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STATE OF NEW YORK : COUNTY OF ORANGE
TOWN OF NEWBURGH PLANNING BOARD

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In the Matter of

IL CENA COLA RESTAURANT
(2007-45)

228 South Plank Road
Section 60; Block 2; Lot 51
B Zone

----- X

CONCEPTUAL AMENDED SITE PLAN

Date: January 29, 2009
Time: 7:00 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

BOARD MEMBERS: JOHN P. EWASUTYN, Chairman
FRANK S. GALLI
CLIFFORD C. BROWNE
KENNETH MENNERICH
JOSEPH E. PROFACI

ALSO PRESENT: DINA HAINES
MICHAEL H. DONNELLY, ESQ.
BRYANT COCKS
PATRICK HINES
KAREN ARENT
GERALD CANFIELD
KENNETH WERSTED

APPLICANT'S REPRESENTATIVE: ANDREW HENNESSY

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MICHELLE L. CONERO
10 Westview Drive
Wallkill, New York 12589
(845)895-3018

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IL CENA COLA RESTAURANT

MS. HAINES: Good evening, ladies and gentlemen. I'd like to welcome you to the Town of Newburgh Planning Board meeting of January 29, 2009. At this time we'll call the meeting to order with a roll call vote starting with Frank Galli.

MR. GALLI: Present.

MR. BROWNE: Present.

MR. MENNERICH: Present.

MR. PROFACI: Here.

CHAIRMAN EWASUTYN: Present.

MS. HAINES: The Planning Board has experts that will provide advice to the Planning Board in reaching various SEQRA determinations. I'll ask that they introduce themselves.

MR. DONNELLY: Michael Donnelly, Planning Board Attorney.

MS. CONERO: Michelle Conero, Stenographer.

MR. CANFIELD: Jerry Canfield, Town of Newburgh.

MR. HINES: Pat Hines with McGoey, Hauser & Edsall, Consulting Engineers.

MR. COCKS: Bryant Cocks, Planning

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Consultant, Garling Associates.

MR. WERSTED: Ken Wersted, Creighton,
Manning Engineering, Traffic Consultant.

MS. HAINES: Thank you. At this time
I'll turn the meeting over to Joe Profaci.

(Pledge of Allegiance.)

MR. PROFACI: Please turn off your cell
phones. Thank you.

MS. HAINES: The first item on the
agenda tonight is Il Cena Cola Restaurant. It is
a conceptual amended site plan located on 228
South Plank Road, it is in a B Zone and being
represented by Andrew Hennessy.

MR. HENNESSY: Hi. Good evening,
everybody. My name is Andrew Hennessy, I'm with
A. Hennessy Architects.

Tonight before you we have, as you just
heard, a conceptual site plan for Il Cena Cola,
an addition to do a 300-seat catering hall. Here
tonight with me as part of our design team is Jim
Sonic from Sonic Design who handled the landscape
aspect of the project. My firm handled the
design of the building as well as the site. M.A.
Day Engineering is dealing with stormwater,

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utilities and grading. We had NLG Engineering doing site lighting.

The building is located at 228 South Plank Road, Route 52, west of Route 300 by approximately a quarter mile. It's located in the B Zone.

I'll switch over to the site plan. The site is approximately 2.9 acres. It currently houses an approximately 3,300 square foot restaurant. The site is served by municipal water and sewer as well as electric and gas. The existing building is a one-story restaurant, as I mentioned, that seats 92 people. The addition as it's currently planned has a first floor square footage of 4,743, the second floor is 8,267 for a total addition of 13,010 which brings the total building to 16,330. The construction is planned as a steel frame building. Exterior materials at this point are stucco, stone and a clay tile roofing material. The owner wishes to create a bit of a Mediterranean feel about this in keeping with his current restaurant as well as a theme for the catering facility.

The parking required by zoning is 1

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space per 4 seats. We're providing 1 space per 3.1 for a total of 126 spaces, 5 of which are handicap.

I'll just walk you through the site quickly. This is New York State Route 52. We created one main entrance and exit as well as a secondary exit further west on 52. Upon entering the site, for the catering facility you would go straight and under the building to a drop-off point that's underneath this skylight, and for the restaurant they would park over in this area. The restaurant entrance is going to remain where it is now.

There was one comment about encroaching on the front setback. It should be noted that the addition is, I believe, a total of 87 feet back from the property line. So it does not increase the degree of nonconformity, at least from what we can see, of the building. So there's the drop-off area here, then there's all parking back here and it loops back around. In case this parking is full, there's parking available on the other side.

As I said, the existing restaurant is

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currently right here. The addition is from this point towards the rear.

We have a garbage enclosure located here.

We are planning on a free-standing road sign near the entrance.

Let me see if I missed anything. There are wetlands on the property which have been flagged and they're delineated on the site. It basically runs down like this. We are not encroaching on the wetlands.

That's all I have for now, unless you would like me to walk you through the flood plain, otherwise I'll take questions or answer the consultants' comments I received.

CHAIRMAN EWASUTYN: Okay. Thank you, Mr. Hennessy.

We'll call on Jerry Canfield to discuss his comments. If it's okay with you, I think we should come to an understanding as far as the interpretation of the front yard setback and if you're increasing a nonconforming use because that would be something that would require sending you to the ZBA. Jerry and then Mike will

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chime in.

Jerry, please.

MR. CANFIELD: The big issue we were discussing is my opinion that yes, you are increasing the degree of nonconformity, and that's based on -- I'm looking at this as what's known as an existing, nonconforming building because the building does meet the use requirements for a B Zone but it's the compliance with the bulk use requirements for a restaurant.

Some of the comments you may have seen also, I'll just clarify that. I believe the bulk use requirements that you applied to the site were for a drinking and eating establishment. The planner and myself agree that we believe you should fall under a restaurant requirement which is the more stringent of the two. That's just for clarity. That's not an issue because you do comply with all the bulk use requirements for a restaurant with the exception of the front yard setback. There's an additional front yard setback requirement in our zoning code for being on a State highway, on Route 52, which is 50 feet. This type scenario in the past we have

1 viewed as increasing the degree of non-
2 conformity. This particular project could apply
3 twofold. One could be -- one application would
4 be the increase of the overall height of the
5 existing building in the front, okay. We're not
6 only looking at the linear footage of the front
7 of the building but we're also looking at the
8 vertical dimension as well. Looking at it that
9 you have -- just say for this example the
10 building is 40 feet long, you have 40 feet of
11 non-conformity, but if you increase the height of
12 it it increases the degree of nonconformity.
13 Another way, which is more true I would say for
14 the application of this project, is that the
15 existing footprint of the building is looked at.
16 The linear footprint of the building is X amount
17 of linear feet meeting the requirement. With the
18 addition you're increasing that linear footprint.
19 It's another way of looking at increasing the
20 degree of nonconformity. Like I said, in the
21 past we've had similar scenarios like this, all
22 of which went to the Zoning Board. We've also
23 sent this scenario in the past to the Zoning
24 Board for interpretation which in all cases the
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Zoning Board has agreed and felt that yes, the project is increasing the degree of nonconformity. So that's our position on that particular issue.

MR. HENNESSY: I understand the verticality. I'm not sure about the perimeter because the additional perimeter is well beyond the setback.

MR. DONNELLY: They've taken the position that the nonconformity can increase. A wall that might be 10 feet from a line that now extends further down longitudinally, although it's not getting closer than 10 feet, increases the degree of nonconformity. Height, mass, volume, and Jerry is also adding the, which is part of mass and volume, or at least mass, the footprint of the building changing. It's a consistent line of decisions. The Zoning Board has talked about that.

MR. HENNESSY: I'm just trying to understand, you know, what you're saying. In other towns normally if I added a floor in the front section; yes, we would be increasing the nonconformity. Basically what we're doing is

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remodeling the front here and the addition starts well back beyond. I've never come up against that. Obviously all towns are different.

MR. DONNELLY: Obviously you'll have the opportunity to make your argument to the Zoning Board. I think the feeling is that given their line of cases it would be safe to send it for interpretation, and, if necessary, for the granting of the relief.

CHAIRMAN EWASUTYN: As you said in your presentation, you're looking to design this with a Mediterranean concept in mind, and now that helps us understand we have a question about the height of the stonewall. We're going to assume that's part of the Mediterranean look, that you want a five or six-foot high wall as compared to a four-foot wall.

There's one other point we need help on and that's the flood plain and some questions as relates to the elevations and what you may have to do, Jerry will explain that, with the current restaurant.

Jerry.

MR. CANFIELD: We've also looked at the

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new flood plain manuals that have been released.

MR. HENNESSY: When did those come out,
by the way?

MR. CANFIELD: July of `08. They've
been out. They were approved in July of `08.
We're looking at panel number 139 of 360.

MR. HENNESSY: We came to your office
and picked up --

MR. CANFIELD: It appears this is in a
flood zone which will greatly impact the
construction.

MR. HENNESSY: We were aware that there
was a flood zone here. These new maps expand on
it greatly, obviously.

MR. HINES: We're finding that in a lot
of locations on the new maps.

MR. HENNESSY: From Pat's initial
comments the first go around you mentioned a
flood plain at the rear of the property.
Obviously this map now shows it's basically into
52. A little bit of a change.

MR. CANFIELD: It's an issue that must
be addressed. What we're asking is that you
delineate it on this site.

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MR. HENNESSY: I'll have the surveyor key it on the survey and then we'll have to deal with elevations on the first floor and making those flood proof.

MR. DONNELLY: What you'll also need to look into is whether or not it requires on this expansion a changing of the first floor elevation of the existing building as well. I'm not saying it does but I've seen other circumstances where that causes that to happen as well, which would be very difficult for you.

MR. HENNESSY: Extremely difficult, yes.

CHAIRMAN EWASUTYN: How much of a recommendation, how much of a direction do you feel you may need at this time, not actually hearing from everyone but having received your review to have a sense of direction where you're going? What the Board was considering, would it benefit you to sit down with everyone at a work session and come up with a punch list as to what you need to accomplish so that you could evaluate the project and move in that direction?

MR. HENNESSY: If that's what you're

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suggesting, then sure.

CHAIRMAN EWASUTYN: We're not suggesting that we would design the project for you.

MR. HENNESSY: I understand.

CHAIRMAN EWASUTYN: Again there's some unknowns that have come up from when you were last before us that are important, and for your time and for the money, for the benefit of your client.

MR. HENNESSY: Which ever way will obviously get us to the finish line the quickest, and that sounds like coordinating might be the way to go.

CHAIRMAN EWASUTYN: Would the Board like to move in that direction?

MR. GALLI: I think he has a big issue with this flood plain. If it takes a meeting together to point him in the right direction, go through the punch list, I don't have a problem with that.

CHAIRMAN EWASUTYN: Cliff Browne?

MR. BROWNE: If it's going to help expediency and the whole thing, yeah. I don't

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want to hold up things.

CHAIRMAN EWASUTYN: Ken Mennerich?

MR. MENNERICH: That's okay.

CHAIRMAN EWASUTYN: Joe Profaci?

MR. PROFACI: Yes.

CHAIRMAN EWASUTYN: Bryant, when do you have a scheduled -- I think you just missed it this week.

MR. COCKS: We just had one, so the one in February would be the 24th.

CHAIRMAN EWASUTYN: That would be you would have to wait until that time because that's when it's scheduled.

MR. HENNESSY: So we're talking a month. Okay.

CHAIRMAN EWASUTYN: We have no control of what you may want to do in the interim as far as getting together as a group.

I would move for a motion from the Board to set this up for the next consultants' work session which is the 24th of February.

MR. GALLI: So moved.

MR. PROFACI: Second.

CHAIRMAN EWASUTYN: I have a motion by

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Frank Galli. I have a second by Joe Profaci.
I'll move for a roll call vote starting with
Frank Galli.

MR. GALLI: Aye.

MR. BROWNE: Aye.

MR. MENNERICH: Aye.

MR. PROFACI: Aye.

CHAIRMAN EWASUTYN: Myself yes. So
carried.

MR. HENNESSY: Okay. Any other
comments in general about the layout of the site?
I mean I know this flood plain is a big issue.
Most of the other comments were towards the minor
side as far as traffic flow and things of that
nature.

CHAIRMAN EWASUTYN: Let's take
advantage of the time for Ken Wersted who was
concerned about -- you mentioned earlier how
you're going to have -- Ken will be in and out of
the project, and the DOT.

Ken, the entry and the exit.

MR. WERSTED: There were a couple of
main issues that I had. One was just the access
from Route 52 into the site. The curb radii

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might seem a bit small to accommodate a box truck.

MR. HENNESSY: We took your recommendation. Actually this plan shows a larger radius.

MR. WERSTED: That will be part of DOT's review as well. You'll need a permit from them and they'll go through the process, the site plan review relative to the driveway accesses and --

MR. HENNESSY: Do you think we're at a point to submit to them now? I didn't want to submit to DOT obviously until I got a read from everyone on the new layout since this layout is new from what you've seen before.

MR. WERSTED: I don't think they would entertain, obviously, getting a highway work permit at this point. They may give you feedback in terms of the access points and the curb radii and so forth, and help you obviously be able to come back when you are ready for a highway work permit and maybe expedite the process if it's per their regulations and so forth.

The other issue that we had was the

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lobby clearance with the drive-through. The center of it appears high enough but as the archway curves down towards the sides there is the potential for linens and so forth, if they move to one side or the other it might clip the edge of that.

MR. HENNESSY: Right. The spring point was at 12 feet. We took a look at that and we can trace to 13 1/2 to 14 for a spring point. That ought to take care of it I would think.

MR. WERSTED: The last issue revolved around the parking. We know the parking currently is providing 1 space per 2.2 seats and it will increase to 1 parking space per 3.1 seats. I did two different calculations on the site. One was based on the number of seating proposed, the other was based on the square footage. I think the number I used for the square footage was around 15,000 and change. Those calculations resulted in an estimate of 170 parking spaces being in demand.

MR. HENNESSY: You took the square footage of the entire building?

MR. WERSTED: Of the entire building,

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the restaurant and the --

MR. HENNESSY: In a catering facility, though, that really doesn't apply. The way it works is the lowest level has a lounge/bar. When a group comes in they go into the bar. An hour later they go upstairs to the reception hall. It's not as if you have 300 downstairs, 300 upstairs.

MR. HENNESSY: Taking the square foot number on a building like this doesn't really relate directly. It's not like office space.

MR. WERSTED: Okay.

MR. HENNESSY: So I don't know if that's a fair way to do it.

MR. WERSTED: Okay. That's a valid point.

MR. HENNESSY: Seat count I think is best. We can have occupancy signs on the building of no more than 300. Square footage -- the square footage is luxurious compared to other places but we're still going to limit the number of people in the building to 300.

MR. WERSTED: That's a fair point, and I can look at those numbers and see how that

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changed.

MR. DONNELLY: Board, remember you do have the authority, when a specific item is not in the listed uses, to use the ITE manual and the advice of your traffic consultant to fix the appropriate parking. When you get further recommendations from Ken you may be able to do that.

CHAIRMAN EWASUTYN: As an example, Walgreen's.

MR. DONNELLY: Yes.

MR. WERSTED: We can look at that issue further, the overall point being the adequacy of the site to handle the parking and what appears to be the lack of potential for overflow parking in case there is a larger parking demand than expected. I think that is what I'm trying to get a handle on, and I think the Planning Board is trying to get a handle on. Is 126 parking spaces going to be adequate? That was the point of that comment.

MR. HENNESSY: I believe zoning is 1 to 4; correct? Zoning is 1 to 4. Your study is showing about 1 to 2; right?

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MR. WERSTED: Yeah. Between 1 space per 2.3 seats or 1.4 seats based on a potentially higher intense use than what would actually happen here.

MR. HENNESSY: Like I said, I don't think you're going to see those kinds of numbers. Well I know you're not going to see those kinds of numbers.

MR. WERSTED: The concern there is, and we've experienced this in the past, there are times that the Town zoning code may require more parking. In the last case it required more parking than we felt was actually going to be needed, so in that case the Town considered allowing a reduced amount of parking because we had other studies that said you're not going to need that much parking. In this case the Town code is saying you need a smaller amount of parking. We have another study that might be saying you need more parking than that. So we're trying to resolve those two aspects.

MR. HENNESSY: I understand. Okay.

MR. BROWNE: Another question.

CHAIRMAN EWASUTYN: Cliff Browne.

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MR. BROWNE: With the catering facility you're going to have some cueing at the drop-off point. Has that been looked at to see if it's adequate for how many cars backing up or whatever coming off 52?

MR. WERSTED: It hasn't been looked at in detail. The width of the drop-off area being one way, there's a potential to cue cars side by side in the lobby area. It really depends on if there's going to be valet service during some events or if people will be dropping off a few people from their car and then self parking themselves.

MR. BROWNE: When I look at the layout I'm not seeing an easy way to get in except for that one entrance and it would be backed up. I realize it would only be a temporary time. It's still a back up to Route 52.

MR. HENNESSY: We are 24 feet the whole way through here even though it's one way. So it's two lanes of traffic. From this end back to where it would start to cause a problem we're looking at well over 100 feet. I don't have a scale here. Probably something around 120, 140

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feet.

MR. BROWNE: You probably should have some plan to see what that looks like.

MR. HENNESSY: Sure. We can provide a map or something.

MR. BROWNE: Something. I know a lot of places where there's cueing issues it's bad enough. When you cue out onto 52, that's not too good.

MR. HENNESSY: That wouldn't be good for anybody.

CHAIRMAN EWASUTYN: Ken, are you satisfied with your presentation?

MR. WERSTED: Yes, I am.

CHAIRMAN EWASUTYN: Bryant, do you want to add anything at this point that hasn't been discussed?

MR. COCKS: We had a couple comments just in the narrative and architectural drawings, and now from what you said the square footages of the expansion are all different. If you can just --

MR. HENNESSY: I'll coordinate that for you.

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MR. COCKS: -- clean that up.

MR. HENNESSY: Sure.

MR. COCKS: Can you submit a revised EAF showing whatever changes for the plan using --

MR. HENNESSY: Regarding the flood plain.

MR. COCKS: We are asking -- there's stonewalls that are up on the top of the site. Are those going to be used for landscaping?

MR. HENNESSY: The current stonewalls?

MR. COCKS: I think there's some stonewalls up on the top section there that are labeled to be removed.

MR. HENNESSY: There's a stonewall currently that runs here along the current parking lot.

MR. COCKS: Down there, then the top -- the very top seven parking spaces by the --

MR. HENNESSY: Right here?

MR. COCKS: Yeah.

MR. HENNESSY: No. That's slated to come out as well. That's not on the property line. It's actually in about 15 feet.

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MR. COCKS: We were just asking, you know, if those can be used for landscaping around the building instead of just being wasted. We try to save the stonewalls in Newburgh, so we're asking for that.

MR. HENNESSY: Yeah.

MR. COCKS: With the next submission if you could just do a signage plan. I know there's going to be an increase of the signage on the interior of the site. On the previous submission, on the wall I guess you guys had a placard. I didn't see that on the wall this time so I didn't know how you guys were going to indicate so people know where to turn. Next time just submit that.

The lighting fixtures are listed at 20 feet and the Town of Newburgh design guidelines would like more of a pedestrian scale.

MR. HENNESSY: I was a little confused by that. It gives 10 to 15 for pedestrian lighting and up to 20 for parking lots it says.

MR. COCKS: Those are large, big box, commercial sites where they didn't want to have, you know, a ton of lights going. For a site like

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this we would like to see 15, 16 feet. If you could try to drop down that fixture.

Other than that, I think everything has been discussed.

CHAIRMAN EWASUTYN: Comments from Board Members. Frank Galli?

MR. GALLI: When this plan goes to the local fire department there might be an issue with -- I know you widened up the driveways for the fire trucks and DOT and things like that. You might get a comment on the actual front drive-through here in the actual front of the building.

MR. HENNESSY: I think that was on Jerry's list.

MR. GALLI: Making that a fire lane?

MR. HENNESSY: Yeah. Right now that driving lane I believe is -- yeah, it's 17 feet wide. We have a 4-foot strip of planting along the building. Obviously we could take that. We prefer not to because the building is going to look a lot better with some planting along there.

MR. GALLI: Which is fine. You're talking about the parking close up in the front

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IL CENA COLA RESTAURANT

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part. Any kind of parking at all along the front part, they might want to make that strictly into a fire lane.

MR. HENNESSY: You're saying with no parking at all?

MR. GALLI: Just something to consider if you want to.

MR. HENNESSY: I know Jerry was saying he wanted to see 20 feet through there was your comment.

MR. CANFIELD: That's per the fire code.

MR. HENNESSY: Per the fire code?

MR. CANFIELD: Yeah.

MR. HENNESSY: So that's a given. There's nothing against having those parking spots adjacent?

MR. CANFIELD: Not in this scenario. If you had a fire hydrant in there it would be something different. You have the 9 spaces there.

With respect to what Frank is saying, in light of what Ken is saying, these parking calculations may fluctuate which may be able to

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IL CENA COLA RESTAURANT

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impact or help the scenario. Future submissions or future -- at the work session perhaps that can be discussed.

MR. HENNESSY: All right.

MR. CANFIELD: A suggestion.

MR. GALLI: That's all I have, John.

CHAIRMAN EWASUTYN: Cliff Browne?

MR. BROWNE: Nothing more.

CHAIRMAN EWASUTYN: Ken Mennerich?

MR. MENNERICH: The generator that's shown on here, is that like an emergency generator?

MR. HENNESSY: Yes. A back-up generator. I know Karen made a comment about moving it to I believe this inside corner here. The issue with that is the generator is required to be at least 10 feet from the building. We can't just -- I would like to shove it in the corner to tell you the truth, but we can't. It is out where it is. It's in this location. This is the service entrance, delivery, garbage comes out. Everything comes in and out of this side of the building. The electric service is going to come in and be housed in a room here. That's why

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IL CENA COLA RESTAURANT

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it was a good spot to locate the generator. We figured we would screen it off as best we can, which I think the landscape plan indicates.

CHAIRMAN EWASUTYN: Joe Profaci?

MR. PROFACI: Nothing right now, John.

CHAIRMAN EWASUTYN: My only question is should you or are you -- do you see a need to accommodate for limo parking?

MR. HENNESSY: We discussed that with the owner. Normally what happens is the limos come, they drop off at the beginning of the reception and leave. Most people don't pay to have a limo sit for four or five hours. We don't really think it's an issue. They could always leave the site and come back. They don't need to be parked there if there's no parking.

CHAIRMAN EWASUTYN: They could park in your lot on the weekends.

MR. PROFACI: For a fee.

CHAIRMAN EWASUTYN: If you don't think there's a need for it. I'm not familiar with that.

Okay. We have a motion that you'll be meeting on the 27th --

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IL CENA COLA RESTAURANT

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MR. COCKS: The 24th.

CHAIRMAN EWASUTYN: -- 24th of February for a work session to go over the major points to be addressed.

MR. HENNESSY: Okay. I assume we're back before you after that for the conceptual approval. Is that the plan?

CHAIRMAN EWASUTYN: I may not be able to grant conceptual approval if you have to go to the ZBA. If it's necessary to go to the ZBA you'll have to first go to the ZBA. Once we understand the flood plain issues and we define those, then the Board would be in a position to grant conceptual approval. If that doesn't match up and the --

MR. GALLI: John, is there any way he could talk to the secretary of the Zoning Board between now and the 24th maybe to get a jump on it in case he does have to go to the ZBA or is it going to be an issue with what they decide at the workshop meeting whether or not he has to go to the Zoning Board?

MR. DONNELLY: There's a SEQRA implication. Somebody has to be the lead agency.

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IL CENA COLA RESTAURANT

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You won't be able to act until that's resolved.
The interpretation piece I think is a Type II.
That could be considered by the Zoning Board
without closing out SEQRA. If things are going
to change as a result of the flood plain
issue, --

MR. GALLI: That's true.

MR. DONNELLY: -- that's the part that
seems to be driving this. I'm not trying to say
it's going to be bad news but I think it's going
to cause you some difficult problems.

MR. GALLI: I'm sorry. The site plan
might change.

MR. HENNESSY: Okay.

CHAIRMAN EWASUTYN: Ken?

MR. MENNERICH: Pat had comments
relative to the subsurface stormwater storage and
I heard your comment that the flood plain comes
all the way out to 52 on the new maps. I'm just
wondering is that going to be a problem?

MR. HINES: Yes I guess is the answer.
I have some technical comments on that system. I
know their engineer has them and he's working on
that. It would be helpful when you come to the

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IL CENA COLA RESTAURANT

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work session that the flood plain elevations can be shown on the plans so I'll have better information to talk about at that work session. If you have that information, even prior to the work session on the 24th, if you can get it to me sooner rather than later.

MR. HENNESSY: Okay.

Thank you all. Good night.

(Time noted: 7:32 p.m.)

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C E R T I F I C A T I O N

I, Michelle Conero, a Shorthand Reporter and Notary Public within and for the State of New York, do hereby certify that I recorded stenographically the proceedings herein at the time and place noted in the heading hereof, and that the foregoing is an accurate and complete transcript of same to the best of my knowledge and belief.

DATED: February 10, 2009

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STATE OF NEW YORK : COUNTY OF ORANGE
TOWN OF NEWBURGH PLANNING BOARD

----- X
In the Matter of

ROUTE 9W SHELL
(2008-22)

NYS Route 9W & North Plank Road
Section 84; Block 1; Lot 1.2
B Zone

----- X

CONCEPTUAL SITE PLAN

Date: January 29, 2009
Time: 7:33 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

BOARD MEMBERS: JOHN P. EWASUTYN, Chairman
FRANK S. GALLI
CLIFFORD C. BROWNE
KENNETH MENNERICH
JOSEPH E. PROFACI

ALSO PRESENT: DINA HAINES
MICHAEL H. DONNELLY, ESQ.
BRYANT COCKS
PATRICK HINES
KAREN ARENT
GERALD CANFIELD
KENNETH WERSTED

APPLICANT'S REPRESENTATIVE: CHARLES BROWN

----- X

MICHELLE L. CONERO
10 Westview Drive
Wallkill, New York 12589
(845)895-3018

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ROUTE 9W SHELL

MS. HAINES: The next item we have tonight is Route 9W Shell. It's a conceptual site plan located on Route 9W and North Plank Road. It's in a B Zone and being represented by Charlie Brown.

MR. BROWN: Good evening. Since our last submission we've totally reworked this plan. We took out the drive-through, made the building slightly larger, rearranged the parking and provided the stormwater basin. We have pretty much entirely new plans. We're here for the first round review from the consultants and input from the Planning Board.

CHAIRMAN EWASUTYN: Charlie, just bring us along. We'll open up with this in mind. You went to the ZBA --

MR. BROWN: No, we did not.

CHAIRMAN EWASUTYN: You never went to the ZBA?

MR. BROWN: No. The last plan we had before, we had a drive-through and my client brought his attorney and we went back and forth between the Planning Board attorney and whatever and he decided to scrap that. We have not gone

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ROUTE 9W SHELL

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before the ZBA.

CHAIRMAN EWASUTYN: Just talking for myself, the issue of the front yard setback where the canopy is is still an issue.

MR. BROWN: We would still need to go to the ZBA for that. Correct.

CHAIRMAN EWASUTYN: So what you're really bringing forward tonight one more time is you no longer have the drive-through?

MR. BROWN: Right.

CHAIRMAN EWASUTYN: Does someone want to pick it up from here, our consultants? Jerry?

MR. CANFIELD: Yeah. The latest submission it appears still has the bulk use requirements in its application dimensions to the old plan. I just ask that the new dimensions for this proposal be included in the bulk use requirement block.

Again, per my September 15th comments, this building is required to have a sprinkler system installed.

MR. BROWN: Understood.

MR. CANFIELD: I'm not certain which side of 9W the main is on but it may be an issue

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ROUTE 9W SHELL

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for you if it's not on your side.

Also in my September 15th comments I raised the question and I don't recollect how it was resolved, our tax maps show that this is two separate parcels. I don't understand if that was left they were to be consolidated or --

MR. BROWN: We would have no problem consolidating those. I'll instruct my client to do that.

MR. CANFIELD: Okay. That's all I have.

CHAIRMAN EWASUTYN: I think Mike Fogarty sooner or later would want that. We had that recently in the case of Walgreen's and the bank where we inadvertently forgot there needed to be --

MR. DONNELLY: I have it in my notes on this one for the resolution. Hopefully I won't forget that.

CHAIRMAN EWASUTYN: I think we all forgot.

MR. BROWN: We should do that as soon as possible?

MR. DONNELLY: No. You could even do

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ROUTE 9W SHELL

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it as a condition of the approval. If you want to do it now, sure.

MR. BROWN: In this case it would serve no other purpose. There's really nothing they can do with them independently.

CHAIRMAN EWASUTYN: Pat Hines, Drainage Consultant.

MR. HINES: I have some comments on the stormwater facility. There's grading that encroaches into the Town right-of-way. You need to modify that or talk that over with Daryl Benedict and Jim Osborne.

Just noting that you're also grading into the DOT right-of-way on the exit ramp on the side there and the pipes are extending into there, so when you go for your DOT approvals that will need to be addressed.

This needs the note for construction stakeout because the rear of the building is at the rear yard setback.

Water and sewer services need to be shown.

I had a reference to Jerry. He just weighed in that it will be sprinklered, so we

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need the standard layout where the potable water and sprinkler system are shut off.

There's some comments on the detention pond. I noted that the inlet pipes in are lower than the outlet pipe which would cause the system to be surcharged for -- I guess all the time. So you need to take a look at that.

The hundred-year storm elevations look like they're going to flow out of the catch basins. You should take a look at that in your report.

MR. BROWN: Everything was located in '99 but I'll make sure. I'll look at those.

MR. HINES: Take a look at those.

Any existing utilities in the roadway should be shown.

You're modifying that pipe. Just to make sure there's no utility conflicts in the road there.

That's all we have.

CHAIRMAN EWASUTYN: Bryant Cocks, Planning Consultant.

MR. COCKS: My main issue is the site is not in conformance with the Town of Newburgh

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design guidelines. The building is currently tucked in the back of the site. The parking is going to be visible from the roadway, and the canopy is up in front and also would require a variance. The Planning Board is going to need to discuss it. Since this is at the intersection of the site it's going to be hard to screen the parking, but you should discuss whether this can stay not in conformance with the design guidelines.

My next comment was you need to show the details for handicap parking, no left turn and a stop sign and do not enter sign. Those are not labeled on the plans at this time.

We're also going to need to see the signage plan with the ARB submission when you get back from the ZBA, and a revised EAF showing the changes to the site including square footages.

Other than that, Jerry discussed the fire code and I think Ken will discuss some of the truck turning movements on the site.

CHAIRMAN EWASUTYN: Ken Wersted, Traffic Consultant.

MR. WERSTED: Last time we requested

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that the fuel tank and fueling facilities be shown. They're shown currently in front of the proposed convenience store, which I believe is where they're located now.

MR. BROWN: Those are existing and will remain.

MR. WERSTED: With them remaining the fuel delivery truck will have to pull in to that area somehow and off load fuel into the underground storage tanks. We'd like to see how a truck is just going to circulate on site. Currently it looks like they can turn right in the main entrance and pull straight up to where the garbage dumpster location is now.

MR. BROWN: They actually pull in and then back in is what they're doing now. They end up blocking that particular entrance. That's what they do now. We will have to show that on the plan. You're right.

MR. WERSTED: We'd like to see how they're going to maneuver around the site. I ran a turning template around a couple different ways and it looks like it has some options.

The second issue is the two entrances

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on Route 9W. The previous client has shown the entrances, one of them being closed and the other one I think remaining, similar size being I think about twenty-five feet. The current plan shows the first entrance as you're heading southbound increasing to twenty-seven and the second entrance to 9W remaining open.

MR. BROWN: It's decreased from what's there existing, though.

MR. WERSTED: Okay.

MR. BROWN: We did shrink it down. I can bring that back to twenty-five. That will be an entrance only, though.

MR. WERSTED: I know we had mentioned that in our previous -- whether it's twenty-five or twenty-seven feet existing or proposed, it's still a wide driveway that can accommodate two-way traffic coming in and out. I know Bryant commented on where the do not enter signs are. Those are not labeled, so that might help us figure out what the operation is there. Just having the driveway that wide encourages people to, you know, be able to pull out of there. DOT has standard right-turn in only driveways.

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Whether that would be able to accommodate the fuel truck deliveries is a question. So the size of that driveway in hand with how trucks are going to get in needs to be looked at. The basic comment being that's a very wide driveway, can that be narrowed down. The second driveway to 9W previously that was shown being closed off, I feel that should still be closed off.

MR. BROWN: We don't have a problem closing that off. Either way. Right now, again, we're, you know, discussing this with the DOT and we'll wait for some feedback from them. They're looking for some SEQRA determination, or at least a lead agency determination from the Planning Board before they'll delve too deep into it. A lot of what happens in this is going to be affected by what we do with the intersection, and we're going to be taking some direction from them on that.

MR. DONNELLY: I believe this is a Type II action. It's under 4,000 square feet; right?

MR. BROWN: Right.

MR. DONNELLY: So there's no lead agency or further SEQRA compliance required.

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ROUTE 9W SHELL

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MR. BROWN: Okay. Okay. Thank you.

MR. WERSTED: So with that being said, there were also improvements proposed previously for gaining access from North Plank Road to the signalized intersection, and the traffic study to follow and so forth we'll review at that time.

MR. BROWN: We'll have that presented to you as soon as it's available.

MR. WERSTED: Thank you.

CHAIRMAN EWASUTYN: We heard from everyone; correct?

I thought I read something -- did you have discussion with the ZBA at all in reference to the sign?

MR. BROWN: Anything that my client has done with respect to the sign and the ZBA has been without any input from me. I've had nothing -- no involvement in that whatsoever.

CHAIRMAN EWASUTYN: Okay. There was discussion. There were two meetings with the ZBA to discuss the sign; correct?

MR. BROWN: I don't know. Again, I've had no involvement with that. I haven't been carbon copied on any of that.

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ROUTE 9W SHELL

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CHAIRMAN EWASUTYN: I think my understanding in reading it is you went to the ZBA -- Jerry, why don't you bring me along on this.

MR. CANFIELD: John, you're correct.

CHAIRMAN EWASUTYN: I think it would benefit us I think at any time -- I think it would benefit you --

MR. BROWN: Yeah.

CHAIRMAN EWASUTYN: -- to know what your client is doing so if you're asked a question --

MR. BROWN: Right.

CHAIRMAN EWASUTYN: -- you're saying I don't know but I'm saying to myself I'm not dealing with the right person, why don't you go home and send me someone who I can talk with. I mean that sincerely.

MR. BROWN: I appreciate that.

CHAIRMAN EWASUTYN: That's just how we work. We're here to discuss things, we're here to take action. To say I don't know anything --

MR. BROWN: I don't like saying that.

CHAIRMAN EWASUTYN: You're a

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ROUTE 9W SHELL

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professional. Thank you.

MR. CANFIELD: The applicant did go before the ZBA on the signage, or the sign, and the question was the diffusion of the LED sign. The Zoning Board did take an action that they disapproved the application.

MR. BROWN: Really?

MR. CANFIELD: Essentially the sign that's on site is in violation, --

MR. BROWN: Interesting.

MR. CANFIELD: -- as well as there's a few other locations for a similar type sign.

MR. GALLI: Jerry, also on this site they had that huge sign in the background.

MR. BROWN: It's still there. The Exxon sign.

MR. GALLI: Did they rule on that at the same time?

MR. CANFIELD: No, they did not. The only application before them was the diffusion of this existing LED sign.

MR. GALLI: It has to go back to being non-lit?

MR. CANFIELD: I'm not familiar with

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ROUTE 9W SHELL

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that, Frank. If that sign exceeds the height requirement, then I would say yes.

MR. GALLI: No. I mean the one that's lit, that has to go back to being --

MR. BROWN: The Shell sign?

MR. CANFIELD: Correct. Yes.

MR. GALLI: They have to go back to being non-lit because none of them have? I didn't know the ruling of the Zoning Board. I see they're all still lit in the Town.

MR. CANFIELD: Currently they're all involved in an enforcement action because basically the Zoning Board did take an action that they did not approve the application, so they're in violation.

MR. GALLI: Okay.

CHAIRMAN EWASUTYN: I'm not -- I just happen to -- you got copies of that which I read.

MS. HAINES: Right. Everyone got a copy.

CHAIRMAN EWASUTYN: Do we refer you to the ZBA now for a front yard variance as relates to the canopy?

MR. BROWN: The canopy -- actually,

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ROUTE 9W SHELL

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depending on the sixty versus the forty foot for the front yard, how that reads on State highways based upon adjoining buildings I meet the 40 for the building but not the sixty. If that's a ZBA decision, the sixty versus the forty on State highways, I would need to go there for that also.

CHAIRMAN EWASUTYN: Mike, can you advise us?

MR. DONNELLY: You can send it for both and let them characterize it. What Bryant was pointing out to you, and it may still create a need for a variance, is if they are not going to come into compliance with the design guidelines you're going to have to make findings as to why they need not, and because that could result in everything being reconfigured in a way that would require different variances, you may want to reach that issue first.

MR. BROWN: Good point.

CHAIRMAN EWASUTYN: Looking at the existing site the way it is now, and the proximity to two other gas stations, it may not be in keeping with the design guidelines. As unusual as this statement may be, it's sort of

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compatible with the existing neighborhood as it relates to that type of use. I don't know how the Board wants to look at the design guideline standards and its proximity to everything that surrounds it, but if the Board is willing to accept it as being reasonable with what's existing, then we just have the two variances that Mike had discussed. I'll take a minute for discussion with the Board Members.

MR. GALLI: I think it's reasonable for the site, and also I think it's a chance to upgrade and improve the site in that particular part of the Town.

MR. BROWN: And the traffic in that area, too.

MR. GALLI: Right. So I think it's a plus in the area of the Town without that much of an impact on the zoning guideline.

CHAIRMAN EWASUTYN: Cliff Browne?

MR. BROWNE: If we were to push the design guidelines what would that end up doing to the plan?

MR. HINES: I don't think you're building on that lot.

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MR. BROWNE: It wouldn't really impact it?

CHAIRMAN EWASUTYN: I think it really would be impractical.

MR. BROWNE: Okay.

CHAIRMAN EWASUTYN: Ken Mennerich?

MR. MENNERICH: I don't think we need to push the point on this particular one because of the nature of the other businesses in the area and the fact that visually as you're driving on 9W I don't think it's going to be a big impact.

CHAIRMAN EWASUTYN: Joe Profaci?

MR. PROFACI: I agree.

MR. BROWNE: I would just caution we make sure that the verbiage is such that what we're doing here does not set a precedent for the next guy that comes down the line.

MR. DONNELLY: I'll make sure I get you the draft language and the resolution ahead of time, but I did take notes as everyone was speaking. I think in view of that, a polling of the Members of the Board, it would be appropriate now to refer this to the Zoning Board. It's a Type II so you don't need to comply with SEQRA.

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ROUTE 9W SHELL

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I take it the referral would be for a front yard variance for the canopy and possibly for the building.

Is that what you're saying, Charlie?

MR. BROWN: Correct.

CHAIRMAN EWASUTYN: Once you have that approval we can make a -- we can conceptually approve it.

While we have the opportunity, and I know Phil Grealy is here, can you bring us along with the traffic improvements, please?

MR. GREALY: Phillip Grealy, John Collins Engineers. I think at our last meeting we had discussed the modifications to North Plank Road and the signal upgrades which my client would be doing. We had initial input from DOT, positive. We're waiting for some final comments back on that.

Essentially we would have to replace the signal system that's there. There's road work. Those changes would allow us to make the modifications to the driveways on 9W.

Since the plan has changed we have to update our traffic numbers because we don't have

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ROUTE 9W SHELL

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the drive-through anymore, so we'll be doing that. We did want to come to this meeting to listen to the comments about the plan.

One question I guess that would be helpful, there was discussion -- on the southerly driveway on 9W, there was discussion about closure on that, possible closure. I think Ken reiterated tonight his opinion was that that be closed as opposed to be made for right turns out only. I guess if that's the position of the Board, that would be helpful in terms of us, you know, going back to the DOT. That's one less thing they have to think about.

CHAIRMAN EWASUTYN: If that's the recommendation from our Traffic Consultant, I'll poll the Board Members.

MR. GREALY: Because their initial comment was that they wanted it to be tightened up -- this is the DOT, I'm sorry, in their conceptual review, tighten this up similar to what you and your consultants said, so that people couldn't make that left, and also to possibly tighten this up so that people couldn't have the opportunity to make a left turn out. At

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ROUTE 9W SHELL

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that point they had not said definitely close it but that was an option that was discussed also, to close it off. So it would be helpful because it's one less thing they have to think about. If the Board feels strongly that it should be closed, we have to convince our client to do that, and so I think it would be worthwhile to discuss.

CHAIRMAN EWASUTYN: Ken Wersted, can we hear from you one more time and your recommendation and advice to the Planning Board in reference to the southerly access?

MR. WERSTED: Given the proximity of it to the signalized intersection, and that section just in the southbound direction is four lanes, it could offer the opportunity for someone to turn right out of there and attempt to cross over one to two lanes to get into the left-turn lane. I think that would be better served by coming out to North Plank Road and going straight across. With that I would recommend the closure of that driveway.

CHAIRMAN EWASUTYN: The southerly driveway on 9W?

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ROUTE 9W SHELL

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MR. WERSTED: Correct.

CHAIRMAN EWASUTYN: Okay. I'll move for a motion -- I'll poll the Board Members for discussion on the closing of the access on the southerly drive for the Exxon gas, right now Shell station.

MR. GALLI: Just to refresh my memory, are they going to try to line up North Plank Road?

MR. GREALY: Actually let me pull this plan out. This I think would be helpful.

MR. GALLI: I thought that's what the original plan was.

MR. GREALY: The original plan, which is still part of the proposal, is that we would be widening on North Plank Road on the Sunoco side to get two lanes. We would be taking out the median that's on North Plank next to our site, making that two lanes, and that necessitated replacing the traffic signal system, and then -- as well as some work on the northbound approach so that we could actually get someone to make a left turn, and that would accommodate the restrictions at the existing

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ROUTE 9W SHELL

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driveways.

CHAIRMAN EWASUTYN: Ken Mennerich?

MR. MENNERICH: Phil, could you explain how traffic coming out of the Shell station onto North Plank Road, what directions they'll be able to go?

MR. GREALY: Okay. The proposal would be that traffic would be right turns in. They could come across North Plank to access the site this way or from the south on 9W and in. When they would leave the site, all exiting traffic would have to come out to the traffic light if this is closed. Right now this would allow people to make a right turn out, but if that did get closed, which is what we're discussing now, then all exiting traffic would come out to the light, they would be able to make a right turn and then this widening here and taking out that median and the modifications of the traffic signal would allow the left and the through. So all the exiting movements would be under the signal control. That's one of the benefits of the plan.

MR. BROWNE: You would have signage on

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the top, the first entrance, no exit?

MR. GREALY: Yeah. At this point here it would be right turns in only. There would be a no left-turn sign on the opposite side of the street as well as here, and then there would be one ways and do not enter signs for anyone that let's say came out and was looking to go out that way, it would be do not enters.

We discussed a little bit about narrowing down the driveway, whether it's twenty-five, twenty-seven feet. We had looked at accommodating the delivery vehicle. It definitely will be narrower than it is today. It's like forty, almost forty-five feet I think existing.

CHAIRMAN EWASUTYN: Ken Mennerich?

MR. MENNERICH: Yeah, I agree.

CHAIRMAN EWASUTYN: Joe Profaci?

MR. PROFACI: It makes sense.

MR. GREALY: So we're going to push to get that closed all together.

CHAIRMAN EWASUTYN: I'll make a suggestion the Board will have Ken Wersted prepare a letter from the Planning Board --

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ROUTE 9W SHELL

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MR. GREALY: Yes.

CHAIRMAN EWASUTYN: -- that you could then have to take to the DOT --

MR. GREALY: Great.

CHAIRMAN EWASUTYN: -- so there will be a matter of record.

MR. GREALY: If you could in that letter just indicate in association with the changes to make this a full access intersection because it's dependent on that. We can't close that if we can't get that. And as I said, the initial indication from them is that that's acceptable. Thank you.

CHAIRMAN EWASUTYN: Thank you for coming.

Do you want to discuss the ZBA variance one more time with us, Mike?

MR. DONNELLY: I would write a letter for you referring it for a front yard, canopy and possible building setback variance.

MR. BROWN: Okay.

CHAIRMAN EWASUTYN: Thank you. Good luck. I didn't mean to be harsh.

MR. BROWN: I appreciate it.

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CHAIRMAN EWASUTYN: I had read about
it. It wasn't complete in my mind.

MR. BROWN: I was truly unaware of it.
I'll take it up with the owner. Thank you.

(Time noted: 7:56 p.m.)

C E R T I F I C A T I O N

I, Michelle Conero, a Shorthand
Reporter and Notary Public within and for
the State of New York, do hereby certify
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knowledge and belief.

DATED: February 9, 2009

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STATE OF NEW YORK : COUNTY OF ORANGE
TOWN OF NEWBURGH PLANNING BOARD

----- X
In the Matter of

TERRIZZI SUBDIVISION
(2006-48)

Request for an Extension of Preliminary Approval

----- X

BOARD BUSINESS

Date: January 29, 2009
Time: 7:57 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

BOARD MEMBERS: JOHN P. EWASUTYN, Chairman
FRANK S. GALLI
CLIFFORD C. BROWNE
KENNETH MENNERICH
JOSEPH E. PROFACI

ALSO PRESENT: DINA HAINES
MICHAEL H. DONNELLY, ESQ.
BRYANT COCKS
PATRICK HINES
KAREN ARENT
GERALD CANFIELD
KENNETH WERSTED

----- X

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TERRIZZI SUBDIVISION

MS. HAINES: Board business. The first thing we have is the Terrizzi subdivision. We received a letter from John Nosek on January 15, '09 requesting an extension of their preliminary approval. The current approval does expire on February 17, 2009. With an extension the approval will be valid through August 16, 2009.

CHAIRMAN EWASUTYN: I'll move for a motion to grant the preliminary extension for the Terrizzi subdivision.

MR. GALLI: So moved.

MR. MENNERICH: Second.

CHAIRMAN EWASUTYN: I have a motion by Frank Galli. I have a second by Ken Mennerich. Any discussion of the motion?

(No response.)

CHAIRMAN EWASUTYN: I'll move for a roll call vote starting with Frank Galli.

MR. GALLI: Aye.

MR. BROWNE: Aye.

MR. MENNERICH: Aye.

MR. PROFACI: Aye.

CHAIRMAN EWASUTYN: Myself yes. So carried.

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TERRIZZI SUBDIVISION

(Time noted: 7:59 p.m.)

C E R T I F I C A T I O N

I, Michelle Conero, a Shorthand Reporter and Notary Public within and for the State of New York, do hereby certify that I recorded stenographically the proceedings herein at the time and place noted in the heading hereof, and that the foregoing is an accurate and complete transcript of same to the best of my knowledge and belief.

DATED: February 9, 2009

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STATE OF NEW YORK : COUNTY OF ORANGE
TOWN OF NEWBURGH PLANNING BOARD

----- X
In the Matter of

MOUNTAIN VIEW SUBDIVISION
(2008-04)

Request for Status of the Board's Consideration
For Final Approval

----- X

BOARD BUSINESS

Date: January 29, 2009
Time: 7:59 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

BOARD MEMBERS: JOHN P. EWASUTYN, Chairman
FRANK S. GALLI
CLIFFORD C. BROWNE
KENNETH MENNERICH
JOSEPH E. PROFACI

ALSO PRESENT: DINA HAINES
MICHAEL H. DONNELLY, ESQ.
BRYANT COCKS
PATRICK HINES
KAREN ARENT
GERALD CANFIELD
KENNETH WERSTED

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MOUNTAIN VIEW SUBDIVISION

MS. HAINES: The next item we have is Mountain View Subdivision. We received a letter from Daniel Bloom dated January 6, 2009 and he's requesting the status of the Board's consideration for final approval of the subdivision.

MR. DONNELLY: As you did in Golden Vista when that site plan final approval came to its end, the two years plus one, and that applicant asked you -- offered to surrender that final approval and return to preliminary status, you granted it. That went on and we recently reissued final approval. This applicant is asking for the same thing here. So you have a precedent, you had done this in the past. You've done it more frequently for subdivisions but you've done it for site plans as well.

My recommendation would be that you accept the surrender and reissue the preliminary, that you give it a duration something like six months, which would take it to -- I think your meeting in July, if I look correctly, is July 23rd.

MR. HINES: You're one ahead. You're

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ahead of us one. We're on Mountain View.

MR. DONNELLY: I'm sorry. I'll say it again later.

Mountain View, I have no idea what's going on. I don't know of any conditions --

CHAIRMAN EWASUTYN: That's why I asked Dina to e-mail you.

Did you e-mail Michael?

MS. HAINES: Yes, I did.

CHAIRMAN EWASUTYN: What happened was we received a letter on January 6, 2009, and it's from the office of Bloom & Bloom, and it goes re: Application for subdivision approval, Mountain View Subdivision, with some project number, west side of Mountain View Road, it gives a section, block and lot number and Daniel Bloom is referencing his file number. It's addressed to me. He said under cover of October 29, 2008 I transmitted a copy of a recent survey of above-referenced client's premises which indicated an apparent overlap regarding the subject subdivision map. May I request that you be good enough to advise as to the status of your Board's consideration of final subdivision approval for

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this premise s.

When I originally received the letter from Dan Bloom discussing the overlap, which we all received a copy of, I Faxed a copy to Andrew Featherston who represents the applicant, and when I then received this letter I sent a copy on to Andrew Featherston again and Andrew stated over the phone that his client said that whatever transparent overlaps there are, that his client is willing to give that property, which he's in a position to do, but he's not going to argue the point and it would go back to -- Catherine Crawford can have that property. That was the conversation.

What I'm hoping to do, Mike, is somehow acknowledge this letter. I don't know what your foundation would be riding on except what I'm saying to you now.

The applicant at one time when they came before us was looking to complete this subdivision and move forward as far as a major subdivision, I believe it was nine lots or so. After looking at the cost associated with a major subdivision he then said maybe what I may want to

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do is go for a minor subdivision. In discussing that point with Andrew Featherston, he's still waiting to hear back from the applicant as to what direction they want to move in.

MR. DONNELLY: As long as this overlap encroachment doesn't create any nonconformity if we look at the smaller lot taking the militarized zone out of the equation, then I don't think we need to solve the problem, but I think there should be a notation of the overlap and possible encroachment area. If they're willing to change it, that could be done as part of the subdivision review process by cutting off this lip and solving the problem. So it's really back in their court. As long as we're sure it doesn't create any nonconformity, we can approve it with the overlap, but what a perfect opportunity this is to solve the problem anyway.

CHAIRMAN EWASUTYN: I would like to, one way or another, acknowledge Dan Bloom with a letter from you so it's not an open end that we just disregard.

MR. DONNELLY: You want me to write back to him saying we appreciate him bringing

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this to our attention, that we would -- you know, it would be wonderful if they could solve the problem with the cooperation of the adjoining owner, but if not the Board could move forward with review of the project. The Board would prefer you solving the problem if you can.

CHAIRMAN EWASUTYN: We haven't taken any action on it.

MR. DONNELLY: No. The preliminary approval was granted on July 3, 2008. By its terms it really lasts six months although it doesn't automatically die. We could take the opportunity to say, if you wish, since it's coming up, you know, the Planning Board also extended your preliminary approval through say July 23rd of this year since that's your second meeting. I know he hasn't asked for it but in the context of his letter he clearly wants it to continue.

CHAIRMAN EWASUTYN: This is Bloom's letter.

MR. DONNELLY: Right.

MR. MENNERICH: He's representing --

MR. DONNELLY: He's representing the

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MOUNTAIN VIEW SUBDIVISION

adjoining land owner. So we shouldn't. Maybe we should notify the applicant that their preliminary approval is coming near the end and send him one of those letters that tells him he's got to do something.

CHAIRMAN EWASUTYN: That Dina will do. If you could address Bloom's letter on behalf of the Planning Board.

MR. COCKS: Mike, I actually went through and checked all the conditions. If you want --

MR. DONNELLY: The status of them. Sure.

(Time noted: 8:05 p.m.)

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C E R T I F I C A T I O N

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DATED: February 9, 2009

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STATE OF NEW YORK : COUNTY OF ORANGE
TOWN OF NEWBURGH PLANNING BOARD

----- X
In the Matter of

GARDNER RIDGE
(2002-29)

Request to Withdraw Final Site Plan Approval
and Revert back to Preliminary Site Plan Approval

----- X

BOARD BUSINESS

Date: January 29, 2009
Time: 8:05 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

BOARD MEMBERS: JOHN P. EWASUTYN, Chairman
FRANK S. GALLI
CLIFFORD C. BROWNE
KENNETH MENNERICH
JOSEPH E. PROFACI

ALSO PRESENT: DINA HAINES
MICHAEL H. DONNELLY, ESQ.
BRYANT COCKS
PATRICK HINES
KAREN ARENT
GERALD CANFIELD
KENNETH WERSTED

----- X

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GARDNER RIDGE

MS. HAINES: The next one on Board business is Gardner Ridge. We received a letter from Tony Ciallella dated January 8, 2009 and they're requesting to withdraw their final site plan approval and revert it back to preliminary.

MR. DONNELLY: Without repeating everything I said before, you've done this before. The applicant did a market conditions. They're offering to surrender the conditional final approval and return to preliminary status.

I would suggest if you grant that that you fix a date for the preliminary -- actually, this is site plan so it's got a two-year duration. You don't need to fix a date.

CHAIRMAN EWASUTYN: So then I would move for a motion that we acknowledge the Gardner Ridge letter requesting the withdrawal of the final site plan approval and revert this back to a preliminary site plan approval for Gardner Ridge.

MR. MENNERICH: So moved.

MR. GALLI: Second.

CHAIRMAN EWASUTYN: I have a motion by Ken Mennerich. I have a second by Frank Galli.

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GARDNER RIDGE

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Any discussion of the motion?

(No response.)

CHAIRMAN EWASUTYN: I'll move for a
roll call vote starting with Frank Galli.

MR. GALLI: Aye.

MR. BROWNE: Aye.

MR. MENNERICH: Aye.

MR. PROFACI: Aye.

CHAIRMAN EWASUTYN: Myself yes. So
carried.

Dina, do you have, for lack of a better
term, a form letter that you'll send out that the
Board approved this?

MS. HAINES: Yes.

CHAIRMAN EWASUTYN: Do you have a
letter?

MS. HAINES: Yes.

CHAIRMAN EWASUTYN: I would like for
you to do that.

(Time noted: 8:07 p.m.)

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C E R T I F I C A T I O N

I, Michelle Conero, a Shorthand Reporter and Notary Public within and for the State of New York, do hereby certify that I recorded stenographically the proceedings herein at the time and place noted in the heading hereof, and that the foregoing is an accurate and complete transcript of same to the best of my knowledge and belief.

DATED: February 9, 2009

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STATE OF NEW YORK : COUNTY OF ORANGE
TOWN OF NEWBURGH PLANNING BOARD

----- X
In the Matter of

Discussion by Michael Donnelly, Esq.

Pending Litigation - The Marketplace
(2004-54)

----- X

BOARD BUSINESS

Date: January 29, 2009
Time: 8:08 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

BOARD MEMBERS: JOHN P. EWASUTYN, Chairman
FRANK S. GALLI
CLIFFORD C. BROWNE
KENNETH MENNERICH
JOSEPH E. PROFACI

ALSO PRESENT: DINA HAINES
MICHAEL H. DONNELLY, ESQ.
BRYANT COCKS
PATRICK HINES
KAREN ARENT
GERALD CANFIELD
KENNETH WERSTED

----- X

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THE MARKETPLACE

MS. HAINES: The next item on Board business is Michael Donnelly discussing fair share contributions for traffic improvements.

CHAIRMAN EWASUTYN: I think we discussed it at the work session.

MS. HAINES: Okay. Then the discussion by Mike Donnelly regarding the pending litigation of The Marketplace.

MR. DONNELLY: As you know, we've had three lawsuits involving The Marketplace project. The first of those is completed with finality. It was handled in both the Supreme Court trial level and the Appellate Division level. The Courts at both levels upheld your position in which you ruled that you didn't have the power or jurisdiction to authorize a trespass on the lands of The Marketplace by the adjoining property owners' experts for the purpose of conducting environmental studies.

The second lawsuit challenged the SEQRA FEIS and Findings Statement. That lawsuit was recently decided in your favor by the trial judge. The new is that the SOS and the Newburgh Mall challengers have filed a notice of appeal in

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which they've notified everyone that they intend to appeal that case to the Appellate Division. That would mean that they would have to perfect that appeal, which means filing the record and briefs within a six-month time period.

The third lawsuit challenged the subdivision approval that you granted. That has not yet been decided by the trial court. I anticipate that in all likelihood it will in the relatively near future. That was a more abbreviated lawsuit than the first two.

The second lawsuit took the judge a great deal of time until he decided it, but I think this one is a little bit more straightforward. The challengers don't have to perfect their appeal, and if they don't, at the end of six months it's subject to dismissal, but they have the right to do so within that six-month time period.

If anything further happens I'll notify you.

CHAIRMAN EWASUTYN: Any questions from the Board Members? Frank?

MR. GALLI: No.

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THE MARKETPLACE

CHAIRMAN EWASUTYN: Cliff?

MS. HAINES: I just want to let everybody know that Cliff can not make it to next week's meeting so we will need everybody.

Also, you're going to be late on the 19th; right?

MR. BROWNE: Yes.

MS. HAINES: You will make it, though?

MR. BROWNE: I should be here unless the plane crashes.

MS. HAINES: One last reminder, next week's meeting, the work session is going to start at 5:30, not 5:00, because we only have one thing on.

That's it.

CHAIRMAN EWASUTYN: All right. Thank you all.

I'll move for a motion to close the Planning Board meeting of the 29th of January.

MR. GALLI: So moved.

MR. PROFACI: Second.

CHAIRMAN EWASUTYN: I have a motion by Frank Galli. I have a second by Joe Profaci. I'll ask for a roll call vote starting with Frank

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THE MARKETPLACE

Galli.

MR. GALLI: Aye.

MR. BROWNE: Aye.

MR. MENNERICH: Aye.

MR. PROFACI: Aye.

CHAIRMAN EWASUTYN: And myself. So
carried.

(Time noted: 8:11 p.m.)

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C E R T I F I C A T I O N

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DATED: February 10, 2009