

JENNIFER LOBATO-CHURCH
85 New Broadway
Sleepy Hollow, NY 10591

October 17, 2012

Members of the Zoning Board of Appeals
via Sean McCarthy, Village Architect
Village of Sleepy Hollow
28 Beekman Avenue
Sleepy Hollow, New York 10591

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BUILDING DEPT.
VILLAGE OF SLEEPY HOLLOW

Dear Members of the Zoning Board of Appeals:

I am writing to express my disapproval of Open Door's application for various parking variances for 1 New Broadway¹ and request that you deny the variances. I ask that this letter be made part of the public record for this application.

Before I detail my reasons for feeling this way, I would like to commend Open Door. Open Door provides a much needed service to persons in our Community who would not otherwise be able to afford appropriate medical care. Further, I greatly appreciate the training opportunity Open Door wants to provide to medical residents as part of its expansion of program and facility. During these times of economic crisis and health care reform, such opportunities, for both patients and health care providers, are critical.

With that being said, the issue is not whether Open Door should be allowed to operate in the Village of Sleepy Hollow ("Village"). In fact, Village officials have openly stated that they hope Open Door continues to operate within the Village, and Open Door still has several years left on its lease for the current Beekman Avenue location. The issue is whether 1 New Broadway is an appropriate location for this facility. Given the tremendous parking variances that need to be satisfied, as well as Open Door's inability to satisfy the criteria for these area variances, I submit that it is not.

Enclosures

Enclosed with this letter are: a letter that I submitted to the Planning Board, which was written with contemplation of Zoning Board of Appeals and Planning Board meeting minutes for a prior owner's application for site plan approval and zoning code variances,² the Police Accident Report Statistics for 2000-2010 for the intersection(s) at question, and two memoranda that I

¹ Please note that this is the proper, legal address for this location.

² See, Resolution – Negative Declaration and Site Plan Approval 300 North Broadway – Grotto Holding Corp., dated Nov. 20, 2008; Zoning Board of Appeals minutes for: November 14, 2007, January 16, 2008, February 20, 2008, March 19, 2008, July 16, 2008, September 17, 2008, October 15, 2008, and November 19, 2008; and Planning Board Meeting minutes for: June 21, 2007, July 19, 2007, September 20, 2007, October 18, 2007, November 15, 2007, January 17, 2008, February 21, 2008, March 20, 2008, April 17, 2008, May 22, 2008, July 17, 2008, September 18, 2008, and October 16, 2008.

drafted on behalf on Webber Park, detailing speeding and traffic concerns on New Broadway and the neighborhood's recommendations for remediation.³ Also enclosed is a letter that I drafted on behalf of the Sleepy Hollow Police Advisory Committee ("PAC") regarding the dangerous intersection at Route 9 / Beekman Avenue / New Broadway. Residents of Sleepy Hollow individually signed copies of this letter, and the PAC mailed several hundred signed copies to the New York State Department of Transportation ("NYS DOT"). I provide these documents to you to demonstrate the community's pre-existing concerns about the safety hazards that exist at this intersection and on New Broadway. These are all being provided for your information and context.

Procedures: Variances Required Under Village Code

As you can see from the public notice, Open Door failed to apply for several variances. Based upon my understanding and review of the Village Zoning Code, such set-back and buffer-area variances will be required because Open Door's plan is to alter a pre-existing, non-conforming structure. I will not, at this time, address my concerns about, and opposition to, these variances in this letter. I will do that at a later time.

The variances I would like to focus on are those related to parking, specifically, the required loading zone, the required number of on-site spots, and Open Door's interpretation of Village Zoning Code regarding off-site parking. It is my belief that Open Door, through its attorneys, misrepresents the parking variances that it requires to proceed with this site plan.

Open Door represents that it has 10 on-site parking spots in the lot at the 1 New Broadway location. I believe that this is a miscalculation of parking spots. Open Door appears to be counting transient and compact parking spots, which, under Village Zoning Code Article V, Section 62-14.A, should not be counted as parking spots until a certain percentage of required spots under the Code are fulfilled. Open Door does not meet this threshold, and, therefore, the zoning variance for these transient and compact spots should be added to the application and the recognized number of on-site spots reduced. Additionally, I do not believe that Open Door is appropriately counting all interior square footage, such as elevators and stairwells, and, therefore, the parking requirements may actually need to be increased based upon appropriate calculations of square footage, as demonstrated by the inconsistencies between the parking requirements Open Door represented to the Planning Board and the requirements it is representing to you, the Zoning Board of Appeals.

Further, based on the size of Open Door's site plan, Open Door is required under Zoning Code Article V, Section 62-14.A.(2) to have an off-street loading space of a certain dimension. It is my understanding that such loading zone is contemplated to be within the parking access and circulation area of the lot. This designated zone is insufficient, however, due to the facts that a)

³ The Adler Consulting Report, dated June 28, 2012, inaccurately represents remediation efforts. NYS DOT did not participate in remediation efforts. All such efforts were undertaken by the Village, and, therefore, all remediation efforts occurred on New Broadway directly. The remediation undertaken consisted of an island being placed at the entrance to Webber Park with a "Webber Park" sign erected on it and a reduction of a 30 mph speed restriction to 25 mph. The traffic, arrow and Route 9 signs cited in the Adler Consulting report, dated June 28, 2012, were already present on Route 9 at the time of neighbor complaints. It was found that the sign congestion was insufficient to notify traffic that they should continue down hill to follow Route 9, hence the need for other measures.

cars will not be able to enter or exit the lot when the truck is in the lot, and b) the truck, when in the lot, will block the door for clients to enter / exit the building. Under Village Zoning Code, the loading zone must be a minimum of 350 square feet, exclusive of access roads, which means a driveway. Clearly, Open Door's proposed loading zone does not meet Code, is a danger to vehicles and pedestrians, and requires a variance.

Finally, with regards to the off-site parking variance, Open Door will need to seek a variance from Village Zoning Code Article V, Section 62.21, *in addition to* the variances for on-site parking under Article V, Section 62.14. The Code does not read that, if an applicant cannot provide on-site parking, then the applicant can satisfy its requirements with off-site parking. To the contrary, these two requirements are mutually exclusive. Further, if an applicant wants to provide off-site parking, then it must meet the requirements under Village Zoning Code Article V, Section 62.21, which include:

- ◆ that off-site parking be located on land in the same ownership or leasehold as that of this applicant,
- ◆ that the off-site location be located within 250 feet from the effective entrance it serves to allow for pedestrian access, and
- ◆ be conveniently usable without causing hazard to pedestrian or vehicular traffic or be a detriment to any residential neighborhood.

Open Door's proposition of providing off-site parking at Phelps Memorial Hospital ("Phelps") for staff only would, therefore, be a condition to a granted variance, not a solution in lieu of a variance. As you will see below, this is a variance that should not be granted, nor is the proposed solution a viable, enforceable or logical condition to such a variance.

Salient Facts and Considerations

Open Door Staff, Clients and Residency Program

At its current location, Open Door serves approximately 5000 patients per year. Open Door has publicly stated that it hopes to double the number of clients by moving into and expanding the 1 New Broadway location and increasing staff to at least 40 persons, including employing residents from the joint residency program it shares with Phelps.

It is my understanding that this residency program began during the summer of 2012, allowing Phelps to now be designated as a teaching hospital, and has been operated out of Phelps in the interim, pending the outcome of the 1 New Broadway application. In fact, Phelps sent out a letter during the summer to Village residents, announcing this new residency program and claiming that it was operating in conjunction with Open Door and out of the new Open Door state of the art facility. At that time, Open Door did not even have a work permit for the location or an approved site plan, yet Phelps was advertising both the facility and the program.

Regardless of location, it is my understanding that the residency program is operational and successful at the Phelps location. Perhaps Open Door may consider employing a shuttle bus for clients to bus them to the Phelps location, thereby eliminating the need for such a large building and prohibitive parking requirements.

One question that has been repeatedly asked, yet not answered to my satisfaction, is where the new patients will come from that Open Door envisions, when the Village population does not appear to support such an increase, especially in view of other medical providers in the area. Another question is whether Phelps will refer patients to the Open Door clinic as part of its mutual cooperation. If so, has there been an estimated number of persons accounted for in the future patient projections? Also, will these persons/new patients be from neighboring communities and, therefore, require vehicular transportation to Sleepy Hollow? If so, then that increased vehicular and pedestrian traffic needs to be accounted for and considered in this application process.

Open Door's Due Diligence

In February 2012, at the Planning Board meeting, Lindsay Farrell detailed some of her efforts to find other suitable locations within Sleepy Hollow. She did not specifically mention the Frank Chevrolet location, which may or may not have been on the market prior to Open Door's purchase of 1 New Broadway. The public was allowed to ask Open Door questions, and I specifically asked Ms. Farrell about that location (as I thought it was for sale during the relevant time period). She indicated that she did not consider that location suitable, as it was too expensive. I asked her whether that determination was made after conversation with the owner or based upon the listing price, and her response was that it was based upon the listing price, as she had never engaged the owner in conversation. She also, at that time, never mentioned environmental concerns. Based upon conversations with the Head of the Buildings Department, Mr. Sean McCarthy, it is my understanding that he does not believe that environmental concerns would have precluded Open Door from operating there.

It is also my understanding from speaking with Mr. McCarthy that the property at the top of Beekman Avenue, the "Callas Sisters" property, which Ms. Farrell looked at prior to purchasing 1 New Broadway, was desirable to Ms. Farrell, specifically for the parking lot. Ms. Farrell and Mr. McCarthy discussed the feasibility of creating a multi-level parking lot and Open Door's ability to renovate the location to suit its needs.

Additionally, there are several vacant lots throughout the Village, particularly on Beekman Avenue. I do not know whether Open Door analyzed any of them, but if they have not, then perhaps they should have, as it is one of the criteria for this Board to consider in its area variance determination.

The previous owner of the 1 New Broadway property (addressed 300 North Broadway at that time) engaged in a very long, drawn out process seeking both site plan approval and a parking variance. His first variance request for parking was denied, and he went back to the Planning Board with a revised site plan, which included parking in the lot, as well as many spaces in the bottom floor of the building for staff. With the new spaces he, therefore, no longer needed a parking variance. A condition of his other variances being granted, however, was that he not rent to a dental or medical facility, due to many resident concerns about pedestrian traffic in the neighborhood. All of this was well publicized throughout the Village, and the hurdle Open Door would have to face with regards to parking, pedestrian traffic and vehicular traffic should not

have come as a surprise to Ms. Farrell and counsel. Further, a review of the relevant Planning Board and Zoning Board of Appeals minutes would have quickly and clearly identified the issues Open Door would face with this property.⁴

Dangerous Intersection

Route 9 is controlled by NYS DOT, so only NYS DOT can approve and post traffic signs on Route 9, which, in my opinion, would be useless given the visual stimulation and over abundance of signs that already exist along that corridor. Also, I understand that Open Door would like to reimburse the Village for employment of a crossing guard, but only NYS DOT can approve that assignment. Further, to my knowledge, Open Door has not approached Village Officials to discuss such an arrangement, including whether such reimbursement would include benefits and retirement and the duration of such a service contract between the Village and Open Door. Finally, Open Door's proposition endangers the crossing guard who has to enter into this intersection to cross pedestrians.

Open Door wants to approximately double its clientele base (which is currently approximately 5,000 people). Of its current clientele base, according to Open Door, approximately 75% of the persons walk (based upon a one-day survey of 237 persons who entered the site)⁵. Using those numbers, over 4,000 persons per year will be crossing that intersection, many of whom will be sick, injured, pushing strollers, holding the hands of toddlers. The Adler Consulting reports dated April 4, 2012, and June 28, 2012, account for the number of clients but do not account for the number children or siblings that accompany the client, thereby increasing the actual number of persons crossing the intersection. This is a safety hazard for the Village's citizens and a potential civil liability.

Finally, Open Door states that the public entrance for the site will be in the lot located on Route 9. The site plan does not contemplate a pedestrian walk way or designated lane. Children will, therefore, be walking through the parking lot that cars will quickly turn into from Route 9, where cars will make U-turns to exit the lot and where the trucks will park for loading.

Parking

The parking variance required is going to be too burdensome to overcome. Open Door proposes that people will use off-site, on-street parking. Adler Consulting notes that there are two metered handicap spots on Beekman Avenue. It is incredulous that Open Door would assume that handicapped persons would park in a metered spot on Beekman Avenue, walk up the hill and cross the Route 9 intersection. Finally, the Adler Consulting report notes the parking spots located on New Broadway as being available for clients.

⁴ See, Resolution – Negative Declaration and Site Plan Approval 300 North Broadway – Grotto Holding Corp., dated Nov. 20, 2008; Zoning Board of Appeals minutes for: November 14, 2007, January 16, 2008, February 20, 2008, March 19, 2008, July 16, 2008, September 17, 2008, October 15, 2008, and November 19, 2008; and Planning Board Meeting minutes for: June 21, 2007, July 19, 2007, September 20, 2007, October 18, 2007, November 15, 2007, January 17, 2008, February 21, 2008, March 20, 2008, April 17, 2008, May 22, 2008, July 17, 2008, September 18, 2008, and October 16, 2008.

⁵ See Adler Consulting Letter, April 4, 2012

New Broadway and the surrounding side streets are already overwhelmed with parked vehicles. Parking on those streets is subject to alternate side restrictions. Many houses have several cars, particularly those houses that are multi-family, and most of the houses do not have drive ways and/or garages. Further, Webber Park already sees a large number of non-residents who park on the streets for the day, particularly day laborers who park there and then walk to their pick-up point on Route 9. Finally, Open Door's hours of operation will extend into the evening hours, when people are coming home from work and looking for parking spots, spots that will be taken by people visiting Open Door. Webber Park simply cannot accommodate any additional parking.

The reality is that, by moving from Beekman Avenue to 1 New Broadway, Open Door is moving farther away from the majority of the clients it serves. The proposed site is located farther away from public parking areas than the current site. These are incentives for more people to consider driving and to park on Webber Park's streets. Additionally, by increasing the number of persons it serves, even if the percentage of walkers remains the same, it increases the number of persons who will drive.

In addition to persons who drive themselves and need to park their cars, there will be an increase in drop-off and pick-up situations, either by hired cabs or by friends and family. Open Door will have no ability to control where these drop-off and pick-up situations occur. I suspect that many will take place on New Broadway, as drivers will want to avoid turning off of a fast moving Route 9 into a small, crowded and dangerous parking lot that is difficult to turn around in and make a left turn out of. This increases vehicular traffic in a residential neighborhood that worked very hard to reduce traffic that does not belong there.

The parking at Phelps is designated for staff only. This does not address the clients that drive to the location, nor does it address visiting professionals who visit for a day or more. (Please take note that the site plan contemplates a conference room with a 70 person capacity, which would be additional persons visiting the site who were not accounted for in the Adler Consulting study.) As I stated above, providing a shuttle for staff to parking at Phelps would be a condition to a variance, not a solution in lieu of a variance. I suggest that such a condition is unenforceable, as the Village cannot monitor for compliance. Should Open Door employees violate policy, the Village will have to rely upon Open Door to reprimand the violator and self-report the violation. The Village will have no way of knowing of and remediating the violation. The shuttle condition, therefore, is unenforceable, and, therefore, should not be granted.

Open Door Fails to Meet the Criteria for an Area Variance

In determining whether to grant an area variance, the Zoning board of Appeals must consider the benefit to the applicant, as weighted against the detriment to the health, safety and welfare of the neighborhood or community by the grant. There are five criteria you must consider, and I believe Open Door fails to satisfy all five criteria.

Variance Request for Adequate On-Site Spots (Minimum of 40 Required)

1. The variance creates an undesirable change and detriment to nearby property. Webber Park is an already densely populated neighborhood with multi-family homes and few, to no, driveways or garages and alternate side of the street parking restrictions. Many non-residents already park in Webber Park for the day so that they may be picked up for work on Route 9. Imposing additional parking responsibilities on this neighborhood is untenable.
2. The benefit Open Door seeks could have been achieved by other means. There were other properties in the Village that could have been more thoroughly explored but were not. Further, the residency program is already functional and successful at Phelps, so Open Door could provide a shuttle to the Phelps location for clients.
3. The area variance requested is substantial. Assuming Open Door is properly calculating square footage and properly characterizing existing spots in the lot, which I maintain they are not doing for either, they still need an additional 30 parking spots on site. This is a substantial variance, and Village Zoning Board of Appeals precedent supports this statement, as this Board has denied less substantial parking variance for these reasons.
4. The proposed variance will have an adverse impact on the physical and environmental conditions of the neighborhood. There will be more cars parking and travelling in Webber Park, more pedestrian traffic in the neighborhood and more pedestrian traffic in a dangerous intersection on a State road.
5. This hardship was clearly self-created. Open Door could have looked at other properties and engaged in negotiations with property owners but chose not to. Ms. Farrell did not review, or if did review, did not care about, the history that came with this building regarding variances, parking and public concerns. A copy of the Planning Board Resolution from the Grotto application, including the condition prohibiting medical or dental offices, was attached to the property title report upon Open Door contracting the property. Further, the Buildings Department does not have any record of Open Door requesting to review the records related to this property prior to the purchase of the property. Open Door chose to buy this property without regard for this Board's precedent or Webber Park's welfare.

Variance Request for Off-Site Spots

1. The variance creates an undesirable change and detriment to nearby property. Since Open Door cannot first satisfy its on-site requirements, it looks to substitute its responsibility with off-site parking, which largely falls on Webber Park. As stated above, Webber Park cannot accommodate this displaced responsibility, changing the character from a residential community to a commercial, commuter location.
2. The benefit Open Door seeks could have been achieved by other means. There were other properties in the Village that could have been more thoroughly explored but were not. Further, these properties had adjacent lots that could have accommodated the required parking.
3. The area variance requested is substantial. According to Zoning Code, the off-site parking should be owned or leased by the same owner or lessee as the subject property and be within 250 feet of the front door. Part of the off-site parking contemplated is 1.6 miles away from the subject property and is not owned or controlled or leased by Open

Door. Further, this parking will only be made available to staff. This is a substantial deviation from Village Zoning Code.

4. The proposed variance will have an adverse impact on the physical and environmental conditions of the neighborhood. There will be more cars parking and travelling in Webber Park, more pedestrian traffic in the neighborhood and more pedestrian traffic in a dangerous intersection on a State road. Further, the off-site parking is not in a lot that is owned, leased or controlled by Open Door (it is existing Village parking), and, therefore, it will not be maintained by Open Door.
5. This hardship was clearly self-created. Open Door could have looked at other properties with on-site parking and engaged in negotiations with property owners but chose not to. Rather, Ms. Farrell chose a property with insufficient on-site parking, as well as insufficient off-site parking and has made no efforts to accommodate these requirements other than to say people can park in a residential neighborhood and at metered spots on the other side of Route 9 and down a large hill.

Distinguishing Open Door's Other Locations

Open Door repeatedly notes its other locations and the lack of parking available as being insignificant. In those cases (Mount Kisco, Ossining, Port Chester), the facilities are located in commercial and industrial locations, easily accessible by public transportation with ample on-street parking. In comparison, those locations are similarly situated as the current location on Beekman Avenue. Regardless, whether or not there are parking problems at these other locations is not of relevance, as it does not satisfy the required tests for granting a variance. Your determination must be made based upon Village Zoning Code and an assessment of the facts as they relate to the circumstances created within the Village.

Conclusion

In its cover letter to the application, Open Door, through its counsel, argues that the Zoning Board of Appeals cannot deny a variance based solely upon the substantiality of the variance in the abstract. I submit that, regardless of this variance being quite substantial, Open Door fails to meet every prong of the Area Variance criteria for both variances. Further, as demonstrated, Open Door is not exempt from the requirement to provide off-site parking within 250 feet of the site on a lot it owns or leases because, as Open Door's counsel argues, it will provide off-site parking 1.6 miles away and a shuttle bus designated for staff only. Rather, parking at Phelps and a shuttle bus are conditions of a variance that should not be granted, due to the inability to efficiently monitor and enforce such condition. Both variances, therefore, should be denied.

I thank you for your time and consideration.

Sincerely,



Jennifer Lobato-Church