

VILLAGE OF PLANDOME HEIGHTS PLANNING BOARD
PRELIMINARY SUBDIVISION PARTITIONING APPLICATION

APPLICANT EVAN PSYLLOS/JMP INVESTMENTS LLC

ADDRESS: 109 SUMMIT DRIVE

(Public Hearing – January 24, 2018; March 27, 2018, April 24, 2018 and May 22, 2018)

(as adopted June 12, 2018)

RESOLVED:

WHEREAS, application has been made by Evan Psyllos/JMP Investments LLC (the “Applicant”), as owner with regard to the premises known as 109 Summit Drive, Plandome Heights, New York, and shown on Nassau County Land and Tax Map as Section 3, Block 30, Lot 272 (the “Subject Premises”), to the Planning Board (the “Board”) of the Village of Plandome Heights (the “Village”) for preliminary subdivision partitioning approval of the Subject Premises into two buildable lots that comply with all provisions of the Village Zoning Code and that are zoned for development and use as single family homes (the “Proposed Partitioning”);

WHEREAS, a public hearing with respect to the application (the “Public Hearing”), was commenced by the Board on January 24, 2018, and continued on March 27, 2018, April 24, 2018 and May 22, 2018, and closed by resolution of the Board, unanimously adopted on May 22, 2018;

WHEREAS, all persons present at the Public Hearing were heard or were given an opportunity to be heard;

WHEREAS, the Board has considered the application and the Partitioning Map (defined below) and all amendments and revisions thereto, and all statements and data submitted to the Board with respect to them;

WHEREAS, the members of the Planning Board have inspected the Subject Premises and the surrounding area;

WHEREAS, the Planning Board, by resolution adopted unanimously at its April 24, 2018 meeting, has designated itself as lead agency under the New York State Environmental Quality Review Act (“SEQRA”) with respect to the environmental review of this unlisted action, determined, after having conducted an “uncoordinated review” of the action under SEQRA, that the implementation of the action is not likely to have a

significant impact on the environment, and adopted a negative declaration with respect to it;

NOW, THEREFORE, the Board makes the following findings, contained in PART I below (“Findings”), and determination, contained in PART II below (“Determination”), with respect to the Application:

PART I: FINDINGS

1. **Partitioning Map.** The partitioning map with respect to which these Findings and Determination are made is entitled:

“Preliminary Partitioning Map of Lot No. 176-177\P/O Lot 178, of Map of Second Section of Plandome Heights,” bearing an original date of 9/22/2017, and a most recent revision date of 5/16/2018, signed and sealed by Charles F. Panetta, Licensed Engineer and Land Surveyor, New York State License Numbers 068914-1 and 050429-1 ("Applicant's Engineer"), principal of Bladykas & Panetta L.S. & P.E., P.C. (“B&P”), 23 Spring Street, Oyster Bay, NY, comprised of a single sheet (the “Partitioning Map”).

 - (A.) The Partitioning Map reflects the partitioning of the Subject Premises, now a single buildable lot improved with one single family home, into two separate buildable lots, identified thereon and referred to herein as “Parcel 1” and “Parcel 2,” respectively, each of which fully complies with the Village Zoning Code.
 - (B.) “Parcel 1,” the westerly proposed lot, has gross lot area of 18,870.7 square feet, including “reasonable flat area,” for purposes of Village Code § 140-5, that exceeds minimum required 10,890 square feet.
 - (C.) “Parcel 2,” the easterly proposed lot, has gross lot area of 16,346.8 square feet, including “reasonable flat area,” for purposes of Village Code § 140-5, that exceeds minimum required 10,890 square feet.
2. **The Record.** A verbatim transcript was made of each Public Hearing session. Such transcripts and all exhibits to the Record so identified therein are deemed part of the record upon which the Board’s decision set forth herein is made (the “Record”).
 - (A.) The written application and all documents, instruments, drawings, written statements and other materials submitted to the Board with the Application or at any time after the initial submission through the closing of the Public Hearing, by or on behalf of the Applicant,

including, without limitation, by B&P, Peter Albinski, R.A., a NYS licensed architect who assisted the Applicant with the presentation (“Applicant’s Architect”), Slacke Test Boring, Inc. (“Slacke Boring”), and VHB Engineering, Surveying and Landscape Architecture, P.C. (“VHB”), are deemed part of the Record.

(B.) All documents, instruments, drawings, written statements and other materials submitted to the Board by or on behalf of Village employees, officials and consultants with respect to the Application, including, without limitation, by Village Building Inspector Edward Butt and Village Engineer James Antonelli, P.E., are deemed part of the Record.

(C.) The Clerk to the Board confirmed Village receipt of Affidavit of Publication from the Manhasset Press with respect to timely publication of the legal notice of the Public Hearing and Affidavit of Mailing from the Applicant with respect to the timely delivery of notice of the Public Hearing to the neighbors entitled to receive same pursuant to applicable Village rules. The Clerk advised that the Notice of Hearing was posted as required within the Village by the Village Clerk and that timely notice of the Public Hearing was provided to the Town Clerk of the Town of North Hempstead.

3. **Retention of Village Engineer.** The Board retained Village Engineer James Antonelli, PE, a NYS licensed engineer (“Village Engineer”), to provide the Board with additional expert review and analysis of the Application to supplement the analysis and review by Village Building Inspector Edward Butt, a NYS licensed registered architect (“Building Inspector”).
4. **Issues Raised are Addressed or Adequately Mitigated through Conditions.** The Board exhaustively considered all issues presented by the Application, as identified by Board members, the Board’s consultants, the Applicant and its consultants, and members of the public. The Board finds, as explained below, that all material issues relevant to the Board’s review and jurisdiction with respect to the Application have been satisfactorily addressed, and/or can be effectively mitigated through the imposition of conditions, which the Applicant has agreed to accept.
5. **Expert Testimony.** At the Public Hearing, the Board heard testimony from, among many other persons, (i) Applicant's Engineer, (ii) Applicant’s Architect, (iii) the Building Inspector, and (iv) the Village Engineer. The only persons providing written or oral testimony to the Board at any time during the Public Hearing and/or included in the Record and recognized by

the Board as experts are Applicant's Engineer, Applicant's Architect, the Building Inspector, the Village Engineer and Robert E. Eschbacher, principal of VHB, Applicant's traffic consultant.

6. **Precedential Impact if Application is Approved.** The Board heard concern that approval of this Application would establish a precedent that would preclude the Village from denying subsequent applications for subdivision in the Village, thereby opening the floodgates to many more subdivisions in the Village, which might adversely impact the Village and its residents. In connection with this point, the Board heard testimony that the Village Planning Board in 2003 denied the subdivision application of Connie Liapakis, then-owner of the premises at 34 Summit Drive.
 - (A.) The Board does not believe that the possibility of future subdivisions is a legitimate basis to deny an application for subdivision that, like the Application, proposes two fully zoning-compliant lots, and otherwise warrants approval after consideration of those factors that are legitimately before the Board in evaluating a subdivision application.
 - (B.) At the same time, the Board finds that potential subdivisions in close proximity to that proposed in the Application might warrant consideration in the context of this Application.
 - (C.) Based upon written analysis by the Village Building Department, there are (i) 4 parcels in the Village that are potentially sub-dividable into "as-of-right" lots (i.e., without zoning variances), and (ii) 8 parcels that are of significant size that a subdivision might be considered, but for which variances would be required.
 - (D.) The Village Attorney advised the Board that the 2003 decision regarding 34 Summit Drive, to which reference was made on the Record, was not a Planning Board denial of a subdivision application, but a Village Zoning Board denial of variances required to permit a subdivision. This Board again notes that the present Application does not require zoning variances, as it would create two "as-of-right" parcels, from a zoning perspective.
 - (E.) None of the parcels in the Village that are sub-dividable as of right are located near the Subject Premises.
 - (F.) Based upon the foregoing, the Board does not believe that there is any realistic concern that the grant of this partitioning Application, which would create as-of-right lots under the Village Zoning Code,

would restrict the Village's ability to consider subsequent subdivision applications on their respective merits, or to deny such applications when (i) variances are required, or (ii) considerations lawfully relevant to subdivision review would warrant denial based upon specific facts and circumstances.

7. **Threatened Legal Challenges.** This Board understands that persons unhappy with the Board's decision and who have legal standing have the lawful right to challenge the decision through legal process, and that the possibility of legal challenge exists regardless of whether the Board's decision with respect to the Application is a denial, a grant, or grant with conditions. Fortunately, this Board is rendering its decision based upon an extraordinarily broad Record. The Board understands the significance of expert testimony with respect to technical issues, such as engineering, suitability of soil for construction and drainage and acceptance of storm water and wastewater systems, traffic and vehicular safety and the like. The Board also understands that its decision should not be based upon general community opposition, or opposition based upon factors not relevant under law to the Board's review powers, or factors and considerations not part of the Record. The Board is satisfied that the decision that it reaches is rational, reasonable and fully supported by the Record, which reflects ample opportunity for those in support of the Application and in opposition to make their respective cases. At the same time, the Board is grateful to all community members who contributed to the discussion and expressed their views and concerns so that this Board is fully armed to make a reasoned and factually supported decision.

8. **“Street”: Compliance with Code Requirements.** By determining that the proposed subdivision requires no zoning variances, the Building Inspector has determined that the frontage of Parcels 1 and 2 on Summit Drive satisfies the Village Code requirement that each proposed lot have frontage on a "street." The Board recognizes that challenges to that determination voiced by members of the public during the Public Hearing were not made either timely or in an effective manner to require review of the determination pursuant to NYS Village Law § 7-712-a.5.(b). Nevertheless, the Board notes the following input from the Village Attorney with regard to this issue: (i) Village Code § 140-2 requires that the width of a street be at least 20' and provides that a street "need not have been dedicated or deeded to the public for public use"; (ii) the materials included in the application include a portion of the Nassau County Land and Tax Map for the area including Summit Drive: that Map reflects a 50' width for Summit Drive; (iii) according to undisputed testimony in the Record, the paved portion of Summit Drive varies from between 16' to 18'; (iv) under the

Village Code, street width encompasses the entire area between the front property lines of opposing lots on either side of the street, and is not limited to the paved area; (v) the VPH Subdivision Rules (defined below) define a "street" as a strip of public *or private* land devoted to movement, over which abutting owners have right of access, air and light; "street width" as the distance *between property lines* at right angles to the center line of the street; and "paved roadway" as the *portion of the street* available for vehicular traffic, the width of which extends from curb to curb. In light of the foregoing, the Board finds that, even if the Building Inspector's determination that Summit Drive satisfies the Village definition of a street had been timely challenged, it likely would have been upheld.

9. **Construction permitted only in "Reasonable Flat Areas."** Concerns were raised that the topography of the site would adversely impact the feasibility of the construction of new homes on proposed Parcels 1 and 2 due to allegedly insufficient reasonable flat lot area. In fact, Village Zoning Code § 140-5 requires that a building lot in the Village contain a "reasonable flat area" of at least a quarter acre (i.e., 10,890 square feet). Parcel 1 is proposed to have a gross lot area of 18,870.7 square feet, including a reasonable flat area in excess of 11,000 square feet, while Parcel 2 is proposed to have a gross lot area of 16,346.8 square feet, including a reasonable flat area in excess of 11,000 square feet. Therefore, in addition to the steeply sloping portions of Parcel 1 and Parcel 2, each has a reasonable flat area that satisfies the Code requirement of lot area.

While the Code does not expressly mandate that construction on a buildable lot be confined to the reasonable flat area, this Board finds that, in order to protect slope stability and maintain the Non-disturbance Areas (defined below), all structures built on either Parcel 1 or Parcel 2 shall be confined to their respective reasonable flat areas.

10. **Storm Water Flow from Properties Fronting on Summit Drive to Properties Fronting on Bay Driveway.** An issue addressed repeatedly at each session of the Public Hearing, and raised by several different speakers, some of whom own single family home parcels fronting on Bay Driveway, downhill of the Subject Premises, concerned the flow of storm water from properties fronting on Summit Drive, which is at a higher elevation, downhill to abutting parcels fronting on Bay Driveway, which is at a lower elevation. The Subject Premises front upon Summit Drive, and share a rear property line with one or more parcels that front upon Bay Driveway. The area that slopes downhill from the properties fronting on Summit Drive to the properties fronting on Bay Driveway below, including but not limited to

the portion of that area located on the Subject Premises, is referred to herein as the "Summit to Bay Slope."

The testimony regarding this issue from each of Applicant's Engineer, the Village Engineer and the Building Inspector was consistent, and to the following effect:

- (A.) Existing conditions at the Subject Premises include no on-site storm water containment; therefore, all storm water that lands on the existing Subject Premises, including on structures and other impervious surfaces, will either be absorbed into existing grass and soil areas, or flow toward low points; and, to the extent that the low point for such storm water is the Summit to Bay Slope, then that storm water will flow down the Summit to Bay Slope toward the properties below.
- (B.) There is no existing on-site storm water containment at the Subject Premises because the existing home was built many years before State and local building codes required on-site storm water containment.
- (C.) The proposed development of the Subject Premises obligates the Applicant to install on-site storm water containment that satisfies applicable NYS and Village requirements.
- (D.) The Village requires that sites being developed with new homes must be improved with a Storm Water Containment System with capacity to contain a 2" rainfall.
- (E.) The Applicant has volunteered to install on both parcels storm water containment facilities sufficient to satisfy the Nassau County Department of Public Works ("NC-DPW") requirement to contain an 8" rainfall.
- (F.) After Village Engineer Antonelli reviewed the proposed storm water containment system, he recommended that same be expanded in capacity and reconfigured, which has been implemented in the Partitioning Map to the satisfaction of Village Engineer Antonelli.
- (G.) In the unanimous opinion of the Village Engineer, the Village Building Inspector and the Applicant's Engineer, the proposed storm water containment system will reduce the amount of storm water that flows from the Subject Premises down the Summit to Bay Slope, thereby improving the conditions for all persons who now

live at the bottom of the Summit to Bay Slope and who receive storm water flow from the Subject Premises.

11. **The Paper Street Gully.** An existing condition in close proximity to the Subject Premises involves what several members of the public referred to as a "gully," located in an unpaved and unimproved area known as a "paper street," that lies outside the boundaries of the Subject Premises, a portion of which occupies a portion of the Summit to Bay Slope (hereinafter, the "Paper Street Gully").
 - (A.) Village Attorney Christopher Prior explained on the Record that a "paper street" is an area depicted on a subdivision map as a street, which is thereby deemed offered by the developer to the village, but which does not become a public street unless and until the village formally accepts the dedication, or takes sufficient steps over a sufficient period of time to effectively accept dedication, of the paper street as a village street.
 - (B.) The Paper Street Gully appears in the Application materials on maps provided by the Applicant based upon the original subdivision map for the area that includes Summit Drive. The Village Attorney advised that, based upon his experience as Village Attorney for more than 10 years, the Village has not exercised any dominion or control over The Paper Street Gully, or in any manner maintained same, and that he is aware of no evidence that the Village ever formally accepted dedication thereof.
 - (C.) The Village Attorney speculated that The Paper Street may still be owned by the original developer of Plandome Heights, or by successors in interest thereto, but that there is no evidence that it is Village Property.
 - (D.) Furthermore, The Paper Street Gully lies outside of the Subject Premises, and is not purported to be owned by Applicant or otherwise to the knowledge of the Board the property of Applicant.
 - (E.) The Board understands, based upon testimony at the Public Hearing, that The Paper Street Gully has existed for many years, bringing storm water down the Summit to Bay Slope to the properties below. To the extent that any property owner believes that he or she is adversely impacted by the existence of The Paper Street Gully, he or she has the right to investigate the ownership of The Paper Street Gully and, to the extent same can be established, ascertain whether he or she has any enforceable right to require remediation of The

Paper Street Gully, and if so, against whom. In any event, resolution of this issue is not within the jurisdiction of this Board or addressable in the context of this Application.

12. **Impact of Proximity of Construction to Slope Area on Storm Water Flow.** Concerns were raised that proximity of construction to the slope areas necessarily means that storm water from the homes eventually constructed will flow down the Summit to Bay Slope. To the contrary, Village Engineer Antonelli stated that the storm water on-site retention systems proposed, designed for the two hypothetical homes, and the actual on-site retention systems that will be modified therefrom to accommodate actual homes eventually proposed for construction, will be designed to cause storm water to be collected (e.g., in roof leaders), and to be piped into dry wells, which will be installed below grade as far away from the slope area as is feasible. The Applicant agreed that the actual systems will be subject to review and approval by the Village Engineer and Building Inspector before building permits for homes proposed to be constructed will be issued. Furthermore, the Board notes that the existing home is situated significantly closer to the Summit to Bay Slope than either of the potential new homes would be, based upon the Partitioning Map.
13. **Soil borings.** (A.) The Applicant proposed that, in the event it receives preliminary Partitioning Approval, it would then conduct soil borings as a condition to final partitioning approval, to evaluate the suitability of the soil to support construction and to accept on-site containment of storm water. The Applicant explained that the investment of time and money associated with soil borings, as well as the physical intrusion into the site, ordinarily are made only after an Applicant has obtained sufficient preliminary approval to warrant the additional expenditures.
 - (B.) Nevertheless, in light of unique factors at the Subject Premises, the Board insisted and the Applicant agreed that soil borings be done prior to the Board's decision on the preliminary Partitioning Application. Therefore, Village Engineer Antonelli reviewed and approved the Applicant's proposed locations for soil borings on both Parcels 1 and 2.
 - (C.) The Applicant retained Slacke Boring to perform the work. Slacke Boring performed the borings and then submitted its report of the results, dated May 15, 2018 (the "Soil Borings Report"), which is deemed part of the Record.
 - (D.) The Applicant's Engineer and Village Engineer both advised the Board that: (i) the results of the Soil Borings Report demonstrate the

suitability of Parcel 1 and Parcel 2 for development with single-family homes as contemplated; (ii) the Soil Boring Report demonstrated the presence of sand and gravel, coarser soils which are preferred as a basis for construction compared to fine soils, such as clay and silt, which do not compact well; and (iii) that no groundwater was detected anywhere to the tested depth of 27', also a positive finding that supports the suitability of both lots for the proposed development and the suitability of the soil to retain storm water.

(E.) Village Engineer Antonelli noted that the sand and gravel soils identified in the report indicate more than adequate drainage infiltration capability, which is relevant both to storm water containment and the on-site sanitary system's effectiveness; that Nassau County standards categorize the soils pursuant to this report as "three-quarter rate," which is above average in terms of both the bearing capacity and the drainage capabilities of the sites; and that the bearing capacity of the soils based upon this report is "2,000 pounds per square foot rating, much more than you actually need." See 5/22/2018 Hearing transcript, page 18.

(F.) Village Engineer Antonelli summarized his view of the Soil Boring Report as follows: "I think we covered the soils. I'm satisfied. You know, in a nutshell, I'm satisfied structurally and [with] the stability and the drainage characteristics." See 5/22/2018 Hearing transcript, page 18.

14. **Partitioning Map Merely Demonstrates Suitability of Proposed Lots for Development.** The Partitioning Map is not intended, and approval thereof shall not be deemed, to fix the final location and positioning on Parcels 1 and 2 of structures or storm drainage or sanitary infrastructure, or impervious surface, or actual trees to be removed. The purpose of the Application, and the legal effect of any approval, is to demonstrate and accept, respectively, that proposed Parcels 1 and 2 are suitable for development with single family homes in accordance with applicable laws, rules and regulations. Actual development of either Parcel 1 or Parcel 2 must satisfy all applicable zoning and building requirements, as well as all conditions imposed in the Determination. Therefore, the actual as-built location of all structures, infrastructure and impervious surface, and the trees to be removed and to remain, may be different from how same are depicted on the Partitioning Map.

15. **Impact of Proximity of Construction to Slope on Slope Stability.** Concerns were raised that construction of the home proposed for Parcel 1 in

close proximity to the Non-disturbance Areas (defined below) could have adverse impacts upon slope stability and storm water drainage. Applicant's Engineer Panetta and Village Engineer Antonelli both explained that locating the proposed home in close proximity to the slope serves to minimize the amount of excavation necessary for the project, which serves to protect, rather than impair slope stability and storm water containment. The Board notes that VPH Subdivision Rule § 13 authorizes the Board, in considering a subdivision, to promote steps that limit the addition or removal of fill, an objective furthered by minimizing excavation. At the same time, VPH Subdivision Rule § 13 authorizes the Board to pursue steps that cause new construction enabled by a subdivision to conform to the extent reasonable with existing topography. In furtherance of that latter objective, the Board will require that any home built on proposed Parcel 1 be set back at least 5 feet, at its nearest point, from the Non-disturbance Area.

16. **Steep slope areas to be undisturbed.** The Board has determined that the sloping areas on Parcels 1 and 2 that are reflected in the Partitioning Map as to be undisturbed (the "Non-disturbance Areas") shall remain undisturbed in order to minimize any potential adverse impact with respect to the stability of the slope and on-site storm water containment. The Applicant has agreed that same is an appropriate condition. Such Non-disturbance Areas shall be identified during construction with temporary fencing, and trees contained therein that are reasonably accessible shall be temporarily marked, during all periods of construction through the issuance of certificates of occupancy so that construction workers and others can more easily identify the areas to remain undisturbed.

17. **Vehicular Ingress and Egress.** In light of the fact that Summit Drive is a narrow private roadway onto which a new home will be added, concerns were raised as to the safety and feasibility of vehicular ingress and egress onto and off of Summit Drive, and general impacts upon traffic. The Board notes generally that Summit Drive has existed in its present condition for many, many years, during which time it has been navigated in its present condition by those homeowners whose homes front upon Summit Drive. In the context of this Application, the concerns were also addressed as follows:
 - (A.) The Applicant has agreed to provide suitable paved areas on each of Parcel 1 and Parcel 2 for vehicles to turn around so that they can enter Summit Drive by moving forward, rather than backing into Summit Drive. Village Engineer Antonelli confirmed that the

proposed areas as depicted on the Partitioning Map are satisfactory for such purpose.

- (B.) In addition, the Applicant agreed to increase the width of the paved surface of Summit Drive in front of Parcel 1 and Parcel 2 from 16 feet to 18 feet, so that vehicles moving between Summit Drive and Parcels 1 and 2 will have a wider paved surface than currently exists in front of the Subject Premises.
- (C.) A suggestion was made that Parcels 1 and 2 have circular driveways. Mr. Antonelli observed that he did not believe that Parcels 1 and 2 had sufficient width to establish a safe turning radius for circular driveways, and that the issue was satisfactorily addressed by the turnaround area on each parcel. Furthermore, Mr. Antonelli observed, portions of the impervious surface required to accommodate circular driveways would cover the contemplated septic system infrastructure, which are required to be located in the front yard by the Nassau County Department of Health, and which are not permitted to be covered with impervious surface. In addition, Mr. Panetta observed that the increased impervious surface required for circular driveways would exacerbate any storm water containment concerns by reducing the soil areas on the lots able to absorb rainwater.
- (D.) The Applicant presented a traffic report from its traffic consultant VHB, dated April 17, 2018, signed by VHB principal Robert Eschbacher. In the VHB Report, which is part of the Record, Mr. Eschbacher concluded as follows: “It is my professional opinion that this very minor level of added trips, whether during the peak hours or throughout the day, would be inconsequential and would not result in traffic congestion or safety concerns.” The Board notes that the Village Engineer identified Mr. Eschbacher as a traffic expert on Long Island, and also observed that Mr. Eschbacher’s conclusion is consistent with the Village Engineer’s understanding that traffic generated by one new home in a residential neighborhood does not have a significant impact on traffic congestion or safety.

18. **Fire and Emergency Access.** Concerns were raised with respect to the ability of fire and emergency vehicles to access homes on Summit Drive. The Village Building Inspector, Village Engineer and Applicant’s Engineer all advised the Board that Summit Drive, while narrow, is not uniquely so when compared to other communities on the North Shore of Nassau County in close proximity to the Village. The surrounding areas contain many narrow, hilly, winding roads. Mr. Butt reported that he had spoken with a

representative at the Nassau County Fire Marshal's office, who happens also to be a volunteer firefighter with the Manhasset Lakeville Fire Department, which provides fire protection service to the area that includes Summit Drive. That representative explained that he had himself answered fire emergency calls on Summit Drive previously, and that the addition of two new homes in the place of one existing home on Summit Drive would not adversely impact the ability of the Fire Department or ambulances to respond to any emergencies on Summit Drive. Mr. Antonelli explained that the crucial determinative factor for a fire truck to navigate a road is that it have a clear zone of 22' in width, which need not be paved surface, but can be comprised of paved surface plus grass or dirt area abutting the paved surface, the aggregate width of which equals or exceeds that 22' clear zone. Such a clear zone exists on Summit Drive, and would not be impacted by the construction of two new homes if this subdivision Application is granted. Mr. Panetta reported that the local Fire Department representative with whom he spoke denied his request for written confirmation that the project poses no significant issues for fire and emergency response, but that the representative did orally confirm that fire and ambulance responders currently are able to respond to emergencies on Summit Drive and that ability would not be materially impacted by the introduction of one new home, and that, if the proposed project did create problems from the Fire Department's perspective, then the Fire Department would issue a letter identifying that issues existed. In this case, according to Mr. Panetta, the Fire Department found no need to do so.

19. **Construction to be Consistent with Existing Topography.** VPH Subdivision Rule § 13 provides that construction on lots created by a subdivision should to the extent reasonable be consistent with existing topography and minimize re-grading and the introduction of fill. The Zoning Code establishes that the maximum floor area of a home to be constructed on a lot created by subdivision shall not exceed 40% of the gross floor area of the lot. Each proposed lot will have a reasonable flat area greater than the Code requires. The balance of the gross lot area is, in large measure, steeply sloping, so that Parcels 1 and 2 appear to be the size of the reasonable flat, "plateau" portions thereof. Therefore, if the floor area of homes constructed on the two proposed lots is based upon the gross lot area, the result could be structures that appear over-sized, in light of the apparent size of the lots being smaller than the actual gross lot areas. The Board finds that this circumstance implicates Chapter IV, "Design Standards," of the Rules and Regulations of Village of Plandome Heights with respect to Subdivision or Partitioning of Land (the "VPH Subdivision Rules"), including, without limitation, clauses "E." (Preservation of Natural Cover), and "F." (Preservation of Existing Natural Features). Therefore,

this Board proposed, and the Applicant accepted, a condition restricting the allowable floor area of the homes to be constructed to be 4,800 ft.² each, an approximation of the Code's 40% of lot area rule, applied to the reasonable flat portions only.

20. **Construction must be within Depicted Buildable Envelope, with 5' Setback from Non-Disturbance Area, and Not to Exceed 2,500 square foot Building Footprint.** In order to protect the slope stability and the existing topography to the extent reasonable and practical, the Board proposed, and the Applicant agreed, that (i) the construction of homes on Parcels 1 and 2 be confined to the buildable envelopes depicted on the Partitioning Map, but modified to reflect that the distance between the Non-disturbance Area and the nearest point of the home to be constructed on Parcel 1 be at least 5 feet, and (ii) that the building footprint for any home constructed on Parcels 1 or 2 not exceed 2,500 square feet.
21. **Site plan Approval by Village Engineer.** Under the Village Code, the construction of a new home on a zoning compliant lot requires approvals by the Village Building Department and the Village Architectural Review Board. However, the Village does not require separate site plan review by either the Board of Trustees or the Planning Board. In light of the unique aspects of this project, including the narrow private road upon which both proposed parcels front and the steeply sloping areas on each lot which have raised a number of planning Board related concerns, this Board has recommended, and the Applicant has agreed, that any and all building plans requiring a building permit from the Village Building Department shall be reviewed and approved not only by the Village Building Department but also by the Village Engineer prior to the issuance of a building permit, and that the plans submitted for such review shall depict all construction contemplated, including all proposed storm water retention and sanitary systems, as well as construction measures to control erosion during the construction process, and that the Village Engineer shall not approve same unless and until he is satisfied that such plans comply with the conditions contained herein, to the extent applicable.
22. **Trees to be removed.** Concerns were raised with respect to the eighteen trees proposed to be removed to accommodate the construction of two new homes. The Board recognizes that the construction of any new home necessarily involves the removal of trees situated within the building footprint. Prohibiting the removal of trees necessary to allow construction of a home on a zoning compliant lot is ordinarily unreasonable, to the extent that it prohibits lawful development. The Applicant noted that a great number of trees exist on Parcels 1 and 2 which are to remain. In fact, in

light of the Non-disturbance Areas on Parcels 1 and 2, the number of trees to remain thereon are likely greater than would be the case in connection with the construction of a new home on most other undeveloped lots within the Village. The Board notes that the construction of new homes on Parcels 1 and 2 will require approval by the Village Architectural Review Board, which has the jurisdiction to require landscaping plans to mitigate potential adverse impacts from the removal of trees associated with construction subject to the jurisdiction of that Board. Therefore, this Board finds that there is no reason for it to restrict in the context of subdivision approval the manner in which the Applicant proposes to remove certain trees and maintain others.

23. **Septic System.** The proposed septic systems for Parcels 1 and 2 satisfy Nassau County Department of Health (“NC-DOH”) requirements, according to the Village Engineer and the Applicant’s Engineer. Furthermore, after his initial review, Village Engineer Antonelli proposed increased septic capacity, as well as a relocation of the infrastructure in the front yard, as mandated by NC-DOH. B&P amended the Partitioning Plan accordingly, to Village Engineer Antonelli’s satisfaction.
24. **Restoration of Summit Drive.** Summit Drive is not a Village road; it is a privately owned roadway, maintained by the abutting property owners. Within the last two years, those property owners expended funds to have the roadway repaved. The Applicant agreed that, as a condition to any approval by this Board and the issuance of any building permit with respect to any proposed construction on either of Parcels 1 or 2, the Applicant would restore to its pre-construction condition the paved roadway of Summit Drive, and that the Applicant would post a security bond in amount deemed sufficient by the Village Engineer to ensure that such road restoration be accomplished.

PART II: DETERMINATION

Based upon the foregoing Findings, the Board hereby approves the Application for Preliminary Subdivision/Partitioning Approval, subject to each of the following conditions:

1. Any and all development of either Parcel 1 or Parcel 2 shall satisfy the storm water retention requirements established by the Nassau County Department of Public Works, which mandate that on-site storm water retention infrastructure is sufficient to accept an 8” rainfall.
2. Any home to be constructed on Parcel 1 shall:

- (A.) Be located within the buildable envelope reflecting the area within Parcel 1 in which a home can be constructed that satisfies all relevant Zoning Code set-back requirements, which shall be depicted in a revised draft of the Partitioning Map, to the satisfaction of the Village Building Inspector;
 - (B.) Have a building footprint not to exceed 2,500 square feet;
 - (C.) Have a floor area, as calculated pursuant to the Zoning Code, not to exceed 4,800 square feet;
 - (D.) Be no closer than 5 feet from the "Non-disturbance Area" for Parcel 1, which shall be depicted in a revised draft of the Partitioning Map, to the satisfaction of the Village Building Inspector; and
 - (E.) Be located entirely within the "reasonable flat area" for Parcel 1, which shall be depicted in a revised draft of the Partitioning Map, to the satisfaction of the Village Building Inspector.
3. Any home to be constructed on Parcel 2 shall:
- (A.) Be located within the buildable envelope reflecting the area within Parcel 2 in which a home can be constructed that satisfies all relevant Zoning Code set-back requirements, which shall be depicted in a revised draft of the Partitioning Map, to the satisfaction of the Village Building Inspector;
 - (B.) Have a building footprint not to exceed 2,500 square feet;
 - (C.) Have a floor area, calculated under the Zoning Code, of not more than 4,800 square feet; and
 - (D.) Be located entirely within the "reasonable flat area" for Parcel 2, which shall be depicted in a revised draft of the Partitioning Map, to the satisfaction of the Village Building Inspector.
4. The Non-disturbance Areas on both Parcel 1 and Parcel 2 that are depicted on the Partitioning Map as revised in accordance with the preceding conditions, shall not be materially altered in grade by excavation, or by removal or addition of fill, and no structures requiring any Village building permit shall be permitted to be constructed therein or thereon.
5. During any periods of construction on either Parcel 1 or Parcel 2 for which Village building permits are required, temporary construction fencing shall be placed around the Non-disturbance Areas, and trees easily accessible

therein shall be temporarily marked for preservation and/or non-disturbance.

6. Prior to the issuance of any building permit with respect to construction requiring building permits on either Parcel 1 or Parcel 2, complete building plans, together with a site plan reflecting all proposed storm water drainage and septic systems and infrastructure and all proposed structures, as well as plans for soil erosion control during construction, shall be provided to the Village Engineer for review and approval. No such building permits shall be issued until the Village Engineer has approved the foregoing, including by confirming compliance with each condition set forth herein to the extent same can be demonstrated on such plans.
7. Prior to the issuance by the Village of any certificate of completion with respect to construction requiring building permits on either Parcel 1 or Parcel 2, the private road known as Summit Drive upon which both Parcel 1 and Parcel 2 front, shall be restored to the condition in which such private road existed prior to the commencement of the construction work with respect to which such certificates of completion pertain. At the time of, and as a condition to, the issuance of any such building permit, the applicant or the then-owner of Parcel 1 or Parcel 2, as the case may be, shall deliver to the Village a performance bond securing performance of the required restoration of the private road portion of Summit Drive, which bond shall contain reasonable and customary terms and conditions satisfactory to the Village Attorney, and be in a penal amount to be determined by the Village Engineer.
8. Within 180 days after the Board adopts any resolution granting final subdivision approval with respect to the proposed subdivision, the Applicant or its successor-in-interest as owner of Parcel 1 and Parcel 2 shall cause to be recorded in the Real Property Records of the Nassau County Clerk a deed reflecting the then-owner of each such parcel, and shall file a copy of such deeds, together with written evidence of the submission of same to the Nassau County Clerk, with the Village Clerk.
9. The Applicant shall apply to this Board for final subdivision/partitioning approval, in accordance with Article 7 of the New York State Village Law, the Village Code and the VPH Subdivision Rules, and the final partitioning map presented to the Board for approval in such application shall be consistent in all material respects with the preliminary Partitioning Map approved in this Decision, as same shall be amended to reflect the conditions above that require amendment of the Partitioning Map to the satisfaction of the Village Building Inspector.

10. The creation of an additional buildable lot, developable with a new single family home where none now exists, increases the burden on Village park and recreation facilities. In accordance with New York State Village Law §7-730.4., and VPH Subdivision Rule §39, this Board finds that a proper case exists in this subdivision application to provide for increased park and recreational facilities within the Village, in light of present and anticipated future needs for park and recreational facilities in the Village, based on projected population growth to which the particular subdivision will contribute. At the same time, the Board finds that it is impractical and not feasible to require that a portion of the Subject Premises be set aside for park and recreation purposes. Therefore, the Applicant shall provide to the Board as part of its application for final subdivision approval, an opinion of a real estate professional with respect to the value of both parcels to be created, in their unimproved condition, in order to assist the Board in determining the appropriate contribution to be made by the applicant to the Village's park and recreation trust fund, in lieu of the set-side of a portion of the Subject Premises for such purpose.