutting and violations of Article 24 of Freshwater Wetlands Act Section 24-0701 6NYCRR Part 663[15].

There have been no sincere efforts of this developer to ensure environmental sustainability and integrity of this area. This developer submitted the requisite application and statements to the NYDEC (on its permit form which made clear and concise mention of a number of these concerns). The NYDEC issued a notice of violation and the pending request for the landfill now before the BZA, which affects, grading and also silt and erosion into Leeds Pond. The developer has made no attempts to adhere to guidelines and regulations or to comply with the underlying environmental concerns which necessitated those environmental regulations.

[11] Leeds Pond Watershed Update 1992 Olson et al.
[12] TTPW Public Comment
[13] See Images https://drive.google.com/drive/folders/19wgxt3-hS2m0uxeyUJBk8l7yUH_gxjiW?usp=drive_link Last accessed June 29 2023
[14] See VPM communications https://drive.google.com/drive/folders/1U2j9Qty7DVNwKktvI9i_2eXhLAAJ6LCd?usp=sharing. Last accessed June 29 2023
[15] Reference-23

The NYDEC Permit required "strict conformance" with the approved plans and required that "the work area shall be graded to conform with the elevation and contours of the undisturbed land immediately adjacent to the work area". The landfill is in direct violation of the original NYDEC Permit and approved building plans.

Any attempt to bypass those concerns with compromises is not serving the interests of the Village of Plandome Manor, its precious, invaluable natural and living resources, or its residents. Such attempts do not exemplify the highest standards of environmental stewardship that residents look to this BZA, its Mayor and other Village Officials to provide.

Below, submitted for the BZA's consideration, is additional information not presented at the June 15 2023 BZA Meeting and comprehensive analysis of the required Village 5-Part Test for Variances.

a) SITE HISTORY: Chairman Harris, "How did a 50 cubic yards of dirt pile turn into a 500 cubic yard dirt plateau?"

This question was asked by Chairman Harris but later withdrawn and never answered. That question now is answered. The timeline of circumstances is as follows:

i. The NYDEC Permit was issued on 3/17/22 requiring that all activities must be in strict compliance with the approved plans dated 5/4/21 submitted by the applicant, and that grading was to "conform with the elevation and contours of the undisturbed land immediately adjacent to the work area." Subsequently, a large amount of fill was dumped or excavated in the Fall of 2022. At that point, that fill was not in compliance with the original site plan, or the NYDEC Permit. The building department was aware because members of Eastern LLC had several conversations with Ed Butt. Ed Butt made representations from November until January 2023 that landfill would be fully removed and the original topography would be restored and regraded back to the original elevations as per original plans submitted to Village Of Plandome Manor And NYDEC[16] [17].

ii. Throughout the fall of 2022 and Spring of 2023, the fill progressively washed into Leeds Pond during rainfall events[18]. The Village was informed.

iii. The January 13 2023 letter by Charles Bowman, from the Land Use firm, representing the developer to the NYDEC states "please review the minor changes in grade/drainage and timely issue a permit amendment authorizing the amended plan". This gross misrepresentation of 500 cubic yards of landfill as a "minor change" was a deliberate attempt to deceive the NYDEC into granting approval to a substantially different project in reality[19] [20] [21].

[16] Reference-22
[17] Reference-40
[18] Reference-33 to 36
[19] Reference-26
[20] Reference-27
[21] Reference-28

iv. On March 6 2023 a call was made to Land Use Ecological Services, Inc. regarding this property. It was disclosed that Land Use Ecological Services, Inc. had been retained by the developer. Within two hours of that phone call, bulldozers appeared and spread the dirt in the piles across the entire property[22] .

v. Inquiries were then made with the New York Department of Environmental Conservation as to the legality, status and potential environmental effects of the newly distributed dirt plateau. Research by our experts demonstrated that the dirt plateau would have detrimental effects upon the Leeds Pond ecosystem.

vi. The NYDEC performed a site visit on March 30 2023 and obviously did not agree that the addition of 500 cubic yards was “minor” as the NYDEC determined that the dirt plateau was a violation of tidal wetland laws[23] and issued a notification of Violations dated April 10, 2023 citing violations of the Environmental Conservation Law for both fill/grading in excess of proposed grade changes, and caused the clear-cutting of vegetation within a NYS regulated wetland without a NYSDEC permit.

vii. The NYDEC's determinations and issuance of violations were based on its jurisdiction at this property that reaches up to 100 feet from the water line. For all the other environmental issues in areas on the property beyond 100 foot line from the Pond, environmental protection responsibility is incumbent upon the Village of Plandome Manor.

b) Precedent of Landfill at Other Properties

Numerous granted variances for fill within Village are not comparable

i. The applicant cited properties where there recent landfill variance was granted including: 1 Gulls Cove in March 2023; 149 Circle Dr. in 2022; 4 Luquer Rd. in 2021; 1 Morgan Ct. in 2020; and 290 Circle Dr. in 2020.

ii. Arguably the applicant cannot have it both ways. The applicant does not want to be treated as a variance yet they seek comparison with a different standard.

iii. Chairman Harris pointed out the flaw with these examples "Are we really comparing apples to apples? Every property has a different acreage and square footage…" These other properties are not comparable to the developer's variance for a play area dirt plateau in an ecologically sensitive area like Leeds Pond.

iv. None of the named properties seem to be in similarly ecological sensitive areas like Leeds Pond. The landfill at these properties does not have an equal adverse community or environmental impact as compared with the applicant's 300 cubic yard dirt plateau as outline in the June 15 2023 hearing and as detailed below.

[22] Reference-39
[23] Reference-23

c) No Legitimate Reason To Keep Dirt Plateau

There are no justifications for the existence of the dirt plateau. The specific reasons being as follows:

i. As described above the intention for this dirt plateau was never disclosed in any of the original site plans or submitted drawings in applications to the village or in the application for NYDEC Permit. The 500 cubic yard dirt plateau, which is an excessively substantial amount of fill, only materialized after the developer was actually granted a NYDEC Permit for a different purpose and dumped on the property by the developer without any permit. Land Use Inc. then misrepresented those 500 cubic yards of landfill as "minor". When the NYDEC was alerted about the dirt plateau the developer spread the fill around the property. NYDEC issued a violation to the developer, the applicant attempted first to obtain a 500 cubic yards variance for and alleged "play area" for the owners' children and now offers this 300 cubic yard "compromise".

ii. At the June 15 2023 BZA Meeting, the BZA and attorneys for the applicant wanted to divert and did not want to discuss adverse effects to Leeds Pond, wetlands or wildlife. However, by the developer creating the dirt plateau, they not only added hundreds more cubic feet of fill, but they changed the elevation and contours that violated the NYDEC Permit. These changes have already causes erosion and silt to have deleterious environmental effects on the Leeds Pond protected natural resource.

iii. There is a 5-Part test required for issuance of the requested variance, truthful responses to which justifies denial of that variance. The applicant can't just respond in a "Look there's a pony… or a play area" manner to divert attention from the elephant in the room… i.e., that there are very real environment concerns at stake here.

iv. Given that the dirt plateau is definitely an undesirable change in altering the natural topography, applicant does indeed have viable alternatives, that both 500 cubic yards, as well as the purported compromise of 300 cubic yards are substantial areas, there are numerous known physical and environmental adverse effects, and any alleged difficulties have been self-created, along with the additional facts presented here, there is no legitimate reason to approve a variance for use of a dirt plateau with a steep drop off for purposes of a play area for young children when there are all valid concerns relating to safety and danger issues relating to young children that weigh against creating such modifications having adverse consequences as set forth below. There are no legitimate reasons to keep the dirt plateau and it should be removed immediately!

d) No Public Benefit To Dirt Plateau

The applicant has not demonstrated any public benefit of the dirt plateau

The applicant argues that their right to play area conceived of only after a purchaser was found outweighs the harms to neighboring properties, surrounding natural environment and community. The community and

experts disagree. At the June 15 2023 BZA hearing despite the developer's vast resources, no members of the community spoke up and supported the developer's initial 500 cubic yard application or the reduced 300 cubic yard plan. In fact, a Change.org petition entitled Save Leeds Pond with supplemental paper hand signed copies totaling over 430 signers who adamantly oppose the developer's poorly conceived plan, with more every day[24].

e) Safety Issues And Dangers Of Dirt Plateau

There are multiple safety issues and dangers of dirt plateau given the new owners have two young children.

i. We don't think many would argue that buying a home on Leeds Pond with young children is having a home with a known attractive nuisance. That is particularly true when the village rules prohibit any kind and safety fencing, barriers or other obstructions that would otherwise be needed to prevent the young children from entering the water. Children move quickly and parental supervision 100% of the time is impossible.

ii. While the new owners assume the risk in buying a waterfront property, substantial additional risks, particularly with respect to young children, can be mitigated by eliminating the dirt plateau. As the saying goes "it takes a village to raise a child" and therefore the community bears some responsibility with regards to the safety of the new owner's young children. The Board cannot in good conscience approve a dangerous property modification, such as the dirt plateau, as conceived and described below, that could result in adverse consequences of their decision.

iii. The proposed flat area of the dirt plateau is inappropriate for any safe play with the drastic grade change so close to the water. The substantial elevation change and proximity to the water poses a drowning hazard. There is a dangerous mixture of soft soil and quicksand at the water's edge. The elevation difference of the proposed dirt plateau could also result in injury or even fatal consequences for the new owner's young children.

iv. The dirt plateau is sloped and is not a level playing service for any sporting activities. Instead, the best playing area is in the front driveway that is of paved and level. The new owners now propose to close off existing circular driveway after this Zoning Board approved additional curb cuts back into a single entrance/exit[25].

[24] Reference-38
[25] Reference-28

f) No Economic Hardship

There is no economic hardship for the developer to remove the dirt plateau given the high profit margin.

i. Based on estimates the developers have made millions of dollars in profits on their project. The closest comparable home is next door 1372 Plandome Rd is a 6,150 square foot house on a 0.78 acre lot with 6 bathrooms. That sold on March 23, 2022 for $3,499,000. Given current market condition 1362 Plandome Dr. was likely sold to the new owners for between $4,000,000-$5,000,000 and, possibly, even more.

ii. 1362 Plandome Dr. was purchased on January 22, 2021 for approximately $1,825,000.

iii. The cost of dirt removal by Frank Piccininni who is President of Spadefoot an ecological restoration and construction company is approximately $20,000 assuming clean fill and other factors[26].

iv. There is no economic hardship to complete removal of the dirt plateau and regrading given the developer's profits.

5. Apparent Misrepresentation and Deceptive Business Practice

The developer made misrepresentations in the NYDEC application and engaged in deceptive business practices.

a. The manner in which this developer has handled this matter has been questionable at best. The facts show that the developer obviously was aware that site plans and applications to the Village and NYDEC for permits needed to be filed and that it was absolutely clear on the NYDEC Permit that conformance with the original site plan that had been submitted was mandatory. Additional fill could not just be added without additional filings with both the Village and/or NYDEC being made. That was clear prior to the developer dumping the 500 cubic yards of fill on the property without a permit!

b. After receiving the original NYDEC Permit, the developer then dumped 500 cubic yards of fill on the 1362 Plandome Road property without a permit for that fill. And even when he became aware that the matter had come to the attention of Village Officials that he was not in compliance with the NYDEC permit, his next step was not to file amendments to his permit, but to spread the fill around the property, and have his representative falsely misrepresent to the NYDEC that some “minor” changes were made with no mention that the reference to “minor” involved the addition of 500 cubic yards of fill!

[26] Reference-42

c. The NYDEC inspected the property and issued a notice of violation. And it was only then that the developer applied for a variance and only in that application that there was a reference to a “play area”.

d. If the original plan was to install a dirt pile/plateau, and if it was, indeed, for a “play area”, why was there no application in due course with the NYDEC for a permit for the requisite elevation change in the Fall of 2023, instead of what has now transpired, i.e., a modification in the initial application by way of a variance and that variance being applied for only as a last resort having first submitted misrepresentations to a governmental agency, after getting “caught”?

a) Mischaracterizing NYDEC’s Limited Jurisdiction Is NOT Addressing the Entire Scope of Damage to Leeds Pond

The NYDEC approved a mitigation plan addressing the area under its jurisdiction, but the Leeds Pond ecosystem health is still harmed by the dirt plateau and developer's action.

a. At 1362 Plandome Road the NYDEC has control of only 100 ft. and makes no comment on any property outside their jurisdiction even if there might be some negative consequences flowing into locations under NYDEC jurisdiction. The threshold is very high for NYDEC intervention.

b. The NYSDEC did not perform any water quality studies and was not privy to recently collected data regarding the impairment of Leeds Pond when approving initial permits.

c. The NYDEC is significantly underfunded and cannot prosecute every environmental harm that occurs in New York State. The NYDEC did not test the fill at 1362 Plandome Road or the water of Leeds Pond.

d. Agencies like the NYDEC, EPA and other governmental environmental authorities set only minimum standards. It is to local authorities like the Zoning Board of Appeals to determine appropriate measures in this case whether the developers cost of removing the dirt plateau outweighs environmental harms to Leeds Pond; changes topography and characteristics of Plandome Manor; creates problematic precedent that could lead to additional harms through proliferation

e. Like the criminal justice system the NYDEC cannot prosecute case and often chooses certain cases to serve as a deterrent. Like law enforcement just because a citation was not issues does not mean a violation did NOT occur. Just because a plea bargain is entered does not mean a crime did NOT occur. If laws are broken but no citation is issued society and victims are still harmed. Similarly, the NYDEC failure to prosecute or address harms does NOT guarantee the absence of ecological or environmental harm.

f. A person can legally own as many polluting diesel engine trucks as desired- this does not negate environmental harm. Similarly a person can legally use and pay for as much electricity at peak hours as they can afford -this does not negate environmental harm. Just because actions are approved by an agency does not mean that agencies condone those actions. Here the NYDEC's specific action relating to the specific area of the property under its specific jurisdiction does NOT condone the dirt plateau. That conclusion cannot reasonably be reached when the NYDEC issued violations for the landfill in excess of the proposed fill and contour covered by the permit, as well as the clearcutting without a permit, that occurred on the 100 feet of land specifically under its jurisdiction.

g. Mr. Bowman the developer's expert attempted to rebut expert scientific testimony by attributing blame to the Town of North Hempstead and others calling for "policy solutions". No credible scientific evidence was present to demonstrate that the Leeds Pond was healthy or that the developer's project would help the flora and fauna of Leeds Pond or any human. The blame for Leeds Pond's current conditions is irrelevant. This board has ample evidence to reject the developer's proposal and save Leeds Pond from destruction specifically related to this developer's actions and the requested landfill.

h. The experts and community recognize that Leeds Pond is a fragile ecosystem. Experts agree that the pond is a tipping point citing recent water testing. Why would this board ignore the science and throw the Pond and the inhabitants over the edge for a children's play area where multiple alternatives exist?

b) Generalized And Expert Opposition

Mere public opposition alone is an insufficient basis for denial however there are multiple reasons to deny the dirt plateau along with multiple experts who oppose the developer's actions and dirt plateau.

a. There is community and general opposition to the dirt plateau. As of the writing of this document there are over 300 signers of the Save Leeds Pond at Change.org petition NOT to mention paper petition physical copies[27].

b. The dirt plateau is opposed by not only the community but by experts whose credentials have been included. The expert opposition has a combined experience many decades long with direct expertise in environmental science and ecosystem health.

c. Mr. Wagner stated there was no empiric evidence of harm caused by the developers of 1362 Plandome Rd. However, both experts and community members disagree. Instead, it is the applicant who has failed to meet their burden of proof. There is no credible scientific evidence which has been presented by applicants to defend or substantiate the clearing of vegetation, mature trees, change in building envelope, construction, the dirt plateau with fill

[27] Reference-38

so far in excess of the Village's 50 cubic yard limit and effects on neighbors, community or the Leeds Pond ecosystem. Expert and community members have submitted letters including:

i. CEA Engineers wrote that the 300 cubic yard plan has many flaws including that the plan does not alter the total quantity of pollutants from 1362 Plandome Rd that enter the Leeds Pond ecosystem.

ii. Science Museum of Long Island wrote that the BZA not EVEN allow the 300 cubic yards dirt on the property adjacent to Leeds Pond, as this will further degrade the pond's health. The health of Leeds pond is essential to the survival of many species. The health of the pond is not good. Careless and thoughtless human behaviors hurt the survival chances of many species of animals and plants.

iii. South Shore Audubon Society wrote that current 300 cubic yard plan will have adverse effects on breeding grounds and habitat for the 152 bird species birds and other wildlife in Leeds Pond but also economic downstream effects.

iv. North Shore Audubon Society wrote that the Village of Plandome Manor has violated their MS4 permit with this project and that vegetative buffers including trees are needed to prevent additional erosion and nitrogen pollution contaminating not only Leeds Pond, but Manhasset Bay and the Sound.

v. Wild Dog Foundation wrote that the responsibility towards keeping water clean and safeguarding wetlands and wildlife habitat is essential to the human spirit. There must be sustainability balanced with nature otherwise we have lost. The displacement of wildlife by destroying habitat like the developer causes wildlife to come closer to homes and people.

vi. Citizens Campaign for the Environment wrote in support of limiting development practices like the developers unnecessary landfill and activities that further impair this water body and put the watershed at risk. The Village of Plandome Manor should be working with the experts and the community to repair the wetlands, prevent pollution from nitrogen and other contaminants, and ultimately to restore the health of Leeds Pond. CCE urges the Zoning Board of Appeals to reject the proposal for 500 cubic yards of fill and to reject the compromise with 300 cubic yards. The Board should instead ensure that the developer removes any additional site fill over the Village limit and prevent development that poses a threat to Leeds Pond.

vii. NYenvironcom wrote in support of preservation of our resources and natural capital. The additional fill being considered is not smart. Allowing individual/s to take and annex and then degrade the ecosystem for their personal use is selfish.

viii. Transition Town Port Washington wrote in support of sediment control and management; tree conservation and reforestation; littoral zone protection and restoration; water quality monitoring controlling nitrogen and phosphate pollution in Leeds Pond.

ix. Council Member Mariann Dalimonte wrote in support of investigations and for the Village of Plandome Manor to enforce environmental protection and develop plans to mitigate pollution, restore vegetation, and enhance the overall ecological health of the pond.

x. Frank Piccininni of Spadefoot spoke how the Leeds Pond ecosystem is already under threat and the 300 cubic yard plan would be another unnecessary environmental insult to an already fragile system.

xi. Prof. Bennington, who is Professor of Geology, Environment, and Sustainability of Hofstra University, traced the deforestation in and around Leeds Pond including at 1362 Plandome Rd. where all mature trees, vegetation and habitat were destroyed by the developers for this project. He concluded that development like the 300 cubic yard plan provides no public benefit and is detrimental to the wetland ecosystem.

xii. Prof. Christopher Gobler who is Endowed Chair of Coastal Ecology and Conservation SUNY Distinguished Professor School of Marine and Atmospheric Sciences Stony Brook University studied Leeds Pond in June 2023 and found multiple pollutants present that put the ecosystem at a tipping point.

xiii. Multiple community members emailed the village clerk and also echoed similar concerns some of whose comments are also included in the appendix.

c) APPLICABLE LAW

i. The applicant argues that their application is not for a variance but a "permit" and seeks to avoid New York State's Village Law § 7-712 b (3). This is incorrect, for more details see Letter by E. Christopher Murray dated June 28, 2023. Because the applicant fails the 5 part test as detailed below the developer seeks to curtail the controlling laws. Instead the applicant seeks to use an arbitrary and capricious standard that does not apply to legalizing the dirt plateau. A project that has already harmed Leeds Pond and should be immediately removed from 1362 Plandome Road.

ii. The April 21, 2022 legal notice states "for BZA2022-6 at 1362 Plandome Road. Applicant is seeking a variance to install curb cuts and a circular driveway. The dual curb cuts and circular driveway violates Section 225-8 A(6) of the Village Code which states: There shall be no more than one driveway (with appurtenant curb cut) providing a single means of ingress/egress to a street to/from a single lot. In addition, the plan indicates an open space ratio of 69%. The open space ratio of 69%

violates Section 225 Attachment 1 of the Village Code which indicates: the open space ratio is for an R-22 is 65% open space[28]".

iii. However, the May 19, 2022 legal notice states "the application for the BZA 2022-6 at 1362 Plandome Road applicant is seeking permission to install dual curb cuts and a circular driveway. Pursuant to Section 225-8 A(6) of the Village Code this is not permitted as set forth therein, there shall be no more than one driveway (with appurtenant curb cut) providing a single means of ingress/egress to a street to/from a single lot[29]".

iv. The verbiage and legal tests are inconsistent from month to month even though the project remains the same and suggests use of an arbitrary standard.

v. Below is test for variance following argument for permit.

d) Application of Required Five-Part Village Test Demands Denial of the Proposed Variance

When an area variance is required, the standard set forth below applies. The Village's Board of Zoning Appeals must apply this standard and may not supplement or replace this standard with elements of the former "practical difficulties" standard or use other elements not included in the test listed below. [30] As set forth in detail below, the pending proposal for a Variance to allow 300 cubic yards of fill, or in the alternative the 500 cubic yards of fill currently existing on 1362 Plandome Road, fail every one of the five prongs of the required BZA test. As such, the proposal for a 300 cubic yards "compromise" should be denied, and the removal of the entire 500 cubic yards of fill should be ordered

> "[T]he Zoning Board of Appeals shall take 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 by such grant. In making such determination the board shall also consider: (1) 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; (2) whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance; (3) whether the requested area variance is substantial; (4) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and (5) whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the board of appeals, but

[28] See Legal Notice for BZA 4-21-2022 at https://plandomemanorny.gov/board-of-zoning-appeals/ last accessed June 29 2023

[29] See Legal Notice for BZA 5-19-2022 at https://plandomemanorny.gov/board-of-zoning-appeals/ last accessed June 29 2023

[30] Cohen, supra; Caspian Realty, Inc., 68 A.D.3d 62, 886 N.Y.S.2d 442 (2d Dep't 2009); Mimassi v. Town of Whitestown Zoning Bd. of Appeals, 124 A.D.3d 1329, 1330, 997 N.Y.S.2d 888, 889 (4th Dep't 2015)("Here, respondent based its determination upon factors and other criteria relevant to the former 'practical difficulty' test, which is no longer followed, rather than on the factors set forth in Town Law § 267–b (3)(b)(citations omitted)").

shall not necessarily preclude the granting of the area variance. (c) The board of appeals, in the granting of area variances, 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...[31]"

A. #1 UNDESIRABLE CHANGE:

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;

i. Altering Natural Topography

The proposed dirt plateau significantly alters the natural topography surrounding Leeds Pond. There are no other similar fill or soil mounds, plateau, piles or deposits anywhere surrounding Leeds Pond. The dirt plateau is a visual blight that is not consistent with any nearby property. 1372 Plandome Rd also has a substantial degree change between their driveway and the dirt plateau. The change in natural grade is currently an eyesore as noted by the BZA after the site visit. There is no swale or other preventative measures that will prevent flooding onto 1372 Plandome Rd. It is unclear how the irregular rock wall will prevents leaching and run off onto 1372 Plandome Rd.

[31] Town Law §267-b (3); Village Law §7-712-b (3); General City Law §81-b (4).

ii. Stop the Arms Race Now

a. 1372 Plandome Rd. grade and elevation is substantially higher than neighboring houses to the North and South. The dirt plateau magnifies that contrast. Throughout the village and area, houses are destroyed with new homes rebuilt on increasingly higher elevation. The race to the sky must stop. Will the Village of Plandome Manor be a series of houses on hills with deep valleys between them -ignoring any natural topography?

b. If the dirt plateau is allowed to remain there could likely be a proliferation of similar dirt plateaus by owners around Leeds Pond (and elsewhere) who will have a viable way to get a "porch or deck made of dirt" via a grading change and circumvent the notoriously onerous, expensive, difficult and lengthy design review board.

c. Once this trend starts, what will stop the proliferation of similar dirt pile decks /plateau projects? If this board allows this dirt plateau in an ecologically sensitive area despite multidisciplinary expert opposition demonstrating substantial harm …what about the ecologically insensitive areas in the village?

B. #2 ALTERNATIVES:

Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;

i. The dirt plateau can easily be removed, at this point, with bulldozers as was originally planned in the approved proposal. There are no structures that would inhibit the easy removal of the dirt plateau. Both driveways are open to heavy machinery that can easily access and remove the dirt plateau. There are no fixtures, furniture, landscape features that have been installed which would impair the full removal of the dirt plateau.

ii. There are no plantings, vegetation, ground cover, or irrigation systems that have been installed on over or near the dirt plateau that would preclude full removal of the dirt plateau. The developer recognized the they have violated NYDEC regulations, EPA Clean Water Act, and numerous other regulations and statutes also in violation of their original proposal and have failed to install any vegetation or plantings or irrigation on the dirt pile while fully landscaping the remainder of the property.

iii. Respected local architect Patricia O'Neill suggested in the June 15 2023 BZA hearing that more thought was required by the developer into the design of landscaping so that site would be more natural and create a level area with respect for surrounding environment and also

neighboring properties. She suggested that the dirt plateau be removed to create a very beautiful integrated landscape that children can play on and would also protect the environment.

iv. Clearly the best solution is to return the grade to original topography allowing the new owner's children ample play space at the foot of stairs coming down from the bluestone patio. The rock boulder walls should be removed and the original grading restored with a gentle transition to blend with neighboring properties. The children can also play in the front paved yard safely away from the hazards of Leeds Pond as discussed above.

C. #3 VARIANCE IS SUBSTANTIAL:

Whether the requested area variance is substantial

i. The original application was for 500 cubic yards and now has been reduced to 300 cubic yards. Yet that still remains 600% over the allowed variance of 50 cubic yards.

D. #4 PHYSICAL AND ENVIRONMENTAL ADVERSE EFFECTS

Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district;

i. 300 cubic yards of fill will have both a physical and environmental detrimental effects not only on Leeds Pond but also on Manhasset Bay. Leeds Pond has multiple ecological benefits to the surrounding region. Leeds Pond is directly connected to Manhasset Bay.

ii. Leeds Pond and surrounding wetlands act as breeding habitat for fish, amphibians, and beneficial insects (e.g. dragonflies). The Riparian zone around Leeds Pond includes native trees and marsh vegetation, which provide a habitat for songbirds and insects. This riparian zone creates a buffer that helps intercept sediment, nutrients, and toxins (pesticides / herbicides) from entering Leeds Pond, Manhasset Bay, and Long Island Sound.

iii. Long Island and Leeds Pond, the developer has a toposequence ranging from low to high marsh then to forest wetland and eventually forested upland[32]. This stratification can best be seen from the shoreline through to the forest of SMLI. Seaward borders are determined by physical stressor like wave action and salt tolerance of vegetation. Landward borders are determined by competition and flood and shade tolerance of

[3232] Piccininni -3

vegetation[33]. Water quality issues are a symptom of upland ecosystem degradation affected by factors canopy and root density; soil porosity and accretion; microbial matter; composition of leaf litter; assimilation of nitrogen in plant tissue and wastewater disposal practices.

iv. At the landward forested part of the toposequence near Leeds Pond lies the forest of SMLI[34]. Spadefoot Design and Construction lead by Frank Piccininni help restore the 36-acre Leeds Pond Preserve at the Science Museum of Long Island (SMLI). The forest surrounding the Science Museum includes mid-to-late successional forest that is threatened by beech leaf disease and other invasive pests.

v. In October 2020 the forest was invaded by kudzu a non-native vine shown in the two highlighted green areas[35]. Through exhaustive mechanical means the area was razed and all invasive material was destroyed. Subsequently native vegetation was replanted and supplement with irrigation systems to ensure growth[36]. The restoration was possible using advanced techniques for invasive species management and reduction. Such restoration efforts take a dying non-native ecosystem and transform into a balance ecosystem with native species that serve as habitat in the Leeds Pond ecosystem.

vi. The forest restoration Leeds Pond Preserve at the Science Museum of Long Island (SMLI) was due to monumental efforts by SMLI and a variety of public and private benefactors which has now been set back by ongoing ecosystem degradation. Ecological Restoration of the Leeds Pond Ecosystem has been hampered by neighbors like the developers at both 1372 and 1362 Plandome Road. It is a “one-step forward, two-step back” scenario in a closely knit ecosystem that cannot afford relapses.

vii. In their application to the NYDEC, Michael Cannone detailed the motivation for their application[37] [38] . The obtuse tone of the application belies the monetary motivations of the developer at the expense of the ecosystem. In addition, the letter falsely states "we are not moving the envelope and will not be close to the pond". In fact, the developer moved the house as close to the Leeds Pond as was feasible given the flood zones[39]. The water views created by these developers are of a dying ecosystem. These developers will move-on after they reap their profits at the expense of the Leeds Pond ecosystem.

[33] Piccininni -3Village Law
[34] See https://www.youtube.com/watch?v=0EuuuA5KARw Last accessed June 29 2023
[35] Piccininni -5
[36] Piccininni -6
[3737] Piccininni -8
[38] Reference- 12-20
[39] Reference -4 FEMA flood plains map.

Proposed Plan Likely To Fail

i. The proposed restoration is unlikely to succeed. Seeding in the summer is generally unsuccessful. The proposed "native plants" are inappropriate for Leeds Pond and are not currently established or successful in this ecosystem. Commercially available inkberry is cultivated and of relatively low ecological value relative to other native trees and shrubs. Chokeberry has shallow roots relative to native trees that will not bind the soil and prevent erosion of the dirt mass into Leeds Pond[40].

ii. The plan lacks any proposed mature trees or vegetation that will adequately restore lost habitat destroyed by the developer's clear cutting[41]. In addition, the riparian zone will be inadequately reestablished since is there is inadequate stabilization of the loose soil to prevent erosion into Leeds Pond.

iii. Rill erosion will lead to more sedimentation of the Leeds Pond as seen in top left aerial photo[42] also seen from side angle[43]. The fill material will exacerbate erosion associated with sheet flow and overland flow. Erosion and subsequent sedimentation will be prevalent even after plantings are installed.

iv. The drainage plan and dry wells most likely will be become saturated with water and do nothing to prevent flooding onto neighboring properties or diminish toxins from reaching Leeds Pond[44].

Multifactorial Effects

i. Development like the proposed 300 cubic yard fill critically impacts Leeds Pond in a number of ways. There is diminishment or loss of the riparian zone buffer.

ii. We already see replacement of native trees with non-native species such as tree of heaven, Norway maple and other invasive large trees. The construction of 1362 Plandome has disturbed the soil biome. With the additional dirt plateau more sediment and nutrients will enter the already fragile ecosystem.

iii. The expansion of lawns and non-native monoculture – are ecologically useless. Such has already been installed in the front of 1362 Plandome Road. These are maintained by applications of fertilizer, herbicides, and pesticides all which end up at Leeds Pond. In addition, the dirt plateau prevents public and neighbor visual access to the natural shoreline.

[40] Piccininni-9
[41] Reference- 6
[42] [4242] Piccininni-10
[43] Reference- 33
[44] CEA Letter

Deforestation Effects

i. All mature trees were removed from 1362 Plandome Road which destroyed habitat and a carbon-sink should be immediately restored[45]. While a small vegetative buffer near the water has been proposed, a more ecologically sound approach would be to replace all grass including in the front of the home with native plants and trees that support native insects by providing nectar, pollen, and foliage for consumption. [46]Such native insects are adapted to utilize native plant species for habitat and food to graze on. Most birds rely on caterpillars to feed their young - high protein food source that supports the rapid growth of birds. Without native plants, native insects are lost, without native insects, birds cannot raise their young.

ii. Leeds Pond has been subject to aggressive deforestation. Prior development maintained much of the riparian zone and trees[47]. Recent redevelopment has negatively impacted the Leeds Pond ecosystem.[48] There was a riparian buffer with trees along much of Plandome Road and North, West, South and East parts of Leeds Pond. This riparian barrier serves to both filter incoming drainage and buffer storm water surges during higher tides. In 2004 there were numerous mature trees along the Plandome Road; however the Mahfar brothers, developers at 1372 Plandome Road sought to maximize profit, improve the view of the speculative project and removed trees without regard to ecosystem health[49]. In 2007, the old building was demolished[50]. After construction in 2012, trees were removed[51]. By 2022, the progressive loss of trees resulted in diminishment of the riparian zone[52].

iii. Continued deforestation around Leeds Pond is a threat to the entire watershed. There are parts of the riparian zone that are present but threatened like on Rock Hollow Road or small portion of Plandome Road near Manhasset Bay[53]. However, 1372 and 1362 Plandome Road development have deforested previous vital habitat for the sake of developer profits[54].

Water Quality & Aquatic Effects

[45] Reference- 6 to 11
[46] Bennington-4
[47] Reference-5
[48] Bennington-5 & 6
[49] See VPM BZA Hearings 2008-2010
[50] Bennington-7
[51] Bennington-8
[52] Bennington-9
[53] Bennington-10 Top two photos;
[54] Bennington-10 Bottom two photos;

i. All of Long Island is a watershed with material from the land that is washed into the sole source aquifer and ultimately surface waters. Precipitation leads to some overland flow which eventually infiltrates into the water table and eventually into groundwater. This ground water becomes our drinking water through the pumping of ground water wells and eventually flows out into estuaries and the cycle continues[55]. A recent water quality study Manhasset Bay was found to be graded D+ having experienced dead zones with no oxygen and fish kills in 2022.

ii. Nitrogen and phosphorus loads from the land go into surface waters. Both nitrogen and phosphorus can be enriched in groundwater through terrestrial sources. Because these are dissolved into water they also follow the course of the water they are dissolved demonstrated in a number of different studies[56]

iii. The most recent Long Island water quality impairment study performed in the summer of 2022 in conjunction with Stony Brook University School of Marine Atmospheric Sciences and the Nature Conservancy surveyed water quality throughout Long Island. In the Leeds Pond ecosystem that is attached to Manhasset Bay, a number of problems were isolated including the aforementioned dead zones, fish kills, and algal blooms[57].

iv. One of the issues with increased nitrogen and phosphorus loading from the land are the association with harmful algal blooms. There are a variety of different blooms with different sub species including: PSP, toxic blue green algae, DSP, brown tide, seaweed infestation, and rust tide[58]. These blooms have myriad effect including poisoning cultivated shellfish, threats to pets, and creating dead zones due to deoxygenation of water that results in “fish kills” that have been increasing over recent years, littering beaches throughout Long Island, and preventing public enjoyment of beaches and waterfronts.

v. Multiple studies demonstrate that increased nitrogen in the water leads to harmful algae on Long Island growing faster and more toxic. This has direct consequences for the Leeds Pond ecosystem and other maritime ecosystems[59]. From the graph we can see a linear relationship that starts off in the 1980s with nitrogen concentrations in groundwater of 2.4 mg/L and by the year 2020 results in almost total nitrogen of 3.8 mg/L. The he results of such increasing levels of nitrogen discharging into surface waters can include blue green algal blooms that can be seen contrasting the blue ocean versus the green infested inland water body[60].

[55] Gobler-2
[56] Gobler-3
[57] Gobler-4
[58] Gobler-5
[59] Gobler-6
[60] Gobler-7

vi. Blue green algae also known as cyanobacteria have number of potent toxins. One of these toxins is microcystin which is linked to a risk of liver toxicity because of an increased risk of hepatocellular carcinoma and colorectal cancer and liver tumor promotion[61]. Microcystin was isolated from samples taken and processed by Professor Gobler on June 1 2023. Cyanobacterial toxins are deadly. In fact, in the Okavango Delta in Botswana some of the largest mammals on earth, elephants, were killed by drinking water with toxins created by blue green algae or cyanobacteria[62]

vii. Manhasset and Port Washington community members frequently walk their dogs on the Leeds Pond beach. A review of canine and cyanotic oxen poisonings in the United States from the 1920s to 2012 confirmed four hundred cases where dogs were poisoned by saxitoxin is related to blue green algae and cyanobacteria. The CDC believes that these voicing events are most likely an underestimation of the cases that actually occur throughout the United States each year[63]

viii. The monitoring of blue green algae is so significant that the NYDEC has an individual program and web page that monitors blooms across New York State that is tracked weekly from May to November.

ix. There is currently no monitoring of Leeds Pond or evidence that Leeds Pond has been scientifically and rigorously monitored for algae until now. The number of water bodies affected by blue green algae blooms throughout New York State has steadily increased from 2012 at a rate of 50 water bodies affected to a staggering almost 500 water bodies in 2020[64] Available nitrogen has two effects on the cyanobacteria low blooms that affects growth and the toxicity of the microcystin produced[65].

x. Both *Alexandrium* harmful algae blooms and paralytic shellfish poisoning have been reported in nearby water bodies. Saxitoxin was isolated from samples taken and processed by Professor Gobler are dated June 1, 2023. One mussel could kill someone with sufficient shellfish toxin levels as happened and July 2020 when a person at Dutch Harbor consumed shellfish tainted with saxitoxin[66]. Neither cooking nor freezing will destroy the toxin. *Alexandrium* has been found near Leeds Pond[67] In the spring of 2022 it was found that the *Alexandrium* density jumped from slightly over and 300 cells/L to 800 cells/L representing an almost 2.5 times increase following the

[61] Gobler-8
[62] Gobler-9
[63] Gobler-10
[64] Gobler-12
[65] Gobler-13
[66] Gobler-15
[67] Gobler-16

experimental enrichment of nitrogen, evidencing the key role this nutrient plays in these events[68].

xi. Harmful algal blooms are also influenced by manmade nitrogen loading and meteorological conditions that promote intense and toxic blooms in Long Island. Simply put, waste water goes into the aquifer enriched with nitrogen that promotes the growth of the *Alexandrium* that in turn produce saxitoxin responsible for PSP[69].

xii. In 2022 there were fish kills during the summer. There were 50 fish kill events that were mainly concentrated across the north shore of Long Island close to the Leeds Pond ecosystem[70].

xiii. The fish kills also occur on Leeds Pond beach and littered the shore, beach and surrounding reeds with fish that slowly decomposed creating noxious smell of rotting fish that precluded public enjoyment of the resource[71]. In August of 2022 the dissolved oxygen as measured with the NYDEC standards was found to be below 1 mg/L only Hempstead harbor and Northport Harbor have lower dissolved oxygen levels[72].

xiv. The proposed 300 cubic yards of dirt located at 1362 Plandome Rd will result in an excess of nitrogen loading that will go into Leeds Pond that cannot be addressed by additional drywells or similar measures. The added contamination does not need to flow into Leeds pond directly over the surface; rainwater and irrigation water will percolate through the soil and leach nutrients that will flow into the pond. The increased elevation of the ground surface created by the dirt plateau will create additional hydraulic head in the groundwater beneath the plateau, which will increase the rate at which water percolates from the surface, through the dirt, and into Leeds Pond. Subsequently, the additional flow of nutrients from the dirt and from any fertilizers used on the lawn as well as any chemicals, pesticides and herbicides applied by the homeowner. Subsequently, this will likely stimulate algal blooms and lower the oxygen levels in Leeds Pond and also in Manhasset Bay resulting in fish kills. The NYDEC water quality standard for dissolved oxygen for waters like Leeds Pond is 4.8mg/L with allowable excursions to not less than 3.0 mg/L four certain periods of time. The standards can be found at 6 NYCRR 703.3. This standard is continuously applicable throughout the year. Nitrogen in water results in algae blooms that consume more oxygen than normal. Through respiration the algae creates carbon dioxide and water. The more algae and warm temperatures during the summer make bacteria hyperventilate[73].

[68] Gobler--17
[69] Gobler—18
[70] Gobler—19
[71] Gobler—20
[72] Gobler—21
[73] Gobler—22

Excessive nutrients like nitrogen promote low water quality impairment and low oxygen as was detected in the summer of 2022[74].

xv. The Nine Key Element (9E) Watershed Plan for Nitrogen in Nassau County was prepared for the New York State Department of Environmental Conservation and by the Stony Brook University School of Marine and Atmospheric Sciences in 2022 by expert Christopher J. Gobler. The Nine-Element Watershed Plan was created to curtail nitrogen loading in the Nassau County watershed. Leeds Pond is a component of the Manhasset Bay in the north central USGS subwatershed map[75]. The nitrogen load reduction goals for the Nassau County subwatershed and Manhasset bay were 163,211 kg/yr. The nitrogen load reduction goal is 38.7% lower than current levels[76]. Manhasset Bay is already polluted and cannot tolerate more nitrogen from exogenous sources such as the dirt pile at 1362 Plandome Rd.

xvi. The Gobler lab performed a Leeds Pond water quality study on June 1 the 2023[77]. There were four sample sites to ensure accuracy. The first site the number one was at Little Leeds Pond across from Stonytown Rd that drains into Leeds Pond and eventually into Manhasset Bay. The second sample site was taken at the outlet for little Leeds Pond on the other side of Stonytown flowing towards the Manhasset Bay. The third site was taken from 1362 Plandome Rd at the site of the dirt pile created by the developer. The fourth site was taken from the culvert side of Leeds Pond on Plandome Rd.

xvii. Results from the water quality study showed that the salinity as measured going from south to north and was consistent with a brackish waterbody. The salinity for Long island sound is approximately 25 PSU[78]. There were no recoverable petroleum hydrocarbons detected. *Chlorophyll a* as a proxy for algae was found to be above the U.S. EPA freshwater standards as well as the U.S. EPA marine standards[79]. The measurement of blue green algae was found to be at 8 micrograms/L within the NYDEC standard is 25 although levels usually peak in late summer[80]. The total nitrogen load in Leeds Pond was 1.8 milligrams per liter while the estuary standard is 0.4 milligrams per liter[81]. The total phosphorus load in Leeds Pond is 0.63 milligrams per liter while the EPA standard is below 0.1 milligrams per liter[82]. Fecal coliform bacteria in Leeds Pond was measured to be 425 CFU per 100 mL where the

[74] Gobler—22
[75] Gobler—26
[76] Gobler—27
[77] Gobler—28

[78] Gobler—29
[79] Gobler—30
[80] Gobler—31
[81] Gobler—32
[82] Gobler—33

New York department of health swimming standards are below 200 CFU per 100 mL[83].

xviii. This is particularly troubling because it demonstrates that Leeds Pond already has unacceptably high levels of algae that are producing saxitoxin and microcystin. If the dirt pile is allowed to stay nitrogen loads to the Pond will increase and subsequently toxin levels are expected to also increase.

xix. During the Fall of 2022 soil was dumped into piles on the Leeds Pond side of 1362 Plandome Rd out of public view[84]. These dirt piles were to be removed and the property was to be a regraded at the original topographic elevations[85]. Since the distribution of fill into a plateau formation in January of 2023 soil continues to wash into Leeds Pond directly through the silt barrier fence[86] [87] [88]. The fill that washed into Leeds Pond is unlikely to be dredged due to the ecological sensitivity of the shoreline[89]. Post wash-in events show rill erosion that will continue to displace the dirt plateau into Leeds Pond along with nitrogen and phosphorus-laden runoff[90]. The process of nitrogen and phosphorus saturation is similar to a coffee percolator in that the groundwater picks up nitrogen and phosphorus then drains into Leeds Pond[91].

xx. Phosphorus is the 11th most abundant element in soils and typically 0.6% of soils by weight (US EPA). Nitrogen content of soils is typically 1 – 4% [92] 300 cubic yards of soil contains a significant of amount of nitrogen and phosphorus. When washed into Leeds Pond, this will stimulate the growth of algae and harmful algal blooms. Filling in of Leeds Pond will make it shallower, warmer and more vulnerable to algal blooms[93].

Danger And Nuisance To Neighbors

Water And Soil Nuisance

i. A level row of Belgian block was established around the catch basin at the end of the driveway area that complied with the approved site

[83] Gobler—34
[84] Gobler—36
[85] Gobler—35
[86] Gobler—36
[87] Reference- 34 to 36
[88] Images & video at https://drive.google.com/drive/folders/19wgxt3-hS2m0uxeyUJBk8l7yUH_gxjiW?usp=drive_link
[89] Gobler—37
[90] Gobler—38
[91] Gobler—2,3,18,39
[92] US EPA, U. Vermont
[9393] Paerl, H.W. and Huisman, J. (2008) Blooms Like It Hot. Science, 320, 57-58.8.

plan[94]. The entire asphalt parking area in the front of the 1362 Plandome Road is sloped towards the neighboring property at One Stonytown Rd. Pools of water collects regularly in the area and flows onto neighboring property[95].

ii. In March 2023, the developer destroyed the level Belgian block and relay the Belgian block so overflow would be deliberately directed flow on to the heritage oak tree root flare and neighboring property[96].

[94] Reference-30
[95] Reference-41
[96] Reference-30 to 32

Hydrogen Sulfide

i. During the Spring of 2023 a number of new complaints have been called into municipal authorities including Nassau County Police of noxious gases coming from 1362 Plandome Road. The gas is most likely hydrogen sulfide from the dry wells and septic system on the property. Standing water in dry wells leads to bacterial overgrowth which produces a malodorous effect[97]. The drywells are buried therefore locating the source is sometimes challenging[98] [99].

ii. Hydrogen sulfide also known as swamp gas, stink damp, and sour damp) it is a colorless gas known for its pungent "rotten egg" odor at low concentrations. It is extremely flammable and highly toxic[100] [101] [102].

iii. The current proposal seeks to increase number of drywells that will increase the amount of hydrogen sulfide caused by bacterial overgrowth and thereby increase the health risks to both occupants, neighbors, community and the Leeds Pond ecosystem.

E. #5 ALLEGED DIFFICULTY WAS SELF-CREATED

Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance.

i. The existing fill was placed by the developer in violation of the original approved building plan. The fill was reshaped into the existing plateau by the developer. The NYDEC was contacted and issued violations of Article 24 New York Freshwater Wetlands Act[103]. The hardship is 100% self-created and could have been avoided if the developer followed the approved building plan. Therefore, the landfill should be disallowed.

ii. The previous topography included trees and a gentle slope rule towards the water. Had the developers returned the topography the original grade as demonstrated in the original approved plans there would be no hardship or continued environmental harm[104].

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[97] See https://www.iec-nj.com/overcoming-dry-well-problems/ last accessed June 29 2023

[98] See https://www.health.state.mn.us/communities/environment/water/wells/waterquality/hydrosulfide.html last accessed June 29 2023

[99] See https://ag.umass.edu/cafe/fact-sheets/hydrogen-sulfide-sulfate-in-private-drinking-water-wells last accessed June 29 2023

[100] See https://www.osha.gov/hydrogen-sulfide last accessed June 29 2023

[101] See https://www.cdc.gov/niosh/topics/hydrogensulfide/default.html last accessed June 29 2023

[102][102] See https://www.epa.gov/sites/default/files/2017-12/documents/appendix_e-atsdr_h2s_factsheet.pdf last accessed June 29 2023

[103] Reference-23

[104] Reference-22

F. MINIMUM NECESSARY TO PRESERVE AND PROTECT CHARACTER, HEALTH, SAFETY AND WELFARE OF THE COMMUNITY.

The Board of Appeals, in the granting of area variances, 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.

i. The harms to the Leeds Pond ecosystem substantially outweigh any possible developer benefit. The developer and new owner are not entitled or have any right to a view. In addition, the removal of the fill will not affect the view of the water or preclude enjoyment of Leeds Pond.

ii. The safety of the new owner's small children and multiple environmental harms outweigh any costs to the developer for removal of the fill. The best plan is for complete removal of the fill with installation of guardrails and grading consistent with the natural topography and landscape of the Leeds Pond ecosystem similar to what Patricia O'Neil spoke about at the June 15 2023 BZA hearing.

iii. In addition, experts agree that the health of the community is directly affected by additional unnecessary fill that will increase toxic pollutants resulting in harmful algae blooms that have already demonstrated production of neuro-toxins like saxitoxin and hepatotoxins like microcystin.

iv. Should the zoning board allow for the unnecessary landfill, they will be fully liable for any and all damages sustained by residents in or around the Leeds Pond, or any outlet of Leeds Pond into Manhasset Bay and beyond

e) The Same Facts, Considerations And Conclusions Of Resulting Harms Are Relevant Even If The Proposed 300 Cubic Yards Proposal Is Treated As An Application For A Permit

i. Assuming the above facts and resulting damage to Leeds Pond is somehow not relevant because this is "compromise" 300 cubic yard proposal the addition of 6 times the 50 cubic yards of landfill allowed under our Village of Plandome Manor Code (down from the 500 cubic yards, i.e., 10 times the allowable amount, that the developer actually dumped on the 1362 Plandome Rd property without any permission), raises very real detrimental concerns and significant adverse environmental impacts set forth in detail above. There are long lasting impacts on Leeds Pond that must be addressed regardless of what the developer, new owners or their attorneys choose to call this new proposal.

ii. If considered under the requirements of obtaining a new permit for fill in excess of the allowable 50 cubic yard amount, why are all prerequisites not fulfilled per the Village Code, e.g. a requiring a Stormwater Pollution Prevention Plan (SWPPP)? The Village Officials have been aware that the developer was not in compliance with the existing permit from the time those 500 cubic yards of illegal fill were dumped on the 1362 Plandome property, why were there no penalties or stop work orders imposed under Sec.115 of our Village Code.

iii. Why did it take the pressure of opposition from residents and signatures on a petition to get the attention of Village Officials? The same officials who, at the very least, now seem to concede that there are facts amiss necessitating that some action needs to be taken at this point to address this situation… all while our Mayor in her letter is attempting to convince our residents that there is nothing there to see[105].

iv. 500 or even 300 cubic yards of landfill far exceeds what is reasonable or what should be allowed, whether by permit or variance. The pending proposal should be denied. The dirt plateau should be removed and regraded to original topography if the BZA is to appear implementing and enforcing our Village Code. Penalties should be imposed retroactively for past violations to deter others.

CONCLUSIONS

All development is not necessarily deleterious; however, in ecologically sensitive areas such as wetlands like Leeds Pond, development has a collective impact on the entire ecosystem – one project cannot be considered in isolation. Development that negatively impacts wetlands provides no public benefit to the surrounding community and is usually detrimental to the wetland ecosystem.

The applicant claims that proposed measures would prevent the dirt from entering the pond. This is not true and does not affect the problems caused the nitrogen and phosphorus in the dirt that will adversely impact the pond will be carried with the water that percolates through the dirt, even if the dirt is successfully retained. Furthermore, the increase in elevation of the surface created by the dirt pile will create a hydraulic gradient beneath the property. This gradient will increase the rate at which nutrients will be leached from the dirt and that fertilizers, pesticides, and herbicides will be carried by percolating ground water into Leeds Pond. Allowing for the 300 cubic yards of fill contributes toward destroying the Leeds Pond Ecosystem by 1000 cuts adding to the numerous assaults that have already occurred within the ecosystem and have a deleterious impact.

Leeds Pond is a brackish waterbody that enjoys a symbiotic relationship with Manhasset Bay. It can be seeded by marine harmful algal blooms and hypoxia but also can cause impairment to Manhasset Bay. Leeds Pond is an impaired water body: excessive levels of nitrogen, phosphorus, algal blooms, blue-green algae and fecal coliform bacteria conditions are likely to worsen with warmer temperatures. Imported fill is a potent source of nitrogen and phosphorus that will further impair water quality in Leeds Pond and Manhasset Bay that runs counter to Nassau County's Nine Element Plan by NYSDEC.

The Village of Plandome Manor Board of Zoning Appeals is entrusted to protect the community which includes its natural and living resources and their habitats. In this case, the desires of a developer for minimum inconvenience and maximum profit coupled with the particular homeowner's desires are contrary to the responsibilities placed on the Village Officials

[105] Reference-37

to exercise good stewardship of those resources as espoused by Mayor Donno and other Plandome Manor officials.

The experts are in agreement that Leeds Pond is fragile and at a tipping point. Silt and other pollutants flow directly into Leeds Pond and harming the pond and Manhasset Bay. Recent water testing shows already unacceptable levels of contaminants. All fill from 1362 Plandome Rd. should be removed immediately without delay. The application of fill at this site should be denied.

The developer has not demonstrated any benefit of the dirt plateau to neighbors, the ecosystem, Plandome Manor or the surrounding community. A child's play area cannot substantiate the destruction of a community resource when there are multiple alternatives including the play in the flat front yard of 1362 Plandome or a lowered regraded section without the 300 cubic yards of unnecessary toxic landfill that would be safer for the young children.

Multiple community members and experts have demonstrated the harm from the excessive amount of landfill and this dirt plateau. There is no right to a child's play area or this variance and the developer should follow the original building plan accepted by the Village of Plandome Manor without any deviation. For all the aforementioned reasons the dirt plateau must go!

Respectfully submitted,