

RALPH G. MASTROMONACO, P.E., P.C.

Consulting Engineers

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Civil / Site / Environmental

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Sal Carrera, Chairman and Members
Town of Ossining Zoning Board of Appeals
John Paul Rodrigues Operations Center
101 Route 9A – PO Box 1166
Ossining, New York 10562

January 3, 2022

Hand Deliver

Re: Preliminary Plat prepared for Mark Picucci
Section 89.08, Block 1 Lot 78.1
51 Croton Dam Road
Town of Ossining, New York

Dear Hon. Chairman and Members of the Board:

Enclosed please find the following materials:

1. Application for Zoning Board of Appeals dated December 23, 2021,
2. Short Environmental Assessment Form dated revised December 28, 2021,
3. Stipulation of Settlement Index No. 56502/2020,
4. Letter from owner, Yellow Jug Corp., authorizing Ralph G. Mastromonaco, PE, PC, to make applications on his behalf dated November 29, 2021.
5. Check in the amount of \$350.00 for the Zoning Board application fee.
6. Ten (10) copies of the following drawing:
 - a. Preliminary Plat prepared for Mark Picucci, Yellow Jug Corp., Laura E. Couzens and Terrie L. Bentley dated December 5, 2019 revised December 14, 2021,

We represent Mark Picucci and his neighbors for a minor subdivision to create one (1) additional lot in the Subdivision of Property prepared for Umberto and Ida Picucci that was approved in 2008 and filed in 2009. We are also adjusting a lot line on the existing parcel at 55 Croton Dam Road to create a Private Road Parcel (Lot 4).

We enclose a Zoning Board Application Form and Environmental Assessment Form revised December 28, 2021 reflecting the revised subdivision plans and variance application. This application was the subject of an Article 78 proceeding and the above enclosed Stipulation of Settlement.

The reason for our appeal to the Zoning Board is that the creation of a private road on the property results in transforming the side yard for the existing dwelling on Lot 2 of the proposed subdivision which requires 14-feet, into a rear yard which requires 32-feet. This existing newly designated "rear yard" only contains 29.9-feet.

The criterion and balancing test for granting a variance under § 200-46, B. (3) of Town Code is as follows:

As to the overall balancing test, the benefit to the applicant is that the orientation of the existing middle house requiring the variance with respect to the private road enables the applicant to comply with the stated wish of the Planning Board, as encompassed in the stipulation, that the house front on the new private road, and thereby to obtain approval of the additional lot-for which there is negligible if any detriment to the health safety and welfare of the neighborhood or community.

The five (5) criterion for the balancing test under § 200-46, B. (3) of Town Code are as follows:

[1] Whether an undesirable change be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance.

1. There is no undesirable change to the character of the community or detriment to nearby properties. The middle house and its location are not being altered. The applicant could obtain the additional lot in any case by an alternate configuration not requiring a variance, but is complying with the wishes of the PB as to what constitutes a better layout. The new home is on a zoning compliant lot.

[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.

2. The benefit sought to be obtained-compliance with the stipulation with the PB, reflecting the PB's desired layout- cannot be acquired without the variance.

[3] Whether the requested area variance is substantial.

3. The variance of only 1.9-2.1 feet-or 5.9%-6.5%, is insubstantial, both mathematically and in context, as the house is not being modified in any way.

[4] Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

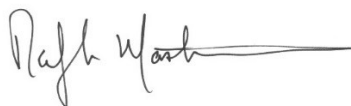
4. The variance has no impact on environmental or physical conditions for the reasons stated above.

[5] 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.

5. Arguably, the variance is not self-created, as the applicant is complying with the stipulation and wishes of the Planning Board and could layout the subdivision without necessity of the variance, but in any event, self-created hardship does not prohibit the granting of an area variance.

We request placement on the next available meeting of the Zoning Board of Appeals for consideration of the Zoning Board for a minor side yard variance due to the change in the location of the front yard.

Sincerely,



Ralph G. Mastromonaco, PE

RGM/mte

cc: Mark Picucci
R. Davis, Esq.



TOWN OF OSSINING
BUILDING & PLANNING DEPARTMENT

101 ROUTE 9A, P.O. BOX 1166

OSSINING, N. Y. 10562

PHONE: (914) 762-8419 FAX: (914) 290-4656

Website www.townofossining.com & Email blgddept@townofossining.com

APPLICATION TO THE ZONING BOARD OF APPEALS

Date December 23, 2021

I, We Mark Picucci, Yellow Jug Corp. Of PO Box 543
(Name of Applicant) (Street)

Millwood NY 10546 914-924-2738 castlecustom@gmail.com : HEREBY
(Municipality) (State) (Zip Code) (Phone No.) (Email)

() APPEAL TO THE ZONING BOARD OF APPEALS FROM THE DECISION OF
THE BUILDING INSPECTOR AND IN CONNECTION THEREWITH REQUEST

() an Interpretation of the Zoning Code or Zoning Map of the Town of Ossining

☒ a Variance from the terms of the Zoning Code of the Town of Ossining, or

() a Temporary Certificate of Occupancy.

() APPLY TO THE ZONING BOARD OF APPEALS FOR A SPECIAL PERMIT.

1. **LOCATION OF PROPERTY:** 51 Croton Dam Road
(Street and Number)

SECTION 89.08 BLOCK 1 LOT 78.1 ZONE R-15

A) Is the Property located within a distance of 500 feet of the boundary of any village, town or county, or any boundary of a State park or parkway?

If yes, specify.

Yes _____ No X

B) Does the Property abut the boundary of any village or town, the boundary of any State or County park or other recreation area, the right-of-way of any stream or drainage channel owned by the county or for which the county has established channel lines, or the boundary of any county or State owned land on which a public building or institution is located? If yes, specify.

Yes _____ No X

C) If a Special Permit is being applied for, is the property shown on the Hudson River Valley Commission Jurisdiction Map?

Yes _____ No X

2. **PROVISION (S) OF THE ZONING CODE INVOLVED:**

Section 200 subsection 21 paragraph Att. 2, Schedule of Bulk Regulations

Section _____ subsection _____ paragraph _____

Section _____ subsection _____ paragraph _____

3. **DESCRIPTION OF RELIEF REQUESTED** (Set forth the circumstances of the case, interpretation that is claimed and details of any variance applied for. Use extra sheet if necessary.)

Applicant is subdividing the property with a private road which makes an existing side yard the new rear yard. Therefore, the existing side yard of 29.9-feet becomes a rear yard where 32-feet is required. The applicant is requesting a variance of 2.1-feet for an existing yard.

4. **REASON FOR APPEAL** (State precisely grounds on which it is claimed that relief should be granted. Use extra sheet if necessary.)

See letter to the Zoning Board.

5. Enclose 10 paper copies and 1 pdf version of an accurate and intelligible plan, survey, location map, of the Property drawn to a suitable scale and a nonrefundable fee of **\$350.00 payable to Town of Ossining. Email pdf to bldgdept@townofossining.com**


(Signature of Property Owner or Authorized Agent)

Short Environmental Assessment Form

Part 1 - Project Information

Instructions for Completing

Part 1 - Project Information. The applicant or project sponsor is responsible for the completion of Part 1. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification. Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information.

Complete all items in Part 1. You may also provide any additional information which you believe will be needed by or useful to the lead agency; attach additional pages as necessary to supplement any item.

Part 1 - Project and Sponsor Information															
Name of Action or Project: Preliminary Plat Prepared for Mark Picucci, Yellow Jug Corp., Laura E. Couzens & Terrie L. Bentley															
Project Location (describe, and attach a location map): 51 Croton Dam Road Ossining, NY 10562															
Brief Description of Proposed Action: Project is to re-subdivide 2.3 acres (existing as two lots and easement) into three (3) single family lots in the R-15 District and a Private Road. This will create one new lot. There are two (2) existing single family dwellings on the property. One (1) of the existing dwellings (lot 2) will require a rear yard variance of 2.1-feet.															
Name of Applicant or Sponsor: Mark Picucci		Telephone: 914-924-2738													
		E-Mail: castlecustom@gmail.com													
Address: P.O. Box 543															
City/PO: Millwood		State: NY	Zip Code: 10546												
1. Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulation? If Yes, attach a narrative description of the intent of the proposed action and the environmental resources that may be affected in the municipality and proceed to Part 2. If no, continue to question 2.			<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 2px;">NO</td> <td style="width: 50%; padding: 2px;">YES</td> </tr> <tr> <td style="text-align: center; padding: 5px;">☒</td> <td style="text-align: center; padding: 5px;">☐</td> </tr> </table>	NO	YES	☒	☐								
NO	YES														
☒	☐														
2. Does the proposed action require a permit, approval or funding from any other governmental Agency? If Yes, list agency(s) name and permit or approval: WCDH: Plat Approval			<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 2px;">NO</td> <td style="width: 50%; padding: 2px;">YES</td> </tr> <tr> <td style="text-align: center; padding: 5px;">☐</td> <td style="text-align: center; padding: 5px;">☒</td> </tr> </table>	NO	YES	☐	☒								
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<table style="width: 100%;"> <tr> <td style="width: 50%;">3.a. Total acreage of the site of the proposed action?</td> <td style="width: 10%; text-align: center;">2.3</td> <td style="width: 10%; text-align: center;">acres</td> <td style="width: 30%;"></td> </tr> <tr> <td>b. Total acreage to be physically disturbed?</td> <td style="text-align: center;">0.2</td> <td style="text-align: center;">acres</td> <td></td> </tr> <tr> <td>c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor?</td> <td style="text-align: center;">2.3</td> <td style="text-align: center;">acres</td> <td></td> </tr> </table>				3.a. Total acreage of the site of the proposed action?	2.3	acres		b. Total acreage to be physically disturbed?	0.2	acres		c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor?	2.3	acres	
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b. Total acreage to be physically disturbed?	0.2	acres													
c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor?	2.3	acres													
4. Check all land uses that occur on, adjoining and near the proposed action. ☐ Urban ☐ Rural (non-agriculture) ☐ Industrial ☐ Commercial ☒ Residential (suburban) ☐ Forest ☐ Agriculture ☐ Aquatic ☐ Other (specify): _____ ☐ Parkland															

5. Is the proposed action, a. A permitted use under the zoning regulations?	NO ☐	YES ☒	N/A ☐
b. Consistent with the adopted comprehensive plan?	☐	☒	☐
6. Is the proposed action consistent with the predominant character of the existing built or natural landscape?	NO ☐	YES ☒	
7. Is the site of the proposed action located in, or does it adjoin, a state listed Critical Environmental Area? If Yes, identify: _____	NO ☒	YES ☐	
8. a. Will the proposed action result in a substantial increase in traffic above present levels?	NO ☒	YES ☐	
b. Are public transportation service(s) available at or near the site of the proposed action?	☐	☒	
c. Are any pedestrian accommodations or bicycle routes available on or near site of the proposed action?	☒	☐	
9. Does the proposed action meet or exceed the state energy code requirements? If the proposed action will exceed requirements, describe design features and technologies: _____	NO ☐	YES ☒	
10. Will the proposed action connect to an existing public/private water supply? If No, describe method for providing potable water: _____	NO ☐	YES ☒	
11. Will the proposed action connect to existing wastewater utilities? If No, describe method for providing wastewater treatment: _____	NO ☐	YES ☒	
12. a. Does the site contain a structure that is listed on either the State or National Register of Historic Places?	NO ☒	YES ☐	
b. Is the proposed action located in an archeological sensitive area?	☒	☐	
13. a. Does any portion of the site of the proposed action, or lands adjoining the proposed action, contain wetlands or other waterbodies regulated by a federal, state or local agency?	NO ☒	YES ☐	
b. Would the proposed action physically alter, or encroach into, any existing wetland or waterbody? If Yes, identify the wetland or waterbody and extent of alterations in square feet or acres: _____	☒	☐	
14. Identify the typical habitat types that occur on, or are likely to be found on the project site. Check all that apply: ☐ Shoreline ☐ Forest ☐ Agricultural/grasslands ☐ Early mid-successional ☐ Wetland ☐ Urban ☒ Suburban			
15. Does the site of the proposed action contain any species of animal, or associated habitats, listed by the State or Federal government as threatened or endangered?	NO ☒	YES ☐	
16. Is the project site located in the 100 year flood plain?	NO ☒	YES ☐	
17. Will the proposed action create storm water discharge, either from point or non-point sources? If Yes, a. Will storm water discharges flow to adjacent properties? ☒ NO ☐ YES	NO ☐	YES ☒	
b. Will storm water discharges be directed to established conveyance systems (runoff and storm drains)? If Yes, briefly describe: Rain Garden ☐ NO ☒ YES			

18. Does the proposed action include construction or other activities that result in the impoundment of water or other liquids (e.g. retention pond, waste lagoon, dam)? If Yes, explain purpose and size: _____ _____ _____	NO ☒	YES ☐
19. Has the site of the proposed action or an adjoining property been the location of an active or closed solid waste management facility? If Yes, describe: _____ _____ _____	NO ☒	YES ☐
20. Has the site of the proposed action or an adjoining property been the subject of remediation (ongoing or completed) for hazardous waste? If Yes, describe: _____ _____ _____	NO ☒	YES ☐
I AFFIRM THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE Applicant/sponsor name: <u>Ralph G. Mastromonaco, PE, PC, Agent</u> Date: <u>Revised: December 28, 2021</u> Signature: <u></u>		

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

MARK PICUCCI and YELLOW JUG CORP.,

Petitioners,

-against-

PLANNING BOARD OF THE TOWN OF OSSINING,

Respondent.

**STIPULATION
OF SETTLEMENT**

Index No.: 56502/2020

Assigned Judge:
Hon. Melissa A. Loehr

Appellate Division Docket No.:
2021/03429

IT IS HEREBY STIPULATED by and among the parties to the above-entitled proceeding as follows:

WHEREAS, Petitioners Mark Picucci and Yellow Jug Corp. (collectively, “Petitioners”) are the owners of real property located at 51 Croton Dam Road in the Town of Ossining, known and designated as Section 89.08, Block 1, Lot 78.1 on the Town of Ossining Tax Map (the “Property”); and

WHEREAS, Petitioners commenced this Article 78 proceeding by filing a Notice of Petition and Verified Petition on June 24, 2020 challenging the determination of Respondent Planning Board of the Town of Ossining (“Respondent” or “Planning Board”) dated May 20, 2020 denying Petitioners’ application to amend a prior two-lot subdivision approval granted by the Planning Board in 2007 to remove Condition 1(g) from the 2007 Resolution that precluded any further subdivision of the Property; and

WHEREAS, the Planning Board filed its Answer and the Certified Record on September 9, 2021; and

WHEREAS, upon the Article 78 proceeding being fully-submitted and having come on to

be heard by the Supreme Court, Westchester County (Loehr, A.J.) in the usual course, the Court issued a Decision and Order dated and filed with the Westchester County Clerk on March 11, 2021 granting the Verified Petition to the extent that “the Planning Board’s decision of May 20th, 2020 is annulled and set aside, and the matter shall be remitted for the Planning Board to (1) annul and (2) remove Condition 1(g) from the prior resolution of subdivision approval” (the “Decision and Order”); and

WHEREAS, the Court issued a Judgment in accordance with the Decision and Order on April 2, 2021 (the “Judgment”); and

WHEREAS, the Planning Board timely filed a Notice of Appeal from the Judgment on April 27, 2021, which has been assigned Appellate Division, Second Department Case No. 2021-03429 (the “Appeal”); and

WHEREAS, the Appellate Division, Second Department granted the Planning Board’s application for a 60-day extension of time to perfect the Appeal, which is currently required to be perfected by December 27, 2021; and

WHEREAS, enforcement of the Supreme Court’s Decision and Order and Judgment has been stayed pending the Appeal pursuant to CPLR 5519(a)(1); and

WHEREAS, Petitioners and Respondent (collectively, the “Parties”) desire to avoid the expense and distraction of further litigation and therefore, desire to settle the disputes among them;

NOW THEREFORE, in consideration of the recitals which are incorporated herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is hereby agreed by and among the Parties herein that the Article 78 Proceeding and the Appeal are settled upon the following terms and conditions:

1. Within 60 days of this Stipulation being fully-executed, Petitioners shall submit to

Respondent a new application for a three-lot subdivision with respect to the Property with all submissions required by the Planning Board for any subdivision application (the “New Subdivision Application”), and which application shall include a preliminary plat in substantially in the form of the the Preliminary Plat last revised 8/5/2021 and annexed hereto as **Exhibit A**, which depicts a proposed private road parcel and three lots comprised of Lot 1 (with an existing frame house); Lot 2 (with a proposed house) and Lot 3 (with an existing house under construction) (“Preliminary Plat”).

2. Respondent will review and render its determination on the New Subdivision Application in its normal course and pursuant to law, subject to Petitioners first making application to and obtaining approval from the Town Zoning Board of Appeals (“ZBA”) for any area variance(s) as may be required.

3. Nothing herein shall preclude Respondent from requiring Petitioners to make revisions or changes to the Preliminary Plat during the course of the subdivision application process as to those matters within the Planning Board’s jurisdiction, including but not limited to, changing or modifying the orientation of the proposed house on Lot 2, changing or modifying the proposed lot lines of Lots 1, 2, 3 and the road parcel, and changing, modifying or relocating the existing frame garage that is depicted as part of Lot 3 (but in front of Lot 1), except that Respondent shall not require removal of the proposed third lot (Lot 2).

4. Petitioners represent, acknowledge and understand that Respondent will not approve a three-lot subdivision that does not (1) propose a private road to be owned and maintained in perpetuity by the owners of Lots 1, 2 and/or 3 and (2) include a condition that no further subdivision will be permitted on the Property or the subdivided lots and that such condition will be reflected on any approved subdivision plat.

5. In the event Petitioners are not satisfied with the determination rendered by the Planning Board on the New Subdivision Application, their exclusive remedy shall be to bring an Article 78 proceeding challenging said determination. But in no event may Petitioners, their successors and assigns, or any future owners of Lots 1, 2, 3 or the road parcel challenge any approval granted by the Planning Board to the extent that it includes any of the requirements or conditions set forth in paragraph 4 herein. This paragraph 5 shall run with the Property and the subdivided lots, if any.

6. Upon the full execution of this Stipulation, Respondent will advise the Second Department that the matter has been settled and will withdraw its Appeal.

7. Upon Respondent withdrawing its Appeal as provided in paragraph 6, neither Petitioners, nor their successors and assigns, nor any future owners of Lots 1, 2, 3 or the road parcel may seek to enforce the Decision and Order and/or Judgment against Respondent, the Town of Ossining or its boards, officers, departments, employees, agents or contractors. This paragraph 7 shall run with the Property and the subdivided lots.

8. This Stipulation constitutes the entire understanding among the Parties with respect to the subject hereof and no amendment or modification hereto shall be valid unless made in writing and signed by the Parties.

9. The Parties have participated jointly in the negotiation and drafting of this Stipulation. In the event an ambiguity or question of intent or interpretation arises, this Stipulation shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Stipulation.

10. If any part of this Stipulation is adjudged illegal, ineffective, or unenforceable by a court of competent jurisdiction, the remainder of this Stipulation shall not be affected thereby provided that the intent of the Stipulation may be otherwise carried out, and the Parties shall be bound by the remainder of this Stipulation as if the illegal, ineffective or unenforceable part had never been inserted.

11. The Stipulation shall be governed by, and construed and enforced in accordance with, the laws of the State of New York. The Supreme Court, County of Westchester shall maintain jurisdiction over this Stipulation and if in the future, any Party seeks to have this Stipulation enforced by the Court, they shall make an application to the Court by Order to Show Cause.

12. The provisions of this Stipulation shall run with the Property and shall be binding upon and inure to the benefit of each of the parties and their boards, officers, employees, administrators, agents, heirs, distributors, successors and assigns.

13. Each signatory to this Stipulation represents and warrants to the other Party that such signatory has the authority to enter into this Stipulation on behalf of that respective Party and that all legal requirements necessary to enter into this Stipulation have been observed.

14. This Stipulation may be executed in electronic or facsimile signature and in one or more counterparts, each of which taken together shall constitute one and the same document.

Dated: December __, 2021

SINGLETON, DAVIS & SINGLETON PLLC

Attorneys for Petitioners

Mark Picucci and Yellow Jug, Corp.

SILVERBERG ZALANTIS, LLC

Attorneys for Respondent

Planning Board of the Town of Ossining

By: _____ By: _____

Robert F. Davis, Esq.
120 East Main Street
Mount Kisco, NY 10549

Katherine Zalantis, Esq.
120 White Plains Road, Suite 305
Tarrytown, NY 10591

MARK PICUCCI
Petitioner

PLANNING BOARD OF THE
TOWN OF OSSINING
Respondent

Mark Picucci

By: _____
Gareth Hougham, Chairman

Yellow Jug Corp.
Petitioner

By: _____
Mark Picucci, President

Yellow Jug, Corp.
P.O. Box 543
Millwood, NY 10546

November 24, 2021

Town of Ossining Planning Board
John Paul Rodrigues Operations Center
101 Route 9A – PO Box 1166
Ossining, New York 10562

Re: 51 Croton Dam Road
Ossining NY
Section 89.08, Block 1, Lot 78.1

To Whom It May Concern:

By this letter I Mark Picucci, of Yellow Jug Corp. owner of property at 51 Croton Dam Road, described above, do hereby authorize Ralph G. Mastromonaco, PE, PC to make applications to the Town and represent the property at Planning Board meetings.

Sincerely,



11-29-21
Mark Picucci