

August 6, 2026

Via Email

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

***Re: Bruce Epperson's Appeal of Zoning Determination
Clemente Materials, Inc. Concrete Batch Plant***

Dear Chairperson Litts and Members of the Zoning Board of Appeals:

This firm represents 3260 Route 9W Highland, LLC (the "Applicant") in connection with its application to the Town of Lloyd (the "Town") Planning Board (the "Planning Board") for site plan approval for its proposed concrete packaging plant (the "Project") to be located at 3260 Route 9W in the Town of Lloyd (the "Project Site").

We are aware that Bruce Epperson (the "Appellant") has submitted a procedurally and substantively flawed appeal to the Town Zoning Board of Appeals ("ZBA") of a July 8, 2026 determination rendered by the Town's Director of Building, Planning and Zoning Enforcement, David Barton, concluding that the Project constitutes a "Light Industry" use under the Town's Zoning Code (the "Zoning Code"), a copy of which is attached as **Exhibit A** (the "Determination"). As set forth below, this appeal must be denied in its entirety.

The only issue on this appeal is whether Mr. Barton correctly interpreted the Town's Zoning Code in concluding that the Project constitutes a Light Industry use. The record leaves no doubt that he did, because the project readily meets the definition of Light Industry uses in the code. Mr. Barton's conclusions are bolstered in all respects by the Town Board recent attempts to amend the Zoning Code to prohibit uses like the Project in the Light Industrial zoning district, thus confirming that the use at issue is permitted.

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BACKGROUND

In early 2025, the Applicant began performing environmental and zoning diligence for the Project Site and the Project including engaging consultants to survey the Project Site, performing wetlands evaluation, and preparing a site plan. During this process, the Applicant met with the Town of Lloyd to confirm that the Project was permitted under the Town Code. The Town Building Inspector advised that the Project was a permitted use in the Light Industrial district – the district within which the Project Site is located – subject to site plan approval. Based on that confirmation, the Applicant proceeded with the purchase of the Project Site and preparation of site plans, traffic and noise studies.

On March 10, 2026, the Applicant submitted an application to the Town of Lloyd Planning Board for site plan approval, which is attached as **Exhibit B**. On April 2, 2026, the Planning Board requested additional project information, which was provided on April 23, 2026, in correspondence attached as **Exhibit C**. The Applicant's April 23 submission addressed, among other things, the Project's propensity to cause any objectionable levels of smoke, noise, dust, odor, glare or vibration beyond property boundaries. On May 28, 2026, the Applicant submitted additional information to the Planning Board, including, among other things, a survey, a traffic study, architectural plans and updated site plans, a copy of which is attached as **Exhibit D**. During the review process, members of the Planning Board visited a concrete batch plant with the Applicant that is similar to the proposed Project. The members present did not raise any concerns relating to any objectionable levels of smoke, noise, dust, odor, glare or vibration beyond property boundaries.

On July 8, 2026, the Code Enforcement Officer rendered the Determination based on extensive analysis and findings. The Determination analyzed the primary applicable definition of "Light Industry" in Section 100-8 of the Zoning Code, a copy of which is attached as **Exhibit E**, and concluded that the Project satisfied it:

Light Industry: Manufacture, assembly, treatment, processing, or packaging of products that does not emit objectionable levels of smoke, noise, dust, odor, glare, or vibration beyond the property boundaries.

Separately, the Determination analyzed the definition of "Industrial Light" as a useful reference given that it specifically included manufacturing of materials, such as "cement":

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Industrial Light: Includes limited manufacturing, wholesaling, warehousing, research and development, and related commercial/service activities such as: beverage bottling, distribution and warehousing; contractors offices and storage buildings; including general contractors, plumbers, electricians, heating, ventilating, air-conditioning contractors, masons, painters, refrigeration contractors, roofing contractors, and other such construction occupations; distribution centers; ice production, storage, sales and distribution; laboratories for research, testing and experimental purposes; manufacture of computers, computer peripherals, electrical appliances, electronic equipment, medical instruments, and other similar products from previously manufactured components; manufacture of precision instruments and equipment, such as watches, electronics equipment, photographic equipment, optical goods and similar products; *manufacturing of articles or merchandise from previously prepared or natural materials, such as cardboard, cement, cloth, cork, fiber, glass, leather, paper, plastics, wood, metals, stones and other such prepared materials; printing and publishing.*

On July 26, 2026, Appellant filed the instant appeal of the Determination.

ARGUMENT

I. The Appeal Must Be Denied For Lack of Standing.

The ZBA's jurisdiction to hear administrative appeals is not unlimited. Any person appealing a determination of the Zoning Administrator (here, Director Barton) must plead and prove that they have standing as a person aggrieved by the determination being appealed (*see* Town Law § 267-a(4)). To establish standing, an appellant must demonstrate (1) an injury-in-fact that is different in kind and degree from that of the general public (which close proximity can establish by inference) and (2) an interest within the zone of interest protected by the applicable zoning statute (*see Sun-Brite Car Wash, Inc. v. Board of Zoning and Appeals of Town of North Hempstead*, 69 NY2d 406 [1987]). However, "[t]he status of neighbor does not, however, automatically provide the entitlement, or admission ticket, to judicial review in every instance. Petitioner, for example, may be so far from the subject property that the effect of the proposed change is no different from that suffered by the public generally" (*Id.*; *see also Matter of Fund for Lake George, Inc. v Town of Queensbury Zoning Bd. of Appeals*, 126 AD3d 1152, 1154 [3d Dept 2015] [affirming ZBA's dismissal of appeal where appellants "did not exhibit any specialized harm and do not own property near the [subject] property"]).

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New York courts have repeatedly held that a distance of over 1,000 feet from a proposed development is insufficient to confer any inference of injury-in-fact by virtue of close proximity (see, e.g., *Matter of Burns Pharm. of Rensselaer, Inc. v Conley*, 146 AD2d 842, 844 [3d Dept 1989] [parties who alleged that they lived 1,000 to 1,500 feet from project were not entitled to presumption of standing]; *Nunnally v Zoning Bd. of Appeals of Town of New Windsor*, 217 AD3d 950, 952 [2d Dept 2023] [“Hotel B would be approximately 1,050 feet from the petitioner's property line, which is too far a distance to allow a presumption of an injury-in-fact”]; *Matter of Green Earth Farms Rockland, LLC v Town of Haverstraw Planning Bd.*, 153 AD3d 823, 826-27 [2d Dept 2017] [same, with distance of 2,000 feet]; *Matter of Casement v Town of Poughkeepsie Planning Bd.*, 162 AD2d 685, 687 [2d Dept 1990] [“The petitioner lives over a mile from the project and operates a car wash located approximately .7 of a mile from the project. These distances from the project deprive the petitioner of the benefit of any inference of injury in fact by virtue of proximity”]; *Matter of Rediker v Zoning Bd. of Appeals of Town of Philipstown*, 280 AD2d 548, 549-50 [2d Dept 2001] [“The petitioners, Stephen M. Rediker and Carla Rediker, allegedly live approximately one-third of a mile from the monopoly. They are not entitled to an inference of injury”]).

In zoning matters, a party cannot establish “presumptive standing” based solely on proximity to property; they must also show that their injury “falls within the zone of interests” (*61 Crown St., LLC v City of Kingston Zoning Bd. of Appeals*, 211 AD3d 1134, 1137 [3d Dept 2022] [holding that petitioners, who had “presumptive evidence of injury” based on proximity, still lacked standing because they “failed to prove that their stated interests fall within the zone of those to be protected by the City’s zoning code”]). General community welfare interests, public opposition, and speculative or personal harms untethered to zoning purposes are outside the zone of interest to establish standing (*Matter of Port of Oswego Auth. v Grannis*, 70 AD3d 1101, 1104 [3d Dept 2010], *lv. denied* 14 N.Y.3d 714 [2010]).

*i. Appellant Is Not Entitled To A Presumption of Standing Based on Close Proximity,
as He Resides Over 1,000 Feet From The Project*

Here, the Appellant claims that he is entitled to a presumption of standing because his property is purportedly within 3,430 feet of the Project site, or .65 miles. According to our calculations, it appears, the Applicant is closer to 4,275 feet or .81 miles from the Project Site. Notwithstanding, even at .65 miles from the Project Site, as set forth extensively in the precedent cited above, this distance is insufficient to confer standing upon him, as it is well beyond the distance accepted by New York courts to confer a presumption of standing.

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ii. Appellant Cannot Demonstrate A Unique Injury Different In Kind From The Public At Large

Appellant has also failed to establish any injury different in kind or degree than the public at large. Appellant cites two purported injuries, which he claims are unique: (1) his home purportedly relies on a private well water supply that he claims the Project will impact because it will withdraw “10,000 gallons per day of water” from the same supply his home draws from, and (2) the Project will cause adverse noise and emission impacts on his property. Neither establishes a sufficient basis to confer standing upon him.

First, the Project is not connecting to any private well water supply. It will connect to municipal water supply managed by the Town of Lloyd Water & Sewer Department. Accordingly, the private water supply impacts cited by Appellant will not occur – it is impossible for them to occur.

Second, the Appellants’ noise concerns are, at best, purely hypothetical and disproven by the record evidence to date. In accordance with the New York State Department of Environmental Conservation’s (“NYSDEC”) noise guidance, ambient sound level increases of 6 dBA or less are considered non-material in nature in a non-industrial area. In order to avoid exceeding the 6 dBA limitation, the Determination correctly concluded that the Applicant has proposed robust sound and dust mitigation measures, including: (1) air compression for off-loading cement will be performed by a ground compression unit (vs. the tractor trailer on-board compressor and diesel engine) to be located inside a fully enclosed sound mitigation room, (2) utilization a fully enclosed concrete mixer bay to mitigate sound during the loading of the mixers. With these measures, the Applicant will avoid impacting an increase of more than 6 dBA at the nearest residential receptor points above and ii) comply with the Town Noise Code requiring the avoidance of unreasonably loud, disturbing and unnecessary noise. At any rate, given the extreme distance between the Project Site and the Appellant’s property, the Appellant will not suffer any noise impacts from the Project.

iii. The ZBA Has Previously Concluded That Appellant Lacks Standing

Finally, it is worth noting that the ZBA has concluded in similar circumstances that the Appellant lacks standing. On May 8, 2025, the ZBA determined that the Appellant lacked standing to appeal a determination of Director Barton because he lacked close proximity to the project at issue and failed to allege any unique injuries. A copy of the minutes from the ZBA’s May 8, 2025 meeting are attached as **Exhibit F**. The ZBA is bound to reach the same conclusion here, as the

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Appellant continues to voice what are purely generalized community concerns and does not reside in sufficiently close proximity to the Project site.

II. No Special Use Permit Is Required For the Project.

Appellant's assertion that the Determination is unlawful because it illegally "approved a special use permit" and is contrary to New York law and the plain terms of the Town's Zoning Code. The Project does not require a special use permit. In accordance with the Zoning Code's use table, a copy of which is attached as **Exhibit G**, light industrial uses are permitted uses in the Light Industry district where the Project is located.

The Appellant cites to a 2005 comprehensive plan which purportedly recommended adopting special use standards for light industry uses in the Town. The Town Board, however, never amended the Zoning Code to do so. Accordingly, the Zoning Code as it exists today is binding and determinative on this issue, and an un-adopted recommendation in the Comprehensive Plan is utterly irrelevant.

III. The Determination Does Not Treat Similarly Treated People Differently.

Appellant next contends that the Determination arbitrarily treats landowners in the Town differently depending on the zoning district they reside in. Specifically, Appellant takes issue with the fact that Light Industry uses are prohibited in the Town's Walkway/Gateway zoning district, but permitted in the Light Industrial district.

Contrary to Appellants' assertions, the Determination correctly recognized that the Town, like all municipalities in this State, is "free to set up various types of use zones" (*Berenson v Town of New Castle*, 38 NY2d 102, 109 [1975]). The Code Enforcement Officer's duty in determining whether a use is permitted is to consult the Zoning Code as-adopted by the Town Board. In this case, the Town Board adopted a code that permits some uses in certain zones but not others, which is a standard principle of zoning. The Appellant cannot fault Director Barton for applying the Town Board's enactment of zoning districts. Appellant's remedy, if any, was to contest the Town Board's enactment of these provisions in the first instance or rebut the strong presumption of constitutionality attached to them. He has done neither.

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IV. There Is No Record Evidence To Support Appellant's Position That the Project Will Cause Objectionable Impacts.

Initially, under Section 100-8 of the Zoning Code, the only areas of impact that relate to this Project are “smoke, noise, dust, odor, glare or vibration” beyond the boundaries of the Project site. Thus, to the extent that Appellant argues that the Determination is arbitrary because it did not analyze water, wastewater disposal, diesel fuel storage, wetlands, stormwater and traffic impacts, the same are irrelevant to the question of whether the Project constitutes a permitted use under the plain terms of the Zoning Code. Appellant has otherwise failed to establish that Director Barton’s Determination should be reversed based on his findings with respect to the six pertinent enumerated impacts in the Zoning Code.

As set forth extensively above, the Applicant submitted information to the Code Enforcement Officer demonstrating that the Project will not result in objectionable noise levels. Director Barton also correctly concluded, a large portion of mechanical equipment will be stored inside the Project’s facility and the cement hopper will be enclosed, which will further suppress noise emissions. These same measures will likewise ensure that there is no objectionable vibration beyond the Project’s boundary line. The Appellant has not submitted any countervailing sound study demonstrating that objectionable levels will result. To the extent that he relies on a sound study submitted in the Town of Clifton Park for a different Project site, the same does not support his positions for the reasons more fully articulated in Director Barton’s August 3, 2026 response to Appellant’s appeal, all of which are incorporated by reference herein and will not be restated.

With respect to dust and odor, Appellant relies on an inapplicable out-of-state neighborhood study conducted in Washington, D.C. for two concrete batch plants. This study is not a reliable comparison, as it analyzed projects in a high-density urban neighborhood which had, at one point, been closed by the EPA due to statutory violations. The area in question was also situated alongside a major construction zone and heavy arterial traffic. Reliance on studies pertaining to dissimilar projects does not suggest or support the conclusion that the Project at issue will cause objectionable dust impacts. As the record evidence shows, the Project proposes numerous dust mitigation measures, which are fully detailed in the correspondence transmitted by the Applicant on May 22, 2026.

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For all of the foregoing reasons, Appellant's appeal must also be denied. The Applicant reserves all rights to submit further comments during any hearing scheduled on this appeal.

Sincerely,

/s/ Gabriella R. Levine

Gabriella R. Levine

Enclosures