



State of New York - County of Sullivan  
Town of Fallsburg - Town Board

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In the Matter of the Application of /  
**YLPF HASBROUCK PROPERTY** /  
**LLC** /  
for a Hardship Variance from the Town's /  
Residential Moratorium Local Law /  
=====

**Verified Petition for Relief  
from Moratorium**

The Petitioner, YLPF HASBROUCK PROPERTY LLC, by its attorneys, KALTER, KAPLAN, ZEIGER & FORMAN, hereby submits this Petition for a hardship variance from the application of the Town's Residential Moratorium Local Law (the "Moratorium Law"), and in furtherance thereof, respectfully alleges as follows:

1. The Petitioner is the owner of two parcels of real property located off of Hasbrouck Road in the Town of Fallsburg, known as Town of Fallsburg SBL 12.-1-30.1 and 12.-1-26 (collectively the "Property").

2. A prior owner of the Property presented a project to the Town Planning Board during the years 2003 and 2004. The project, then known as Hasbrouck Colonial Estates, was approved in the year 2004 as a seasonal residential community consisting of 101 detached manufactured single family dwellings. The project that was then approved represented single family, fee simple lots, including a homeowners association.

3. In connection with the 2004 project approval, the Town agreed to extend the Town water and sewer districts to include the available lots that had been approved. However, there is no record that the Town water and sewer district extension had been completed and a formal district extension map filed with the Sullivan County Clerk. Notwithstanding, the Town Planning Board allowed construction of this Project to begin, and the then owner of the Property began construction, including construction of the entrance roadway. Except for the foregoing, no further work was done, and no continuing efforts to construct the Project in the manner approved in 2004 has been pursued. On the other hand, in connection with the 2004 approval, significant engineering reports had been submitted to the Town, including an extensive traffic impact study.

**THE PROJECT**

4. The Project now pending before the Town of Fallsburg Planning Board is a duplex development pursuant to the Town of Fallsburg Duplex Development Law. The Project consists of new construction of 40 duplex buildings, representing 80 residential dwellings. The Project includes community facilities, including a ball field, swimming pools and a community building (the "Project"). The Project is now known as Hasbrouck Estates (Lands of Puretz).

5. The Project was introduced to the Planning Board during the month of April, 2013, by the Project Engineer, Kirk Rother of Rother Engineering. During the next several months of the year 2013, the Project was quite active. The Planning Board conducted public hearings, the Planning Board declared itself lead agency under SEQRA, and the Planning Board determined that the Project would be an unlisted action.

6. In connection with the SEQRA investigation of the Property, after several staff meetings the determination was made that a long environmental assessment form shall be submitted and that a draft part 2 of the environmental assessment form was also submitted for review by the Town Engineer and the Town Planning Consultant. Indeed, those documents were reviewed and discussed with the Planning Board, and there was discussion that it would be appropriate to prepare a part 3 of the environmental assessment form. That document has not yet been prepared.

7. There was also an extensive review of the traffic study that the Petitioner had submitted with respect to the prior project, which traffic study was rather extensive. The traffic study was reviewed by the Town Planning Board Consultant, a special consultant retained by the Planning Board for traffic matters, and Tim Miller Associates on behalf of the Petitioner. As a result of that review, a determination was made that the 2003 traffic study would need to be reviewed and updated, the scope of the roads to be reviewed, and the intersections to be studied determined.

8. As previously stated, the original Project, as approved, would be included within the Town water and sewer districts, and it was expected that the Project in its current format would also be included within the Town water and sewer districts. In furtherance of the foregoing, the Petitioner conducted extensive negotiations with a neighboring property owner which discussions would allow for the Petitioner to be granted an easement through the property of the adjacent property owner. This easement would allow for more easier access for the installation of the water and sewer infrastructure to connect to the Town water main on Zimmerman Road.

9. In addition, in connection with the new Project, the Project Engineer submitted several of the detailed engineering drawings that would be required in connection with a project of this nature, and those engineering drawings were reviewed and commented upon by both the Town Engineer and the Town Planning Consultant.

10. In essence, during the year 2013, this Project was well on its way to pursuing all of the engineering and other studies necessary for approval.

## FORECLOSURE LITIGATION

11. When the Property was acquired by the Petitioner in 2004, the purchase price was \$1,750,000.00. At a later date, the Petitioner financed the Property together with two other parcels then owned by the Petitioner; the financing amount was \$3,500,000.00. Said loan was secured by a mortgage applicable to the Property and two other properties then owned by the Petitioner. The lender was a private lender and the loan consisted of short term financing. The plan was that the loan would soon be converted to permanent, more long term financing, at such time as the Project was approved by the Town Planning Board. Unfortunately, conventional institutional lenders are unwilling to provide financing for projects that have not obtained final approval to begin construction.

12. When the mortgage from the private lender described above matured, the Petitioner was unable to refinance the mortgage for the reasons stated in Paragraph " 11" above, and was unable to pay the loan back in full. As a result, the lender began a mortgage foreclosure proceeding. As a result of said mortgage foreclosure proceeding, it was no longer viable for the Petitioner to continue to pursue approval for this Project by the Town Planning Board. To continue approval of the Project would involve the expenditure of substantial funds. Given that the Property was subject to a mortgage foreclosure proceeding, until the mortgage foreclosure proceeding was resolved, spending substantial funds for a Project to be located on the Property which the Petitioner might not own in the near future as a result of the mortgage foreclosure proceeding was not a wise investment. Accordingly, the Petitioner needed to pause the ongoing process of obtaining Town Planning Board approval for the Project.

13. The mortgage foreclosure proceeding described above has been ongoing since April, 2010. The mortgage foreclosure proceeding is now substantially completed. The lender obtained a Judgment of Foreclosure of Sale October, 2011, and the foreclosure auction was held September, 2013. At the foreclosure auction the lender was the highest bidder, and as of today's date, the referee appointed in connection with the foreclosure sale can at any time deed the Property to the lender and divest the Petitioner of ownership of the Property. During the pendency of the foreclosure proceeding, and from time to time the parties entered into one or more forbearance agreements. One such agreement existed during the years 2012 and 2013; it was during this period that the Project was brought back to the Planning Board. That forbearance agreement ended September, 2013.

14. After the lender completed the mortgage foreclosure proceeding, the lender pursued further due diligence with respect to the Property, and the marketing potential of the Property. According to the Petitioner, the lender was rather disappointed with the results of that due diligence investigation. According to the Petitioner, the lender realized that the Property had a far less value to the lender because the Property had no Planning Board approval, and the Property essentially consists of vacant land, without any development approvals. During this period, the Petitioner and the lender had ongoing discussions regarding a further forbearance agreement.

15. As a result of the lender's due diligence, the lender began listening to the Petitioner and the lender finally determined that the lender's best marketing plan would be to allow the Petitioner to complete obtaining approval of the Project by the Town Planning Board. As a result of these discussions, the lender and the Petitioner have entered into a further forbearance agreement, pursuant to which the lender has agreed to allow the Petitioner until March 31, 2017 in order to obtain Town Planning Board approval for the Project. According to the forbearance agreement, should the Town Planning Board approval for the Project be obtained, then the lender will allow the Petitioner to continue to develop the Property, with payments to be made to the lender either upon refinancing of the Property by a conventional lender providing a construction loan, or as dwelling units within the Project are sold.

16. Annexed hereto as Exhibit "A" is a letter dated August 24, 2016 pursuant to which the attorney for the lender confirms the terms and conditions of the forbearance agreement which is described in this Petition and specifically that the lender has agreed to forebear pursuant to the mortgage foreclosure proceeding until March 31, 2017 to allow the Petitioner an opportunity to obtain Town Planning Board approval for the Project.

#### **HARDSHIP**

17. As discussed in Paragraphs "11" through "16" above, the Property is now involved with a mortgage foreclosure proceeding, which the lender can complete within a very short period of time. Notwithstanding, the lender has agreed to forebear pursuing the mortgage foreclosure proceeding through March 31, 2017 to allow the Petitioner to complete approval of the Project. In order to meet that time requirement, relief from the Moratorium Law is mandated. Indeed, even if the Moratorium did not exist, meeting that time requirement would be difficult, inasmuch as the Project will require extensive updated engineering studies, including traffic studies. Should this Project continue to be subject to the Moratorium Law, meeting that deadline would be essentially impossible since, under the best of circumstances, the Moratorium is likely to continue past March 31, 2017.

18. As set forth in Paragraph "11" above, the Petitioner purchased the Property for \$1,750,000.00. Subsequent to acquiring the Property, the Petitioner spent significant funds towards ongoing ownership of the Property, including real estate taxes, and interest with respect to the mortgage described herein. The Petitioner also spent significant funds in connection with the Project approval that had been received during the year 2013 by way of engineers, attorneys, traffic consultant, and payments to the Town consultants. According to the Petitioner's records, Petitioner has spent in excess of \$74,000.00 towards obtaining Planning Board approval for this Project through today's date.

19. In light of Paragraph "10" above, the Petitioner's current investment in the Property now exceeds \$1,824,000.00, consisting of \$1,750,000.00 for the purchase of the Property and \$74,000.00 in development costs. In addition to the foregoing are the ongoing operating costs for

the Property, including real estate taxes, and the significant funds that the Petitioner has spent by way of interest applicable to the mortgage described herein and attorneys' fees in connection with the mortgage foreclosure proceeding. Thus, the total the Petitioner has invested in the Property is well in excess of \$1,824,000.00.

20. In the event that the Petitioner is not capable of obtaining approval for this Project on or before the March 31, 2017 date provided for in the Petitioner's settlement with its lender, the lender will complete its mortgage foreclosure proceeding and the Petitioner would lose ownership of the Property. In such event, the loss to the Petitioner would be no less than \$1,824,000.00. Clearly, this is a substantial financial hardship.

### **RELIEF REQUESTED**

21. For the reasons heretofore set forth in this Petition, the Petitioner is requesting relief from the Moratorium Law and requesting authority to complete the development of the Project.

22. To summarize, the Petitioner has a substantial investment towards this Project, including the purchase price for the Property and development costs heretofore expended by the Petitioner. The total investment of the Petitioner is in excess of \$1,824,000.00. In connection with this Project, the Petitioner has had substantial work performed towards Project approval, including public hearings, SEQRA investigation and determinations, traffic studies and engineering reports. Although approval for the Project is not imminent, Project approval is well on its way, with a clear path towards approval. Bear in mind that a substantial development project (101 homes) had previously been approved for this Property and many of the engineering reports and studies that were used in connection with the previous approval in the year 2003 would be very helpful in connection with the reports required during the year 2013 for the pending Project.

23. The Petitioner was delayed in continuing to pursue this Project because of the mortgage foreclosure proceeding described herein. The Petitioner now has an opportunity to save the Property and the Project by obtaining Project approval on or before March 31, 2017. Although that date is several months away, obtaining approval for a Project of this size and nature will take several months. Continuing to subject this Project to the Town Moratorium Law would, in essence, preclude the Petitioner from saving the Property and would cause the Petitioner to lose the Property and the Petitioner's investment in the Property and in the Project of in excess of \$1,824,000.00.

24. For all of the reasons set forth herein, it is respectfully submitted that the Petitioner has demonstrated that a significant hardship would be incurred, financial and otherwise, in the event that the Petitioner would not be allowed to proceed towards completion of this Project, and that, in such event, Petitioner would suffer irreparable injury of no less than \$1,824,000.00.

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WHEREFORE, it is respectfully requested that the Town of Fallsburg grant the Petitioner relief from the stay of development provided for by the Town of Fallsburg Residential Zoning Moratorium Law and that this Project be allowed to proceed through the approval process of the Town of Fallsburg Planning Board and any other Town Boards which may require approval for this Project, including the Architectural Review Board and the Building Department.

Dated: Woodbourne, New York  
August 18, 2016

YLPF Hasbrouck Property LLC

By: \_\_\_\_\_

Aron Poretz, Managing Member



**EXHIBIT "A"**



# KURZMAN EISENBERG CORBIN & LEVER, LLP

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August 24, 2016

## VIA EMAIL

YLPP Hasbrouck Property LLC  
1877 East 9<sup>th</sup> Street  
Brooklyn, New York 11223  
Attn: Mr. Aron Puretz

Re: Mortgage Foreclosure Proceeding  
Property: Town of Fallsburg SBL 12.-1-30.1 and 12.-1-26

Gentlemen:

As you know, this firm is counsel for Taron Partners LLC ("Taron"). You have requested that Taron forbear from pursuing its rights and remedies in the pending mortgage foreclosure proceeding (the "Foreclosure Proceeding") involving the Property described above.<sup>1</sup>

This will confirm that Taron will agree to forbear from taking further action in the Foreclosure Proceeding and from taking title to the Property pursuant to the judgment entered in the Foreclosure Proceeding, subject to the following terms and conditions:

1. You agree to immediately apply to the Town of Fallsburg Town Board (the "Town Board") to obtain relief from the Moratorium Law. The application must be submitted prior to the last date to submit an application of this nature, but not later than August 25, 2016.
2. Should you obtain relief from the Town of Fallsburg Moratorium Law, you shall continue to diligently pursue the 80 unit development project that is described in the site plan prepared by Kirk Rother, P.E. dated March 12, 2013 as amended and supplemented (the "Project"), and you shall continue, in good faith, to diligently seek obtaining site plan approval for this Project.
3. As a condition to this forbearance, you agree to pay all costs and expenses of obtaining approval for this Project, and you shall diligently and on a continual basis continue to pursue all that is necessary to obtain such Project approval.
4. If the application for relief from the Moratorium Law is denied by the Town Board (exclusive of and notwithstanding any appeals, resubmissions, rearguments, or further

<sup>1</sup> The Foreclosure Proceeding is pending the Supreme Court of the State of New York, County of Rockland, entitled *Taron Partners LLC v. Monticello Jefferson Street Development LLP, et al.* and bearing Index No.3451/2010.

motions or any other proceedings relating thereto), then the forbearance provided for herein shall automatically terminate.

5. Taron's agreement to forbear, subject to the conditions set forth herein, shall continue until March 31, 2017, at which time Taron's agreement to forbear shall be at an end (if not terminated sooner under this agreement). In the event that Project approval is obtained on or before said date, then Taron will agree to allow you an opportunity to refinance the Property and pay off the mortgage and/or judgment debt due to Taron (the "Permitted Refinance"). Any Permitted Refinance must be completed, and the mortgage debt due to Taron must be paid in full, on or before June 30, 2017, time being of the essence.

6. If you are unable to refinance and pay the mortgage and/or judgment debt in full in accordance with the terms and deadlines set forth above, Taron may (in its sole and absolute discretion) continue to forbear, on terms to be mutually agreed upon, provided that you commence construction on the Project and diligently pursue such construction until the Project is complete and homes are sold. At such time, Taron will endeavor to agree with you as to an arrangement pursuant to which Taron will release its mortgage (and/or judgment) lien on the Property (or portions thereof) upon the sale of each home (but only insofar as is necessary to remove the mortgage lien from the particular lot(s) sold, provided that an agreed upon amount is paid to Taron for each such release. Notwithstanding anything to the contrary set forth above, any such agreement(s) must be in writing signed by both parties, and shall be on terms acceptable to Taron in its sole and absolute discretion.

7. In addition, you shall pay and keep current any and all property taxes levied on or against, or otherwise charged to or against, the properties involved in the Foreclosure Proceeding.

8. If any of the terms and conditions above are not timely satisfied or complied with, then (notwithstanding any other term of this agreement) the forbearance provided hereunder shall automatically terminate, without notice.

9. In order to be effective, this letter must be countersigned by you in the space provided below and returned to the undersigned.

10. This letter represents the terms and conditions under which Taron will agree to forbear from continuing to pursue its rights and remedies in the Foreclosure Proceeding.

11. This letter is written without waiving any of Taron's rights in and pursuant to the pending Foreclosure Proceeding or pursuant to any settlement agreement by and between the

YLPF Hasbrouck Property LLC

August 24, 2016  
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parties, and is written in furtherance of the parties' settlement discussions; and in any event, shall not be deemed binding upon Taron except for the specific items set forth in this letter.

Very truly yours,



John C. Re

jcr  
73001.0001

Agreed and accepted:

YLPF Hasbrouck Property LLC

By:                     *On Perf*                    

Name:  
Title:

Date:                     08/24/16