

RESOLUTION OF APPROVAL

SITE PLAN

THIRD AMENDED

FOR

**WILDER BALTER PARTNERS, INC., THE MARKETPLACE AT
NEWBURGH, LLC AND WB INTERCHANGE ASSOCIATES, LLC
[THE MARKETPLACE]**

PROJECT # 2004-54

Nature of Application

Wilder Balter Partners, Inc., The Marketplace at Newburgh, LLC and WB Interchange Associates, LLC [The Marketplace] have applied for approval of a Third Amended Site Plan in relation to property identified herein that has already received site plan approval permitting the use of that property for a retail shopping center. The site plan amendment sought will allow the following modifications to the currently approved plans:

- deferral of construction of the Project's Route 52/Fifth Avenue access road improvements until the Project build out exceeds 400,000 square feet of commercial floor area;
- redesign of an internal driveway (identified on the site plan as "Entry A") to permit two-way traffic;
- lowering of the "village center" grading by approximately 21 inches on average; and

- inclusion of a pharmacy building in the village center.

Property Involved

The property affected by this resolution is shown on the Tax Maps of the Town of Newburgh as parcel(s) 60-3-41.3, 60-3-41.4, 60-3-48, 60-3-49.1, 60-3-49.22, 71-4-8, 71-4-9, 71-4-10, 71-4-11, 71-4-12, 71-4-13, 71-4-14, 71-5-9, 71-5-15, 71-5-16, 97-1-13.3 and 97-1-20.3. The following parcels (the “DOT parcels”) are also affected by this resolution: Map 746, parcels 1142 and 1143; and Map 747, parcels 1144 and 1145.

Zoning District

The property affected by this resolution is located in the IB and R-3 zoning district of the Town of Newburgh.

Plans

The Third Amended Site Plan and other materials considered by the Planning Board include the following:

1. Completed application form and Environmental Assessment Form.
2. A Draft and Final Environmental Impact Statement.
3. The SEQRA Findings Statement issued by the Planning Board.
4. Various memoranda and correspondence from the Planning Board’s consultants.
5. Plans prepared for Wilder Balter Partners, Inc., The Marketplace at Newburgh, LLC and WB Interchange Associates, LLC [The Marketplace] as follows:

Author

Title

Last Revision Date

History

DATE OF APPLICATION

The original application was filed with the Planning Board on July 15, 2004. Preliminary site plan approval was granted on October 4, 2007 and final site plan approval was granted on June 19, 2008. Subdivision approval was granted on May 29, 2008. A first amended site plan approval was granted on September 16, 2010 and a second amended site plan approval was granted on November 18, 2010. This application for third amended site plan approval was submitted in October of 2011.

PUBLIC HEARING

A simultaneous SEQRA/Site Plan public hearing on the original site plan application was convened on June 1, 2006 and closed on June 29, 2006. A public hearing on the subdivision application was held on May 29, 2008. The Planning Board—given the nature of the amendments proposed and the number and extent of earlier public hearings—has elected not to hold a further public hearing on this third amended site plan proposal.

SEQRA

On October 14, 2004, a full Environmental Assessment Form (EAF) application for the proposed Project (initially referred to as Crossroads at Newburgh), was submitted to the Town of Newburgh Planning Board (the “Planning Board,” the “Board”). The Planning Board determined that the proposed activity was a Type I action and the Board established itself as lead agency on December 9, 2004. Subsequently, the Applicant prepared and submitted an Environmental Impact Statement (“EIS”) for the Project.

On February 10, 2005, in cooperation with all other involved agencies and interested parties and subsequent to a public scoping meeting held on January 13, 2005, the Planning Board adopted a final scoping document designating the potentially significant environmental impacts to be addressed in the Draft Environmental Impact Statement (“DEIS”) for the Project. The accepted scope outlining the information to be covered in the DEIS is provided in Appendix A of the DEIS. The DEIS was originally submitted to the Town of Newburgh on November 23, 2005.

Based upon comments received from the Lead Agency, the applicant submitted a revised DEIS to the Planning Board on January 3, 2006; additional revisions were made and the DEIS submitted again on April 4, 2006. On May 4, 2006, the Planning Board accepted the DEIS as complete with respect to its scope, content and adequacy and issued a Notice of DEIS Completion and Notice of Public Hearing and caused the DEIS to be filed with all involved agencies. The Planning Board conducted a Public Hearing on the DEIS on June 1, 2006. This hearing was continued on June 29, 2006, and the open public comment period was extended to July 31, 2006.

In response to the comments to the DEIS, the applicant modified the proposed project and Site Plan by incorporating elements of several of the alternatives discussed in the DEIS.

A Final Environmental Impact Statement (“FEIS”), including project revisions and a response to all substantive comments, was prepared and accepted by the Board as complete on March 15, 2007. A Notice of Completion and the FEIS was filed with all involved agencies on March 15, 2007.

A SEQRA Findings Statement was thereafter issued and was filed with all involved agencies on May 3, 2007.

On March 6, 2008 the Planning Board issued an amendment to the Findings Statement in connection with the Project Sponsor’s submission of a comprehensive signage plan and its request for subdivision of the parent Project parcel to accommodate the needs of several Project tenants to hold fee title to their

development sites. That Amended Findings Statement is incorporated herein by reference.

On June 19, 2008, the Planning Board issued a second amendment to the Findings Statement necessitated by mandates from outside agencies having principal jurisdiction over well protection and stormwater pollution prevention, and the lead agency's identification of a superior methodology to address groundwater recharge. A copy of that Second Amended Findings Statement is incorporated herein by reference.

On September 16, 2010, the Planning Board issued a SEQRA Consistency Determination in connection with the Project Sponsor's first application for amended site plan. A copy of that SEQRA Consistency Determination is incorporated herein by reference. A first amended site plan approval was granted on that date.

On November 18, 2010, the Planning Board issued a SEQRA Consistency Determination in connection with the Project Sponsor's second application for amended site plan. A copy of that SEQRA Consistency Determination is incorporated herein by reference. A second amended site plan approval was granted on that date.

The Planning Board has reviewed the plans supporting this application for a third amended site plan approval, the written submissions from the applicant and the review comments of the board's consultants. The Planning Board finds, after review of all of those materials, that the third amended site plan proposal does not significantly change the basic concept of the original approval and falls within what was contemplated by the earlier Environmental Impact Statement.

The proposal to phase the project—while new—was addressed in the FEIS and reexamined and updated in a more recent traffic analysis provided to the board as a part of this third amended site plan application. No adverse environmental impacts not studied in the FEIS are presented by the proposal to phase the project. However, because the project as originally approved included no provision for phasing (and the Findings Statements incorporated that no-

phasing proposal into its commands), a Third Amended SEQRA Findings Statement—authorizing the phasing of this project—was issued on

_____.

GML 239 Referral

The original application was referred to the Orange County Planning Department for review and report as were the earlier proposals for amended site plan approvals. The Planning Department reported, in each case, that this matter is one for local determination, there being no significant inter-municipal or countywide considerations found to exist. This third amended site plan application was also referred to the Orange County Planning Department for review and report. The Planning Department has reported, yet again, that this matter is one for local determination, there being no significant inter-municipal or countywide considerations found to exist.

Findings

The Planning Board has determined that approval of this Third Amended Site Plan will substantially serve the public convenience, safety and welfare; and will not otherwise be unduly detrimental to the public health, safety, comfort convenience or welfare, subject to compliance in full with conditions hereinafter imposed pursuant to Section 185-57 (H).

Moreover, the Planning Board finds that the modifications proposed do not significantly change the basic concept of the original approval and fall within what was contemplated by the earlier Environmental Impact Statement and SEQRA Findings. All potential environmental impacts of this project were adequately addressed during that earlier environmental review and no new impacts will result from this third amended site plan proposal. Thus, this third amended site plan proposal is within the scope of the earlier environmental review and is not prohibited by any SEQRA Findings (as amended).

Resolution of Approval

NOW, THEREFORE, THE PLANNING BOARD RESOLVES to approve this Third Amended Site Plan as said proposal is depicted on the plans identified above upon the conditions outlined below, and the Chairperson (or his designee) is authorized to sign the plans upon satisfaction of those conditions below noted to be conditions precedent to such signing.

Specific Conditions

1. The plans shall not be signed until receipt of a letter from the Town Fire Inspector certifying that the plans have been modified in accordance with his memo of [_____ (Date of Memo)].
2. The plans shall not be signed until receipt of a letter from the Planning Board Engineer certifying that the plans have been modified in accordance with his memo of [_____ (Date of Memo)].
3. The plans shall not be signed until receipt of a letter from BC Planning, LLC certifying that the plans have been modified in accordance with his memo of _____.
4. The plans shall not be signed until receipt of a letter from Karen Arent, the Town of Newburgh Landscaping Consultant, certifying that the plans have been modified in accordance with her memo of [_____ (Date of Memo)].
5. The plans shall not be signed until receipt of a letter from Creighton Manning Engineering, the town's Traffic Engineers, certifying that the plans have been modified in accordance with his memo of _____.

6. Except as modified herein, all conditions attached to the earlier grants of site plan and subdivision approval are to remain in effect and this approval is subject to, and conditioned upon satisfaction of same as if those conditions were set forth herein at length.
7. All mitigation measures proposed within the EIS or announced within the SEQRA Findings Statement issued by this board (with amendments) are hereby made conditions of this approval as if those mitigation measures were set forth herein at length.
8. All conditions attached to a grant of variance issued by the Town of Newburgh Zoning Board of Appeals on March 27, 2008 are made a part of this approval and this approval is subject to the same as if those conditions were set forth herein at length.

Entranceway Construction Deferral

9. No certificate of occupancy shall be issued for any retail establishment shown on these amended plans until the two entranceways proposed to be completed initially are, in fact, completed to the satisfaction of the Town of Newburgh Code Compliance Department, together with all of the first phase improvements listed in the map notes on the plan coversheet as being required to be completed before such issuance.
10. No certificates of occupancy will be issued for any structures beyond a total of 400,000 square feet until all three proposed entranceways have been completed to the satisfaction of the Town of Newburgh Code Compliance Department.
11. To the extent that condition # 32 [roundabout construction timing] and condition # 44 [authorized SEQRA modifications] of

the original June 19, 2008 Final Site Plan Resolution of Approval are inconsistent with this resolution of third amended site plan approval, the conditions of this resolution shall supersede and govern the issues covered in those earlier numbered conditions.

12. Conditions numbered #41 [fair share traffic improvement contribution], #42 [traffic monitoring program deposit], #43 [traffic management plan participation] and #46 [lifestyle center commitment] shall remain in effect and are not in any fashion modified by this third amended site plan approval.

Architectural Review Board Approval

13. No building permit shall be issued authorizing construction of structures inconsistent with the architectural renderings submitted to, and approved by, the Architectural Review Board for the ShopRite building, nor shall any certificate of occupancy be issued for any structures constructed except in conformance with such renderings. Karen Arent, the Town's Landscape Architect, shall review the building plans when submitted to the Building Department in order to insure compliance with the approved architectural renderings. Karen Arent, the Town's Landscape Architect, shall also inspect the work before a certificate of occupancy is issued to insure compliance with the approved architectural renderings. No other buildings have, thus far, received ARB approval.
14. As set forth in the SEQRA Findings Statement, all future architectural development of the site must follow a unified theme in accordance with guidelines that establish a basic level of architectural variety, compatible scale, pedestrian access and mitigation of negative visual impacts. All architectural development

shall be in accordance with approved conceptual architectural plans, plans [SW-1 – SW-5 and PF-1 – PF-6]. The entire site must be designed as a pedestrian-oriented environment and will include pedestrian amenities such as benches. The lifestyle center will feature decorative sidewalks internal to the complex and various pedestrian amenities including café tables and chairs, benches, etc. The appearance and proposed architectural design of the lifestyle center will provide a sense of proportion to the larger individual stores that mitigates the overwhelming visual impact that would otherwise be presented by a “big box” shopping center of this size. Its sense of “downtown” character also provides a focus, a sense of scale and a public amenity that is pleasing and that greatly limits the visual impact that would result were there no lifestyle center component to the project. Specific site plan elements, including conformance with the architectural guidelines, signage, pedestrian circulation, awning details and street furniture, will be reviewed by the Planning Board either as part of future amended site plan applications or by way of ARB review of individual buildings.

15. Final architectural approval for each future building is hereby reserved until detailed plans are received that show all required building-specific elements including (but not limited to) elevation views of all four sides of the building with all materials shown, proposed colors of all materials, sizes of building elements, signage in accordance with site plan and the comprehensive sign plan Mechanical and air conditioner compressor units and screening of these units must be illustrated (screening can include the setting of the units back far enough from the roof wall to be out of public view). A plan view of each building must be presented for final architectural approval including

streetscape design that shows pavement patterns and planting spaces. Planting plans for each building must be submitted with plant lists that specify botanical and common names, quantities and sizes of each proposed plant.

Landscape Security & Inspection Fee

16. Landscape security and inspection fees are required to be posted under other resolutions of approval (including the simultaneous ShopRite ARB resolution); therefore, no additional requirement for same is set forth in this resolution.
17. Approval of future individual building-specific ARB applications may require the posting of additional performance security not included in that established in the original resolution of approval. The amount of any such security shall be in an amount to be fixed by the town board upon recommendation of the town's landscape consultant. A separate inspection fee in an amount in accordance with Section 104-2 (G)(6) shall be submitted and deposited in an escrow account to cover the cost of the Town's Landscape Architect services. While the town board may defer posting of the performance security, the applicant shall be required to pay the required landscaping security to the town before the plans are signed.

Outdoor Fixtures & Amenities

18. This third amended site plan approval allows construction of only that which is shown on the plans identified above. No outdoor amenities or accessory structures or outdoor fixtures—including but not limited to exterior walls, mechanical units, dumpsters, etc.—may be constructed, placed or erected except as shown on the approved site plan. Architectural drawings shall carry a certification that what is shown thereon is fully

consistent with the approved site plan.

General Conditions

This approval is conditioned upon the applicant submitting all necessary copies of the plans to be signed, including mylars when required, to the Town of Newburgh Building Department. A full set of the plans to be signed shall simultaneously be submitted to BC Planning, LLC, the Planning Board's planning consultant. The plans shall not be signed until BC Planning, LLC has reported to the Chair that all conditions of this resolution required to be satisfied before the plans can be signed have, in fact, been satisfied.

This approval is further conditioned upon the applicant delivering (prior to signing of the plans) proof, in writing, that all fees—engineering, planning, legal and otherwise—in regard to this project have been fully paid. The applicant shall also be required to deliver proof that all required Public Improvement, Erosion Control and Landscaping inspection fees and escrow have been deposited with the Town. The plans shall not be signed until proof, satisfactory to the Chair, has been presented showing that all fees have been paid and escrow deposits made.

Approval of the final site plan shall, pursuant to Section 185-58 (E) of the Zoning Ordinance, be valid for two years from the date this resolution is filed in the office of the Town Clerk, after which time this approval shall be null and void unless a building permit has been issued. If no building permit has been issued within that time, the plan must be resubmitted to the Planning Board for approval.

A FAILURE to comply with the general condition immediately above in a

timely manner shall result, without further action, in a lapsing of this approval.

In Favor _____ Against _____ Abstain _____ Absent _____

Dated: _____

JOHN P. EWASUTYN, CHAIRPERSON
TOWN OF NEWBURGH PLANNING BOARD

