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

----- X
In the Matter of

ORANGE COUNTY TRUST
(2007-03)

Northeast corner of Noel Drive & North Plank Road
Section 76; Block 2; Lot 1
B Zone

----- X

SITE PLAN & ARCHITECTURAL REVIEW

Date: March 6, 2008
Time: 7:00 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

- BOARD MEMBERS: JOHN P. EWASUTYN, Chairman
- FRANK S. GALLI
- CLIFFORD C. BROWNE
- KENNETH MENNERICH
- EDWARD O'DONNELL
- JOSEPH E. PROFACI
- ALSO PRESENT: DINA HAINES
- MICHAEL H. DONNELLY, ESQ.
- BRYANT COCKS
- PATRICK HINES
- KAREN ARENT
- KENNETH WERSTED
- GERALD CANFIELD

APPLICANT'S REPRESENTATIVE: THOMAS DePUY

----- X

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

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CHAIRMAN EWASUTYN: I would like to thank everyone for coming this evening. The Planning Board will now be starting their meeting of the 6th of March.

I'll ask for a roll call vote starting with Frank Galli.

MR. GALLI: Present.

MR. BROWNE: Present.

MR. MENNERICH: Present.

MR. O'DONNELL: Present.

MR. PROFACI: Here.

CHAIRMAN EWASUTYN: Myself present.

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

MR. DONNELLY: Michael Donnelly, Planning Board Attorney.

MS. CONERO: Michelle Conero, Court Stenographer.

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

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

ORANGE COUNTY TRUST

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

MS. ARENT: Karen Arent, Landscape Architectural Consultant.

MR. WERSTED: Ken Wersted, Creighton, Manning Engineering, Traffic Consultant.

CHAIRMAN EWASUTYN: At this time I would like to turn the meeting over to Ed O'Donnell.

MR. O'DONNELL: Please join me in saluting the flag.

(Pledge of Allegiance.)

MR. O'DONNELL: I would appreciate it if you would turn off all communication devices. Thank you.

CHAIRMAN EWASUTYN: The first item of business this evening is the Orange County Trust. It's here for site plan and ARB approval. It's located on the northeast corner of Noel Drive and North Plank Road, the property is zoned B and it's being represented by Thomas DePuy.

MR. DePUY: Tom DePuy with DePuy Engineering. Orange County Trust is proposing a branch bank on the corner of Route 32 and Noel

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Drive. It's been in front of the Board several times. I think we only had a few outstanding issues.

One was getting permission on sewer, which the letter had been issued.

I think there was one issue brought up by the fire department. We will remove some trees off the Noel side and maybe plant some low-lying stuff in here so it doesn't affect the ladder trucks.

I think they were the two issues we had from a site plan standpoint that were outstanding.

I know there's other -- we have joint off-site agreements that are being worked on. From a site plan standpoint that was the issue.

If you want I can turn the meeting -- the architectural over to Mr. DeHaun.

CHAIRMAN EWASUTYN: Let's talk about some of the joint site improvements. That's part of the whole package for the site plan. We'll give you an opportunity to discuss them now.

MR. DePUY: Okay. We will be -- with the applicant across the road we will be doing a

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joint improvement on Noel Drive. This is the adjoining. We'll be improving Noel Drive along here. They will be improving on this side. We'll be making some improvements to the intersection on 32. Then downstream we will be -- which is down Gidney Avenue here, we will be doing replacement of storm sewer all the way down Gidney Avenue and then discharging to the stream.

CHAIRMAN EWASUTYN: Pat Hines will discuss the site plan.

MR. HINES: As Mr. DePuy said, our previous comments have been addressed. The flow acceptance letter from the City of Newburgh was received on the 26th of December.

The off-site drainage improvements between this project and the other project are going to benefit the intersection as a whole. That was identified previous or several years ago by the Town as a concern. It was a concern when these projects first came through. I think putting the two projects together and correcting that drainage issue will help that intersection greatly.

Water and sewer items have been

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addressed.

This plan -- we'll talk about the other plan. This plan is a single phase plan so we have no issues with that. Otherwise all our comments are addressed.

CHAIRMAN EWASUTYN: Bryant Cocks, Planning Consultant.

MR. COCKS: As Tom said, the only site plan comment that was left was regarding the removal of the pin oak on the north side of the site. We haven't seen the plans yet but he already indicated they'll be replacing that with some low-lying shrubs. Other than that we had no further site plan comments.

CHAIRMAN EWASUTYN: Karen Arent, Landscape Architect.

MS. ARENT: The consultant addressed all my site plan comments and landscape comments.

They did work diligently to coordinate this project adjacent matching the stonewalls and light fixtures. All of the comments were addressed.

CHAIRMAN EWASUTYN: Ken Wersted, we have a fair share contribution to a traffic

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signal. Do you want to discuss that?

MR. WERSTED: Correct. In addition to the other site agreements that are off-site, there are agreements to improve Noel Drive and Route 32 and bring the stormwater I believe down Gidney Avenue to the intersection improvements at the intersection of Gardnertown Road and Gidney Avenue. So there's a joint agreement between this applicant, the pharmacy and bank applicant. Also, the other primary applicant for that intersection is Gardnertown Commons. These two applicants are working together to offset some of the initial costs of those intersection improvements as part of the Gardnertown Commons agreement.

CHAIRMAN EWASUTYN: Okay. Comments from Board Members. Frank Galli?

MR. GALLI: No additional.

MR. BROWNE: I'm good.

MR. MENNERICH: Ken, will there be modifications to the light that's on 32?

MR. WERSTED: At this intersection I believe there would be. There may be some signal head kind of alignment issues. Right now the two

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2 intersections are a little bit offset and so when
3 they realign the road they may have to adjust
4 some of the lights so that they wind up ahead of
5 the lane that you're pulling out on. I think
6 when DOT reviews the project they'll have to look
7 at that. It is part of the highway work permit.
8 MR. MENNERICH: Thanks.
9 CHAIRMAN EWASUTYN: Ed O'Donnell?
10 MR. O'DONNELL: Pat, the improvements
11 to the road, the intersection, is that under our
12 auspices or is that a DOT type of deal?
13 MR. HINES: Part of it is within the
14 Town right-of-way and some of it is within DOT.
15 They're going to realign the intersection, as Ken
16 just said, to be a conventional intersection.
17 MR. O'DONNELL: Is it part of the
18 applicant's package to have the specs as to how
19 that's going to be done and accomplished?
20 MR. HINES: The portions in the Town
21 road, yes. There will be a separate DOT permit
22 application they'll have to come back with.
23 MR. O'DONNELL: Where Tom said there
24 were some improvements, we exactly know what they
25 are going to do?

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MR. HINES: The geometry of them are shown on the plans.

CHAIRMAN EWASUTYN: Joe Profaci?

MR. PROFACI: I have nothing.

CHAIRMAN EWASUTYN: Jerry Canfield, would you like to add anything at this time?

MR. CANFIELD: I have nothing to add.

CHAIRMAN EWASUTYN: Mike Donnelly, Planning Board Attorney.

MR. DONNELLY: The resolution would have a number of conditions. Most of them were in the Sembler resolution, although a few of the Sembler resolution conditions need to be modified but we made provisions for that.

Specifically the approval would be subject to the issuance of a DOT highway work permit. You will require the plans to be submitted for signing include in both cases all of the joint site improvements so that they're shown on both site plans. There will be a condition requiring that all of the site work identified in the joint construction phasing plans shall be completed to the satisfaction of the town engineer and town code compliance

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department before any certificate of occupancy is issued for a structure on either site.

Now, we discussed the need for and I assume it must appear in both resolutions that notwithstanding the foregoing the applicant shall be permitted to post financial security to the satisfaction of the Town Board and town attorney to ensure completion of all site improvements that can not be completed until demolition of the existing Key Bank building. I know that's on the other site but the issue is some of the site work can't be completed until that building is taken down. The applicant proposes not to take it down until the new bank is open and operable. I think because we're treating site improvements jointly, that that resolution condition needs to be in both. It may relate to who pays what as between the two applicants but I think the condition needs to be there.

Next we include the requirement of the fair share contribution. The plans will not be signed until the fully executed copy of that agreement has been delivered to the Planning Board. I know you've seen a copy of the

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Gardnertown agreement. I know that Neil Wilson from Sembler had some conversation with Mark about drawing a new agreement for your contributions, but that's going to have to be followed up.

I'll leave aside the ARB conditions until you discuss that.

There will be a requirement of landscape security, stormwater improvement security, a Town road security for the work to be done there, and the standard requirement that only those structures that are shown on the plan may be constructed. No additional outdoor fixtures or structures may be constructed if they are not on the site plan.

CHAIRMAN EWASUTYN: Do any of our consultants have anything they would like to add to the resolution for approval? Pat Hines?

MR. HINES: No. We're satisfied with that. Those are the items we discussed at work session.

CHAIRMAN EWASUTYN: Okay. Bryant Cocks?

MR. COCKS: No, I do not.

ORANGE COUNTY TRUST

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2 CHAIRMAN EWASUTYN: Karen Arent?
3 MS. ARENT: No.
4 CHAIRMAN EWASUTYN: Ken Wersted?
5 MR. WERSTED: No.
6 CHAIRMAN EWASUTYN: Comments from our
7 Board Members.
8 MR. GALLI: No additional.
9 MR. BROWNE: I'm good.
10 MR. MENNERICH: Nothing.
11 MR. O'DONNELL: Nothing.
12 MR. PROFACI: No thanks, John.
13 CHAIRMAN EWASUTYN: Okay. Then I'll
14 move for a motion that we grant site plan
15 approval to Orange County Trust subject to the
16 conditions of the resolution that the Attorney
17 just presented to us.
18 MR. MENNERICH: So moved.
19 MR. O'DONNELL: Second.
20 CHAIRMAN EWASUTYN: I have a motion by
21 Ken Mennerich. I have a second by Ed O'Donnell.
22 Any discussion of the motion?
23 (No response.)
24 CHAIRMAN EWASUTYN: I'll move for a
25 roll call vote starting with Frank Galli.

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MR. GALLI: Aye.

MR. BROWNE: Aye.

MR. MENNERICH: Aye.

MR. O'DONNELL: Aye.

MR. PROFACI: Aye.

CHAIRMAN EWASUTYN: And myself yes. So carried.

Tom, if you would like to bring forth now the ARB.

MR. DePUY: Okay. Chris DeHaun will be doing the presentation.

MR. DeHAUN: Do you want me to rotate this more?

CHAIRMAN EWASUTYN: I think we've seen it. The public can see it better.

MR. DeHAUN: The bank is proposing a one-story structure, a wood frame structure with a brick base coming up about three foot. The rest of the building would be a stucco finish on the exterior, an asphalt shingled roof. The bank has done a number of these projects around in Montgomery, Middletown and so forth using the same character of those buildings, same finishes. That's it.

ORANGE COUNTY TRUST

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CHAIRMAN EWASUTYN: Okay. Karen, would you like to add anything at this time?

MS. ARENT: No. I think that the architecture is -- it complies with the Town of Newburgh design guidelines.

CHAIRMAN EWASUTYN: Thank you. Frank Galli?

MR. GALLI: No additional.

CHAIRMAN EWASUTYN: Cliff Browne?

MR. BROWNE: No.

CHAIRMAN EWASUTYN: Ken Mennerich?

MR. MENNERICH: No.

CHAIRMAN EWASUTYN: Ed O'Donnell?

MR. O'DONNELL: Nothing.

CHAIRMAN EWASUTYN: Joe Profaci?

MR. PROFACI: Nothing.

CHAIRMAN EWASUTYN: Mike Donnelly, part of the resolution.

MR. DONNELLY: The standard ARB condition which states no structures may be built -- no building may be built nor any certificate of occupancy shall be issued for structures except in conformance with the renderings.

CHAIRMAN EWASUTYN: Jerry, would you

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like to add anything to that?

MR. CANFIELD: No.

CHAIRMAN EWASUTYN: Having heard from our Landscape Architect, Karen Arent, who reviewed the ARB, having heard from our Attorney, Mike Donnelly, I'll move for a motion to approve the ARB for the Orange County Trust.

MR. PROFACI: So moved.

MR. O'DONNELL: Second.

CHAIRMAN EWASUTYN: I have a motion by Joe Profaci. I have a second by Ed O'Donnell. Any discussion of the motion?

(No response.)

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

MR. GALLI: Aye.

MR. BROWNE: Aye.

MR. MENNERICH: Aye.

MR. O'DONNELL: Aye.

MR. PROFACI: Aye.

CHAIRMAN EWASUTYN: And myself yes. So carried.

Thank you.

(Time noted: 7:14 p.m.)

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

I, Michelle Conero, a Shorthand Reporter and Notary Public within and for the State of New York, do hereby certify that I recorded stenographically the proceedings herein at the time and place noted in the heading hereof, and that the foregoing is an accurate and complete transcript of same to the best of my knowledge and belief.

DATED: March 10, 2008

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

----- X

In the Matter of

PROPOSED PHARMACY AND BANK
(2006-57)

North Plank Road, Noel Drive & Stanley Place
Section 77; Block 2; Lot 5
B Zone

----- X

ARCHITECTURAL REVIEW

Date: March 6, 2008
Time: 7:14 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

BOARD MEMBERS: JOHN P. EWASUTYN, Chairman
FRANK S. GALLI
CLIFFORD C. BROWNE
KENNETH MENNERICH
EDWARD O'DONNELL
ALSO PRESENT: JOSEPH E. PROFACI
DINA HAINES
MICHAEL H. DONNELLY, ESQ.
BRYANT COCKS
PATRICK HINES
KAREN ARENT
KENNETH WERSTED
GERALD CANFIELD

APPLICANT'S REPRESENTATIVE: TIMOTHY O'BRIEN

----- X

MICHELLE L. CONERO
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(845)895-3018

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CHAIRMAN EWASUTYN: The following item of business this evening is the proposed pharmacy and bank. It's here tonight for ARB approval. It's located on North Plank Road, Noel Drive and Stanley Place, it's in a B Zone and it's being represented by -- I know Mr. Wilson isn't here.

MR. O'BRIEN: Tim O'Brien with BL Companies. I was the site engineer. With us this evening is Josh Byer with Sembler Companies; the architect for the project, Mark Wilson, also with BL Companies.

Would you like us to discuss the site plan at all? I know we already have our approval but it's been awhile.

CHAIRMAN EWASUTYN: That would be a good idea. Sure.

MR. O'BRIEN: As Tom had pointed out, the two projects are working closely with the applicant for Orange County Trust. Currently on our site is a Key Bank. The existing bank sits basically right where my finger is. What we're proposing is a Walgreen's of 14,490 square feet, a Key Bank of roughly 3,500 square feet. We have a drive-through for the pharmacy and a drive-

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through for the bank.

We have access onto Noel Drive and access onto North Plank Road. What we've done with both accesses is we pushed them as far from the intersection as possible.

With the improvements to Noel Drive -- as was pointed out earlier the two intersections or the cross accesses don't line up too great, so we're shifting Noel Drive over approximately five feet, and in doing so a stop bar and a crosswalk will be added. The stop bar will be moved back so that the cross bar can go up. We're also adding the sidewalk up Noel Drive all the way up to the back street, Plank Road. The crosswalk will line up with Tom's sidewalk of the Orange County Trust. We're also providing a sidewalk all the way up North Plank Road.

As part of the DOT review that we're working on right now they've added a curb all along the frontage. That will come up beyond the stop bar and the crosswalk and end. That's basically it.

We've left the buffer. We haven't disturbed any of the trees, just a small section

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in this area here where we're going to be cutting down some trees and moving the access back.

Currently on North Plank Road and Noel Drive it's almost an open curb cut. We're eliminating that and just using the two curb cuts that were shown on the plan.

We believe we're improving the site not only with the site plan but also with the architecture. I'll turn it over to Mark now.

CHAIRMAN EWASUTYN: Thank you.

MR. WILSON: I'm Mark Wilson, project architect, BL Companies. These are the elevations that we have for the building. They have evolved over time. We have two tenants as Tim said, a Walgreen's and a Key Bank.

This is the elevation that faces Plank Road. This is the side on Noel Drive.

We've kept the same language and the architecture for both tenants but to give each a little bit of an identity the Key Bank has more of a flat roof and we have more of a gabled structure for the Walgreen's. We're keeping the scale down, it's only one story tall. On the base of our building we're using what they call a

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2 cultured stone which is a manufactured stone if
3 you will. It's going to be matching the stone-
4 walls which are real stone on the site, which
5 also matches the stone on the property across the
6 road. So these two projects are tied together
7 very well. It's a clappered style look but it's
8 not wood. It's what they call hardy plank. It's
9 a manufactured board so it has a very long life.
10 It doesn't need repainting as often. The trim is
11 again just a white hardy plank board. That's
12 pretty much it.

13 CHAIRMAN EWASUTYN: The light fixtures
14 on the building?

15 MR. WILSON: Light fixtures on the
16 building actually match -- there are two types of
17 light fixtures that we have. Over the Key Bank,
18 in order to light their signs. They match the
19 fixtures that are in the parking lot. Then
20 there's some decorative fixtures just over the
21 entrance of the Walgreen's which are just
22 decorative lighting. I have cuts on those this
23 evening.

24 CHAIRMAN EWASUTYN: Comments from Board
25 Members. Frank Galli?

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MR. GALLI: The lighting in the actual parking lot itself, is there going to be strictly -- they're not going to be real bright?

MR. WILSON: No. They're not real bright. It's also a decorative fixture. We're also using the same fixture -- we're not -- Tom across the street is using the exact same fixture to tie these together. It's the ones right on the cover.

MR. GALLI: Okay.

CHAIRMAN EWASUTYN: And the height of that fixture?

MR. O'BRIEN: I believe it's twenty feet. I'm not a hundred percent sure. It's been awhile since we went over the site plan.

CHAIRMAN EWASUTYN: Okay.

MR. GALLI: That's all.

CHAIRMAN EWASUTYN: Cliff Browne?

MR. BROWNE: You mentioned with the hardy plank, that doesn't have to be repainted that often. What is that often?

MR. WILSON: Typically if you paint a wooden clapper it ends up needing to be repainted every five to six years. This has a warrantee on

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it for fifteen. They usually go for twenty.

MR. BROWNE: This is a pre-finished material?

MR. WILSON: Yes, it is.

MR. MENNERICH: They've used hardy board on one of the Habitat houses in Newburgh in the historic area and it came out very nice. It's a nice looking product.

CHAIRMAN EWASUTYN: Ed O'Donnell?

MR. O'DONNELL: If I might digress for a second and go back to the site plan. Having not been here for a few months I was kind of dismayed to see an article in one of the local papers about the parking. I was wondering, Mike, if you could explain how we came to whatever conclusion we came to here just for the benefit of myself as well as the people in this audience.

MR. DONNELLY: Your Zoning Ordinance has a chapter on off-street parking, and that chapter, unlike some ordinances that have bulk table parking requirements, has a two-step method of computing parking requirements. Firstly, some uses that appear in the permitted use table from the back of the Ordinance appear in Section

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2 185-13 but not all of the uses. For the uses
3 that exist in Section 185-13, the off-street
4 parking section, parking requirements are set.
5 The section then goes on to say for any use not
6 listed in the schedules the Planning Board shall
7 set the parking requirements for those uses using
8 the ITE, the International Traffic -- whatever it
9 stands for, Ken. Institute of Traffic
10 Engineers, --

11 MR. WERSTED: Institute of --
12 MR. DONNELLY: -- the most recent copy,
13 as a guide in setting those parking requirements.
14 When this application first came before the Board
15 we didn't check that schedule carefully and
16 inadvertently sent it to the Zoning Board for a
17 parking space variance based upon the generic
18 retail category that appeared in the table. As
19 we all know, that variance was denied. When the
20 applicant returned, the applicant's attorney
21 brought to our attention the section in question
22 and when you as a Board saw it and when I noticed
23 it, and I wrote you a follow-up letter, you
24 realized that consistent with other projects
25 where you had fixed parking requirements where

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2 they weren't listed and because the pharmacy use
3 was not among those listed, you determined with
4 Ken Wersted's advice and the ITE traffic tables
5 to establish the parking requirement for the
6 pharmacy, the drive-in use as listed in the ITE
7 tables. I believe that's consistent with what
8 the Zoning Ordinance requires under the
9 circumstances. Unfortunately matters appeared
10 confusing and obviously some degree of
11 consternation has been caused by the Zoning
12 Board. We've tried to explain that to them and
13 hopefully we've succeeded but I don't know we can
14 satisfy all of their members.

15 MR. O'DONNELL: I guess I can conclude
16 that from a legal viewpoint we've done the
17 appropriate thing with the parking.

18 MR. DONNELLY: I certainly believe so.

19 MR. O'DONNELL: I trust you
20 emphatically. I guess we must have erred in
21 sending it to the Zoning Board.

22 MR. DONNELLY: I think that's where the
23 error was, yes.

24 MR. O'DONNELL: Thank you.

25 CHAIRMAN EWASUTYN: Joe Profaci?

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MR. PROFACI: I have no comment on the ARB.

CHAIRMAN EWASUTYN: Pat Hines, do you have any comment on ARB?

MR. HINES: No. Not at all.

CHAIRMAN EWASUTYN: Bryant Cocks?

MR. COCKS: No. Karen actually just looked at the lighting detail and it -- the light itself is fifteen feet. It's maybe another two feet on top of the fixture. It kind of hangs over. The actual light is fifteen feet.

CHAIRMAN EWASUTYN: And that conforms to the guideline standards?

MR. COCKS: Yeah. The guideline standards say there's a maximum of twenty feet in commercial districts but ideally it should be ten to fifteen.

CHAIRMAN EWASUTYN: Karen Arent?

MS. ARENT: As we spoke during work session, the applicant revised the building substantially from the first submission and made a huge improvement in the aesthetics of the building. They also demonstrated through the site profiles that the mechanical equipment will

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be well hidden on top of the roof except from very far away. They've addressed all of my comments.

CHAIRMAN EWASUTYN: Ken Wersted, would you like to add anything?

MR. WERSTED: No, thank you.

CHAIRMAN EWASUTYN: Jerry Canfield?

MR. CANFIELD: Nothing to add.

CHAIRMAN EWASUTYN: Mike, we will be approving the ARB this evening and we will be amending --

MR. DONNELLY: Yes.

CHAIRMAN EWASUTYN: -- the resolution for the site plan approval that had been approved.

MR. DONNELLY: The ARB resolution will be the standard requirement that the architectural renderings are the guide to what may be constructed, and as in Orange County Trust they'll be subject to examination of those plans by Karen Arent and inspection in the field.

Insofar as the amended resolution is concerned, three changes are being made, and I'll remind you the first resolution contemplated this

1
2 possibility and the applicant's agreement in the
3 first resolution left room to amend the condition
4 to dovetail with Orange County Trust. The first
5 of those is we had forgotten to mention that the
6 approval is subject to the highway work permit by
7 the DOT, and I'll add that to the resolution.
8 Secondly, as we mentioned with Orange County
9 Trust, the final plans to be submitted are going
10 to need to include on the Sembler site plan all
11 of the joint improvements so that the site plan
12 submitted by Orange County Trust shows all of the
13 improvements, the site plan submitted by Sembler
14 for signature shows all of the improvements.
15 Further, the same requirement as we had with
16 Orange County Trust, and that is that the
17 coordination must occur and that the site work
18 has to be completed before there can be occupancy
19 of either structure. It's the same language.
20 Notwithstanding that, there is the opportunity
21 for the applicant to bond the improvements that
22 can't be completed due to the need to keep Key
23 Bank open until such time as the new bank branch
24 opens, and that can be handled by bonding at the
25 Town Board level.

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CHAIRMAN EWASUTYN: Would you like to add anything? For the record, your name.

MR. BYER: For the record, my name is Josh Byer, I'm with the Sembler Company. I just wanted to ask one other question regarding the amended resolution. It has to do with specific condition number 10 which is the statement regarding the future modification of the resolution. Given that Orange County Trust received their approval tonight, I'm wondering if that condition 10 can be removed?

MR. DONNELLY: We're going to issue a new resolution with the amended conditions from tonight and that condition will now be removed.

MR. BYER: Thank you.

CHAIRMAN EWASUTYN: The first action I'm going to move for tonight is approval of the amended resolution for the site plan for the proposed pharmacy and bank as discussed by Attorney Mike Donnelly.

MR. MENNERICH: So moved.

MR. O'DONNELL: Second.

CHAIRMAN EWASUTYN: I have a motion by Ken Mennerich. I have a second by Ed O'Donnell.

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2 Any discussion of the motion?
3 (No response.)
4 CHAIRMAN EWASUTYN: I'll move for a
5 roll call vote starting with Frank Galli.
6 MR. GALLI: Aye.
7 MR. BROWNE: Aye.
8 MR. MENNERICH: Aye.
9 MR. O'DONNELL: Aye.
10 MR. PROFACI: Aye.
11 CHAIRMAN EWASUTYN: Myself yes. So
12 carried.
13 Now I'll move for a motion to grant ARB
14 approval for the proposed pharmacy and bank.
15 MR. PROFACI: So moved.
16 MR. O'DONNELL: Second.
17 CHAIRMAN EWASUTYN: I have a motion by
18 Joe Profaci. I have a second by Ed O'Donnell.
19 Any discussion of the motion?
20 (No response.)
21 CHAIRMAN EWASUTYN: I'll move for a
22 roll call vote starting with Frank Galli.
23 MR. GALLI: Aye.
24 MR. BROWNE: Aye.
25 MR. MENNERICH: Aye.

PROPOSED PHARMACY AND BANK

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MR. O'DONNELL: Aye.

MR. PROFACI: Aye.

CHAIRMAN EWASUTYN: Myself yes. So
carried.

Thank you.

MR. O'BRIEN: Thank you.

(Time noted: 7:27 p.m.)

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

I, Michelle Conero, a Shorthand
Reporter and Notary Public within and for
the State of New York, do hereby certify
that I recorded stenographically the
proceedings herein at the time and place
noted in the heading hereof, and that the
foregoing is an accurate and complete
transcript of same to the best of my
knowledge and belief.

DATED: March 10, 2008

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

- - - - - X

In the Matter of

DRISCOLL SUBDIVISION
(2005-46)

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

- - - - - X

FINDINGS STATEMENT

Date: March 6, 2008
Time: 7:27 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

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

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

APPLICANT'S REPRESENTATIVE: ROSS WINGLOVITZ

- - - - - X

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

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CHAIRMAN EWASUTYN: The following item of business this evening is the Driscoll subdivision. It's here tonight for the Findings Statement. The project is located on Route 300 in an R-3 Zone. The applicant is proposing 107 single-family residential homes. It's being represented by Ross Winglovitz.

MR. WINGLOVITZ: Good evening. Ross Winglovitz from Engineering Properties. We submitted a draft of the scoping document I think back in the beginning of February.

MR. DONNELLY: Findings.

MR. WINGLOVITZ: What's that?

MR. DONNELLY: Findings Statement.

MR. WINGLOVITZ: Findings Statement.

I'm sorry.

MR. DONNELLY: You're going back a few years.

MR. WINGLOVITZ: I'm going backwards. I guess the last meeting we were here the F.E.I.S. was determined to be complete. I think you circulated as of last Friday so I don't think -- I meant to look up the timeframes before I left but I don't think we have enough time to

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finalize the Findings.

MR. DONNELLY: There's a mandatory ten-day timeframe.

MR. WINGLOVITZ: I was hoping to get any comments and have it worked up so that at the next meeting we could ask for it to be adopted along with the resolution for preliminary approval.

CHAIRMAN EWASUTYN: Let's talk about the changes that we discussed at our work session. Pat Hines.

MR. HINES: The document that Engineering Properties has submitted, we revised it and submitted our comments to Bryant's office as the keeper for that. The significant changes were as discussed at the last work session.

The location of the on-site rock crushing equipment. There's a significant amount of bedrock that's going to be removed for construction of the roadways. The applicant's wish to process that on site and use it for aggregate material on the roadways, that helps because the trucks then don't have to truck that excess material off site. The concerns were

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noise and blasting issues as well as the constant noise from the rock crusher. A plan has been submitted moving the rock processing equipment to the area of the detention ponds.

Maybe Ross, if you can indicate where the pond to is. Just above there to take advantage of the slight change in elevation and the more central location on the site.

A twenty-foot high berm to be constructed of on-site material is proposed to be placed on the upper west side of that in order to provide additional noise and screening from the Kroll development which is approximately 500 feet to the west. So there's a distance there. The change in elevation, that was incorporated. So we've addressed those issues in the Findings along with the dust control issue there.

Some of the other items we had were clean-up items. We had some wording changes and those changes have been submitted to Bryant's office so he can compile a complete document with all the other consultants' comments.

With the changes that we made and the changes I reviewed from the other consultants, I

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think the document is in pretty good shape.

CHAIRMAN EWASUTYN: Ken Wersted,
Traffic Consultant.

MR. WERSTED: Likewise we had some
minor changes in the transportation and traffic
sections. A little more substantial of them
include -- a couple are references to the traffic
study. It looked at the Driscoll subdivision and
the Polo subdivision projects both individually
and cumulatively. Improvements that are being
noted should also include a right-turn lane on
Gardnertown Road as shown in the concept plan
provided in the F.E.I.S. There were a couple
other locations relative to construction where
the construction entrance to Gardnertown road is
referenced to be closed. Between Bryant's office
and ours we've changed the language to say that's
not going to be closed but restricted from
construction traffic. It will still be open but
construction traffic will no longer be able to
use that. That was the bulk of my comments.

CHAIRMAN EWASUTYN: Karen Arent,
Landscape Architect.

MS. ARENT: The vegetation and habitat

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2 mitigation section should mention a minimum of
3 twelve inches of subsoil and a minimum of six
4 inches of topsoil shall be spread over all
5 disturbed areas in efforts to -- excuse me. A
6 minimum of six inches of topsoil shall be spread
7 over all disturbed areas. There should be a
8 minimum of twelve inches of subsoil plus a
9 minimum of six inches of topsoil to be spread
10 over those areas.

11 We spoke also about the recreational
12 facilities. I'll let Mike speak about that.

13 CHAIRMAN EWASUTYN: Mike, would you
14 take the opportunity now to discuss that?

15 MR. DONNELLY: I need to double check
16 the language. We went through several iterations
17 of it. I'm not sure the one that reached your
18 draft of the Findings was the one we agreed on.

19 MR. WINGLOVITZ: I think you're right.
20 This was issued before we finalized the language.

21 MR. DONNELLY: We'll double check that
22 and change that into conformance with what I've
23 suggested. That should be easy to do.

24 CHAIRMAN EWASUTYN: Bryant Cocks,
25 Planning Consultant.

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MR. COCKS: I received comments from the other consultants and I'm going to kind of put together a document.

The only other change I had that wasn't already discussed was the hours of operation of construction and the rock crusher. That is going to be from 8 a.m. to 5 p.m. The Town Code allows from 7 to 7 for construction activities. This isn't going to be on weekends or holidays. That was the only change that wasn't previously discussed.

CHAIRMAN EWASUTYN: Frank Galli?

MR. GALLI: No additional.

CHAIRMAN EWASUTYN: Cliff Browne?

MR. BROWNE: No.

CHAIRMAN EWASUTYN: Ken Mennerich?

MR. MENNERICH: No questions.

CHAIRMAN EWASUTYN: Ed O'Donnell?

MR. O'DONNELL: Just one more question.

I remember at the scoping session we had there were a whole bunch of folks that were from Kroll Acres that had concerns. I'm wondering who would I look to to ensure that their comments have all been addressed? Is that your job, Ross?

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MR. WINGLOVITZ: They are all in the F.E.I.S.

MR. O'DONNELL: Right. We have a checklist of what the concerns were that were voiced at that scoping session. To ensure they're all addressed in this Findings Statement --

MR. DONNELLY: I think that's our job as lead agency. The F.E.I.S. document, which you've already approved, had a lengthy discussion of those. I believe that you're satisfied that the comments have been addressed.

MR. HINES: It actually had the transcript of that evening as an attachment and each of the items that were addressed in the F.E.I.S. That's what the F.E.I.S. was for.

One of the significant changes was the concerns we heard about sewer issues in the Kroll development. In working with the applicant and the town engineer, provisions have been made for two sanitary sewer lines to be run to the end of the property lines which would facilitate connection of the Kroll development to the extended sewer.

MR. O'DONNELL: It sounds like the time

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for those people to go to a Town Board meeting.

MR. HINES: I think that was the recommendation during the public hearing.

MRS. GREEN: They have.

CHAIRMAN EWASUTYN: Joe Profaci?

MR. PROFACI: I have nothing additional.

CHAIRMAN EWASUTYN: On the F E.I.S. you have a date of distribution as being February 29th. Is that correct?

MR. WINGLOVITZ: The date of distribution was last Friday, which was the 29th.

CHAIRMAN EWASUTYN: The ten-day time period is -- all right. What you're going to do then is make the necessary corrections to the --

MR. WINGLOVITZ: Procedurally, Bryant I guess has the best copy to work on. He has a digital copy of it.

MR. HINES: I don't know, Ross, you need to. I think our copy is what we'll go with.

MR. DONNELLY: We'll send it to you so you have it.

MR. GALLI: I have one more question. Since the last meeting you were going to pursue

DRISCOLL SUBDIVISION

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2 Mr. and Mrs. Kroll to see if you could get any
3 further with them.
4 MR. WINGLOVITZ: I made three phone
5 calls and have had no response.
6 CHAIRMAN EWASUTYN: Dina, our next
7 Planning Board meeting is when?
8 MS. HAINES: March 20th.
9 CHAIRMAN EWASUTYN: I'll move for a
10 motion to set the date of March 20th under Board
11 Business for consideration of adopting the
12 Findings Statement for the Driscoll subdivision.
13 MR. MENNERICH: So moved.
14 MR. O'DONNELL: Second.
15 CHAIRMAN EWASUTYN: I have a motion by
16 Ken Mennerich. I have a second by Ed O'Donnell.
17 Any discussion of the motion?
18 (No response.)
19 CHAIRMAN EWASUTYN: I'll move for a
20 roll call vote starting with Frank Galli.
21 MR. GALLI: Aye.
22 MR. BROWNE: Aye.
23 MR. MENNERICH: Aye.
24 MR. O'DONNELL: Aye.
25 MR. PROFACI: Aye.

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CHAIRMAN EWASUTYN: Myself yes. So carried.

Dina, would you mark our calendar for that, please.

MS. HAINES: Yes.

MR. WINGLOVITZ: When we submitted our application we also submitted a complete set of preliminary plans. We were also hoping to get a motion for preliminary approval. They were prepared to that level of detail.

MR. HINES: I think that procedurally issues are handled under Board Business. Those technical issues are typically not.

CHAIRMAN EWASUTYN: We'll schedule that phase of the site plan review for our meeting on the -- what's our meeting in April?

MS. HAINES: The 3rd.

CHAIRMAN EWASUTYN: We'll set that.

Dina, would you mark our calendar and set that for the 3rd of April?

MR. WINGLOVITZ: Thank you.

(Time noted: 7:37 p.m.)

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

I, Michelle Conero, a Shorthand Reporter and Notary Public within and for the State of New York, do hereby certify that I recorded stenographically the proceedings herein at the time and place noted in the heading hereof, and that the foregoing is an accurate and complete transcript of same to the best of my knowledge and belief.

DATED: March 10, 2008

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

----- X
In the Matter of

CENTRAL VALLEY REAL ESTATE
(2007-14)
Stony Brook Lane
Section 97; Block 1; Lot 55
B Zone

----- X

SITE PLAN & ARCHITECTURAL REVIEW

Date: March 6, 2008
Time: 7:38 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

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

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

APPLICANT'S REPRESENTATIVE: LOUIS T. POWELL

----- X

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

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CHAIRMAN EWASUTYN: Our following item of business this evening is Central Valley Real Estate. It's here this evening for site plan approval and ARB approval. It's located on Stony Brook Lane in a B Zone and it's being represented by Lou Powell.

MR. POWELL: Good evening, Board. My name is Lou Powell, I'm from Eustance & Horowitz, we're the engineers for the project. This is a proposed office building at the end of Stony Brook Court. It's the last lot in this subdivision to be developed.

The building is a 4,615 square foot building which would be served by Town water and Town sewer.

The required number of parking spaces is twenty-four and we've provided twenty-four. I think that's about it.

Oh, I would mention one thing. This is a one-story building. There is no basement in this building. I want to make that clear. I think we need to put a note on the plan stating there is none because the issue seems to keep coming back up.

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2 Since we were here last we met with the
3 highway superintendent and town engineer in
4 reference to this island, this landscaped island,
5 because there was an issue that the fire district
6 had raised about access to this proposed building
7 after construction. I did not receive any
8 correspondence from Jim or any phone calls but
9 based on the consultants' review letters
10 apparently the decision has been made to remove
11 that island. We will do that as part of the
12 construction of the building and bring that road
13 up to Town specs for whatever we remove there.

14 I guess there are some other -- there
15 were some other concerns about fire apparatus or
16 emergency vehicles turning around in here. I
17 don't know what size fire vehicles they're
18 talking about. When we met with Frank he said
19 they would probably just pull up there and then
20 back out of it, they weren't going to turn the
21 fire trucks around. I would think ambulances, if
22 they were called to the site, could get up in
23 here and turn around and get out.

24 I do have the consultants' review
25 letters. There are some issues to resolve.

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Apparently we did have a sprinkler -- a fire hydrant to sprinkler water in here. We were under the impression with a 5,000 square foot building it wasn't required. Apparently the Town has a code that anything over 2,500 square foot requires that. So we will put that -- those lines back on there.

There is a small retaining wall in the easterly end of this parking lot. It's three foot high at the corner and then goes to zero both ways. I don't know whether that requires a guardrail or not. At one place in the Code it says if it's over four foot high you need it. Pat made reference to it as being required. If it is we will put that detail on there. We need to clarify that.

MR. HINES: The reason being that the retaining wall is three feet high and then there's thirty feet of grade difference between the other side of the retaining wall and the Quassaick Creek there. If you go off that retaining wall you're probably really going off some thirty-three feet of elevation. So I would recommend that it be installed there.

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MR. POWELL: Okay.

CHAIRMAN EWASUTYN: We'll need to see a cut sheet on what they are looking to construct on top of it.

MR. POWELL: We'll need a detail of the retaining wall. Yes.

MR. HINES: You have the retaining wall detail. We're looking for the guide rail detail.

MR. POWELL: Just the guardrail detail. Correct.

Let's see. Bryant raised the question about the reduced -- we do show -- the landscape architect Esposito did show on the plan the base for the lights. There is no detail for the lights. I do have -- the lights will match what is existing in the park. I do have the specs for those. The lamp is called out on his plans but there is no detail. If you want the detail onto it we can do it or if the specs suffice that we'll be glad to give them to the consultants.

MR. COCKS: Usually we have the detail on the plan sheet.

CHAIRMAN EWASUTYN: You reference the fact that it's an antique street light but,

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correct, you don't have it detailed on the sheet
itself.

MR. POWELL: They can put that on the
plan. We have that. We can provide that also to
the consultant.

The other thing is in Karen's letter
there is the question of adding the tree
preservation notes to the site plan. If I put a
note on here that those other plans are a part of
the set, does that suffice or would you like me
to put the notes on?

MS. ARENT: I would rather the tree
preservation notes be put on the grading plan
because the excavating contractor is not going to
have the landscape plan when he's working in the
field. He has to be aware that we're trying to
save trees. The landscape plan is -- people
don't even look at that until the very end of the
project. We need to get the tree preservation
notes on the drawings that they are going to be
using in the field when they're building and
excavating.

MR. POWELL: All right. So I will
contact you about which notes you need there.

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MS. ARENT: Okay.

MR. POWELL: You made a reference to the lighting and landscape plan, that the proposed lighting appears to exceed five foot candles. On the lighting plan it says the maximum of E whatever it is.

MS. ARENT: Right. They overlap and that's -- like on the photometric diagram they overlap so it could be more being that it's two times if they're overlapping. Usually you can have a foot candle analysis done by the lighting company and they don't -- they usually don't charge. That's what I was looking for, a foot candle analysis to make sure that the lighting doesn't exceed five. When I looked at the lighting plan and you look at the photometric diagram you can see there's a lot of overlap. When I calculate the overlap it seems like they do exceed five foot candles.

MR. POWELL: I'll look.

MS. ARENT: It's the overall. It's the combination of light. Not just one light being five foot candles but the foot candle in the parking lot looks like it could be six or seven

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or eight foot candles because of the overlap of the lights.

MR. POWELL: We'll have Esposito --

MS. ARENT: If you could have the lighting company provide that analysis. You might end up needing fewer lights.

MR. POWELL: We'll have him check that then.

Okay. That's all I have.

CHAIRMAN EWASUTYN: Jerry Canfield, do you have any comments at this point?

MR. CANFIELD: Just perhaps a clarification. Mr. Powell, did you indicate that you researched the Municipal Code with respect to the sprinklering of the building?

MR. POWELL: I didn't do it. The architect I guess thought that because it was under 5,000 square foot it wasn't required but apparently there is a local code that requires it.

MR. CANFIELD: Yes. That's what I'm getting to. Town of Newburgh has more restrictive fire protection when it comes to sprinkler systems.

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MR. POWELL: I think the architect was aware of that.

MR. CANFIELD: He may want to take a look at that to see that it complies.

Also I have another question. That section of the Code pertains to -- the exception only applies to office occupancy, okay. Is it the proposal of this building that it is only office occupancy, and does that mean that they will further restrict the use of this building to just office or will there be a mix of retail? If so, that changes the intent of the law.

MR. DONNELLY: I think the proposal is office only.

MR. POWELL: I think it's office only. They are going to sprinkler the building because it's a --

MR. CANFIELD: Okay. I'm sorry. I misunderstood.

MR. POWELL: We originally thought because of the 5,000 square foot rule it didn't have to be because it was 4,600. The architect did in fact check the Code and there is a local code that says 2,500. So we are going to put

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the --

MR. CANFIELD: It changes the size of the service.

MR. POWELL: We'll put the lines back so it conforms to the Town guidelines.

MR. CANFIELD: One other question perhaps is the basement --

MR. POWELL: There is no basement. There is no basement.

MR. CANFIELD: There is no.

MR. DONNELLY: There will not be, and he's going to put a map note to that effect.

MR. POWELL: Right. Because of the -- they're going to fill the -- it will be a slab on grade for just one floor. There is no basement there.

MR. CANFIELD: That's going to be filled. Okay. I have no further questions.

CHAIRMAN EWASUTYN: Thank you. Pat Hines.

MR. HINES: My first comment has to do with the Town Code and the sprinkler requirements. That was just addressed.

I did have a conversation with Jim

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2 Osborne, the town engineer, and it was determined
3 that that island, which is existing in the
4 cul-de-sac of Stony Brook Court, which is a Town
5 road in that area, is to be removed and needs to
6 be labeled as such. Details for reconstruction
7 of that cul-de-sac should be added to the plans.

8 There's a letter from the Goodwill Fire
9 District, a couple of the items which appear to
10 be outstanding, one of which is the island and
11 the other one is comment 3 that says once on site
12 there isn't sufficient room to turn emergency
13 vehicles around. I don't know that's been
14 addressed anywhere on the plans or if we have an
15 updated letter from the fire district. This one
16 is dated September 5th of 2007. I think that
17 item is still outstanding.

18 We did receive a flow confirmation
19 letter from the City of Newburgh.

20 I did suggest guiderails at the
21 retaining wall, there's a parking area, both
22 because of the height of the retaining wall and
23 the grades beyond.

24 Another clean-up item is where the
25 retaining wall elevations are shown at 300

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elevation, they should be at 200.

With the confirmation that there is no basement, my last comment regarding the basement is not required. There's going to be some extensive construction costs for building that without a basement. You're doing all the work and filling it back in.

MR. CARDAROPOLI: I'm Nick Cardaropoli, the owner and the builder. I think it brought in too many other variables. You know, what's the use of it. It would change the parking requirements, access to it. We'll probably do like a ledge, you know, and fill it and pour the slab.

MR. HINES: We're going to need a note it won't have a basement.

MR. CARDAROPOLI: We were talking about that.

MR. POWELL: We're going to put the note.

CHAIRMAN EWASUTYN: Thank you. Bryant Cocks, Planning Consultant.

MR. COCKS: The applicant has addressed our comments regarding the bulk table, the

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parking calculations and they've added the surveyor's seal and signature.

We discussed the lighting detail.

We have received the City of Newburgh sewer flow acceptance letter.

We discussed the fire district letter.

This is going to be on for architectural review. The only drawing I had was just a small drawing of the building with no materials, specific color types or any of the signage details, so that's going to have to be reviewed.

CHAIRMAN EWASUTYN: Karen Arent, Landscape Architect.

MS. ARENT: The memorandum indicated that a dumpster enclosure be changed from vinyl to wood but the materials aren't labeled on the drawings so I wasn't sure what kind of wood and whether or not what is the preferred alternative. It depends on the type of wood that you're selecting.

MR. POWELL: We have a plan of that.

MS. ARENT: Okay. My comment is just what type of wood. If it's pressure treated,

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they end up looking bad quickly. It's important to choose a wood that's long lasting or go back to your vinyl alternative.

CHAIRMAN EWASUTYN: What is the material that you're proposing?

MR. CARDAROPOLI: Actually it's called masonry, and we've done it on other buildings and it's actually quite nice. It's basically a split-faced block, poured footing, cross footing. Split-faced block with a cap and then we do a nice vinyl gate like that.

MS. ARENT: That's perfect. That's not on the drawing so the drawing needs to change.

MR. POWELL: We had put just a generic thing on it.

MS. ARENT: If you take the detail showing the wood fencing off the drawing. This is the preferred alternative. It won't get damaged by the dumpster and it will stay nice.

MR. CARDAROPOLI: We usually do a real earth tone type color.

MS. ARENT: That's a very good alternative.

CHAIRMAN EWASUTYN: Comments from Board

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2 Members on the site plan. Frank Galli?
3 MR. GALLI: Air conditioning and
4 heating units are on the ground and they're all
5 landscaped and covered?
6 MR. POWELL: Yeah. They are on the
7 ground and they show on the landscape plans.
8 MR. HINES: They're on either side of
9 the building.
10 MR. POWELL: On sheet 2 of 3. They are
11 on either side of the building.
12 MR. GALLI: Okay.
13 MR. POWELL: Actually, the location is
14 shown on the site plan but we don't show the
15 landscaping. The landscaping plan does show it.
16 CHAIRMAN EWASUTYN: Cliff Browne?
17 MR. BROWNE: No.
18 CHAIRMAN EWASUTYN: Ed O'Donnell?
19 MR. O'DONNELL: How come you skipped --
20 CHAIRMAN EWASUTYN: I'm sorry. Ken
21 Mennerich?
22 MR. MENNERICH: I have no questions.
23 CHAIRMAN EWASUTYN: He raised his
24 glasses.
25 MR. O'DONNELL: I don't have any

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comments.

CHAIRMAN EWASUTYN: Joe Profaci?

MR. PROFACI: No comment.

MR. DONNELLY: John, I noticed this project appears to be within 500 feet of the City of Newburgh boundary line. That would require a referral under 239-M to the Orange County Planning Department and under 239-M,N to the City of Newburgh. I don't know if that was done yet.

CHAIRMAN EWASUTYN: Bryant Cocks?

MR. COCKS: I believe we did circulate this for lead agency. Let me make sure.

MR. DONNELLY: I think we did lead agency in August of 2007 but did we send a general municipal law referral to Orange County Planning Department and to the City of Newburgh?

MR. COCKS: I believe we did. We got letters back from the fire company and --

MR. DONNELLY: If we didn't we need to. That's all.

CHAIRMAN EWASUTYN: Bryant, your records state? I see on the 30th -- on August 30th we declared a negative declaration, we waived the public hearing. I have no

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footnotes as far as circulating to the Orange County Planning Department under 239-M.

MR. COCKS: It doesn't look like we did.

MR. DONNELLY: It has to go to the City under 239-M,N as well.

CHAIRMAN EWASUTYN: Actually, we can't take action tonight on the site plan. What you'll need to do is provide plans to Bryant Cocks so he can circulate to both the Orange County Planning Department and to the City of Newburgh.

MR. POWELL: How many sets do you need, Bryant?

MR. COCKS: Just two.

MR. POWELL: Two.

CHAIRMAN EWASUTYN: I think at this point it would be good to add all the details that we discussed that we don't have on the plans before we circulate that.

MR. POWELL: Okay. We'll make those revisions.

CHAIRMAN EWASUTYN: We won't be able to take action on ARB also until we hear back from

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the municipality. We'll take the opportunity as Bryant said.

Your presentation didn't seem to show what you have with you tonight so let's begin discussing the materials.

MR. CARDAROPOLI: Let me show you the larger color rendering first. Can you guys see this if I put it here?

MR. POWELL: I'll be the --

MR. CARDAROPOLI: Hold it. Okay.

Basically we've matched -- the brick that was used in Stony Brook Court is no longer made but with Federal Block's assistance we did a good job at matching the brick. It's a real tarring brick. Essentially the building is going to have brick on three sides. As you pull up this side here this is what you will see. This is all brick, the front is brick and the other side. A brick with a little bit of stone right in the center kind of as a little accent. We thought it might be kind of nice to go with a cultured stone. A little bit of like maybe a castle look with like a pretty tooled joint. It's just an accent over the entrances, and there's two

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separate entrances. So essentially it's brick and stone on the front, brick on the two sides, and then on the rear we were going to go with vinyl siding on the part that's going to be wood frame and then there will be concrete exposed as well.

Let's see. We have obviously the roof shingle which is the prominent part of this hip roof with two reversed gables. We have a little metal accent which is kind of a nice detail to do. It's a standing seam metal kind of like a starter and then the shingle up to it, and that will be like in an antique bronze right here. We have all the exterior trim which will be like -- it's a composite. We do our fascia, our soffits. That's all going to be in like a dark accent color, earth tone.

Our glass, which is pretty neat, is a real kind of a cool -- it's a real green glass. It really filters -- it's like twenty percent reduction in energy costs, especially in the cooling time of the summer, and gives it kind of a nice look here. We are going to do some corners glass to glass. The glass is going to

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wrap around which I think is going to be a nice detail. I always wanted to do it on a building and I picked this one to do it on. That's our glass, our glazing.

Let's see. This is kind of neat. Just to have a little bit of communal space -- we have our entrances -- we're going to have a paver rotunda just to give some people -- and like two granite benches. Say it's an office building and people want to come out, hopefully not smoke a cigarette but maybe have a sandwich or something.

CHAIRMAN EWASUTYN: I won't ask you for dispensers for the cigarettes.

MR. CARDAROPOLI: Right. We try to say no smoking on the premises because it's just a -- you know, you get butts everywhere. Kind of a neat little spot there. Obviously our entrances. We were trying to work that into the plan.

Here you can see the AC units. Steve Esposito did the landscaping both at the other end of the building. This kind of shows the back but not exactly.

Karen, we're going to revise this. I saw your comment. The architect didn't have the

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2 exact grade in the back. He has it now
3 electronically. We're obviously going to step
4 down the side. Our brick ledge will always start
5 at grade so the whole -- we'll drop it down. It
6 will be a step footing. So we'll step the brick
7 down so when you pull up this is all going to be
8 brick. It will step down and we have the
9 landscaping going in there. On the back side
10 obviously there's going to be quite a bit of
11 concrete showing so it will be vinyl siding down
12 to the top of the concrete.

13 That's about it.

14 CHAIRMAN EWASUTYN: Any comments from
15 our consultants? Karen?

16 MS. ARENT: He addressed my concern
17 about the building showing flat but it's really
18 going down to the whole story. So with the
19 stepping of the brick, that's going to look very
20 nice.

21 In the back the concrete can be
22 exposed. There's no way you can see it from
23 anywhere. That will be fine.

24 With the architectural drawings, just
25 so that we make sure that what's built is what

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2 you're showing us tonight, we just need all of
3 the materials that you showed us labeled on your
4 drawing --
5 MR. CARDAROPOLI: Okay.
6 MS. ARENT: -- including the colors
7 and, you know, the style and the manufacturer.
8 MR. CARDAROPOLI: Okay. Sure.
9 MS. ARENT: And I think that is it. If
10 you could submit a full scale drawing just so
11 that you can read the material.
12 MR. CARDAROPOLI: Sure. Just the
13 exterior?
14 MS. ARENT: Just use those and just
15 make an arrow and point and just say what the
16 materials are.
17 MR. CARDAROPOLI: No problem.
18 CHAIRMAN EWASUTYN: Have they provided
19 a landscape cost estimate?
20 MS. ARENT: They did and it's accurate.
21 It's \$19,272.
22 CHAIRMAN EWASUTYN: Frank Galli?
23 MR. GALLI: No additional comment.
24 CHAIRMAN EWASUTYN: Cliff Browne?
25 MR. BROWNE: I would like to see those

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2 renderings redone with the actual colors of the
3 materials because I have a hard time visualizing
4 what you showed me to what we'll end up seeing.
5 MR. CARDAROPOLI: Sure. No problem.
6 If everybody likes these colors we can take these
7 and actually put them on.
8 MS. ARENT: That's fine.
9 MR. CARDAROPOLI: Okay. Sure.
10 CHAIRMAN EWASUTYN: Ken Mennerich?
11 MR. MENNERICH: It looks like it's
12 going to be very nice. I have a question about
13 the green glass. Is it a reflective glass?
14 MR. CARDAROPOLI: No. It's just --
15 it's not reflective at all. It's not like
16 mirrored or anything like that. It basically just
17 has that bluish-green tint to it.
18 MR. MENNERICH: Okay. Do you notice
19 that color when you're standing on the inside
20 looking out?
21 MR. CARDAROPOLI: Um -- every day is a
22 sunny day. I don't think you notice it as much.
23 I think it's more of an exterior thing.
24 CHAIRMAN EWASUTYN: Joe Profaci?
25 You don't have a sense of humor any

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2 more. I'm sorry. Ed O'Donnell?
3 MR. O'DONNELL: Would you let me go
4 anyway?
5 MR. PROFACI: Sure.
6 MR. O'DONNELL: Good job.
7 CHAIRMAN EWASUTYN: Are you okay?
8 MR. O'DONNELL: I'm fine.
9 CHAIRMAN EWASUTYN: Any comments?
10 MR. O'DONNELL: I said nice job, Nick.
11 And Lou. Excuse me.
12 MR. PROFACI: Just to clarify, is it
13 four units?
14 MR. CARDAROPOLI: Well, I think it's
15 going to be two units. I wanted to keep the
16 flexibility because with the economy sometimes
17 you get a lot of downsizing of actual tenants. I
18 think it sets up well. They're getting to be
19 small spaces if it's four tenants. I think we're
20 going to reduce it to two tenants.
21 MR. PROFACI: So this is being built to
22 be rented?
23 MR. CARDAROPOLI: Yeah, it's to be
24 rented.
25 MR. PROFACI: Okay. Thank you.

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CHAIRMAN EWASUTYN: The County has a thirty-day timeframe to respond when we circulate. Once we receive from Bryant correspondence that he's actually sent the plans out to the County and to the City we'll begin thinking of the next agenda to place you on. If you would maybe write us or e-mail us when you think the clock is beginning to start, we'll then begin to set aside a date.

MR. POWELL: When I send the plans to Bryant I will send a copy of the transmittal to you.

CHAIRMAN EWASUTYN: And Bryant, normally what he does too is he sends us a copy of the notice that he's sending to the County.

MR. POWELL: I tried to send you a copy of everything --

CHAIRMAN EWASUTYN: I appreciate that.

MR. POWELL: -- that comes in or goes out so you're aware of what's going on. You've requested that and I think that's a good idea. When we get those confirmations from the City and that kind of stuff it at least let's the Board know what's happening.

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CHAIRMAN EWASUTYN: You had said earlier in your presentation you met with Frank out in the field and he said it was fine for backing vehicles out. When you said Frank, who is Frank?

MR. POWELL: Frank Valdina. He is the fire -- whatever he is. He's the head of the fire district or whatever his title is.

MS. GREENE: Commissioner.

MR. GREENE: He's chairman of the board.

CHAIRMAN EWASUTYN: I think as Pat Hines said earlier, we have some notes in the file that date back to September.

MR. POWELL: I will contact him and tell him what's going on and find out just what he wants to do about this, the question about turning the apparatus around. He said in the field that they would just go in there and then they would back out afterwards. I'll just have to confirm.

MR. HINES: He has a September 5th letter that if you don't have I can get you. He wrote a letter dated September 5th. It has those

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concerns in there.

MR. POWELL: I have those. We met out there after that.

MR. HINES: All right. We need a follow-up letter.

MR. POWELL: That's when this issue came up about the landscaped island and that's when I got a hold of the Town and they said -- you know, they took -- what happened here is they took the road over originally down here part way and then somehow they got this piece and this was already there. The highway superintendent is just as happy to get rid of that because he has a problem plowing around that.

CHAIRMAN EWASUTYN: It's tight.

MR. HINES: I met with them and the highway superintendent and Jim Osborne indicated that should go.

CHAIRMAN EWASUTYN: Thank you for your time.

MR. POWELL: Thank you very much.

MR. CARDAROPOLI: Thank you.

(Time noted: 8:06 p.m.)

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

I, Michelle Conero, a Shorthand Reporter and Notary Public within and for the State of New York, do hereby certify that I recorded stenographically the proceedings herein at the time and place noted in the heading hereof, and that the foregoing is an accurate and complete transcript of same to the best of my knowledge and belief.

DATED: March 10, 2008

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

----- X
In the Matter of

EXTENSION OF BUILDING BLOCKS CHILDCARE CENTER
(2006-56)
248 Lakeside Road
Section 51; Block 10; Lot 11.1
B Zone

----- X

AMENDED SITE PLAN

Date: March 6, 2008
Time: 8:06 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

- BOARD MEMBERS: JOHN P. EWASUTYN, Chairman
- FRANK S. GALLI
- CLIFFORD C. BROWNE
- KENNETH MENNERICH
- ALSO PRESENT: JOSEPH E. PROFACI
- DINA HAINES
- MICHAEL H. DONNELLY, ESQ.
- BRYANT COCKS
- PATRICK HINES
- KAREN ARENT
- GERALD CANFIELD

APPLICANT'S REPRESENTATIVE: STEPHEN J. GABA

----- X

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

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CHAIRMAN EWASUTYN: The following item of business this evening is the extension of Building Blocks Childcare Center. It's here to discuss the amended site plan. It's located at 248 Lakeside Road in a B Zone. It's being represented by Stephen Gaba.

MR. GABA: Good evening. I'm Stephen Gaba, I represent the applicant, Building Blocks. With me here tonight is Greg Shaw from Shaw Engineering along with Marie Marino and Vincent Marino, the owners of Building Blocks.

First I'd like to thank the Board for it's courtesies in allowing us to be added to the agenda. I know this is a somewhat unusual procedure we find ourselves in. I'll try to be brief with my remarks.

As far as the project itself, it's simple enough. In 1996 a use variance was granted to Building Blocks, which was the contract purchaser of the old Dan Leghorn Fire Department property. The property was improved at that time by two buildings, a main building closer to the intersection of 17K and Lakeside Road and kind of a poor deeted metal garage a

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2 little bit further to the north on the property.
3 When the use variance was granted the applicant
4 came back to this Board and obtained site plan
5 approval. The site plan approval merely
6 indicated existing garage to remain. The use of
7 daycare center, which is what the variance was
8 granted for, was established chiefly -- it
9 extended the entire property but the children
10 themselves were in the main building in front.
11 That's how things remained for a short time. The
12 garage was used for storage in regard to the
13 daycare center. As the Board may be aware, under
14 New York State regulations if there's more than
15 one building on property dedicated to a daycare
16 center it can be used only for daycare center
17 purposes. So the garage was at the time used in
18 the course of the daycare center. Time went by,
19 and as you may be aware there's only a handful of
20 childcare centers in the Town of Newburgh, five,
21 maybe six, and Building Blocks did fairly well.
22 They fixed up the building in the front very
23 nicely with the gingerbread and the business did
24 very well. They decided that they needed more
25 room so what they did was they applied for a

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2 building permit to change the garage into office
3 and storage space and made renovations and made
4 the building match the building in the front.
5 They obtained a CO for that. That was about
6 2005. About that time, because they were doing
7 so well, and if you ask anybody Building Blocks
8 is one of the quality childcare services in the
9 area. I should know, my kids attended. They
10 decided it would be a good idea to make more room
11 in the main building by moving one of the groups
12 of children into the 2,576 square foot now office
13 building that's out there. They were getting
14 ready to come in to this Board and seek amended
15 site plan approval on it when they were rather
16 hastened because they made a mistake, an innocent
17 mistake but nevertheless a mistake. They have a
18 summer camp which they run at the property. It
19 was a very popular summer camp. From time to
20 time they would have the children, before they
21 went out on their morning excursions, congregate
22 at the outbuilding. On inspection the Town very
23 rightly came in and said hey, you can't have the
24 children in that building, it's approved for
25 storage space and office space. If you want to

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2 have people in you have to sprinkler it. We
3 stopped doing that and then they came to this
4 Board and applied for amended site plan approval.
5 The application at that time was to move the
6 fourth year group, the four year olds, out of the
7 main building and into the office building, now
8 an outbuilding for the main use. In addition to
9 that they wanted to run the summer camp out of
10 that building. So it wasn't just pre-schoolers,
11 it was pre-schoolers and sometimes summer as
12 well. They applied to this Board and made two
13 mistakes. At least two mistakes. The first one
14 was that the applicant was laboring under the
15 misconception that when you're granted a use
16 variance your property becomes a legal
17 nonconforming use. That's not the case. Use
18 variance is tantamount to the zone change. When
19 you get the use variance your property becomes a
20 legal conforming use subject to the bulk
21 requirements in whatever district it is that the
22 use is permitted. So when they applied to this
23 Board the first thing they said was we need a
24 referral to the Zoning Board to expand our use,
25 meaning what they thought was a legal

EXTENSION OF BUILDING BLOCKS CHILDCARE CENTER

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2 nonconforming use. The other mistake they made is
3 instead of referring to it as simply moving one
4 group of students, the four year olds in
5 particular, from the main building into the
6 garage building they said we want to establish a
7 classroom in the building. Of course they didn't
8 want to establish a classroom in the building but
9 informally they referred to their one year olds
10 and two years olds, three year olds as their
11 first year classes. So they were talking one
12 thing, they had one meaning in mind and of course
13 to this Board it looked like something else all
14 together. Classroom, what are you doing, it's an
15 educational use. So they got a referral to the
16 Zoning Board. When they went to the Zoning Board
17 they didn't apply for an interpretation because
18 they were still laboring under the misconception
19 they needed a use variance. Their application to
20 the Zoning Board was solely for a use variance.
21 That's all they asked for. Far be it -- I'm not
22 criticizing the Zoning Board. I can stand here
23 and tell you they decided it wrongly and you can
24 say maybe, maybe not. We're the Planning Board,
25 what do you want us to do about it.

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2 Just by way of putting on the record
3 what happened there, let me briefly explain. I
4 promise I'll be short. They walked in to the
5 Zoning Board, and I didn't represent them, it was
6 just from reading the record, and for whatever
7 reason they didn't make a 239-M referral to the
8 County. It appears that the Zoning Board was
9 under the impression, and you can read the
10 minutes yourself and draw your own conclusions,
11 the request was for a variance to allow the
12 daycare use to be put into the garage. Of course
13 you didn't need a variance for that. Once you
14 got the use variance you can build a whole new
15 building on the property as long as it meets the
16 bulk requirements. It looks like that's what
17 they thought, there was a request for a use
18 variance to enlarge a nonconforming use to go
19 into the garage. How they got off on that
20 tangent I don't know but that's the way it went
21 down. They got to the end and they didn't adopt
22 the findings. They didn't adopt a resolution.
23 There's their vote on the minutes which as best I
24 can make out somebody read the referral from this
25 Board saying hey, can they put a classroom in

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2 that building and they said no. Expansion of a
3 nonconforming use and they said no. I don't want
4 to guess. I would suspect it had something to do
5 with not submitting the dollars and cents proof
6 you would need. I don't know. Whatever it was
7 it was an irregular proceeding.

8 So after that they said well, what can
9 we do in regard to this application. We came up
10 with two ideas. To come back to this Board.
11 We're not going to ask you to refer the exact
12 same thing to the Zoning Board. We know you
13 can't do that. We're not going to ask you to
14 ignore the Zoning Board's decision. We have two
15 ideas that you might be able to consider.

16 The first one is if the problem is that
17 the first time around we were seeking a classroom
18 use for the outbuilding, let us amend our
19 application. When we apply to this Board we'll
20 not seek a classroom use, we'll seek purely a
21 daycare use. The use will consist of moving the
22 third-year students to that building, not the
23 fourth-year students, and there will be no use of
24 the building for the summer camp. Any children
25 who are above -- school age or higher will have

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2 to use the main building or will do what they did
3 in the past but not use that building. I think
4 if we take it out of that classroom use and we
5 ask this Board purely for a daycare use, you can
6 proceed to process the application in it's
7 amended form without having to send us back to
8 the Zoning Board.

9 If you're uncomfortable with that, the
10 second thing I would suggest is if we change the
11 application in that respect so that it's
12 different from what we submitted to you to begin
13 with and what you referred over to the Zoning
14 Board and we make it clear that we're not seeking
15 a classroom use, maybe you could give us a second
16 referral to the Board but on this different
17 altered application and ask them for an
18 interpretation that this altered use, this non-
19 classroom use would be something we could
20 establish in the garage. So those are our --
21 we're asking the Board for either one.

22 CHAIRMAN EWASUTYN: Mike, can you give
23 us an interpretation of what was presented this
24 evening and the position that the Board takes?

25 MR. DONNELLY: We discussed this at

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2 work session and I had given you a letter, and
3 I've given a copy of that to Steve. I think the
4 factual recitation that Steve has outlined is, as
5 far as I understand it, generally accurate. This
6 is one of those matters where the Zoning Board
7 did not issue it's own discrete decision and we
8 have only the minutes of their meeting of
9 February 2007. We will remedy that by entering
10 that as the decision, but that's I think in part
11 what the applicant has been waiting for, for that
12 decision to come down.

13 I think that we need to understand one
14 issue and that is what was -- let me explain it a
15 different way. Under 274-A of the Town Law, when
16 an applicant appears before you with either a
17 site plan or subdivision application that does
18 not comply with the bulk table requirements,
19 setback and the like, you have the authority --
20 it doesn't really read this way but you have the
21 authority to refer that to the Zoning Board for
22 consideration of an area variance without the
23 need of the applicant going into the building
24 inspector's office, asking for a building permit
25 for something he's not allowed to have, get

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2 turned down and then appeal to the Zoning Board.
3 There's a relatively new amendment to the Town
4 Law, maybe eight or ten years old, that did away
5 with the need to go through that exercise. That
6 was not the nature -- that is permitted for area
7 variance issues only. The referral that you made
8 back in January of 2007 was not a referral under
9 274-A. What you were confronted with, and Steve
10 has accurately portrayed it, was an existing use
11 variance for a daycare center and a proposal to
12 carry on a classroom use. You thought it
13 appropriate at that time to seek clarification
14 from the Zoning Board as to whether or not the
15 classroom use was something that was permitted by
16 the use variance that was granted for a daycare
17 center. That was the issue that was sent to the
18 Zoning Board.

19 I think it is a fair reading of the
20 minutes of that proceeding to say that the
21 primary concentration of the Zoning Board was on
22 the can any use be carried out in the accessory
23 building rather than the issue of may a classroom
24 use be included within the daycare center use
25 variance. However, in their ruling portion,

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2 which I think is what binds you, they were not at
3 all unclear in what they said. They said that
4 the use may not be carried out in that building,
5 and said even if it was a use that came within
6 the protection of the original use variance. And
7 number two -- that was the first request that you
8 asked of them. The second one is you asked
9 whether they would consider expanding the
10 variance to include the use and they said,
11 although it seemed to be referring to the
12 accessory building more than the classroom, that
13 they were not inclined to extend or enlarge the
14 grant of the use variance. I don't think there's
15 any further need for clarification.

16 It seems to me that if the applicant
17 wishes to have a second chance at the Zoning
18 Board decision to clarify it, they can ask for
19 that. It may take a unanimous vote of that board
20 to grant it. Or, if he wants to change the
21 application so as to now apply for a daycare
22 center use rather than a classroom use, I think
23 they can go to the code compliance department, be
24 turned down and have, I would think, an appeal as
25 of right for the Zoning Board to consider that

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use, and that is the procedure.

The third alternative is if the applicant believes the Zoning Board was incorrect in it's decision, to test that decision in the courts. I'm not inviting that litigation. I would be hopeful that conceivably through one of the other two mechanisms the applicant would have a chance to more fully explain it's position to the Zoning Board. But that's not for you to decide, that's something within the applicant's control, the Zoning Board's control and, final analysis, the court's control. I don't think that my advice is intending to punish this applicant but I don't believe in the face of a clear ruling by the Zoning Board that emphatically says this use may not be carried out under the granted use variance, that you have any authority to refer it again or any jurisdiction to take any action in regard to the project other than to disapprove it. I wish there were another solution but my recommendation to you is that you not refer the matter again and that you allow the applicant, if he chooses, to pursue his application further here that you have no choice

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but to deny it. If you want to leave it open as he pursues the other alternatives, I think that's a permissible course to follow as well.

CHAIRMAN EWASUTYN: Of the three points that were discussed by our Attorney which would you prefer?

MR. GABA: Well, if I could on that. I think he's proceeding in the first instance from a mistaken premise. The Zoning Board, if you can read the tea leaves as to what it found at all, denied only the referral that this Board sent over to it in regard to the interpretation. The chairman read into the record verbatim Mr. Donnelly's letter as to the referral. One board member and one board member only in referencing his vote on this application said that he didn't feel that any use would be allowed in the garage building, and I respectfully disagree with him on that. I think more important this Board would be hard pressed to gaze into a crystal ball reading over the Zoning Board minutes and say there, that comment by that board member indicates the finding of the Zoning Board on this issue. I don't think you can do that. I think all you

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2 have here is that an application was made to the
3 Zoning Board and the Zoning Board denied it.
4 That doesn't mean that a new amended application
5 couldn't be referred to them as well. With all
6 due respect to Mr. Donnelly who is a wise and
7 learned counsel, and I'm respectful, he's urging
8 this Board, as a good attorney will do, to take
9 the safe course, to do the noncontroversial.
10 He's not saying what I'm suggesting to you is
11 illegal, he's saying in his counsel as your
12 attorney it would be unwise. Well, you weren't
13 put on the Board to decide only noncontroversial
14 issues. You weren't put on the Board to decide
15 only requests made to you when it's safe and
16 you're not going to get any grief from the
17 constituents in the Town. You were put here for
18 your judgment because you do what you feel is
19 right within the boundaries of the law for the
20 citizens of this Town, Town residents. Here you
21 have a daycare center, again one of the handful
22 in the Town where there's a crying need for
23 daycare, daycare that's provided by people like
24 my client, and all they want to do is go forward
25 and provide this needed service. And admittedly

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2 perhaps to some extent we're asking to go out on
3 a limb a little bit, but I don't think we're
4 asking you to do anything illegal here. None of
5 what Mr. Donnelly suggested is palatable to my
6 client and we ask you go with my suggestion
7 notwithstanding his prudent counsel, but I would
8 suggest it's not counsel you're bound to accept.
9 MR. DONNELLY: My only response is it
10 was indeed one member of the Zoning Board, Mr.
11 Hughes, that made the statement to the effect
12 that I don't see it, meaning the proposal, being
13 part of the use variance, and then he added even
14 if it is conducting the same business or
15 businesses. Steve is correct that that was Ron
16 Hughes that said that. However, the minutes then
17 go on to read, "CHAIRPERSON CARDONE: Do I have a
18 motion to that effect? MR. HUGHES: I will move.
19 MR. MCKELVEY: Second. All those in favor --
20 from the chair -- please say aye," and all
21 answered aye. So although it was expressed as
22 the opinion of one member, that opinion became
23 the motion that received a second and a unanimous
24 vote. I don't mean to quibble. It was an
25 expression of one member but that was the vote.

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Would it be absolutely illegal for you to refer the matter to the Zoning Board again. No. I agree with Steve, it would not be illegal. What I think is somewhat troublesome is if you were to refer the same application -- and remember, there's no statutory authority for the referral. Earlier you were seeking a clarification. If you were to send it I would think the Zoning Board should feel that they have to respond. Right now for the Zoning Board to consider the same application again they would have to vote unanimously. So I'm troubled by the fact that by referring it, which might require an acceptance and a ruling, the applicant is going to get through the side door what might take -- on just a calendaring basis what might take unanimous vote in the other direction.

If the applicant is going to amend the proposal so as to propose a daycare center use in the building, then I don't think they need your referral, they can get a denial and take an appeal. I think it's really more a procedural issue. I am not at all troubled by the applicant pursuing the possibility of getting a further

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hearing before the Zoning Board but I don't know that that referral should come from you because the issue that required the referral, the lack of certainty, is no longer in play.

CHAIRMAN EWASUTYN: In keeping with good judgment what would your recommendation be to the Planning Board?

MR. DONNELLY: That you either table the application until this issue is clarified, or, if the applicant prefers, you can deny the application in view of the Zoning Board's ruling.

MR. GABA: Those would be acceptable to my client. We will, if you give us thirty days or table it for the time being, both make formal application to the Zoning Board to reopen and seek a denial from the building inspector, and if that solves our problem it solves our problem. We ask you put off a decision on the referral until that time.

MR. DONNELLY: Why don't we adjourn it without date until you get back to us. I don't know how long those proceedings will take.

MR. GABA: That will be acceptable.

CHAIRMAN EWASUTYN: For the record, I

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would like to have a statement, and I'll move for a motion to accept that statement as being our action.

MR. DONNELLY: I believe the motion is to adjourn this matter with the applicant's consent in order for the applicant to pursue a re-hearing or additional appeal to the Zoning Board and that we will await further notification as to how that happens.

CHAIRMAN EWASUTYN: I would like to add to that motion that our Planning Board Attorney, Mike Donnelly, will prepare a letter to Grace Cardone, the Chairperson for the ZBA, as to the discussion and the action before us this evening.

MR. DONNELLY: Okay.

MR. PROFACI: So moved.

MR. GALLI: Second.

CHAIRMAN EWASUTYN: I'll move for a motion -- I have a motion by Joe Profaci. I have a second by Frank Galli. Any discussion of the motion?

MR. BROWNE: Yes, John.

CHAIRMAN EWASUTYN: Please.

MR. BROWNE: Just a point of

EXTENSION OF BUILDING BLOCKS CHILDCARE CENTER

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clarification. We are not on this Board to make decisions that are not backed up by Code strictly. We can not make those kinds of judgment calls. That's the ZBA, or possibly go back to the Town Board. It's not our position to make judgment calls, just for clarification. We're not here for that job. Not us.

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

(No response.)

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

MR. GALLI: Aye.

MR. BROWNE: Aye.

MR. MENNERICH: Aye.

MR. PROFACI: Aye.

CHAIRMAN EWASUTYN: Myself. So carried.

MR. GABA: Thank you very much.

(Time noted: 8:28 p.m.)

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

I, Michelle Conero, a Shorthand Reporter and Notary Public within and for the State of New York, do hereby certify that I recorded stenographically the proceedings herein at the time and place noted in the heading hereof, and that the foregoing is an accurate and complete transcript of same to the best of my knowledge and belief.

DATED: March 10, 2008

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

----- X
In the Matter of

DILEMME & SONS, INC.
(2006-02)
5 New Road
Section 34; Block 2; Lot 99
B Zone

----- X

AMENDED SITE PLAN

Date: March 6, 2008
Time: 8:29 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

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

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

APPLICANT'S REPRESENTATIVE: JAMES RAAB

----- X

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

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CHAIRMAN EWASUTYN: The next item of business this evening is the Dilemme & Sons, Inc. amended site plan that's located on 5 New Road in a B Zone. It's being represented by James Raab.

MR. RAAB: After we received site plan approval on this application Mr. Dilemme went through a very extensive cost estimate procedure to find out how much the site costs are. He went to two or three excavators to see what the cost was going to be to do -- build this building and put the drainage in. After all of that and meetings that involved myself, Darren Doce, Nick and, like I said, a couple of different excavators, it was decided that we would re-look at the drainage and explore the possibility of using a percolation in the one drainage area that's inside the storage area, and also to route the drainage that comes from an existing pond above us, around and through and down to the other pond as it does now. That is what we did. We revamped it. We've raised the site two feet.

What we're looking for is that amendment, the revamping of the two storage areas that are now storm techs and also the fact that

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we're routing the drainage around -- not inside those drainage areas but around them and into the pond as they basically do right now. That's pretty much it.

We have revised the drainage study. They have all been supplied to Pat. We have Pat's comments. That's pretty much it.

CHAIRMAN EWASUTYN: Okay. Since you left off with Pat Hines, Drainage Consultant.

MR. HINES: Our first comment just identifies the building was raised two feet and the rear of the property three feet based on the previous grading plans.

Our third comment is a concern with their retaining wall and the proximity to the existing pond. That hasn't changed but I still think careful construction and strict adherence to the limit of the disturbance lines are going to have to be had.

We have a couple of comments on the drainage report. One is the return frequency event has been modeled with a seven-inch in some cases and with an eight-inch in some others. It should be consistently eight. That should be

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revised.

It looks like you modeled the existing pond, I guess it's to the west, with an outlet control structure but I don't know if it exists in the field.

MR. RAAB: I don't believe it exists. We went and looked at it today. If it was there, okay, you would have seen some type of drainage going down to it. I mean it's there but it doesn't work. There was a culvert in here before -- I'm going to go back probably twenty-five years, okay. There was a smaller culvert in here that was taken out and replaced by this twenty-four inch --

MR. HINES: I think that model needs to get done with the twenty-four. You're showing a four- inch discharge that I don't think exists there either. With those minor changes to the stormwater report to make sure that it does route through properly.

MR. RAAB: Right. Darren agreed with that.

MR. HINES: That needs to get done. That's the extent of our comments.

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The septic system remained the same.
Previously the stormwater management plan used an in-pipe system that was larger than the infiltrator system that they're proposing now because the entire site drained through it. Conceptually we're fine with it but we do have some technical questions on the report.
CHAIRMAN EWASUTYN: Bryant Cocks, Planning Consultant.
MR. COCKS: The applicant didn't have any changes to the building location, the outdoor storage area, the parking, setbacks, so we have no additional comments.
CHAIRMAN EWASUTYN: Frank Galli?
MR. GALLI: No additional comments.
The only thing he changed was the storm stuff.
CHAIRMAN EWASUTYN: Cliff Browne?
MR. BROWNE: I'm good.
CHAIRMAN EWASUTYN: Ken Mennerich?
MR. MENNERICH: No questions.
CHAIRMAN EWASUTYN: Joe Profaci?
MR. PROFACI: Nothing further.
CHAIRMAN EWASUTYN: Mike, we would need -- this is a Type II action.

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MR. DONNELLY: Was it originally?

MR. HINES: It wasn't originally.

MR. DONNELLY: It was Unlisted. It's an amended plan. I think you can stay with your original negative declaration.

The question is do you need the revisions before you act or do you want to act subject to Pat signing off on the revisions.

MR. HINES: I'm okay with signing off on the revisions.

CHAIRMAN EWASUTYN: Jerry, I'm sorry, do you have anything to add?

MR. CANFIELD: Nothing additional.

MR. DONNELLY: I'll then prepare an amended resolution that has all of the conditions of the original with the addition of a sign-off letter from Pat. I'll need the new map set but I'll get that from Jim.

CHAIRMAN EWASUTYN: All right. Having heard the conditions for the amended site plan which will be prepared by Attorney Mike Donnelly, I'll move for that motion.

MR. MENNERICH: So moved.

MR. PROFACI: Second.

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CHAIRMAN EWASUTYN: I have a motion by
Ken Mennerich. I have a second by Joe Profaci.
Will there be discussion of the motion?
(No response.)
CHAIRMAN EWASUTYN: I'll move for a
roll call vote starting with Frank Galli.
MR. GALLI: Aye.
MR. BROWNE: Aye.
MR. MENNERICH: Aye.
MR. PROFACI: Aye.
CHAIRMAN EWASUTYN: And myself yes. So
carried.
MR. RAAB: Thank you very much.
(Time noted: 8:34 p.m.)

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

I, Michelle Conero, a Shorthand Reporter and Notary Public within and for the State of New York, do hereby certify that I recorded stenographically the proceedings herein at the time and place noted in the heading hereof, and that the foregoing is an accurate and complete transcript of same to the best of my knowledge and belief.

DATED: December 10, 2008

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

----- X
In the Matter of

LANDS OF POST
(2008-03)
Corner of Route 300 & Hidden View Drive
Section 11; Block 1; Lot 35.21
AR Zone

----- X

CONCEPTUAL SKETCH PLAN

Date: March 6, 2008
Time: 8:35 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

BOARD MEMBERS: JOHN P. EWASUTYN, Chairman
FRANK S. GALLI
CLIFFORD C. BROWNE
KENNETH MENNERICH
JOSEPH E. PROFACI
ALSO PRESENT: DINA HAINES
MICHAEL H. DONNELLY, ESQ.
BRYANT COCKS
PATRICK HINES
KAREN ARENT
GERALD CANFIELD

APPLICANT'S REPRESENTATIVE: CRAIG MARTI

----- X

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

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CHAIRMAN EWASUTYN: The last item we have this evening is the lands of Post. It's a conceptual sketch plan for a lot line change. It's located on the northeast corner of Route 300 and Hidden View Drive, it's in an AR Zone and it's being represented by Craig Marti.

MR. MARTI: Thank you, Mr. Chairman. The proposal tonight basically involves two parcels of land on the corner of Hidden View Drive and New York State Route 300. One parcel, the residential use, which was built in 1887, subsequently remodeled in 1959. On the adjacent parcel is a nursery school, Miss Cindy's Neighborhood Nursery School.

The existing conditions with regard to the existing common property line have a garage which does not meet the existing or the Town Zoning setback requirements for an accessory structure, and there's actually an encroachment of the parking area which has been installed, removed and then subsequently to Cindy and Scott by the adjoining parcel. The parking lot has been reinstalled in it's prior condition which has created an encroachment to the neighboring

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parcel.

The proposal is to transfer equal amounts of land from one lot to another such that the dashed line as represented on the drawing, the existing common lot line be removed and be replaced with a new lot line as shown on the drawing.

This lot has been designed such that there's no impact on the existing well and septic systems which serves the two structures, and it removes the encroachment for the parking area, and it also eliminates the nonconformance with regard to the setback on the garage.

CHAIRMAN EWASUTYN: Bryant, you had made some comments that it may or may not need to be referred to the ZBA.

MR. COCKS: There were a couple items in the bulk table that needed to be adjusted. The nursery school has to have a minimum lot size of 2 acres. It has 40,000 square feet. The minimum side yard is 50 feet, it's listed as 30. The minimum bulk side yard is listed as 80 and it's supposed to be 100. It doesn't have to be referred to the ZBA if it's an existing

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nonconforming use.

MR. MARTI: I do acknowledge the review comments. We have checked and the lots -- the correction on the table would still comply with those regulations as you've outlined. Those changes will obviously be made to the final drawing.

MR. COCKS: The only other thing we needed was a surveyor's seal and signature.

CHAIRMAN EWASUTYN: Pat Hines. I think they may be looking at 35.22.

MR. MARTI: With regard to lot 35.22, the residential structure which was constructed in 1870 originally does have existing nonconformances with regard to the existing zoning setback requirements as the buildings were put there far in advance of any of the zoning requirements of the Town.

MR. HINES: I had that same comment, that it may need a variance. I was under the impression that the ZBA has in the past said if you change the lots you lose your protection.

MR. DONNELLY: That's the ruling they have made. It's never been in the context of a

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2 lot line. The ruling was the protection is lost
3 when that event occurs. I would assume we at
4 least have to give the Zoning Board the chance to
5 tell us if the same rule applies in that context.
6 They've consistently said if you subdivide you
7 lose the protection.

8 MR. MARTI: Okay.

9 MR. DONNELLY: I think we have to ask
10 them whether or not the same rule applies if it's
11 a lot line change.

12 MR. MARTI: Would that be a subject of
13 overriding Town Law or State level law or is that
14 something that would be overridden by --

15 MR. DONNELLY: It's a local issue.
16 It's the section of the Ordinance that protects
17 noncomplying buildings. It talks about what
18 changes can be made without losing the
19 protection. They've ruled that if the division
20 of that land into an additional parcel or
21 subdivision causes the loss of the protection.
22 They may conclude that a lot line change does
23 not, but given their rulings in the past I think
24 we need to send it to them for them to give us
25 that ruling.

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CHAIRMAN EWASUTYN: Mike, you would prepare a letter, send it on to the ZBA and we would wait to hear back in a written form from the ZBA?

MR. DONNELLY: That's correct.

CHAIRMAN EWASUTYN: We would then notify Craig Marti of the decision.

MR. DONNELLY: Yes. Well, I think the applicant would have to also apply. We would send it, then the applicant has to apply.

MR. MARTI: We would have to actually apply to the ZBA?

MR. HINES: Otherwise you're costing yourself time if you don't do that.

CHAIRMAN EWASUTYN: That's why I wanted to clarify that.

Then I would move for a motion to refer this to the Zoning Board of Appeals for an interpretation, Mike?

MR. DONNELLY: And/or to grant the variance it needs.

CHAIRMAN EWASUTYN: And the variance would be for a front yard setback, --

MR. HINES: Side yard also.

1
2 CHAIRMAN EWASUTYN: -- rear yard
3 setback and a side yard setback.
4 MR. DONNELLY: All three?
5 MR. HINES: I think it's just front and
6 side.
7 MR. MARTI: Front and side I believe.
8 MR. HINES: I believe you have it
9 labeled as a rear. I don't believe it's a rear.
10 CHAIRMAN EWASUTYN: It's labeled as a
11 rear.
12 MR. HINES: It says it's a rear but I
13 don't see where it is.
14 MR. MARTI: Okay.
15 CHAIRMAN EWASUTYN: So it would be a
16 front yard setback and a side yard setback.
17 Correct?
18 MR. DONNELLY: In the meantime I have
19 another question. This is in the AR zoning
20 district. Is it near any certified agricultural
21 operations?
22 MR. MARTI: No. I don't believe that
23 that would apply to this. I will double check
24 that before I come back.
25 MR. DONNELLY: Then it's an Unlisted

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action and you could issue a negative declaration which would remove the need to await for a SEQRA declaration.

CHAIRMAN EWASUTYN: The fact that it's a lot line change are we required under 239-M, since it's on a State road, to refer it to the Orange County Planning Department?

MR. DONNELLY: Yes.

MR. HINES: Yes.

CHAIRMAN EWASUTYN: So then the motion would be to refer to the Orange County Planning Department. Would you advise us to declare a SEQRA determination now or wait until we hear back from the County?

MR. DONNELLY: I don't think any environmental issues are raised by the lot line change.

MR. COCKS: No, but we have to wait thirty days.

MR. DONNELLY: Not for SEQRA. You could act.

MR. COCKS: Since this is a private road over here, it's two front yard setbacks.

MR. CANFIELD: It's a corner lot, it

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has two front yards.

CHAIRMAN EWASUTYN: So then first and foremost we're going to refer it to the Zoning Board of Appeals for an area variance, for two front yard setbacks and one side yard setback.

MR. DONNELLY: Just two fronts.

MR. MARTI: I believe they're both front yards.

MR. HINES: It looks like a driveway next to it. It's Hidden View Drive.

CHAIRMAN EWASUTYN: I'll move for the one action first, to refer it to the Zoning Board of Appeals for an area variance, for two front yard setbacks.

MR. PROFACI: So moved.

MR. MENNERICH: Second.

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

(No response.)

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

MR. GALLI: Aye.

MR. BROWNE: Aye.

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MR. MENNERICH: Aye.

MR. PROFACI: Aye.

CHAIRMAN EWASUTYN: And myself yes. So carried.

At this point I'll move for a motion to declare a negative declaration and to refer it to the Orange County Planning Department.

MR. GALLI: So moved.

MR. PROFACI: Second.

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

MR. BROWNE: John, was there a question about the distance from something? I thought he was going to check on something and get back with us.

CHAIRMAN EWASUTYN: I think what he was talking about was the distance being the rear yard.

MR. DONNELLY: The question was whether it's in the ag district. If it's within I think 500 feet of an active certified agricultural zone it would become a Type I.

MR. MARTI: I don't believe it is. I'm

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quite confident that it's not.

MR. BROWNE: You said you weren't sure and you were going to --

MR. MARTI: I'm quite confident. I would proceed under the idea -- along the premise that it's not. If indeed there's a problem the trip to the ZBA and subsequent trip here I will double -- confirm that. If there's a problem I'll get to Dina.

MR. DONNELLY: If you find out that it's so, you would have to revoke your notice of declaration, do a notice of intent, wait thirty days and reissue it. I think this would be a Type II for the Zoning Board anyway.

MR. HINES: Even with the ag district I believe it's just 25 percent of any one of the Type I thresholds.

MR. MARTI: The only impact may be to add a note.

MR. HINES: It reduces all the other impacts by 25 percent. I think they're still all right.

MR. BROWNE: Thank you.

CHAIRMAN EWASUTYN: So we had a motion

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by Joe Profaci. I had a second by Frank Galli.
I moved for discussion. Any further discussion?

(No response.)

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

MR. GALLI: Aye.

MR. BROWNE: Aye.

MR. MENNERICH: Aye.

MR. PROFACI: Aye.

CHAIRMAN EWASUTYN: Myself. So
carried. Thank you.

MR. MARTI: Thank you.

CHAIRMAN EWASUTYN: You'll get plans to
Bryant so we can refer them to the Orange County
Planning Department.

(Time noted: 8:45 p.m.)

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

I, Michelle Conero, a Shorthand Reporter and Notary Public within and for the State of New York, do hereby certify that I recorded stenographically the proceedings herein at the time and place noted in the heading hereof, and that the foregoing is an accurate and complete transcript of same to the best of my knowledge and belief.

DATED: March 10, 2008

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

----- X

In the Matter of

THE MARKET PLACE
(2004-54)

Discussion by Michael Donnelly
Amended Findings Statement

----- X

BOARD BUSINESS

Date: March 6, 2008
Time: 8:45 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

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

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

----- X

MICHELLE L. CONERO
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Wallkill, New York 12589
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CHAIRMAN EWASUTYN: Dina Haines, at this time would you please manage the Board under Board business.

MS. HAINES: Sure. The first item for Board business is Mike Donnelly discussing the amended Findings Statement for The Market Place.

MR. DONNELLY: We discussed this during the work session. You will recall that at the time the Findings Statement was issued for The Market Place there was not then before you a subdivision application. The concept or the possibility of the subdivision was mentioned in the E.I.S. and in the Findings, and you ruled then if a subdivision application was made that you would determine at that point what level of further environmental review might be required. That's issue number one.

Issue number two is you recognized in the original E.I.S. and the original Findings the potential for visual impacts that might be created by the signage that would be put in place on this retail shopping center. You therefore imposed a requirement in your Findings that a comprehensive sign development plan satisfactory

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to the Board that addressed those aesthetic, scale and visual impact issues be submitted to you.

The applicant, as you know, has now applied for a subdivision. You have referred the subdivision application to the Zoning Board of Appeals for needed area variances. The applicant has also submitted a sign package to you along with the full comprehensive sign plan that you have found satisfactory. That matter has been referred to the Zoning Board for the consideration of area variances for the nonconformities in size and area of those signs.

The question that's now before you is how do you wish to handle these developments under the State Environmental Quality Review Act. Your consultants have looked at the issue and you have before you a proposed amended Findings Statement. It deals with both of those issues and it concludes that under the issue regarding the subdivision that, and I'm looking at the I guess it's the fourth page of the amended Findings Statement, the series of lettered paragraphs, that the subdivision will not result

1
2 in any more building square footage or impervious
3 surfaces on the site than that amount reviewed in
4 the previously issued E.I.S. and so on and so
5 forth. It essentially looks at all of the
6 impacts that were addressed in the original
7 E.I.S. and determines that this proposal, which
8 in essence has no more impact really than lines
9 on a piece of paper, has not created any new
10 environmental impacts that warrants a
11 supplemental Environmental Impact Statement and
12 the Findings so announced.

13 What is included in number I is the
14 only issue that's not addressed in the original
15 E.I.S. and that is the requirement, and it was
16 discussed in the E.I.S. but it's now explicitly
17 made a finding, that a single managing agent be
18 responsible -- actually it recites that you had
19 already done this in the preliminary resolution
20 -- for arranging and ensuring compliance. The
21 issue that comes about is once there's more than
22 one owner of the site the Town doesn't want to
23 have to knock on multiple doors when there's a
24 dumpster overflowing, or trash in the parking
25 lot, or dead landscaping and a single managing

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agent will remain in charge. So the Finding at the bottom of that page is that the subdivision proposal does not have potential to cause significant environmental impacts.

In terms of the sign, you recite the specifics and particulars of the sign application and you then make a series of Findings that the signage plan is consistent with the design guidelines, that you have reviewed the comprehensive sign plan for scale and aesthetics, you find it would be satisfactory, and you therefore determine that there are no additional potential for significant environmental impacts flowing from the sign plan that were not addressed. If you're inclined to follow this recommendation you should vote upon the issuance of these amended Findings.

The Zoning Board of Appeals cannot complete it's review of the variances until this SEQRA issue has been resolved.

CHAIRMAN EWASUTYN: Discussion from Board Members. Frank Galli?

MR. GALLI: So on the subdivision part of it everything is -- we know nothing has

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2 changed for the actual environmental part of it.
3 On the signage, all the signage
4 calculations they gave us were the same signage
5 calculations that were in the Findings Statement
6 and none of that has changed?
7 MR. DONNELLY: No. What you said in
8 the original Findings was you're going to need to
9 submit a very comprehensive sign plan and we're
10 going to look at it as to scale, color treatment,
11 compliance with the sign guidelines. Now that
12 has been done and you're concluding that it
13 satisfies the original Findings and the issues
14 addressed in the E.I.S.
15 MR. GALLI: Okay. So it has nothing to
16 do with variances or anything like that?
17 MR. DONNELLY: It's not dictating that
18 variances have to be granted or not. That's the
19 ZBA's call.
20 MR. GALLI: That's all.
21 CHAIRMAN EWASUTYN: Cliff Browne?
22 MR. BROWNE: I'm good.
23 CHAIRMAN EWASUTYN: Ken Mennerich?
24 MR. MENNERICH: I read it over and it's
25 fine.

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CHAIRMAN EWASUTYN: Joe Profaci?

MR. PROFACI: Nothing further.

CHAIRMAN EWASUTYN: I'm going to move for two motions for approving the amended Findings Statement. The first will be for the subdivision, and I'm going to read into the record the following: By virtue of the above, the Planning Board hereby finds that the requested subdivision and resulting area variances have no potential to cause significant adverse environmental impacts. To the extent the proposed subdivision and resulting area variances are actions not previously considered or disclosed in the E.I.S., the Planning Board finds that these actions do not relate to a significant environmental impact and no supplemental Environmental Impact Statement need be prepared. Finally, the Planning Board finds that the requested subdivision and the resulting area variances do not change or otherwise alter it's previous Findings, that the project conforms to land use plans recommended by both the Town of Newburgh and Orange County.

Again I'll move for a motion to approve

1
2 the amended Findings Statement for the
3 subdivision based upon that finding.
4 MR. MENNERICH: So moved.
5 MR. PROFACI: Second.
6 CHAIRMAN EWASUTYN: I have a motion by
7 Ken Mennerich. I have a second by Joe Profaci.
8 Any discussion of the motion?
9 (No response.)
10 CHAIRMAN EWASUTYN: I'll move for a
11 roll call vote starting with Frank Galli.
12 MR. GALLI: Aye.
13 MR. BROWNE: Aye.
14 MR. MENNERICH: Aye.
15 MR. PROFACI: Aye.
16 CHAIRMAN EWASUTYN: Myself yes. So
17 carried.
18 MS. HAINES: We also --
19 CHAIRMAN EWASUTYN: I have a motion
20 also for the signage.
21 MS. HAINES: I'm sorry.
22 CHAIRMAN EWASUTYN: This would be a
23 motion for approving the amended Findings
24 Statement for the signage. By virtue of the
25 above, the Planning Board hereby finds that the

1
2 proposed comprehensive signage plan and resulting
3 area variances have no potential to cause a
4 significant adverse environmental impact. To the
5 extent the comprehensive signage plan and
6 resulting area variances are actions not
7 previously considered disclosed in the E.I.S.,
8 the Planning Board finds that these actions do
9 not relate to a significant environmental impact
10 and no supplemental Environmental Impact
11 Statement need be prepared. Finally, the
12 Planning Board finds as requested the
13 comprehensive signage plan and resulting area
14 variances do not change or otherwise alter it's
15 previous finding that the visual impacts of the
16 proposed projects have been mitigated to the
17 greatest extent practical.

18 I'll move for that motion.

19 MR. GALLI: So moved.

20 MR. MENNERICH: Second.

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

24 (No response.)

25 CHAIRMAN EWASUTYN: I'll move for a

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roll call vote starting with Frank Galli.
MR. GALLI: Aye.
MR. BROWNE: Aye.
MR. MENNERICH: Aye.
MR. PROFACI: Aye.
CHAIRMAN EWASUTYN: And myself yes. So
carried.

(Time noted: 8:53 p.m.)

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

I, Michelle Conero, a Shorthand
Reporter and Notary Public within and for
the State of New York, do hereby certify
that I recorded stenographically the
proceedings herein at the time and place
noted in the heading hereof, and that the
foregoing is an accurate and complete
transcript of same to the best of my
knowledge and belief.

DATED: March 10, 2008

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

----- X

In the Matter of

MARINA AND VETERINARY LOCAL LAWS

Discussion by Michael Donnelly

----- X

BOARD BUSINESS

Date: March 6, 2008
Time: 8:53 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

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

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

----- X

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

1
2 MS. HAINES: We also have Mike Donnelly
3 discussing a report letter from the Planning
4 Board regarding the marina and veterinary local
5 laws.

6 MR. DONNELLY: I think we talked about
7 those local laws in the work session. My
8 recollection is that you have authorized Bryant
9 to review those, give you a report and take the
10 referral report back to the Town Board at your
11 next Board Business session.

12 CHAIRMAN EWASUTYN: Dina, the date of
13 the next Board Business session?

14 MS. HAINES: March 20th.

15 CHAIRMAN EWASUTYN: Bryant, you'll have
16 that report ready?

17 MR. COCKS: Yes.

18 CHAIRMAN EWASUTYN: Thank you.

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20 (Time noted: 8:54 p.m.)
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C E R T I F I C A T I O N

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DATED: March 10, 2008

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

----- X

In the Matter of

HL RENTALS
(1997-18)

Discussion of letter by Kenneth Lytle
for Final Approval

----- X

BOARD BUSINESS

Date: March 6, 2008
Time: 8:54 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

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

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

----- X

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MS. HAINES: Next we have Pat Hines discussing HL Rentals for final approval.

MR. HINES: HL Rentals was before you probably a month ago for final approval. We had received a letter from DOT after it was scheduled for approval where they requested changes to the access drive. We suggested that they need to come back to the Board for approval if those access drives would change. The applicant's representative went back to DOT and DOT has now signed off on the original entrance and exit which is two -- a full turning movement out and also an additional one-way out arrangement. So the originally approved arrangement has received approval from DOT and the two conditions of approval have been met.

CHAIRMAN EWASUTYN: So then Pat, the action before us tonight is to grant final approval --

MR. HINES: Correct.

CHAIRMAN EWASUTYN: -- subject to the original conditions of the resolution?

MR. HINES: Yes.

MR. DONNELLY: I have a final

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2 resolution. I can go down the conditions
3 quickly. There are several tax map parcels that
4 need to be merged, the standard ARB condition
5 because I believe that you had approved ARB
6 earlier, at least in concept, on April 19, 2007
7 at the time you granted preliminary approval.
8 Landscape security, stormwater security and the
9 standard condition regarding outdoor fixtures.
10 CHAIRMAN EWASUTYN: So then actually
11 the action before us is to approve the site plan
12 and ARB?
13 MR. DONNELLY: My notes show that you
14 approved the ARB, but it couldn't hurt to
15 re-approve it. I've worded it as finalizing the
16 ARB approval, that way --
17 CHAIRMAN EWASUTYN: I think that would
18 be fine.
19 MR. DONNELLY: So we have it in this
20 resolution. Everybody looks at the last
21 resolution.
22 CHAIRMAN EWASUTYN: I'll move for a
23 motion to grant final ARB approval and site plan
24 approval for HL Rentals subject to the conditions
25 in the resolution being prepared by our Attorney,

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Mike Donnelly.

MR. MENNERICH: So moved.

MR. PROFACI: Second.

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

(No response.)

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

MR. GALLI: Aye.

MR. BROWNE: Aye.

MR. MENNERICH: Aye.

MR. PROFACI: Aye.

CHAIRMAN EWASUTYN: And myself yes. So carried.

(Time noted: 8:56 p.m.)

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

I, Michelle Conero, a Shorthand Reporter and Notary Public within and for the State of New York, do hereby certify that I recorded stenographically the proceedings herein at the time and place noted in the heading hereof, and that the foregoing is an accurate and complete transcript of same to the best of my knowledge and belief.

DATED: March 10, 2008

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

----- X

In the Matter of

DeSOUSA LOT LINE CHANGE
(2007-46)

Letter from Kenneth Lytle
Requesting Final Approval

----- X

BOARD BUSINESS

Date: March 6, 2008
Time: 8:56 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

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

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

----- X

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CHAIRMAN EWASUTYN: Dina.

MS. HAINES: We also have Pat Hines discussing the DeSousa lot line change to be granted final approval.

MR. HINES: This was a lot line change that in reviewing it there were notes on the original subdivision that identified existing wells to be abandoned and a new well being installed. There's kind of a rush on the applicant's behalf in that they've constructed an addition to their house that encroached on the rear lot line. This lot line proposal cleans that up.

What's occurred was that I had received a signed contract from a local well driller signed by the DeSousas saying that that work will be accomplished. With that I'm recommending that the lot line be approved subject to a note that no building permit be issued on the rear lot until such time as the confirmation that the new well has been drilled. They have a signed contract it's going to get done but he can't get a CO and complete his addition he's constructed without filing the lot line.

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2 MR. DONNELLY: Did we not approve it in
3 January?
4 MR. HINES: We did not.
5 CHAIRMAN EWASUTYN: So you'll make
6 mention of that in the resolution, Mike.
7 MR. DONNELLY: Well, I think I sent the
8 resolution in thinking it was approved in
9 January. We'll simply re-date that resolution
10 now and I think we should be okay. We need a
11 letter, though, from Pat that that issue has been
12 resolved on the contract, or no?
13 MR. HINES: I issued a letter with a
14 copy of that contract. What we put in there was
15 no building permits should be issued for the rear
16 lot, which is currently a vacant lot, without
17 that work being accomplished. So we have both a
18 signed contract from a contractor to do the work
19 and the ability to enforce it if he doesn't.
20 MR. DONNELLY: No building permit for
21 the rear lot until the well --
22 MR. HINES: Yes. There's an
23 abandonment of one well and re-drilling of a new
24 well. Abandonment of two wells. There's two
25 existing wells on the site which don't conform.

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CHAIRMAN EWASUTYN: The proposal was from David Tomkins & Son, well driller.

MR. HINES: Yes. They are one of the three well drillers around here.

CHAIRMAN EWASUTYN: I'll move for a motion to grant final approval for the DeSousa lot line change.

MR. MENNERICH: So moved.

MR. PROFACI: Second.

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

MR. BROWNE: Do we need to mention the motion referring to the conditions?

MR. DONNELLY: I'll include the conditions Pat just outlined plus the standard lot line change conditions.

CHAIRMAN EWASUTYN: I'll amend that motion to make it subject to the resolution being -- the conditions being prepared in the resolution by our Attorney, Mike Donnelly.

I have a motion by Ken Mennerich. I have a second by Joe Profaci. Any additional comments?

DeSOUSA LOT LINE CHANGE

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(No response.)

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

MR. GALLI: Aye.

MR. BROWNE: Aye.

MR. MENNERICH: Aye.

MR. PROFACI: Aye.

CHAIRMAN EWASUTYN: Myself yes. So
carried.

(Time noted: 9:00 p.m.)

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

I, Michelle Conero, a Shorthand Reporter and Notary Public within and for the State of New York, do hereby certify that I recorded stenographically the proceedings herein at the time and place noted in the heading hereof, and that the foregoing is an accurate and complete transcript of same to the best of my knowledge and belief.

DATED: March 10, 2008

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

----- X

In the Matter of

PROPERTY FOR TERRIZZI
(2006-48)

Request for Extention of Conditional Final Approval

----- X

BOARD BUSINESS

Date: March 6, 2008
Time: 9:00 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

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

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

----- X

MICHELLE L. CONERO
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CHAIRMAN EWASUTYN: Dina.

MS. HAINES: We received a letter from John Nosek on February 19, 2008 regarding the property for Terrizzi. He's requesting a 180-day extension for the conditional final approval granted on September 6, 2007. His current approval expired on March 4, 2008. A 180-day extension will be valid through August 31, 2008.

CHAIRMAN EWASUTYN: Mike, is that okay?

MR. DONNELLY: I didn't do the math. If that doesn't exceed 360 we're fine because it was a conditional final. I'll double check.

MS. HAINES: I found a calculator on the Internet.

MR. DONNELLY: There you go. I'm going to trust you.

MR. BROWNE: Is it a problem if it's already expired?

MS. HAINES: Two days ago.

MR. DONNELLY: Did they ask for it before it expired?

CHAIRMAN EWASUTYN: The letter we received was dated the 19th. Correct, Mike?

MR. HINES: That's normally what we do.

PROPERTY FOR TERRIZZI

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CHAIRMAN EWASUTYN: Okay. Then I'd
move for a motion to grant an extension of the
final approval for the Terrizzi subdivision until
the 31st of August 2008.

MR. GALLI: So moved.

MR. MENNERICH: Second.

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

(No response.)

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

MR. GALLI: Aye.

MR. BROWNE: Aye.

MR. MENNERICH: Aye.

MR. PROFACI: Aye.

CHAIRMAN EWASUTYN: Myself yes. So
carried.

(Time noted: 9:02 p.m.)

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DATED: March 10, 2008

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

----- X
In the Matter of

DESIGNATION OF LEAD AGENCY
TO THE CITY OF NEWBURGH PLANNING BOARD
FOR

AAA DEVELOPERS, MAINE CORP. and NEWBURGH FAMILY YMCA

----- X

BOARD BUSINESS

Date: March 6, 2008
Time: 9:02 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

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

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

----- X

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CHAIRMAN EWASUTYN: Dina.

MS. HAINES: We received letters from James Monell, the City of Newburgh Planning Board Chairman, and they were dated February 22, 2008. He is just looking for a response because the letters were regarding designation of lead agency for two projects that are in front of the City of Newburgh. He's just looking for a response from our Board regarding that.

CHAIRMAN EWASUTYN: I'll move for a motion to refer the lead agency coordination for the subdivision for AAA Developers and Maine Corp., and also for the Newburgh Family YMCA to the City of Newburgh Planning Board, attention James Monell, Chairperson.

MR. GALLI: So moved.

MR. MENNERICH: Second.

CHAIRMAN EWASUTYN: I have a motion by Ken Mennerich -- excuse me. By Frank Galli. I have a second by Ken Mennerich. I'll ask for a roll call vote.

MR. BROWNE: Can I ask you a question, John? Why are we being asked this question?

MR. GALLI: Because we're neighbors.

CITY OF NEWBURGH PLANNING BOARD

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MR. HINES: Proximity to the Town line.

MR. DONNELLY: We'll just write them a letter and tell them we have no objection to the lead agency status.

CHAIRMAN EWASUTYN: I would appreciate that you be the author.

MR. DONNELLY: Bryant usually does SEQRA stuff.

CHAIRMAN EWASUTYN: Bryant, cc us on that.

MR. GALLI: We have a copy of the map?

CHAIRMAN EWASUTYN: Both maps are in the office.

MR. GALLI: I would like to see the one behind the firehouse.

MR. HINES: It abuts Pepsi back there.

CHAIRMAN EWASUTYN: I think when I first circulated it I left a note.

MR. HINES: Frank, they went to pump stations on each lot.

CHAIRMAN EWASUTYN: I lost track. I think we have a motion by Frank Galli and a second by Ken Mennerich. Correct?

MS. HAINES: Yes.

CITY OF NEWBURGH PLANNING BOARD

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CHAIRMAN EWASUTYN: We had it up for discussion. I'll move for a roll call vote starting with Frank Galli.

MR. GALLI: Aye.

MR. BROWNE: Aye.

MR. MENNERICH: Aye.

MR. PROFACI: Aye.

CHAIRMAN EWASUTYN: And myself. So carried.

(Time noted: 9:04 p.m.)

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

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DATED: March 10, 2008

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

----- X
In the Matter of

QUARTERLY SITE INSPECTIONS

----- X

BOARD BUSINESS

Date: March 6, 2008
Time: 9:05 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

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

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

----- X

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CHAIRMAN EWASUTYN: This is the last item we have on business. I got a write in from Ken Mennerich and he's available the 15th or the 29th for site visits. Anyone else interested in going?

MR. GALLI: The 15th is this Saturday.

CHAIRMAN EWASUTYN: Next Saturday.

MR. PROFACI: I can't do that. I can do the 29th.

MR. GALLI: I can do the 29th.

CHAIRMAN EWASUTYN: Then we'll do it on the 29th.

(Time noted: 9:05 p.m.)

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DATED: March 10, 2008

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

----- X

In the Matter of

THE MARKET PLACE
(2004-54)

Discussion by Michael Donnelly
regarding the appeal

----- X

BOARD BUSINESS

Date: March 6, 2008
Time: 9:05 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

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

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

----- X

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CHAIRMAN EWASUTYN: Any other items of business?

MR. DONNELLY: John, I don't know if I've updated you on the argument of the first Market Place appeal, the one in regard to the request for an order directing that you allow the challengers on the property. I don't think I did. That was argued last week.

CHAIRMAN EWASUTYN: That's true.

MR. DONNELLY: It was an interesting argument. Joel Sachs who has not appeared I think before the Board but is the partner at Keane & Beane who has been behind the scenes is also a professor at Pace Law School. He argued the appeal, and he's well enough known in the environmental field that that probably peaked the interest of the Court. He argued first because he's the appellant, and they hopped all over him about whether or not the Planning Board had authority to grant the order he requested. When he said well they don't have the specific authority but in order to live up to the intent and spirit of SEQRA they would need to do it. Well Mr. Sachs, you're telling us in every case

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2 the Planning Board has to issue this order? No,
3 just in a case like this. And then they talked
4 about how a planning board would have the
5 authority to order a trespass and so on and so
6 forth. He tried to stay with where he was going
7 but they were clearly pressing him. When I
8 argued they changed ears, and this often happens
9 when you do appeals. Their questions to me were
10 well how can there be meaningful participation by
11 a neighbor to a property like this when they
12 believe -- and Judge Ritter is our Orange County
13 judge in the Appellate Division -- they believe
14 there's extensive wetlands? He used that as an
15 example. He said let me amplify that. Let's
16 assume for the moment that the expert that the
17 applicant had is someone of ill repute, and we
18 all know there are experts who sell their
19 licenses for whatever reason, and he says that
20 there are very little in the way of wetlands on
21 the property. And let's assume further that the
22 consultants that the Town hires that are paid for
23 by the applicant anyway are incompetent and they
24 say the same thing. What is the applicant -- not
25 the applicant. What are the neighbors left with

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by way of meaningful participation?

MR. HINES: How about a jurisdictional determination.

MR. DONNELLY: That's exactly what I said. I said in this case using, that example judge, there's already a jurisdictional determination and the Army Corp., and I had no comment -- I should have said I have no comment on their competence -- was out there and verified that. I said moreover, what you're suggesting is remedial legislation to change the rules of the game. Right now the rules of the game are clear, they have the opportunity to come and see and hear, listen and give us their comments. They don't have the authority to go beyond that unless an applicant agrees to let them onto the property.

I think they were interested in it. I don't think they're likely to change the ruling. I think they were struggling for a better understanding of is there a real issue raised by the challengers.

In chatting with Joel Sachs afterward he had told me that if they lose this appeal he

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says Pace is inclined to fund an application to the Court of Appeals for leave to appeal. They think it's an interesting enough issue that they may well pursue it. I thought that was somewhat of a surprise.

My own thought was that this was, along with many of the other claims, ones paid for and advanced by the Newburgh Mall in the hopes of slowing the process. In a way this one is no longer important because they have newer lawsuits that will better achieve that objective and yet they pursued this action. They argued it. Joel Sachs tells me they may well pursue it. It's not automatic, it's a permission appeal only at a further stage, which I found interesting. But it was a lively argument.

I think we're in good stead but the court was really struggling with how to, you know, allow neighbors to have meaningful participation.

CHAIRMAN EWASUTYN: Comments from Board members?

My knee-jerk reaction, I'm not using the right terminology, how does a third party now

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2 so to speak get involved in this lawsuit? We're
3 talking -- we'll say SOS and the Newburgh Mall
4 and now a third party might be Pace. I mean how
5 does that come together?

6 MR. DONNELLY: Just that Joel Sachs is
7 from Pace and their environmental -- they'll lend
8 their legal aura to the issue. In other words,
9 they'll put people to work to work on it as a pro
10 bono project. He may just be talking through his
11 hat at this point.

12 MR. HINES: That would open a big mess
13 if every applicant would have to open their
14 property up.

15 MR. DONNELLY: The Court was clearly --
16 they really went -- I mean I was thinking this is
17 time to go home, we're doing all right here.
18 Then I stood up. I think the questions of me
19 were polite and they were struggling I think with
20 the validity of the arguments and how real they
21 were. One of the judges said how can these
22 people be satisfied. I said judge, with all due
23 respect I'm at a lot of planning board meetings,
24 they don't want to be satisfied. There are those
25 who come and make their points, there are those

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2 who come and ask their questions. Many of those
3 people are satisfied. But there are those that
4 come because they want to stop the project. It
5 doesn't matter what answers you give or what you
6 allow them to -- what degree of participation you
7 allow. Frankly probably by inviting greater
8 participation you've frustrated them all the more
9 and get them angry.

10 At least two of the judges must have
11 some experience in the planning board realm and I
12 think that hit a cord for them. I don't think a
13 court should be legislating to allow trespassing.
14 It's just beyond the authority of the planning
15 board to allow people onto the property.

16 MR. HINES: Bring your own boxer.

17 CHAIRMAN EWASUTYN: Was there anyone
18 there from SOS, interested parties, that were
19 interested?

20 MR. DONNELLY: If they were there they
21 didn't speak in my presence. I can't tell who
22 was present.

23 CHAIRMAN EWASUTYN: There were public
24 sitting in the audience?

25 MR. DONNELLY: Yes. That usually is

THE MARKET PLACE

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mostly lawyers but there's always a handful of non lawyers. I did not recognize anyone there as the people I met with at the county planning department several weeks ago.

CHAIRMAN EWASUTYN: Okay. Anything else?

MR. DONNELLY: No.

CHAIRMAN EWASUTYN: I'll move for a motion to close the Planning Board meeting of the 6th of March.

MR. PROFACI: So moved.

MR. MENNERICH: Second.

CHAIRMAN EWASUTYN: I have a motion by Joe Profaci. I have a second by Ken Mennerich. I'll ask for a roll call vote starting with Frank.

MR. GALLI: Aye.

MR. BROWNE: Aye.

MR. MENNERICH: Aye.

MR. PROFACI: Aye.

CHAIRMAN EWASUTYN: Myself yes.

(Time noted: 9:10 p.m.)

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DATED: March 10, 2008

