MEMORANDUM IN SUPPORT OF APPLICATION FOR SPECIAL PERMIT APPROVAL

INTRODUCTION

The Applicant, Columbia/Wegman Hartsdale, LLC1 (hereinafter “Columbia” or the “Applicant”) respectfully submits this Memorandum in Support of its application for Special Permit approval at the above-referenced property (the “Property”). The Applicant is proposing to demolish current improvements on the Property and construct a new, three-story, state-of-the-art assisted living facility (the “Facility”), which will offer a much-needed service for seniors in the Greenburgh area.

STATEMENT OF FACTS

The Property is located in the R-20 “One-Family Residence” District, and is approximately 8.47 acres in size. The Property is located on the south side of West Hartsdale Avenue, and is the site of the now-closed Maplewood Swim Club with an address of 202 West Hartsdale Avenue. The surrounding neighborhood is largely made up of single-family residences, as well as a religious use (Mission Hill Missionaries), adjacent to the Property to the west. The proposed facility will have a total of 137 beds within 115 residential units. There shall be 89 assisted living units, with memory care services provided for in the remaining 26 units. No independent living units are proposed.

1 Columbia/Wegman Hartsdale, LLC is a partnership between Columbia Pacific Advisors and Wegman Companies, Inc.
Assisted living facilities are a permitted Special Permit use in the R-20 District. Pursuant to § 285-10.A.(4) of the Zoning Ordinance, the Town Board has approval authority over the proposed Special Permit use at the Property. The Facility will also require a dimensional adjustment from the Board for a parking area setback, which is permitted pursuant to § 285-10.A.(4)(f). For the reasons set forth herein, it is respectfully submitted that the project complies with the applicable requirements, and that the requested approvals should be granted.

STATEMENT OF LAW

Statutory law dictates that a special use permit is the “authorization of a particular land use which is permitted in a zoning ordinance or local law, subject to requirements imposed by such zoning ordinance or local law to assure that the proposed use is in harmony with such zoning ordinance or local law and will not adversely affect the neighborhood if such requirements are met.” N.Y. Town Law § 274-b. Assisted living facilities are a permitted special permit use in the R-20 District, subject to the additional requirements of § 285-10.A.(4)(f). See Zoning Ordinance § 285-12.A.(2).

It is well settled law that, “The inclusion of the permitted use in the ordinance is tantamount to a legislative finding that the permitted use is in harmony with the general zoning plan and will not adversely affect the neighborhood.” N. Shore Steak House, Inc. v Bd. of Appeals of Inc. Vil. of Thomaston, 30 NY2d 238, 243 [1972]; Kabro Assoc., LLC v Town of Islip Zoning Bd. of Appeals, 95 AD3d 1118, 1120 [2d Dept 2012].

Unlike a use variance, a permitted special exception allows a property owner to put their property to a use expressly permitted by local ordinance subject only to conditions attached to its use to minimize its impact on the surrounding area. Capriola v Wright, 73 AD3d 1043, 1045 [2d Dept 2010]. “The issuance of such a permit is a duty, imposed upon the [approving] board once it is shown that the proposed use meets the standards prescribed by the ordinance.” Knight v Bodkin, 41 AD2d 413, 417 [2d Dept 1973](emphasis added). Any denial of such a permit would require substantial evidence, and may not be based upon general community opposition. Twin County Recycling Corp. v Yevoli, 90 NY2d 1000, 1002 [1997]; Robert Lee Realty Co. v Vil. of Spring Val., 61 NY2d 892, 894 [1984].

It is against this legal backdrop that Columbia’s application should be considered. For the reasons set forth herein, it is respectfully submitted that the Board should grant the requested Special Permit and dimensional waiver for the proposed Facility.
THE APPLICATION MEETS THE CRITERIA FOR SPECIAL PERMIT APPROVAL

Generally, in order to grant a special use permit, New York requires assurance that the “proposed use is in harmony with such zoning ordinance or local law and will not adversely affect the neighborhood if such requirements are met.” N.Y. Town Law § 274-b.1. The proposed assisted living Facility clearly meets this standard. As further discussed below, the proposed use will have minimal effect on the surrounding neighborhood with regard to visual impacts, traffic, noise, or environmental impacts. The project will incorporate landscaping as well as stormwater and lighting improvements to mitigate any potential impacts the Facility may have on the residential neighborhood.

Furthermore, as established by the foregoing cases, it is black letter law that the inclusion of a permitted use in the Zoning Ordinance is equivalent to a finding by the Town Board that the permitted use is in harmony with the general zoning plan and will not adversely affect the neighborhood. Therefore, an assisted living development such as the proposed Facility is inherently harmonious with zoning, and will not adversely affect the neighborhood.

The detailed Special Permit criteria for assisted living facilities in Greenburgh are set forth in Section 285-10.A.(4)(f) of the Zoning Ordinance. Each of these criteria has been met by the proposed Facility (except where noted) as follows:

1. *The minimum lot size shall be four acres.*

   The Property is approximately 8.47 acres.

2. *The number of beds provided shall not exceed 25 beds per acre.*

   Up to 200 beds are permitted for a site of eight (8) acres. The Facility will have a total of 137 beds, which is well below the maximum limit.

3. *No building shall be located less than 100 feet from any street or lot line. Where topography and landscaping or other site conditions provide adequate screening, the Town Board may reduce this setback requirement no closer than 50 feet.*

   The proposed building will be located at least 100 feet from all lot lines.
4. *The maximum height of all buildings shall not exceed three stories and shall not exceed 40 feet.* Where topography and landscaping or other site conditions provide adequate screening, the Town Board may increase the maximum height to four stories, not exceeding 50 feet.

The maximum building height does not exceed three (3) stories or 40 feet. In fact, the memory care portion of the proposed building will only be one (1) story and 15 feet in height.

5. *No parking area shall be located less than 50 feet from any street or lot line.* Where topography and landscaping or other site conditions provide adequate screening, the Town Board may reduce this setback requirement no closer than the corresponding setback of the underlying zoning district.

The proposed parking area will be set back 38.7 feet from the western property line. Because the Property is located in the R-20 District, the parking setback requirement may be reduced by the Town Board to 16 feet. The proposed setback is therefore more than double the side yard setback required in the R-20 District.

Moreover, the Property is at a much lower elevation than the adjacent lots to the west (approximately 30 vertical feet). As a result of this change in topography, the parking area will not be visible from the adjoining lot unless neighbors were looking straight down from the property line.

The Applicant did consider alternate parking locations on the site; however, given the nature of this assisted living facility, there is a need to have as many spaces near the front entry as possible. For all of the foregoing reasons, the proposed parking area meets the requirements for a setback reduction from the Town Board, and exceeds the 16-foot minimum required by zoning to the greatest extent practical based on the site conditions and facility layout.

6. *The lot width will be determined by the underlying zoning district.*

The required lot width in the R-20 District is 120 feet. The width of the Property is 396 feet at its narrowest dimension.

7. *The maximum FAR shall not exceed 0.4.*

The proposed FAR does not exceed 0.4
8. The maximum coverage of principal buildings shall not exceed 12%.

   Maximum principal building coverage does not exceed 12%.

9. The maximum coverage of accessory buildings shall not exceed 3%.

   No accessory buildings are proposed.

10. The maximum coverage of impervious surfaces shall not exceed 40%.

    Maximum impervious surface coverage does not exceed 40%.

11. The maximum length of any building shall not exceed 300 feet.

    In order to fit the Property and reduce significant site disturbance and visibility to
    neighboring lots, the proposed building will be approximately 420 feet in length. The
    Applicant will require an area variance from the Greenburgh Zoning Board of Appeals.
    Nevertheless, the intended length is part of the natural layout for development on this
    particular Property. The proposed layout limits disturbance by working with the inherent
    features of the site and making use of the current developed areas on the Property.

12. One loading berth shall be required for the first 100 beds, and one additional loading berth
    for each additional 100 beds.

    The Facility will have two (2) loading berths, as required.

13. One-half off-street parking space must be provided for each unit.

    71 off-street parking spaces are proposed, where 58 spaces are required. This higher parking
    count represents the anticipated required parking during the busiest days of the year, based
    on the Applicant’s experience in the industry.

14. The site must be within 200 feet of, and have access to, a state or county right-of-way, other
    than parkways and interstate highways. Such access must be direct or via a side street and
    shall not be accessed by a circuitous route.

    The Property has frontage on West Hartsdale Avenue (Route 100A), which is a state road.
15. The applicant shall demonstrate that such facility shall not have an adverse impact upon the Town.

In the Town’s recently-adopted 2016 Comprehensive Plan, assisted living facilities are specifically identified as a form of special needs housing that will be beneficial to Greenburgh. The Comprehensive Plan explicitly states that, “Assisted living facilities are an important component of the continuum of care with respect to housing needs.” See Comp. Plan, pp. 10-17, 10-18.

In keeping with the goals of the Comprehensive Plan, the proposed Facility will provide a greatly-needed housing product and care-giving service to the Greenburgh community. Local markets have clearly demonstrated a significant desire for additional assisted living beds in this area, which will allow Westchester and Greenburgh residents to age within their own communities. In fact, it is anticipated that the majority of future residents of the Facility currently live within 5 - 10 miles of the Property.

As the population continues to age, there is a growing need for assisted living facilities to provide the necessary care for local seniors. This project will generate 137 assisted living and memory care beds for the Greenburgh and southern Westchester market, which will help provide greater services to the local community.

Beyond the fact that this project will generate additional beds for an underserved market, Columbia is willing to provide an affordable element to further benefit the community. Five (5%) percent of the Facility’s 89 assisted living units will be offered with a 20% discount to the base real estate rental cost. These units will be offered to prospective residents who meet certain income-based qualifications, in order to provide a more affordable option to the Town.

From a purely fiscal perspective, it is anticipated that the Facility will result in a considerable increase in tax revenue over the current taxes paid on the Property, without adding any school children or requiring a significant increase in Town services. Furthermore, senior living facilities, particularly assisted living and memory care, are a low impact use with comparatively little traffic generation, noise, or outdoor activity. The Applicant has conducted a Traffic Impact Study, prepared by Maser Consulting, P.A., dated June 20, 2019, the initial draft of which is enclosed herewith as Exhibit A for the Board’s review.

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2 Details on the income-based qualifications will be worked out as Columbia moves forward in the approval process with the Town.
The Traffic Study concludes that, “[T]he proposed redevelopment of the site for the Hartsdale Assisted Living Facility is not expected to cause significant impact in overall traffic operations in the area.”

Assisted living facilities were only recently added as a permitted use in the R-20 District. The Zoning Ordinance was purposefully changed by the Town Board to allow this use in 2013. We reiterate that pursuant to the above-referenced case law from the New York Court of Appeals, the fact that assisted living facilities are permitted by Special Permit indicates that the Board has made a legislative finding that these facilities are in harmony with the zoning plan and will not adversely affect the neighborhood. We concur with this finding.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the project complies with the criteria for Special Permit approval and dimensional waivers set forth in the Zoning Ordinance. Therefore, the Applicant respectfully requests that this Board grant the requested approvals.

Dated: White Plains, New York  
July 8, 2019

Respectfully submitted,  
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EXHIBIT A