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August 4, 2026

Via Email

Town of Lloyd Zoning Board of Appeals
Attn: Dave Barton and Sarah Van Nostrand
(dbarton@townoflloyd.gov)
(svannostrand@townoflloyd.gov)

***Re: 3260 Route 9W Highland, LLC
Appeal of Determination
Application for Area Variance***

Dear Chair Litts and Members of the Zoning Board of Appeals,

This firm represents 3260 Route 9W Highland, LLC (“Applicant”), the owner of property located at 3260 Route 9W in the Town of Lloyd, New York (the “Project Site”). The Applicant has a site plan application pending before the Town of Lloyd (the “Town”) Planning Board (the “Planning Board”) for a proposed ready-mix concrete packaging plant (the “Project”).

As set forth in the Project plans, the Project includes construction of a batch plant building (the “Batch Plant”), a cement silo (the “Cement Silo”), and an aggregate silo (the “Aggregate Silo”). The Cement Silo stores cement, which does not contain moisture and, thus, does not need to be insulated from the wintertime temperatures. Therefore, the Cement Silo is proposed to be constructed as single detached, outdoor, structure on the Project Site. The Aggregate Silo, however, stores aggregate which contains moisture and, thus, needs to be insulated from wintertime temperatures to avoid freezing. Therefore, the Aggregate Silo is proposed to be constructed inside the Batch Plant (which is heated).

Under the Town Code, the height limit in the Light Industrial District is 45 feet. *See* Town Code § 100, Attachment 2. “Silos” are exempt from these height restrictions provided they comply with the applicable sections of Article VI. *See* Town Code § 100-15(B)(5)(b). The term “silo” is

not defined under the Code. However, it is generally understood to be a tower that is used or bulk storage of materials.¹

On June 24, 2026, this firm, on behalf of the Applicant, submitted a request for determination to the Town Director of Building, Planning and Zoning Enforcement (the “Director”) that the proposed batch plant building (the “Batch Plant”) is allowed to be 60 ft in height to accommodate the enclosure of the Aggregate Silo within the building (the “Request for Determination”). *See Attachment A.* As set forth in the Request for Determination, the Aggregate Silo meets the definition of “silo,” the increase in height will be exclusively to accommodate the silo, and it would otherwise comply with Article VI of the Code.

On July 16, 2026, in response to the Request for Determination, the Director issued a determination (the “Director’s Determination”) which provided a two-part response:

- A. “If the [Aggregate Silo is] within the walls and under the roof of the principal building, the maximum building height will be exceeded because the distance from the finished grade to the highest point of the roof would be more than 45 feet and therefore would not be allowed.”
- B. “The [Applicant] also inquired whether placing the [Aggregate Silo] within the footprint of the principal building but keeping the roof of the principal building within the maximum height allowed while allowing the [Aggregate Silo itself] to extend through the roof would be allowed under the Zoning Code. The portions of the [Aggregate Silo] above the roof would then be protected against cold via insulation.

It is our opinion that such a design would not comply with the maximum building height limits in the Bulk Table. In this conceptual design, because the [Aggregate Silo] would be within the footprint of the principal building and therefore appear to function as part of that building, the roofs of the [Aggregate Silo] would be, in essence, the top-most roof of the building and over the maximum height. Therefore, that design would not be allowed.”

See Attachment B.

In sum, the Director determined that Town Code Section § 100-15(B)(5)(b) would not apply to the Aggregate Silo if it were located within the footprint of the principal building – here, the Batch Plant – even if the roof of the Batch Plant met the district’s height limitation except for the area above the Aggregate Silo.

We respectfully appeal the Director’s Determination and, if unsuccessful (i.e., this Zoning Board of Appeals upholds the Director’s Determination), we request a height variance to accommodate locating the Aggregate Silo in the Batch Plant. Based on the below (see Section II), the benefit to the Applicant from granting a height variance far outweighs any detriment to the neighborhood or community, and therefore the area variance should be granted.

¹ See Merriam-Webster Dictionary, available at: <https://www.merriam-webster.com/dictionary/silo>; see also Cambridge Dictionary, available at: <https://dictionary.cambridge.org/us/dictionary/english/silo>; see also Wikipedia, available at: <https://en.wikipedia.org/wiki/Silo>.

I. The Determination Appeal

The Determination is Arbitrary and Not Consistent with the Town Code

Under New York Law, neither building inspectors nor Zoning Boards of Appeals can render determinations inconsistent with the plain language of the application zoning code. *See Emmerling v. Town of Richmond Zoning Bd. Of Appeals*, 67 A.D.3d 1467 (4th Dept 2009); *see also McGrath v. Town of Amherst Zoning Bd. Of Appeals*, 94 A.D.3d 1544 (4th Dept 2012). Courts have consistently held that in cases of statutory interpretation, “the statutory text is the clearest indicator of legislative intent and court should construe unambiguous language to give effect to its plain meaning.” *Mestecky v. City of New York*, 30 N.Y.3d 239, 243 (2017). While building inspectors and Zoning Boards of Appeal are afforded deference in interpreting the code, such determinations cannot be irrational, unreasonable, or inconsistent with the clear language of the Code. *See Emmerling*, 67 A.D.3d 1467 (4th Dept 2009).

The Director’s Determination rests on inserting non-existent language into the Town Code, limiting the term “silos” to those that are outside, detached, and not within the footprint of a principal building. Nowhere in the Town Code does this limitation exist. *See Town Code § 100-15(B)(5)(b)*. Thus, the Director’s Determination is inconsistent with the clear language of the Town Code.

In addition, the Director’s Determination is irrational and unreasonable because it arbitrarily treats silos that must be indoors differently from silos that can be constructed as detached outdoor structures. It is clear from a plain reading of the Town Code that the height exemptions found in Section 100-15 were included in the code in recognition that some buildings or structures (e.g., telecommunication towers) are required to be greater than 45-feet in height to properly operate. It would be irrational and unreasonable to recognize the height constraints of silos but to only apply the exemption to silos that are detached and not within the footprint of a building.

Ambiguity in a Municipal Code Must be Resolved in Favor of the Applicant/Property Owner

To the extent this Zoning Board of Appeals finds that Section 100-15(B)(5)(b) or the term “silo” are ambiguous, then that ambiguity must be resolved in favor of the Applicant.

Under New York Law, ambiguities in a zoning code “are to be resolved in favor of the property owner.” *See Mamaroneck Beach & Yacht Club, Inc. v Zoning Bd. of Appeals of Vill. of Mamaroneck*, 53 AD3d 494, 498 (2d Dept 2008), *lv to appeal denied* 11 NY3d 712 (2008); *see also Tiekert v Bd. of Appeals of Vill. of Mamaroneck*, 236 AD3d 803, 804 (2d Dept 2025) (same); *Brancato v Zoning Bd. of Appeals of City of Yonkers, N.Y.*, 30 AD3d 515, 516 (2d Dept 2006) (same); *Sposato v. Zoning Bd. Of Appeals of Village of Pelham*, 287 A.D.2d 639 (2d Dept 2001) (“Ambiguities in a zoning ordinance must be resolved in favor of the property owner.”); *Vergilis v Plan. Bd. of Vill. of Fishkill*, 251 AD2d 506, 507-508 (2d Dept 1998) (Where parking for a “nonresidential use” was prohibited in any residence district but “a medical clinic was a use authorized by a special use permit in a residential zone,” there was ambiguity as to whether the

term “nonresidential use” in the zoning code excluded those uses authorized by special use permit in a residential zone; the Planning Board appropriately resolved the ambiguity related to the term “nonresidential use” in favor of the property owner when it treated the medical clinic’s parking lot as accessory to the clinic and therefore “authorized by a special use permit in a residential zone.”).

In addition, “[w]hen reviewing an ‘interpretation’ of a zoning code provision, a zoning board is required to rule on the ‘narrow issue’ before it.” *BBJ Assocs., LLC v Zoning Bd. of Appeals of Town of Kent*, 65 A.D.3d 154, 159 (2d Dept 2009), quoting *N. Dutchess Rod & Gun Club, Inc. v Town of Rhinebeck*, 29 A.D.3d 587, 588 (2d Dept 2006). “Zoning regulations may not be extended by implication.” *KMO-361 Realty Assocs. v Davies*, 204 A.D.2d 547, 548 (2d Dept 1994); *see also Inc. Vill. of Old Field v Hickey*, 225 A.D.2d 666, 669 (2d Dept 1996) (“Particularly where an “ordinance restricts the manner in which real property may be used, its provisions are not to be extended by implication.”). Lack of a definition for a term used in a zoning ordinance may cause ambiguity that must be resolved in favor of the property owner. *See e.g., Town of Huntington v Barracuda Transp. Co.*, 80 A.D.2d 555, 555 (2d Dept 1981) (Where a “distribution center” was permitted in the applicable zoning district but “distribution center” was not defined, the court found that “[s]ince the zoning ordinance under review [did] not define ‘distribution center’, and it [was] unclear precisely what [was] meant by these words, the resulting ambiguity must be resolved against the municipality and in favor of the property owners.”). Even if an alternative definition is proposed and accepted, the alternative definition is “merely evidence [of] an ‘ambiguity in the language employed [that] must be resolved in favor of the property owner.’” *Winterton Props., LLC v Town of Mamakating Zoning Bd. of Appeals*, 132 A.D.3d 1141, 1143 (3d Dept 2015), quoting *Subdivisions, Inc. v Town of Sullivan*, 92 AD3d 1184, 1185 (3d Dept 2012), *lv to appeal denied* 19 N.Y.3d 811 (2012).

Here, if this Zoning Board of Appeals finds that Section 100-15 or the term “silos” are ambiguous, the Board must resolve that ambiguity in favor of the Applicant – i.e., that silos contained inside a building are – the silo and the building – exempt from the height limitations of in the Light Industrial District. Thus, the Zoning Board of Appeals must overturn the Director’s Determination.

II. Area Variance Requested

The following area variance is requested to allow the Applicant to construct the “Batch Plant” on the Project Site and have the Aggregate Silo within the Batch Plant building:

Town of Lloyd Code Section	Permitted	Variance Required
Chapter 100, Attachment 2, Dimensional Table	Maximum building height of 45’	Maximum building height of 60’ (a 15’ variance)

Area Variance Review Standards

Per New York State Town Law § 267-B(3)(b), the applicable legal standard for the Zoning Board of Appeals to review the requested area variance is a “balancing test” that considers 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 applying this “balancing

test,” the Zoning Board of Appeals must consider the five statutory factors provided in New York Town Law § 267-b(3)(b). As discussed below, we submit that the requested variance is justified under this “balancing test” as required by the New York Town Law and the Town Code.

NYS Town Law § 267-B(3)(b)(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.

Granting the requested height variance for the Batch Plant will not result in an undesirable change in the character of the neighborhood or create a detriment to nearby properties. The Project Site is located in a predominantly commercial corridor along State Route 9W, a four-lane, divided, state highway, surrounded by numerous commercial establishments including an auto sales and repair shop with tens if not hundreds of cars stored on-site, outdoors, and up to the property boundary, a machine shop, and other commercial businesses.

The Route 9W corridor is also lined with dense tree growth separating the adjacent properties to the north and the south and providing a partial visibility buffer for passing traffic. Some of the tree growth exceeds the height of the proposed 60’ Batch Plant. In addition, under the Town Code, silos are exempt from height limitations. The Project also includes construction of a Cement Silo that will also be 60’ in height and in compliance with the Town Code. The Batch Plant would be constructed to match the height of the Cement Silo which is already allowed under the Town Code.

NYS Town Law § 267-B(3)(b)(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.

The “benefit” sought by the Applicant is having a 60-foot Aggregate Silo inside the Batch Plant Building. The height of the Aggregate Silo is necessary for operational efficiency and mitigation of energy use and carbon emissions. Locating the Aggregate Silo inside the Batch Plant is necessary to insulate the stored aggregate from the wintertime temperatures.

A 60-foot Aggregate Silo allows the facility to operate more efficiently with a smaller carbon footprint with less sound generation. A 60-foot Aggregate Silo (v. a 45-foot Aggregate Silo) allows for tractor trailers to dump full loads of aggregate into the ground silos, which in turn can be used to fill the Aggregate Silos. If the Aggregate Silo was 45-feet, the facility would no longer be able to use full tractor trailers to load the ground bins (as the 45-foot silo would lack the capacity to store a full tractor trailer load). In turn, a 45-foot aggregate silo would require an increased use of ground storage for aggregate. The increased use of ground storage would increase the need for a front-end loader to load the ground bins to avoid overfilling the aggregate silo. As a result, this would increase on-site aggregate handling that would drive an increase consumption of diesel fuel and corresponding emissions and sound impact from the increased use of a front-end loader on site to fill the ground silos versus using a tractor trailer.

In addition, as noted above, the aggregate being stored in the Aggregate Silo contains moisture. Thus, the Aggregate Silo must be located indoors or be insulated from the wintertime temperatures to avoid the aggregate freezing.

The only alternative to placing the Aggregate Silo in the Batch Plant is to construct an additional building to house the Aggregate Silo or to insulate the Aggregate Silo. As set forth above, the Director's Determination clearly stated the Aggregate Silo being placed inside a building would not comply with the Town Code. In addition, simply insulating the top of the Aggregate Silo, where the aggregate is stored, would result in increased noise impacts, at the Project Site.

Thus, to obtain the operational benefits of the 60-foot silo and the protection from the wintertime temperatures as well as the noise impact mitigation – there is no feasible alternative to the requested variance.

NYS Town Law § 267-B(3)(b)(3) – Whether the requested area variance is substantial.

The requested area variance is not substantial. As noted above, the Project will also include construction of a Cement Silo that will be located near the Batch Plant, 60-feet in height, and compliant with the Town Code. The requested area variance would only be to match the height of the Batch Plant building with the height of the Cement Silo – which is already permitted under the Town Code at 60 feet – so that the Aggregate Silo can be insulated from the cold weather elements.

NYS Town Law § 267-B(3)(b)(4) – Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

The requested height variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. As noted above, the Project also includes construction of a Cement Silo which will be located on the Project Site, 60-feet in height, and compliant with the Town Code. In addition, any visible impacts from the proposed Batch Plant would be at least shielded by the dense and tall tree growth between the Project Site and the adjacent properties to the north and the south and partially shielded from passing traffic. The Applicant has also submitted a visual impact assessment that demonstrates that topography of the Route 9W corridor blocks any visual impacts from sensitive sites across the Hudson River valley.

NYS Town Law § 267-B(3)(b)(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.

The need for this variance was not self-created. As set forth above, the Applicant purchased the property with the understanding that the Town Code exempts “silos” from the height limitations in the Light Industrial District. The only reason Applicant is seeking an area variance is because of the Director's Determination that the Aggregate Silo would not be exempted from the height limitations in the Light Industrial District if it was placed inside a building. Even if this Zoning Board of Appeals finds that the need for the requested variance is self-created, this consideration does not preclude the granting of an area variance. *See* New York State Town Law § 267-b(3)(b)(5).

Conclusion

Based on the foregoing, the benefit to the Applicant by the grant of the requested variance far outweighs any detriment to the community caused by the Project.

Sincerely,

/s/ *T.J. Ruane*

T.J. Ruane, Esq.

ATTACHMENT A

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June 24, 2026

VIA REGULAR MAIL AND EMAIL

David E. Barton II
Director of Building, Planning and Zoning Enforcement
Town of Lloyd
(dbarton@townoflloyd.gov)

***Re: 3260 Route 9w Highland, LLC
Request for Determination***

Dear Mr. Barton:

As you are aware, this firm represents 3260 Route 9w Highland LLC in connection with its application to the Town of Lloyd Planning Board for site plan approval for its proposed concrete packaging plant to be located at 3260 Route 9w in the Town of Lloyd (the “Project”).

This letter respectfully requests your written determination that the Town of Lloyd Code (the “Code”) permits the proposed batch plant building (the “Batch Plant”) to be 60 ft in height.

Under the Code, the height limit in the Light Industrial District is 45 feet. *See* Code § 100, Attachment 2. However, silos are exempt from these height restrictions provided they comply with applicable sections of Article VI. *See* Code § 100-15(B)(5)(b). The term “silo” is not defined under the Code. However, it is generally understood to be a tower that is used for bulk storage of material.¹

As set forth in the Project plans, the project includes aggregate silos and cement silos. The aggregate silos are located within the Batch Plant because, unlike cement, aggregate contains moisture and will freeze in the wintertime unless the silo is contained inside a heated building.

¹ *See* Merriam-Webster Dictionary, available at: <https://www.merriam-webster.com/dictionary/silo>; *see also* Cambridge Dictionary, available at: <https://dictionary.cambridge.org/us/dictionary/english/silo>; *see also* Wikipedia, available at: <https://en.wikipedia.org/wiki/Silo>.

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Currently, the cement silos are designed at 60 feet in height and the aggregate silos (and the Batch Plant which contains the aggregate silos) are 45 feet in height.

We respectfully request your written determination that the Batch Plant is allowed to be 60 ft in height to accommodate the enclosure of the aggregate silo (the structure used to store bulk aggregates) within the building. The aggregate silo meets the definition of "silo," the increase in height will be exclusively to accommodate the silo, and it would otherwise comply with Article VI of the Code.

With your determination we will submit revised plans that increase the height of the Batch Plant to 60 feet which will improve the plant layout and operations.

Thank you kindly for your attention to this letter. Please let me know if you have any questions.

Very truly yours,

/s/

T.J. Ruane

Encs.

ATTACHMENT B

Determination: Silo versus Building Height when Silo is enclosed within a building

July 16, 2026

Background

An applicant, Clemente Materials, Inc., applied to the Planning Board for a Concrete Batch Plant (CBP) located at 3260 Route 9W, Highland, NY 12528 (S.B.L. 80.3-2-8) in the Town of Lloyd. A CBP is a facility used to store materials for, mix, and deliver wet concrete to a job site.

The CBP requires material storage within silos on the site. A silo is typically a circular container for storage of bulk materials.

Request

The applicant has requested a determination related to silos and maximum building height relative to the Dimensional Table of the Town of Lloyd Zoning Code. The project is proposed in the Town's Light Industry Zone, where the maximum building height is 45 feet. The proposed silos are presently designed to be 60+ feet in height.

The applicant seeks a determination on whether three silos can be within a building where the roof of the building is over the silos, thereby encasing the silos within the building itself. The applicant states that certain materials, such as stone, sand and the like, contain water and therefore must be protected against freezing. The cement silo is designed to be a stand-alone structure, separate from the principal building.

Determination

The Town of Lloyd Zoning Code definition of Building Height is as follows:

The vertical distance measured from the average elevation of the finished lot grade of all sides of the building to the highest point of the roof, if the roof is flat, or to the average level between the eaves and the highest point of the roof, if the roof is of any other type.

Chapter 100-15.B(5)(a) of the Zoning Code states that:

Barns, silos, solar energy systems, wireless telecommunications facilities, and small wind energy facilities may exceed the height limits of this chapter, provided that they comply with the applicable sections of Article VI.

Part A

If the silos for stone, sand, etc are within the walls and under the roof of the principal building, the maximum building height will be exceeded because the distance from the finished grade to the highest point of the roof would be more than 45 feet and therefore would not be allowed.

Part B

The applicant also inquired whether placing the silos within the footprint of the principal building but keeping the roof of the principal building within the maximum height allowed while allowing the silos themselves to extend through the roof would be allowed under the Zoning Code. The portions of the silos above the roof would then be protected against cold via insulation.

It is our opinion that such a design would not comply with the maximum building height limits in the Bulk Table. In this conceptual design, because the silos would be within the footprint of the principal building and therefore appear and function as part of that building, the roofs of the silos would be, in essence, the top-most roof of the building and over the maximum building height. Therefore, that design would not be allowed.

Note: This determination did not include 100-15(B)(5)(a) as no drawing was submitted as part of the request; thus, there is no information whereby we can determine if the conditions within this section of the Code would apply.

David E. Barton II
Code Enforcement Officer
Town of Lloyd
12 Church Street
Highland, NY 12528