

Comments of Michael Utevsky regarding Timothy House Application for Special Use Permit
to Head of the Harbor Board of Trustees – June 21, 2023

My name is Michael Utevsky, and I reside at Harbor Hill Road in the Head of the Harbor.

At the previous May 17 Public Hearing, you heard testimony that the Application for a Special Use Permit does not comply with a large number of legal requirements, none of which were considered by SHPO. Among them:

--The plans will violate two separate recorded Deeds of Covenants and Restrictions on the Property that expressly protect the landscape as well as the house. Any burden created by these covenants and restrictions to the Monastery on the use of the property is self-inflicted, because the Monastery purchased the property with full notice of the restrictions.

--Also, the 36 proposed parking spaces are not adequate for the proposed maximum occupancy of 282 persons, and therefore the plans do not satisfy the parking requirement for a special permit for a church under Village code Section 165-23;

--Also, the traffic study is outdated, and its conclusion – that only 2 to 4 additional vehicle trips will be created – is dubious at best; I hope the new traffic study will have a more believable conclusion;

--Also, the Application does not satisfy 3 out of the 6 requirements for a special permit under Village code Section 165-36;

--Also, the plans violate the side yard setback requirement of the Village Code. As Mr. Buzzell stated at the hearing last month, the Monastery does not own a triangular piece of land near the top of the easement driveway, and the distance from the proposed church building to the lot line is only 25 feet, while the Code requires a 55 foot setback.

But the heart of the matter – the reason that the Village Codes and the deed covenants must be enforced --lies in the importance of this Property and its landscape to our Village. Timothy House is one of Head of the Harbor's few recognized historic homes. The AIA Guide to Nassau and Suffolk County lists only

five properties in Head of the Harbor, and Timothy House is one of them. Every description of Timothy House, whether in the AIA Guide or in books about our village history, mentions the landscape as an important rural setting for the historic home. As you heard from other speakers at the last hearing, the land and its history, the so-called cultural landscape, are an essential part of the property.

The construction of a large church building with a large paved parking lot on this site will substantially degrade the historic landscape and, therefore, the entire property. Our Village has a compelling interest in enforcing its land use regulations in order to preserve a very important property.

Moreover, there has been no evidence presented of any need to sacrifice the landscape in order to preserve the residence. The Timothy House residence was well taken care of by its previous owners and, apparently, is still well taken care of. There has been no showing that the current owners cannot continue to maintain it, or that undertaking a million dollar church building project, which is not yet funded, will somehow insure the future of the residence. Nor has there been any showing that there is no other potential purchaser of the property who will maintain it properly.

Our Village was founded to protect our harbor and our historic homes, and we have a compelling interest in enforcing our land use codes to protect one of our most important properties. We cannot abandon our heritage.

GLENN B. GRUDER
PARTNER
ggruder@certilmanbalin.com

June 27, 2023

VIA REGULAR MAIL & EMAIL: aguardino@farrellfritz.com

Farrell Fritz
Att: Anthony S. Guardino, Esq.
100 Motor Parkway, Suite 300
Hauppauge, NY 11788

**RE: Acker with The Monastery of the Glorious Ascension
and the Village of Head of the Harbor
Our File #55363.0001**

Dear Anthony:

As you know, we represent Natasha Acker, the owner of the premises located at 483 North Country Road, which premises are directly adjacent to and east of the Timothy House..

Following up the comments I made on Ms. Acker's behalf at the hearing held on June 21, 2023, I enclose a copy of the 1973 recorded covenants and restrictions signed by Barbara Van Liew and returned to the Village by the County Clerk. The 1973 covenants and restrictions do not include the language that is contained in the 1997 covenants and restrictions, which language states that the Village has no obligation to enforce the covenants.

As I see it, the critical language in the 1973 covenants is contained in paragraphs 1, 2 and 3, which I have highlighted for your convenience. Could the covenants and restrictions been drafted more clearly? The obvious answer is yes. But, let me submit that the answer to the question of whether a brand new church, with a footprint of approximately 4,000 square feet, located on the front lawn of Timothy House, and closer to NYS Route 25A, "fundamentally alters ... the open space character of the property" is also "yes".

As I stated at the aforementioned hearing, it is unreasonable, illogical and literally incredible to argue otherwise. Based solely upon the language in the 1973 covenants and restrictions, the Village Board of Trustees should deny the application for a special permit by the monastery.

I have copied the Village Clerk and respectfully request that this letter be made a part of the Record.

Very truly yours,



Glenn B. Gruder

GBG:mrh
Enclosure

C: Natasha Acker (w/enclosure)
Village Clerk of the Village of Head-of-the-Harbor (w/enclosure)

HISTORIC PLACE AND OPEN SPACE EASEMENT DEED

This Indenture, made the 30th day of APRIL, 1973, between BARBARA FERRIS VAN LIEW, residing at 481 North Country Road, St. James, Town of Smithtown, County of Suffolk, State of New York, hereinafter referred to as the Grantor, and the INCORPORATED VILLAGE OF HEAD-OF-THE-HARBOR, a municipality of the State of New York, having its principal address of 103 Harbor Road, St. James, Town of Smithtown, County of Suffolk, State of New York, hereinafter referred to as the Grantee.

W I T N E S S E T H :

WHEREAS it is the public policy of the State of New York and the local government of the County of Suffolk to preserve properties and historic and open space value; and

WHEREAS the Grantor is the owner of certain property hereinafter described on which is located a structure of historic and architectural importance and which is characterized by natural scenic beauty; and

WHEREAS the property is located on the historic North Country Road, Town of Smithtown, County of Suffolk and State of New York, the character of which it is desirable to preserve as a historic resource; and

WHEREAS the existing structure and present state of use of said property, if retained, would enhance the present state of use of said property, if retained, would enhance the present or potential value of abutting or surrounding properties and of historic North Country Road, and would maintain and enhance the conservation of natural, scenic and historic resources; and

Fee 1.50 Tax 61.905
Receipt #

SUFFOLK COUNTY
231943
REAL ESTATE TRANSFER TAX
Dept. of Taxation & Finance
STATE OF NEW YORK
\$ 61.905
PB. 10745

WHEREAS the Grantor and the Grantee wish to preserve the environment in which the historic structure on the property now exists so as to realize its great educational and cultural value, and wish to prevent any unsightly developments that will tend to mar or to detract from such environment which would materially affect the historic value of said structure or of historic North Country Road, by altering its surroundings; and

WHEREAS the Grantor and Grantee wish to protect the architectural features of the historic structure and to that end, to exercise such reasonable controls over the property as is hereinafter described as may be necessary and expedient to accomplish such objectives,

NOW, THEREFORE, in recognition of the foregoing and in consideration of the sum of One (\$1.00) Dollar and other valuable consideration, the receipt of which is hereby acknowledged, the Grantor does hereby grant and convey to the Grantee an easement in the structure referred to in the preambles hereto (hereinafter called the "House") and in the parcel of land, consisting of 4.609 acres, on which the House is located (hereinafter, collectively with the House, called the "Property"), situate, lying and being in the Incorporated Village of Head-of-the-Harbor, in the Town of Smithtown, County of Suffolk, and State of New York, all as more particularly described in a survey made in April, 1971, by Theodore S. Prime, a copy of which is annexed hereto as Schedule A and is hereby made a part hereof, subject to the following restrictions which are hereby imposed on the use of the Property for the purpose of accomplishing the intent of the parties hereto and to preserve, protect and maintain the historic and open space value of the Property:

1. The House shall be maintained and preserved in its present state as nearly as practicable, though structural changes, alterations, additions, or improvements ~~as would not, in the opinion of the Grantee or its agents, fundamentally alter the historic character of the House and the open space character of the Property,~~ may be made thereto by the owner, provided that the prior written approval of Grantee or its agents to such alteration, addition or improvement shall have been obtained.

2. ~~The open space and natural character of the Property shall be maintained as a landscaped environment~~ so as to enhance the setting of the House as a historic landmark, but nothing herein contained shall prohibit the parking, in a designated part of the premises approved by the Grantee or its agents, of registered operating motor vehicles in use by the owner or occupants of or visitors to the Property.

3. ~~No activities shall be carried on on the Property which would destroy or impair the historic and open space value of the Property.~~

4. The Property shall not be subdivided.

5. No sign, billboard or outdoor advertising structure shall be displayed on the Property other than one ^{square} sign not exceeding four (4) feet ~~square~~, for each of the following purposes:

(a) to state the name of the Property and the name and address of the occupant;

(b) to advertise the activity permitted on the Property;

(c) to advertise the Property for sale or rental; provided, however, that this Paragraph 5 shall not limit the Grantee's right hereinafter to display on the Property, at its discretion, a marker or sign four (4) ^{square} feet ~~square~~ evidencing its ownership of the easement thereby granted.

The Grantee and its representatives may enter the Property:

(a) from time to time for the purpose only of inspection and enforcement of the terms of the easement thereby granted; and

(b) in its discretion, to erect the aforementioned marker or sign.

Nothing herein shall be construed to convey a right to the public of access or use of the Property, and the Grantor, her heirs, executors, administrators, successors and assigns shall retain exclusive right to such access and use for all purposes, present and future, subject only to the provisions herein recited.

If, at any time, the Grantee shall cease to exist, then on the happening of such event, this easement and the rights and privileges by this instrument granted and given to Grantee shall cease and determine to the same effect as though this instrument had never been executed by the Grantor.

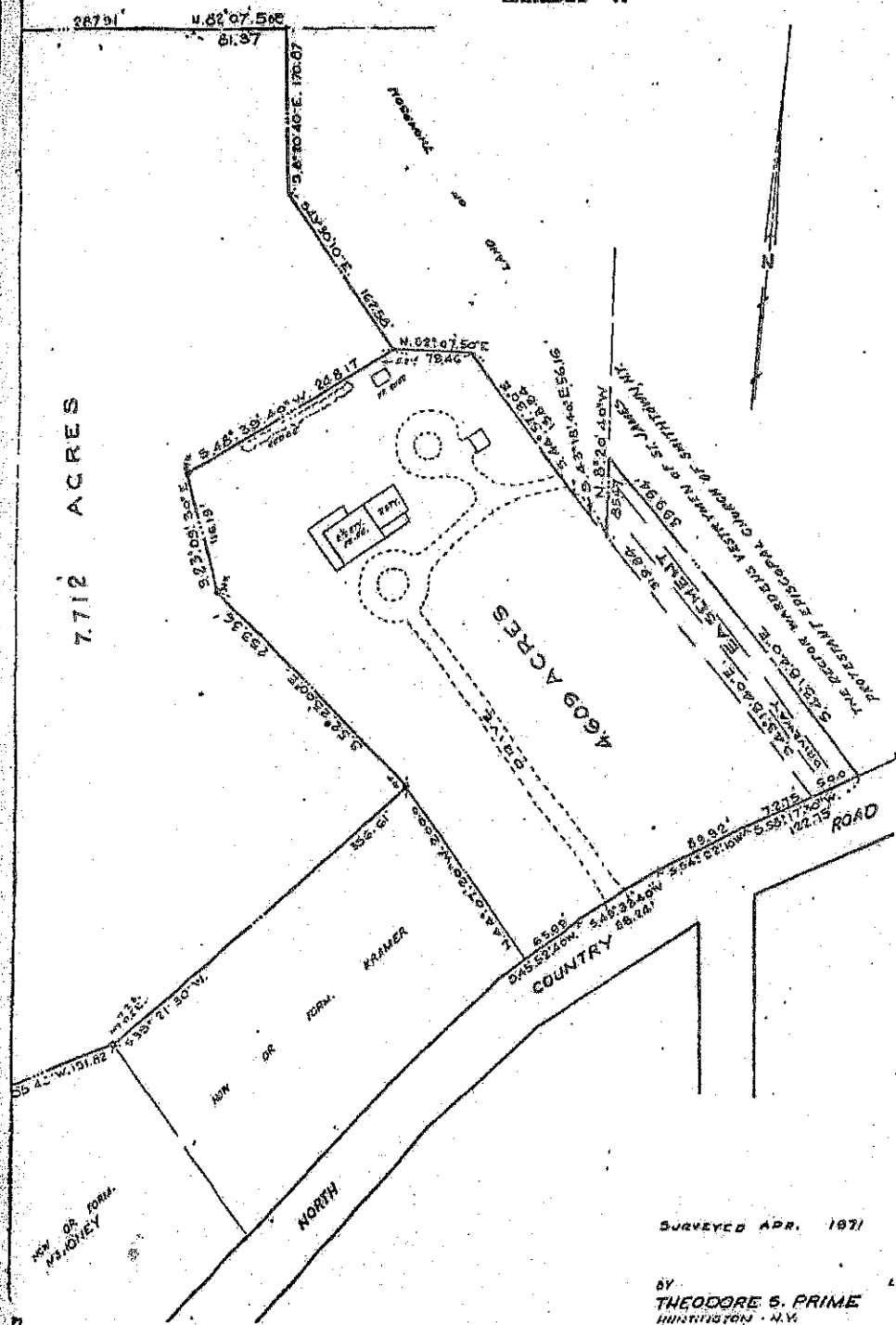
TO HAVE AND TO HOLD the aforegranted easement with all its rights and privileges to the Grantee, its successors and assigns, forever.

TOWN OF SMITHTOWN - SUFFOLK COUNTY, N.Y.

FORM NEWTON NEW OR FORM VOLANTIER

SCALE: 1"=100'

EXHIBIT "A"



LIBER 7412 PAGE 251

179/12 CP 245

159

RECORDED

JUN 6 9 28 AM '73
LESTER ALBERTSON
CLERK OF
SUFFOLK COUNTY

Village of Head of the Harbor
Village Clerk & Treasurer
St. James, N.Y.
11780

July 12, 2023

Dear Mayor Douglas Dahlgard,

Hope you are enjoying the summer.

Mr. Buzzell the monk's lawyer, said something at the June meeting that concerned us. He stated that because the monastery is not a parish, it will not grow. Hasn't it grown already?

Saint Dionysios is of the Eastern Orthodox faith. That encompasses "Eastern Orthodox", not only Russian, but Greek, Romanian, Ukrainian, Bulgarian, etc., Any faith from the eastern part of the world that has migrated here can worship at the monastery. We as Greek Orthodox can go to the monastery with our family instead of driving all the way to Greenlawn to attend St. Paraskevi Greek Orthodox Church or Port Jefferson Greek Orthodox Church of Assumption. Sunday service(always has and always will be two plus hours), communion, baptisms, holy days, etc., are all performed the same way.

It's inevitable, congregations grow and so can the number of monks.

If you and the trustees approve the special permits, you will be chipping away at the codes and covenants and set precedent to other historical sites in our prestigious village.

We see such a lack of transparency and false statements on the part of Mr. Buzzell and the monks.

What else is in store for this property?

All we want is to preserve what we are so lucky to have, and maintain it for generations to come.

Sincerely,

Stacey and Phil Kostis

Stacey Kostis
Phil Kostis