

THE LAW OFFICE OF KORY SALOMONE, P.C.

118 NORTH BEDFORD ROAD, SUITE 100
MOUNT KISCO, NEW YORK 10549
Tel: (914) 219-0789
Fax: (914) 709-4605
ks@ksalomonelaw.com

February 22, 2021

Sal Carrera, Chair
Zoning Board of Appeals
Town of Ossining
John-Paul Rodriguez Operations Center
101 Route 9A – P.O. Box 1166
Ossining, NY 10562

Re: 550 North State Road (90.15-2-8)
Terra Rustica Ristorante
Area Variance Application

Honorable Chair and Members of the Board:

I. INTRODUCTION

This firm represents Terra Rustica Ristorante (the “Applicant”) in connection with its amended site plan application, which is currently pending before the Planning Board. The Applicant is proposing to expand the existing outdoor deck by approximately 380 s.f., and to construct a roof over the deck, while leaving the sides open. While the proposed deck expansion conforms with the vast majority of the bulk and area regulations, it is deficient with respect to the front yard setback requirement in the GB zoning district. The purpose of this letter is to submit an application for a variance from the minimum front yard setback requirement.

For the reasons set forth below, we submit that the requested variance, if granted, is the minimum relief required and will not have an adverse impact on the neighborhood.

II. SUBJECT PROPERTY

The Subject Property is located at 550 North State Road and is identified on the Tax Assessment Map of the Town of Ossining as Section 90.15, Block 2, Lot 8. The relevant portion of the tax map is attached hereto as **Exhibit A**. Aerial images of the site are attached hereto as **Exhibit B**. The Subject Property is located in the GB (General Business) zoning district, which permits restaurants as a principal permitted use.

The Subject Property is 1.1 acres and is improved with an approximately 4,300 s.f. structure and ±620 s.f. deck. The building has been occupied by the Terra Rustica since 1999.

III. PROPOSED DEVELOPMENT

The Applicant is proposing to enlarge the existing ±620 s.f. deck by approximately 380 s.f. and extend the roof of the building to cover the deck. The deck will remain open to the outside with no walls being proposed. Additionally, a walkway will be added on the eastern side of the deck, which will connect the deck to the upper parking lot. Please note that there is no intention to increase the seating capacity on the deck. The existing deck is able to accommodate 30 seats. If approved, the new, approximately 1,000 s.f., deck will have the same number of tables and seats. The additional space will simply allow for more appropriate distancing between the tables. The proposed deck expansion is shown on the Site Plan, prepared by DeMasi Architects P.C., dated January 21, 2021, last revised February 8, 2021 and the Covered Deck Plan, prepared by DeMasi Architects P.C., dated January 21, 2021, both of which are attached hereto as **Exhibit C**.

We made our initial presentation to the Planning Board at its February 3, 2020 meeting. We made a second presentation to the Planning Board on February 17, 2021. At the conclusion of that meeting, the Planning Board referred this matter to the Zoning Board of Appeals for the required relief.

IV. ZONING REQUIREMENTS AND NEED FOR VARIANCE

The Subject Property is located in the GB (General Business) zoning district. Pursuant to § 200-23 of the Ossining Zoning Code, the minimum front yard setback in the GB zoning district is 30 feet. As shown on Exhibit C (Site Plan) the north-eastern corner of the deck is set back 25.1 feet from the front yard lot line. Accordingly, a variance of 4.9 feet is required.

V. STANDARDS FOR GRANTING AN AREA VARIANCE

A. Statutory Provisions:

1. Town Law § 267-b(3): This Section of the Town Law provides the framework and statutory underpinning for the Zoning Board's review of area variances. This Section provides as follows:

“Area Variances. (a) The zoning board of appeals shall have the power, upon an appeal from a decision or determination of the administrative official charged with the enforcement of such ordinance or local law, to grant area variances as defined herein.

(b) In making its determination, the 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 shall not necessarily preclude the granting of the area variance.

(c) The board of appeals, in the granting of area variance, shall grant the minimum variances 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.”

2. Zoning Ordinance § 200-45(B)(3): In addition to the applicable provisions of the Town Law as set forth above, the Zoning Ordinance of the Town of Ossining provides an additional framework for the Zoning Board’s review of area variances. This section provides as follows:

“(a) The Zoning Board of Appeals shall have the power, upon an appeal from a decision or determination of the administrative official charged with the enforcement of this chapter, to grant area variances, as defined herein.

(b) In making its determination, the 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 condition in the neighborhood or district.

[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.”

These “local” standards are identical to the state standards.

B. Application of Area Variance Standard to the Present Application:

1. Overall Standard: The overall standard that governs the Zoning Board’s review of area variances is a balancing test set forth in § 267-B(3)(b) of the Town Law and § 200-45(B)(3) of the Town Zoning Ordinance. This standard requires the Zoning Board of Appeals to balance “...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.” Both the state and local statutes then provide the Zoning Board with five specific considerations to take into account in evaluating the balancing test set forth above.

It is respectfully submitted that the granting of this variance will not be a detriment to the health, safety, and welfare of the neighborhood or community, but it will be a great benefit to the Applicants.

On balance, and for the reasons set forth below, we feel that the Applicant is entitled to the requested variance.

2. Specific Standards for Zoning Board Review:

a. *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:*

It is respectfully submitted that the granting of the requested area variance will not produce an undesirable change in the character of the neighborhood or be a detriment to nearby properties. The Subject Property has been improved with and occupied by a restaurant dating back to the 1970’s. Terra Rustica has been in operation on the Subject Property since 1999. The granting of the requested variance will not result in a change in the character of the neighborhood.

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

It is respectfully submitted that in order to create appropriate social distance between tables that is now expected by restaurant patrons, while maintaining the existing seat count, there is no feasible method for the applicant to pursue other than the area variance.

c. *Whether the requested area variance is substantial:*

It is respectfully submitted that the requested area variance is not substantial. As stated above the required front yard setback in the GB district is 30 feet. In this case, 25.1 feet or 84% of the required setback is being provided. The 4.9-foot variance requested represents a deficiency of 16%.

d. *Whether the proposed variance will have an adverse effect or impact on the physical or environmental condition in the neighborhood or district:*

It is respectfully submitted that the requested variance will have no adverse effect or impact on the physical or environmental condition in the neighborhood or district.

e. *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:*

It is respectfully submitted that the alleged difficulty was not self-created. The need to expand and cover the deck area is being driven by the pandemic and restaurant patrons' desire to have appropriate social distancing between tables. As previously mentioned, the Applicant is simply proposing to provide more distance between the tables, not increase the table count. It should be noted that pursuant to both the State and local law, this criteria shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance.

Based on the foregoing, a balancing of all the factors supports the granting of the requested variance. There will be a significant benefit to the Applicant if the requested variance is granted with no harm to the neighboring properties. Therefore, the interests of justice will clearly be served by the granting of the area variance.

3. Application of Balancing Tests: The standard that the Zoning Board of Appeals must use in evaluating this request for an area variance is the benefit to the Applicant if the variance is granted, compared to any detriment to the health, safety and welfare of the neighborhood or community created by such grant. In this case, there will be no detriment to the health, safety and welfare of the neighborhood, while the benefit to the Applicant is significant.

The analysis of the specific factors set forth above clearly demonstrates that the benefit to the Applicant outweighs any detriment to the health, safety and welfare of the neighborhood. For all of the foregoing reasons, it is respectfully requested that the variances sought herein be granted.

VI. CONCLUSION

Attached hereto as **Exhibit D** and **E**, please find a completed application form for this variance request and a Short Environmental Assessment Form, respectively, together with the application fee in the amount of \$350.

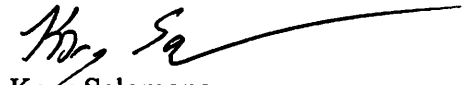
Sal Carrera, Chair
Town of Ossining Zoning Board of Appeals

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Please place this matter on the Zoning Board's March 15, 2021 so that we can continue our discussion of the proposed site plan amendment.

If you have any questions or concerns, please do not hesitate to contact me.

Very truly yours,



Kory Salomone

cc: Abel Magana
Lou DeMasi

EXHIBIT A



EXHIBIT B



Aerial Location Images

Aerial Location Images For

550 N. State Road. Briarcliff Manor, NY.

Date	Jan. 21, 2021
Job No	221-011
Drawing	1 OF 1

DeMasi Architects P.C.

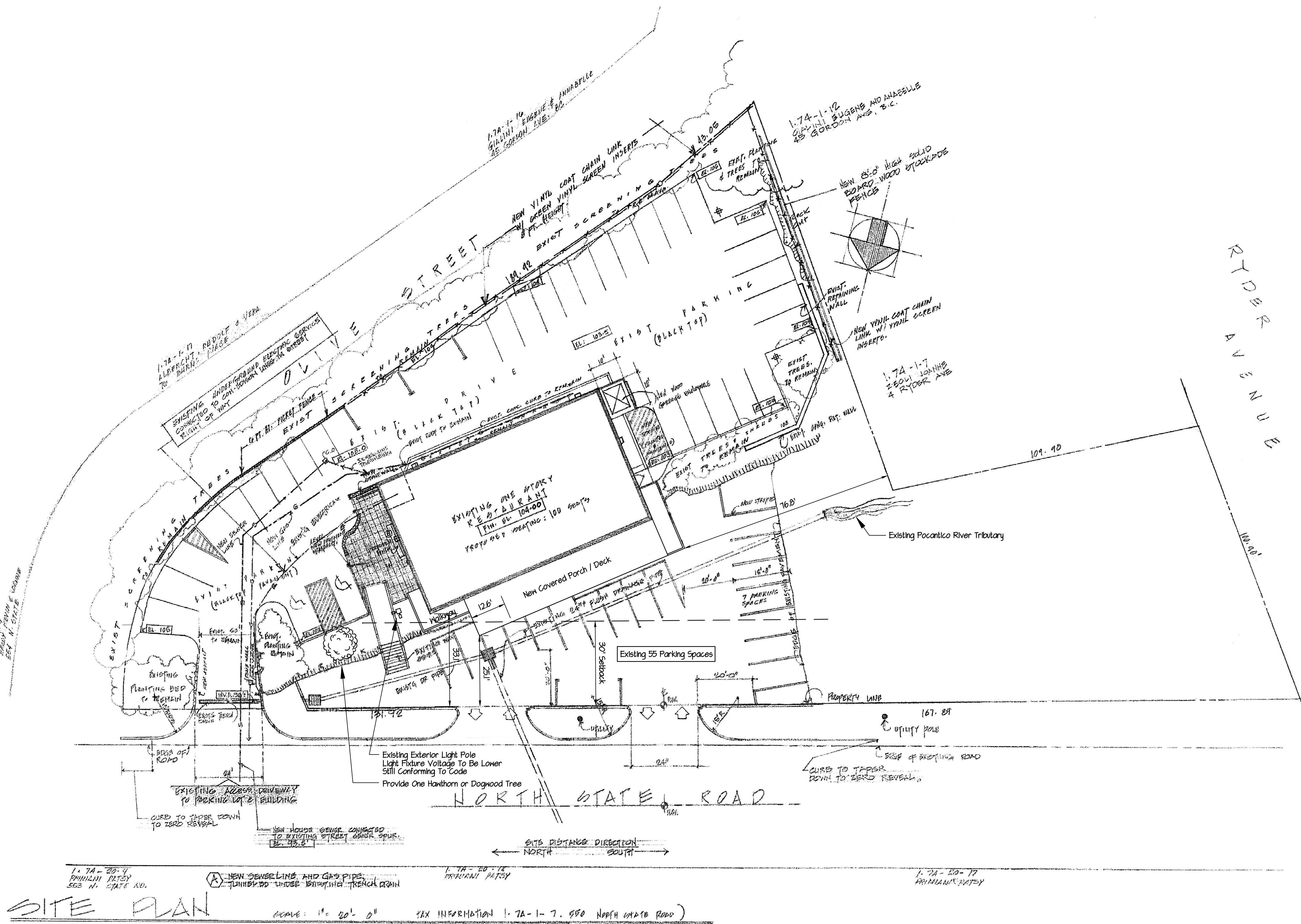
105 SMITH AVENUE, MOUNT KISCO, NEW YORK 10541

PHONE: (914) 666-3858

EMAIL: LoveDeMasiArchitects.com

Do Not Scale Prints

EXHIBIT C



Occupant Load Calculation

2020 International Building Code: Section 1004; Table 1004.5
Assembly Unconcentrated (Tables And Chairs) = 15 net

Proposed Deck Size = 1,006 sf
Proposed Deck Size Minus Path And Egress Ways = 750 sf
750 sf (Usable Deck Space) / 15 sf (Per Person) = 50 Max. Occupant Load

Parking Requirements

Restaurant Area Size = 2,006 sf
Existing Deck Size = 575 sf

Existing Inside Seats = 100 Seats

Town Of Ossining Zoning Parking Code 220-24
1 for each 3 seats or 1 for each 75 square feet of gross floor area

EXISTING	Required Number Of Spaces	Inside	Outside
	1 Space Per 75 sf	2006 / 75 = 26.7 = 27 Spaces	575 / 75 = 7.6 = 8 Spaces
Existing Number Of Parking Spaces Required: 27 Inside + 8 Outside = 35 Total Spaces		Existing Number Of Parking Spaces Provided: 38 Total Spaces	

PROPOSED	Required Number Of Spaces	Inside	Outside
	1 Space Per 75 sf	2006 / 75 = 26.7 = 27 Spaces	1006 / 75 = 13.4 = 14 Spaces
Number Of Parking Spaces Required: 27 Inside + 14 Outside = 41 Total Spaces		Number Of Parking Spaces Provided: 55 Total Spaces	

Zoning Data

Zone:	GB		
Use:	Single Family Residence		

	Required By Code	Existing	Provided
Lot Area	20,000 sf	47,707 sf	No Change
Lot Width	100'	419'	No Change

Set Backs

Front	30'	33.1'	25.1' (4.4' Variance)
Side	---	---	---
Side Abutting Residence District	30'	71.2'	76.8'
Rear	---	---	---
Rear Abutting Residence District	30'	N/A	N/A

Building Hgt	2 Story or 35'	14'-4"	No Change
Building Coverage	30% (14,312 sf)	11.2 % (5,361 sf)	12.7 % (6,046 sf)

Site Plan

Scale: 1" = 20'

Original Site Plan Provided By Owner
Original Site Plan Drawn By:
Croier Gedney Architects
41 Elm Place Rye, NY

Original Site Plan Dated:
July, 1996

DeMasi Architects P.C.

105 SMITH AVENUE, MOUNT KISCO, NEW YORK 10549

EMAIL: Lou@DemasiArchitects.com



These plans are the property of the Architect. Any use or reproduction in whole or part without the written authorization of the Architect is prohibited. Any person or corporation who reproduces these plans without the written authorization of the Architect will be responsible to compensate the Architect.

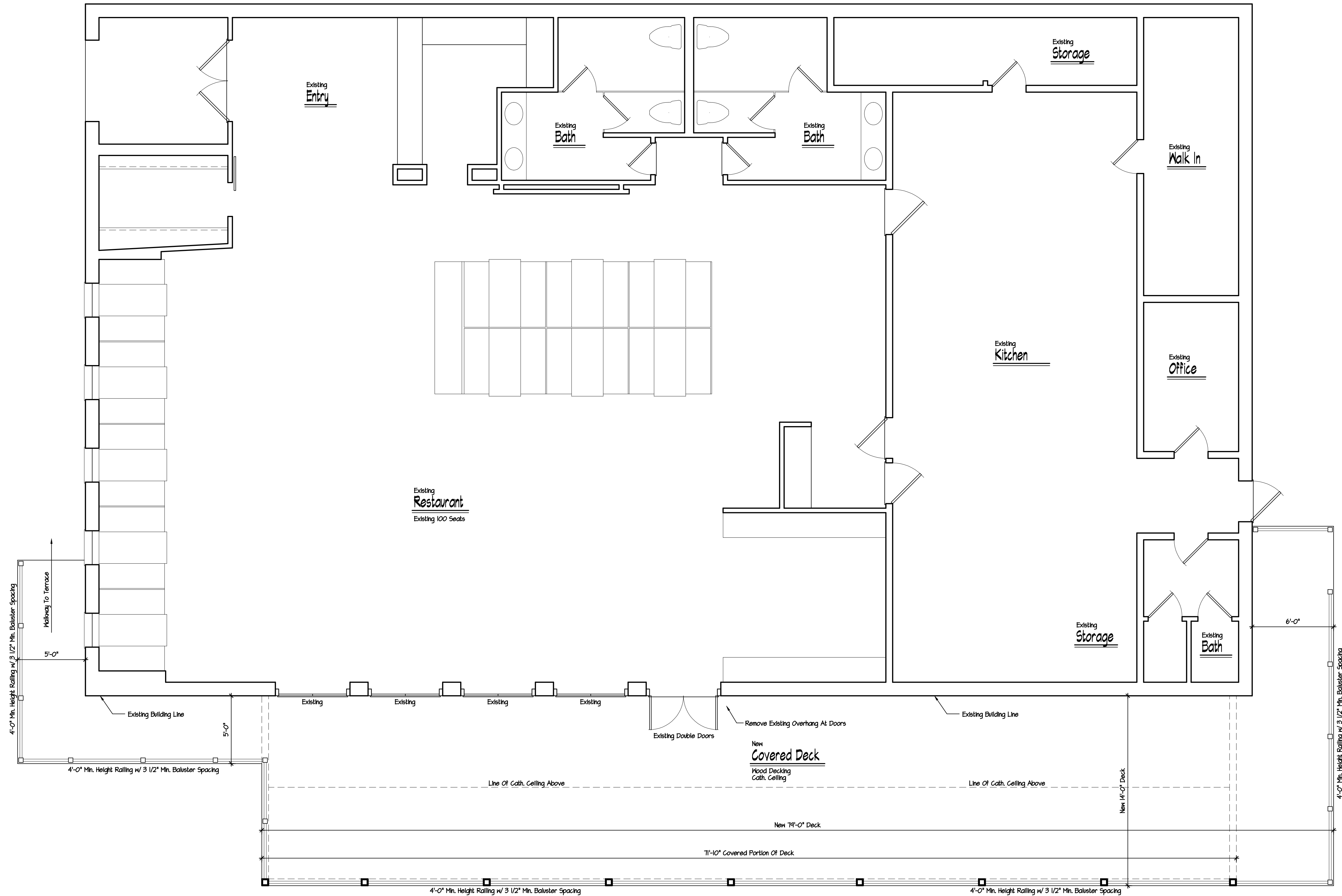
These plans are not valid for a building permit unless the person or corporation who reproduces these plans for the construction of one structure only by the person whose name appears on the plans.

New Covered Deck For

550 N. State Road.

Briarcliff Manor, NY.

Town Comments	2/8/21
Revision	Date
Date	Jan. 21, 2021
Job No	221-011
Drawing	0 OF 1



Proposed
Covered Deck Plan
Scale: 1/4" = 1'-0"

Do Not Scale Prints

DeMasi Architects P.C.
105 SMITH AVENUE, MOUNT KISCO, NEW YORK 10549
PHONE: (914) 666-3850 EMAIL: Lou@DemasiArchitects.com



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New Covered Deck For
550 N. State Road.
Briarcliff Manor, NY.

Revision	Date
Date	Jan. 21, 2021
Job No	221-011
Drawing	

EXHIBIT D



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 bldgdept@townofossining.com

APPLICATION TO THE ZONING BOARD OF APPEALS

Date 2/22/21

I, We Terra Rustica (by Abel Magana) Of 550 North State Road
(Name of Applicant) (Street)

Briarcliff Manor NY 10510 914-629-8096 : 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

(X) 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:** 550 North State Road
(Street and Number)

SECTION 90.15 BLOCK 2 LOT 8 ZONE GB – General Business

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 23 paragraph _____

Section _____ subsection _____ paragraph _____

Section _____ subsection _____ paragraph _____

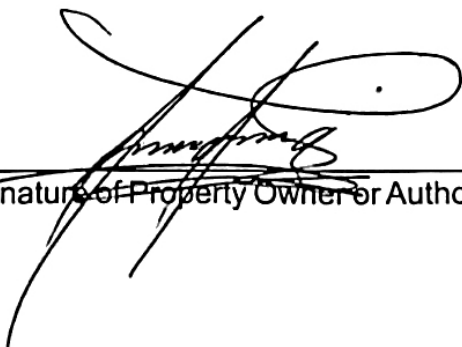
3. **DESCRIPTION OF RELIEF REQUESTED** (Set forth the circumstances of the case, interpretation that is claimed and details of any variance applied for. Use extra sheet if necessary.)

SEE ATTACHED LETTER

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

SEE ATTACHED LETTER

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



(Signature of Property Owner or Authorized Agent)

EXHIBIT E

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:				
Project Location (describe, and attach a location map):				
Brief Description of Proposed Action:				
Name of Applicant or Sponsor:			Telephone:	
			E-Mail:	
Address:				
City/PO:		State:		Zip Code:
1. Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulation?			NO	YES
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.			☐	☐
2. Does the proposed action require a permit, approval or funding from any other government Agency?			NO	YES
If Yes, list agency(s) name and permit or approval:			☐	☐
3. a. Total acreage of the site of the proposed action? _____ acres				
b. Total acreage to be physically disturbed? _____ acres				
c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor? _____ acres				
4. Check all land uses that occur on, are adjoining or 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? b. Consistent with the adopted comprehensive plan?	NO ☐ ☐	YES ☐ ☐	N/A ☐ ☐
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? b. Are public transportation services available at or near the site of the proposed action? c. Are any pedestrian accommodations or bicycle routes available on or near the site of the proposed action?	NO ☐ ☐ ☐	YES ☐ ☐ ☐	
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 project site contain, or is it substantially contiguous to, a building, archaeological site, or district which is listed on the National or State Register of Historic Places, or that has been determined by the Commissioner of the NYS Office of Parks, Recreation and Historic Preservation to be eligible for listing on the State Register of Historic Places? b. Is the project site, or any portion of it, located in or adjacent to an area designated as sensitive for archaeological sites on the NY State Historic Preservation Office (SHPO) archaeological site inventory?	NO ☐ ☐	YES ☐ ☐	
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? 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: _____ _____ _____	NO ☐ ☐	YES ☐ ☐	

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 plan?	NO	YES
	☒	☐
17. Will the proposed action create storm water discharge, either from point or non-point sources? If Yes,	NO	YES
	☒	☐
a. Will storm water discharges flow to adjacent properties?	☒	☐
b. Will storm water discharges be directed to established conveyance systems (runoff and storm drains)? If Yes, briefly describe:	☒	☐

18. Does the proposed action include construction or other activities that would result in the impoundment of water or other liquids (e.g., retention pond, waste lagoon, dam)? If Yes, explain the purpose and size of the impoundment:	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 CERTIFY THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE Applicant/sponsor/name: <u>Abel Magaña</u> Date: <u>1/22/2021</u> Signature: <u>[Signature]</u> Title: <u>Owner</u>		