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

----- X

In the Matter of

PROPOSED PHARMACY AND BANK DEVELOPMENT  
(2006-57)

North Plank Road and Noel Drive  
Section 77; Block 2; Lot 5  
B Zone

----- X

AMENDED RESOLUTION

Date: February 4, 2010  
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  
KENNETH MENNERICH  
JOSEPH E. PROFACI  
JOHN A. WARD

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

APPLICANT'S REPRESENTATIVE: TIM O'BRIEN

----- X

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

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MR. PROFACI: Good evening, ladies and gentlemen. Welcome to the Town of Newburgh Planning Board meeting of February 4, 2010.

At this time I'll call the meeting to order with a roll call starting with Frank Galli

MR. GALLI: Present.

MR. MENNERICH: Present.

MR. PROFACI: Here.

MR. WARD: Present

CHAIRMAN EWASUTYN: Present.

MR. PROFACI: The Planning Board has professional experts that provide reviews and input on the business before us, including SEQRA determinations as well as code and planning details. I ask them to 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,

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Hauser & Edsall, Consulting Engineers.

MR. COCKS: Bryant Cocks, Planning Consultant, Garling Associates.

MS. ARENT: Karen Arent, Landscape Architectural Consultant.

MR. PROFACI: Thank you. At this time I'll turn the meeting over to John Ward.

MR. WARD: At this time please stand to say the Pledge of Allegiance.

(Pledge of Allegiance.)

MR. WARD: If you have any cell phones, please turn them off. Thank you.

MR. PROFACI: The first item on this evening's agenda is the proposed pharmacy and bank development. It's an amended resolution. It's on North Plank Road and Noel Drive, Section 77; Block 2; Lots 3 and 5 in the B Zone represented by Tim O'Brien.

MR. O'BRIEN: We've made a request to the Planning Board. The off-site improvements could not be completed in time due to the winter conditions. As a formal resolution of the Planning Board those improvements were supposed to be completed prior to a CO being issued. We

1  
2 ask that a resolution be passed so that we can  
3 get our CO and those improvements can be  
4 completed in the spring.

5 CHAIRMAN EWASUTYN: Pat Hines, you had  
6 an opportunity to speak with Jim Osborne.

7 MR. HINES: I did. Jim Osborne and the  
8 applicant's representative, Tim, have worked out  
9 a list of -- punch item list of issues that need  
10 to be completed. They've identified the cost for  
11 those. There is sufficient security already  
12 posted to more than put those improvements in  
13 place. Jim Osborne was okay with the concept of  
14 it. It's more of a seasonal issue. They  
15 couldn't do the work now if they wanted to  
16 because of the asphalt plants being closed.

17 A substantial amount of the off-site  
18 improvements were done. The drainage, a large  
19 portion of it, has been completed. The roadway  
20 was reconstructed and moved but it was dug up on  
21 several occasions for various utility work.

22 It's Jim's idea that it have an overlay  
23 put over it so it looks in the new condition that  
24 it was supposed to look.

25 All those items have been identified

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PROPOSED PHARMACY & BANK DEVELOPMENT

and adequate securities are in place.

CHAIRMAN EWASUTYN: Jerry Canfield,  
Code Compliance, do you have anything to add?

MR. CANFIELD: I spoke today with  
Zibbie Zacharia of the DOT and she conveyed she  
had no problems with the site, and she was okay  
with the issuance of the C of O.

CHAIRMAN EWASUTYN: Comments from Board  
Members. Frank Galli?

MR. GALLI: No additional.

CHAIRMAN EWASUTYN: Ken Mennerich?

MR. MENNERICH: No questions.

CHAIRMAN EWASUTYN: Joe Profaci?

MR. PROFACI: Nothing.

CHAIRMAN EWASUTYN: John Ward?

MR. WARD: Nothing additional.

CHAIRMAN EWASUTYN: Bryant, do you have  
anything to add at this time?

MR. COCKS: I have nothing.

CHAIRMAN EWASUTYN: I'll turn to Mike  
Donnelly, our Attorney.

MR. DONNELLY: I think you should vote  
on a motion to authorize -- I don't think we need  
to have any formal resolution, unless Jim Osborne

1  
2 feels that one is necessary. As to authorize the  
3 bonding or the acceptance of the existing  
4 financial security for improvements that your  
5 resolution originally dictated were to be  
6 absolutely completed before CO.

7 CHAIRMAN EWASUTYN: Having heard the  
8 comments from Mike Donnelly, Planning Board  
9 Attorney, I'll move for a motion to approve the  
10 issuing of a certificate of occupancy based upon  
11 the fact that there's security in place to  
12 satisfy the outstanding field improvements that  
13 cannot be accomplished at this time because of  
14 weather conditions.

15 MR. GALLI: So moved.

16 MR. WARD: Second.

17 CHAIRMAN EWASUTYN: I have a motion by  
18 Frank Galli. I have a second by John Ward. Any  
19 discussion of the motion?

20 (No response.)

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

23 MR. GALLI: Aye.

24 MR. MENNERICH: Aye.

25 MR. PROFACI: Aye.

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PROPOSED PHARMACY & BANK DEVELOPMENT

MR. WARD: Aye.

CHAIRMAN EWASUTYN: And myself. So  
carried.

MR. O'BRIEN: Thank you very much.

(Time noted: 7:05 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.

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DATED: February 20, 2010

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

----- X

In the Matter of

SANTA MONICA HOLDINGS  
(2010-03)

5266 Route 9W  
Section 20; Block 2; Lot 30.21  
AR Zone

----- X

CONCEPTUAL SITE PLAN

Date: February 4, 2010  
Time: 7:05 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, NY 12550

BOARD MEMBERS: JOHN P. EWASUTYN, Chairman  
FRANK S. GALLI  
KENNETH MENNERICH  
JOSEPH E. PROFACI  
JOHN A. WARD

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

APPLICANT'S REPRESENTATIVE: BRETT LINN and  
JOSEPH MINUTA

----- X

MICHELLE L. CONERO  
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SANTA MONICA HOLDINGS

MR. PROFACI: The next item on this evening's agenda is Santa Monica Holdings at 5266 Route 9W, Section 20; Block 2; Lot 30.21 in the B Zone. It's a conceptual site plan and it's being represented by Joseph Minuta.

MR. LINN: My name is Brett Linn and I'm appearing for Richard Schisano.

MR. MINUTA: Good evening. Joseph Minuta representing the project, Santa Monica Holdings. We're here before you tonight for a first blush at the project. We've gone through and redesigned the site.

The plans are to take the existing building that's in front and remodel that, change that into a different use, such as a retail space and what have you, take the existing use and move it to the back portion of the site and provide a brand new building. The use will be consistent with what it is now.

We had provided some site planning measures, the E.A.F. We've taken a look at the site for various items to illustrate the site.

We have one, two, three curb cuts on Route 9W. Those are all going -- plan to be

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remained. There are existing openings on DeVito Drive. This section will be closed off, this will be narrowed.

The building has been oriented in a solar orientation for maximation of solar gain.

We have provided a landscape area in front which is a pedestrian walk path to get to the building with a portico on top. I know there were some question in the past with regard to heights. We are at a 14-foot height which is planned for this building which would accommodate any sort of vehicle underneath that.

We also have a width total of 22 foot 11. That is from walk to walk. There was some confusion I guess in some of the comments that there is no center island. What that is is a paver area for decoration.

The dumpster location is situated between the buildings here, to the rear of this building and to this building. That has been enclosed in a split face concrete CMU block wall with bollards and metal gates. Those colors will be congruous with the new building.

Let's see here. There's some

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pedestrian paths running through.

We also have a stormwater retention area on the side.

Unfortunately our engineers are not here tonight but they have received the comments and they are working on them.

We have met with the Orange County Department of Health with regard to the flow rates for this project. They were in concurrence with the flow rates that we had used. We are also in the process of getting a letter of acceptance of their concurrence.

The site has been looked at from an environmental standpoint. We've had Klein Felder out to the site, they delineated the wetlands. We're not within any of that range. There's various details which I'm sure you've seen.

I am open to any questions.

CHAIRMAN EWASUTYN: Okay. Let's start with Jerry Canfield, Code Compliance. Jerry.

MR. CANFIELD: Joe clarified the portico underneath. I think I heard you say it was 14 feet in height.

MR. MINUTA: 14 feet to the underside

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SANTA MONICA HOLDINGS

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of the clearance.

MR. CANFIELD: To the underside clearance. It has 22-foot drive aisle through unobstructed?

MR. MINUTA: It's 22'10" -- 22'11" unobstructed. We can go a little wider if needed.

MR. CANFIELD: Okay. That complies with the requirement. The overall building height is less than 30 so the drive aisle minimum width is 20 feet, which complies.

The question I had, Joe, is where the hydrant is located, that's a one-way lane that's restricted to, I believe it's 13 feet.

MR. MINUTA: This is 13 foot 3 here. It's looped all the way around the site with a full 24 foot and change clearance.

MR. CANFIELD: You may want to look at that. The requirement near a hydrant is a 26 foot width.

MR. MINUTA: Okay.

MR. CANFIELD: Because of its proximity to that location it may comply but you may want to look at that again.

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MR. MINUTA: We will do that.

MR. CANFIELD: Pat had picked up, and I'm sure he'll elaborate on it, you display a 6-inch line servicing the hydrant and going into the building which you've acknowledged the sprinkler requirement which is good. In the past we've requested when there's a hydrant on a main it be a minimum of 8 inches, and that would better facilitate fire flow.

MR. MINUTA: Will do. Thank you.

CHAIRMAN EWASUTYN: Pat Hines, Drainage Consultant?

MR. HINES: The first of the comments are general DOT approval will be required for the additional use on the site. I don't know whether they're going to let you keep all three curb cuts. That will be up to you to work out with them.

A County Planning referral is required.

We have some comments on the stormwater management plan and report that were submitted. I know the applicant's representative will address those.

We commented on the septic system. The

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design of the septic system utilized a flow rate for stadium seating of five gallons a day a seat. I would be interested to hear the County's take on that.

MR. MINUTA: They actually provided that to us in the field.

MR. HINES: We're requesting that you do get County approval for the septic system because the flows on the combined site are identified as being greater than 1,000 a day. The SPDES requirements have to look at the site as a whole, not the individual uses.

Jerry Canfield's comments on the six-inch water main.

The site improvements seem to be all on the north portion of the site.

It appears that you're looking to leave the gravel parking on the south end of the site. I think this is an opportunity, while the Board reviews this, to clean up the site and get the whole site in order. We're looking to have you take a look at the entire site.

The Board does not allow currently gravel parking for commercial uses, so take a

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look at redeveloping the whole site.

The traffic flow pattern, I know you have Ken Wersted's comments on the traffic flow. He had suggestions on the redesign. Take a look at that.

That's all we have so far.

CHAIRMAN EWASUTYN: Okay. Thank you.

Bryant Cocks, Planning Consultant?

MR. COCKS: My first comment was regarding the use of the site. You're stating that this is going to be a gentlemen's club and steakhouse.

MR. MINUTA: Yes.

MR. COCKS: In the bulk table it's listed as an eating and drinking establishment.

MR. MINUTA: That was the closest we could find within the regulations.

MR. COCKS: They do have a restaurant in there. I think the steakhouse portion would be -- it changes a couple of the bulk requirements, but you meet them anyway so that really wouldn't be a problem.

The gentlemen's club use is not listed in the B zone or in any zone in the Town of

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SANTA MONICA HOLDINGS

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Newburgh. I believe that that is going to need to be referred to the Zoning Board for a use interpretation.

MR. LINN: May I address that?

CHAIRMAN EWASUTYN: Let him finish. He has the table now so he's giving his reviews.

MR. LINN: I apologize.

MR. COCKS: There was also a front yard variance granted for the project in the summer of 2006.

Since there's going to be an additional building, even though the existing building isn't going to be removed I think that's going to need to be revisited when you go to the ZBA.

MR. MINUTA: I'm sorry. You said the existing building is going to be removed?

MR. COCKS: I said even though the existing building isn't going to be removed. I think because the front yard variance was granted in 2006, the ZBA will have to look at it, if the new building would affect it, because the whole site is being affected if you would lose that front yard variance or not.

MR. MINUTA: Okay.



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MR. COCKS: The second comment was regarding the Town of Newburgh design guidelines. They reference facing the buildings towards the street and putting the parking in back. Especially with the proposed use on the site, I was wondering if you guys thought about moving that building closer to the existing building and putting a larger parking lot in back, and if there's any reason why you didn't want to do that.

MR. MINUTA: Actually there is. The existing site as it's situated now, the topography of the site is well suited for the building where it's located. Placing this in the front is going to be an encumbrance on that and create some issues with traffic flow and parking. We'll also be able to garner a substantial amount of landscape area in the front of the building by placing it in this direction, not to mention what I earlier stated about the solar orientation.

MR. COCKS: Since that is part of the design guidelines, the Planning Board would have to discuss that and actually waive that portion

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of the design guidelines. That will be something that will be addressed later on.

The bulk table also didn't have any parking calculations in it. We're going to need to see parking calculations.

There were some details that needed to be added to the detail sheet including the three-foot high stonewall that's in front and the wooden fence that's in front.

We're also going to need curbing details.

Pat discussed the DOT needing to approve the three entrances.

We're going to need a copy of the wetland delineation and whatever letter your consultant had regarding the threatened and endangered species. It was in the E.A.F.?

MR. MINUTA: In the submittal package we gave you there was a bound copy from Chazen with a blue binding on it. That had all that information on it.

MR. COCKS: The engineering report?

MR. MINUTA: I believe so.

MR. COCKS: Okay. I'll take a look to

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see.

We're going to need a signed and sealed survey sheet.

Jerry Canfield did say you had the drive aisle widths. That's been addressed.

Karen will discuss the architectural drawings.

We're going to need to see materials and color detailed.

The dumpster enclosure is also going to need detail for the colors and also the bollards.

You guys stated that there is a lighting plan in the plan set but that wasn't included. If you could just include that with a foot candle diagram and also detail the type of lights and the height.

MR. MINUTA: Just to confirm, we had planned the site for 18 foot tall heights which I believe is 2 foot below the design guidelines.

MR. COCKS: For a commercial, yes. We do like to see around 16 feet, depending on how many more fixtures. We'll just take a look at that.

MR. MINUTA: Thank you.

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MR. COCKS: Just for the approvals, the E.A.F., the DOT, the Town of Newburgh highway department for the entrance on DeVito Drive, the Town of Newburgh ZBA and also the Health Department should be added.

MR. MINUTA: Just to confirm, we have to go to DOT for the reason of?

MR. COCKS: The entrances.

MR. MINUTA: Which are existing. In other words, we're not making any changes to --

MR. COCKS: You're improving it, though.

MR. MINUTA: I'm sorry?

MR. COCKS: When you improve from --

MR. HINES: Yeah. They're going to look at it for a change of use, and also you have utility connections in their right-of-way so you'll need a permit for utilities.

MR. COCKS: Pat just looked and said that that letter regarding the threatened and endangered species wasn't in there.

MR. MINUTA: Okay.

CHAIRMAN EWASUTYN: Karen Arent, Landscape Architect?

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MS. ARENT: Parking is shown very close to the road and it's proposed to be -- it's shown very close to both roads and it's shown to be screened with a stonewall. In the past the DOT was concerned about stonewalls being close to the road and blocking sight lines, so that's something the DOT will have to approve. If the stonewall is not allowed, the parking will be pretty much very visible from Route 9W as well as DeVito Drive.

MR. MINUTA: We tried to work with that, Karen, by providing a stonewall, and we did provide the sight lines that are required for DOT. That may be a non-issue.

MS. ARENT: It was an issue on another project even though it was located quite a distance back from the road.

MR. MINUTA: Thank you.

MS. ARENT: That's something we -- that's something that I think is going to be for you to make sure that the stonewall is allowed so if the parking remains as is it will be adequately screened. Also, the parking in the front doesn't conform with the Town of Newburgh

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design guidelines as Bryant discussed.

Details of the stonewall must be provided.

Lighting fixtures and locations must be shown.

I also noticed that the stonewalls, the stone in front of the existing building, it's not called out on the plan. Are you planning to put up the stonewall across the front of the --

MR. MINUTA: That is being seen from the roadway. It's just a vantage point that we put that image in our modeling program.

MS. ARENT: It could be coming down on Route 9W.

MR. MINUTA: Correct.

MS. ARENT: I mean north. I'm sorry. Driving north on 9W. So the stonewall should run all the way across the front of the existing building.

MR. MINUTA: It will run up to the curb cut and then there were further portions down to the south of this site that we're planning on using fencing because the stonewall --

MS. ARENT: Then this has to be

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revised, this drawing.

MR. MINUTA: I'll make a note of that and make whatever adjustments are needed.

MS. ARENT: The rendering on your new building shows like a red lighted roof.

MR. MINUTA: Mm'hm'.

MS. ARENT: Is that planned? Are you planning on doing special lighting around the building?

MR. MINUTA: Well, we're planning on doing some lighting for the building, some architectural lighting just to illuminate it as you see in the images. The color, I think the color is actually reflected --

MS. ARENT: I was wondering.

MR. MINUTA: -- with the red sky. If you're opposed to the color of lighting --

MS. ARENT: No. The Planning Board needs to know exactly what's going on so they can make an educated decision about what this is going to look like at night. There is concern about the neighbors. So if there's going to be lighting on the building, just describe it and list it.

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MR. MINUTA: We'll provide you the details, yes. The intent is really to use just a white light.

MS. ARENT: When you get to it we'll need a rendering of the sign.

MR. MINUTA: Yes.

MS. ARENT: From the existing building this is a nice improvement --

MR. MINUTA: Thank you.

MS. ARENT: -- over what exists.

And another thing you will have to address is where the mechanical units for the proposed building will be and how they'll be screened.

And then I have a bunch of landscaping comments. Basically you have the comments. The landscaping is very sparse. There's large areas of black mulch. This rendering doesn't accurately portray the proposed landscaping. That's something that should, if this landscaping will remain, at least the rendering should portray exactly what it's going to look like. We need more big shade trees in the parking lots. I'm sure you're aware of the green building --



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MR. MINUTA: Yes.

MS. ARENT: -- requirements to shade the asphalt. All trees you're proposing are low growing and they don't develop big canopies, so they don't provide shading the asphalt. Change a lot of the smaller trees to street trees.

MR. MINUTA: Just so I understand, your reflectance in heat gain of the parking lot in accordance with the green standards, is that what you're referencing?

MS. ARENT: Yes. As well as Town of Newburgh standards for parking lot -- to provide one shade tree in the parking lot for every eight spaces.

MR. MINUTA: Okay.

MS. ARENT: As well as street trees along DeVito Drive and 9W.

MR. MINUTA: Mm'hm'.

MS. ARENT: There are some things with the landscaping that -- there are some plants that are marginally hardy, to consider using another plant. There's a tree that has thorns that grow -- that are at eye level. You want to --

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MR. MINUTA: We actually are changing that.

MS. ARENT: Okay. You want to reconsider that.

And we spoke about the Hostas. They're not compatible.

More screening should be planted, evergreen screening, near the existing wooded area.

MR. MINUTA: I have a question on that if I may. I don't know if you've been to the site but the site is lush with woods beyond. There's so much there I don't even know that we can enhance that more than it already is. I'm certainly open to any comments you have for additional trees.

MS. ARENT: I'll look again. I believe it would behoove you to put a few evergreens so that when there's lights at night, sometimes light travels more than the view of the structure itself and the parking. So it might make sense to add a few more evergreen trees in the street area. Then you have the rest of my comments.

MR. MINUTA: Yes. Thank you.

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CHAIRMAN EWASUTYN: Comments from  
Boards Members. Frank Galli?

MR. GALLI: Joe, on the flow  
acceptance, you contacted the County. Did you  
tell them it was a restaurant or did you tell  
them it was a bar?

MR. MINUTA: No. They were fully aware  
of the use. I did not meet with them personally.  
The engineers in Chazen did. Chris Viebrock I  
believe met with them in the field. They  
discussed the use, they discussed the property  
and the appropriate flow rates.

MR. GALLI: I would just be curious  
hearing from Chazen then. If it's a steakhouse,  
when I hear steakhouse I think of a restaurant.  
Schlesinger's or whatever. A steakhouse. A  
restaurant, I don't think that's the flow detail  
they would give you. That's low.

MR. HINES: For stadium seating. Yeah.  
Your sports stadium and the design flow.

MR. GALLI: Is a sports stadium a  
restaurant?

MR. HINES: No.

MR. MINUTA: I'll check in to see if

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that was a carryover from maybe something else that they did as far as the notation, or are you specifically quoting the flow rate itself?

MR. HINES: They use the flow rate in the design calculations identified as sports stadium. A Giant's stadium type use.

MR. MINUTA: It may be part of their program. I will check into it.

MR. HINES: I would be interested why they went to the County. They identified the flow as less than 1,000 gallons in their calculation, which would mean it would get locally reviewed using that 996 gallons a day. It seems like they got ahead of themselves.

MR. MINUTA: We wanted to see where our threshold was because of the site.

MR. GALLI: But it's a restaurant. Anyway, we'll get that answer.

The second thing is I don't think DOT is going to let you have three entrances on 9W, but we'll see how that comes back also. Really that's all I had.

CHAIRMAN EWASUTYN: Thank you. Ken Mennerich?

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MR. MENNERICH: Joe, on the new building is there going to be windows in it?

MR. MINUTA: Yes, there are windows. They are portrayed -- if I may approach. The windows are in these locations here. So it's within the architecture of the building. There are not a lot of windows but they are in accordance with standards.

MR. MENNERICH: Could you go into a little more detail about the solar orientation of the building?

MR. MINUTA: Absolutely. Orientation of a building in a north, south, west, east direction, the maximum exposure you want to the south because you're going to gain your maximum amount of heat through that. It helps with thermal compliance and things of that nature. It's basically -- I think Karen can attest to the green aspect in solar orientation. That's primarily the position we chose. When we looked at the site we saw the site and the area we had now, the site comes up, slopes up here greatly. This really allowed -- the site really spoke to us as to the orientation of the building.

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MR. MENNERICH: Are there windows on the other sides of the building other than just the front?

MR. MINUTA: I don't believe that we're planning on that, no.

MR. MENNERICH: I guess I lost the impact of what the solar orientation is doing then to the building.

MR. MINUTA: It's thermal heat mass. When you have a mass wall -- the windows have nothing had to do with the solar, it's the building itself. When you're heating the building and heating a large surface, that is taking in that heat.

MR. MENNERICH: I disagree with you to some extent. Usually you think of solar orientation as an orientation so the windows are located so you get the benefit of the solar radiation into the building. Buildings are so well insulated -- modern buildings are so well insulated nowadays. I haven't heard that particular rationale.

MR. MINUTA: That is part -- that is the rationale.

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CHAIRMAN EWASUTYN: Joe Profaci?

MR. PROFACI: I have nothing at this time.

CHAIRMAN EWASUTYN: John Ward?

MR. WARD: With the lighting, --

MR. MINUTA: Yes.

MR. WARD: -- like according to the guidelines, even though it says 20 feet I'm recommending 16 feet because of the residential neighborhood in back. Even if you had to add more lighting just to keep it low. Thank you.

MR. MINUTA: Understood. Thank you. And just to clarify, I'm not sure if you're aware the neighborhood is elevated from this. So the elevation is much higher. But I will certainly make them 16 feet.

MR. DONNELLY: John, before Brett addresses the use issue, and I think you need to hear from him, I think I'll try to comment on what I think is our view of it. The site is presently used, and I don't want to does describe or mis- describe the use but it caters to an adult audience. I'm hearing now that the adult use is going to be moved to a different building.

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The adult use is not one that's allowed in the B zone, and I'm assuming it's a protected nonconforming use. I don't know what else it would be. Section 185-19 A(1) of the Newburgh code says you can't move a nonconforming use from one location on a lot to another without ZBA relief. So if it is a nonconforming use and it's being moved, you would need ZBA relief.

Let's change to another perspective, and that is if what you're proposing is a restaurant use that has an accessory component that is customarily incidental to the restaurant use, that might be permitted under the code. Maybe the gentlemen's club is a membership club, which is also permitted in this zone. But argument that the use falls into one or both of those categories is a fact bound one that I think is again for the determination of the Zoning Board of Appeals, not for this Board.

As presented in your application, you've called it an eating and drinking establishment, but I think more correctly a restaurant and a gentlemen's club. The gentlemen's club component is not listed in the



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use table but an argument could be made to the Zoning Board it fits existing categories or that the nonconforming use relocated is entitled to relief from the Zoning Board. So I think that's how we see it.

Brett, I don't know if that's different than what you're looking at or whether it's something --

MR. LINN: May I ask for clarification? Thanks, Mike. First of all I apologize, I was only able to see Mr. Garling's comments late this afternoon. I would ask for some time for some clarification and respond in writing if that's okay.

I came here basically thinking that the difficulty may be that whether it's a pre-existing use or not. I think the provision that was cited in the comments was added in 1998 and our use well exists that I believe.

MR. DONNELLY: I assume that to be, yes.

MR. LINN: The thing I'd like to look at, Mike, when we discuss the issue you've raised, and this is the first time I heard it so

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I would ask for a little bit of time, is under 185-19 A(1) that details with enlargement or extension of the use, and I question whether we're doing that. I would at least -- I would at least question whether or not subdivision 3 -- I'm sorry, subdivision B dealing with nonconforming buildings may be more applicable. We're not enlarging the use but it's a nonconforming building, and there are only two requirements for seeking some type of a permit to do that. If it's a nonconforming building, that's relocation and restoration.

MR. DONNELLY: When you get a chance look at A(1). It says a nonconforming use shall not be enlarged, reconstructed, et cetera or placed on a different portion of the lot or parcel of land occupied by the use on the date of protection. So I think it does include a relocation of it elsewhere.

MR. LINN: I would like a little bit of time.

MR. DONNELLY: That's fine. The choice becomes this. Normally I think the Board, if it feels the application is close enough in terms of

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its general presentation, the Board might be inclined to refer this to the Zoning Board for that purpose. Do you want us to hold off doing that until you've had a chance to address it?

MR. LINN: I would just like a brief opportunity to respond to it, and I may ultimately agree to it.

MR. DONNELLY: Okay.

MR. LINN: Thank you.

CHAIRMAN EWASUTYN: For clarification, I'm not sure what you mean by responding to it because I think what Mike is saying at this point, a normal meeting, we would be referring you to the ZBA. If you want time to respond to it, then what that means to me is at a later point you're going to be resubmitting to be on the agenda.

MR. LINN: Excuse me a second.

(Mr. Linn conferred with his client.)

MR. LINN: We would be willing to be referred to the ZBA tonight and we would be willing to take up the issue with the ZBA.

MR. DONNELLY: If the Board votes to do that I would write a letter to them copied to you

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in which we state what we see the issue to be,  
but you would then also have to file an  
application with the Zoning Board.

MR. LINN: Okay. Thank you.

CHAIRMAN EWASUTYN: Then for the  
record, will you give us the language that we  
would be moving for a motion to refer to the  
Zoning Board of Appeals?

MR. DONNELLY: I think the referral  
would be for the Zoning Board to determine  
whether or not this remains or continues to be a  
protected nonconforming use in view of the  
relocation and/or that relief is granted along  
those lines, or whether or not the use that's  
proposed is one that fits within an existing use  
category, like restaurant or membership club, and  
is in fact a protected one. I'd also include in  
the referral letter that it seems appropriate to  
treat this as a non-coordinated review action  
under SEQRA because I don't think we're ready yet  
to issue a declaration of significance, and if we  
stay as lead agency on a coordinated review basis  
then we would prohibit the Zoning Board from  
taking any action, and I think that's

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counterproductive. It's a threshold issue and I think the Zoning Board should be able to look at this on its own SEQRA analysis and we'll pick up the pieces after that.

CHAIRMAN EWASUTYN: Questions from Board Members. Frank Galli?

MR. GALLI: No additional.

CHAIRMAN EWASUTYN: Ken Mennerich?

MR. MENNERICH: No.

CHAIRMAN EWASUTYN: Joe Profaci?

MR. PROFACI: No.

CHAIRMAN EWASUTYN: John Ward?

MR. WARD: No.

CHAIRMAN EWASUTYN: Then I'll move for a motion to refer the applicant to the Zoning Board of Appeals based upon the conversation of record that Mike Donnelly has proposed to the Board.

MR. GALLI: So moved.

MR. WARD: Second.

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

(No response.)

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SANTA MONICA HOLDINGS

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

MR. GALLI: Aye.

MR. MENNERICH: Aye.

MR. PROFACI: Aye.

MR. WARD: Aye.

CHAIRMAN EWASUTYN: Myself. So carried.

Thank you for your time.

MR. DONNELLY: John, both the Zoning Board and you will need to refer this to the County Planning Department. It might make sense for that referral to come now.

CHAIRMAN EWASUTYN: I think we'll wait until we get revised plans based upon our concern.

MR. DONNELLY: So the Zoning Board can do their own referral based upon what they have. Okay.

MR. MINUTA: Thank you.

CHAIRMAN EWASUTYN: As you notice, this evening we don't have any further Board Business. We don't have any Board Business, so at this point I'll move for a motion to close the

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SANTA MONICA HOLDINGS

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Planning Board meeting of the 4th of February.

MR. GALLI: So moved.

MR. MENNERICH: Second.

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

MR. GALLI: Aye.

MR. MENNERICH: Aye.

MR. PROFACI: Aye.

MR. WARD: Aye.

CHAIRMAN EWASUTYN: Myself. So carried.

(Time noted: 7:34 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.

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DATED: February 20, 2010