

Brooklyn Inst. Land.

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June 24, 1998

BY FAX & REGULAR MAIL - 962-6181

Michael J. Grace, Esq.
Grace & Grace
330 Underbill Avenue
Yorktown Heights, NY 10598

Re: Weston Charitable Foundation/Kitchawan Institute

Dear Mr. Grace:

This letter is being submitted in furtherance of our telephone call in which you asked the applicants to delineate the rationale of how the applicant's proposed uses meets the requirements set forth in the zoning code of the Town of Yorktown.

Our records indicate that the Brooklyn Botanic Garden acquired this property in the early 1950s prior to the implementation of your zoning ordinance. It is the position of the applicant that the building and use of the land is a non-conforming use, which has continued unfettered and uninterrupted to the present date and time. I am attaching for your records a letter from the Brooklyn Botanic Garden which confirms these underlying facts.

The zoning code of the Town of Yorktown clearly permits non-conforming uses that exist prior to the date of the code in an R-1B0 zone. Specifically §300.170 entitled "Continuing Existing Use" says in part, "Except as otherwise provided in this article, the lawfully permitted use of land or building existing at the time of the adoption of this chapter, including uses of land and buildings under a special permit heretofore issued by the board of appeals, may be continued, although such use does not conform to the standard specified in this chapter for the zone in which such land or building is located".

It is clear that the Brooklyn Botanic Garden has always assumed that the property has unusual features which deserve protection because of its unique location status in this environmentally sensitive residential zone. A review of the Building Department's file

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indicates that the Brooklyn Botanic Garden has never received any special permits from the Town of Yorktown.

In fact, the County of Westchester and the Brooklyn Botanic Garden recognized this special relationship concerning the use of the property when they entered into an easement agreement for which the Brooklyn Botanic Garden received access from a public road. In that easement agreement, there is a requirement that in the event of any sale by the Brooklyn Botanic Garden that the County would not grant its consent unless the same use or similar uses would be continued. In pertinent part, the agreement reads that the easement shall continue for so long as "The garden property owned by any successors or assigns are used for a garden or facility for horticultural, botanical and agricultural research, studies and educational activities and other similar or related uses or any other use permitted under the present 1989 zoning laws without a variance." A copy of the easement agreement is attached herein for your review. The applicants and contract and the Weston Charitable Foundation clearly intends to operate and use the property in the same form and manner as the Brooklyn Botanic Garden. The applicant has already stated to the Town that it is planning to do office, research and educational and horticultural activities on this site.

The Weston Charitable Foundation has simultaneously met with the respective County Commissioners and officials concerning the County waiving its right of first refusal in order for the Weston Charitable Foundation to acquire the property. At this time, the County of Westchester has agreed that the Weston Charitable Foundation is the best suitable entity to take over the property at the present time. On June 10, 1998, the County Executive, Andrew J. Spano, by written communication to the County Board of Legislators, recommended that the County waive its right of first refusal so that the Weston Charitable Foundation can acquire the property. See letter of transmittal attached hereto for your perusal.

The County of Westchester believes, as does the applicant, that no changes in the zoning are required in that the applicant's proposal is consistent with the ongoing activities by the Brooklyn Botanic Garden.

The Brooklyn Botanic Garden has continued to have a full time caretaker on site since 1992 and has continued to use the building for staff meetings and research activities ongoing.

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It was our understanding that when we appeared before the Town Board of the Town of Yorktown, that the Town and the applicant believed that the only thing necessary was to amend the existing site plan. The applicant has appeared now before the Planning Board and is working its way through that process. It should be noted that in order for an amended site plan to be considered, it is presumed that the existing site plan must be in conformance with the zoning ordinance. Since the Brooklyn Botanic Garden could not meet any other criteria; since it predated the zoning ordinance; and there are no permits at the present time issued to the Brooklyn Botanic Garden, obviously it was an existing, non-conforming use.

I trust that this elucidation of the issues and the facts demonstrate that the Town of Yorktown should recognize that the Weston Charitable Foundation is only seeking an extension of the non-conforming use and requests that you so advise the Zoning Board of Appeals and the Town Building Inspector.

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

Very truly yours,



Gerald K. Geist

GKG:kw

cc: Sue Morrow Flanagan
Supervisor Linda Cooper
Members of the Town Board
Chairman David Wright, Zoning Board of Appeals
Members of the Zoning Board
Peter Helmes
John Dodson