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Via FedEx & Electronic Mail: ZoningBoard@westorange.org

Mr. Philip D. Neuer Esq., Zoning Board Chairperson
Zoning Board of Adjustment
TOWNSHIP OF WEST ORANGE
Town Hall
66 Main Street
West Orange, NJ 07052

Re: Application for Bulk “c” Variance Approval
Applicant: Pardo Development Group, Inc.
Property: 104 Winding Way
Block: 46.01 Lot: 33
Application No.: ZB-24-17

Dear Chairperson Neuer and Members of the Board:

As you are aware, this office represents the Applicant, Pardo Development Group, Inc., with regard to the above referenced application. Kindly allow this letter to clarify the issues identified by the Board at the last hearing on this matter.

First, as discussed during the last board meeting, the property is surrounded on two of three sides by the Rock Spring Golf Course. As this Board is aware, the Golf Course was purchased by West Orange and is operated by a private entity. Additionally, this property has subsequently been placed in the town’s Green Acres inventory. Due to this designation, it is unavailable to be purchased by an individual or entity without subsequently replacing the land in the Township’s inventory with another parcel of land.

The Board additionally requested that we provide more information on the parcel of land and its history. We were provided with a full title report on the property which demonstrated that the property has existed as a separate parcel since at least 1955. This strengthens our position that the size of the lot is not a self-created hardship and is instead a condition that pre-exists the changes in zoning requirements.

New Jersey Courts have found that knowledge of an existing non-conforming lot does not immediately disqualify the applicant from requesting the variance under the c(1) criteria. If an owner, who was entitled to a lot-size variance on hardship grounds, sells to a buyer who knows that the lot does not conform, the right to a variance is not lost as a result of the buyer's knowledge. Dalton v. Ocean Twp. Zoning Bd. of Adjustment, 245 N.J. Super. 453 (App. Div. 1991). An applicant who pursues a variance under N.J.S.A. § 40:55D-70(c)(1) must establish that the particular conditions of the property present a hardship. The efforts made to bring the property into compliance with the ordinance are factors that must be considered. Those efforts may include attempts to acquire additional land or offers to sell the nonconforming lot to adjacent property owners. Ten Stary Dom Partnership v. Mauro, 216 N.J. 16 (2013). Subsequent to the last hearing, our office sent letters to the Municipality and the one adjoining property owners to inquire as to the availability of any property or desire from those property owners to acquire this property. As of this date no responses have been received.

Finally, this letter is also intended to confirm that this application is not barred under the doctrine of *res judicata* due to the prior denied application in 2005. This position was additionally supported by the Board's attorney during the last meeting. *Res judicata* does not bar a new application if there are significant differences in the application or changed circumstances affecting the property. The Supreme Court has stated that the requirement for significant changes "be liberally construed in favor of the applicant [which] would be in accord with the purpose of boards of adjustment to provide the necessary flexibility to the zoning ordinance." Russell v. Bd. of Adjustment of Borough of Tenaflly, 31 N.J. 58, 66 (1959). The present application is significantly different from the previous application that was denied by this Board. The prior application was for a single-family residence but the similarities between the applications end there. The present application removes variances for rear and front yard setbacks along with a reduction in the footprint of the proposed home by nearly 10%. The present application requires additional variances for steep slope relief due to the addition of steep slope requirements after the denial of the previous application.

Should you have any questions or concerns, please do not hesitate to contact this office.

Respectfully Submitted,

/s/ *Stephen F. Hehl*

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cc:	Alexander Fisher, Esq.	<i>via email</i>
	Ryan MacNeill, PE	<i>via email</i>
	Christopher Dochney, PP, AICP	<i>via email</i>

Pardo Development Group, Inc.
manTERRA Design LLC
DantasCarrete Architecture

via email
via email
via email