

ZBA MEETING – NOVEMBER 24, 2009

(Time Noted – 7:50 PM)

GDP AMODEO PARTNERS, LLC

UNION AVE (RTE 300) & ORR AVE, NBGH
(96-1-6, 7, 8, 9, 11.1, 95-1-37.2, 36) IB ZONE

Applicant is seeking area variances for varying front and side yards setbacks, the lot surface coverage and the total signage to build a commercial (retail) and restaurant (existing) space.

Chairperson Cardone: The next applicant GDP Amodeo Partners, LLC.

Ms. Gennarelli: The Public Hearing Notice was published in The Mid-Hudson Times on Wednesday November 11th and The Sentinel on Friday, November 13th. The applicant sent out twenty-seven registered letters, twenty-four were returned. All the mailings and publications were in order.

Chairperson Cardone: If you would identify yourself for the record.

Mr. Wolinsky: Yeah, my name is Larry Wolinsky, attorney with the law firm of Jacobiwitz and Gubits, here on behalf of the Shoppes at Union Square. I apologize I have a bad cold. So please bear with me if you can't hear me just ask me to raise my voice. With me this evening are Brian Waisnor our project engineer, Joe Minuta, one of our project architects, Phil Greeley, our traffic engineer, Adrian Goddard our project principal. This is a project this Board is familiar with. We were here in July of 2008 on the 24th of that month the Board granted six area variances for this project. Since that time the project has been amended to accommodate the requirements of actual tenants who will be residing in that project. Brian will, in short course explain what the modifications are. As a result of these project modifications, two of the variances have been eliminated and two new variances have been included plus three are some slight modifications to several previously granted variances. Again, Brian will detail all of those for you in a second. Also since we have tenants for this project now we know the sign requirements and we're in a position tonight to seek the necessary sign variances for project. Joe Minuta will go through that with you and just so you're aware if you are not already the amended plan has been before the Planning Board, the Planning Board has issued a SEQRA Negative Declaration amending its prior Negative Declaration. It has also issued a preliminary site plan approval for the amended site plan. We got to you via a letter from the Planning Board attorney dated 8-21-09 written on behalf of the Planning Board which referred the application to you. So without further delay I want it right over to Brian Waisnor who will go over with you the project amendments and the area variances we are seeking this evening.

Mr. Donovan: Before he starts Larry I want to make sure, this is not anything different from your application? You haven't changed any variances or you have?

Mr. Wolinsky: None, from the application that's before you tonight is what is exactly being presented, no change.

Mr. Donovan: So the application and I want to make sure I'm clear is just before he starts. You ask for seven variances, correct? In your application?

Mr. Wolinsky: Correct.

Mr. Donovan: Two of them you don't need and we determined the last time you didn't need them.

Mr. Wolinsky: We were asked...yeah.

Mr. Donovan: The front yard on Route 300 and the front yard on Orr Avenue, correct?

Mr. Wolinsky: Yes, however, just stop right there for a second Dave. At the Planning Board meeting we were asked by the Building Department to have those variances reaffirmed by your Board and that's why they are in our present application.

Mr. Donovan: Sure, I just wanted to make sure the Board focuses on and I'm correctly focused on what you're asking so those two which we actually determined you didn't need so those are two of the seven. The other two, you asked for a side yard from 50 feet to 0 feet and we gave you 50 to 0.8 last time. So that's less than a foot.

Mr. Wolinsky: Correct.

Mr. Donovan: And then there was a side yard or lot surface coverage we gave you a variance from 80 to 89.3 and you're looking for 89.8.

Mr. Wolinsky: Correct.

Mr. Donovan: So as I see it there's three new variances, there's a side yard from 50 ft to 5 ft, a side yard from 50 ft to 40.3 ft and the sign variances.

Mr. Wolinsky: Right, that's correct.

Mr. Donovan: And what I want to do is focus on those.

Mr. Wolinsky: Focus on only those, O.K.

Mr. Donovan: If that's O.K. with the Board?

Chairperson Cardone: That's fine.

Mr. Hughes: I have a question; I don't know whether I was hearing things or maybe you misspoke. Is this Brian Cox not the Brian Cox I know? And I thought you said that Brian Cox was going to brought up...?

Mr. Wolinsky: I said Brian Cox? No, I thought I said Brian Wasner.

Mr. Waisnor: I'm Brian Waisnor.

Mr. Hughes: Well if we could, Betty please check the records and make sure.

Ms. Gennarelli: I'm pretty sure he did say that Waisnor, Brian Waisnor.

Mr. Donovan: Plus he probably is whoever he is.

Mr. Hughes: Well I don't count that that's who that is. But I thought that Larry said that Brian Cox was going to be up and I was looking for him in the room.

Mr. Wolinsky: Oh, you're scaring me.

Mr. Hughes: O.K. well...

Mr. Wolinsky: I know I'm getting old but that would be a little too accelerated for my benefit.

Mr. Hughes: Senile is a good sport; you'll get into it after a while.

Mr. Wolinsky: O.K. Brian Wasner.

Mr. Waisnor: Brian Waisnor, good evening ladies and gentlemen, thank you very much.

Chairperson Cardone: You can take that microphone off the stand if it's more comfortable or raise the stand up.

Mr. Waisnor: Take it off if that's O.K.?

Ms. Gennarelli: Yes, you just have to hold it close.

Mr. Waisnor: Closer?

Ms. Gennarelli: Yes, that's good.

Mr. Waisnor: O.K. Thank you. I'd just like to take a minute and walk you through the amended site plan that I have up here rendered for presentation purposes. It is the same plan that was included in your package. Since July of 2008 when we were last before the Board as Mr. Wolinsky alluded to there's actual tenants now for the site. ShopRite is going to be the anchor, the supermarket anchor back here next to Lowe's. On this plan I should point out north is to the right hand side of the plan, Orr Avenue is on the bottom of the page, Route 300 or Union is on the bottom, sorry on the bottom of the page, Orr Avenue is on the left hand side of the page. ShopRite is the proposed anchor in the rear of the site. Staples is also one of the tenants they are located towards the front by Route 300

and down here on the corner is the existing Cosimo's Restaurant, the Sprint store next door and there's two tenants in one building. One of the tenants is identified as Vitamin Shoppe that's proposed to go down here in the corner. There will still be a main entrance off of Route 300 with a main connector driveway that runs through the site and over and into the Lowe's Shopping Center, interconnecting with that. There is still one driveway coming out to Orr Avenue behind the Cosimo's, very close to where the existing Cosimo's driveway is today. Overall the parking fields as shown here are in general conformance to what was previously proposed. If you recall that we did originally have a driveway, a service driveway, towards the very western corner of the site back by Orr Avenue in one of our original applications. Subsequently prior to gaining our final variances and site plan approval last year we had removed it but now because of the reconfiguration of the site and for circulation purposes we've added it back in and I just want to point out that in conjunction with that we've been working with the Planning Board engineer to insure that the improvements that we're doing will improve the drainage situation in the entire area. To that effect right now there's an existing 54-inch pipe up at the corner of the site. The Planning Board engineer has reviewed this and has determined that the best course of action would be to remove that pipe and put in a larger culvert, which we've agreed to do. In addition, the crossing in the middle of the site here we are looking at installing a bridge across this crossing instead of a culvert and provide more floodway for the stream during storm events and in addition as a requirement of the last approval there is going to be maintenance of the stream, in terms of cleaning out all the debris, fallen tree trunks, etc., etc. There's already been some debris clean up but we need to get our New York State DEC Permit to clean up the rest. That's a general overview of the site; I'll jump into the variances very quickly, the area variances. I've got a couple of boards here. This first board, this is a blowup of the Cosimo's area, the Cosimo's building is here, Sprint is here, Route 300 is on the bottom of the page and this is Orr Avenue. This figure indicates the four variances, the two variances that were previously granted are the existing variances are for the Cosimo's to the front yard, 55.7 ft. and also to the front yard of Orr Avenue, is the front yard or the side yard of Orr Avenue, the side yard depending upon Planning Board interpretation of the corner lot. Those are existing variances we not looking to change anything there. On the right hand side this is the new Vitamin Shoppe and the need for this small variance, which was previously granted at .8 feet, is because Cosimo's lot needs to remain its own independent lot. It cannot be consolidated into the overall shopping center. If it was consolidated into the shopping center we would not need a variance for this condition. So that's a 0.0 setback there and in addition the overall coverage which is building, parking, sidewalks on this lot is increasing from 89.3 to 89.9%, 89.8% excuse me. The two other variances, on the Amodeo lot which is the rear portion of the lot where the new ShopRite is going to go the 5 ft. side yard setback that is against the Lowe's building. This is the Lowe's building; again Orr Avenue is on the left hand side of the page if you're looking at it. Again if this was developed, as one contiguous shopping center there would be no setback, excuse me, no variance required. This will make it look like it was a homogeneous shopping center going across. We're also requesting a side yard setback to the rear to Lot 35, to 40.3 ft. and again the configuration of this building and the parking out in front has really been tailored to minimize the stream and the stream buffer that remains undisturbed by the project and that drives the need for the location of this

building and the location of this building in relation to the lot next door. I think those are...that's the synopses of the variances that we're requesting. I'd like to turn it over to Joseph Minuta to go over the signage briefly...

Chairperson Cardone: Before he does, I have the report from the County and there were a couple of issues raised and so I'd like to bring them up at this time. First of all they have issued Local Determination but they've added the sentence however we find that the proposed lot surface coverage on existing SBL 96-1-11.1, that's the Cosimo's property, of 89.8% may pose an issue regarding stormwater runoff and pollution. We advise the Zoning Board of Appeals and the Planning Board to review the proposed storm water management plan and determine whether the proposed measures for storm water management are sufficient to prevent water supply contamination in the Lake Washington watershed.

Mr. Waisnor: May I address that?

Chairperson Cardone: Yes.

Mr. Waisnor: Yes, the lot coverage while it is exceeding the allowable for this individual lot when taken into consideration of the entire project is below the permissible amount. It's only approximately 66% as opposed to the 80% that's permitted. Furthermore, we did develop a unified stormwater management approach where we looked at the entire site to ensure that all of the surfaces would get some form of treatment. We've actually recognized that we need to treat to a higher level than the State actually requires. We're treating 110% of what the State requires in terms of the water quality storm. This was discussed and reviewed with Pat Hines and he has reviewed our report. He's made a couple of suggestions for improvement, which we're incorporating now. One of which was the culvert crossing back here and the other which was a change in the outfall location directly to the wetlands, which will increase the filtering of the storm water before it reaches Lake Washington.

Mr. Hughes: Are you including the Lowe's Plaza next door when say the entire?

Mr. Waisnor: No the Lowe's Shopping Center has its own storm water management system. That's actually collected and I believe routed down towards 300 further to the north.

Mr. Hughes: O.K. then the basin that feeds this project that runs off of Stewart and west is the 8500 acres on the eastern end of Stewart Airport that you're referring to?

Mr. Waisnor: The a...there is a large watershed.

Mr. Hughes: 8500 acres.

Mr. Waisnor: I'm not sure if it's quite that big its on the order of 1000 acres I believe.

Mr. Hughes: I misspoke. 850 acres.

Mr. Waisnor: Correct, that all comes down through this stream, specifically through this stream.

Mr. Hughes: O.K. so then when you say this parcel and this project you're referring to just this here and not the inclusion of Lowe's which you say has a separate border. Mr. Goddard, I think we had a conversation when we were here last time and you going to go out and clean up some of the problems on Orr Avenue was that completed?

Mr. Goddard: We did as much as we...

Ms. Gennarelli: Excuse me, I'm sorry, you have to...

Chairperson Cardone: You have to use the microphone.

Ms. Gennarelli: ...use the microphone and please identify yourself for the record.

Mr. Goddard: Yes, my name is Adrian Goddard. Yes, a lot of it was and the rest needs a DEC Permit which we're...what I'm saying is part of this project.

Mr. Hughes: So is it yes or no? You didn't finish...?

Mr. Goddard: We did some.

Mr. Hughes: You did some?

Mr. Goddard: As much as we could without a DEC Permit which we need to complete this project.

Mr. Hughes: So then the problem that existed when we agreed to give you the variance the last time still persists?

Mr. Goddard: We haven't built the project yet. When we build the project we'll, you know, its part of building the project we'll address the issue.

Mr. Hughes: I thought you were going to take care of that the last time. There was a big problem in the neighborhood there.

Mr. Goddard: Are you talking about as part of this project or...?

Mr. Hughes: I think you know what I'm talking about. You were the guy that agreed that's how I recognized you by your name that you were going to take care of that.

Mr. Goddard: As part of the Lowe's project or of this project?

Mr. Hughes: I guess, as part of both of them. That's why I asked the gentleman if he is referring to just this piece here or the whole corner, which other than one parcel back there I presume at this point that you own under the name of Amodeo Properties.

Mr. Goddard: Yes, is this the, was this the discussion we had in July when we were...?

Mr. Hughes: Well I can't tell you I don't have that kind of memory but I can dig the minutes up.

Chairperson Cardone: It was from July. Yes.

Mr. Hughes: O.K.

Mr. Goddard: And one of our tenants blew out and the project didn't get built and that's why we're back here and I'm...

Mr. Hughes: Well I wasn't so much concerned about your rent-ability there but the neighborhood. You were supposed to go out and fix what was wrong in the neighborhood.

Mr. Goddard: We did as much as we could without a DEC Permit which is part of...

Mr. Hughes: So then you need the DEC Permit to finish it up?

Mr. Goddard: That's correct.

Mr. Hughes: When do you expect to do that?

Mr. Goddard: When we complete the planning process and begin construction. That's the sequence. The reason it hasn't happened is because we haven't started the project yet.

Chairperson Cardone: Has that been a condition from the Planning Board do you know?

Mr. Goddard: Has what specifically?

Chairperson Cardone: The cleanup...

Mr. Donovan: Let me, if I can do this? How about I read what we said in July of 2008? This is under as we examine the five factors to be considered in granting an area variance. Factor number four is, are there any adverse or environmental effects? And we said at that time the Board notes that the existing adverse...well let me go up...during the course of the Public Hearing an adjoining property owner testified as to an existing adverse drainage condition. This resident raised a concern that the new construction might exacerbate this existing condition. Initially the Board notes that the existing adverse condition has no relationship to the variances requested by the applicant nevertheless the Board inquired if the applicant would cooperate with the Town Engineer

to review the condition identified by the neighbor. The applicant consented and as a result a field investigation was performed by the offices of McGoey, Hauser and Edsall Consulting Engineers, PC, on behalf of the Town of Newburgh together with Langan Engineering on behalf of the applicant. The results of this field investigation are set forth in a memorandum dated July 23rd, 2008 which memorandum is attached to and made part of this decision. Essentially the Town's consultant determined that the applicant's project will "not significantly impact drainage tributary to the residents' culvert". This finding notwithstanding the Town's consultant did identify certain items which the applicants have voluntarily agreed to perform to improve the overall drainage condition.

Mr. Wolinsky: So as part of this approval we're still committed to undertaking what we agreed to do previously. It will happen during the time the construction proceeds forward so, you know, and that's the traditional time you get your DEC Permit. We need the DEC Permit to do the completion of that drainage work, the cleanup work and other work as well but we're committed to do if that's really the question. If we're still committed to that, we are.

Mr. McKelvey: The Planning Board will make you do it too probably won't they?

Mr. Wolinsky: Absolutely. Absolutely. It will be a condition of our approval. We don't, we don't, we're happy to have you make it a condition of any variance you grant. But it will be done.

Mr. Hughes: Well it wasn't an out and out per se condition but I thought we had a general opinion here of cooperation and I don't see it happening so I...

Mr. Wolinsky: Well, but it...

Mr. Hughes: Do you want me to cook another hamburger today and you can pay me for it Tuesday?

Mr. Wolinsky: No, no, no it was a...it was a preexisting condition not caused by anything having to do with Mr. Goddard. Mr. Goddard as the letter indicated, Mr. Goddard volunteered to do it at the time the project went forward and the project didn't go forward at that time because of the tenant issues that he explained and now its going forward. Thank God we got some tenants. It's not easy in this climate and we're going to do it. Bottom line.

Ms. Drake: Are there notes on the plan that the Planning Board will be signing off on indicating that that work will be done?

Mr. Waisnor: Yes. Yes, on the grading and drainage plan. Yes.

Mr. Hughes: But Mr. Goddard are you still in the same frame of mind to fix this thing?

Chairperson Cardone: You have to use the microphone.

Mr. Goddard: Pardon me. Absolutely we're committed to completing that work.

Mr. Hughes: Counsel? In order to even think about entertaining this at all I would like it that as part of the condition. Do you have the right wording?

Mr. Donovan: Well are you suggesting or is the Board suggesting we repeat the condition from the prior variance?

Mr. Hughes: Well evidently we didn't get it properly in writing the last time or it would have been completed by now that was a couple of years ago.

Mr. Donovan: So what language are you suggesting then?

Mr. Hughes: Just something that nails them down and has them complete it. That's all.

Mr. Donovan: O.K. but I'll need to...

Mr. Hughes: When it gets to that point, I mean, we've got a lot to look at here yet.

Mr. Manley: I have a question relative to the County question about the impact on the Lake. Was that at the Planning Board level discussed at all and did Mr. Hines, from McGoey, Hauser and Edsall address that specific topic?

Mr. Waisnor: To be perfectly candid this is the first I'm hearing of the comment. I don't know that we had it in time for the Planning Board.

Mr. Manley: O.K.

Mr. Waisnor: But we did specifically, myself and Mr. Hines, leading up to the meeting to prepare our stormwater management study did discuss the additional requirement to go above and beyond the State requirements specifically because the Lake is a reservoir and a water supply for the City.

Mr. Hughes: Are your leftovers here going into Murphy's Ditch?

Mr. Waisnor: I'm not sure where Murphy's Ditch is to be honest.

Mr. Hughes: Mr. Goddard do you know where Murphy's Ditch is?

Mr. Goddard: No I don't.

Mr. Hughes: The chunnel if you will, that goes underneath the parking lot at Home Depot it crosses underneath 300 north of the project here right by the brick telephone building, across the street from Cosimo's.

Mr. Goddard: I think Brian's in a better position to show you exactly what we're doing there.

Mr. Waisnor: Yes sir, there's a Murphy's Ditch, if that's what you call it, there is a culvert that goes under 300 and splits right down between the Home Depot property and the Adam's property.

Mr. Hughes: That's the one I'm talking about.

Mr. Waisnor: Yes, everything I guess east of Route 300 in this area comes down through that ditch.

Mr. Hughes: O.K. and so the public can know and so the fellow Board Members understand if most of here are familiar with Murphy's Ditch it's a chunnel that takes and I'll re-speak again because its not only 850 acres in the one part that's directly west but there's another 1250 acres that's west by southwest on the top of the plateau of Stewart property that also dumps into Murphy's Ditch. The chunnel is big enough for me to walk into and that's a pretty big chunnel. You have an 8 x 8 thing that feeds Washington Lake, which is the critical water supply for the City of Newburgh. This is a very delicate situation here and with the problems that have occurred there already with the Thruway and everything else I'd feel more comfortable if I knew about where everything is going. So thank you for answering that and now the public can understand what's going on here as well.

Mr. Manley: If I could continue my question? I never really got a chance...

Mr. Hughes: I'm sorry about that.

Mr. Manley: ...to finish my question. Would it be possible that you could or maybe the Board could forward to Mr. Hines based on the County's recommendation being a new, you know, recommendation and you know, asking this Board to make sure that we look into that take a look at their concerns and perhaps get a response from, you know, the Town's engineer with regard to that before a decision is perhaps rendered. I would feel a little bit more comfortable having that looked at.

Mr. Hughes: Counsel, what's the verge where an EAF form has to go into the next possible size on this thing because of the stormwater. Are we piggybacking and compounding something here going into a bigger spectrum?

Mr. Donovan: Well in the first instance that's a determination made by the lead agency, which we are not.

Mr. Hughes: And if they've made a mistake?

Mr. Donovan: I don't know on what basis they made a mistake.

Mr. Hughes: To me it has all of the qualifications to go into the higher criteria but I'm not a...

Mr. Donovan: What criteria is that you're referring to?

Mr. Hughes: The larger drainage area for the stormwater management.

Mr. Donovan: I am not familiar with the criteria in the SEQRA regulations that provide for drainage that's going to indicate, the necessity to prepare an EIS.

Mr. Hughes: I shouldn't dig it out.

Mr. Wolinsky: Well, there was a...there was a...there's been a SWPPP, stormwater pollution prevention plan. It complies and/or it may exceed...

Mr. Hughes: Brian do you have a copy of that?

Mr. Waisnor: I have a copy in my bag.

Mr. Wolinsky: It exceeds the standards...

Mr. Hughes: I don't have one in my package.

Mr. Wolinsky: ...for treatment of stormwater. So I believe that...and the engineer for the Planning Board has reviewed that and the Planning Board has issued a determination of non-significance so I'd had hate to loose a month here for something that we already know the answer to is what I'm saying because its al part of the record already. The document has been prepared. We have a licensed professional engineer standing here, and you correct me if I'm wrong I don't want to put words in your mouth, but telling us that the stormwater is being treated in exceedence of the standards required by DEC Reg's?

Mr. Waisnor: Correct. That is correct.

Mr. Wolinsky: O.K.

Mr. Manley: And I appreciate your position but this Board being independent of the Planning Board has to take into account any testimony or any information that's received of this Board and it seems as if the County has interjected, I'm not sure that they interjected to the Planning Board or not but if this is a new finding on the part of the County I just want something to satisfy my...

Mr. Wolinsky: I understand.

Mr. Manley: ...in my deliberation, you know, to decide whether or not its of impact or not.

Mr. Hughes: Betty, do you have a copy of that SWPPP?

Ms. Gennarelli: I don't believe that it was submitted.

Mr. Hughes: So I could, if you can understand Mr. Wolinsky none of the Board Members have a copy of the document he's speaking of. I'd feel more comfortable if I read that and was assured.

Ms. Gennarelli: Was it submitted?

Mr. Wolinsky: I don't remember.

Ms. Gennarelli: To us?

Mr. Donovan: Well typically it wouldn't be submitted to us.

Mr. Hughes: Yeah, I know.

Mr. Donovan: And typically I don't even know that the Planning Board Members would spend a lot of time with it but the Planning Board engineer would. And that is...its evaluated and reviewed by the Planning Board engineer to determine if the applicable requirements are satisfied.

Mr. Manley: Mr. Donovan, could we send a copy of the County's finding or their recommendation or their question to the Planning Board and just ask the Planning Board to comment on that if there's any...?

Mr. Donovan: Could you do that? Sure. If that's what the Board wants to do, I mean.

Mr. Hughes: I'd rather read what they have for a document first before we get to that point.

Mr. Wolinsky: Can you reread that letter from the County please?

Chairperson Cardone: Yes. However we find that the proposed lot...do you want me to read the whole thing or...? The whole thing is lengthy.

Mr. Wolinsky: Yes, just the part about the stormwater, yes.

Chairperson Cardone: Just the part, O.K. However we find that the proposed lot surface coverage on the Cosimo's property, of 89.8% may pose an issue regarding stormwater runoff and pollution. We advise the Zoning Board of Appeals and the Planning Board to review the proposed storm water management plan and determine whether the proposed measures for storm water management are sufficient to prevent water supply contamination in the Lake Washington watershed.

Mr. Wolinsky: O.K.

Mr. Manley: And you know what I'm think is perhaps because that is a separate parcel and the County is maybe looking at that as a separate entity from the other but as long as I get somebody to tell me that that's the situation whether Mr. Hines says that more than likely the County is saying that because they don't, they don't see the two properties as being married together that satisfies my question then. But I would like something from one of our consultants or one of our professionals to tell me that.

Mr. Wolinsky: Yeah, I mean quite honestly the... whoever with all due respect to the person who wrote that, they don't understand drainage. I mean because, you don't look at the drainage on a parcel by parcel bases necessarily but on a watershed, on a greater basis and this is clearly, you know, this site is clearly a combined site with a larger watershed and the treatment is all there so again, I mean, we're happy to... we're happy... if that's what you want, you know, we'll have to do it but it just seems to me that... that its rehashing work that has already been done and that's in the record and demonstrated.

Mr. Waisnor: Well in order to get our final site plan approval before the Planning Board, the Planning Board engineer has to be satisfied that we met or exceeded State criteria which I think is that's implying that you need to ensure that because there's a higher density in this area that you're properly managing your stormwater. And what I can tell you as a designer is that we did take some of this drainage into the larger site specifically so we could treat it before it gets discharged.

Mr. Wolinsky: Let me also try it this way, because we need another DEC Permit, DEC will be reviewing the SWPPP here and before we get and can construct at all there will be a sign off on that SWPPP and the DEC will make sure that there will be no adverse impact to the water body. So there's another layer. All I'm pointing out is that there is another added layer of protection and again we have no problem with you placing a condition on any ZBA approval stating that, you know, subject to DEC approval of the SWPPP.

Mr. Waisnor: And the Planning Board engineer's approval of the SWPPP.

Mr. Wolinsky: Yes, which must have happened conceptually.

Mr. Waisnor: It's happened conceptually, yes, we have to make one change and get it back.

Ms. Drake: Will the DEC review be a five-day or a sixty-day review?

Mr. Waisnor: It will be a five... we anticipate its going to be a five-day review because the Town engineer has to sign off as an MS 4 for a Municipal system. So once the Town engineer is satisfied we will send it to DEC for the five-day review.

Ms. Drake: And you're stating in the notice of intent that it meets all the criteria for the DEC standard therefore not requiring to be an individual Permit or it goes to the sixty day review?

Mr. Waisnor: That's correct. That's correct.

Ms. Drake: It says in the minutes from the Planning Board meeting on October 1 that the City of Newburgh will have to...issue will have to be revised for the sewer flow but also approve all the stormwater discharge plans so the City of Newburgh has to review the stormwater plan because its going into their water supply also?

Mr. Waisnor: That's correct. In addition to the Town, the City also reviews it and the State also reviews it because we're asking for permission to clean up the crossing stream. So you have three entities that will also review our stormwater plan to insure that it complies.

Mr. McKelvey: You say on this variance between ShopRite and Lowe's, is that between the buildings or is it the parking lot?

Mr. Waisnor: That's just from the ShopRite building to the property line.

Mr. McKelvey: O.K.

Mr. Waisnor: From the property to the parking there is another twenty to twenty-five feet and then from that parking lot to the building there's approximately fifty-five feet.

Mr. McKelvey: O.K.

Mr. Hughes: And what's the problem about combining these lots?

Mr. Waisnor: Combining the Amodeo lot and the Cosimo's lot? Or the Lowe's lot?

Mr. Hughes: The Lowe's lot.

Mr. Waisnor: They're separate owners. They'd have to be under common ownership. I guess one side would have to...

Mr. Hughes: There's no commonalities there?

Mr. Waisnor: Not any longer, no.

Mr. Hughes: Oh, so there's been a change?

Mr. Wolinsky: No, there's two separate...there are two separate property owners. There will be continue to be two separate property owners but the property will function as an integrated center. The property owners will enter into an agreements for reciprocal

easements to use utilities, parking, etc. as every other shopping center basically in the Town of Newburgh does.

Mr. Hughes: And so at this point, tonight, what site approvals have you accrued already?

Mr. Wolinsky: We have an amended preliminary site plan from the Planning Board.

Mr. Hughes: In concept?

Mr. Wolinsky: No in...in...in approval. That's the approval we have.

Mr. Hughes: You have an amended approval?

Mr. Wolinsky: An amended approval. We originally had a final approval and now we're back to a...an amended for a preliminary site plan.

Mr. Hughes: You can see our perspective and I can enjoy and see your perspective too. I'm really concerned about; excuse me, two thousand acres of runoff of two inches rain...

Mr. Wolinsky: I understand.

Mr. Hughes: ...in an afternoon is a billion gallons.

Mr. Wolinsky: I understand.

Mr. Hughes: All right. And there's been a problem all along whether it was created by construction or if it was bi-product of construction and poor planning or the segmentation of it...to me, you should do the whole valley and then break it down if you're going to do a segmentation of any property. Here you did a corner that's three thousand acres and a lot of bad things going on. There's residences close by, there's a person that has had a perennial problem since any of this started and we're trying to make sure that its not going to happen again and that its going to get cleaned up and then we don't want anything to get worse. Now I have a couple of other questions, you're going to divert the stream to go back so that you can create the bridge and take a corner off the wetlands with that building. That 40.3 that you are looking for what's the number supposed to be 50?

Mr. Wolinsky: Yes.

Mr. Hughes: So you're looking for another ten feet to put a great big building up to...is that the only residential lot on the road left?

Mr. Waisnor: I think there's some residences left on the other side of the street.

Mr. Hughes: No on that side of the road.

Mr. Waisnor: Yes that is the only one there.

Mr. Hughes: So you're looking to get ten feet closer to that and there's a big problem there to begin with. What's that bridge and that diversion of the stream going to do?

Mr. Waisnor: Well there's really not a diversion of a stream right now there's a pipe that kind of bottlenecks everything.

Mr. Hughes: We've all been out there.

Mr. Waisnor: O.K. Then for anybody who hasn't been out there the pipe right now bottlenecks all this thousands of gallons coming down here. We're going to remove that pipe and put a large span in. So we're not going to divert the stream we're going put...box it, you know, a wall, a wall and a cover. So that the water can get...

Mr. Hughes: So the pipe will be under the roadway only and the rest will be an open culvert?

Mr. Waisnor: Correct.

Mr. Hughes: O.K. I didn't understand that. Thank you for answering those questions. Thank you for answering all those questions. I have nothing else at this time.

Ms. Drake: I have a question. In the October Planning Board meeting minutes they refer to the Orange County Department of Planning did review this initially. They had a series of comments all were incorporated into the final plans of October 2008. Do you know if those Planning Board...Orange County Planning Department comments are the same ones that we have here? Are you familiar with what ones were incorporated in 2008 plan?

Mr. Waisnor: I have to tell you I'm not familiar with all of the comments of the current but I think a lot of their comments had to do with landscaping, cleaning up the stream, things like the lot coverage being excessive and making sure you had the proper protection measures in place.

Ms. Drake: O.K.

Mr. Waisnor: So we've incorporated what we previously agreed to do in the spirit of doing exactly what we agreed to do before.

Ms. Drake: O.K. and then it also goes on to say that this should be referred back to the Orange County Planning Department for a report and recommendation. So this final plan is going to now go back again for another determination that they find everything acceptable or recommend their comments?

Mr. Waisnor: Yes, I believe it already has gone back to them and that if this letter isn't the review letter then we'll surely be getting another review letter that we'll have to look at their comments and then address them accordingly.

Mr. Manley: Just one other, that 40.3, you're increasing it about ten feet. What additional screening has been put in place in order to help alleviate the neighbor that actually lives there to help mitigate that?

Mr. Waisnor: This rendered site plan here shows the proposed landscaping and its probably difficult for you to see from that distance but we've got a row of pines and other kinds of trees back here in addition to a fence. This property is going to be up higher than the neighboring property. Everything slopes down towards Orr Avenue.

Mr. Manley: So they'll be looking up at it?

Mr. Waisnor: Well they'll be looking up at the vegetation that will be between that and the loading area in the rear.

Mr. Manley: What's the age of the vegetation going to be with respect to screening of the property? Obviously it takes a while for trees to grow so are you using more mature pines that will grow a little bit faster, that will help alleviate that so it's not really an eyesore to the neighbor?

Mr. Waisnor: We'll probably use some, you try to a little mixing of different size and different species to make sure that one doesn't burn out or you're not overpopulating it but I suppose we'll be using something a little more mature in some of these areas to give it some definition and make it more a...more than just a row of hedges so to speak.

Mr. Manley: Would the applicant have any issue if the Zoning Board worked with the landscape architect in the Town here to come up with a recommendation as far as minimum height for some vegetation there to help screen that a little bit? I'm assuming...is that going to be like a loading dock area in the back?

Mr. Waisnor: Yes, yes these are truck loading.

Mr. Manley: So you're going to have trucks that are going to be coming in and making noise obviously that probably they don't hear now, you know, tree cover helps to kind of deaden that noise.

Mr. Waisnor: Yes.

Mr. Wolinsky: Mr. Manley, we believe that Karen Arent is already working on that or she has already but we don't have any objection to what you're asking.

Mr. Manley: O.K.

Chairperson Cardone: And I think we're ready to hear about the signs.

Mr. Minuta: O.K. Good evening ladies and gentlemen. Joseph Minuta, for the record, of Minuta Architecture representing the signage. I do have some pamphlets here if I may approach the Board to present?

Mr. Minuta approached.

Mr. Minuta: Obviously we're here to request a variance for signage for the property. We're taking a look at the property as a whole for this application. We are seeking a variance as stated in the application a total of 429-½ square feet for the entire site. I will show you the items that we are going through for this property. Let me first illustrate the buildings and signage. We have the Vitamin Shoppe, which is located near the Cosimo's location. There is a new entrance that's going to be located in this location, which is down the street from the existing stoplight. That will be receiving a monument sign. O.K. so that's how we'll enter the site this way, we'll be seeing the Vitamin Shoppe here and then we will have the proposed Staples up toward the center. Staples because it's a pad site has exposure on four sides. Because it has exposure on four sides we need to get some identification on that building so that's why we have additional signage for that. The ShopRite which is in your packet, it is the last page of the packet, it's a rather large building over 60,000 sq. ft. as I recall and we have signage both on the front and on the, I believe, it's the east and west sides, excuse me, south, north and east, east is the main elevation. O.K. so for the level earth buildings and deep site which require signs that's where we are with that. We have a table toward the front that's showing you where the existing signage is as well as the proposed. We'd like to do this is one fell swoop the tenants are committed. They have a branded image, which I would also as the Board to consider for a national tenant as well as the size of the site. Due to the overall size of the site we have a total of 1808 lineal feet for the frontage will bring us a total of 904 square feet of signage. If we take a look at this on an acre-by-acre basis what we're looking for the front portion only being one acre is about 12% increase. The overall is 47-½% increase just for your numbers. Acre-by-acre basis this is very minimal when you consider the property so I would ask that you take that into consideration. And I'll take any comments or questions from the Board.

Ms. Drake: You show two different monument signs?

Mr. Minuta: Yes, the monument sign, which is the polar monument, is the one that's located on the Route 300.

Ms. Drake: O.K.

Mr. Minuta: O.K. the other is located to the interior side of the lot. Labeled in with Post-its it's a little easier this way, this is the main entrance here that's the taller sign. The monument sign that we're looking at is in this location, which is near the ShopRite, and this is the existing Lowe's. So those are the two signs we are discussing. There is a third sign, which is three square feet, which is a directional sign, which is in this location on

Orr Avenue. O.K. That's not in your packet. That has not been assigned but it will be internally illuminated. In fact all of the signs will be internally illuminated.

Ms. Drake: And that sign that you said was not in the package was included in all of the calculations?

Mr. Minuta: Yes. Yes, you'll see that on, Directional Signage it is the second one, third one from the, excuse me, Identification Signage, two sided, three square feet located at the bottom of the first page.

Mr. Manley: Your information that you provided shows that the larger sign is being illuminated by a ground flood is that no longer the case?

Mr. Minuta: Please disregard that, the documentation that we have is from the sign manufacturer. The overall images are what we presented how its being illuminated has changed. Mind you this project has had some time behind it.

Mr. Maher: What's the purpose of the Staples' sign in the rear of the building?

Mr. Minuta: The building itself, we have basically 360-degree coverage.

Mr. Maher: Correct.

Mr. Minuta: O.K.? So you're seeing it on the board, you have an orientation in this direction and this direction so...

Mr. Maher: Well I understand the south side but obviously the west side there is no entrance to the facility, correct? Other than trucks?

Mr. Minuta: We have truck entrance through this way, this would actually be...there's other properties on this side of it, you could access through here and yes there is truck access.

Mr. Maher: So there really be no customer basis that will see that rear sign, correct?

Mr. Minuta: The customer base will see the rear sign from this location here on the property into this parking area.

Mr. Manley: They could also see it from the side, the north side.

Mr. Minuta: Correct. It's visible throughout the lot but as I said it's a pad site so we have four sides. So to provide a blank side is a little on the disingenuous, signage is meant to direct you to a location.

Mr. Manley: But there's a point where you hit overkill.

Mr. Minuta: Agreed, which is why we made those signs smaller on that side.

Mr. McKelvey: I think people that are going to go to Staples are going to go to Staples and people who are going to go to ShopRite are going to go to ShopRite.

Mr. Minuta: For those who are familiar with the area, yes.

Mr. McKelvey: But most of the people who are going to shop there are going to be from the area.

Mr. Minuta: Well we can assume that now but as we know as these types of malls grow favor you do have people who are out of town and do come to the site.

Mr. McKelvey: I have to agree though that this four sided sign it's a little overkill.

Mr. Minuta: Are there any other questions?

Mr. Maher: Is there a similar sign in the rear of the ShopRite building?

Mr. Minuta: No and again, the reason being we don't have anything back here which is of a pedestrian nature. To the north, to the east and to the south there's visibility because this is located towards the center...

Mr. Maher: No, I understand what you're saying there but you have to admit that there's no possible way to get to the back of that building without seeing the side or the front first, correct? Literally you are coming in from the ShopRite side, the large sign on the north side of the building you're going to see much before you ever see the one in the back of the building.

Mr. Minuta: It could be argued.

Mr. Manley: Even the size of the sign in the back is very, very insignificant in comparison to the others. I mean if you look...

Mr. Minuta: That is correct it really just is an identifier.

Mr. Manley: I mean, you're not looking at a huge loss if you even took it out. I think that people would still know where Staples is. I mean the Vitamin Shoppe doesn't have a sign to the back either and that faces the back has it only to the north and east, north and east.

Mr. Goddard: Shall I interject?

Mr. Minuta: Please.

Mr. Goddard: Staples is very committed to a corporate protocol and our negotiations on the signage are...have been very inflexible on their side of this. You know I think, you

know, the sign in the back is arguable. I think it's also potentially a danger to the transaction if we don't get it.

Mr. Maher: They've been flexible or inflexible?

Mr. Goddard: Inflexible. You know, its an environment where tenants, you know, have power and a...

Mr. McKelvey: I don't think it's their call. I think it's our call though.

Mr. Goddard: Of course but I'm just...from my point of view that's where it is.

Mr. Manley: I mean we have other...in fairness to, you know, other people we've had, in fact we had Best Buy here at one point and of course that never went through but I mean, this Board was very tough on Best Buy and they had the same feeling that if you don't give us what we want we're going to pull out and we...we trimmed their sign down significantly and they still, you know, they still went with what we were going to give them. In the end, I understand your point...your point is well taken but in the granting of any area variance we have to grant the minimum that's required to effect the...what we feel is going to be in the best interests of the...

Mr. Goddard: No, I understand. I think the argument that they would make is that the sign on the rear of the building, a small sign on the rear of the building is sort of sensible as a...as a, you know, an adjunct to all the others but...

Mr. Manley: Are they here by any chance to offer the Board any...

Mr. Goddard: No they're not.

Mr. Manley: ...any testimony or any type of a...?

Mr. Goddard: They're not here now.

Mr. Manley: O.K.

Mr. McKelvey: I think that north sign is going to be visible enough for that project instead of that rear one.

Mr. Maher: Do they require a certain amount of square footage of signage for the buildings or do these pieces fit the façade of the building?

Mr. Minuta: There's a couple of things that happened here. We designed the building in part so that we don't have a big box. It's an 18,000 sq.ft. building. O.K.? What we've been able to do with the architectural façade is break scale down through using some of that signage, I think you'll agree, rather than looking at large blank wall that sign helps to break up that property, you know, break up that field of view. And I'd be happy to show

in large versions if that helps anyone here. Now imagine this wall without any identifier on it, its pretty much a large blank wall.

Chairperson Cardone: And that's thirty-one square feet?

Mr. Maher: 31.5 in fact.

Mr. Minuta: Thank you, yes.

Mr. Maher: You know, again, do they have a minimum requirement as far as square footage goes on the signs?

Mr. Minuta: This is what they have given us as their requirements. We've worked with them for months on this project with this particular building.

Mr. McKelvey: But that north sign is two hundred and forty square feet, I mean, it's a big sign.

Mr. Minuta: Yes, that's their main attraction sign and we were able to break that scale down.

Mr. Waisnor: One thing I just wanted to point out, its not obvious on this plan but we're proposing to maintain the vegetation along the stream here and there's some big vegetation in there. So particularly in full foliage you may not be able to see all the way through here. There's going to be some limitations to visibility and we're adding landscaping there as well. So I think part of their concern is as people are driving through, you know, you look at your Staples, you looking did I go to the wrong place? You're going to see it by...as you're coming around the corner particularly for pedestrians who are walking there, just an observation that may not be apparent on the plans.

Mr. Minuta: Brian's point is very well taken by me, we've actually remodeled this site and taken views from this and there is quite a bit of landscaping throughout there. So just as you go through any shopping mall you see some of the signage, you see some of the building, these identifiers really do help when you take a look...take into account all of the stanchions that are in the way of that view.

Mr. Hughes: Excuse me. Are there any of these buildings that are going to be chopped up in the future for other kinds of stores?

Mr. Minuta: At this time, the tenants that are in there have allocated to signage.

Mr. Hughes: And so you've prescribed your projection of the total amount of signage here to include just what you have on site now with no overage?

Mr. Minuta: The signage has been calculated per tenant for the site and complete.

Mr. Hughes: With no spares?

Mr. Minuta: Spares meaning what?

Mr. Hughes: Well a spot in the signage you could add another store if it were to be divided or if there was another pad site possible.

Mr. Minuta: Well again the entire site is based on...you're qualifying this as an entire site therefore lets say a tenant goes out they may not require the same size sign or they require that sign and they simply put it back up. You split this building in half at some point you still have plenty of signage on it.

Mr. Hughes: O.K. and what I'm getting at might be interesting for Mr. Goddard too to listen to this part. We don't want to find you back here again saying well we need more signage because we didn't have enough on it.

Mr. Goddard: No I understand.

Mr. Hughes: We've had traditions in the past where they come in and they get the pylon sign and the wall signs then three months later one of the big ones goes out and they make three stores in there and then they want a different array of signs and they don't have enough on the marques. We don't want to have the creeping sub-division of signs going on.

Mr. Goddard: In this particular situation there are three long term leases and you know, it's highly unlikely that it'll occur.

Mr. Hughes: And just for a point of reference too about the insistence of Staples and others, that sign out front is 10 x 34. That's as long as this room. That's a lot of sign and if they want to persist with you, you can refer them to the Hess Station in Fishkill. Because of the area and because of the Town's integrity and what we're looking for here to keep a rural status I don't think they'd want not to have their store there for the lack of reducing their signs. That may be an influence with you but it's not an influence with our Board.

Mr. Goddard: That may or may not be true.

Mr. Hughes: Well I'll refer you to the case in point of law, New York State, Wappingers.

Mr. Minuta: If I may with respect to that sign, we are looking at a building façade that's got 142 feet in length.

Mr. Hughes: Yes.

Mr. Minuta: So, you need to take perspective in this...

Mr. Hughes: No I...we've been through this before, this isn't our first Friday night out.

Ms. Eaton: Are there any other pad sites available for other stores or is this it? Will this be what's there?

Mr. Goddard: What's on the plan is it. There's nothing else.

Ms. Eaton: There's nothing else?

Mr. Goddard: Nothing else.

Mr. Hughes: So the signage, the parking and everything is site specific for this development only.

Mr. Goddard: Yes.

Mr. Hughes: O.K. Thank you for answering those questions.

Mr. Goddard: You're welcome.

Chairperson Cardone: Do we have any questions or comments from the public? Please state your name and address.

Ms. Cook: Hi I'm Donna Cook; I live at 32 Orr Avenue. Could you put that thing up there, the map with the white spot on it please? That one yes, thank you. I'm the white spot on there as the Board all knows.

Chairperson Cardone: Right.

Ms. Cook: You know about the water problem. Lowe's has never solved the problem. I'm still being flooded. I'm 64 years old and still digging ditches to eliminate the water from my property. If they're going to build higher than me I'm going to be more flooded from that. It's bad enough its coming down from 17K. The worst part of the flooding comes from the side. Not where the driveway is, not where the piling...there's piling they're talking about is going to be. It comes in from the side of the property and that's where the flooding comes across. I've been there forty years and I've seen the floods go all the way to the back of my property.

Mr. Hughes: Could you point on the map where you're talking about?

Ms. Cook: Oh, I could.

Mr. Hughes: So that everyone knows it.

Ms. Cook: This is my house right here.

Ms. Gennarelli: Excuse me. Could you please use the microphone? Thank you.

Ms. Cook: This is my property the white spot. When it floods it comes in the back over here. Right now it's coming down from the back from Lowe's plus from the side onto my property. Years ago this property was going to be built by White, White Super Store was going to go here. They built that property six feet higher than me causing me to be wet. Lowe's came in and made it worse. Now these guys are going to come in and they are going to make even worse. I'm not going to give up the fight. My house is paid for. I pay the taxes in this Town and there's no reason why I have to be forced to move out because ShopRite wants to build a new store here. Stay where you are you need people over there to shop. Are they going to widen this road to a two-lane road so cars can go up and down? Right now only a car goes up and down the road. How are they going to get trucks in across here?

Chairperson Cardone: I have a question. When the...there was a Public Hearing, the Planning Board had a Public Hearing...

Ms. Cook: That I was not invited to, yes.

Chairperson Cardone: O.K.

Ms. Cook: I was never sent a letter. I was sent a letter for this one.

Chairperson Cardone: O.K. so you did not get an opportunity...?

Ms. Cook: No I did not.

Chairperson Cardone: ...to tell the Planning Board your concerns?

Ms. Cook: I did not know anything about it until someone called me about they saw it in the Middletown Record.

Chairperson Cardone: O.K. Thank you.

Mr. Hughes: I believe the Public Hearing was waived.

Mr. McKelvey: It was waived.

Mr. Hughes: By the Planning Board.

Mr. McKelvey: It was waived.

Ms. Cook: There has been no one down this road to do anything to the stream. The only people that have done anything was a trucking outfit came in with a backhoe one day and pulled out a tree stump because it was flooding their property. It's not just me that gets flooded. They get flooded too and if they are going to pull out this tile that I use to get into my driveway how am I going to get into my house?

Chairperson Cardone: Do you have an answer for that?

Mr. Waisnor: Thank you. May I just point at this?

Ms. Cook: Sure.

Mr. Waisnor: Right now, you indicated you're getting water this way and this way. The two ways that this project is going to improve that situation; number one, we're going to put a curb and inlet here and we're going to collect this water and we're going to pipe it down and around your property. Right now there's nothing to stop it from going there. We're going to collect it, we're putting a big underground detention in and we're going to pipe it down to the west. That's part of stormwater management plan. So its going to be piped to this side obviously where everything runs downhill. That's number one. Number two is right now there is about a four and a half foot pipe, concrete...

Ms. Cook: Yes.

Mr. Waisnor: ...kind of actually coming up through your driveway.

Ms. Cook: Yes.

Mr. Waisnor: What the Planning Board engineer theorized happened is that this thing is like a straw. You're trying to empty a gallon of water through a straw and all this backs up and runs over and finds its way down and is why it comes in the side yard. Right?

Ms. Cook: Nope.

Mr. Waisnor: It doesn't come down this way?

Ms. Cook: No it doesn't. It comes down from up here, the stream curves around up here. The tile is here. It does come down to there but when it comes down to there it comes up on the other side of the road. When it comes down the side over here, it's a low side, through these woods all are low, it comes right across there through the house next door because some times its gone through their living room, all the way its gone back as far as back of my (inaudible) the back of my yard. And then it floods all the way down. And up here there is Cosimo's, over here there's some houses, one of them is an architect has a building back there. It floods all the way back up to his property, At one time the gas tanks on his house got broken off and my ex-husband went up and found the tanks. So this little stream has gotten worse over the years.

Mr. Waisnor: Yeah but there's a thousand acres (inaudible)

Ms. Cook: I have complained and complained and...

Mr. Waisnor: Right.

Ms. Cook: ...nobody seems to care.

Mr. Waisnor: So...

Ms. Cook: But it comes through here where the stream is up here is where it comes through.

Mr. Waisnor: So what we're...what we're going to do as part of this project is that little pipe that's through there now...

Ms. Cook: Right.

Mr. Waisnor: We're going to make that a big crossing. It's not going to be four feet wide it's going to be sixteen feet wide.

Ms. Cook: Good. Can I get in and out of there with my car?

Mr. Waisnor: Yes, yes its going...this whole thing is going to be a driveway, an asphalt driveway. And you've got a gravel trench going right to your house?

Ms. Cook: It used to be. It used to be gravel but over the years most of its worn away from the front borders and center and so forth and then of course Amodeo who dug across it made such a mess out of it its garbage now.

Mr. Waisnor: Yes, you are going to be able to drive on the asphalt and right into where you stopped sharing the driveway with your neighbor. The idea is by putting this larger crossing in the water is not going to get so backed up that it comes over here. It's going to go through here. But even if it does get backed up over here we've got drainage in this road that is going to collect it before it gets to your property.

Ms. Cook: It's going to go over that road. It's not a matter of what you're going to do unless you're going to build u six feet there to keep it from going over. I tried to build...there used to be another neighbor there years ago, we wanted to put a wall, a stonewall up along this whole side of the creek here to prevent the water from coming over and the Town said we couldn't do it.

Mr. Waisnor: We actually are building this area up. This is going to...after you're driveway it's going to go up.

Ms. Cook: So I'm just going to be one big swimming pool down there? What about the wildlife down there? Or doesn't that matter anymore?

Mr. Waisnor: No the wetlands and the stream quarter is being retained. These are...

Ms. Cook: What about the wild animals, the deer, the raccoons and other various animals there in the woods? Doesn't matter there anymore? What about this road? It's a one-lane road here. The trucks continue to come down here. How are going to get those trucks down? Are you making it a two-lane road there?

Mr. Waisnor: We did analyze it for tractor-trailers and we analyzed it for fire trucks and make sure that there is...

Ms. Cook: Oh, I know fire trucks can get down there because they've had to pump me out.

Mr. Waisnor: Right.

Ms. Cook: But are you going to leave that as a single lane road as it is? Or are they going to make it wider?

Mr. Waisnor: There are no plans to make it wider.

Ms. Cook: O.K. Cross...see here's my right over here the road is caving in. It's caving in. This part of the road down here has caved in before and now its all put in it but over here the road is caving in, its been caving in.

Mr. Waisnor: There may be ongoing maintenance issues with this road but...

Ms. Cook: Oh, yeah.

Mr. Waisnor: ...but, but I mean this project is going to correct a lot of things. Its not going to maybe correct everything but its going to correct a lot of things and to the extent that it will provide improvements I think we've incorporated those well.

Ms. Cook: I don't see any improvements at all. I see it making it worse. I just see it another big money maker for corporate. I don't see why they need a ShopRite over here. We have five other supermarkets. All right. Are they going to destroy the ShopRite on North Plank Road? Why don't they fix that one? There's people that live over there too. Union Avenue is busy enough. Getting in and out even with the red light is a joke.

Mr. Wolinsky: I think it's starting to wander off.

Chairperson Cardone: Yes.

Ms. Cook: No its not. Like I've not invited to these meetings. I live there. I'm a taxpayer. I have a right to know why. And I have a right to be happy and I have a right to live my life but not have to come over here and fight because you people want to do something.

Chairperson Cardone: I would agree that these issues should be covered at the Planning Board meeting. If the lady was not given that opportunity I would like to afford that opportunity at this time.

Mr. McKelvey: They waived the hearing.

Mr. Hughes: But maybe we can make this short. Can Larry (Wolinsky) could maybe the developer offer a resolution to this where we won't have to go on? I mean, because this has been going on...

Mr. Wolinsky: Well the resolution appears not to...

Mr. Hughes: ...to fix the thing.

Mr. Wolinsky: Well it's going to be fixed. I mean we committed that and I have forty-five minutes ago.

Mr. Hughes: And you did two years ago too and she's still wet.

Mr. Wolinsky: And nobody has been down there. Nobody has come down and done a thing.

Mr. Waisnor: Well this a large watershed.

Mr. Hughes: We've discussed that too. We're well aware of the mechanics.

Mr. Wolinsky: It's a preexisting condition and the property owner has already said he went out and did what he could do without having to go through the time, expense and effort at this point in time of a DEC Permit. They will complete whatever else there is that needs to be done. And the problem will be corrected as described by Brian, which is not a problem even as its described right now it's not a problem being created by this project. It's a problem being created by the existing configuration of this watershed and what's running down there. So, its...

Ms. Cook: What did they do? Just tell me what did they come down the road and do to eliminate any of the problem? They have done nothing. I have seen hide nor hair of anybody. I live there.

Mr. Wolinsky: There was...there was cleaning of debris from the stream.

Ms. Cook: Cleaning what debris from the stream? What debris was cleaned from that stream? The only thing that was cleaned out of that stream was when the trucking outfit brought a backhoe over this past winter and pulled out a piece of plywood because they were being flooded from water.

Mr. Goddard: And that's not so.

Ms. Cook: I'm sorry the garbage is still down there. The rocks are still down...

Chairperson Cardone: We can't...all remarks should be directed to the Board. We can't get into a back and forth.

Ms. Cook: O.K. Thank you. I'm sorry.

Chairperson Cardone: O.K.

Ms. Cook: Nothing has been cleaned out of that stream. The only thing cleaned out of that stream was when the trucking outfit that's there brought a backhoe in and they pulled out a piece of plywood because it was blocking the stream and causing flooding to their property. There are still trees down in there and I mean, you know, that's nature.

Mr. Wolinsky: We disagree with that.

Chairperson Cardone: O.K.

Mr. Wolinsky: But...but...but I want to get off that because that's an un-winnable argument the way its happening now. The bottom line on the hearing is what I want to emphasize. This is an amended plan. The first plan went through a full Public Hearing process. These issues that we're discussing now about drainage were vetted at that time. O.K. it was a slightly different project but...but we're still far under the surface coverage so all the...the...so...so the fact that the Planning Board...and the reason why the Planning Board waived the Public Hearing this time because this was because this was an amendment and not a full...fully blown new plan first presented to it, at the Planning Board.

Chairperson Cardone: But there was a full Public Hearing on the original plan?

Mr. Wolinsky: That...

Mr. Goddard: Yes.

Mr. Wolinsky: Yes.

Mr. Hughes: I'd like to see a record of that. I believe that the Public Hearing was waived by the Planning Board.

Mr. McKelvey: I read the minutes...

Mr. Hughes: I don't believe there ever was a Public Hearing.

Mr. McKelvey: ...the last one they waived.

Chairperson Cardone: Right I understand that.

Mr. Hughes: I know they waived at least one but I think that there was two opportunities and they chose to waive both.

Mr. Manley: Well I'm confused because if she received notice this time about the Zoning Board hearing and if indeed the Planning Board did have a hearing then more than likely she should have gotten...I mean she lives right next to the project. She would have gotten a certified letter I would imagine.

Chairperson Cardone: There was not a Public Hearing on the amended plan.

Mr. Manley: But the first...

Chairperson Cardone: My question was on the first.

Mr. Manley: On the first one.

Chairperson Cardone: Right.

Mr. Manley: Did you ever receive anything from the Planning Board?

Ms. Cook: Once...uh, the last time I was here I had gotten a certified letter. There was one time before that you guys had a meeting and I never got the letter. And I said, you said well you should have gotten one. One of you looked in your records, you found out and apologized that I had never gotten one. This is the second one I've ever gotten.

Mr. Hughes: But that's just Zoning not Planning.

Ms. Cook: Just this one. That's it.

Mr. Hughes: I don't think there was ever...

Ms. Cook: And the only reason I made a stink about it is because I came to the Town Hall, I spoke to them and something had, you know...

Mr. Wolinsky: I don't have a specific recollection. My clients have a specific recollection that there was a Hearing and that this woman showed up and gave testimony at that Hearing. And that should not be, you know...you know, that should not be a reason for delaying our proceeding tonight because all the...all...she's here, she's given her testimony. The issues are on the table. O.K.? We've addressed them to the best we can. I really would like to move on and for everybody else sitting as well not just for us.

Chairperson Cardone: Well there may be other people also that would like to speak. Thank you. Is there anyone else from the public? Yes, please state your name and address.

Ms. Goddard: My name is Donna Goddard, Goddard Development Partners; I just wanted to state that I called Donna. I left her a message. I said that we had revised the site plan. I said any opportunity you'd like to speak outside of that...of any of the meetings I'd like to come and show you the plan. No answer.

Chairperson Cardone: O.K.

Ms. Goddard: That's just my comment.

Chairperson Cardone: Thank you. I have a letter that's addressed to the Zoning Board and I have to read that into the record.

It has recently come to our attention that the Town of Newburgh is reviewing plans related to a development called The Shoppes At Union Square. It is our understanding that this development will be located between Lowe's and Wal-Mart. Our concern is that this project will be studied carefully to determine if the following major questions and issues will not unduly encumber the taxpayers in the future. The effect this project will have upon a number of families who will be displaced. The potential detrimental effects this project will have on the environment. How this project will affect the water supply of the adjoining homes; will this project create flooding because of changes to the creek; how much more traffic congestion will this project create? In closing we hope a thorough study is requested under the State Environmental Quality Review process. We are thus writing to the Planning and Zoning Board Chairs to urge you to take our concerns into consideration before approving this project. Thank you for your time and attention. Sincerely, Charles Joanides and I think, Nancy Joanides. I might have mispronounced their names. It's J-O-A-N-I-D-E-S and they live in the Town of Newburgh.

Mr. McKelvey: These other houses along there, they're going? The only house that's going to be left is hers?

Mr. Wolinsky: Yes.

Chairperson Cardone: I also have another document that was dropped off. Residents opposed to unchecked development. We the undersigned residents of the Town of Newburgh oppose plans to build the Shoppes at Union Square without proper environmental. We believe this development has potential to create significant environmental impacts on watershed, wild life, traffic increases, litter and noise pollution. This project has changed over the last year and should have a full review under the State Environmental Quality Review Act. We urge Town of Newburgh public officials to take the necessary steps to make the developer conduct a full SEQRA study. And that's signed by Perry Nenni, Gary Griffin Jr., I think its M. A. Jacobson, Richard Williams Jr., Christina Glenn, Tara Williams, Lisa Lopez, Maria Cortez, Margaret Scott, Mark and Cathy Burns, Jay and Geraldine Wayne, Richard Taylor, Victor Cortez, Ed Holland,

Teresa Holland, Marie Chumas and Louise Fern, Town of Newburgh. Do we have any other questions or comments from either the Board or the public? Yes?

Mr. Rosencrans: My name is Richard Rosencrans, Town of Newburgh. If I was listening correctly, you're going to have an entrance off of 300?

Mr. Waisnor: (pointing to map) This location here.

Mr. Rosencrans: So that will be between the two red lights?

Mr. Waisnor: Yes that's correct.

Mr. Rosencrans: Is the State going to put another red light in there or are you going to have directed traffic? Because you can't come out there and make a left towards 17K.

Mr. Waisnor: I'd like to let our traffic engineer address that question.

Mr. Rosencrans: Because we have three hundred lights over there now.

Mr. Greeley: Yep.

Mr. Rosencrans: Let's make it three hundred and one.

Mr. Greeley: Philip Greeley, John Collins Engineers. This intersection will not be signalized. The State D.O.T. has a configuration similar to what's at Home Depot. There will be no left turns exiting from this driveway.

Mr. Rosencrans: O.K.

Mr. Greeley: The plan is laid out with three access points. Access through Lowe's to use the Lowe's/Adam's signal. O.K.? Also has access to Orr Avenue at the signal. As part of the project there's going to be some upgrades that...as part of the review of the 300 corridor the State is looking at coordinating the traffic lights along this stretch, which is needed. As part of this project the signal at Lowe's the existing signal will be coordinated with the signal at Orr Avenue and Old Little Brittain Road and the infrastructure is also in place up at 17K and 300 so they're going to be interconnected and as part of this project this existing signal is being replaced with the interconnect equipment to the Lowe's signal and the antenna and receiving equipment at that signal is also going to be installed as part of the DOT Permit. Also on Orr Avenue it will be widened, so that there will be two full lanes exiting near the Hess Station there. And the radius coming off of Route 300 onto Orr Avenue is also being improved, the curb radius there to accommodate better turns.

Mr. Rosencrans: Right because the old trucking company NFI when they made those turns they took out...

Ms. Gennarelli: Excuse me.

Chairperson Cardone: Use the microphone, please.

Mr. Rosencrans: When the tractor-trailers from NFI made that right turn they took out Cosimo's landscaping down because that's a sharp turn.

Mr. Greeley: Correct.

Mr. Rosencrans: You know and I used to come out of the gas station I would back up so they could make that turn.

Mr. Greeley: Yup. That will be improved as part of this project that work will be done.

Mr. McKelvey: Jerry is Orr Avenue a Town Road?

Mr. Canfield: Yes.

Mr. Rosencrans: Which brings me to my next question. That lady lives on Orr Avenue and she is complaining that it's falling apart, it's sinking. Can you get somebody from the Town to go out there? And if that's true, now you know ShopRite has a lot of tractor-trailers, if you look at the one in Vails Gate and the other ones they store their tractors there. So they're going to be busy. That road is going to have to be up-graded to take the weight.

Mr. McKelvey: That would be an issue with...

Mr. Rosencrans: Orr Avenue is very small.

Mr. McKelvey: That would be an issue for the Town Board.

Chairperson Cardone: And the Planning Board.

Mr. McKelvey: And the Planning Board.

Mr. Rosencrans: Right, I mean you guys some input to them?

Mr. Donovan: Well, maybe...

Mr. Rosencrans: In other words the road has to be probably up-graded to take the weight. Right? Is there a weight limit on that road? Like in some of the Towns like near where I live there's a 3-ton and there's tractor-trailers going through there all the time. I got to get to the Town Police on that deal.

Mr. Hughes: The problem with Orr Avenue is when they brought the Thruway through here in the '50's they cut Orr Avenue in half and when they did they increased the spongeability of the land all through there. The valley if you'll look where the Thruway goes

north and south runs this way and if you look at Orr Avenue at the Thruway it also runs this way. So there was a dip there and they ran the Thruway through there and they never did the proper drainage. The more the water gets in there and saturates that land the more you're going to have a problem with that road and it is something that needs to be looked at but that's not under our jurisdiction here.

Mr. Rosencrans: Right.

Mr. Hughes: You'll have to go to the Town Council and you'll have to go to the Highway Department.

Mr. Rosencrans: Those trucks you're talking 40 tons at a full load, you know...

Mr. Hughes: 20 tons.

Mr. Rosencrans: This way you can tell if this lady is telling the truth and if she is...

Mr. Hughes: I've been out to the site and we all have. There is a problem there.

Mr. Rosencrans: O.K.

Mr. Hughes: And I can't imagine why it be resolved.

Mr. McKelvey: There is going to be a problem with the trucks there is no doubt about it.

Mr. Donovan: If I can? I'm sorry, go ahead.

Mr. Rosencrans: I was just going to a...I was just wondering Staples, correct me if I'm wrong, weren't they going to go in across from Hess where Flannery's used to be? There was a sign that said Staples coming.

Mr. Hughes: Yeah but that really doesn't have anything to do with what we're doing here.

Mr. Rosencrans: Well what I'm saying is, nowhere in the Town there's land that wouldn't interrupt the drainage, you know, can't you guys buy land somewhere else?

Mr. Hughes: Well that's another story altogether.

Mr. Rosencrans: I mean you know, you guys seem to pick the worst possible land when there's so much, you know, there's so many malls that are half empty. The garden...the Marketplace...

Mr. Manley: That's capitalism.

Mr. Rosencrans: ...you now have a big hole in the woods. Come on. And the signs that the guy put on the fence is falling down. There's garbage and trash all along 300. That's not your problem.

Mr. McKelvey: No.

Mr. Rosencrans: That's the Town and all that. But that guy went in there and he cleared all those trees out. Right? And he did nothing. Now you have a big hole in the woods and garbage laying all over. You know...(inaudible)

Mr. Wolinsky: Well as I think Brian said before, one of the benefits of this project...

Mr. Rosencrans: You know I lived in this Town for fifty years.

Mr. Wolinsky: ...one of the benefits of this project is to help improve that drainage and just as part of the review by the New York State D.O.T. they also reviewed the drainage and approved the drainage plan as an improvement to this area so you have the Town engineer, you're going to have the D.E.C., the D.O.T...

Mr. Rosencrans: Well for this ladies sake I hope so.

Mr. Wolinsky: Yeah and I think that's...that's part of this process.

Mr. Rosencrans: She lives there. She was there before you guys. You got to take care of her, you know, or you wind up owning them all?

Chairperson Cardone: Thank you.

Mr. Rosencrans: O.K. I've had my fun.

Mr. Donovan: The only thing I wanted to say just to kind of circle back to where we started, I mean obviously everything that was said tonight was important and obviously even more important in that the members of the public didn't have the opportunity to speak in front of the Planning Board. But I would just say that, you know, we are a Board of limited jurisdiction we have in front of us two side yard variances and a sign variance. Issues of traffic and drainage are critical to people and they're especially critical if you live on that road but the fact of the matter is they're not within our jurisdiction. Traffic, drainage issues such as those are within the Planning Board's jurisdiction and the fact of the matter is we have two side yard variances and a sign variance in front of us.

Mr. Maher: I do have two questions left. Brian, on the ShopRite building, and not to get into uncharted territory here, the parking was...there's no issue with parking, correct? There's more than enough parking in the whole facility, correct?

Mr. Waisnor: Correct, in the entire facility. Yes.

Mr. Maher: The road in front or the area which the traffic is going to flow in front of the ShopRite building it doesn't obviously go into the traffic flow in front of Lowe's its going to the parking lot somewhat below the...their front entrance area, correct?

Mr. Waisnor: Correct, it doesn't line up exactly.

Mr. Maher: O.K. So if there's enough parking and the entrances don't line up why wasn't the building pulled ten feet forward to accommodate that rear yard set back to begin with?

Mr. Waisnor: There's exactly enough parking. There's one spot exactly to spare. We don't have the room to pull it forward and eliminate a bay of say ten parking spaces. We can't come up with an efficient circulation plan and safe circulation plan that pulls that building or otherwise modifies that parking lot and still meet parking. I mean, just for clarity purposes according to the Zoning regulations we can go another 50,000 sq. ft. here for the floor area ratio. We can't fit it. It doesn't fit and this is a...as tightly packed get it maintaining all of the wetlands and stream buffering that you're allowed or required to maintain.

Mr. Maher: O.K. The second part, in the rear of the building you show a 15 x 20 refrigerated cooler with a full foundation according to the elevations. Is that taken into consideration on the setback as far as the side yard goes?

Mr. Waisnor: I believe that is a removable cooler.

Mr. Maher: It's got a foundation.

Mr. Waisnor: No. I'm not certain. My understanding was that it essentially is a cooler that is on grade. It's got a four-foot platform so it can be even with the building but the idea it's not a habitable space it can be removed at any time. It's not a permanent structure. I'll have to confirm why it's got a permanent foundation if that's the case.

Mr. Maher: O.K. nothing further.

Mr. Wolinsky: I just have one clarification on the sign variance.

Chairperson Cardone: Yes.

Mr. Wolinsky: Because our application called out actually two variances from signage, I just want to make sure, one was...one was obviously exceeding of the area from 904 to 1333.50 but we also had varying the size of a directional sign from 3-feet to 35-feet.

Mr. Donovan: And I just want to make clear is that 35-feet is included in the 1333.50?

Mr. Wolinsky: Yes.

Mr. Donovan: O.K.

Mr. Wolinsky: But I think there is a separate limitation on a directional sign.

Mr. Donovan: Correct. And that was the application for the two variances.

Mr. Wolinsky: Yes. Yes. O.K. I just wanted to make...

Chairperson Cardone: Any other questions from the Board? Do I have a motion to close the Public Hearing?

Mr. McKelvey: Is this on the signs?

Chairperson Cardone: It's on the whole thing.

Mr. Donovan: It's one application.

Mr. McKelvey: Ron did you want more information on this?

Mr. Hughes: I think I've heard enough.

Chairperson Cardone: I'm asking again do I have a motion to close the Public Hearing?

Ms. Drake: I'll make a motion to close the Public Hearing.

Chairperson Cardone: Do we have a second?

Ms. Eaton: I'll second.

Ms. Gennarelli: Roll call.

John McKelvey: Yes

Brenda Drake: Yes

Ruth Eaton: Yes

Ronald Hughes: Yes

Michael Maher: Yes

James Manley: Yes

Grace Cardone: Yes

Chairperson Cardone: Thank you.

Mr. Wolinsky/Mr. Waisnor: Thank you.

(Time Noted – 9:17 PM)

ZBA MEETING – NOVEMBER 24, 2009 (Resumption for decision: 10:17 PM)

GDP AMODEO PARTNERS, LLC UNION AVE (RTE 300) & ORR AVE, NBGH
(96-1-6, 7, 8, 9, 11.1, 95-1-37.2, 36) IB ZONE

Applicant is seeking area variances for varying front and side yards setbacks, the lot surface coverage and the total signage to build a commercial (retail) and restaurant (existing) space.

Chairperson Cardone: On the next application of GDP Amodeo Partners, LLC. Union Avenue & Orr Avenue seeking area variances for varying front and side yards setbacks, the lot surface coverage and the total signage to build a commercial (retail) and existing restaurant space. Do we have a motion to accept the Planning Board Negative Declaration?

Mr. McKelvey: I'll make a motion we accept it.

Ms. Drake: Second.

Ms. Gennarelli: Roll call.

John McKelvey: Yes

Brenda Drake: Yes

Ruth Eaton: Yes

Ronald Hughes: Yes

Michael Maher: Yes

James Manley: Yes

Grace Cardone: Yes

Chairperson Cardone: Do we have discussion on this application?

Mr. Hughes: I think we discussed everything soup to nuts on this thing quite well and I think and I'm looking forward to everybody around the table to holding up to their commitment to cleaning this thing up. Everybody is understanding?

Mr. Wolinsky: Yes sir.

Mr. Hughes: Can we do everything at once or do we need to go through them one at time, counsel?

Mr. Donovan: Well its one application so you do them all at once.

Mr. Hughes: I'll vote for an approval for the application with those conditions.

Mr. Manley: I had an issue still with that sign in rear. That's just my...that's just my issue.

Mr. Hughes: Well if you want to make it a condition that the applicant speak to the tenant about the reduction of that particular sign?

Mr. Donovan: That's not much of a condition. If you want...well...there is a motion to approve the application as indicated. That could be seconded and voted on. Or if you want to amend that motion because you want to change one of the signs I would say that speaking to the tenant is not...

Mr. Hughes: Yeah, that's true.

Mr. Donovan: If you speak to the tenant he's going say no.

Mr. Hughes: The applicant's representative explained that in certain times of the year that there would be foliage and stuff but that's still a pretty big sign. All of them are pretty big signs, the one on the front is 34 x 10, if my calculations are correct, so...

Chairperson Cardone: But the one on the rear is not really that large.

Mr. Hughes: No its not.

Chairperson Cardone: It's 39 square feet.

Mr. Hughes: Right, but even at that if its 39 square feet, it's a little bigger than a sheet of plywood.

Mr. Manley: I mean even architecturally if they came back with something, if Staples had something more pleasing but that's their, you know, that's there corporate...

Mr. Hughes: That's their logo. Yes.

Mr. Manley: I just, it's one of the issues that...there is a point of overkill.

Mr. Hughes: Well setting that aside I'll continue with my motion for approval.

Ms. Drake: I'll second.

Mr. Donovan: So a yes vote is to approve the application as submitted for the two side yard variances and the two sign variances.

Mr. Hughes: That's correct.

Ms. Gennarelli: Roll call.

John McKelvey: Yes

Brenda Drake: Yes

Ruth Eaton: Yes

Ronald Hughes: Yes

Michael Maher: No

James Manley: No

Grace Cardone: Yes

Chairperson Cardone: The motion is carried.

PRESENT ARE:

GRACE CARDONE
JOHN MC KELVEY
BRENDA DRAKE
RUTH EATON
RONALD HUGHES
MICHAEL MAHER
JAMES MANLEY

DAVID A. DONOVAN, ESQ.

(Time Noted – 10:20 PM)