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

----- X

In the Matter of

BRITAIN COMMONS
(2003-20)

Route 207
Section 97; Block 1; Lot 40.1
R-3 Zone

----- X

RESIDENTIAL SITE PLAN

Date: October 2, 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
CLIFFORD C. BROWNE
KENNETH MENNERICH
JOSEPH E. PROFACI

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

APPLICANT'S REPRESENTATIVE: TIM MILLER

----- X

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

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MS. HAINES: Good evening, ladies and gentlemen. I'd like to welcome you to the Town of Newburgh Planning Board meeting of October 2, 2008.

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

MR. GALLI: Present.

MR. BROWNE: Present.

MR. MENNERICH: Present.

MR. PROFACI: Here.

CHAIRMAN EWASUTYN: Present.

MS. HAINES: The Planning Board has experts that will provide input and advice to the Planning Board in reaching various SEQRA determinations. I ask that they introduce themselves at this time.

MR. DONNELLY: Michael Donnelly, Planning Board Attorney.

MS. CONERO: Michelle Conero, Stenographer.

MR. CANFIELD: Jerry Canfield, Fire Inspector, Town of Newburgh.

MR. HINES: Pat Hines with McGoey,

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BRITAIN COMMONS

Hauser & Edsall, Consulting Engineers.

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

MS. ARENT: Karen Arent, Landscape
Architectural Consultant.

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

(Pledge of Allegiance.)

MR. PROFACI: If you could please make
sure your cell phones are turned off. Thank you.

MS. HAINES: The first item of business
we have tonight is Britain Commons. It is a
residential site plan located on Route 207 in an
R-3 Zone. It is being represented by Tim Miller.

MR. MILLER: Good evening, Mr.
Chairman, Members of the Planning Board. I'm
here tonight representing Ginsberg Development
Corporation. They are the applicants for this
site plan application which is known as Britain
Commons.

With me tonight is Bill Evans who is
the vice president of Ginsberg Development and
Jennifer Van Tuyl, the attorney representing the
project, and I'm Tim Miller with Tim Miller

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Associates.

This application was originally filed in 2003 for 388 units. The Planning Board adopted a positive declaration and requested us to prepare an Environmental Impact Statement. We went through the scoping process and we proceeded to develop an Environmental Impact Statement for the project. We went through due diligence and engineering. The plan was slightly modified. We're now at 370 units. We're here tonight to tell you that we expect to submit that document to your Board and your consultants sometime I'm hopeful in the next thirty, forty-five days.

What we're hoping to do is move this application forward to the SEQRA process and address the notable SEQRA issues as it relates to environmental impacts, traffic impacts, stormwater management and utilities. We have been -- when I say we, Ginsberg Development Corporation and actually many of my private developer clients have been struggling with moving these projects through the planning process and coming up with a program that recognizes what's been taking place in our world

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both in terms of the housing market, the cost of goods and services, the price of oil, the cost of materials, and that's part of the reason why this project was filed in 2003 and now in 2008 we're getting ready to submit an Environmental Impact Statement. We also have ideas about how we can make this project a greener project. As I'm sure many of you know, this has been very much promoted by the American Land Institute, American Planning Association, finding various ways to develop projects that are neo-urbanism, that have more of a village environment, walkable, pedestrian friendly, community friendly. We do have some ideas toward that end that we expect to go through as we go through this process.

Our primary goal right now is to get back in front of your Board and your advisors with the Environmental Impact Statement and start getting some feedback so we can move this application forward. There are a number of things we expect we'll be talking about. One is the possibility of phasing this project. Projects of this nature have been getting more and more difficult to finance because they're

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approved in one phase and then they get -- the infrastructure gets built in one phase and the financing needs to be taken out in one phase. As I'm sure you're all aware, in the credit market it's becoming more difficult to do that. That's something we want to talk to the Board and your advisors about as well.

We're here tonight to give you this brief update on how we got from there to here and request that we set up a workshop with your advisors so that we can ready ourselves to submit the Draft Environmental Impact Statement.

If you have any questions I would be happy to try to answer them. That's all I have to say.

CHAIRMAN EWASUTYN: Questions from the Board. Frank Galli?

MR. GALLI: Did you consider all the new updates since the last time, like the road width and stuff like that?

MR. MILLER: We are aware of that and that is a matter we want to have some more discussions with the Town about. Absolutely. The landscape guidelines also may have

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implications for this. Yes, we know there have been some changes in the codes.

CHAIRMAN EWASUTYN: Why don't you walk us through, just for a moment to refresh us, the square footage of the units, the amount of bedrooms. Maybe just take a few minutes, it's been such a long time, because, I don't know, you may want to decrease the size. Are you possibly thinking about -- we've had projects similar to this where originally they were being proposed between 2,700 to 3,200 square feet and as the market changed they came back and talked about 1,800 to 2,200 square feet. I don't know if you're giving any considerations to that.

MR. MILLER: This application is townhouses and condominiums. The dwelling units are proposed in a couple different configurations. The ownership will be entirely condominium ownership. This plan shows 254 three-bedroom units. They would range in size from 1,700 to about 2,200 square feet. There's 116 two-bedroom units that would range in size from about 1,200 to 1,700 square feet. We expect that there may be some adjustments to those sizes

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BRITAIN COMMONS

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based on market conditions. There will be a total of around 1,100 bedrooms.

MR. EVANS: We're also --

CHAIRMAN EWASUTYN: Just for the record --

MR. EVANS: I'm sorry. I'm Bill Evans with Ginsberg Development.

We're also looking at the possibility of increasing the master downs because of the active DMT master and the young professional which we think this type of community and all the other communities seem to be focused on. We're probably going to go to 25 to 35 percent with master downs.

MR. MILLER: That's basically the master bedroom on the first floor.

MR. EVANS: Sorry.

CHAIRMAN EWASUTYN: Questions from the Board Members. Frank?

MR. GALLI: If you're trying to get that type of clientele why would you have a lot of three bedrooms than two bedrooms?

MR. EVANS: With the master down you still are going to have probably two bedrooms

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upstairs because that's where you lock the grand kids away and you put -- that's a normal type of arrangement.

CHAIRMAN EWASUTYN: Ken?

MR. MENNERICH: You mentioned the green features that you wanted to incorporate in the project. Is that covered in your Draft D.E.I.S. that you're submitting or --

MR. MILLER: We expect that there will be some criteria that are sort of goals that we will have for the project. Some of it has to do with the way stormwater is managed on the site. There has been advancements in stormwater management just in the last five years. The permit has changed and there's been technological improvements, some of which are directing stormwater to grass swales and, you know, reducing the amount of water that actually ends up in a stormwater management facility, keeping it on the ground and into the landscaping. We will have a section that talks about our target goals for a green community. Absolutely.

MR. MENNERICH: Previously when we were looking at this project there was -- you had kind

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of arranged the buildings and everything to fit into the topography and the terrain of the site, and in doing so you were coming up with a whole list of zoning violations --

MR. MILLER: Variances.

MR. MENNERICH: -- variances that you would need. Is that still true in the proposal that you have in front of us now?

MR. MILLER: There will be some variances, and we will detail exactly the nature of those variances. We think they're really in the interest -- one of the things that we want to do is reduce earth movement, maintain trees. Because the way codes are written, invariably, you know, they take kind of a big picture view of spacial relationships between units, setbacks and separation distances and things of that nature. So sometimes it just makes sense to request relief when other values of communities have -- I know that all the communities I work in do value trees and greenery, seek to be preserved. So yes, we expect that there still will be some requests for relief in those instances.

MR. MENNERICH: Thank you.

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MR. BROWNE: John.

CHAIRMAN EWASUTYN: Cliff Browne?

MR. BROWNE: Is there -- do you see any reason we're going to have to revisit the scope on this? Are we changing things that we have to go back through the scope and look at everything and make sure everything that was scoped --

MR. DONNELLY: Either by virtue of your project or the surrounding area. I don't know but that's a good question.

MS. VAN TUYL: I think that's a question that we --

CHAIRMAN EWASUTYN: For the record --

MS. VAN TUYL: I'm sorry. My name is Jennifer Van Tuyl. We have looked into the matter and I have done some research. We believe that the scope is still perfectly valid because, if you recall, the scope is really the questions that need to be answered and not any of the answers. So we think the scope is still valid in setting the relevant intersections, for example, to be analyzed for traffic. Of course I think that's one of the issues we want to discuss with the consultants and make sure the attorney and

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planner agree with that. We think the Board set a pretty tough scope when it did adopt the final scope and that those are still the relevant questions, certainly the data we've been working on updating to make sure it's current, and I think that's the -- that's what we'll make sure, that we do have, current data.

MR. BROWNE: Thank you.

CHAIRMAN EWASUTYN: Frank Galli?

MR. GALLI: Jennifer, back when the project first came before us they were working on the easement for water for fire protection. Pat wrote, or one of the --

MR. EVANS: You want me to answer that?

MR. GALLI: Were those easements ever granted?

MR. EVANS: One of them is. The other is almost completed. We finished all the survey work and so forth.

MR. GALLI: You'll have them intact this time?

MS. VAN TUYL: Yes.

MR. GALLI: That was one of the major concerns.

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MS. VAN TUYL: Just to clarify one other point, I just wanted to mention that actually the Zoning Board did issue the variances based on this original plan. We'll of course re-evaluate and see if any modification of those decisions needs to be reached. The Zoning Board did ultimately determine to grant the request of variances for exactly the reason that Tim Miller said, it was really a better plan, it preserved the trees, preserved limited grading, et cetera. So that was all part of the Zoning Board's findings.

CHAIRMAN EWASUTYN: Signage was one of the major issues, 75 to 40 or something like that.

MS. VAN TUYL: Right.

CHAIRMAN EWASUTYN: If you were to phase it you would be building it out from the rear forward, the front back? How do you envision phasing it?

MR. MILLER: I don't have an answer for that.

MR. EVANS: If I may, we're looking at a number of phasing plans but we're looking at of

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course grading the entrance, the clubhouse center and then maybe starting the fifty units here and then moving up here and then coming up through the center and then eventually coming into this area over here. We think it's a very, you know, progressive way to go, that way you create a center and move out from there. We have water which will be coming in from here and sewer which will be coming in from here.

CHAIRMAN EWASUTYN: Let me ask a question. I recently went to -- MoMA had an exhibit on prefabricated homes that have come into existence in the last hundred years. It was quite interesting. I learned how to spell the word quansit. That was kind of a prefabricated home that came in during World War II. I think Fuller was the gentleman who brought that about. I'm just wondering, you say the cost changed so drastically now for building materials. Is there any thought to going with prefabricated homes?

MR. EVANS: Not in this case. We seem to always -- Mr. Ginsberg always likes to kind of modify and change the product of every one of the communities to make it distinctly different, and

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because of that it's very hard to modularize every one of these.

CHAIRMAN EWASUTYN: Joe?

MR. PROFACI: So did I understand, would it be four or five phases?

MR. EVANS: We're not finished deciding that yet but I would suggest, based on what's going on in the world today, it would be five.

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

CHAIRMAN EWASUTYN: Okay. Comments from our consultants. Jerry Canfield?

MR. CANFIELD: I think some of the Board Members, especially Frank, highlighted on the fire protection concerns. At the consultants meetings we'll get into that a little more in depth.

CHAIRMAN EWASUTYN: Pat Hines?

MR. HINES: The only thing that comes to mind is to make sure the intersection of Union Avenue and Little Britain -- Old Little Britain Road. We had that issue. I'm not sure if that was in there. We're looking at improving that intersection, and this may impact that intersection.

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CHAIRMAN EWASUTYN: Bryant Cocks?

MR. COCKS: I have nothing at this time.

CHAIRMAN EWASUTYN: Karen Arent?

MS. ARENT: I have no comments.

MR. DONNELLY: Just one myself quickly. If you are talking in terms of phasing, it's not a scoping issue but it is a content issue. We need to see how you're going to treat the undeveloped land as you phase in terms of stabilization, plantings, that kind of thing.

Is the consultants' meeting that you wish to hold one that will be held after you deliver the E.I.S. and the consultants have a chance to see it or --

MR. MILLER: We would like to have a meeting just to talk about what our hopes and expectations are as far as processing. As I indicated, we are not going to proceed with the site plan at this time, so when we go through SEQRA and open up public hearings it will be limited to the Environmental Impact Statement. Martin Ginsberg feels at this juncture, because the SEQRA process does take awhile, he wants to

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be in a position to really, you know, do the engineering on the site plan at the time when he understands what the market is and how it works. So there are aspects of this that we know we're going to be able to address, and if the Board and your advisors are accustomed to and there are going to be aspects we may not, we kind of want to make sure we all have a comfort level as to what it is.

CHAIRMAN EWASUTYN: Which is uniquely different than how we've been reviewing projects like this.

MR. GALLI: John, I have one more question. Pat, on the intersections weren't we also concerned about Old Little Britain Road and 207, --

MR. HINES: That one was included.

MR. GALLI: -- up that way to get up to Union Avenue to get to the Thruway?

MR. HINES: What was just explained is often times you need to be careful there's enough detail in the E.I.S. that the Board and the consultants feel comfortable. Hearing the stormwater management design won't be done --

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MR. MILLER: There will be a conceptual stormwater management design and it will provide sufficient information to know that we've got basin size to accommodate stormwater runoff.

MR. HINES: I've seen that in the past where sometimes you head toward supplemental E.I.S.s in the future and if it's a long time regulations change. I know you're proceeding along that course but it's kind of at your own risk to make sure there is enough data there and the project doesn't change once again and you have to redo this process.

CHAIRMAN EWASUTYN: Can I make a suggestion? I would move for a motion from the Board to set this up for a work session on the 28th of October, but in that same motion then I would ask the Board and yourself to reappear at a later date to discuss openly what was agreed upon, the direction that you'll be taking --

MR. MILLER: Good.

CHAIRMAN EWASUTYN: -- to make sure they're all comfortable.

MR. MILLER: That's fine.

CHAIRMAN EWASUTYN: Then that would be

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the motion that I would make.

MR. PROFACI: So moved.

MR. GALLI: Second.

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

(No response.)

CHAIRMAN EWASUTYN: I'll move for a roll call --

MR. BROWNE: John, --

CHAIRMAN EWASUTYN: Yes.

MR. BROWNE: -- the work session, what you're proposing then is to have enough engineering detail so it can be addressed and things look okay from an engineering standpoint?

MR. MILLER: Yes. For example, we have a conceptual grading plan, we have conceptual detail, we have in this case a stormwater management plan with a hydrology report and stormwater calculations. We're not suggesting that there's going to be some shortcut to this information, it's just the level at which we take the engineering. Part of that comes from, you know, having taken this plan, you know, at a

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pretty good level of engineering and quite honestly spent engineering dollars in the six figures and --

MR. EVANS: High six figures.

MR. MILLER: -- high six figures and we want to be able to respond to the changing world that we're in right now.

MR. BROWNE: Where my thinking was going was beyond that point. When we get to a public hearing, presentation for that point for the public. I mean if some nebulous kind of thing for the public --

MS. VAN TUYL: Could I just say something? As someone who is old enough to have survived a couple of prior downturns in the market, I can say I've had this experience previously. SEQRA requires that the environmental impact of projects be addressed, but there is a point at which a board and the public and the applicant become comfortable that the environmental impacts are addressed and that the specifics of the design can be dealt with in the -- by conventional engineering methods that are widely accepted at the time of site plan.

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SEQRA does not require that you have every -- you know, every detailed engineering done. As Tim said, we're not asking the Board to take any material shortcuts to short circuit any environmental analysis requirement. We know that the Board has to take a hard look and we want to do that. I think it is legitimate and there's substantial precedence for not getting into detailed engineering when we're in a market right now where we know we're not going to be building in the very short term. In fact, in some ways these types of times allow a really thorough evaluation of the environmental issues.

MR. BROWNE: What I'm gathering then is that you're agreeing essentially then that if we do not feel that we're comfortable with enough of the information that's available to make these determinations, then you will obviously continue to supply what we need to get where we have to go.

MS. VAN TUYL: This Board has the sole jurisdiction to issue the findings. We know who's driving the bus as it works.

MR. HINES: It will require two public

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hearings. You're going to do one for the SEQRA process and one later on for the site plan process at which time SEQRA will already have been addressed. I know Mike has that -- Mike has the seal on that.

MR. MILLER: The price we pay is the time of doing it sequentially, yet during that site plan public hearing, you know, the detailed engineering drawings will be available. My experience has been the big picture of the public hearing is what most people comment on, and we will certainly be in a position to present substantial information on those big picture issues by the time we get to the SEQRA public hearing.

MR. BROWNE: Thank you.

MR. DONNELLY: The context in which the split between SEQRA and site plan later happens most commonly is an example of an industrial park that a community wanted to develop and wanted to address the environmental impacts, perhaps get a rough idea of the parameters of uses, and maybe even the lot sizes so that if, as and when the right user comes along the turnaround time is

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much shorter than if they had to go through a full environmental review. Certainly SEQRA allows that approach. While it encourages combined public hearings on the site specific subdivision or site plan application for the SEQRA, it does not mandate that procedure.

MR. BROWNE: Thank you. Thank you, John.

CHAIRMAN EWASUTYN: I have a motion by Joe Profaci. I have a second by Frank Galli. We had discussion by Cliff Browne. Any further discussion?

(No response.)

CHAIRMAN EWASUTYN: Then I'll move for a roll call vote.

MR. GALLI: Aye.

MR. BROWNE: Aye.

MR. MENNERICH: Aye.

MR. PROFACI: Aye.

CHAIRMAN EWASUTYN: And myself yes. So carried.

Thank you.

MR. MILLER: Thank you very much.

CHAIRMAN EWASUTYN: Bryant Cocks

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prepares the agenda for the work session, so he'll notify you as to the time you'll be appearing.

MS. VAN TUYL: Thank you.

(Time noted: 7:27 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: October 20, 2008

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

----- X
In the Matter of

DIANE TAYLOR SUBDIVISION
(2006-54)

North side of Holmes Road
Section 20; Block 4; Lot 3.2
AR Zone

----- X

FOURTEEN-LOT SUBDIVISION

Date: October 2, 2008
Time: 7:27 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

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

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

APPLICANT'S REPRESENTATIVE: THOMAS OLLEY

----- X

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DIANE TAYLOR SUBDIVISION

MS. HAINES: The next item of business we have tonight is the Diane Taylor subdivision. It is a fourteen-lot subdivision located on the north side of Holmes Road in an AR Zone. It is being represented by Tom Olley.

MR. OLLEY: For the record, Thomas Olley, engineer for the applicant, Diane Taylor. As the project was introduced, it is a fourteen-lot subdivision that is located on the north side of Holmes Road near -- not too far from Lattintown Road. As you come down through the old orchard, it's right before you make the bend on Holmes Road to the north and on up to Lattintown Road.

The site was the -- was an old landing strip at one point, and the road that we've proposed pretty much follows that old landing strip. So we're keeping the roadway and most of the cleared area and putting the home sites for the most part just tucked back in the woods on the north side predominantly .

There would be two connections to Holmes Road. We would form a loop road without any cul-de-sacs, without any turnarounds.

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2 As has been the Town's policy recently
3 regarding stormwater management basins and
4 detention basins, we would be creating an
5 additional municipal lot that would be dedicated
6 to the Town of Newburgh. Presumably we would
7 form a drainage district as also has been the
8 practice in the last few years, and the district
9 would only include these fourteen residential
10 lots because they're the only ones that would be
11 benefiting from those public improvements.

12 The project will be served by
13 individual wells and septic systems. There is, I
14 believe it's a sixteen-inch water main that goes
15 up Holmes Road but due to inadequate chlorine
16 contact time it's not available to be tapped into
17 for potable uses. At some point when the Town
18 builds their filter plant out at the aqueduct
19 that may all change, but at this point we will
20 serve the project by individual wells and septic
21 systems.

22 Since the project was last before you
23 we've done all of the extensive engineering to
24 size the septic systems for each of the lots.
25 We've done our percolation tests, we've done our

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deep tests. The net result of all of that work was the loss of an additional lot. The last time this was before the Board it was a fifteen residential lot subdivision. We're down to fourteen. The loss of the lot was in this northwesterly area and we simply just redistributed the land area.

There is one area of Army Corp wetlands that's located in the northwest corner. We are proposing a very, very minor disturbance of that area, less than one-tenth of an acre. That will not require any mitigation of the wetlands, however under the current Army Corp regulations we will have to file a pre-construction notification. I just wanted to touch briefly on that because I know at least two of your consultants made note of wetlands in their comments. We will file the pre-construction notification probably at the same time that this Board sets the public hearing date for this just so that we know we have a plan that we're confident represents what we think will be the look of the final plan, and once we submit that pre-construction notification the Army Corp has

1
2 forty-five days in which to request any
3 additional information or to just accept the
4 field delineation as it's submitted and the plan
5 as it's submitted. So we've been -- it's
6 noteworthy for me to bring that up because we've
7 had several instances in the last twelve months
8 where on these very minor projects, rather than
9 the Army Corp issuing a JD letter, jurisdictional
10 determination letter, they're simply allowing
11 that forty-five days to pass. So we'll go ahead
12 and submit that once, you know, we have
13 conference with the Board here and we'll get that
14 clock running. I do believe that with the very
15 minor disturbance, we're going to be crossing
16 with a water line to get to a well and just a
17 small fill on this one lot here for just a little
18 bit of an additional backyard, we anticipate that
19 they're just going to let that forty-five day
20 clock run.

21 MR. HINES: My comment was just to get
22 the information for the delineation. I'm not
23 suggesting we wait for a jurisdictional
24 determination because you're under the permit
25 threshold. The information should be in the

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Town's file.

MR. OLLEY: Yes. We'll submit a map showing that delineation, and we'll also reflect on here who did that. It was done by Ecological Solutions.

MR. HINES: Submit that with the field notes and such.

MR. OLLEY: Yup.

Can I answer any questions the Board may have?

CHAIRMAN EWASUTYN: If you're talking about time clocks and permits, I'd like to start with Jerry Canfield.

MR. CANFIELD: Some of our comments we had discussed at the work session, and I sent Mr. Olley a copy of this. We have a question with regard to the flood plain development permit that was submitted with the application.

MR. OLLEY: Yes.

MR. CANFIELD: Is it your intention to proceed with that at this time?

MR. OLLEY: Well now that you brought it up, what is the Board's and the Town's pleasure on that? Is that something that can be

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done prior to final approval or is it something that you would recommend doing at this point? We'll do either.

MR. CANFIELD: Not at this point. What happens is because you submitted the application -- the flood plain development permit is not something that has to go before the Planning Board. The code compliance department handles that, and the engineering department. The fact that you submitted it, the Town is under Municipal Law within thirty days to turn that permit around, whether to approve it or disapprove it. There's also a fee fixed with that, too. So the question is is it your intention to submit it and the clock start running, or what I would suggest is you withdraw it until you're ready for actual development.

MR. OLLEY: I'll consult with my client but I believe we'll send you a letter to withdraw it. We have it ready to go.

Just so that the Board Members know, there's an existing driveway that comes out onto Holmes Road. There's a culvert that is underneath that driveway that drains areas to the

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south of Holmes Road. There's a twenty-four, thirty-inch culvert that crosses Holmes Road just to the west of this entrance, our easterly entrance, and then it turns and goes under here. All we're going to do is to widen the fill to make it conform to the Town road standards. We're not changing the elevation of it. We've been very careful to make sure that we maintain the shape of the land, the profile so as not to create any higher fill than what's already there, and we would just replace the culvert. Since we'll be widening it the culvert would have to be a little bit longer. In effect there would be no change to the hydraulic conditions of the flood plain right through there. So we would have a zero net impact on that.

MR. HINES: The proposed culvert is actually larger than the existing.

MR. OLLEY: I think -- I think we bumped it up six inches --

MR. HINES: Yeah.

MR. OLLEY: -- just to match what was going under Holmes Road.

MR. CANFIELD: If I may continue. One

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other question on that, Tom. The relocation of that driveway, the existing house appears to be at or very near still that flood zone. The question actually that comes up because of that is is that house required to have flood plain insurance? It's just a point of consideration. Possibly in the future take a look at that.

CHAIRMAN EWASUTYN: Jerry, for the record would you give the name of that lot, the name of the owner, or Tom.

MR. CANFIELD: Corrado.

MR. OLLEY: C-O-R-R-A-D-O.

CHAIRMAN EWASUTYN: Thank you.
Pat Hines.

MR. CANFIELD: Just a couple more things.

CHAIRMAN EWASUTYN: I'm sorry.

MR. CANFIELD: Fire wise, the road widths comply with the new fire code. That's not an issue. We ask that a note be placed on the plan also.

Some of the building -- most of the building footprints are at or near the building envelopes. In the past in that scenario we've

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asked a note be placed on the plans stating that a licensed surveyor or engineer stake out the houses prior to the foundations being dug so they do not encroach or go over those setback envelopes.

The last comment I had, which I believe was answered at the work session and I just briefly discussed with Pat, was about the scheduled maintenance for the site stormwater pollution prevention measures that you have noted on sheet 7 of 8. Because it's a drainage district I guess the answer is the Town will be responsible for that.

MR. OLLEY: During construction it will be the builder/developer that's responsible for it. Once it's dedicated and accepted by the Town of Newburgh, then it would become the drainage district.

MR. CANFIELD: Thank you.

CHAIRMAN EWASUTYN: Thank you, Jerry.

Pat Hines, Drainage Consultant?

MR. HINES: Our first comment just requested submission of the Federal wetlands delineation.

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This project is going to require a cross-grading easement. Several of the lots depend on grading across lot lines to develop them as proposed.

After preliminary approval the Health Department will review the septic systems. I had a couple clean-up notes on the septic system. Tom tells me he sent me information today. They are minor in nature and more clean-up items.

The roadway design has been modified.

Our last comment identified vertical curves that weren't in compliance with the Town's regulations. Those have all been changed.

I just wanted to let the Board know the blacktop curbing, similar to other projects in the vicinity of this project, has been proposed and a detail provided. The highway superintendent does prefer that in that portion of the Town.

We have a couple clean-up items on the report I know the applicant's representative has. Otherwise our previous comments have been addressed and these are some clean-up items.

CHAIRMAN EWASUTYN: Bryant Cocks,

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Planning Consultant?

MR. COCKS: Most of our comments have been addressed regarding the lot layout.

As mentioned, the lot count was reduced by one.

No variances are going to be necessary for any bulk requirements for any of the lots.

I was asking for the lands of Corrado, their driveway is going to access the proposed road. Is there currently an easement there?

MR. OLLEY: No, there isn't. There is no current easement but that strip out to Holmes Road is owned by Taylor. We're not going across Corrado's land, Corrado is using Taylor's land and there is no recorded easement for that.

MR. COCKS: Is that what it's going to be?

MR. OLLEY: It will be a dedicated road so that will obviate that gap.

MR. COCKS: Just for the Board's knowledge, this is going to be phased in three phases, the roadway detention basin and four lots in phase I, eight lots in phase II and the final three lots in the third phase.

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Were you guys planning on doing all the landscaping?

MR. OLLEY: I just want to differentiate between stormwater phasing for the SPDES permit, stormwater compliance versus phasing in the sense of a realty subdivision. We're not proposing that the project be phased for approvals. What we're talking about in those phases is simply the sequencing of the construction which would not be distinct phases. For the purposes of showing how the flow of the work would take place with respect to compliance with the SPDES general permit for stormwater discharge, it will be built in kind of three phases but we really know that once you complete the first phase and you start restoring you kind of morf into those other phases. As you complete an acre you move on to another acre. That's the direction that this project will go. It will start with the detention basin, that portion of the road and those first four lots as the initial construction, but we'll bond, we'll complete all of the public improvements in a single phase.

MR. COCKS: Okay. You guys mentioned a

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DIANE TAYLOR SUBDIVISION

38

ranch-style fence for the stormwater pond and I
couldn't find a detail for that.

MR. OLLEY: Okay.

MR. COCKS: I think Karen is going to
comment on additional landscaping at the
stormwater pond. It seems to be kind of thin.

We mentioned outside agency approvals.
The highway department for access road location.
Jerry mentioned the flood plain development
permit and drainage district, the Orange County
Health Department, and then he also mentioned the
Army Corp of Engineers.

CHAIRMAN EWASUTYN: At this point
before I refer to Karen Arent, any comments from
the Board Members. Frank Galli?

MR. GALLI: No additional.

CHAIRMAN EWASUTYN: Cliff Browne?

MR. BROWNE: Nothing.

MR. MENNERICH: No.

CHAIRMAN EWASUTYN: Joe Profaci?

MR. PROFACI: No, thank you.

CHAIRMAN EWASUTYN: Mike, would you
like to add anything?

MR. DONNELLY: One thing, Tom. Because

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you're proposing a drainage district, I think that sooner rather than later you should visit the Town Board, or at least speak with Jim Osborne and Mark Taylor or the supervisor to make sure the Town is inclined to accept it, otherwise you're going to go seek Health Department approval on a lot layout that you don't know if it's going to work and you may cause yourself problems down the road. I have no reason to believe they are not in favor of the idea but it's something you should begin to explore. Not that you get your drainage district approved, that will come much later, but the concept is acceptable.

CHAIRMAN EWASUTYN: Thank you, Mike.

Karen Arent?

MS. ARENT: Notes regarding the installation of construction fencing before construction begins should be put on the erosion control plan in addition to other tree protection notes that are listed.

The Honey Locust should have been removed from the street tree list since it's light and airy and doesn't contribute to the look

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of a tree-lined street.

The stormwater areas should be landscaped to screen the basin from public points of view or to be designed to be aesthetically pleasing.

Ranch-style fencing with wire should be installed around the area that will hold water. The basin also needs to be planted in accordance with DEC regulations.

Include the street tree detail and a note on the grading plan where the plantings are shown or to create a separate sheet so that everything is on one sheet so it's not confusing.

Then just put some more warrantee notes on the drawing.

MR. OLLEY: We'll opt to add a sheet because I think we can then incorporate the --

MS. ARENT: All the landscaping.

MR. OLLEY: -- landscaping details, the planting plan for the detention basin as well, and it will all be on one interval sheet then.

MS. ARENT: Then I also looked at the screening on the lot that's near Holmes Road that showed the spruces. The existing woods are dense

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so I don't see any need to put the spruces in the woods. Just to show five and put them in whatever holes exist in the screen. Once you finish all that you have to submit a landscape cost estimate.

MR. OLLEY: Right. Which will be prior to the final.

MS. ARENT: Yes.

MR. OLLEY: Okay.

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

MR. GALLI: No additional.

MR. BROWNE: Nothing.

MR. MENNERICH: Nothing relative to what Karen just mentioned but I was just wondering if Tom has got a copy of the letter from Ken Wersted.

CHAIRMAN EWASUTYN: I was going to mention it. Why don't you take advantage of speaking.

MR. MENNERICH: Ken Wersted of Creighton, Manning sent a letter to John, the Chairman, concerning the site plan and basically focuses on the sight distances on both

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DIANE TAYLOR SUBDIVISION

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entrances --

MR. OLLEY: Mm'hm'.

MR. MENNERICH: -- and also mentions that there's no problem with the K-factor meeting the Town's K-factor requirements.

The speed limit. Do you know what the speed limit is on that?

MR. OLLEY: I believe it's 45 out there but I was going to suggest -- by the way, I did get Ken's letter. Thank you. I was going to add that or suggest that we just add that speed limit to the plan along with the sight distances so that it's -- you know, it fully supports what Ken is asserting.

MR. MENNERICH: Okay.

CHAIRMAN EWASUTYN: Anything else?

MR. MENNERICH: No.

CHAIRMAN EWASUTYN: Joe Profaci?

MR. PROFACI: Nothing, John

CHAIRMAN EWASUTYN: At this point the Board would like to turn to their consultants for their recommendation for a SEQRA determination.

Pat Hines?

MR. HINES: They've addressed our

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DIANE TAYLOR SUBDIVISION

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comments sufficient that we would recommend a
negative declaration.

CHAIRMAN EWASUTYN: Bryant Cocks?

MR. COCKS: Yes, they addressed all of
our comments and we would also recommend a
negative dec.

CHAIRMAN EWASUTYN: Karen Arent?

MS. ARENT: Same.

CHAIRMAN EWASUTYN: Jerry Canfield?

MR. CANFIELD: I have nothing
outstanding.

CHAIRMAN EWASUTYN: Dina, would you
happen to know offhand our meeting date in
November, our first meeting?

MR. OLLEY: It's the 6th.

CHAIRMAN EWASUTYN: I'll move for a
motion from the Board to -- Bryant, we're still
going to reference this as a fifteen-lot
subdivision?

MR. COCKS: It should be fifteen.

MR. DONNELLY: I thought it was
fourteen.

MR. OLLEY: Fourteen residential lots
and one municipal.

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DIANE TAYLOR SUBDIVISION

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CHAIRMAN EWASUTYN: So we're in agreement it's a fifteen-lot subdivision?

MR. OLLEY: We only have to pay for fourteen with the Health Department.

CHAIRMAN EWASUTYN: I'll move for a motion to declare a negative declaration for the fifteen-lot subdivision of Diane Taylor and move to set this for a public hearing for the 6th of November.

MR. MENNERICH: So moved.

MR. PROFACI: Second.

CHAIRMAN EWASUTYN: I have a motion by Ken Mennerich. 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. BROWNE: Aye.

MR. MENNERICH: Aye.

MR. PROFACI: Aye.

CHAIRMAN EWASUTYN: And myself yes. So carried.

MR. OLLEY: Thank you very much.

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DIANE TAYLOR SUBDIVISION

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(Time noted: 7:50 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: October 20, 2008

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

----- X
In the Matter of

GETTY ROUTE 17K
(2008-25)

91 Route 17K
Section 95; Block 1; Lot 34
IB Zone

----- X

CONCEPTUAL SITE PLAN

Date: October 2, 2008
Time: 7:50 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

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

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

APPLICANT'S REPRESENTATIVE: ANTHONY COPPOLA

----- X

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

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GETTY ROUTE 17k

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MS. HAINES: The next item of business we have tonight is Getty Route 17K. It is a conceptual site plan located at 91 Route 17K in an IB Zone. It's being represented by Anthony Coppola.

CHAIRMAN EWASUTYN: AJ.

MR. COPPOLA: Thank you, John. Thank you, Dina.

This is basically a total interior renovation for a proposed retail convenience store inside the existing footprint at the Getty Route 17K gas station, service station at 91 Route 17K.

Basically real quickly, this site plan was approved in 1999 for that purpose, to convert the service station and the garage inside, to convert those spaces into a retail convenience store. At that time I believe they received variances for this and received site plan approval and noted, as would be customary, the square footage of the retail space. There was an office space included in that. I think it calculated all the parking at 150 square feet per parking space, and there were eleven parking

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spaces. So that was in 1999.

Jerry can probably shed more light on this than me, what's happened in the interim years. I'm not sure what -- since 1999 up until I became involved with the project in July 2007. If you walked in there today you'd see basically kind of a shoddy retail store that takes up about half or a third of the space of what's there. It's not very well organized. The existing bathrooms are in the rear of the store where you kind of come into a men's and women's bathroom like an older style service station. Those are still there and then there's an existing garage area that is unfinished. So the retail store is kind of all the way in the front half of the existing.

What we're proposing is effectively in the 1,500 square feet kind of a gut renovation of what's there, refinishes, new interiors, new gondolas for goods and everything.

Really I think the reason why I'm here tonight is the other thing that's being proposed here is a financial services component. So this is basically an -- under the building code this

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GETTY ROUTE 17k
would be an office function. Not a retail function but an office function. It's 189 square feet and it's in the corner. It's proposed to be in the corner of the store. Basically the owners -- I'll just take this a little differently. My clients are not the owners, my clients lease the store. I've actually never met the owners. My clients have I think a fifteen-year lease on the store and they're going to make the improvements. Basically my clients run check cashing businesses. I think that's why this location is favorable to them, because of the location and the high volume they will get there. So this financial services section of the corner depicted here is basically a check cashing operation where there's going to be a secure room. Money obviously will be kept in that room. People would come up to the service counter, kind of cue up as they would at a bank and cash their check or do a money order or wire transfer or whatever they do. There's a little area noted as waiting but it's not going to be sit down chairs, it would be where you would scratch out something similar to waiting in a line at a bank like a

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GETTY ROUTE 17k

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service counter. That would be at the corner of the store. The rest of this would be a typical retail store that you'd see at any gas station.

So I think that's -- that's really I think the core of the issue. Jerry can probably explain it a little better than I can.

I'll just go real quickly. There are some exterior improvements. We're opening up some storefront glass, blocking up of the existing openings. The finishes are going to match pretty much what's there. No site plan improvements are being proposed.

CHAIRMAN EWASUTYN: Before I take your advice and refer to Jerry Canfield, I'll check with the Board Members to see if they have any further questions as far as the financial services or the overall plan itself.

MR. GALLI: Actually he answered my question. I was curious on what it was going to be.

MR. BROWNE: A major, major question was what's it actually going to do.

CHAIRMAN EWASUTYN: Ken Mennerich?

MR. MENNERICH: Anthony, how many total

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GETTY ROUTE 17k

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parking spaces did you say was on the plan?

MR. COPPOLA: Eleven on the original site plan. It's 1,500 square feet. You divide that by 150.

MR. MENNERICH: I guess with the check cashing thing, I'm wondering if one or ten people coming in waiting to cash checks, that's ten cars out there plus the help and the people using the convenience store. Is there going to be a problem with parking?

MR. COPPOLA: I think this would be calculated the same as a bank, probably one per 150 square feet. I think you're going to be okay with that.

MR. MENNERICH: That's it.

CHAIRMAN EWASUTYN: Joe Profaci?

MR. PROFACI: Nothing right now, John.

CHAIRMAN EWASUTYN: Just for my own understanding, you say it's a good location and there will be a high volume of use for the finance service. Where do you see the customers coming from?

MR. COPPOLA: They'll come from that side of the road definitely. You know, 17K, you

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GETTY ROUTE 17k 52
can't really cross the road there. They're going to be coming from the west, like down towards -- into the -- I'm sorry. Towards the east.

CHAIRMAN EWASUTYN: Just drive by, you need this type of check cashing.

MR. COPPOLA: Yes. These people operate -- I think they have one down on Broadway in Newburgh. Further down actually on the same road.

CHAIRMAN EWASUTYN: In a similar type of use?

MR. COPPOLA: Just on Broadway. Like a storefront.

MR. GALLI: A storefront?

MR. COPPOLA: It's a storefront. It's not in a convenience store.

CHAIRMAN EWASUTYN: Jerry Canfield, would you like to elaborate on this, please?

MR. CANFIELD: Yeah. Thank you, Anthony, for clarifying what that financial services was. In the work session and even up until this point it was a little unclear. With that accurate definition it becomes crystal clear the reason why you're here is because it fits the

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criteria of the change of use which requires a site plan as we discussed in the work session, which also triggers another questionable area that the likelihood of you being referred to the Zoning Board I believe is very high as the applicant did back in 1999 when it changed use from a gas station to a gas station/convenience store. With this definition that you've provided and what this service will be, we discussed at the work session, and I believe everyone is in agreement, that it is another dimension. It's not necessarily retail sales as a convenience store is intended. It's a whole different office use with additional personnel requiring additional parking.

With that being said, again we all feel that it does fit the criteria of a site plan or change in use. So that's what brings you here.

MR. COPPOLA: Okay.

MR. CANFIELD: I think it would be proper and the next step for the Board is to refer this to the Zoning Board for the area and requirements, the bulk use requirements that are not met because of the existing lot size.

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MR. DONNELLY: We took out the file during work session and what we saw was the variance was granted for the retail operation. The setback variance I'm talking about. It was fifteen feet where fifty feet was required. The office use has a different requirement. It has a requirement of sixty feet. So I think the Zoning Board has to tell us whether or not the variance allowing fifteen where fifty was required also permits you to carry out a use that has a requirement of a sixty-foot setback because it's a different requirement.

MR. COPPOLA: That was the requirements then, in 1999, or now? Like with the setbacks --

MR. DONNELLY: I'm assuming at both junctures, and I haven't looked at any old code. The retail setback is different than the office setback. One is fifty, the other is sixty.

MR. COPPOLA: So what they got before were area variances for setbacks?

MR. CANFIELD: Area variances only. Correct.

MR. COPPOLA: It's a ten-foot difference between the side yard.

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MR. CANFIELD: I believe in the 1999 plan, Anthony, it depicts a thirty-six foot front yard setback as existing. As Mike had said, the front yard setback in an IB Zone for retail is fifty feet, however the front yard setback in an IB zone for office space is sixty feet.

MR. COPPOLA: That's what they have, existing thirty-six, fifty required.

MR. CANFIELD: Right. I believe other non-conformities are lot area, 40,000 square feet is the requirement. I believe this is much less. I think it's like 26,000. Don't quote me on that. But then there's also setbacks. I believe there's a thirty and eighty feet setback requirement and this existing was only like nine and the other side was much smaller. So therefore you would have to go back to the Zoning Board to reapply for those same variances.

MR. COPPOLA: Let me just ask -- I mean even though -- forget the building code for a minute. I guess we'll just talk about the Town. If I have a building with two allowable uses, the retail is probably by square foot more than 183 square feet. You think even though it's

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a minor use or a use inside the building, that
that still --

MR. DONNELLY: Let's pretend this is
a brand new site. If you were proposing a dual
use for setback purposes, your building would
have to meet the more stringent requirement of
those two uses.

MR. COPPOLA: Okay.

MR. DONNELLY: I think what you have
touched on is the argument that this building is
already here, this is a minor component, under
the five factors there's no change, but I think
the distinction is you were granted a forgiveness
of fourteen feet from the fifty to allow you to
have a thirty-six if my math is right, and now
you're seeking a greater variance from what the
code requires for the new use. Whether the
Zoning Board re-grants the variance or considers
this a new variance is for them to decide. I
think it needs to go back to them for them to
make the decision as to whether this use can be
carried out at that setback distance.

MR. COPPOLA: All right. I mean --

MR. CANFIELD: One additional thing,

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Anthony. You're one hundred percent correct, the building code does permit this accessory use. However, the building code in that sense is secondary to establishing zoning perimeters and planning requirements, okay. The zoning -- the building code and the building permit process comes after, you know, we complete this step.

Also, in an IB zone, according to the bulk use tables in the accessory column, okay, this is not listed. So in column A, accessory uses, it's not listed. Therefore, if you took that approach, I don't suggest that simply because if you went that approach then you would be applying to the Zoning Board for a use variance which is much more difficult to acquire than these area variances.

MR. COPPOLA: I understand that. I mean we certainly don't want to go that approach for a use variance. Even though the use is allowed, you're saying if I took the approach of that being --

MR. CANFIELD: Both uses are allowed in the D column of the use tables.

MR. COPPOLA: Okay.

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CHAIRMAN EWASUTYN: Pat Hines, would you like to add anything to this?

MR. HINES: My comments have to do laterally and over to Bryant for planning review.

Also in the 17K corridor in the IB zone there's a requirement of a thirty-five foot landscape buffer. So you may be needing relief from that also.

MR. COPPOLA: The front yard?

MR. HINES: Yeah.

MR. COPPOLA: That's a new requirement?

MR. HINES: No.

MR. COPPOLA: That's been there?

MR. HINES: Yeah. Before '99 even it was there. I don't know if they addressed it back then.

MR. COPPOLA: If I'm going I'm going.

MR. HINES: I just want to make sure you get everything you need while you're there.

CHAIRMAN EWASUTYN: Thank you, Pat.

Bryant Cocks?

MR. COCKS: All the planning comments have been addressed by Jerry. I just had a comment that they are doing some architectural

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work on the front of the building so the Planning Board will have to give some kind of ARB approval for the colors and the new windows that they are putting up.

CHAIRMAN EWASUTYN: Thank you.

Karen Arent?

MS. ARENT: I just asked about signs and some of the aspects of the building. The glass windows should have water so they don't get all dirty.

MR. COPPOLA: We'll look at that. Now that I have time to look at that.

MR. BROWNE: That was an issue. The siding we were talking about earlier at work session. If you have this other use I assume you have to have some kind of advertising outside.

MR. COPPOLA: I'll revisit that with my client. They haven't said they want that. I'll certainly ask. It would make sense.

MR. BROWNE: If it's not addressed now later it's going to be a violation.

MR. COPPOLA: I understand.

CHAIRMAN EWASUTYN: Frank Galli?

MR. GALLI: No additional.

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CHAIRMAN EWASUTYN: Ken Mennerich?

MR. MENNERICH: Nothing.

CHAIRMAN EWASUTYN: Joe Profaci?

MR. PROFACI: Nothing, John.

CHAIRMAN EWASUTYN: Let me understand.

We're referring this to the ZBA for a lot area variance, a front yard variance, a side yard variance and a thirty-foot front yard buffer variance. Is that correct?

MR. DONNELLY: The lot area, I don't know if there's a different lot area for the office use from the retail. Is it?

MR. CANFIELD: It's still 40,000.

MR. DONNELLY: The same. I think that one has already been granted. Certainly the front yard is different. Certainly at least you need a clarification as to whether the landscape buffer was either granted or impliedly granted, and if not to be considered now.

One thing I will point out is this type of variance is not a Type II action under SEQRA, therefore either you should move forward with SEQRA at this point or recommend to the Zoning Board that they segment out. I don't see any

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reason why from what I've heard you couldn't take
action on SEQRA this evening and --

CHAIRMAN EWASUTYN: Declare ourselves
lead agency?

MR. DONNELLY: Sure.

CHAIRMAN EWASUTYN: Right now the
action is a Type II because it's under 4,000.

MR. DONNELLY: Then it's going to be
Type II there as well. Yes, it's type II. Then
that's not an issue. Sorry.

CHAIRMAN EWASUTYN: So they'll need a
front yard variance, a side yard variance and an
interpretation whether in 1999 it received relief
for a thirty-five foot front yard buffer
variance.

MR. DONNELLY: Right. I'm not sure
that the side yard is different because those
variances, if they are the same, have been
granted. I think it's just the front that's
different.

Right, Jerry? The side yard is the
same.

MR. CANFIELD: Yes.

MR. DONNELLY: It's just the front yard

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and the possibility of the thirty-five foot
buffer to be granted or explained or
reconsidered, however you want to put it.

CHAIRMAN EWASUTYN: Mr. Coppola will be
thinking in the meantime if he may need a
variance for signage. That he'll discuss with
his client.

MR. COPPOLA: Yes, I will.

CHAIRMAN EWASUTYN: Comments from the
Board Members?

MR. GALLI: Nothing, John.

CHAIRMAN EWASUTYN: I'll move for a
motion from the Board to refer this to the ZBA
for a front yard variance and the possible need
for a thirty-five foot front yard buffer
variance.

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.

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MR. GALLI: Aye.

MR. BROWNE: Aye.

MR. MENNERICH: Aye.

MR. PROFACI: Aye.

CHAIRMAN EWASUTYN: Myself. Thank you.

MR. COPPOLA: Thank you.

(Time noted: 8:07 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: October 20, 2008

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

----- X
In the Matter of

PETCO/NEWBURGH MALL
(2008-13)

1401 Route 300
Section 60; Block 3; Lot 41.21
IB Zone

----- X

SITE PLAN

Date: October 2, 2008
Time: 8:08 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

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

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

APPLICANT'S REPRESENTATIVE: JOSEPH MINUTA

----- X

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

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MS. HAINES: The last item of business we have this evening is Petco at the Newburgh Mall. It is a site plan located at 1401 Route 300, it is in an IB Zone and being represented by --

MR. MINUTA: Joseph Minuta, Minuta Architecture. This is Steve Gaba with Drake, Loeb, et al.

MS. HAINES: Thank you.

MR. GABA: Good evening. My name is Steve Gaba, I'm the attorney for the applicant. The application is for site plan approval to establish a retail pet mall in particularly the Newburgh Mall.

With me here tonight is our architect, Joe Minuta. We have Kate Lake, general manager of the Newburgh Mall, Robert Heyland from Urban Retail Properties, and Kathy Miller and Karen Werthwein from Petco.

The project was before this Board in May. We thought that possibly there was a problem with some local laws which would affect the zoning. After presenting it we went and checked into that and it turned out that in fact

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the local laws had not been passed and therefore there's no impediment with us going forward.

The structure is of course the old Weis building presently occupied in part by Bed, Bath & Beyond. The remaining portion of the building, this part here, 15,000 square feet which is proposed to be rented to the Petco pet store which will be established in there.

We are tonight back to go forward with this. We received comments from the consultants. We've attempted to address them.

Here to explain to you the project now is our architect, Joe Minuta.

MR. MINUTA: Good evening, Mr. Chairman, Members of the Board. Just for the record, I'm here representing the client. I'm not the architect of record for this. The architect has performed the plans and they are signed and sealed and presented to you.

As Mr. Gaba explained, the existing building has been vacant for approximately ten years. It's approximately 15,000 square feet. Petco has decided that they want to move into our neighborhood and we've presented this -- this

1 was previously presented before. All comments
2 that were prior provided to us have been
3 addressed including the most recent comments that
4 we received. Those have also been addressed, not
5 necessarily in these plans but we have addressed
6 them as of today.
7

8 With respect to the project on an
9 overall scale, the existing mall is here. This
10 is the outbuilding of the mall pad site. This is
11 the existing Bed, Bath & Beyond and this is the
12 space that would be accommodated by Petco.

13 With respect to that we provided some
14 parking. There is maneuvering of vehicles as
15 well. This shows you the front portion of the
16 lot where the trucks would come in. There's
17 truck turning radiuses for both fire and/or
18 delivery.

19 The front section of the sidewalk will
20 be removed and replaced with a handicap
21 accessible at this location. New landscaping
22 will be provided in front as well as a new
23 facade. New trees shall be planted within the
24 existing landscape buffer that currently they do
25 not exist. This one had died once upon a time

1 and will be replaced at this point in time.
2
3 There's additional landscaping coming across the
4 back of the building. We're adding two trees
5 here. They're slated right now to be Dogwoods.
6 We did receive Ms. Arent's comments and we're
7 addressing them accordingly. Basically we've
8 taken the position the suggestions that were
9 provided will be made part of the plans, end of
10 story. The rest of this information, we had
11 provided additional trees, conifers to block some
12 of the view.

13 There was an issue with respect to the
14 chain-link fence. We do have a letter from our
15 engineer, from Fulchetti & Associates who had in
16 fact taken a look at this property and the chain-
17 link fence is not on the property of the owner,
18 it is the DOT's property. Obviously we can't do
19 anything with that. However, we did continue the
20 existing landscape buffer that's there and
21 provided new just for some fill and to shore up
22 some of that fill.

23 There are rooftop units located up top.
24 There are a total of four of them here. They are
25 being provided with screening from the roadway.

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We've also raised the parapet in front so you will not see those from the roadway. There is a view analysis of that.

To address one of Mr. Cocks' comments, the project here from the roadway, we took a vantage point of approximately three -- excuse me, four feet above the road at the center location, which is your standard driving height. From that location we projected lines to the parapet. The existing parapet is here and you just catch the top of this one. There's a parapet toward the front. Taking that same sight line, you catch this portion and your view is only above that location. To aid in some of that we have actually screened these on the two sides as depicted. They are an architectural screen which will be painted the same colors as the building. The color sample board is this. This would be the stucco and these would be the paint colors used on the building.

The truck maneuvering radius. I actually have two plans for the truck maneuvering on the property for deliveries. These are based on what currently exists on the site and those

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that have been provided to us as approved by your Board for other projects. There was an access way off of Meadow Hill that comes along the back of the building, would access through here, come back around and the truck would back in. The second access is similar to the access that is currently used by Office Depot and approved at the last Office Depot approval where the trucks come in through the parking lot through this way, come back up, back in and then come back around through. So those are the maneuvering radiuses of the tractor trailers that may come in to make their deliveries.

There were some curb cut items that were of question in the detailing. Pat, all those will be used, the curb cuts. They are not specifically on the plan but they do reference different areas of the site that are being addressed. There's a simple curb cut which is going to take place at the grass area and pavement. There is a monolithic curb cut which will take place in front of the store for the entire portion of that. So that's why there's the two curb cuts there.

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Other than that, I'm not sure what other questions you may have, but again we can address all your comments.

CHAIRMAN EWASUTYN: Any questions from Board Members at this point?

MR. GALLI: No additional.

CHAIRMAN EWASUTYN: Cliff Browne?

MR. BROWNE: I appreciate the detail that you presented. There was a question at workshop about the scissor lift in the back of the building, the need for that. It's staying; correct?

MR. MINUTA: The scissor lift in the back of the building is staying. There has been provided adequate screening from the roadway.

MR. BROWNE: The purpose of the scissor lift versus a conventional dock, what's the rationale?

MR. MINUTA: Elevation. The current finished floor elevation is at grade, therefore to provide a dock we would actually come down. We would need to regrade. It's a more economical approach.

MR. BROWNE: When the lift is raised up

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you're going to drop it down --

MR. MINUTA: Exactly. There was a comment with regard to the drainage on that portion of it. There is an existing catch basin within forty feet of that. It's about forty-eight inches down below grade. I just looked at that this afternoon, as a matter of fact, to verify your comment. That will be connecting to that for the drainage on that one particular item.

MR. BROWNE: Is there anything that we know of, requirements, as far as safety requirements for that scissor lift that's additional to what had been in use ten years ago?

MS. LAKE: It's a new lift. It's a brand new lift.

MR. MINUTA: Oh, yes. It's brand new. I misunderstood the question.

MR. BROWNE: I'm thinking it's been there. I'm thinking I'm sure there's going to be safety issues involved.

MR. MINUTA: There's concrete and asphalt there now.

MR. HINES: I think what happened was

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PETCO/NEWBURGH MALL

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they split the building and the loading dock went with the other half of the building. When it was one building -- one use in the building.

MR. BROWNE: Thank you.

CHAIRMAN EWASUTYN: Ken Mennerich?

MR. MENNERICH: No questions.

CHAIRMAN EWASUTYN: Joe Profaci?

MR. PROFACI: Nothing further, John.

CHAIRMAN EWASUTYN: We'll start with Jerry Canfield. Jerry, do you have anything?

MR. CANFIELD: Nothing additional.

CHAIRMAN EWASUTYN: Pat Hines?

MR. HINES: I just have those two clean-up items. There were two curb typical details shown there. That's fine.

And the comment regarding the drainage. We want to show that pipe and a placement detail on that.

MR. MINUTA: Absolutely. They'll be provided.

CHAIRMAN EWASUTYN: Bryant Cocks?

MR. COCKS: I just want to note that the lighting they are using matches Bed, Bath & Beyond.

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MR. MINUTA: Yes. We provided the catalog cuts to you. Those are the exact same.

MR. COCKS: The color scheme for the building is going to stay the same?

MR. MINUTA: That's correct.

MR. COCKS: The only question is just regarding the signage. It's proposed to be internally illuminated which is now not recommended in the Town of Newburgh design guidelines. The rest of the site is internally illuminated. That's just an issue for the Board to discuss, whether that should be allowed to match the existing signage on the site or whether they would like to adhere to the design guidelines.

MR. MINUTA: If I may comment on that.

CHAIRMAN EWASUTYN: It will come back to the Board. Thank you.

MR. MINUTA: Okay. Thank you.

CHAIRMAN EWASUTYN: Karen Arent?

MS. ARENT: I also had a question about the sign, if there was a way that it could conform but not being -- sorry. It could conform to the guidelines but also be continuous --

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look good with the rest of the site. There's all different kinds of lighting there, some of them halo lighting and different ways to light the signs that give you light that might look okay with the other internally illuminated signs but that would conform to guidelines. That was a question for either you as an architect or a signage consultant.

MR. MINUTA: Okay.

MS. ARENT: That was a question I had. Then the rest of the information about the plant materials, they suggest that they are going to make the changes, so --

MR. MINUTA: Correct. I do have a question with respect to the Cyprus, or the Spruce rather. You suggested the Norway Spruce. My only comment on that is spruces typically are a fast growing tree and it's very weak. The limbs tend to fall off. I prefer to do something different than a spruce tree at that location to prevent that type of accident.

MS. ARENT: If you want to call or e-mail.

MR. MINUTA: Very well. Thank you.

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CHAIRMAN EWASUTYN: Discussion from Board Members as far as the internally illuminated sign for Petco which is one that we haven't been approving since the design guidelines.

MR. GALLI: I think it's pretty visible right from Union Avenue. That's probably the only place you're going to see it. You're not going to see it from the back of the building. It's right on the road practically. It sits down a little bit off the road. External illumination I think would be fine. I still think you would see it pretty well from the road. It's not like you're at four different intersections trying to look different ways. You're only seeing it from one direction, the same as you're seeing Bed, Bath & Beyond from one direction, and that's heading south on Union Avenue. I think you can see it pretty well because it's right there on the road. I would like to see it externally lit if possible.

CHAIRMAN EWASUTYN: Cliff Browne?

MR. BROWNE: My thinking was basically the Petco sign is so much different than the

1
2 other signage that to my mind there shouldn't be
3 a problem with it illuminated as well. The whole
4 thing is very different and I really don't have a
5 problem -- not a problem. I don't think there
6 should be a problem with illuminating it
7 differently also. It's very different. It's
8 obviously different. I don't think it has to
9 necessarily tie in to look like the rest of them.
10 That way you would keep with the guidelines and
11 it wouldn't be an issue.

12 CHAIRMAN EWASUTYN: Ken Mennerich?

13 MR. MENNERICH: I agree in that the
14 sign is going to be very visible from 300 because
15 of your location. I guess my concern would be if
16 an internally lit sign is too bright it can
17 become overpowering because it is so predominant
18 at that location. Because the rest of the mall
19 does have internally lit signs, I think I can
20 live with that as long as there was some
21 limitation on the illumination level.

22 CHAIRMAN EWASUTYN: Joe Profaci?

23 MR. PROFACI: I hate to be the stick in
24 the mud but the rest of the mall signage, none of
25 it is the same. It's all different. All of the

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signs are different. They are internally illuminated. I think for aesthetic purposes you need a little bit more continuity than all of a sudden this one place is externally illuminated. I personally disagree. I have no problem with the internally illuminated signage.

CHAIRMAN EWASUTYN: It's pretty much split right down the middle. So what's your alternate proposal to the Board?

MR. MINUTA: Our proposal to the Board is to provide, rather than your traditional backlit illuminated sign that typically uses fluorescent bulbs, this sign uses LED lights throughout the sign therefore there are no hot spots and it has a continuous level. It's my understanding they could be -- the amount of output of lumens could be altered with those. So our preference is to have it internally illuminated as the rest of the site is. I think if we take a look at this as an entire property, I do understand the wanting to conform to the guidelines but this existing mall has this as its portae. To change the sign from -- to an externally illuminated standpoint you would then

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have overhead lighting which would be a completely different aesthetic motif than we have with the rest of the building.

CHAIRMAN EWASUTYN: Back to Frank Galli. Are you satisfied with --

MR. GALLI: I don't have a problem with the LEDs if they're downgraded, not real bright. I'm only going to make this comment because I know sooner or later when the economy gets good, they have additional sites they can build on the mall for freestanding buildings and stuff and it's going to come before us again about the signage and how it's going to be lit and stuff like that with the new buildings that are going to come before us. So just remember now that if we do it this way, when the new buildings come for the signage, to follow the guidelines it's going to be brought back to us the same way for internal lighting.

CHAIRMAN EWASUTYN: Cliff Browne?

MR. BROWNE: I'm just trying to understand with an LED. I know those turn on hard and you get what you get. You would have to have LED specifically designed I would assume for

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the lumens that you're looking for.

MR. MINUTA: That's correct, yes. I would need to confer with the sign manufacturer.

MR. BROWNE: So with that then, if we agree to that then we would have to have some kind of a specification on the lumens we're talking about. I don't know how we end up developing that kind of a number.

MR. DONNELLY: Is it possible, Joe, in some visual way we can take the immediately adjoining sign, a picture at night, have your sign person put this sign in place and try to show us what the proposed illumination value will be as compared with the existing sign? Otherwise I don't know how the Board is going to gauge --

MR. MINUTA: I believe that's a fair comparison. Typically what happens is we have photometrics we can use with respect to the lumen. What we can do is measure what the lumens are now with the current Bed, Bath & Beyond sign and say these aren't going to be any more than that, so it would be in concurrence with it. I would also point out the existing Bed, Bath & Beyond sign has a black background and a white

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sign, therefore you're getting much more light output than the proposed red channel letters. So the color has a lot to do with how much light is actually being emitted.

MR. DONNELLY: So you're agreeing to keep it at the same value as the existing sign with the difference in color, not to lower it to an illumination value that's lower?

MR. BROWNE: To be more technical, I don't know if you've noticed but in the summer fluorescent tubes run brighter than in the winter. That's just a natural thing with fluorescent. If you're going to do it, do it now. It's going to be brighter now than it will be in a couple more months.

MR. DONNELLY: I'm trying to ask if the exercise I proposed is something that's doable or --

MR. MINUTA: It's feasible to the extent I would need to confer with our sign manufacturer.

CHAIRMAN EWASUTYN: Karen?

MS. ARENT: I would think the objective of lowering -- altering the lumens of the LED

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light would be to make it less than Bed, Bath & Beyond and not similar to. When you externally illuminate a sign it's not as bright as internally illuminated signs. The point that some of the Planning Board Members had about the fact that your sign is so close to the road, it doesn't have to be as bright as other signs. I would think the goal would be to have it less than Bed, Bath & Beyond and not equal to it.

MR. MINUTA: How much less than? This becomes a technical --

MS. ARENT: That's something you're going to have to show us.

MR. MINUTA: Very well. Very well. We'll confirm the point on that isn't just to attract drive-by traffic from Route 300, it's also to denote the location of the store within the mall. If you're coming in from, I don't know, the Meadow Hill exit or something you're going to be able to pick up the location of this just as easily. I think if it was consistent with what the Bed, Bath & Beyond sign was, especially since the Bed, Bath & Beyond sign has the dark background and the white --

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MS. ARENT: Then there's no purpose for measuring -- almost no purpose for measuring it. We were trying to figure out a way to --

MR. MINUTA: I wouldn't measure the luminaires. I would make it consistent with what the Bed, Bath & Beyond sign is. If you want to do the measurement, we can do that.

MS. ARENT: Then we're not getting anywhere then with trying to conform with the intent of the guidelines.

MR. MINUTA: No. The guidelines would be avoided in this particular case. We would keep it consistent with what's in the mall already. The building you're talking about is basically a stand alone if you look at these two stores and separate them out from the rest of the mall. I know the type of sign is consistent but when you're talking visually what you look at, you're looking at Bed, Bath & Beyond and Petco. If the two are about the same -- if one is brighter than the other, it's just not going to look right.

MR. MENNERICH: Could I ask a question? The symbol is red and blue?

MR. MINUTA: Yes.

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MR. MENNERICH: That's proposed to be back lit too with LEDs?

MR. MINUTA: Yes. That's this section here. These are the two colors, the dog and cat.

MR. GABA: Why don't you put the sign up, the one that shows the two signs together, so they get an idea.

MR. MINUTA: They have a copy.

MR. GABA: I know. The visual I think is helpful. You have to imagine at night of course, but you get a pretty good idea.

MR. MINUTA: There will be less glare out of the colored sign due to the fact that it does have the translucent colors on top as you would as opposed to a white sign.

CHAIRMAN EWASUTYN: I'm listening to people. Do we want them to, as Mike Donnelly had suggested, to have a comparison as far as illumination to Bed, Bath & Beyond? Are we looking for them to address it with something less intensive as Karen is suggesting they keep a little closer to the design guidelines?

MR. DONNELLY: I think the exercise is --

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CHAIRMAN EWASUTYN: Mike, please. It's up to the Board. I appreciate your comments and I will refer back to you. Again, it's -- you know, we're mixing apples and peaches.

Frank?

MR. GALLI: As long as it's not brighter than Bed, Bath & Beyond I can go with the internal. I mean I just don't want to see something sticking out more than that when you're driving down the road. That's all.

CHAIRMAN EWASUTYN: Cliff Browne?

MR. BROWNE: I don't have a problem with that either. I think the only issue I have at this point is what Frank brought up initially was what if we approve this, in the future down the road we're going to be called to do the same thing later. If we do that I think we need to make a decision on that now and/or put something on -- a statement along with this that says this will not set a precedent for the future.

CHAIRMAN EWASUTYN: Good point.

Ken Mennerich?

MR. MENNERICH: I would certainly agree that we should make it clear that this isn't

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setting a precedent for the future. On the other hand, it's a backlit sign that I don't think we've seen in the Town of Newburgh yet with LEDs. Maybe it would be interesting to see how it does work out, how it does look.

CHAIRMAN EWASUTYN: Okay. Joe Profaci?

MR. PROFACI: Well, the sign looks to be about a third of the size of the Bed, Bath & Beyond sign, so it's already much smaller than the other one is. What I said before still stands.

As far as precedent is concerned, we're still dealing with a uniform look in a uniform project. Again, why we would look at anything else different than we're looking at this that's being built in the future, it still goes against what I said before. I don't see a need to have to say we're establishing a precedent.

CHAIRMAN EWASUTYN: Okay. What's your position on future changes to the mall and the type of signage that they show? You're saying they should then consistently approve internally illuminated signs throughout the mall?

MR. PROFACI: Yes. The mall was built

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in 1982. That's what we did back then. Nothing has been changed at the mall. Every store has its own logo internally illuminated. I don't see why we should now impose the new guidelines on a project that is thirty years old almost.

CHAIRMAN EWASUTYN: Example, I'm not looking to argue, Mid-Valley Mall. When Mid-Valley Mall came back for a change, a facelift, what we did was we established guidelines which would apply throughout the mall from that point on. Realizing that the Mid-valley Mall, conversation, came into existence the same time as this mall came into existence. So we're looking to apply the current standards to any new construction.

MR. PROFACI: But the Mid-Valley Mall was completely done at one time if I'm not mistaken. All signage was proposed to be changed to conform all at one time. Now we're going, you know, project by project. I don't think you can do that and preserve a continuity of look in a project.

CHAIRMAN EWASUTYN: Okay. So the only question before us now is -- we're accepting the

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internally illuminated sign for Petco. We're hoping that the illumination would be similar. So the question for the Board is, and we would have to bring it to a vote, all future signage would then comply with the design guideline standards or we will keep with the same, I'll call it random design that the Newburgh Mall currently has.

Steve, I'm discussing this with the Board. Please.

MR. BROWNE: John, what I contend is not that we make a statement that all future things must comply to the design guidelines but that this does not set a precedent so that we must adhere to this for future so that each one that comes on, if it does happen, we can look at it individually without going back to this one.

MR. PROFACI: I'm fine with that.

MR. MENNERICH: I don't think we should make a future determination because you never know what's going to come in in the future. There may be something that comes in that's a whole revamp of the mall at which time we may want to change all the signs to something else.

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MR. PROFACI: Then you revert back to the design guidelines.

MR. MENNERICH: Right.

CHAIRMAN EWASUTYN: Okay.

MR. BROWNE: If a single building came on next, I think we should look at that one individually and say how does this work, what's going to happen, not that it's going to automatically be one way or the other.

MR. PROFACI: That's not what I meant at all. I wasn't saying that.

CHAIRMAN EWASUTYN: Does someone want to make a motion for approval of the Petco signage the way we're describing it now and move for that motion?

MR. GALLI: I'm make a motion we approve the internally lit sign for Petco not brighter than the Bed, Bath & Beyond sign.

MR. BROWNE: Can we ad LED internally lit?

MR. GALLI: Yes.

MR. BROWNE: That's what we were discussing.

MR. MINUTA: That's the intent.

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CHAIRMAN EWASUTYN: Do we want to make any mention of future signage, which is something you brought up?

MR. GALLI: I don't.

CHAIRMAN EWASUTYN: You don't. I have a motion by Frank Galli.

MR. PROFACI: Second.

CHAIRMAN EWASUTYN: 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. BROWNE: Aye.

MR. MENNERICH: Aye.

MR. PROFACI: Aye.

CHAIRMAN EWASUTYN: Myself yes. So carried.

MR. DONNELLY: John, could I just ask the applicant, would you provide us with a reading of the lumens value of Bed, Bath & Beyond and whatever the appropriate numerical scale is so we can then impose that as the maximum luminance of the Petco sign so we have a

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measurable way --

MR. MINUTA: That can be done.

CHAIRMAN EWASUTYN: We had discussed during the work session, apparently you sent a letter to the ZBA.

MR. GABA: Withdrawing the application because the local laws were not passed. That's correct.

CHAIRMAN EWASUTYN: Do we have a copy of that letter?

MR. GABA: I don't know. The Planning Board was copied on that I'm told.

CHAIRMAN EWASUTYN: We never received it.

MR. MINUTA: A copy of which letter?

MR. GABA: Withdrawing the application.

MR. MINUTA: Oh, withdrawing from the ZBA. That was filed. I don't know that your office received it but it was filed.

MR. GABA: No, no. The Planning Board. Was it sent to the Planning Board?

MS. LAKE: It was sent to the Zoning Board.

MR. GABA: We can provide them with a

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copy of it.

MR. MINUTA: Absolutely.

CHAIRMAN EWASUTYN: Let's carry on now.

MR. DONNELLY: I want to follow up on what Steve mentioned earlier so that our records here are clear. As you'll recall, in May of this year the applicant appeared before us. We were mindful of the position we took in the Petsmart application but we had received a copy of a proposed local law which would have prohibited the veterinary services that Petsmart had provided in its store within this zoning district, and we had believed that that local law was enacted or not enacted, about to be, and the applicant was then sent to the Zoning Board for consideration of the use variance. It became apparent that the law was not enacted and in the months that had ensued it doesn't appear likely that it will be, at least not any time soon, therefore the applicant withdrew from the Zoning Board. It was my recommendation to you earlier in the work session that provided that the narrative that you've received of the proposed activities that Petco wishes to carry out in the

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store fall within the contours of those that Petsmart put in the narrative that you relied upon for granting that approval, that you should make the same findings that you did in the Petsmart application. In that resolution you had concluded that the veterinary services that were proposed in that Petsmart store were services customary and incidental to a modern pet store operation and are therefore authorized as part and parcel of the retail use approval you granted at that time. I think you're going to need to make sure you have a comfort zone that the narrative is no greater than the extent of veterinary services than Petsmart, and as in the case of Petsmart you attached that narrative to the resolution and made that to limit the services that can be carried out under the approval if that's in fact what you grant.

CHAIRMAN EWASUTYN: As a matter of record, you introduced earlier, and I apologize I didn't retain the names of the representatives from Petco. I would ask at this point if they come forward and for the record describe the use as they see it.

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MR. MINUTA: Certainly.

MS. WERTHWEIN: Good evening. How are you guys? My name is Karen Werthwein, W-E-R-T-H-W-E-I-N.

MS. MILLER: I'm Kathy Miller, I'm district manager for Petco.

MS. WERTHWEIN: In regard to the vaccinations, it's actually not a vet's office that's in the store. It's a third-party vendor that we have an agreement with who comes in to our store anywhere between a weekly or monthly basis to just administer vaccinations, low-cost vaccinations to folks who bring in their dogs and cats. The service I believe is about \$45 for the bundle. It provides rabies, Bordetella, the whole package of what's really needed to have the proper records to have grooming done, to also take your dog to a dog park or elsewhere.

MS. MILLER: It's not meant as an actual veterinarian service.

MS. WERTHWEIN: If the vet administers vaccinations and feels that there's anything else that's going on, they would recommend that the folks take their dog or cat to their own vet.

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There's no services other than that being provided at the store.

CHAIRMAN EWASUTYN: Any questions from Board Members?

MR. GALLI: No. That answers it.

MR. DONNELLY: I guess not remembering everything that was in Petsmart, it sounds as though it's well within that narrative because I think they had a slightly broader level of services.

MR. MENNERICH: Okay. Thank you.

CHAIRMAN EWASUTYN: Joe?

MR. PROFACI: I'm fine.

CHAIRMAN EWASUTYN: Jerry, do you have anything to add to this?

MR. CANFIELD: No. Echoing what Mike said. Also, I had the opportunity to meet with Mr. Gaba's firm, Mr. Loeb, and that meeting was accompanied with people from Petsmart and the mall which was also accompanied by Mark Taylor, the Town attorney, and we had discussed this very item as far as what the actual veterinary, if there were veterinary use would be. I concur with all their findings. It's much less than

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Petsmart. I have no issue with it at all.

CHAIRMAN EWASUTYN: Okay. So what we have now Michael, we have to approve the amended site plan, we have to approve the ARB.

MR. DONNELLY: You do. I think there's a need for a 239 referral, though. I don't think that was done.

MR. GABA: On site plan?

MR. DONNELLY: My notes don't show that it was done back in May.

MR. COCKS: We haven't sent it yet but it does need to go.

CHAIRMAN EWASUTYN: That would make sense. We would refer under 239-M because we referred it to the ZBA and we wouldn't make that decision --

MR. COCKS: Until after they came back.

MR. GABA: Okay. The only thing I would ask, I believe, and of course it's up to the Board but I mean this is basically a site plan for a change in occupant at a mall site. I think the Board is in a position to adopt a negative declaration, waive any public hearing and go right ahead and approve the amended plans

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because it's basically putting a new tenant in.
Of course that's up to you.

What I'd ask is that we'll get out the
239-M referral and see if we can get a response
from County Planning. I've got to believe it's a
local determination but you never do know. Maybe
we can be on the next agenda. I hate like heck
to hold up --

CHAIRMAN EWASUTYN: The next agenda
wouldn't be until November.

MR. GABA: It is what it is.

CHAIRMAN EWASUTYN: Bryant Cocks
handles the circulation. We'll go from there.
The Board has never really taken action to this
date on approving something until we've heard
back from the ZBA -- I mean, excuse me, from the
Orange County Planning Department.

Ken.

MR. MENNERICH: Could we put that under
Board Business and as soon as we get some letter
from the County, put it on the next Board
Business meeting and the applicant wouldn't even
have to be present?

CHAIRMAN EWASUTYN: We could do that.

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MR. GABA: Would we be on for approval?

CHAIRMAN EWASUTYN: We could act under Board Business.

MR. GABA: That would be great.

CHAIRMAN EWASUTYN: That's once we receive a letter from Orange County.

MR. DONNELLY: You can take SEQRA action this evening I believe. I don't see anything holding that up.

MR. GABA: I think in fact we insist on that for a complete submission. I think it would be helpful.

CHAIRMAN EWASUTYN: I'll move for a motion from the Board to declare a negative declaration on the Petco site plan and refer it to the Orange County Planning Department.

MR. PROFACI: So moved.

MR. GALLI: Second.

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

(No response.)

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

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MR. GALLI: Aye.

MR. BROWNE: Aye.

MR. MENNERICH: Aye.

MR. PROFACI: Aye.

CHAIRMAN EWASUTYN: Myself. So
carried.

I'll move for a motion from the Board
to set this up under Board Business for final
site plan approval and ARB approval subject to
receiving a sign off from the Orange County
Planning Department.

MR. GALLI: So moved.

MR. PROFACI: Second.

CHAIRMAN EWASUTYN: I have a motion by
Joe Profaci -- excuse me, a motion by Frank Galli
and 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. BROWNE: Aye.

MR. MENNERICH: Aye.

MR. PROFACI: Aye.

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CHAIRMAN EWASUTYN: And myself. So
carried.

Thank you.

MR. GABA: What's the date of the
meeting?

CHAIRMAN EWASUTYN: It isn't a date.
It's waiting to hear back from -- the next
Planning Board meeting is the 16th.

Cliff is suggesting separate from the
letter that they sent to the ZBA, that we should
send to the ZBA also saying where we are with
this project just so there's no ill feelings.

MR. BROWNE: With some background,
otherwise --

MR. DONNELLY: What night were you
there? It may be clear from the minutes. Does
anybody remember the date?

MR. MINUTA: Which?

MR. DONNELLY: The date you were last
at the ZBA.

MS. LAKE: July. I was on vacation.

MS. HAINES: It's always the last
Thursday. Was July the month?

MS. LAKE: Yes.

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MR. DONNELLY: They don't have their minutes on the website.

MS. HAINES: They do. They post them.

MR. DONNELLY: I'm bringing them up. I've looked at both the July 24th and August, it looks like 28th meeting minutes of the Zoning Board of Appeals. I read the July 24th ones quickly, they are fairly lengthy. There seemed to be a great deal of confusion and no one told the Board that night that they were withdrawing the application. Indeed at the end it finished with Mr. Minuta saying to give you the ability to review this further, my client is willing to hold this open. The board then passed a motion to continue the public hearing for one month more to the August meeting, and they did not appear on the August -- within the August meeting minutes. I don't know whether the letter was received by the board but there was no action on their agenda at that time. I think the idea that we write a letter explaining what happened between then and now to the Zoning Board is a good idea. I'll be happy to take a stab at that draft. And John, make sure you take a look at it before I send it.

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CHAIRMAN EWASUTYN: I'm confident in what you're doing. Thank you.

MR. DONNELLY: In fairness to them.

CHAIRMAN EWASUTYN: Without a doubt. I agree with that.

(Time noted: 8:45 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: October 20, 2008

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

----- X

In the Matter of

NEWBURGH PLAZA
(2005-35)

Status of Phase II and Phase III

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BOARD BUSINESS

Date: October 2, 2008
Time: 8:45 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

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

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

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

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NEWBURGH PLAZA

MS. HAINES: The first item of Board Business that we have tonight is the Newburgh Plaza. There was a letter from Joseph Korn to Gerald Canfield dated September 19, 2008 regarding the status of Phase II and phase III of the project.

CHAIRMAN EWASUTYN: Give us an update basically.

MR. CANFIELD: Newburgh Plaza, as you're aware, is the Petsmart, Kohl's which was a three-phase project that was approved back in 2005, 2006. Phase I was constructed which consisted of Petsmart and Kohl's. Phase II was the restaurant area that's in the fenced-in area to the Washington Lake side of Kohl's. In front of Kohl's there was supposed to be a 6,000, 7,000 square foot restaurant and another 3 or 4,000 square foot pad site. That was phase II. Phase III was to be the old Lloyd's gas station out front that was to be completed.

Awhile back I received some Inquiries about the fence and basically the general condition of the site as far as

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NEWBURGH PLAZA

the fenced-in area getting pretty shabby and the fence being knocked down. That prompted me to contact Joseph Korn from Newburgh Plaza to inquire about what he was going to do about cleaning up the site per se, fix the fence and also replace some of the Signs. There was a hazardous condition. The one-way signs on the entrance to Little Britain Road actually coming in off Little Britain into the site, the signs, the one-way signs had disappeared. We asked them to replace them. In doing so they committed to repair the site, which they have. They Repaired the fence, the signs are on order. They are supposed to be replaced this week.

We got into a conversation with Joseph Korn as far as what is in the near Future as far as completing this project, phases II and III. If you remember, at that time we had discussed it briefly. We have nothing in our resolution for the approval of this project that limits or gives any timetables. In this market my concern was or hope was to perhaps get Newburgh Plaza

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back to this Board to make something a little more permanent inside that fenced-in area rather than just leaving that construction fence and the weeds that are there that's growing, just to kind of dress up the site. Mr. Korn gave me some of the reason. I had asked him to put it in writing so I have something tangible to bring to the Board. I did submit it to John and I believe he distributed it to everyone.

Basically what Joseph Korn has explained is that the second phase of the site which consists of the old, I'm talking about very old, Lloyd's gas station which is the fenced-in area, as he explains is still under DEC mandate to do continual monitoring of the air quality. Actually, the soil that's there.

MR. HINES: Water quality.

MR. CANFIELD: Water quality. They did their last required set of testing which was in the fall of this year -- excuse me, summer of this year and the DEC did not accept them and asked to extend that timeframe to have them

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re-test into the spring of 2009. So with that that somewhat limits what can and will be happening in the very near future with that phase of it.

He does say in his letter that phase III they did have a tenant, which was Quickcheck, interested but for some reason that fell apart and they walked away, however he's currently negotiating with another tenant, which he did not reveal, for phase III. So basically that's the update.

My hopes and wishes are of perhaps a vehicle or means to get them back here to do something with phase II at this time. I don't think there's a future in that. I don't see any means or any enforceable action we can take to force them back here because they're being under basically a hold by DEC. What the problem is with that, that DEC issue, is there's a possibility that if these monitoring wells and the readings from these wells are not acceptable, they may have to go back and excavate some more soil, so there may be more remediation

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NEWBURGH PLAZA

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on the site. There's a possibility of that.
So anything that we may ask them to do may be
for naught. Basically that's where we stand
with them.

CHAIRMAN EWASUTYN: Thank you, Jerry.

MR. GALLI: Do you think Quickcheck is
waiting to see if Shell gets their signage
approvals? They want the same thing Shell
already put up.

MR. HINES: They have to put their sign
up first and then apply.

CHAIRMAN EWASUTYN: They're one of the
applicants that we wrote to to see -- to find out
if they are active, if they want to be considered
active.

MR. GALLI: They pulled out on 9W?

MR. PROFACI: The drive-in.

CHAIRMAN EWASUTYN: We did a general
mailing and that was one of them.

MR. MENNERICH: They never formally
withdrew their application?

CHAIRMAN EWASUTYN: No.

Karen?

MS. ARENT: When I did the inspection

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NEWBURGH PLAZA

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for Newburgh Plaza I reviewed thoroughly the plans and there's supposed to be temporary pavement on that area. Of course you would have to wait until their testing is finished. It's not supposed to look like that.

MR. HINES: The DEC would most likely allow you to pave over any fuel contaminated site.

MS. ARENT: That's on the drawings.

MR. GALLI: They would or wouldn't?

MR. HINES: They would. It helps. It stops water infiltrating through any potential contaminated material.

MR. CANFIELD: That makes sense.

MR. MENNERICH: From a visual standpoint wouldn't it be better to have grass there than blacktop?

MR. HINES: You don't have grass.

MS. ARENT: They have the base for the pavement.

MR. HINES: It looks a lot better with the fence straightened up.

CHAIRMAN EWASUTYN: Thank you, Jerry,

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NEWBURGH PLAZA

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for getting that.

Any other comments?

(No response.)

(Time noted: 8:50 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: October 20, 2008

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

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In the Matter of

ARB SUBMISSION REQUIREMENTS

Discussion by Karen Arent

----- X

BOARD BUSINESS

Date: October 2, 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
CLIFFORD C. BROWNE
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JOSEPH E. PROFACI

ALSO PRESENT: DINA HAINES
MICHAEL H. DONNELLY, ESQ.
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ARB SUBMISSION REQUIREMENTS

MS. HAINES: Karen has ARB submission requirements that we've been holding on to for a long time.

MS. ARENT: The people always have a question on what they need to submit as far as ARB, so I just wrote up things that we've been looking for, which would be ten copies, and I wrote ten working days before the scheduled meeting because that always seems to be confusion. I always get the drawings yesterday. You know, Wednesday right before the meeting. Nobody has a chance to look at them. Then elevations of all four sides of the buildings. The elevations must show all materials and list color and manufacturer of the materials. All condenser units must be shown and screened. Drawings as necessary are required to be submitted to illustrate from where, how the units are screened. Signs must be shown on all elevations and the chart that lists square footage of signage allocated to each retail use should be included on the drawing. This chart should include all the signs -- size of the pylon sign and coordinated with the maximum square

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2 footage of allowable signage. If a variance is
3 required the Planning Board must first approve
4 the proposed signage guidelines and square
5 footage and then they would be referred. Signage
6 guidelines must include a note that limits signs
7 to the locations that are shown on the drawings
8 and guidelines must list maximum letter size,
9 color, materials, restrictions and any other
10 guideline necessary to create a cohesive and
11 distinctive look from the plaza. These are some
12 of the things that the applicants have been
13 doing. Just so that, you know, they're clear on
14 what we're looking for. The drawings must match
15 the footprint of the building shown on the site
16 plan. That sometimes doesn't happen and it's a
17 given. So I wrote it just so that they are aware
18 that they have to go back to the site plan and
19 make sure everything works. And then a color
20 rendering of all sides of the building visible by
21 the public should be presented. Materials and
22 colors must be depicted as accurately as
23 possible. Show a detailed proposed pylon sign
24 and drawings as necessary to -- I already said
25 that one. Excuse me. And the plan view of the

1 building. They should label the different uses
2 of the building accurately on the plan. That was
3 something that Brookfield -- Brookside, that
4 would be helpful for that project so Bryant can
5 clearly check to make sure all the parking is met
6 and everything. And then the architectural
7 review form that's available online. The
8 architect should bring a full-size rendering as
9 well as copies of all their plans to the meeting.
10 Samples of the proposed colors and materials
11 should also be brought.
12

13 CHAIRMAN EWASUTYN: The purpose of the
14 discussion is to sort of agree that this would be
15 a good boilerplate for an applicant to receive so
16 they would know what it is we're looking for. We
17 would have a copy in the office. Dina could
18 e-mail that to any representatives when we're
19 reaching that point in the review. Bryant could
20 work with it. All of us could work with it.
21 That's why it's before us tonight.

22 I think more than anything applicants
23 would like to have an understanding of what it is
24 they need to do, what the information is so they
25 can act accordingly. We as a Board would like to

1 know that we have everything that we need to make
2 a decision. At the same time we'd like to know
3 that we have it in a timely manner so we can
4 review it and make that decision. So it really
5 covers a range of needs, both on our part and the
6 applicant's part.
7

8 MR. HINES: Is there any thought of
9 putting that in as a checklist so when they
10 submit it they --

11 CHAIRMAN EWASUTYN: That would be a
12 great idea. Can we do that?

13 MS. HAINES: Add it into the
14 application?

15 MR. DONNELLY: We'll put boxes on it.

16 MR. HINES: Make a checklist and have
17 the architect sign that I did all that, that way
18 if he didn't he can't say he didn't see it.

19 CHAIRMAN EWASUTYN: Explain that to me.

20 MR. GALLI: Boxes next to each point.

21 MS. ARENT: Instead of bullets, just
22 boxes.

23 CHAIRMAN EWASUTYN: And they would
24 receive this as part of the application package?

25 MR. DONNELLY: Yes.

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ARB SUBMISSION REQUIREMENTS

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CHAIRMAN EWASUTYN: We would somehow have to insert that.

MS. HAINES: I'm sure if I called Gail he would know how to do it.

MR. HINES: It may save them a lot of time and effort knowing what you want and they're submitting it.

CHAIRMAN EWASUTYN: Discussion from the Board. Frank?

MR. GALLI: No additional. That's a good idea.

CHAIRMAN EWASUTYN: Cliff?

MR. BROWNE: I think it's great. You may want to have one more comment on there, something indicating that we may want to require something additional for some projects. I mean we may give them this and they say I did everything. What do you mean you've got everything? You may want something else.

MR. HINES: The last bullet can be any other additional information required by the Board.

MR. MENNERICH: Such as simulations.

MR. BROWNE: There may be some other

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things.

CHAIRMAN EWASUTYN: That's the one thing they never want to see.

Ken?

MR. MENNERICH: I guess the flip side of that coin is there might be times, depending on what the project is, where we don't need all of this. If it's an existing building that's changing a use, the building is staying the same, the only thing changing is the sign. Is there some way we can word in the fact it's going to be depending on the circumstances?

MR. DONNELLY: If an item is not provided, explain reason below.

MS. ARENT: There you go.

MR. BROWNE: That works.

CHAIRMAN EWASUTYN: That's good. Thank you.

Joe?

MR. PROFACI: I agree with everything that was said.

CHAIRMAN EWASUTYN: Jerry, do you want to add anything?

MR. CANFIELD: No.

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ARB SUBMISSION REQUIREMENTS

CHAIRMAN EWASUTYN: Pat?

MR. HINES: No.

CHAIRMAN EWASUTYN: Bryant?

MR. COCKS: No.

CHAIRMAN EWASUTYN: Mike?

Karen, do you want to finalize that for us and e-mail everyone, get a copy to Dina and we'll go from there.

Thank you.

(Time noted: 8:58 p.m.)

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DATED: October 20, 2008

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

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In the Matter of

QUARTERLY SITE INSPECTION

----- X

BOARD BUSINESS

Date: October 2, 2008
Time: 8:58 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

BOARD MEMBERS: JOHN P. EWASUTYN, Chairman
FRANK S. GALLI
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QUARTERLY SITE INSPECTION

CHAIRMAN EWASUTYN: We have one other item.

MS. HAINES: The quarterly site inspection. Ken can only make the Saturday, October 25th.

MR. MENNERICH: That's the only one I can't make.

MS. HAINES: I misread the e-mail.

MR. MENNERICH: It's the only one I can't.

MS. HAINES: What Saturday does everybody want to come other than the 25th?

CHAIRMAN EWASUTYN: This we'll have to move into November. Let's put it down for November.

Everyone e-mail Dina what date in November. Whatever the majority is for November, that's when we'll have the site inspection. All right. Is that fair enough?

(No response.)

CHAIRMAN EWASUTYN: Any other questions or comments?

(No response.)

CHAIRMAN EWASUTYN: I'll move for a

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QUARTERLY SITE INSPECTION

motion to close the Planning Board meeting of
October 2nd.

MR. GALLI: So moved.

MR. PROFACI: Second.

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

MR. GALLI: Aye.

MR. BROWNE: Aye.

MR. MENNERICH: Aye.

MR. PROFACI: Aye.

CHAIRMAN EWASUTYN: And myself.

(Time noted: 9:01 p.m.)

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

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