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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
(2006-57)
North Plank Road, Noel Drive & Stanley Place
Section 77; Block 2; Lot 5
B Zone

----- X

SITE PLAN

Date: February 7, 2008
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

ALSO PRESENT: DINA HAINES
MICHAEL H. DONNELLY, ESQ.
BRYANT COCKS
PATRICK HINES
KAREN ARENT
MARK SARGENT

APPLICANT'S REPRESENTATIVE: NEIL WILSON

----- X

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

PROPOSED BANK AND PHARMACY

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CHAIRMAN EWASUTYN: Good evening, ladies and gentlemen. I'd like to welcome you to the Planning Board meeting of February 7th. At this time we'll call the meeting to order with a roll call vote.

MR. GALLI: Present.

MR. MENNERICH: Present.

MR. PROFACI: Here.

CHAIRMAN EWASUTYN: Myself present.

The Planning Board has experts that make various SEQRA recommendations to this Board and they're here tonight. I would like them to introduce themselves.

MR. DONNELLY: Michael Donnelly, Planning Board Attorney.

MS. CONERO: Michelle Conero, Court Stenographer.

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

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

MS. ARENT: Karen Arent, Landscape Architectural Consultant.

MR. SARGENT: Mark Sargent,

PROPOSED BANK AND PHARMACY

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Transportation Engineer with Creighton, Manning Engineers.

CHAIRMAN EWASUTYN: Thank you.

At this time I'd like to turn the meeting over to Frank Galli.

(Pledge of Allegiance.)

MR. GALLI: Turn off all cell phones, pagers and any other annoying devices.

CHAIRMAN EWASUTYN: The first item of business we have this evening is the proposed pharmacy and bank. It's a site plan located on North Plank Road, Noel Drive and Stanley Place, it's Zoned B and it's being represented by Neil Wilson.

Mr. Wilson.

MR. WILSON: Mr. Chairman, Members of the Board, Neil Wilson, I'm the attorney representing the applicant, Sembler Company. As we had discussed at the last Planning Board meeting, we've asked the Planning Board to consider whether in fact this particular use requires a parking variance. Certainly based upon the information that I provided to the Board two weeks ago it's our opinion that in fact the

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Planning Board's vested with the authority to establish the parking rate for what is in fact a pharmacy as opposed to a retail use. I'm here to discuss that with you here tonight.

CHAIRMAN EWASUTYN: Will you continue discussing it with us?

MR. WILSON: Yes.

CHAIRMAN EWASUTYN: Mike Donnelly, we received a letter from Mr. Wilson dated January 25, 2008 which gives an explanation as to what he's presenting tonight.

MR. DONNELLY: You'll remember at our last meeting the issue Mr. Wilson just advanced, that is Section 185-13 of the Ordinance gives you the discretion to fix the parking requirements for uses that are not specifically listed in the off-street parking schedules was put forth. You also asked Mr. Wilson to provide the Board with information regarding the percentage of the floor space of the building that was to be allocated to the uses and the types of activities so that if you needed to make a determination as to adequacy of parking you would have the data to do so.

As a follow up to that letter I spent

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quite a bit of time looking at Section 185-13 as well as the use tables in the Ordinance, and I've given you my letter and we discussed it at work session.

The concept of setting parking requirements for use is not listed in the table as one you're familiar with. This one I think we were looking at the nature of the use as solely retail, and therefore the table use was 1 per 150 feet of gross leasable area. We were not focused on the issue of the pharmacy not being listed and therefore without thinking about it we referred it to the Zoning Board for a variance. It was only after the applicant didn't obtain that variance that it focused our attention on that section, and I have outlined my recommendation to you.

I believe that though this is generically retail use, because I think a pharmacy fits that and that's why the use is allowed, the parking requirements are ones that you can set. Similarly for the bank. Although that is listed in the use table and there are some requirements, they can be adjusted. What is

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given to you in that section as the reference for setting parking requirements when the use is not listed is the ITE manual. A version of the ITE manual is actually set forth as chart 1 to that section, although it is not a current one and the section specifically says the current ITE manual.

So the bottom line is I think you're permitted to fix the parking requirements for the pharmacy use. I think you should hear from your traffic engineer as to the adequacy of those requirements and as to what is proposed, but the issue that we had initially thought required a variance is, in my opinion, one that does not require a variance and it need not return to the Zoning Board. If all else is in order, you are free to act on the proposal because you've already held your public hearing and handled SEQRA.

CHAIRMAN EWASUTYN: Mark Sargent, can you explain to us the ITE third edition as it relates to Mr. Wilson's presentation?

MR. SARGENT: The applicant's engineer had provided some calculations based on ITE, and we're in agreement with those. What those are

1
2 based on are observations at other similar sites
3 across the nation. They observed average peak
4 parking accumulation at similar sites. When I
5 say average, that means some sites might
6 accumulate more vehicles during the peak time
7 period and another might accumulate fewer
8 vehicles. What Mr. Grealy's office did is they
9 picked the absolute peak of all the observations
10 and used that in their calculations. So it's a
11 worst-case estimate of the demand at the site.
12 They estimated a demand of 77 spaces. I think
13 the average demand was closer to 50 spaces on
14 site. So from our perspective they've used the
15 industry standard for traffic engineering and
16 demonstrated what's proposed will meet, in all
17 instances, what's expected for peak demand.

18 CHAIRMAN EWASUTYN: Okay. Phil Grealy,
19 John Collins, are you here to speak this evening?

20 MR. GREALY: Again, Phillip Grealy,
21 John Collins Engineers. Just to reiterate, what
22 we did was we took the highest of the rates from
23 the ITE to do this calculation. Typically you
24 would go with more the average rates based on it.
25 For both the pharmacy and the bank our

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calculation is based on the highest observed ratio for each of those uses in calculating the required parking. We again come up with 77 spaces at the maximum. Thank you.

CHAIRMAN EWASUTYN: Comments from Board Members. Frank Galli?

MR. GALLI: On the spacing part, what Mike Donnelly just expressed to us, I feel comfortable not cutting into the buffer zone like they wanted to do for the additional spaces and just go with the original, I think it was 82 spaces. I wouldn't want to drop it down to 77. I think the 82 spaces that were proposed without cutting into the buffer zone and leaving the buffer the way it is.

MR. DONNELLY: 82 or 77?

MR. COCKS: It was 82.

MR. HINES: 77 is required, 82 have been provided.

CHAIRMAN EWASUTYN: Thank you. Ken Mennerich?

MR. MENNERICH: I concur with what Mike said.

CHAIRMAN EWASUTYN: Joe Profaci?

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MR. PROFACI: I'm fine also.

CHAIRMAN EWASUTYN: And I agree with the information that was provided tonight, and I'm in agreement with what Mr. Galli said and the other Board Members, that the final site plan will show 82 parking spaces.

Pat, we were waiting for a City flow acceptance letter from the City of Newburgh I believe.

MR. WILSON: I believe you received that.

MR. HINES: That's correct. I followed up with that this week and provided it to the Board and the applicant's representative.

CHAIRMAN EWASUTYN: What other outstanding items did we have?

MR. HINES: With the new -- the site plan remaining the same, we don't have any other technical comments. We previously signed off on it. Should the plan have changed we were worried about how the additional parking would impact the drainage. Without the additional parking then our original comments stand and they've all been addressed.

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CHAIRMAN EWASUTYN: Bryant Cocks,
Planning Consultant?

MR. COCKS: The applicant addressed all
of our previous comments. The layout hasn't
changed. We're in keeping with the 82 parking
spaces. We have nothing further.

CHAIRMAN EWASUTYN: Karen Arent,
Landscape Architect?

MS. ARENT: I have some minor comments
from my October 15th memo. They are just minor
in scope. For example the sign. The materials
that the sign is constructed of has to be
established.

There's a decorative stonewall on the
landscape sheet that should be removed.

I also have a note that you need to
provide a landscape security, and you have to put
the cost for the wall in the security. That's
it.

I did have a -- this is one of the
projects where the square footage of signage is
less than the allowable signage which is unusual
for this Town. That's it.

CHAIRMAN EWASUTYN: Mark Sargent,

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Traffic Consultant?

MR. SARGENT: No other comments.

CHAIRMAN EWASUTYN: Mike Donnelly, the action before us this evening?

MR. DONNELLY: It would be for site plan. You had, however, and I don't know how you want to handle this, wanted to keep the Orange County Trust project and this project together and handle them simultaneously. They do interlock, they do coordinate, and some of the conditions apply to both in terms of fair share contributions and construction, construction phasing. I believe that Orange County Trust was, but for this variance, I think ahead of this application. I think we could perhaps do a resolution now. I'm wondering whether you want them on the same night to be approved at the same time with similar interlocking language. If that's not necessary we can handle it tonight and I can give you a listing of what I think are the required conditions. We had announced earlier we were going to try to handle them as a simultaneous review and approval. It only got separated by virtue of this issue.

PROPOSED BANK AND PHARMACY

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CHAIRMAN EWASUTYN: Okay. I'll turn to Board Members. Frank Galli?

MR. GALLI: When do we have the Orange County Trust coming back up?

CHAIRMAN EWASUTYN: At this point it isn't scheduled.

MR. DONNELLY: I think they were waiting for this issue to be resolved.

MR. GALLI: I would like to see them together. They're doing some road improvements together and things like that. If we can try to keep them coordinated if possible.

CHAIRMAN EWASUTYN: Ken Mennerich?

MR. MENNERICH: Is there any update on the status of that common work that was going to be done, the drainage and road improvements?

MR. WILSON: Well, we had provided the Board and Mr. Donnelly a copy of a shared cost agreement which talks about the sharing of the costs and identifies the various schedules. That would include obviously the construction plans that have effectively been kind of merged if you will. They just need to be finalized. We would anticipate frankly submitting those for the

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Chairman's signature as a final approval package simultaneously with Orange County Trust. It's always been our intention that those drawings would sort of travel together.

With respect to the agreement itself, the only thing that actually needs to be done to create a final document are to obtain the costs that are actually part of the schedules that are at the back of the agreement. The agreement itself is done. We've agreed to it, it just needs to be -- we just need the cost attached to it and then get the final plan set done.

MR. MENNERICH: Mr. Chairman, I think I would be comfortable with a preliminary approval. I would rather wait.

MR. DONNELLY: Well we could do it but then you would want to do final when Orange County Trust came back, and I think that's going to be in the near future. I would say either give it final and link it to the other one or wait until they're both on and have the resolution conditions worded the same. My only fear is if something comes up with Orange County Trust regarding the wording of a condition that

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relates to an interlocking issue, this project has already passed through the needle and there's nothing we can do after the fact.

MR. WILSON: If I may. I think what we were anticipating was a condition or an approval similar to that which had already been granted to Orange County Trust. I think that was done back in December, which was a preliminary. If the Board -- at least that was my recollection.

MR. DONNELLY: Does anybody recall that project number?

MR. WILSON: I don't recall it as being a final.

MR. DONNELLY: I don't know that it had preliminary either.

MR. HINES: 7-2 they're saying.

CHAIRMAN EWASUTYN: 7-2.

MR. COCKS: Off the top of my head I think that's what it is.

MR. PROFACI: We just closed the public hearing on December 6th.

MR. DONNELLY: It's 03. It got conceptual approval but nothing beyond that. The public hearing closed on December 6th, they

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waived the sixty-two day time period and then my notes are need variance for Sembler and sewer flow letter. So it's just in limbo awaiting this.

MR. WILSON: Conceptual approval.

MR. DONNELLY: I think you may have received that as well.

MR. WILSON: The Board had just issued the negative declaration to allow us to go to the ZBA. We had obviously granted -- waived the sixty-two days then. That was all that was done.

CHAIRMAN EWASUTYN: Frank, do you want to add something?

MR. GALLI: Wasn't our concern if one project got ahead of the other one, whoever started first would actually have to start the improvements on their own?

MR. DONNELLY: That's one of the dovetailing provisions. By the way, you received the preliminary approval on the same night, July 19th. So you're really in the same spot now. There's no difference.

MR. BYER: I would just like --

CHAIRMAN EWASUTYN: For the record give

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your name.

MR. BYER: Josh Byer with the Sembler Company. The improvements, I think we were both on the hook so to speak. And you're right, whoever goes first -- if the other project were not to go forward for instance, that particular project that did go forward would be responsible for the full improvements. I think in terms of giving us an approval early, we're kind of the ones at risk for Orange County Trust not moving forward because we're stuck to make the improvements. The private agreement between us and Orange County Trust is kind of, like I said, a private agreement. By giving us approval, we still have the same conditions that we would have to do those improvements if they were to move forward or not.

I just want to point out from a scheduling standpoint we need to get an approval for obligations we have for getting a loan in place on the property and closing on the land. It's necessary for our lending institutions to have those approvals in place. If it can be done to get an approval this evening, we would like

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that to be considered if that's possible.

MR. DONNELLY: Perhaps if we could include in the resolution language that would say that the Planning Board reserves the right to modify the conditions so as to conform with those conditions imposed upon Orange County Trust, then I'd be less troubled. What I'm somewhat concerned with is as we run down the final stretch and with Orange County Trust we have some conditions that in all fairness should have been in both resolutions, we lose the opportunity to add. I don't know if --

MR. PROFACI: If their agreement indeed spells out that you would be responsible a hundred percent if they didn't do their project or start their project --

MR. BYER: I think our site plan approval would do that.

MR. WILSON: The resolution and the site plan.

MR. BYER: The requirements for those improvements I think are going to be in the resolutions for both projects. The agreement for us to share in the work I think is kind of a

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private agreement between two entities from the Town's perspective. You know, if one project doesn't go forward, the other project that does still would be required to get those improvements done regardless of the other project not going forward.

MR. HINES: There's going to be bonding requirements for those off-site improvements that somebody is going to have to pay.

MR. BYER: That's part of the agreement with Orange County Trust as well.

MR. HINES: Right, but --

MS. ARENT: We didn't formally approve the architecture yet either.

CHAIRMAN EWASUTYN: That would be another action. Correct. This is site plan.

Pat.

MR. HINES: Each of the projects is going to be individually bonded I guess is how that's going to have to work. We have both projects on the hook; right?

MR. DONNELLY: The Town Board is going to have to decide whether they want separate bonds representing half of the total amount or

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one bond with two obligators.

MR. HINES: The way they explained it is they're willing to take on the obligation. It almost looks like it has to be placed on these guys.

MR. DONNELLY: I don't think it should be each pays half.

MR. WILSON: It's not actually a fifty-fifty agreement. Sembler is --

MR. DONNELLY: Right.

MR. WILSON: -- going to have more of the share. I guess the point is that absent any agreement, each project would have to separately bond whatever the improvements were that they needed to make. The fact of the agreement is actually a benefit not only to the Town but to both parties here. We would very much like to see a -- have an approval tonight, and if there is a need to correct say a condition going forward when Orange County Trust comes back before you, we don't have any problem doing it. I can't anticipate or think offhand what that may be but certainly that is something that we would consent to.

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CHAIRMAN EWASUTYN: Okay. Is the Board in agreement?

MR. GALLI: Yes.

MR. MENNERICH: Yes.

MR. PROFACI: Yes.

CHAIRMAN EWASUTYN: Agreement from Frank Galli, Ken Mennerich, Joe Profaci and myself.

Mike, would you present to the Board the conditions for final approval for the proposed pharmacy and bank?

MR. DONNELLY: Let me just ask a couple clarifying questions. This will need a landscape bond, a stormwater bond?

MR. HINES: Yes.

MR. DONNELLY: There is work to be done in the Town road. Will that require ponding?

MR. HINES: Both that and the drainage improvements are going to need to be bonded off site.

MR. DONNELLY: Are there any offers of dedication here? I don't think so.

MR. HINES: No. The right-of-way is large.

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MR. DONNELLY: Okay. You will have to make findings consistent with your discussion earlier. I'll include them in the resolution regarding the fixing of the parking requirements for this project at 82 spaces.

MR. DOBRZYNSKI: Excuse me. The Board is not recognizing me with my hand up for five minutes. I am a resident --

CHAIRMAN EWASUTYN: Excuse me, sir. It's not a public hearing.

MR. DOBRZYNSKI: But they're allowed to come in here and shove something down the public's throat.

CHAIRMAN EWASUTYN: It's part of the site plan approval process. It's not a public hearing.

MR. DOBRZYNSKI: In other words, this Board, which half the members are not landowners and are renters, can still do something that's not right for the rest of the Town? I just want an answer to that. This is not going to rest here tonight, that I can tell you.

CHAIRMAN EWASUTYN: Counsel --

MR. DOBRZYNSKI: If these people are

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2 coming in and you're giving them another plan, it
3 has to be open to a public hearing again where
4 the public can come back and say yes or no. It's
5 not up to Walgreen's and any of them to make
6 agreements with anybody else. We don't really
7 care about stonewalls to be honest with you. It
8 doesn't mean a darn thing to us. What it does
9 mean is you're taking a neighborhood that you
10 don't give a darn about and you're willing to
11 kill it and this Board still cannot tell us why.

12 MR. DONNELLY: There were two public
13 hearings.

14 MR. DOBRZYNSKI: We were here for both,
15 and then there was a variance hearing also where
16 it was knocked down. Now according to what I'm
17 hearing tonight is this Board can go ahead and
18 overrule anybody. If you're going to overrule
19 them, give us, the citizens, the right to come
20 back and voice our opinion again. That's the way
21 it should be.

22 CHAIRMAN EWASUTYN: Counsel --

23 MR. DOBRZYNSKI: It's not right for
24 just a few people to make the decision for
25 everybody that lives there. Anybody in here,

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2 whether it's you people on the Board or the
3 people here that say sounds good to me. That's
4 the way it has to be. We're the people that pay
5 for this Town. We're the property owners. We're
6 the ones that have the right to the say. I'm not
7 going to let it end like this tonight. I
8 guarantee it. These people want to come back in
9 here and bamboozle the garbage out of everybody,
10 then the public has the right to come back in
11 here and tell them exactly what they think of it.
12 That's not a pharmacy, that is a junk store with
13 a little pharmacy in it. Three-tenths a mile
14 from that location there are three pharmacies.

15 MR. DONNELLY: There was a public
16 hearing on the project. Often after a public
17 hearing the plan may be changed in a way to
18 accommodate what happened. I don't think this
19 plan is significantly different than the original
20 one.

21 MR. HINES: It's the same.

22 MR. DONNELLY: It's the same plan that
23 was subject to the public hearing. The public
24 hearing was closed and the Town --

25 MR. DOBRZYNSKI: But they're back in

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here again trying to make a deal on cutting down the amount of parking spaces. We as the citizens have the right to come in here and object to it. It's not the right of the Board to say no, you don't. We didn't ask for this hearing to be closed.

MR. DONNELLY: It's the same amount of parking that was subject to the hearing.

MR. DOBRZYNSKI: No. It was a hundred and some odd spaces prior if I'm correct.

MR. DONNELLY: You'll need a sign-off letter from Karen on the comments from her October 15th memo I think you said it was. We'll need to see a detailed and satisfactory construction phasing plan. That may be accomplished on the map notes on the two projects, but one of the concerns we've had all along is how the coordination and phasing of the improvements is accomplished, and that will need to be signed off on probably by both Pat and by Jim Osborne.

MR. DOBRZYNSKI: So in other words what's happening right now is you don't care what the public has to say? I just want a yes or a no

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to that.

MR. DONNELLY: All of the construction will need to be --

MR. DOBRZYNSKI: Excuse me.

MR. GALLI: Excuse me.

MR. DOBRZYNSKI: They had their right to come in and speak tonight. We the public have our right to come in here. We didn't ask this Board to close this hearing last time. They decided to close it, not us.

MR. DONNELLY: The Board decided to close it.

MR. DOBRZYNSKI: That's what I said, the Board decided to close it, not us. Not the public.

MR. DONNELLY: It's the Board that makes the decision.

MR. DOBRZYNSKI: So in other words this Board sitting up there you're telling me has the right to tell everybody in this Town go to hell with yourself, we're doing what we want? Are those your words?

MR. DONNELLY: No. I think those were yours.

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MR. DOBRZYNSKI: No, that's what you're -- you said the Board has the right to do what they want.

MR. DONNELLY: You'll need to coordinate with the Orange County Trust project. That includes the cost sharing agreement to the satisfaction of the Town Board. We'll have to have provisions to memorialize the agreement to make the fair share contribution to the traffic improvements and the drainage improvements. We're going to reserve the ability to modify this resolution condition language subject to any changes we make at the time of Orange County Trust review. There will be a condition that requires that all site work be completed before the first CO is issued for either project, Orange County Trust or this project. We'll need a landscape security inspection fee, stormwater, Town road. The standard condition regarding the prohibition of the construction of any outdoor fixtures or amenities that are not shown on the plan. And of course the payment of all required fees.

CHAIRMAN EWASUTYN: Should we mention

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the fact that ARB is still outstanding?

MR. DONNELLY: Unless you're going to separately vote on that, we'll reserve on ARB to a future date.

CHAIRMAN EWASUTYN: Any additional recommendations from our consultants. Pat Hines, Drainage Consultant?

MR. HINES: Those conditions cover it.

CHAIRMAN EWASUTYN: Bryant Cocks, Planning Consultant?

MR. COCKS: No.

CHAIRMAN EWASUTYN: Karen Arent, Landscape Architect?

MS. ARENT: The architectural review for Orange County Trust is not formalized also. You may want to have that at the same meeting.

CHAIRMAN EWASUTYN: Okay. Mark Sargent, Traffic Consultant?

MR. SARGENT: No additional comments.

CHAIRMAN EWASUTYN: Comments from Board Members. Frank Galli?

MR. GALLI: No additional.

CHAIRMAN EWASUTYN: Ken Mennerich?

MR. MENNERICH: No questions.

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2 CHAIRMAN EWASUTYN: Joe Profaci?
3 MR. PROFACI: No.
4 CHAIRMAN EWASUTYN: Having heard the
5 conditions of approval for the pharmacy and bank
6 presented by our Attorney, Mike Donnelly, I would
7 move for that motion.
8 MR. GALLI: So moved.
9 MR. MENNERICH: Second.
10 CHAIRMAN EWASUTYN: I have a motion by
11 Frank Galli. I have a second by Ken Mennerich.
12 Any discussion of the motion?
13 (No response.)
14 CHAIRMAN EWASUTYN: I'll move for a
15 roll call vote starting with Frank Galli.
16 MR. GALLI: Aye.
17 MR. MENNERICH: Aye.
18 MR. PROFACI: Aye.
19 CHAIRMAN EWASUTYN: Myself yes. So
20 carried.
21 Would you be available on the 6th of
22 March for ARB?
23 MR. WILSON: Yes, we will.
24 CHAIRMAN EWASUTYN: Let the record
25 state on March 6th we'll have the proposed

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pharmacy and bank on the agenda for architectural review, and we'll also have the bank on for final approval.

MR. WILSON: Thank you very much.

MR. DOBRZYNSKI: I just have one thing to say to the Board because we're not allowed to speak. I understand your rule here completely. This is not over, okay. You changed it, you have to have a public hearing. You didn't have it. That's it. We're going to do what we have to do as the community that you're destroying. You're destroying it, we're not. You closed the hearings. We said no. You still closed them. We're going to do what we have to do to stop this project. He can smile and laugh. The guys out there are smiling and laughing and you guys can if you want to. You have not heard the end of us yet. That I can guarantee you. Okay. You didn't give a damn about the residents. What does that say about you as individuals? Pathetic. That's all I have to say. Very pathetic.

MS. CONERO: Can I have your name, please?

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MR. DOBRZYNSKI: Douglas Dobrzynski,
D-O-B-R-Z-Y-N-S-K-I, 8 Roy, R-O-Y, Place,
Newburgh.

(Time noted: 7:32 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 19, 2008

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

- - - - - X

In the Matter of

DRISCOLL SUBDIVISION
(2005-46)

Route 300
Section 34; Block 1; Lots 45,46,32.1,32.2,52.1 & 53.5
Section 60; Block 2; Lot 4
R-3 Zone

- - - - - X

107-LOT SUBDIVISION
F.E.I.S.

Date: February 7, 2008
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
KENNETH MENNERICH
JOSEPH E. PROFACI
ALSO PRESENT: DINA HAINES
MICHAEL H. DONNELLY, ESQ.
BRYANT COCKS
PATRICK HINES
KAREN ARENT
MARK SARGENT

APPLICANT'S REPRESENTATIVE: ROSS WINGLOVITZ

- - - - - X

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

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CHAIRMAN EWASUTYN: The next item of business this evening is the Driscoll subdivision. It's a 107-lot subdivision. It's located on Route 300 in an R-3 Zone. It's being represented by Ross Winglovitz. We're here this evening to discuss the Final Environmental Impact Statement.

MR. WINGLOVITZ: Good evening. Ross Winglovitz from Engineering Properties here on behalf of the Driscoll subdivision regarding the Board's review of our submission of the Final Environmental Impact Statement. It was originally submitted in I think November and revised and resubmitted in mid January. We have provided also today addressing two of the comments that we think -- two outstanding comments on the F.E.I.S. submission. I would be glad to discuss any of those with you this evening.

CHAIRMAN EWASUTYN: Let's discuss both comments. You can select which one you would like to start with first.

MR. WINGLOVITZ: Comment number 2 and 3 of the Creighton, Manning February 1st letter

1
2 were the subject of our letter that was submitted
3 today. I'll read them out loud here. Comment
4 response number 60 regarding air quality and the
5 intersection operating at level of service C or
6 better is adequate. There are two, however, that
7 do not screen out of this preliminary review.
8 These include the intersections for Route 300 and
9 32 and Route 300 and 52 which operate at overall
10 level of service D or worse. These two
11 intersections require another level of air
12 quality screening to determine whether the
13 project impacts are minimal or are more detailed
14 -- or a more detailed level of analysis is
15 needed.

16 We submitted with our cover letter a
17 letter from John Collins Engineering addressing
18 what is that next level of review. My
19 understanding is it's based on the percentage of
20 traffic from the project that enters that already
21 failing intersection, or level of service D
22 intersection in the case of Route 32 and 300.
23 Mr. Grealy's comment says that at Route 300 and
24 52 and also Route 300 and 32 the amount of peak
25 hour traffic generated by the Driscoll

DRISCOLL SUBDIVISION

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2 subdivision would not result in a significant air
3 quality impact. For example, a total of 32
4 vehicles would be generated by the project at the
5 Route 32/300 intersection which would have 2,293
6 vehicles without the project. This represents an
7 increase of just over 1 percent. Similarly, at
8 300/52 the project will generate a total of 63
9 vehicles which has 3,290 vehicles without the
10 project. This represents less than a 2 percent
11 increase.

12 CHAIRMAN EWASUTYN: Mark Sargent?

13 MR. SARGENT: That comment was written
14 by our office. My sense is that the air quality
15 issue has been resolved, however I can't confirm
16 that entirely tonight. I need to run this by our
17 quality staff person in the office.
18 Unfortunately I didn't get a chance to do that
19 today. My sense is the 1 percent impact that
20 you've identified does meet that second level of
21 screening requested but I need to verify that.

22 CHAIRMAN EWASUTYN: Thank you.

23 Any comments from our consultants. Pat
24 Hines?

25 MR. HINES: One issue we talked about

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at work session is the one traffic count may be a little dated and the intersection improvements at 300 and 32 may have been accomplished since that. That may be operating at a higher level of service also.

MR. WINGLOVITZ: Okay. The other comment that we talked about was in response to our letter of comment 3 of the Creighton, Manning letter. I'll read it aloud. Comment response number 95, the response should add what operating hours are allowed by the Town Code. Furthermore, the applicant may wish to consider using excess or stockpile fill to create a temporary earth berm to reduce any noise effects of the rock. In my comment response letter dated today I indicated that the Town Code permits construction activities between the hours of 7:30 a.m. and 6:00 p.m. This is based on conversations with the building department. I couldn't find it in the Code. That's just general construction activities are limited to those timeframes. Monday through Saturday, no Sundays, no holidays. This is more restrictive than the Noise Ordinance portion of the Code which provides an exemption

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2 for construction of noise between the hours of
3 7:00 a.m. and 7:00 p.m. It's estimated the
4 crusher will need to be on the site for
5 approximately six months to process the bulk of
6 the material. There were some 80,000 yards
7 estimated originally. I think based on fine
8 tuning the grading we're a little less than that.
9 Also the bulk of the rock excavation is going to
10 be to create this road and this intersection
11 that's in phase I of the project. So this is
12 going to occur early on.

13 We're proposing that our crusher would
14 be located in this location here. We also
15 discussed there were several types of rock
16 crushers available. The applicant is willing to
17 prohibit the use of an impact hammer type, which
18 is the noisier of the crushers that are
19 available. So we would prohibit the use of that
20 on the site to minimize noise creation. We are
21 further willing to reduce the hours of operation
22 to 8:00 a.m. to 5:00 p.m. instead of the 7:00
23 a.m. to -- 7:30 to 6:00 p.m. that are permitted
24 with no weekends or holidays. No weekends
25 entirely. So we're excluding Saturdays in

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addition which is permitted under the Code. We would exclude Saturdays for the rock crusher operation.

We also noted that the ability to do this on site does also actually reduce other potential impacts of construction traffic because this material then is re-used on site.

We're willing to hear anything the Board has to say.

CHAIRMAN EWASUTYN: Pat Hines, we'll start with you.

MR. HINES: We discussed the issue at work session at length. We're looking to have you locate the crusher in the vicinity or as close to detention pond 2 to move it as far away from the residents as possible, and also --

MR. WINGLOVITZ: The residents it's closest to are the residents in Kroll.

MR. HINES: Right. That's the majority.

MR. WINGLOVITZ: Where it is here we're about 1,000 feet to the nearest residence on 300.

MR. HINES: That's what we were talking about.

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Also a requirement that the berm be constructed. We want to show that on the site plans but we will address that in the Findings Statement. A berm will be required to be constructed. We were talking about a twenty foot high utilizing the existing topsoil and fill material in a crescent shape wherever the crusher ends up.

MR. WINGLOVITZ: To screen these people?

MR. HINES: To provide noise abatement more than screening. Yes.

Also we want to restrict the hours of operation of the drilling equipment for pre-blast drilling to the same hours that you have identified in here as the 6:30 to -- 7:30 to 6:00 p.m. with the same days of the week. I think that will help mitigate the impacts along with that.

MR. WINGLOVITZ: Both of those would be acceptable to our client.

MR. COCKS: He said 8:00 to 5:00.

MR. HINES: You have the crusher from 8:00 a.m. to 5:00 p.m.?

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MR. WINGLOVITZ: Pardon me?

MR. HINES: You're limiting the crusher from 8:00 a.m. to 5:00 p.m.?

MR. WINGLOVITZ: 8:00 a.m. to 5:00 p.m. Monday through Friday.

MR. HINES: If the same could be entailed with the rock drilling, that would help to eliminate a lot of the impacts.

CHAIRMAN EWASUTYN: Bryant Cocks, do you want to add to the statement Pat Hines has just presented?

MR. COCKS: No. Those were the main concerns we had, the installation of the berm and moving it into the lowest spot which is the drainage basin over there.

CHAIRMAN EWASUTYN: Mark Sargent, your office made a suggestion or a comment on this. Are you satisfied with the mitigation measures that Mr. Winglovitz is presenting this evening?

MR. SARGENT: The understanding is that there will be some impacts during construction, some noise impacts. Those will be temporary but they will be noticeable. The applicant is doing everything reasonable to try to minimize those

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impacts. So yes, we're satisfied.

CHAIRMAN EWASUTYN: Let's receive comments from our consultants on the F.E.I.S. before us this evening if they feel it's complete at this time. Pat Hines?

MR. HINES: I do feel that the F.E.I.S. is complete for public review. We have a couple outstanding issues that are addressed in the F.E.I.S. and will shake out further in the site plan.

The issue with Circle Lane and the connection is still there. The applicants haven't revised the F.E.I.S. to state they'll attempt to purchase that property or an easement from the adjoining owners to allow that connection but the access parcel itself under their control will be dedicated to the Town.

There's the ownership and maintenance of the sidewalks. There's been a couple options addressed in the F.E.I.S. including the HOA providing the operation and maintenance of those sidewalks should the Town Board decline to operate and maintain the sidewalks.

We had a comment regarding the

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2 Quaiassaick Creek biodiversity study that had been
3 done and the biologist's review of that. We have
4 an additional letter that will be incorporated as
5 an appendix in the F.E.I.S. from the applicant's
6 biology consultant stating that they have
7 reviewed that project corridor for the presence
8 or absence of those threatened species and they
9 did not locate those species.

10 With that our comments have been
11 addressed.

12 CHAIRMAN EWASUTYN: Comments from Board
13 Members. Frank Galli?

14 MR. GALLI: No additional.

15 CHAIRMAN EWASUTYN: Ken Mennerich?

16 MR. MENNERICH: No questions.

17 CHAIRMAN EWASUTYN: Joe Profaci?

18 MR. PROFACI: No, thank you.

19 CHAIRMAN EWASUTYN: Bryant Cocks,
20 Planning Consultant?

21 MR. COCKS: My first two comments also
22 go with what Pat said about the sidewalk issue
23 and the easement over Circle Lane or the transfer
24 of property, whichever it happens to be.

25 My next comment was just a note in the

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F.E.I.S. that the applicant indicated they are going to tell the building department when construction vehicles are going to be coming off of Gardnertown Road in the residential district.

Also in the Findings Statement that they conform to the Noise Ordinance and the use of the crusher will be from 8:00 to 5:00.

My next comment was regarding the need for a recreational analysis. This has to do with the payment of parkland fees which could be deferred. The applicant stated he's going to provide this analysis for the Board to review.

My last comment was just a note that they gave a detail for the street lighting which is at 12 feet and is in conformance with the design guidelines.

CHAIRMAN EWASUTYN: Comments from Board Members. Frank Galli?

MR. GALLI: No additional.

MR. MENNERICH: No.

MR. PROFACI: No.

CHAIRMAN EWASUTYN: Thank you, Bryant.

Karen Arent, Landscape Architect?

MS. ARENT: I have no additional

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F.E.I.S. comments. I do want to tell you that screening for the neighbor along Route 300 was requested and the applicant provided additional screening of the road from Route 300 from the neighbor that shares that property line.

CHAIRMAN EWASUTYN: Thank you.

Mark Sargent, Traffic Consultant?

MR. SARGENT: No outstanding concerns other than the air and the noise that we talked about already.

CHAIRMAN EWASUTYN: Final comments from Board Members. Frank Galli?

MR. GALLI: No additional.

CHAIRMAN EWASUTYN: Ken Mennerich?

MR. MENNERICH: No questions.

CHAIRMAN EWASUTYN: Joe Profaci?

MR. PROFACI: No.

CHAIRMAN EWASUTYN: Mike Donnelly?

MR. DONNELLY: Just one quick follow up on Bryant's comment on the parkland fees. The applicant has agreed to pay the parkland fees if warranted. However, what they've asked is the opportunity to provide a study to the Town that shows that they are not placing any additional

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2 demand on the Town's recreational facilities in
3 view of the significant passive recreation that
4 the site is providing. In the event that the
5 Town determines that that study is not
6 satisfactory, they will pay the parkland fees.
7 If the Town acknowledges the validity of that
8 study either completely or partially, the fees
9 may either be waived by the Town Board or reduced
10 in an amount that's consistent with the proof of
11 the limited demand for recreational facilities.
12 I don't think we're segmenting it under SEQRA,
13 we're simply putting off the opportunity to
14 deliver that study before those fees are paid.
15 I've given some proposed language to Ross and
16 Jane and they're going to incorporate that
17 language into the F.E.I.S.

18 CHAIRMAN EWASUTYN: It's my
19 understanding at this time our consultants are
20 recommending to us that the F.E.I.S. could be
21 accepted as being complete. That would bring us
22 to what stage in the SEQRA process?

23 MR. DONNELLY: After that is filed and
24 a notice published in the Environmental Notice
25 Bulletin and after it has been sent to the

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2 involved agencies, then there's a mandatory ten-
3 day pause period before you can issue your
4 findings. The next stage is for the Findings to
5 be prepared which will of course dictate any
6 mitigation measures that need to be incorporated
7 into the plans. I understand that the applicant
8 has today delivered a draft of the Findings that
9 I think your consultants need to begin to amplify
10 to incorporate these things we've talked about
11 into that language.

12 CHAIRMAN EWASUTYN: Would it be proper
13 at this time then to move for a motion to accept
14 the F.E.I.S.?

15 MR. DONNELLY: That's correct.

16 CHAIRMAN EWASUTYN: Having heard from
17 our consultants, having reviewed the process with
18 our attorney, I'll move for a motion that we
19 accept the F.E.I.S. for the Driscoll 107-lot
20 subdivision located on Route 300 in an R-3 Zone.

21 MR. GALLI: So moved.

22 MR. MENNERICH: Second.

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

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(No response.)

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

MR. GALLI: Aye.

MR. MENNERICH: Aye.

MR. PROFACI: Aye.

CHAIRMAN EWASUTYN: And myself yes. So carried.

Thank you.

MR. WINGLOVITZ: Thank you.

MS. DALY: Mr. Chairman, just a question --

CHAIRMAN EWASUTYN: For the record can you please give your name.

MS. DALY: Jane Daly, the attorney for the applicant. Do you want us to make the modifications to the F.E.I.S. before you circulate?

CHAIRMAN EWASUTYN: I believe that's what we had discussed.

MR. DONNELLY: I think the motion was subject to the changes that were just outlined.

MS. DALY: Is there anything -- do you want to review the changes before it gets

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incorporated?

MR. HINES: I think Creighton,
Manning's office should look at that before you
do the reproduction.

MS. DALY: We'll improve it and then
circulate it. Thank you very much.

(Time noted: 7:48 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 19, 2008

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

----- X

In the Matter of

SHOPPES AT UNION SQUARE
(2007-05)
Route 300 & Orr Avenue
Section 96; Block 1; Lot 6
IB Zone

----- X

SITE PLAN & ARCHITECTURAL REVIEW

Date: February 7, 2008
Time: 7:48 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

ALSO PRESENT: DINA HAINES
MICHAEL H. DONNELLY, ESQ.
BRYANT COCKS
PATRICK HINES
KAREN ARENT
MARK SARGENT

APPLICANT'S REPRESENTATIVE: CHRIS VIEBROCK

----- X

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

SHOPPES AT UNION SQUARE

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CHAIRMAN EWASUTYN: The following item of business this evening is the Shoppes at Union Square. It's a site plan located on Route 300 and Orr Avenue, it's in an IB Zone and it's being represented by Chris Viebrock.

MR. VIEBROCK: Good evening. Once again my name is Chris Viebrock from Lanc & Tully Engineering. I'm here tonight representing Goddard Development Partners in reference to the Shoppes at Union Square project. I'm joined tonight by Mr. Eric Nyler from Tinkelman Architecture and Mr. Larry Wolinsky of Jacobowitz & Gubits, the project attorney.

The last time we were in front of the Board was the December 13th Planning Board meeting. At that meeting we received a negative declaration for SEQRA and a waiver of the public hearing portion.

We had subsequently submitted revised plans based upon the consultants' comments. We received comments from the consultants for the submitted plans. We feel as though those comments were very minor and did not affect the site plan.

At this time we would like to ask for

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the Board's consideration for a preliminary site plan approval.

CHAIRMAN EWASUTYN: Mike Donnelly, I'm going to turn to you this evening because we were reviewing the site plan as far as it's completeness and the SEQRA determination tonight, or the determination to get preliminary approval. You raised a question and I'd like to bring that to the table now.

MR. DONNELLY: I spoke to Mr. Wolinsky about the issue and the applicant is asking, despite my having advised of the need for the variance as a requirement, to grant preliminary approval and to make the Zoning Board one of the other agencies that will have to grant approval before you can grant final. I have, generally speaking, recommended to you that the need for a variance is different than an agency approval from the DOT or the DEC because until the variance is granted the plan can not be approved by you. So in a sense it is a pre-condition of your granting an approval. I have always advised you against granting an approval subject to the obtaining of a variance. I suppose that if you

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2 wanted to take the position that because it's a
3 preliminary approval and not a final and the
4 authorizing language for preliminary approvals
5 enables you to decide, even on an application
6 that hasn't provided you with everything you
7 need, that has complicated issues, to allow the
8 applicant to move forward to other agencies, to
9 grant that approval subject to the obtaining of a
10 variance. I have not seen you do that in the
11 past. I've certainly never made that
12 recommendation. I wouldn't say it's a legal
13 impossibility because it's preliminary but I
14 think you probably need to hear from your other
15 consultants as to the status of the rest of it.
16 That would be an unusual thing for you to do but
17 not an impossible thing.

18 CHAIRMAN EWASUTYN: Listening to
19 Counsel and before we refer it to our consultants
20 for their comments; Mr. Wolinsky, I would like to
21 hear your side of this.

22 MR. WOLINSKY: Thank you, Mr. Chairman.
23 Mike and I did speak about this prior to the
24 meeting this evening. I don't disagree with what
25 he said. I think different boards take different

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approaches on this. I've seen boards take the approach that Mike has recommended and I've also seen just as many boards have no problem with granting preliminary approvals conditioned upon an area variance. Obviously a use variance would be a totally different kind of a situation. A minor area variance for just setbacks.

CHAIRMAN EWASUTYN: What are we talking about as far as minor dimensionally?

MR. VIEBROCK: The variances that we would be asking for would be based upon the existing Cosimo's lot that will be remaining at the end of the project.

CHAIRMAN EWASUTYN: And the footage for the front and side yard.

MR. VIEBROCK: Yes. Setbacks, also some coverage variances as well. That's pretty much it.

MR. WOLINSKY: This is another one of the shopping center situations where lot lines shift and certain tenants need to have their own parcel. We find it with all the shopping centers. We had it with The Market Place. The Market Place was actually a separate application

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2 and that's how it avoided this kind of situation.
3 I mean what we typically do in those situations
4 is we acknowledge on the record that it's
5 completely done at our risk. We understand,
6 which Mr. Donnelly has pointed out, that someone
7 who wanted to could argue that there was a
8 jurisdictional issue with it. I think we can
9 make arguments against that. We don't anticipate
10 that happening at all in this particular
11 situation.

12 The underlying main concern here is the
13 two to three-month time period it will take to go
14 through the process, get kicked out of the ZBA
15 and back on to the Planning Board agenda where we
16 lose that time in making our applications or
17 getting our applications commenced to be
18 processed by the outside agencies. So that's
19 what drives the request.

20 Again, it's just -- I can't stand here
21 and say what Mike is telling you is incorrect
22 because it's not. I can't stand here and tell
23 you that, you know, what I'm saying, that it can
24 be done that way as well is not correct either.

25 Adrienne Just asked me. The risk is

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ours as the applicant if someone challenges the approach. If the approach was determined not to be a proper approach it would be our risk. Other than that, I don't think I have anything further to add on the issue.

CHAIRMAN EWASUTYN: Thank you. Before I turn to our consultants, does any Board Member want to speak at this point?

MR. GALLI: Does the sign variance come into an issue with that?

MR. DONNELLY: The sign issue is usually more easily handled because an applicant can avoid the need for them by simply removing the signs from the plan and then it's not an issue and come back with a sign plan later. There will ultimately be a need for a sign variance.

MR. WOLINSKY: I should also mention that the area variances, the lot line, those are Type II actions under SEQRA so they don't need a negative declaration in a sense. It's purely a zoning issue and not a SEQRA issue.

MR. MENNERICH: I feel we should be consistent with what we've done in the past. If

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the applicant knew from the beginning that they would need the variance, there was nothing to prevent them from going for that variance. I mean Market Place, the parallel with Market Place, they're going for their --

MR. WOLINSKY: They received their preliminary approval first and now they're going for their variance. However, the distinction is that in that situation the site plan that received preliminary approval was actually a compliant site plan. Subsequently a separate subdivision application was made which rendered the site plan application in essence noncompliant because it's one of these financing subdivisions, and that kicked it into the ZBA.

MR. DONNELLY: We talked about the need, just in fairness to your comment, for the variance at your meeting in June. However my notes show that at that time we wanted to hold off on the referral until the plan was more fully developed. I don't know that we returned to that issue at the October or December meeting. In hindsight I suppose last month would have been the time to refer it when we issued the negative

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2 declaration and were moving forward with what I
3 think is mostly technical review at this point,
4 but we didn't. I don't think that the applicant
5 could have done it in the early stages because we
6 internally were saying let's not send it until we
7 see what the rest of the plan looks like. Both
8 the applicant and we, me in particular, should
9 have caught the need sooner than this meeting.

10 CHAIRMAN EWASUTYN: Joe Profaci?

11 MR. PROFACI: I think that I would be
12 comfortable with the preliminary approval subject
13 to the variance.

14 CHAIRMAN EWASUTYN: With the
15 understanding that the applicant would take full
16 responsibility for the outcome of the variance?

17 MR. PROFACI: Absolutely.

18 CHAIRMAN EWASUTYN: Let's hear from our
19 consultants as far as their final comments in
20 reference to the site plan and also the issue
21 before us.

22 Pat, you work in other municipalities
23 so you may be able to acknowledge what Mr.
24 Wolinsky says. Just for conversation, is it a
25 practice in other municipalities that you work

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in?

MR. HINES: I'm not familiar with this occurring before. One of the things I think maybe with Target, with the Target site plan we may have because that was moving along. It may have gotten a preliminary approval and then went to the ZBA. I seem to recall that one, that that had some existing lot lines on it and that moved well along before it went to the ZBA I remember. I think a lot of boards throughout the county do have varying policies. Some do SEQRA after the public hearing and some do it like you do it, before. It is a policy decision I think.

MR. DONNELLY: Of course that's clearly wrong.

MR. HINES: Right. I think if the applicant is stating that it is at their own risk, I think it's important to put that on the record, if in fact you do that that they are proceeding along. Similar to what we did with the sewer moratorium for some projects you couldn't approve but they did move on and proceed at their own risk. If they don't get the variance they have to come back. They could have

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2 come in and did a lot consolidation. They were
3 up front and showed us what was there and told
4 you their intentions. So they could erase that
5 lot line now and tell you they're going to
6 eliminate it. We've moved projects along and
7 approved them with a lot line consolidation which
8 is similar to this. They are looking not to do
9 that. That's my response to that.

10 Army Corp of Engineers and DEC permits,
11 these are statements, are still required. They
12 do have a negative dec so they can seek those
13 approvals at this point.

14 The sewer flow acceptance letter from
15 the City of Newburgh is required.

16 My comment number 5 for Mr. Viebrock is
17 the City of Newburgh has recently required some
18 additional water quality in addition to what is
19 required by the DEC because of the location
20 within their watershed. You see my comment
21 there?

22 MR. VIEBROCK: I understand your
23 comment. We're looking into that.

24 MR. HINES: It's kind of a warning
25 flag, although someone in my office -- it's

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another person that is requiring that.

MR. VIEBROCK: I appreciate it.

MR. HINES: I have a concern I'd like to talk to the applicant and have them confirm tonight that this is a single-phase project. Similar to some other projects we've run into they have multiple buildings on the site and were looking for COs for one building before the other. The way it looks here the entire project would have to be built. I think if it's going to be phased we would have to look at that before final approval so we don't run into this issue with the building department that the restaurant is built and wants to open and some other site improvements aren't done.

MR. GODDARD: Our intention would be to apply for COs and complete all the work at the same time.

MR. WOLINSKY: Single phase.

MR. GODDARD: Single phase.

CHAIRMAN EWASUTYN: How do you see managing this?

MR. GODDARD: Our intention is to pre-lease the space. Therefore to deliver it all as

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quickly as we can and as part of the same project. I don't see breaking it up.

MR. HINES: We haven't heard back from the jurisdictional fire department I don't believe.

That's all the comments we have.

CHAIRMAN EWASUTYN: Board Members, comments on Pat Hines' review?

MR. GALLI: Mr. Goddard says it's going to be one phase, it's one phase.

MR. MENNERICH: Nothing.

MR. PROFACI: Nothing additional.

CHAIRMAN EWASUTYN: Bryant Cocks, Planning Consultant?

MR. COCKS: Just to clarify, the applicant is going to have to ask for a rear yard setback variance, one side yard and both side yard variance, a lot building coverage variance and a lot surface coverage variance. That isn't including the signage variance which at this point they're asking for. They're proposing 1,399 square feet and 1,006 is what's allowed. I know Karen is going to talk about the proposed pylon sign and maybe scaling that back and taking

1
2 a couple of the leasees off of it. I'm not sure
3 they're going to be able to get all the extra
4 300 square feet. As of now that's what they're
5 proposing.
6 CHAIRMAN EWASUTYN: One more time would
7 you go through the variances, please.
8 MR. COCKS: It would be the rear yard,
9 one side yard, both side yards, lot building
10 coverage and lot surface coverage.
11 MR. DONNELLY: Front yard too; right?
12 MR. COCKS: I just scaled out the front
13 yard.
14 MR. VIEBROCK: The front yard I believe
15 is in conformance.
16 MR. COCKS: It is.
17 MR. VIEBROCK: The existing building
18 might be over.
19 MR. COCKS: I just measured it out.
20 Hold on.
21 CHAIRMAN EWASUTYN: What was the one
22 after building coverage?
23 MR. DONNELLY: Lot surface coverage.
24 MR. COCKS: With the canopy as part of
25 the building then it would be.

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MS. ARENT: It needs a front yard.

MR. VIEBROCK: The existing Cosimo's building.

MR. HINES: You lose that protection upon subdivision or site plan changes.

MR. DONNELLY: You make these modifications consistent with the precedent of the Zoning Board. If they tell you you don't need it, fine. I would rather refer it. If you convince them it's not needed, that's fine.

MR. VIEBROCK: Okay.

CHAIRMAN EWASUTYN: Karen Arent, Landscape Architect?

MS. ARENT: My comments are minor. I think they did a good job with the site plan and spec'ing out the site furniture and landscaping.

The proposed heights of the stonewalls should be labeled so it's clear which wall is going to be 30 inches and which is going to be 36.

Add a little bit more landscaping on the -- between the stonewall near the detention basin and the curb so that it's not just mulch that gets all over the place but some kind of

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ground cover or something.

MR. VIEBROCK: Talking towards the entrance there?

MS. ARENT: Right. Right between the stonewall and the sidewalk there's nothing planted there. It would be nice to see something.

The fence with the stormwater management basin is located directly behind the stonewall. I think the stonewall could be used as a fence so you can stop the -- just make sure you don't leave a gap but stop the fence.

MR. VIEBROCK: We'll put a post right at the end.

MS. ARENT: Exactly. You have to show details of the stormwater management fencing. They're going to be really noticeable so we would want to see what type of fencing you're going to -- sorry. Not fencing. Gate. The gates have to be specified.

MR. VIEBROCK: Right. It's going to match. We were proposing I believe --

MS. ARENT: A ranch style fence.

MR. VIEBROCK: Correct. We're going to

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show a similar type of gate.

MS. ARENT: What kind of gate?

MR. VIEBROCK: I'm not sure right now. We're looking into trying to get something that --

MS. ARENT: We just need to see the detail.

MR. VIEBROCK: We'll add that to the plans.

MS. ARENT: Once architectural review is completed and the color of the retaining wall is presented, we just want you to make sure it's labeled on the detail sheet so that the color is -- the contractor knows what color it's supposed to be.

As far as the signage variance, I think we should probably wait before recommending until the Board is satisfied and has the changes to review all the proposed signage and calculations. That's the Board's decision.

Then the landscape cost estimate. Just so that you're aware, before John signs the plan the bond has to be posted.

As soon as all the changes are made you

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should probably submit your cost estimate.

That's it as far as site plan. Did you want me to go over signage or architectural?

CHAIRMAN EWASUTYN: I think we'll wait. I think we'll take your advice, though, as far as before we make our recommendation to the ZBA for a signage variance, which I think they're proposing 1,399 square feet and they're allowed 1,006 square feet. We're looking for something that would provide us with a comprehensive signage plan so that when we move forward to make the recommendation to the ZBA when you come back the building department has something in hand to know how to work with that.

MR. WOLINSKY: I think that's better for us. We may be able to pare that down a bit knowing more precisely between preliminary and final where we stand on tenancies and things like that. That would be helpful.

CHAIRMAN EWASUTYN: Any comments from the Board Members on Karen Arent's presentation?

MR. GALLI: No.

MR. MENNERICH: No.

MR. PROFACI: No.

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CHAIRMAN EWASUTYN: Okay. Mark Sargent, Traffic Consultant?

MR. SARGENT: Just one comment. There are three parcels there that just front up against Route 300 kind of between your driveway and the existing major driveway to the plaza there on the east side of the site. I'm wondering if it's possible to allow an easement in the event those parcels change. Some time in the future if development comes along, would it be possible to offer an easement for access to that property if it's determined to be feasible prior to some future development?

MR. VIEBROCK: To all three parcels?

MR. SARGENT: The one in the corner there, in the upper corner. I know you've got detention there.

MR. VIEBROCK: In here?

MR. SARGENT: That could work. You don't control the other side obviously. It would have to be along your frontage somewhere.

CHAIRMAN EWASUTYN: Can you come forward. Either that or throw a dart.

MR. VIEBROCK: I'm trying to understand

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as well.

CHAIRMAN EWASUTYN: Mark, why don't you come forward and just kind of indicate --

MR. VIEBROCK: We can look into -- I'm probably going to respond we can look into it. I want to discuss it with my counsel as well. We want to come up with an answer that's -- I don't want to shoot you an answer right now. If you can send me a letter with that comment, we can discuss it and respond back to you.

MR. SARGENT: Is that how you want to handle it?

CHAIRMAN EWASUTYN: We'll refer to you. How do you want to manage it?

MR. SARGENT: That's reasonable. We talked about it a little bit in work session.

Mike, you had some thoughts on how feasible it was. I think if it's something that you can offer, that it provides an overall benefit to your project, to the public in general. We see these little islands created and traffic engineers look at trying to establish minimizing curb cuts on the State highway and allowing access between parcels as an overall

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benefit.

MR. VIEBROCK: A possible easement you're thinking to connect into the roadway network essentially?

MR. SARGENT: Right.

MR. WOLINSKY: I think what we would contemplate doing would be something like -- if you guys find a location that works for everybody, just showing the location on a site plan. Put a note on the plan that that could be used in the event of a future site plan.

MR. DONNELLY: That's the concept. If that's something you're willing to offer we would appreciate it.

MR. WOLINSKY: I think initially it's a designing and planning issue. Whether the consultants can come up with a location that works --

MR. VIEBROCK: Right.

MR. SARGENT: Does it even need to be workable at this stage? Can it be generic enough at this stage where it's determined in the future? You could say anywhere along this line or do you have to pinpoint it now?

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MR. GODDARD: We can identify a location.

MR. VIEBROCK: We could send you some sketches and talk about it and come up with a solution.

CHAIRMAN EWASUTYN: Joe, do you want to make a comment?

MR. PROFACI: I was just thinking it can't be anywhere. It's got to be on a site that's potentially usable.

MR. HINES: The grading and drainage constraints there with the stream and detention pond are going to dictate where it's going to go. Where Mr. Viebrock was just indicating may be the only spot that works.

MR. VIEBROCK: This is probably the only feasible spot. We'll look into it and come up -- I would have to look at my grading, my drainage design and everything and then I'll coordinate with your consultant. We can come up with a reasonable solution.

MR. SARGENT: I guess the one caveat is the grading and drainage you put in place now doesn't have to be the grading and drainage that

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2 exists when the -- the other parcel may raise the
3 elevation of their property ten feet. The
4 constraints we're talking about may or may not --

5 MR. DONNELLY: If you don't have the
6 location now then we would be asking that other
7 developer to redo all the drainage work on your
8 property at his cost where they may not be
9 willing to have it done. I think if the
10 suggestion can be made that will identify a
11 location and will hatch it out as potential
12 future --

13 MR. GODDARD: Easement.

14 MR. DONNELLY: -- connection and offer
15 that availability to that other developer at his
16 cost, if that's something that's agreeable I
17 think it would prove of great benefit if you're
18 willing to do those sketches.

19 MR. WOLINSKY: Just so we're on the
20 same page because of these commercial deals, the
21 definition of his costs can get a little complex.

22 MR. DONNELLY: As is the obligation of
23 maintenance over time when he starts to use your
24 road.

25 MR. WOLINSKY: Right. There are

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2 business deal issues which gets into tenant
3 permission for additional access through -- you
4 know, there's all that kind of thing that could
5 arise. As a planning exercise to show it and
6 provide for that potential, I don't see that --
7 MR. DONNELLY: If you're making the
8 offer, include the caveats you think are
9 appropriate and we'll consider it. It's probably
10 better than not having that provision at all.
11 MR. GODDARD: We'll send you over
12 something.
13 CHAIRMAN EWASUTYN: Any comments from
14 Board Members on Mark Sargent's review?
15 MR. GALLI: No.
16 MR. MENNERICH: Nothing.
17 MR. PROFACI: Nothing.
18 CHAIRMAN EWASUTYN: Mike, we're at a
19 point in the process now where the applicant is
20 looking for a preliminary approval. He's looking
21 to note that it would be at their own risk upon
22 receiving this preliminary approval if they
23 didn't receive the necessary variances from the
24 ZBA, that being a front yard variance, a rear
25 yard variance, one side yard variance, both side

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yard variances, a building coverage and a lot surface, that they would hold this Board harmless. What are your recommendations and what would be the conditions for preliminary approval?

MR. DONNELLY: The preliminary resolution would need to recite the issues that need to be resolved and the approvals that need to be obtained before final. As I understand it, we would need -- the applicant would need to return with DOT approval, DEC approval, Army Corp approval, City of Newburgh sewer flow letter, and of course the variance at which the applicant agrees it is at his risk. In addition to the other agency approvals, before final approval is obtained we need a sign-off letter from Karen on the issues that she has raised. We would need a report from you on the feasibility of a future connection to adjoining lands. We would of course need ARB. We would need to have a comprehensive sign plan so that we can compute and refer to the Zoning Board any need for variances. Of course we will need all of the appropriate financial securities that are required for the public improvements that are put

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in place. Obviously landscaping and stormwater improvement are the ones that come most readily to mind.

CHAIRMAN EWASUTYN: I think in addition, Mike, we will need a sign off from the jurisdictional fire department.

MR. DONNELLY: Okay.

MR. HINES: The Health Department for the water system also.

MR. DONNELLY: Okay, Health.

CHAIRMAN EWASUTYN: Having heard conditions for preliminary approval presented by Attorney Mike Donnelly, I would move for that motion.

MR. PROFACI: So moved.

CHAIRMAN EWASUTYN: I have a motion by Joe Profaci.

MR. MENNERICH: Second.

CHAIRMAN EWASUTYN: 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.

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MR. MENNERICH: Aye.

MR. PROFACI: Aye.

CHAIRMAN EWASUTYN: Myself yes. So carried.

MR. WOLINSKY: Thank you, Mr. Chairman. Do we also need a formal referral action?

MR. DONNELLY: I'll send you a letter.

I think you should vote on it to authorize me to send the referral letter.

CHAIRMAN EWASUTYN: Okay. I will move for a motion to have our Attorney, Mike Donnelly, prepare a formal motion to the ZBA requesting the variances. That would be a front yard variance, a rear yard variance, one side yard variance, both side yard variances, building coverage and lot surface for the Shoppes at Union Square site plan.

MR. GALLI: So moved.

MR. PROFACI: Second.

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

(No response.)

CHAIRMAN EWASUTYN: I'll move for a

SHOPPES AT UNION SQUARE

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roll call vote starting with Frank Galli.
MR. GALLI: Aye.
MR. MENNERICH: Aye.
MR. PROFACI: Aye.
CHAIRMAN EWASUTYN: Myself yes. So
carried. Thank you.
MR. WOLINSKY: Thank you very much.
MR. VIEBROCK: Thank you.

(Time noted: 8:15 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 19, 2008

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

----- X
In the Matter of

MID-HUDSON II HOLDING COMPANY, L.L.C.

North Plank Road
Section 80; Block 7; Lot 77
B Zone

----- X

SITE PLAN

Date: February 7, 2008
Time: 8:15 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

ALSO PRESENT: DINA HAINES
MICHAEL H. DONNELLY, ESQ.
BRYANT COCKS
PATRICK HINES
KAREN ARENT
MARK SARGENT

APPLICANT'S REPRESENTATIVE: ANTHONY COPPOLA

----- X

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

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CHAIRMAN EWASUTYN: The following item of business this evening is Mid-Hudson II Holding Company, L.L.C. It's a conceptual site plan located on North Plank Road, it's in a B Zone and it's being represented by Anthony Coppola.

MR. COPPOLA: Thank you, Mr. Chairman.

CHAIRMAN EWASUTYN: Thank you, Anthony.

MR. COPPOLA: This project is the second time in front of this Board. We were here last October for an initial concept review and basically there were certain things the Board was unhappy with that night, so we took a second look at the footprint of the redesign. I'm going to kind of go through those changes.

The last plan that was presented was for 4,500 square feet. This is basically a proposed retail building on North Plank Road. We reduced the footprint and the square footage of the building to just under 4,000 square feet, 3,975. That enabled, of course, less parking around the site and enabled us to do some other things. Basically lowering the density I think contributed to a lot of the improvements that

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2 we've submitted tonight. Really the one
3 issue I want to talk about -- we did get all the
4 comments from the consultants but the one issue I
5 really want to focus on tonight is the parking
6 that's being placed in front of the building and
7 the design review guidelines because I think
8 that's the most significant issue. Since the
9 last meeting when I took a look at the plan, what
10 we typically showed at the last meeting is your
11 typical rectangle. I basically decided to take a
12 little bit of a different approach in the design
13 of this site and the building and basically
14 looked -- wanted to look at the architecture
15 first. So keeping in mind the intent of the
16 design review guidelines which I think are
17 basically so that when we present buildings from
18 a public right-of-way or from the street we're
19 not looking at a sea of parking in front of the
20 buildings, we're looking at the buildings. With
21 that kind of concept in mind what we developed at
22 my office was basically an architectural element
23 that's in the front of this building that I think
24 would be the most interesting part of the
25 building. I'll show the elevation in a second.

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The concept basically was to bump out the front of the building, show this round furtive element, like a multi-faceted facade, that that point would be the highest and, like I said, the most interesting, present that so that there's no parking in the front of that, and also present that so it's directly in line with the entrance so that as you drive into this retail building that's the element that you see and that's the signature of the building. So that's the portion of the building that comes out here.

Before we had five parking spaces in the front. Now we only have the two handicap spaces in the front, which probably more likely than not would be empty most of the time. Basically we have five parking spaces here which now we've introduced a sidewalk and a stonewall there. So they're screened to a certain extent behind the stonewall, at least the bumpers of those cars. Then the rest of the parking, this is kind of a one-way circulation pattern, is angled towards the side seven spaces. Actually a lot of the parking is in the rear next to the landscaping buffer. So the side and the rear

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parking, that was basically the same as the other plan.

We also have a drive-through which we had on the previous plan.

We added a loading zone which is required.

Of course as I mentioned we have the landscaping buffer in the rear.

Now, the architecture is similar to what I mentioned. This is the element that I'm talking about. It's kind of a canopy design. It's going to be basically an octagon which will wrap around the front of the building. It will be covered by a covered walkway. That will basically connect between two possible entrances over here. That's all under cover all the way around to here. That also conforms I think -- the guidelines call for a maximum of 35 feet to the highest point of the roof. I don't think it's the average elevation of the roof anymore. That corresponds there. That's the element that you're going to look at when you see this building. That I think will be a signature of this building.

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2 So, you know, we did look at the design
3 guidelines. Sometimes I think quite honestly the
4 criticism can produce a better product, and I
5 think it has this time. Really from my
6 perspective I'm trying to design a building
7 that's integrated into the site which is
8 something we don't do a lot of. It's something
9 we honestly don't do a lot of. We normally do
10 the architecture at the end. This time I decided
11 we should really look at the architecture in the
12 building and design our site around the building.
13 That's what hopefully I think we've done.

14 CHAIRMAN EWASUTYN: Nice presentation.

15 MR. COPPOLA: Thank you.

16 CHAIRMAN EWASUTYN: I think you did an
17 outstanding job of giving us the reasoning to
18 make a decision. That's important as far as the
19 guidelines go. Thank you. Continue on with your
20 presentation.

21 MR. COPPOLA: Well, we received the
22 rest of the comments. I know there's a traffic
23 comment that we'll probably talk about when we
24 reach your traffic consultant about possibly
25 combining entrances. We did receive that.

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There's a lot of landscaping comments. I've looked through them and I don't think there's anything in there that we can't do. Karen is pretty specific about her suggestions in that respect.

I know there's comments for the drainage and the legibility of the topo, which I can understand that. We'll get that corrected.

That's basically where we're at.

This facade is something we're going to continue with, and we'll continue the rest of the design around the building to show the other elevations, pick out colors and materials at the next meeting or whenever.

CHAIRMAN EWASUTYN: Before I ask the consultants if there's anything that jumps out before them this evening, I would like to go on record as stating as it relates to the review comments, I would like to first turn to Planning Board Member Frank Galli as far as conceptual approval and his thoughts on that at this time.

MR. GALLI: I have to agree with John. I think he did an excellent job on the building and focusing in. I think it will work.

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MR. COPPOLA: Thank you.

CHAIRMAN EWASUTYN: Ken Mennerich?

MR. MENNERICH: I agree. Relative to the building and a focal point, it should come out very nice.

I've got one question on the parking. The label says thirteen parking spaces in the rear. I only counted up ten.

MR. COPPOLA: That's correct. I think that label is wrong. Twenty-seven spaces. I'll have to take a look at that. There are ten spaces there. I'll correct that.

CHAIRMAN EWASUTYN: Joe Profaci?

MR. PROFACI: I would echo the praise. I think you did a great job, Anthony.

Just one question. How many retail spaces in this building?

MR. COPPOLA: I think you're going to see a maximum of two. I mean this may be a bank or something that uses the drive-through. That might be, you know, 3,000 square feet. That leaves you like another 1,000 which possibly could use a side entrance or another front entrance. I mean I can't see this being an

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office. I think you're going to end up with a high-end retailer or a national retailer there. That would be my guess.

MR. PROFACI: Okay.

CHAIRMAN EWASUTYN: Pat Hines?

MR. HINES: We took a look at the drainage report. Our only comment is we want to make sure that the discharge from -- there's an underground stormwater management facility. We want to see where those discharges go. We've had some issues in the past where although we return them to the pre-development flows, when they come out the end of the pipe towards the neighbor it is causes some concern. Additional detail and the down gradient there to see where it enters a water course or natural channel there, otherwise the drainage report is fine.

We need some notes on there for maintenance and inspection of the stormwater, that it can be enforceable by the code enforcement officer. That's a result of some conversations I've had with Jerry Canfield and Tilford regarding the drainage. The Town is coming out with a new drainage stormwater

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management ordinance that's going to require those.

DOT approval for the access as well as 500 feet of force main is required. That's going to be a challenge for DOT. You're going to have to work that out with them, the force main down their right-of-way.

The site grading issue.

The topo lines are existing and proposed with the same line type and are difficult to follow.

MR. COPPOLA: I think the right of -- I think the right-of-way -- I mean the easement is not in the right-of-way. We're on the trunk side of that.

MR. HINES: So you're looking for it on private property?

MR. COPPOLA: He's got an easement through the front of the other property.

MR. HINES: We should see that along with the easement, and that easement agreement should go to Mike.

MR. COPPOLA: It's still going to need DOT approval. They'll have to go into the line

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at the end. Most of that 500 feet is on private land.

MR. HINES: If you could submit that easement to Mike.

MR. COPPOLA: Sure.

MR. HINES: That's all we had.

CHAIRMAN EWASUTYN: Bryant Cocks, Planning Consultant?

MR. COCKS: Me and Karen were just looking at the site in regard to the number of parking spaces. Twenty-seven are required. Since they're three short now we're trying to look at spaces where we can move it over. We were thinking maybe if you shift the refuse container to the other side of the site you would be able to gain two there.

MR. COPPOLA: In the corner. Yup.

MR. COCKS: If you come up with one on this side and one on the southern side.

MR. COPPOLA: I think we can work it out.

MR. COCKS: Okay. I mean we would like to not send you for a variance. I'm sure you wouldn't want to go for three parking spaces.

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MR. COPPOLA: We'll work that out for three spaces.

MR. COCKS: My other comments were we're going to need a surveyor's and engineer's seals and signatures on the plans.

You made the presentation about being in conformance with the design guidelines. That's going to be up to the Planning Board to determine if those should be applicable.

You did propose a stonewall to screen the cars as was stated in the design guidelines. You just happen to have seven spaces in front instead of all being around the back and side, but they're just guidelines so it wouldn't require a variance.

You did provide some landscaping in between the building and sidewalk that's proposed. Additional landscaping in the front by the proposed pylon sign. We're going to have to take a look at the proposed pylon sign. It looks a little large.

MR. COPPOLA: We can probably bring it down. Sure.

MR. COCKS: I did have a concern about

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the way the loading zone is designed. Just having the drive-through right next to it, I don't know, you know, what kind of trucks are going to be able to make that turn, especially if you're going to have this island in between here.

MR. COPPOLA: I could probably back off this other area to the right of that and extend the loading zone.

CHAIRMAN EWASUTYN: Mark, I think somewhere in the review Ken had thought that this would only be able to accommodate a box truck.

MR. SARGENT: A standard unit truck. We looked at the template and thought it was okay. If you could gain some feet by pushing that back a little bit, make it a little easier. Sure.

MR. COCKS: That was another concern. You provided the detail for the site lighting which is going to be sixteen feet in height and also a lighting plan which looks like it would be in conformance. It's pedestrian scale, it's not going to be too bright.

I just commented upon the architecture, that it was a nice looking building. We had no

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other comments.

CHAIRMAN EWASUTYN: Karen, your summary -- brief summary of what needs to be -- AJ acknowledged the fact he's going to have to address your comments. Your major comment.

MS. ARENT: Briefly, I think that the project might be very difficult to design with all the parking in the back to get the vehicular circulation to function nicely.

The one comment I think that we -- I'll mention is that you're showing a marquis type of sign which lists all your tenants whereas all your tenants will be visible from the road. That's not in accordance with the design guidelines. Also, maybe consider putting a stonewall base at the sign to kind of balance the stonewall on one side and some kind of stone element on the other side might be nice. Otherwise I think it's a good way to address the design guidelines even though he's not doing exactly what it says.

CHAIRMAN EWASUTYN: And the details that he may be lacking on the stonewall he'll provide in his later detail sheets.

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MS. ARENT: Yes.

CHAIRMAN EWASUTYN: It's your turn, Mark.

MR. SARGENT: Okay. Let's see. My colleague Ken looked at this site and had written a letter. As you indicated, he's developed a concept for shared access which was included in the letter. Whether you agree or not with the actual concept that we've proposed, the idea makes sense. From a traffic engineering standpoint what we try to do is minimize closely spaced intersections. You try to provide adequate separation between them. When they are close together you try to look for opportunities to combine them and share access. Overall it improves safety, it improves operation and efficiency. It's a better overall design from a transportation standpoint. Is it a fatal flaw, no, to have two closely spaced intersections. This is a low-volume intersection on the west --

CHAIRMAN EWASUTYN: It would be north.

MR. COPPOLA: It's Monroe Muffler.

MR. SARGENT: It's low volume. The idea I believe is worthy of looking into and

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maybe exploring that with your neighbor.

You're going to need a DOT highway permit, which you mentioned already.

We would like you to explore the idea.

MR. COPPOLA: Sure. I'll pass that along to my client, he'll contact the owner next door and see where it goes and we'll document that back to you.

MR. SARGENT: The outside, we believe that's a pass through lane, the outer lane.

MR. COPPOLA: Correct.

MR. SARGENT: There is no actual --

MR. COPPOLA: Right. We can note it that way.

MR. SARGENT: -- ATM there so you won't be blocking both lanes at once?

MR. COPPOLA: Yup.

MR. SARGENT: That's it. Those are our basic comments.

CHAIRMAN EWASUTYN: Any additional comments from Board Members. Frank Galli?

MR. GALLI: Is this going to be leased out before you start construction or is it going to be constructed and hopefully you get a bank

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and somebody else?

MR. COPPOLA: I don't think you'll see this constructed until it's leased.

MR. GALLI: If you don't get a bank you're not going to have the drive-through constructed?

MR. COPPOLA: Unless he comes up with another user.

MR. GALLI: A pharmacy?

MR. COPPOLA: Probably not a pharmacy.

MR. GALLI: We already have ten in the area. I was just curious if you were going to build to suit.

MR. COPPOLA: I don't think you'll see that here.

CHAIRMAN EWASUTYN: Ken Mennerich?

MR. MENNERICH: No more questions.

MR. PROFACI: Nothing further.

CHAIRMAN EWASUTYN: Are you surprised -- with the thought in mind Frank raised, are you surprised with the seven buildings that you have designed in the Town that still haven't reached full occupancy?

MR. COPPOLA: Well, I mean things are

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slowing down quite a bit. It is a bit of a surprise to me. Even before the latest slow down there's been other buildings we've done that are not occupied or they've lost tenants. So yeah. I mean it's a sign of the times to a certain extent I believe.

CHAIRMAN EWASUTYN: Okay. Mike Donnelly, would you like to add anything at this time? The motion before the Board this evening is to grant conceptual approval?

MR. DONNELLY: No, I have nothing to add. You may wish to consider whether you're ready for a SEQRA declaration as well.

CHAIRMAN EWASUTYN: What's the square footage of this building?

MR. COPPOLA: 3,975.

MR. DONNELLY: It's a Type II.

MR. HINES: It needs to go to County.

MR. DONNELLY: We have a letter it's

Local.

MR. COPPOLA: Did you get a letter back?

MR. DONNELLY: Yes.

CHAIRMAN EWASUTYN: Speak to Dina.

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MR. COPPOLA: That's fine.

CHAIRMAN EWASUTYN: The other question I'll ask from the Board -- let me state first I'll move for a motion to grant conceptual site plan approval for Mid-Hudson Holding Company.

MR. GALLI: So moved.

MR. PROFACI: Second.

CHAIRMAN EWASUTYN: I have a motion by Frank Galli. I have a second by Joe Profaci. 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. MENNERICH: Aye.

MR. PROFACI: Aye.

CHAIRMAN EWASUTYN: Myself. So carried.

Will the Planning Board waive the requirement for a public hearing for this site. Frank Galli?

MR. GALLI: Yes.

CHAIRMAN EWASUTYN: Ken Mennerich?

MR. MENNERICH: Yes.

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CHAIRMAN EWASUTYN: Joe Profaci?

MR. PROFACI: Yes.

CHAIRMAN EWASUTYN: And myself yes.

MR. COPPOLA: Thank you.

CHAIRMAN EWASUTYN: So then you'll
continue to revise --

MR. COPPOLA: We'll continue to revise
and we'll make a full submission next time with
the architectural drawings.

(Time noted: 8:35 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 19, 2008

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

----- X
In the Matter of

LANDS OF BARRY WHITE
(2008-02)
Fostertown Road
Section 17; Block 1; Lot 40
R-2 Zone

----- X

SITE PLAN

Date: February 7, 2008
Time: 8:35 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

ALSO PRESENT: DINA HAINES
MICHAEL H. DONNELLY, ESQ.
BRYANT COCKS
PATRICK HINES
KAREN ARENT
MARK SARGENT

APPLICANT'S REPRESENTATIVE: MICHAEL MIELE

----- X

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

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CHAIRMAN EWASUTYN: Our next item of business this evening is the lands of Barry White. It's a conceptual sketch plan located on Fostertown Road between Summit Ridge and North Fostertown Road, it's in an R-2 Zone and it's being represented by Michael Miele.

MR. MIELE: I'm Mike Miele, I'm the engineer for the applicant. What the applicant is proposing to do -- this is a house and a barn and a dwelling. It's approximately five-and-a-half acres. He's looking just to cut it in half, keep the existing house, which I think there's an accepted offer to sell, and develop the back piece. He's developing now a single lot. There are plans in the future once this is done if he wants to do more with it later. For now we're just cutting up.

We're going to require a variance for the dwelling, front yard variance to Fostertown Road.

It's well and septic.

I got comments back from Pat about the road dedication and stuff like that. That's pretty much where we're at.

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CHAIRMAN EWASUTYN: Are you looking
this evening for a referral to the ZBA?

MR. MIELE: Yes, please.

CHAIRMAN EWASUTYN: Before I move for a
motion to refer this to the ZBA for, I believe it
would be a front yard variance where fifty feet
is required and I think you're proposing forty-
six --

MR. MIELE: That's correct. That
actually might be changed a little bit based on
the comments. I have to base it off the road
dedication. The property survey is based off
the center line of Fostertown Road. Before I
submit to the ZBA I'll have a surveyor adjust
that, adjust the lot area and also adjust the
variance. It should only affect the front yard
variance.

MR. DONNELLY: This is for the new
building?

MR. MIELE: The existing house in
front.

CHAIRMAN EWASUTYN: Bryant, your
comments?

MR. HINES: Just before that, there are

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two lots here now?

MR. MIELE: No. We went around and around. The deed calls out for two parcels but it is one parcel. Originally we thought we could do a lot line change. I guess the way the section, block and lot was dictated it was 17-1-40.1 which I found out was for tax reasons. It's one lot. That's why we're doing the subdivision and not the lot line change.

MR. HINES: Okay.

CHAIRMAN EWASUTYN: Bryant Cocks?

MR. COCKS: That was actually my first comment. We were just discussing that. We clarified that already.

Also, you just indicated that the setback line might actually meet. Right now it says forty-six. It measures out to forty-six.

MR. MIELE: It will be less because once the surveyor gives me the proper dedication, given the fifty-foot right-of-way it will probably only be, I don't know, thirty-eight once it's done. I'll make sure that's addressed before we submit to the ZBA.

MR. COCKS: You're going to need to get

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referred to the ZBA from this Board.

Also, where is the proposed driveway location for lot 2? It's not shown on the front. I guess it's shown on the back one.

MR. MIELE: It's on the southeast side.

MR. COCKS: That has to be shown on both plans.

You should label sight distance on one of the plans for both driveway locations just for clarification.

The acreage calculations on the plans, it says parcel 1 then parcel 2 back here and then up here there's one circled and then 2 circled. Clean that up to say exactly what parcel 1 and parcel 2 are going to be.

MR. MIELE: In speaking with the surveyor, do we have to even show it? He was saying to represent it because that's how it's listed on the deed even though it's one lot. Does that need to be -- it doesn't matter either way. We can just take it and show the one with the circle represents what the proposed lots are. The other is just more showing where the two parcels were where it referenced it in the deed.

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So if you don't feel that needs to be referenced on the plat, I can remove it.

MR. DONNELLY: I don't think we need the deed descriptions.

MR. HINES: That's confusing.

MR. MIELE: Okay.

MR. COCKS: And that's not 18.5 acres.

MR. MIELE: 1.85. I'll correct that.

MR. COCKS: Just a survey of the site with a surveyor's seal and signature and an engineer's seal and signature are going to be needed on the plans.

In the legend you just have a proposed monument in there. I didn't know what that was for. I didn't see any on the site so I didn't know if that was actually proposed or that was just left on the legend for some reason.

MR. MIELE: I'll put in where the proposed monuments are going to be.

MR. COCKS: What kind of monuments are they going to be?

MR. MIELE: Usually in the front the survey monument and pins in the rear. Actually, most of the -- the existing corners are pinned.

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MR. COCKS: That's fine. I didn't know if that was something going in the front that would be seen from the road or anything like that.

There were just a couple items in the E.A.F. that should be adjusted.

The threatened and endangered species needs to be confirmed with the DEC website.

One of them says that the existing house is served by public utilities. It actually has a well and septic.

The zoning information, the minimum lot proposed should list the smaller lot of 1.8 acres.

MR. MIELE: I'll address that.

CHAIRMAN EWASUTYN: Pat Hines, your comments.

MR. HINES: My first comment had to do with the roadway dedication parcel. That's required.

I'm not clear on why you would need the variance for fifty feet when you can provide fifty feet.

MR. MIELE: Right now it's --

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MR. HINES: Just for the front yard setback. So this lot line that's going to be fifty, that's not labeled. The access driveway for lot 2.

MR. MIELE: Yeah. Lot 1 is the existing lot that we're going to need the variance for the existing well.

MR. HINES: Just the front yard setback?

MR. MIELE: Just the front yard setback. The second lot, the proposed lot, we meet all zoning. It's the existing structure that's there.

MR. HINES: That's fine. Metes and bounds are incomplete. The front yard -- the front access for lot 2, the frontage wasn't labeled. You'll have to label that once the dedication parcel is shown.

A surveyor's stamp and date of survey will be needed.

Adjoining wells and septic systems should be depicted to assure there's none down gradient.

MR. MIELE: You have a bunch of houses

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to the west there. Summit Ridge.

MR. HINES: A note saying there is none with within 200 feet. If you can confirm that.

On your septic sheet you have note 4 that states that the septic will be designed by a licensed professional.

MR. MIELE: I'll get rid of that.

MR. HINES: The building department had a problem on one of your other plans. I don't know if you knew about that. That note can go away.

The standard note for certification to the building department for the septic system is required.

MR. MIELE: Okay.

CHAIRMAN EWASUTYN: I think we're fine at this point. Any comments from the Board Members. Frank Galli?

MR. GALLI: County for Fostertown Road.

MR. MIELE: You said Fostertown. Yeah, we will need a referral.

CHAIRMAN EWASUTYN: We can do that while we're sending them to the ZBA also.

So I'll make that part of the motion.

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I'll move for a motion to refer this to the Zoning Board of Appeals for a -- just a front yard variance; correct?

MR. DONNELLY: Front.

CHAIRMAN EWASUTYN: For a front yard variance and also to circulate it to the Orange County Planning Department.

Mike, what you'll do is you'll provide plans to Bryant Cocks and we'll circulate that to the Orange County Planning Department.

MR. HINES: You'll need County DPW for the driveway.

MR. MIELE: Can I submit that now or --

MR. HINES: Now would be --

MR. MIELE: -- do I do that -- do I send it to you?

MR. COCKS: I'll send it.

CHAIRMAN EWASUTYN: I'll move for that motion.

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?

1
2 (No response.)
3 CHAIRMAN EWASUTYN: I'll move for a
4 roll call vote starting with Frank Galli.
5 MR. GALLI: Aye.
6 MR. MENNERICH: Aye.
7 MR. PROFACI: Aye.
8 CHAIRMAN EWASUTYN: And myself.
9 MR. COCKS: John, we would also have to
10 declare our intent for lead agency because of the
11 DPW.
12 CHAIRMAN EWASUTYN: The next motion
13 I'll make is that we declare our intent for lead
14 agency.
15 MR. MENNERICH: So moved.
16 MR. GALLI: Second.
17 CHAIRMAN EWASUTYN: I have a motion by
18 Ken Mennerich. I have a second by Frank Galli.
19 I'll ask for a roll call vote starting with Frank
20 Galli.
21 MR. GALLI: Aye.
22 MR. MENNERICH: Aye.
23 MR. PROFACI: Aye.
24 CHAIRMAN EWASUTYN: And myself yes. So
25 carried.

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Thank you.
MR. MIELE: Thank you.

(Time noted: 8:47 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 19, 2008

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

----- X
In the Matter of

LANDS OF POST
(2008-03)

Corner of Route 300 and Hidden View Drive
Section 11; Block 1; Lot 35.21
AR Zone

----- X

CONCEPTUAL SKETCH PLAN

Date: February 7, 2008
Time: 8:48 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
ALSO PRESENT: DINA HAINES
MICHAEL H. DONNELLY, ESQ.
BRYANT COCKS
PATRICK HINES
KAREN ARENT
MARK SARGENT

----- X

MICHELLE L. CONERO
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Wallkill, New York 12589
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CHAIRMAN EWASUTYN: The next item is
the lands of Post. We didn't receive all the
necessary funds and the applicant was notified.

(Time noted: 8:49 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
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DATED: February 19, 2008

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

----- X
In the Matter of

HL RENTALS, L.L.C.
(1997-18)

Request for Final Approval

----- X

BOARD BUSINESS

Date: February 7, 2008
Time: 8:49 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

ALSO PRESENT: DINA HAINES
MICHAEL H. DONNELLY, ESQ.
BRYANT COCKS
PATRICK HINES
KAREN ARENT
MARK SARGENT

----- X

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CHAIRMAN EWASUTYN: At this point in time I'll turn to Dina Haines to review the Board business.

MS. HAINES: We received a fax from Ken Lytle dated February 5, 2008 regarding HL Rentals. They received their City flow acceptance letter, and that was dated June 25th, from the City of Newburgh. We need a motion for final approval.

MR. HINES: Time out. I had sent a memo recently regarding DOT approval, and the relocation of the driveway, and the need for this project to come back. I sent a copy to everyone.

CHAIRMAN EWASUTYN: I do remember that. Okay. Did you read your Board business? Do you have Board business in front of you? Look underneath the fax that we received from Zen Design.

MR. DONNELLY: I had sent you a letter too because Ken Lytle thought he was entitled to have his plans signed and I told him he never received final approval.

MR. HINES: Yeah, but --

CHAIRMAN EWASUTYN: I'm not saying

1
2 you're not correct. I'm saying in the absence of
3 remembering what you had said and having received
4 these transmittals, this is why it became Board
5 business.

6 MR. HINES: Right, right. What
7 happened is just recently he sent to me a copy of
8 the plans marked up --

9 CHAIRMAN EWASUTYN: And they wanted a
10 change.

11 MR. HINES: -- with DOT changes and he
12 wanted to know if he had to come back to the
13 Board. I said absolutely, the resolution says
14 any changes have to come back.

15 CHAIRMAN EWASUTYN: All right. At this
16 point in time do you want to leave it for a
17 motion you'll contact Ken Lytle tomorrow and
18 explain to him what will be needed and that we'll
19 add this to our agenda on March 6th?

20 MR. HINES: Okay. I think one of his
21 conditions was DOT approval.

22 CHAIRMAN EWASUTYN: I remember they
23 wanted to split it. They want a right in and
24 then --

25 MR. HINES: They're changing. It was a

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right in.

CHAIRMAN EWASUTYN: There's a dual access coming out. Right.

Then I'll move for a motion to table the discussion on HL Rentals and that Pat Hines will follow up with Ken Lytle to establish a March 6th Planning Board agenda date to move forward on final approval.

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. MENNERICH: Aye.

MR. PROFACI: Aye.

CHAIRMAN EWASUTYN: Myself. So carried.

Thank you.

(Time noted: 8:50 p.m.)

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

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

----- X
In the Matter of

SCATTURO SUBDIVISION
(2006-13)

Request for Extension of Conditional Final Approval
----- X

BOARD BUSINESS

Date: February 7, 2008
Time: 8:51 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

ALSO PRESENT: DINA HAINES
MICHAEL H. DONNELLY, ESQ.
BRYANT COCKS
PATRICK HINES
KAREN ARENT
MARK SARGENT

----- X
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MS. HAINES: We received a letter from Charlie Brown dated February 5, 2008. He's requesting a 180-day extension of the conditional final approval. His current approval expires on April 14, 2008. A 180-day extension will be valid through October 31, 2008.

CHAIRMAN EWASUTYN: I'll move for that motion.

MR. DONNELLY: I disagree only with his math. I think it's October 11th.

CHAIRMAN EWASUTYN: All right. So that we'll amend the motion to October 11, 2008.

MR. PROFACI: So moved.

CHAIRMAN EWASUTYN: I have a motion by Joe Profaci.

MR. MENNERICH: Second.

CHAIRMAN EWASUTYN: 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. MENNERICH: Aye.

SCATTURO SUBDIVISION

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MR. PROFACI: Aye.

CHAIRMAN EWASUTYN: Myself. So carried.

Start thinking about the possibility for a quarterly site inspection in March 2008.

(Time noted: 8:52 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 19, 2008

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

----- X
In the Matter of

DISCUSSION BY MICHAL DONNELLY
RE: MEHR AND KANE

----- X

BOARD BUSINESS

Date: February 7, 2008
Time: 8:52 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

ALSO PRESENT: DINA HAINES
MICHAEL H. DONNELLY, ESQ.
BRYANT COCKS
PATRICK HINES
KAREN ARENT
MARK SARGENT

----- X

MICHELLE L. CONERO
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2 MR. DONNELLY: John, one matter if I
3 could. I told you last week that the Exeter
4 appeal is being argued Monday. I will argue
5 that in the Appellate Division, and the Town
6 as well as Exeter will also argue.

7 Since then I've received notice that
8 the Mehr and Kane appeals are scheduled to be
9 argued next Friday. After receiving that
10 notice I received a letter from the attorney
11 for Mehr and Kane saying that he was not
12 going to appear for oral argument. It's
13 optional whether you do. The legal
14 requirement is you submit written briefs.
15 Normally when a party says they're not going
16 to argue after they've requested argument, it
17 is, I don't know, sort of a concession that
18 they think it isn't worth it. That might be
19 true based upon the case that I sent you a
20 letter about. However, I guess what I'm
21 asking is just because he is not going to
22 argue doesn't mean that I can not or that the
23 developer might not. I'm somewhat concerned
24 that the court doesn't know about that case.
25 It seems incomprehensible but I'm not allowed

1
2 to communicate with the court except by
3 going. While they should know about the case
4 because the Court of Appeals reversed them, I
5 think it would be helpful to say that since
6 the briefs were filed this case was decided,
7 I believe it governs here. Of course it
8 means a trip to Brooklyn and of course the
9 Town has to pay to send me down there.

10 I also know that the attorney for
11 Mehr and Kane has been coming to the Zoning
12 Board proceedings where the motel is now
13 asking to exceed the 25 percent limitation on
14 kitchens in rooms. So it may be what they
15 are trying to do is save money and do the
16 same thing. That is, now they have another
17 lawsuit that they can bring against the
18 Zoning Board that will drag it out further so
19 who cares about this one because they don't
20 ever hope to win, they just want to delay.

21 However, to us the importance of
22 being able to rely upon the D.E.I.S. for that
23 business park has repercussions and meanings
24 beyond just this application, and perhaps
25 beyond just this segment of the 17K corridor

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because I assume to some extent as that continues to develop some of the data will be significant to you.

I guess what I'm asking is dollars and cents do you want me to withdraw from that oral argument or do you wish me to go to argue your position? It means I've got to leave at 6:30 in the morning and I get back at 1:00 in the afternoon, I need a few hours to go over the file and get up to date on the cases before I go. We're talking about, you know, seven, eight, nine, ten hours worth of time.

CHAIRMAN EWASUTYN: The Board's position. Joe Profaci?

MR. PROFACI: I think it's probably important that he do argue this point.

CHAIRMAN EWASUTYN: Ken Mennerich?

MR. MENNERICH: I agree.

CHAIRMAN EWASUTYN: Frank Galli?

MR. GALLI: Having attended the Zoning Board meeting I think it's very important he goes down and gets the issue on the record.

CHAIRMAN EWASUTYN: If you're looking

1
2 at the activity or the potential activity along
3 the corridor, I think it's essential.
4 Is there anything else?
5 MR. DONNELLY: Thank you.
6 CHAIRMAN EWASUTYN: Does anybody else
7 have a comment?
8 (No response.)
9 CHAIRMAN EWASUTYN: I'll move for a
10 motion to close the Planning Board meeting of
11 February 7, 2008.
12 MR. PROFACI: So moved.
13 MR. GALLI: Second.
14 CHAIRMAN EWASUTYN: I have a motion by
15 Joe Profaci. I have a second by Frank Galli.
16 I'll ask for a roll call vote starting with Frank
17 Galli.
18 MR. GALLI: Aye.
19 MR. MENNERICH: Aye.
20 MR. PROFACI: Aye.
21 CHAIRMAN EWASUTYN: And myself. So
22 carried.
23 Thank you.
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25 (Time noted: 8:55 p.m.)

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DATED: February 19, 2008

