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When there is a discrepancy found within a Zoning Code, New York Courts consistently hold that terminology contained in a municipality's Zoning Code is to be strictly construed against the municipality and in favor of property owners when interpreting zoning provisions. "It is well settled that zoning codes, being in derogation of the common law, must be strictly construed against the enacting municipality and in favor of the property owner in accordance with their ordinary meaning." Mamaroneck Beach and Yacht Club, Inc. v. Zoning Board of Appeals of Village of Mamaroneck, 53 A.D.3d 494, 498 (2d Dep't 2008).

It is an established rule of construction that zoning legislation is to be strictly construed against the municipality seeking to enforce it. Ellington Construction Corp. v. Zoning Board of Appeals of the Village of New Hempstead, 77 N.Y.2d 114, 123 (1990). "Any ambiguity in the language used in such regulations must be resolved in favor of the property owner." Barkus v. Kern, 160 A.D.2d 694, 695 (2d Dep't 1990). See also, Allen v. Adami, 39 N.Y.2d 275, 277 (1976).

In this instance, the ambiguity at issue in the Code is that there are 2 distinctly separate base density requirements set forth in the code for multi-family uses in the HD-E Zoning sub-district. On Page 150, the code states that the allowable residential density is 1 unit per 1 acre but on Page 153 the code states that the density and bulk standard for multi-family uses in the HD-E sub-zone is a minimum of 3,000 square feet per unit. There is a significant divergence between these allowable densities creating a clear ambiguity in the Code as to which should be applied to the applicant's proposed multi-family project. As set forth above, the ambiguity created by this discrepancy must be resolved in favor of the Applicant and the 3,000 square feet minimum should have been utilized by the Building Inspector.

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By:_____
Andrew Brick, Esq.