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December 10, 1997

HAND DELIVERED

Hon. Leonard Jacob, Chairman, and
Members of the Ridgewood Zoning
Board of Adjustment
Ridgewood Village Hall
131 North Maple Avenue
Ridgewood, New Jersey 07451

Re: Application of Eric Roos
Block 4704, Lot 6.01
560 Route 17 North
Ridgewood, New Jersey
Hearing Date: December 10, 1997

Dear Chairman Jacob and Members of the Board:

This office represents Commons at Ridgewood Condominium Association, the owners of property located in Block 4704, Lot 4.01, also known as Carriage Lane, Ridgewood. My clients' property is located adjacent to the north boundary of the above premises, which are the subject of an application to the Ridgewood Board of Adjustment. Both properties are designated within the R-125 Zone of the municipality, which permits single family homes.

My clients recently received notice of a hearing scheduled for this evening, and they engaged my services in order to assess the impacts of the proposed development and represent their interests before the Board. Unfortunately, revised plans in this matter, as well as drainage calculations prepared by Andrew Marshall, P.E., were filed with the Board only yesterday, and my clients and their expert consultants have not been able to review the plans and prepare adequately for this evening's hearing.

A review of the plans indicates that substantial changes have been made to the original design, creating new variances, placing two commercial structures closer to the homes on my clients' property, and resulting in substantial impacts which require detailed engineering analysis. Due to the fact that my clients are significantly affected by this proposal, as the owners of property

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abutting 525 feet of the site (nearly the entire north boundary), it would be manifestly unfair for the matter to proceed to a hearing this evening.

In addition, a review of the design of the site, the circumstances of the present use of the applicant's property, as well as a portion of my clients' property, and the proposed future use thereof as reflected on the plans, demonstrates that the application cannot be permitted to continue this evening. The reasons for such a position are found in the procedural requirements imposed upon this Board by the New Jersey Municipal Land Use Law (N.J.S.A. 40:55D-1, et seq.) and the Zoning Ordinance of the Village of Ridgewood (Village Code Chapter 190), as well as the legal rights of my clients as neighboring landowners.

It is respectfully requested that the Board consider the following issues, prior to hearing the application this evening, obtain the advice of Counsel for the Board, and issue a ruling whether the matter may proceed to a hearing. By copy of this letter, I have addressed these issues to Counsel for the Board, Morton Hirschklau, Esq., as well as the applicant's attorney, Charles C. Collins, Jr., Esq., for their review and response prior to the hearing.

1. The Board must determine, as a threshold matter, whether the application involves the expansion of a non-conforming use entitled to protection under N.J.S.A. 40:55D-68.

Please note initially that the application has been presented as an "expansion of a non-conforming use." It is my understanding that the applicant did not obtain a determination from the zoning officer or this Board (pursuant to N.J.S.A. 40:55D-68 and Ridgewood Code §190-126G) that the current use of the property is a valid non-conforming use entitled to continuation under the law. In the absence of such a prior determination, the applicant must first establish its rights, upon application to the Board and notice to all interested parties as required by statute. The burden of proof of such non-conforming status is upon the applicant. It would be unfair to anyone whose rights may be affected by this development if the Board permitted the applicant to proceed with an

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application characterized as an "expansion," in the absence of a hearing on this limited issue, and submission of proofs relating to same.

In the course of such an application, the Board must determine the character and extent of the alleged non-conforming use at the time of the adoption of the zoning ordinance which prohibited such use, including the area(s) of the property covered by the use in question. For example, based on the proofs submitted, the Board may find that prior owners of the property used a portion of the property as a nursery, involved in the growing of planted materials for sale and transplantation off the premises. If the present use is principally the sale of plant products grown off-site and sold on the premises from inventory, then it is not a valid non-conforming use.

Even if the present use is established as a non-conforming use entitled to protection, the Board must still determine whether the non-conforming use is merely being enlarged or expanded [a subsection d(2) variance], or whether the application involves an entirely new use, by virtue of the change in character of the former non-conforming use [a subsection d(1) variance]. In the absence of a finding that the proposal involves an expansion of the prior non-conforming use, the applicant must seek approval of a use variance, under subsection d(2), and sustain the burden of proof applicable to this form of variance relief. Due to the importance of this issue, the nature of the rights which may accrue from any determination of non-conforming status, and their impact on the further proceedings in this application, the Board must conduct a hearing under N.J.S.A. 40:55D-68 and -72, on proper notice to the public. In the alternative, the applicant must apply for a use variance under N.J.S.A. 40:55D-70(d)(1).

2. The applicant has previously expanded its business use without proper zoning approvals, onto land owned by Commons at Ridgewood Condominium Association.

Most important to any assessment of the status of a "non-conforming" use of property is the extent to which the owner of the property may have expanded or changed the use after the date

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of the adoption of the zoning ordinance which outlawed the use. In particular, the Board should note that the applicant has expanded the Cerillo's business activities onto my clients' property, after the construction of the townhouses on Lot 4.01, in the absence of any zoning permit or certificate of occupancy. This expansion was not permitted by my clients, but was discovered only after the applicant had placed substantial amounts of planted materials, woodchips, mulch and other inventory, commercial vehicles as well as debris and refuse from its business activities, on the townhouse site.

The area of this unpermitted encroachment is shown on the most recent plan prepared by Mr. Marshall dated December 5, 1997, which indicates "Portion of Lot 4.01 Currently Being Used for Nursery Use [To be Eliminated]" in the southeast portion of my clients' property, as well as an additional area labelled "Nursery Stock Area" on both sides of the common boundary with the applicant's site, which is apparently proposed to remain. It should be noted that the current application fails to identify Lot 4.01 as a portion of the subject premises, in either the application or public notice of the hearing, my client is not an applicant to the Board and has not provided its consent to the application, and the applicant has failed to serve notices upon persons owning property within 200 feet from Lot 4.01.

The fact that the applicant expanded its business into an adjoining residential lot, without securing appropriate land use approvals therefor, demonstrates the importance of determining the nature and extent of any non-conforming use of the site, prior to consideration of an application involving an *expansion* of that use. The applicant's business use of my clients' property clearly violates the zoning ordinance of the municipality, and my clients (by letter of this date to Zoning Officer Anthony Merlino; copy enclosed) are seeking local enforcement measures, requiring the immediate removal of all of the applicant's materials from the townhouse site, and restoration of that property to its original condition. This Board should refuse to hear any application by Mr. Roos until such time that all zoning violations have been eliminated, in the interests of fairness to the adjoining neighbors and adherence to the requirements of Chapter 190.

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3. The application is not complete, and must be amended to incorporate the physical conditions shown on the revised plan, as well as all variances and other relief sought by the applicant; all required fees and deposits must be paid, and proper notice of the application must be published, prior to a hearing in this matter.

As provided by Ridgewood Code §190-42D, substantial amendments in the layout of improvements proposed by the developer require an amended application to be submitted and proceeded upon, by the Board. In the event that additional variances are created by virtue of such an amendment, or the nature of the relief sought is changed, the notice should be revised to reflect same. In the present case, the plans have been substantially amended to change the location of the two proposed structures on the site, a new variance has been created which was not the subject of prior application or notice, and the extent of other zoning ordinance and site plan deficiencies has been exacerbated by the new design (see discussion, infra.).

Due to the failure of the applicant to revise its application and provide public notice which accurately describes the application and relief sought, the application is not complete and a hearing should not be conducted. In addition, the applicant has not paid all of the application fees and deposits required with respect to the additional variances, as set forth in Chapter 145 (Fees) and §190-23 of the Ridgewood Code. Until these amounts are paid, the applicant has not submitted a complete application, and is not entitled to proceed to a hearing on the matter.

The applicant has not filed its plans and other materials upon which action by the Board is requested, at least ten days prior to the hearing, as required by N.J.S.A. 40:55D-10 and Ridgewood Code §190-15. In fact, copies of the revised plans were filed only yesterday, together with drainage calculations (which were filed with the Board for the first time). This failure to file materials at least ten days prior to the hearing is most unfair, in view of the substantial period which has transpired since the last hearing in this matter, and the great public interest in this matter exhibited at that time.

As a result of this procedure, the appropriate agencies of the town have not been given enough time to review these materials and render their comments prior to the hearing. In addition,

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members of the public have not been able to inspect the plans and review the application at a reasonable time prior to the hearing. For all of these reasons, the application must not proceed to a hearing this evening.

4. The applicant has failed to comply with procedural requirements for public notice of the application.

As this Board is aware, public notice of all hearings on applications for development is a jurisdictional requirement for Board action on the application. In the absence of valid notice, reasonably designed to inform the public regarding the nature of the application and relief sought by the applicant, hearings may not be conducted on the application. The notice must be served upon all persons owning properties located within 200 feet from the property which is the subject of the application.

As previously noted, my clients' property is unwittingly the subject of the application, as the applicant and its engineer have noted the existence of unpermitted business activities on Lot 4.01. Therefore, any application involving the Cerillo's business must include Lot 4.01, and the notice must be served upon all persons owning properties located within 200 feet from Lot 4.01.

In addition, the application and notice must include all of the variances identified hereinbelow, which result from the proposed use and development of the applicant's property. More than merely an "expansion" of any present use of the Roos property, the present proposal involves the creation of entirely new and unpermitted uses of the site, as well as several bulk conditions which violate the ordinance. The prior notice of the December 10 hearing does not properly describe these condition or the true nature of relief which is required for an approval of the current site plan. Accordingly, the Board must refuse to hear the application until the required notice has been provided.

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5. The applicant proposes additional use variances and subsection "d" variances.

Although the current proposal is characterized as an "expansion of a non-conforming use," it actually involves the creation of several new uses which are not presently found on the site. These may be described as follows:

a. Retail store (within building);

b. Offices;

c. Storage of commercial vehicles (within garage structure);

d. Off-street parking lot (for offices, retail store building, as well as other future uses on property).

Due to the fact that none of the above uses are permitted either as principal or accessory uses in the R-125 Zone, the applicant must seek variances to permit same, under N.J.S.A. 40:55D-70(d)(1). It would be improper to characterize any of these conditions as an "expansion" of any current use of the property, which clearly does not include these uses.

In addition to the foregoing, the application involves the creation of more than one principal use of the property. The above uses are proposed in addition to the use of the property for outdoor storage and display of goods (outdoor retail sales), which is also not permitted in the zone pursuant to Code §190-124E(1).

The retail store building is not a permitted principal building in the R-125 Zone, and a variance is therefore required pursuant to N.J.S.A. 40:55D-70(d)(1). The Board may also note that the proposed garage is not a permitted accessory structure in the R-125 Zone. This is based on the fact that it is not accessory to a permitted residential use, and that it contains more than four (4) bays. As a result, the proposed garage is a second, unpermitted principal structure, in violation of Code §190-119B(1). A variance for this condition of multiple principal structures must also be

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obtained pursuant to N.J.S.A. 40:55D-70(d)(1).

The absence of any application for these uses, or notice of application(s) pursuant to subsection d of the statute, mandates a finding by this Board that the application is not complete and that the application cannot be heard this evening.

6. The applicant proposes additional subsection "c" or bulk variances.

Although the applicant has previously sought approval for several bulk variances, and recently amended its notice (although not its application) to include additional deficiencies, the recent changes in the plans have resulted in more variances as well as different deficiencies for the conditions previously noted. These variances may be summarized as follows:

a. Front Yard Setback. Pursuant to Code §190-100E(2), the minimum front yard in the R-125 Zone is 50 feet. However, the site has frontage on Route 17, a State highway. Under §190-119A(3), "the yard requirement for any residentially zoned lot that abuts a State highway or active railroad shall increase . . . by fifty percent (50%)." Accordingly, the front yard requirement for this site is actually 75 feet.

The prior application and plan noted a requirement of 50 feet, and a proposal to create a 51 feet front yard setback. For this reason, a variance application was not filed, and the notice did not make reference to a front yard setback variance.

Under the current proposal, a variance is needed to create a front yard setback of only 30 feet. This is 45 feet less than the ordinance provides, and a variance is therefore required. The applicant has not amended its application or notified the public regarding the need for this variance.

It should also be noted that the definition of "yard, front," as contained in Code §190-3, is "an open, unoccupied space (unless occupied by a use or structure specifically permitted by this chapter) extending across the full width of any lot and lying between the street right-of-way and the

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nearest building on such lot." The current plan proposes the use of the entire "front yard" for outdoor storage, display and sales of merchandise on the lot, which is not a permitted use in the R-125 Zone. As a result, the applicant is actually providing no front yard setback of any kind.

b. Side Yard Setback. Village Code §190-100E(3) requires a minimum side yard measuring 20 feet. The definition of side yard is consistent with front yard, previously noted above, and prohibits uses as well as structures within the side yard.

The prior application, plan and notice set forth a side yard variance request, to provide a 14 feet side yard (along the south side of the proposed retail/office building), in violation of the above requirement. However, the current plan shows the following conditions in violation of the 20 feet side yard requirement:

i.	South side yard, measured from dumpster pad location:	-0-
ii.	South side yard, measured from garage structure:	10 feet
iii.	North side yard, measured from parking lot:	4 feet (NE corner); 10 feet (North curb)*

*measured from north end of vehicles which overhang the curbline

iv. As in the case of the front yard, the current plan proposes the use of the entire "side yard" east from the parking lot, for outdoor storage, display and sales of merchandise on the lot, and the creation of an off-street parking lot between the retail store/office building and the north property line.

None of the foregoing uses or structures are permitted in the R-125 Zone, and the applicant is providing no side yard setback of any kind. The applicant must be required to eliminate these deficiencies, or seek variances to permit these conditions.

c. Total Side Yards. The applicant's failure to comply with this requirement is directly affected by the measurements which are used to establish each individual side yard. The proposed total side yards should be zero, in view of the placement of the dumpster pad and outdoor retail areas adjacent to the south and north property lines, respectively. In any event, the

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applicant clearly requires a variance from the requirement of 1/3 of the lot width, or 38 feet, as noted by Mr. Marshall.

d. Off-Street Parking Spaces. The proposed retail store and office building contains a total of approximately 5,300 square feet of floor areas dedicated to those uses, and the "garage" structure contains an additional 1,440 square feet of area. The applicant has counted only a portion of the main building, in declaring its parking requirement to be 18 spaces. If only the main building was counted for determining required off-street parking, it would result in a total of 22 spaces. The applicant proposes a parking lot containing only 18 spaces, and a variance is therefore required.

The extent of this potential non-conformity is magnified by the fact that Cerillo's currently experiences much greater parking demand during peak seasonal periods, without a retail store building or offices on the site. Any expansion of the existing business, or addition of new uses or structures to the site, will only add to the parking deficiencies. This clearly points out the need for the Board to assess a parking requirement for the proposed outdoor display and sales areas (which have not been counted at all, on the current plan). To the extent that parking is required for these areas, the applicant must provide such parking or seek variances for any deficiencies. The prior application, as well as the prior and current plan and notices, have not included any variance for this deficiency.

Conclusion. My clients regret the fact that these issues must be addressed to the Board on the day of the proposed hearing, but find that this was only necessary due to the lateness of the submission by the applicant. If the plans had been filed as reasonable time prior to the hearing, the issues which appeared from the revisions could have been raised at that time. However, the substantial nature of the changes, deficiencies in the proposed site conditions, and impact upon my clients can be seen from the face of the application and plan documents, and the Board can and must resolve the issues raised hereinabove prior to conducting any further hearings on the application.

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Especially where the application does not seek variances which are clearly required for non-permitted uses such as retail store and offices, as well as the other proposed uses and structures (storage of commercial vehicles; unpermitted garage; outdoor display, storage and sale of goods; parking lots), the applicant must be required to provide notice to the public which apprises interested parties of the true impacts of the development. At that time, the applicant must provide notice of the missing front yard and parking variances, as well as the corrected side yard/total side yard variances. Since notice is a jurisdictional requirement for Board action, no hearing must be conducted in the absence of proper notice.

Of greatest importance, this Board must not consider any application where the property owner or his tenant comes before you with unclean hands. My clients have demanded that the applicant immediately remove all unpermitted business materials, trucks, debris and other activities from their property. These materials, equipment and activities have been placed and conducted on a residential lot in violation of the Village Zoning Ordinance. Until such time that these violations are cured, the application should not be heard.

I would appreciate the opportunity to discuss these matters with the Board at the time of the public meeting this evening. On behalf of my clients, I thank you for your consideration of the above arguments.

Respectfully yours,

Robert J. Inglima, Jr.

RJI/vm
Encl.

cc: Morton Hirschklau, Esq. (Via telefax)
Charles C. Collins, Jr., Esq. (Hand Delivered) ✓
Client