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VIA EMAIL AND HAND DELIVERY

Chairman Vincent Rappa
And Member of the Planning Board
Village of Chester
47 Main Street
Chester, New York 10918

***Re: Waiver of Fencing Requirements
PDJ Components Inc.***

Dear Chairman Rappa and Members of the Planning Board:

This firm represents PDJ Components, Inc./35 Brookside Avenue, LLC (the “PDJ” or the “Applicant”), the owner of 31 Brookside Avenue (SBL 114-1-10.2), 33 Brookside Avenue (SBL 114-1-10.1) and 35 Brookside Avenue (114-1-17), Chester, NY 10918 (collectively, the “Property”) in their application for site plan approval and special use permit. At the March 26, 2024 Planning Board Meeting, we received comments from the Village’s Planning Board and the Planning Board Attorney, Mr. Stephen Honan, Esq., about the Project’s proposed fencing. *See Site Plans*, dated April 9, 2024. The comments discussed were whether PDJ can pursue a waiver request from the Planning Board for the height of the proposed fencing. In response, Mr. Honan advised we submit this request asking the Planning Board to waive the fencing requirements for the Project provided below.

In § 98-14(D)(2) of the Village of Chester Zoning Code (the “Zoning Code”), it requires that “[n]o open fence shall be more than four feet in height in any front yard, and no solid fence shall ***exceed three feet*** in height.” As demonstrated in the Site Plans, PDJ is providing a solid 6-foot-high fence that borders the Property’s front yard along Brookside Avenue. *See Site Plans*, dated April 9, 2024. PDJ believes that a 6-foot-high fence will provide greater screening of the Property, than a 3-foot-high fence, which is required by the Zoning Code. The goal of the 6-foot-

high fence is to protect the surrounding neighborhood from the lumber yard's industrial operations in the newly zoned Business Corridor, and that could be more easily accomplished with a 6-foot-high fence.

In Zoning Code § 98-14, it permits the Planning Board is to waive “any requirements” for the approval of site plans where it is found not to be in the interest of the public health, safety or general welfare or inappropriate to a particular site plan. Additionally, Zoning Code § 98-14(C)(2), states the Planning Board "*may amend* the fencing requirements to *provide for screening*", or *to meet site plan or special use permit requirements*. This statement is reiterated generally in Zoning Code § 98-14 which emphasizes the Planning Board to take into consideration screening and physical features meant to protect adjacent land uses when reviewing a project application.

However, under the General Requirements for Site Plan Approval § 98-29, it states “where a proposed site plan contains one or more features which do not comply with the zoning regulations, applications may be made to the Zoning Board of Appeals for an area variance without the necessity of a decision or determination of an administrative official charged with the enforcement of the zoning regulations.” The same provision is provided in Zoning Code § 98-24 for the pursuance of special permits (which we are required to pursue for changes to non-conforming uses). This provision conflicts with Zoning Code § 98-14(C)(2) above, and now requires the Applicant to apply to the ZBA after the Building Inspector makes a determination that the proposed fencing is not code compliant.

It is black letter law that “ambiguities in zoning ordinances are resolved in the manner most favorable to the landowner.” *Boyer v. Davenport*, 304 A.D.2d 1028-29 (3d Dep’t 2003). Since the language in the Zoning Code § 98-14 and § 98-24 conflict with one another, the Zoning Code is ultimately ambiguous as to how the Planning Board should handle the fencing requirement. However, based on the principle from *Boyer v. Davenport*, the discrepancy must be resolved in favor of PDJ. That being said, the most favorable outcome to PDJ is for the Planning Board to provide a waiver from the fencing requirements, rather than require PDJ to go before the ZBA and seek an area variance. We are requesting that that the Planning Board waive the 3-foot-high fencing requirement established in Zoning Code § 98-14(D)(2) and permit the Applicant to provide a 6-foot-high fence instead.

We hope to discuss PDJ's fencing waiver request with the Planning Board at its April 23, 2024 meeting. We look forward to speaking with you about the Project. Please do not hesitate to contact me with any questions or concerns at (518) 487-7719 or dalbano@woh.com.

Very truly yours,

/s/ *Dominique G. Albano*

Dominique G. Albano

cc: Eli Goldberger, PDJ Components
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Brian Nugent, Esq., Village Board of Trustees Attorney
Kristen O'Donnell, Village Planner
Stephen Honan, Esq., Village Planning Board Attorney