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

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In the Matter of

LAXMI ESTATES II, LLC
(2006-23)
5277 Route 9W
Section 40; Block 2; Lot 20
B Zone

----- X

SITE PLAN & ARB

Date: July 18, 2013
Time: 7:55 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

BOARD MEMBERS: JOHN P. EWASUTYN, Chairman
KENNETH MENNERICH
JOSEPH E. PROFACI
THOMAS P. FOGARTY
JOHN A. WARD

ALSO PRESENT: MICHAEL H. DONNELLY, ESQ.
BRYANT COCKS
PATRICK HINES

APPLICANT'S REPRESENTATIVE: JAMES GILLESPIE

----- X

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

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MR. PROFACI: The next item on tonight's agenda is Laxmi Estates II, LLC, project 2006-23. It's a site plan and architectural review, 5277 Route 9W, Section 40, Block 2, Lot 20. It's located in the B Zone, being represented by James Gillespie.

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MR. BOYEA: Good evening. For the record, my name is Chris Boyea with Bohler Engineering. Here with me tonight is Anish Patel who is the property owner and franchisee for Dunkin Donuts. We have an exciting project here as far as redevelopment. This is not new dirt. This is regeneration. We're going to take an existing building that's currently vacant and freshen it up, make a substantial reinvestment in this building and create a new Dunkin Donuts on 9W.

What I have in front of you right now is an aerial photograph of the property, of the area. We've got seasonal sales across the street. There's a new Quick Chek that was built down the street. I think Paradise is here and then there's an industrial facility here.

Our property goes significantly uphill.

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2 We have a large property, it's about 2 acres in
3 size, a little over 2 acres. Much of it, from
4 this point back, is probably at a fifty percent
5 grade. It goes right uphill. So we're looking
6 at just redeveloping the existing building here
7 and we're going to tear down some of the car wash
8 bays that are in the back. So some of you guys
9 who have been around might recognize or remember
10 car washes being there. The facility has been
11 vacant for some time now.

12 It's a great project as far as
13 reinvesting in it. Certainly -- I just passed
14 out elevations. That's the theme of the
15 elevation we're looking at. Much more attractive
16 than what's out there today.

17 As you'll see on the drawing here, this
18 is the existing building. It's 3,930 square
19 foot. It sits parallel with U.S. Route 9W. The
20 existing car wash facility is a dashed line on
21 the plan. That's going to be removed. We're
22 placing a drive-through window in the first bay
23 of the self-serve drive-through car wash bay. We
24 had discussions with the applicant's attorney and
25 the attorneys for the Town about this to confirm

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2 that that use would be acceptable. We're taking
3 those three self-serve drive-through car wash
4 bays off and we're just keeping that first self-
5 serve drive-through lane open. That's where our
6 window is going to be, right where that drive-
7 through bay is. For that reason we didn't bring
8 it on to the side. We could bring it on to the
9 side. We'd prefer to have it up here. It's
10 visible. We think it would be better for
11 business to have it up there where it's easily
12 seen, but because of the existing car wash
13 self-serve bays that are here, we're putting it
14 on the back of the building.

15 Traffic circulation. We're keeping the
16 existing access points here and here. The
17 property has two of them. We're keeping the
18 existing drive along the front. When I say
19 keeping, we're going to reinvest. We're going to
20 tear everything up and put it back. The asphalt
21 is too far gone. We need to -- if we're going to
22 invest this much money in the building, we're
23 going to make sure that the site and surroundings
24 looks comfortable as well. We want it to look
25 inviting but we're going to keep the same general

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2 layout.

3 We'll have eleven parking spaces right
4 along the front of the building and then we're
5 going to have nine -- excuse me, six parking
6 spaces that are angled in the rear. These are
7 more for our employee parking and service,
8 et cetera, overflow for customers. In general,
9 all of our customer traffic will be here.

10 Drive-through traffic would enter the
11 existing entrance, come around the building here,
12 there's an order board here, and then pull
13 forward to the pick-up window and then be
14 funneled out back to 9W. So all of the drive-
15 through components, which would be the speaker
16 noise, ordering operation and the window service,
17 are all going to take place between the existing
18 building and this line which is the edge of a big
19 monstrous bank. As far as impacts to any
20 neighbors, concerns of those types of things,
21 it's a pretty well thought out layout. Somebody
22 would have to be having a picnic and it would be
23 on two acres of their land back here.

24 The trash corral is located right here.
25 That's so the trash truck can pull in, back up

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2 and then drive around the back of the building.
3 So that's how the trash is going to be done.

4 We did receive a few comments to date
5 and we didn't see anything of substance or
6 concern that would make us think we're not on the
7 right track here.

8 One thing that I just would like to
9 refresh the Board's memory on this because I was
10 here -- I don't even know when. It's got to be
11 back in 2008 or so, I'm guessing, but that was a
12 long time ago for this exact same project. We
13 got site plan approval from this Board for a
14 brand new building to be constructed on this lot.
15 The economy did what it did and we didn't proceed
16 with that proposal. So at that time we were
17 going to even push back further into the property
18 with a new project, and so we were going to
19 impact the bank that's here. As we just said,
20 it's a very steep bank as it goes uphill. You
21 can see now that tearing down the car wash
22 building that comes all the way out to here in
23 the aerial, we're substantially away from the
24 bank now which substantially reduces the cost of
25 retaining walls. We don't need any of them. In

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LAXMI ESTATES II, LLC 7

fact, we're going to fill in some more behind here. We have a septic system that's going to be back in here. So we're much further away from the bank. It makes it much more cost effective. Renovating the existing building, making it look like the new image, which is what was handed out, much more cost effective, much more of a green initiative.

All in all, it's a great project and we're happy to be here. I'm looking forward to reviewing any comments, questions, concerns and then moving forward with the approval process, then a building permit. We've got a little bit of work to do.

CHAIRMAN EWASUTYN: We'll start with Pat Hines, Drainage Consultant.

MR. HINES: Our first comment is the DOT approvals that you were seeking before will need to be renewed, reevaluated.

The County Planning review is required. You just explained why previously we didn't send you for a front yard setback for the zoning variance, because the building was going to be moved. The building currently is within

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2 the front yard setback. Typically buildings that
3 are -- site plans that are renewed lose their
4 protection that they have, so most likely there
5 is requirement for the front yard setback to
6 receive a variance.

7 The previous sewer system that was
8 proposed was a surface discharge to the DOT
9 culvert. I believe that you had a DEC issued
10 SPDES permit for that discharge but not plan
11 approval from the Health Department. That was
12 outstanding. That is also an issue that needs to
13 be -- I don't know if your SPDES permit is still
14 valid or you kept it valid. Also approval for
15 this surface discharge is required. I recall DOT
16 having an issue with the surface discharge to the
17 catch basin. If that was the case, I believe
18 they had a concern that their workers would be
19 working in the discharge from your sand filter on
20 the site. It's just something you're going to
21 need to work through.

22 Stormwater management on the site needs
23 to be addressed. If the footprint is smaller,
24 it's just something we're going to need some
25 information on. The elimination of the roofs and

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such may get smaller, that's fine, but the stormwater regulations since 2008, we have the 2010 ones now you're facing for redevelopment purposes, so you need to look at that for compliance with the Town and the DEC standards for redevelopment of sites. They're less stringent but there are requirements for implementation of stormwater improvements.

So that's what we have, some of the changes since 2008.

CHAIRMAN EWASUTYN: Bryant Cocks, Planning Consultant.

MR. COCKS: Sure. At the work session we also discussed the actual use of the site. You said you talked to the Town Attorney about being allowed -- the drive-through being allowed in there. Do you have anything written?

MR. BOYEA: We could probably follow up with that. Our attorney is Elizabeth Stradar and she has spoken to the Town Attorney about that. That's correct. I could follow up with you on that.

MR. COCKS: Okay. We were discussing the previous -- you guys were before the Zoning

1 Board before and they previously said that there
2 was no drive-through allowed. That has expired
3 but that wasn't actually a variance, that was an
4 interpretation. It expired. I feel like the ZBA
5 would still hold that view towards it.
6

7 MR. BOYEA: It's a good point. Before
8 we invested this money to get to where we are
9 today with the drawing and plans and everything,
10 we vetted that out. We wouldn't be here today
11 without it. The issue is that we're reusing the
12 existing building, which is a change from the
13 past use, and we're reusing one of the self-serve
14 drive-through car wash bays. That's the key.

15 CHAIRMAN EWASUTYN: We've never had
16 that happen before, what you're discussing now.
17 We've never had an applicant go to the Town
18 Attorney to get an interpretation from the Town
19 Attorney to acknowledge and approve that, to come
20 back to us that and literally say Mike Donnelly,
21 would you please go home tonight, all the
22 questions have been resolved. So since we've
23 never had it happen, I would ask you to politely
24 address Mike Donnelly and allow him to go home
25 this evening. Since he's on vacation this week

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2 and he offered his services tonight on his
3 vacation, I would again repeat myself, would you
4 invite Mike Donnelly to go home? I'm serious.
5 Or would you allow Mike Donnelly to speak on the
6 matter? It's up to you.

7 MR. BOYEA: I would like to have him
8 speak on the matter.

9 CHAIRMAN EWASUTYN: Thank you ever so
10 much. Welcome to the Town of Newburgh Planning
11 Board.

12 Mike Donnelly, Planning Board Attorney,
13 would you speak on behalf of the Planning Board?

14 MR. DONNELLY: I don't know if Beth
15 spoke to the Town Attorney. I'm not the Town
16 Attorney, I am the Planning Board Attorney. I
17 spoke to Beth on June 10th. She told me what her
18 argument was going to be, and that is,
19 backtracking, 2008 when this application for
20 Dunkin Donuts was before the Planning Board,
21 everyone realized that fast food restaurants were
22 not permitted in the zoning district. This use
23 either was a restaurant use that would allow a
24 drive-in window or it was a food preparation
25 business, and that required an interpretation

1 from the Zoning Board of Appeals. A food
2 preparation business does not allow a
3 drive-through window. It went to the Zoning
4 Board of Appeals. The Zoning Board of Appeals
5 characterized the use as a food preparation
6 business and therefore disallowed the drive-in
7 window. Beth wanted to argue to me that because
8 that interpretation had a durational provision
9 and the duration of the interpretation had
10 expired, that it was no longer binding. I said
11 to her well, if you take the position that it's
12 expired, we can send you back and you can ask
13 again, or you can go ask on your own and find out
14 whether it stands. I clearly said to her I could
15 not accept that argument, I wouldn't recommend it
16 to the Planning Board, and as far as I was
17 concerned the use is where we were in 2008. It
18 may not move forward with a drive-in window
19 because the Zoning Board explicitly said it may
20 not and this Board can't overrule the Zoning
21 Board. I don't know who she spoke with after
22 that or whether there's just some
23 miscommunication here. I have the notes of my
24 discussion with her and I clearly informed her
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that she would need to go to the Zoning Board.

MR. BOYEA: Got it.

MR. DONNELLY: While we're at it, there's one other issue. That is the building, the existing building does not conform to setbacks. There's a provision in the Town of Newburgh Zoning Chapter that protects a non-compliant building, however if any change is made to the building, unless that change is going to make the building less nonconforming, it needs to go to the Zoning Board. So when you go to the Zoning Board to talk about the drive-in window, you'll also need to talk to them about the need for an area variance to protect the setback of the building if you're going to change the configuration as you propose. All right?

MR. BOYEA: Got it. I'm sure it's a miscommunication but I'll get together with Beth and dot the Is and cross the Ts.

MR. DONNELLY: Understood.

CHAIRMAN EWASUTYN: Bryant Cocks, did you complete your review?

MR. COCKS: I just had a couple other small comments.

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CHAIRMAN EWASUTYN: Speak a little bit louder.

MR. COCKS: We'll need a plan showing the vehicle stacking, how many cars will be able to fit in the drive-through lane.

How many feet do you think it's going to wrap around from where you order to maybe say the front parking spaces? Do you figure like six cars?

MR. BOYEA: Probably about six. A hundred plus feet.

MR. COCKS: So if we can just have the plan showing the truck turning movements for the garbage can, where the loading/delivery is going to be. In the back when the place isn't open I would assume? There's no loading zone either really. I don't know what kind of trucks you guys are going to be pulling in there.

MR. BOYEA: We have an eighteen-foot lane in the rear for that, for the loading, and a ten-foot on the side. So we have places, but we can designate it and show it on the plan.

MR. COCKS: Okay. Also, since this is a conceptual plan we'll need a lighting and

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landscaping plan, the full ARB drawings. This only shows two sides of the building. We'll need the full ARB drawings with the color, material samples labeled. You can also bring them in to the Planning Board for them to see.

Also, the screening of the rooftop units.

We'll need a signage plan showing the amount of signage on site, the total between each side of the building and the freestanding sign. If you're going to the ZBA you might want to package that in with the front yard setback, depending how much you guys are planning on using.

We just need the full site details, the trash enclosures. A demolition permit will be required for the car wash bays.

We will need to send this back to Orange County Planning since it's a big enough change.

As Pat mentioned, DOT also.

This also will need an adjoining notice to be sent out to the property owners within 500 feet of the project. I will get the mailing list

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from the assessor and then we'll talk about how you guys can send out the adjoiner notice and what the procedure is for that.

CHAIRMAN EWASUTYN: Normally what happens, at this point Mike Donnelly would prepare a letter to the Zoning Board of Appeals. Would you like him to discuss that now or do you want to wait to speak with the attorney before we move in that direction?

MR. BOYEA: Based on what I've heard, I think it's appropriate to move forward with a letter to the Zoning Board. I'm going to just -- I got a miscommunication. I would like to move forward with a letter to the Zoning Board if possible.

CHAIRMAN EWASUTYN: Okay. Mike.

MR. DONNELLY: The letter will be to ask them to reconsider the decision they issued in 2008 declaring this use to be a food preparation business, and secondarily consider granting an area variance to protect the existing noncomplying building that is not being made more noncomplying. You also will need to follow that up with an application to the ZBA, but I'll send

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a letter to begin.

CHAIRMAN EWASUTYN: It was very unusual. I apologize. We have to work with what's being suggested.

MR. BOYEA: You don't need to apologize. I understand.

MR. FOGARTY: May I say something?

CHAIRMAN EWASUTYN: By all means.

MR. FOGARTY: I think procedurally it was done all wrong. I really do. I mean because the way your presentation went is that your attorney met with the Town Attorney and made this decision, so Planning Board you have to accept this. You should have come here first. This thing is going to be brought -- it's a new project and all that other stuff. You should make your appointment here, come before us, show us the changes and go through the normal channels that we do for every other project. It just had a feeling of -- you know what I'm saying? It had the wrong feeling for me. This stuff was already decided in the back room over here and now we have to kind of accept it. That's not the procedure, the way it should work.

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2 MR. MENNERICH: One other question on
3 the architectural portion. You don't show a view
4 of what the building looks like facing 9W. Is
5 there going to be signage on that, too?

6 MR. PROFACI: This is completely
7 conceptual? This is not the building?

8 MR. BOYEA: That's correct. That's
9 correct. These are the color schemes and the
10 architectural style that would be applied to this
11 building. Like I said, we have a long way to go
12 as far as incorporating those into site specific
13 ones for you to look at as well as site specific
14 landscaping. So those details will follow. At
15 least you'll have an idea of the flare of the
16 style and size and color scheme of the building.

17 CHAIRMAN EWASUTYN: Does anyone else
18 have any questions?

19 MR. WARD: It definitely should go to
20 the Zoning Board.

21 MR. BOYEA: Before we table and
22 resubmit to come back with more, are there any
23 comments about the layout of the project, the
24 flow orientation, those types of things that we
25 could be working on?

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MR. MENNERICH: Do you have what was in the consultants' comments?

MR. BOYEA: That's correct. Just from the Board's perspective. I've got the written comments.

MR. FOGARTY: I don't have any comment at this time, no.

MR. WARD: I think we should wait until he comes back. You don't know what they're going to suggest. That could change your whole scenario.

MR. BOYEA: I can appreciate that.

MR. HINES: Chris, here is a copy of my comments.

CHAIRMAN EWASUTYN: All right. Thank you.

MR. BOYEA: Thank you so much.

(Time noted: 8:16 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.

Michelle Conero

DATED: August 8, 2013