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

----- X

In the Matter of

LANDS OF JAN KADNAR
(2008-16)

275 Pressler Road
Section 6; Block 1; Lot 10
AR Zone

----- X

PUBLIC HEARING
FIVE-LOT SUBDIVISION

Date: July 2, 2009
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
THOMAS P. FOGARTY
JOHN A. WARD

ALSO PRESENT: DAVID DONOVAN, ESQ.
BRYANT COCKS
PATRICK HINES
KAREN ARENT
GERALD CANFIELD

APPLICANT'S REPRESENTATIVE: DARREN DOCE

----- X

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

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LANDS OF JAN KADNAR

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MR. BROWNE: At this time I would like to call the Planning Board meeting to order with a roll call vote.

MR. GALLI: Present.

MR. BROWNE: Present.

MR. MENNERICH: Present.

CHAIRMAN EWASUTYN: Present.

MR. FOGARTY: Present.

MR. WARD: Present.

MR. BROWNE: Also I would like to have our professional consultants introduce themselves and the capacity of their work.

MR. DONOVAN: Dave Donovan, Planning Board Attorney.

MS. CONERO: Michelle Conero, Stenographer.

MR. CANFIELD: Jerry Canfield, Town of Newburgh.

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

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

MS. ARENT: Karen Arent, Landscape Architectural Consultant.

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LANDS OF JAN KADNAR

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MR. BROWNE: I would like to turn it over to Frank Galli.

(Pledge of Allegiance.)

MR. GALLI: Shut off all cell phones, please.

MR. BROWNE: Our first item of business this evening is a public hearing for the Lands of Jan Kadnar represented by Darren Doce.

First I think we'll have Ken Mennerich read the letter of notice.

MR. MENNERICH: "Notice of hearing, Town of Newburgh Planning Board. Please take notice that the Planning Board of the Town of Newburgh, Orange County, New York will hold a public hearing pursuant to Section 276 of the Town Law and to the Municipal Code of the Town of Newburgh, Chapter 185-57 Section K, on the application of Lands of Jan Kadnar for a five-lot subdivision on premises 275 Pressler Road in the Town of Newburgh, designated on Town tax map as Section 6; Block 1; Lot 10. Said hearing will be held on the 2nd day of July at the Town Hall Meeting Room, 1496 Route 300, Newburgh, New York at 7 p.m. at which time all interested persons

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LANDS OF JAN KADNAR

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will be given an opportunity to be heard. By order of the Town of Newburgh Planning Board. John P. Ewasutyn, Chairman, Planning Board Town of Newburgh. Dated June 1, 2009."

MR. GALLI: Fourteen registered letters were sent out and mailed, nine were returned. All the mailings are in order.

MR. BROWNE: Thank you. John.

CHAIRMAN EWASUTYN: At this time I would like to introduce Darren Doce to speak to the public about the subdivision before us this evening.

Darren.

MR. DOCE: I'm Darren Doce, I'm representing Mr. Kadnar on a five-lot subdivision located on Pressler Road.

We're creating three new building lots outlined in the yellow for single-family homes. They range from one acre to two acres in size.

We're creating a lot outlined here in the green for an existing two-bedroom cottage and a lot for the existing villa which will be approximately forty-one acres in size. The villa will be renovated into a four-bedroom home.

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Lots 1, 2 and -- 1 and 2 will share a common access off of Pressler Road and then have separate driveways. Lots 3 and 5 will share an access off of Pressler Road over a common driveway. Lot 4 has an existing driveway off of Pressler Road across from Ellen's Way.

The lots will all have individual wells and septics designed as part of the Health specs.

There's a wetland area located to the center portion of the site. The boundary was verified by the New York State DEC.

There's a number of outbuildings that are designated to be removed. Mr. Kadnar has submitted an application for a demolition permit and will remove those buildings once he receives the permit.

The project has gone through the review process with the Planning Board. There were a number of comments the consultants and Planning Board have, and I believe I've addressed all those comments.

I'll turn it back over to the Board.
Thank you.

CHAIRMAN EWASUTYN: If there's anyone

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here this evening that has any questions or comments, we ask that you raise your hand, give your name and address for the record.

MR. TOOLE: Do I just stand here? My name is Stephen Toole, I live at 254 Pressler Road which is on the other side of the road from where lots 1 and 2 are.

I'm concerned about the groundwater. Over time we've had -- when we have had heavy rains like we've had recently, we had some groundwater flowing from, that's probably the east side of the road to the west side of the road. I'm concerned that if pavement and buildings occur on those lots adjacent to the road, that groundwater will be ushered onto my side of the road. I'm concerned about the impact that may have on my home, which has a below-ground basement, and on my lot in general. That's my concern.

CHAIRMAN EWASUTYN: Darren.

MR. DOCE: There is a small portion, about half an acre, that does drain to Pressler Road in that area. We're proposing two houses to be built towards the crest of the hill. I had

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indicated that the roof runoff through the leaders be directed to the rear of the property to try to lessen the impact of any roof runoff. The driveway -- Pressler Road breaks to the south approximately at the existing entrance to the villa. We can possibly regrade the swale in this area to --

MR. HINES: The highway superintendent did take a look at the site when the driveway was proposed. The driveway permit does note that they need to develop a swale to keep the runoff from the driveway locations on the west side of the roadway. As Mr. Doce just explained, the roof leaders are directed to the rear of the property and down gradient towards the wetlands. So two of the three houses proposed are already existing and the other two houses on lots 1 and 2, they've done some work to mitigate the amount.

I'm more concerned about the surface water than the ground was the issue you raised. Between the highway superintendent's comments on the roof leaders directing the water back to the large wetland area, I think they've addressed stormwater on the site.

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This project doesn't meet the threshold that would require a site specific drainage report. The Town of Newburgh has a stormwater management ordinance that if you were constructing a new road or a private road or something to service the project, then they would have to do an analysis of the pre and post-development runoff. The size of this project is below the threshold where that would be required.

We did, at work session, review the drainage concerns, so I did take a look at the plans so I could address any of those potential comments.

MR. TOOLE: So the swale, that would run along the front of the property?

MR. HINES: Rather than putting culverts at the driveway the highway superintendent requested a swale at the low point prior to Pressler Road to keep the surface runoff from those driveways itself on the opposite side of the road from your house.

MR. TOOLE: The driveways could be paved?

MR. HINES: Actually, it's required

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that they be paved it says here.

MR. TOOLE: Right now nothing is paved on that side of the road.

MR. HINES: The new driveways will have to be paved as part of the condition of the highway permit.

MR. TOOLE: The one that was most recently put in adjacent to the lot that's furthest to the south, I think that's got some paving but it's also just gravel.

MR. HINES: It's either in the right-of-way -- Mr. Canfield informed me it's the first twenty-five feet at least has to be paved.

CHAIRMAN EWASUTYN: Additional comments from the public?

(No response.)

CHAIRMAN EWASUTYN: At this point I'll turn to our consultants for their comments. Jerry Canfield, Code Compliance?

MR. CANFIELD: Our previous comments regarding a well to be abandoned has been identified with a note it will be capped according to the American Waterworks Association. We have nothing additional.

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CHAIRMAN EWASUTYN: Pat Hines, Drainage
Consultant?

MR. HINES: My initial comments were
identified in my June 4th comment letter.
Subsequent to these comments I did receive a
resubmission from Mr. Doce's office addressing
our comments.

The largest one of that pertained to
the septic system proposed on lot 3. Previously
there was a proprietary Elgin septic system
proposed on that lot. The slopes were such that
that was not permitted on those slopes, so the
latest plans have that septic system revised in
accordance with the Public Health Law. So the
wells and septics are acceptable.

As Jerry stated, there are two wells on
the site, the one Jerry referred to and there's
one along Pressler Road that will also have to be
abandoned. It's across the street from Quinn,
just north of Ellen's Way.

Mr. Doce also checked the elevation of
the well on the Brown parcel because it appeared
to be down gradient from the septic system --
replacement septic system on the existing

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cottage, however he field reviewed that and represented on the plans that it is outside the course of drainage, so that is acceptable. Our comments have been addressed.

CHAIRMAN EWASUTYN: Bryant Cocks, Planning Consultant?

MR. COCKS: We did have minor comments. The applicant did make the revisions regarding the bulk table.

They have a location map and all the stamps and signatures.

The Town of Newburgh Highway Department did issue their approval.

Just a note that the Planning Board did waive the requirement for topography on the whole site at the last Planning Board meeting.

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

MR. GALLI: No additional comment.

CHAIRMAN EWASUTYN: Cliff Browne?

MR. BROWNE: I would still like to carry the comment that I made at the last meeting about the fence in the front, the current eyesore it is. Even though the applicant stated he wants

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LANDS OF JAN KADNAR

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to keep the fence, I think it needs to come down.
That's just a comment.

CHAIRMAN EWASUTYN: Mr. Donnelly -- not
Mr. Donnelly. Dave, you may want to list that as
one of the conditions in the resolution for
approval, the fence along the front of the
property be removed.

MR. DONOVAN: Yes, Mr. Chairman.

MR. DOCE: If it becomes an issue we
will.

CHAIRMAN EWASUTYN: Anything else,
Cliff?

MR. BROWNE: No.

CHAIRMAN EWASUTYN: Ken Mennerich?

MR. MENNERICH: No questions.

CHAIRMAN EWASUTYN: Tom?

MR. FOGARTY: Is there a timetable for
the demolition of those buildings?

MR. DOCE: They're going to start
removing them. I believe in the minutes to the
initial meeting it was going to be a requirement
before approval that they be removed. They're
planning on doing that. They applied for the
permit. He just informs me, Mr. Kadnar, that he

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LANDS OF JAN KADNAR

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received it. His son is in Spain so I'm assuming
as soon as he returns that they'll begin.

MR. FOGARTY: Very good. Thank you.

MR. WARD: No comment.

CHAIRMAN EWASUTYN: Okay. Any
additional comments from the public?

(No response.)

CHAIRMAN EWASUTYN: I'll move for a
motion from the Board to close the public hearing
for the five-lot subdivision for the Lands of
Kadnar.

MR. MENNERICH: So moved.

MR. WARD: Second.

CHAIRMAN EWASUTYN: I have a motion by
Ken Mennerich. I have a second by John Ward.
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. FOGARTY: Aye.

MR. WARD: Aye.

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LANDS OF JAN KADNAR

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CHAIRMAN EWASUTYN: And myself yes. So carried.

At this point, Dave, I'll turn to you to read to the Board the conditions of approval for the Lands of Kadnar.

MR. DONOVAN: Yes, Mr. Chairman. Should I read them verbatim or outline them?

CHAIRMAN EWASUTYN: Outline them.

MR. DONOVAN: Compliance with the requirements as stated by the Planning Board Engineer. Compliance with the conditions as stated by the Planner from Garling Associates. Compliance with the conditions that are set forth in the Zoning Board of Appeals resolution of approval, which includes -- speaks specifically to the small cottage on proposed lot number 4, that that not be used as an accessory structure. If there's ever a new house constructed on that lot, that cottage is to be removed. Review and approval of a common driveway easement and maintenance agreement satisfactory to the Planning Board Attorney. For the record, that has been received and appears to be acceptable. I'll leave that up to Mike to make sure it's a

1 hundred percent acceptable. The approval is also
2 subject to review of the driveway locations by
3 the Town of Newburgh Highway Superintendent, and
4 Mr. Hines has indicated those have been reviewed,
5 especially relative to the swale that's going to
6 be required. Also, the structures shown on the
7 site are to be removed as indicated before prior
8 to the plat being signed. We've added this
9 evening the fence along the front also to be
10 removed.
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12 CHAIRMAN EWASUTYN: Okay. Cliff, are
13 you satisfied with the condition on the fence?
14 Do you want to specify a time?

15 MR. BROWNE: That's fine.

16 CHAIRMAN EWASUTYN: Comments from the
17 Board Members as far as the resolution for final
18 approval?

19 MR. GALLI: No additional.

20 MR. BROWNE: Nothing more.

21 MR. MENNERICH: Nothing.

22 MR. FOGARTY: None.

23 MR. WARD: None.

24 CHAIRMAN EWASUTYN: Then I'll move for
25 approval of the five-lot subdivision for the

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LANDS OF JAN KADNAR

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Lands of Kadnar subject to the conditions of the resolution explained to us by Dave Donovan, Planning Board Attorney.

MR. GALLI: So moved.

MR. FOGARTY: Second.

CHAIRMAN EWASUTYN: I have a motion by Frank Galli. I have a second by Tom Fogarty. 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. FOGARTY: Aye.

MR. WARD: Aye.

CHAIRMAN EWASUTYN: And myself. So carried.

Thank you for coming this evening.

MR. DOCE: You're welcome.

(Time noted: 7:13 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: July 20, 2009

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

----- X

In the Matter of

NINE ROCK CUT ROAD, LLC

Rock Cut Road
Section 86; Block 1; Lot 16
IB Zone

----- X

SITE PLAN

Date: July 2, 2009
Time: 7:13 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
THOMAS P. FOGARTY
JOHN A. WARD

ALSO PRESENT: DAVID DONOVAN, ESQ.
BRYANT COCKS
PATRICK HINES
KAREN ARENT
GERALD CANFIELD

APPLICANT'S REPRESENTATIVE: GREGORY J. SHAW

----- X

MICHELLE L. CONERO
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MR. BROWNE: The next item on the agenda is Nine Rock Cut Road LLC represented by Gregory Shaw.

MR. SHAW: Good evening. A brief overview of the project for the Board and the public. You've seen it a few times before. It's a two-acre parcel located on Rock Cut Road just north of Route 17K in the IB Zone requiring a minimum lot area of 40,000 square feet which we exceed substantially.

We're proposing to construct a two-story office building for a total square footage of 17,280 square feet. Along with the building we are proposing site improvements, such as 87 parking spaces which we are obligated to provide according to your Zoning Ordinance.

With respect to the infrastructure adjacent to the site, we will be installing a force main -- a pump station and a force main which will tie into the Town's low-pressure sewer system on Rock Cut Road which ultimately discharges into the City of Newburgh sewage system.

With respect to water for the project,

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we do have to sprinkler it according to the Town Code, and we'll be installing a water main off site from our site to Route 17K and under Route 17K to the Town's water system on the south side of Route 17K. All total it will probably be about 700 feet in length.

With respect to the storm drainage, we have a stormwater collection system in our parking area which is going to discharge into a water quality basin located in the rear of the property. That stormwater quality basin will discharge through a level spreader overland for about 150 feet into the New York State DEC wetlands which is located on the lands of Peters. We will not be detaining any stormwater flows as the increase in runoff which will be generated by the project site will be attenuated by the large surface area of the wetlands in the rear of the property.

That is a brief overview. I'll answer any questions you or your consultants may have.

CHAIRMAN EWASUTYN: I'll start by turning it over to the Planning Board Members for questions they may have. Frank Galli?

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NINE ROCK CUT ROAD LLC

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MR. GALLI: I didn't have any questions on this.

CHAIRMAN EWASUTYN: Okay. Cliff Browne?

MR. BROWNE: No.

CHAIRMAN EWASUTYN: Ken Mennerich?

MR. MENNERICH: I don't have any questions.

CHAIRMAN EWASUTYN: Okay. Tom Fogarty?

MR. FOGARTY: One of the issues I thought that was brought up on this particular project is whether there was going to be an eight-inch or a twelve-inch pipe that connects to the Town water system.

MR. SHAW: That has not been resolved at this time. We are proposing -- we are obligated -- let me rephrase that. In order for a water main to be installed on Rock Cut Road, which is a County road, there has to be a municipal line. It can not be owned by us. Therefore it has to go out to the Orange County Department of Health. The Health Department does their review according to the State standards, which it has to be a minimum line of eight

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inches, primarily for fire flow protection and to increase the service area in the future if it so wants. That is what we are obligated to do, all right. The Town has suggested, and it's actually Mr. Osborne, possibly about making that line twelve inches to increase the service area and, because it is a commercial area, to be able to withdraw greater fire flows, not only for this project but for that area in general. We had a meeting with the Town Board in which we've discussed many options, and it really did not come to a resolution. So to the best of my knowledge it's still an open item. What I've been told is that they revisited whether or not we could get a variance and not sprinkler the building. The answer to that was no. So there is going to be a water main. I can't tell you for sure whether it's going to be an eight or a twelve. It's going to come down to a decision made probably between my client and the Town Board.

MR. FOGARTY: Thank you.

CHAIRMAN EWASUTYN: John Ward?

MR. WARD: My question was going to be

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the twelve-inch line. I would recommend it.

At the same time I had a question about more handicap parking spots. You had four in the front. How many -- being a two-story building, I thought you should have maybe at least two more for handicap.

MR. SHAW: According to New York State, four is more than sufficient to satisfy their requirements. Ordinarily I would say yes, I would be more than happy to give more handicap if the Board felt that was appropriate. The problem is we have just the right number of spaces now, all right. I'm not sure if I could find another space because if I were to go to a handicap space I would lose one and now I'd have to go someplace else on the site to try and find an area for another space, and I'm not sure that area is available.

MR. WARD: The top of the building, is that just a regular door or is it a fire door? At the top right there.

MR. SHAW: This?

MR. WARD: Yes.

MR. SHAW: This is something that I put

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on the drawing. There are no architectural plans of the building that have been generated yet. I'm just assuming with a building of that length there's going to be some type of an exit door at the extremities of the building. That's going to be up to the architect when the drawings get generated of the building.

MR. WARD: If it was going to be an access door possibly for going in and out, possibly have handicap back there. That's an option.

At the same time we were talking about signs, putting up different signs by the building. I recommended when you go in the driveway, on the right-hand side, right there, not on the left, right in that area. Just keep that in mind because your neighbor next door has the sign in the driveway right near there. It's confusing seeing the sign.

I also suggested behind the -- the back of the building some type of landscaping or something for the neighbor to have just not looking at a plain building under new construction.

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NINE ROCK CUT ROAD LLC

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MR. SHAW: That building being A&A Alarm Company?

MR. WARD: Yes.

MR. SHAW: Okay. We do have a utility line back there so we'll have to be careful. Our sanitary line is back there. We would have to be careful about what we put back there. I wouldn't want to put a lot to be honest with you.

MR. WARD: I'm saying for a visual.

MR. SHAW: I understand. I just don't want to interfere with the sewer line.

MR. WARD: You can put oriental grasses or something. That's what I'm saying. Not trees or something. I'm saying as cosmetic.

MR. SHAW: We can accommodate that.

MR. WARD: Thank you.

CHAIRMAN EWASUTYN: Do you know the height -- I realize you don't have architectural drawings for the building yet. Do you know the height of what this proposed building would be?

MR. SHAW: We discussed it at the last meeting. I would have to refer to Mr. Canfield because there's a cut off with respect to the height of the building versus the width of the

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NINE ROCK CUT ROAD LLC

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aisle. Is it thirty feet? Is that the number?
We are going to be less than that number.

MR. CANFIELD: That's correct.

MR. SHAW: We have not provided the
width that you would need to have a higher
building than that prescribed number.

MR. CANFIELD: The site plan displays
twenty-five feet, which indicates to me that
you're going to keep it under the required thirty
feet.

MR. SHAW: Okay. The number is thirty.
That's the number where once you reach that
number you have to increase the width of the
aisles for firefighting purposes.

CHAIRMAN EWASUTYN: Jerry, any
additional comments or questions at this point?

MR. CANFIELD: Just for clarification
for the record Greg, the applicant is afforded
the right to apply to the fire bureau for a
variance for the sprinkler. I think you had
stated that you were told no. I think that's the
cart before the horse. We can't tell you no. I
can also tell you for clarification, it was under
my advice to the town engineer that the fire

1 bureau has not granted a variance for an
2 application of this size. Just for
3 clarification, you can submit. I mean it's your
4 Constitutional right to submit and apply for the
5 variance. It's premature to say no, you can not
6 have it. In my past experience, and I'll advise
7 you the same that I did them, Mr. Osborne and Mr.
8 Booth and Mr. Taylor, is that we have never
9 granted a variance for a building of this size.
10

11 MR. SHAW: Again just for the record, I
12 was -- I'm the second engineer on this project.
13 I was told that the first engineer and the owner
14 went for a variance, not myself, and that they
15 got a no answer, okay. This is prior to my
16 involvement. This may go back two, three years
17 ago.

18 MR. CANFIELD: Yes, the project is that
19 old.

20 MR. SHAW: So therefore when we met
21 with the Town Board and that issue possibly came
22 up, I believe somebody approached the Town, I
23 believe it was my client, and the response we got
24 back was, you know, we can not reconsider the
25 granting of the variance. Very simply, the

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NINE ROCK CUT ROAD LLC

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building is too big. It's too big a building.
That's the answer, which seems to be similar to
what you're saying. It's not that it's two
story, it's just too big a building.

MR. CANFIELD: Yes, the logic of that
is correct. You still have the right to apply,
and that's the point I'm trying to clarify.

MR. SHAW: But they applied already.

MR. CANFIELD: It's an entirely
different project than what was originally
applied for. I'm not suggesting you do that but
I'm making it clear to you that it is an option.

MR. SHAW: Thank you.

CHAIRMAN EWASUTYN: Additional
comments, Jerry?

MR. CANFIELD: That's it.

CHAIRMAN EWASUTYN: Pat Hines, Drainage
Consultant?

MR. HINES: We have some technical
comments on the plans. One regarding a note on
the retaining wall.

We're going to need an engineer's
report for the pump station once that's complete.

The driveway access permit from the

1
2 Orange County Public Works is required. That
3 will be applied for after preliminary approval.

4 It is noted, and we did discuss, the
5 water main at length, the issue with the sizing
6 of the water main and the Town Board approvals at
7 work session. We will need plans for that to be
8 submitted along with the application package.

9 I suggested to the Planning Board that
10 since municipal water is going to be provided, it
11 is a SEQRA issue. We know municipal water is
12 available. It's a matter of the pipe sizes,
13 which we can work out later.

14 We've reviewed the stormwater
15 management report that was prepared in May for
16 the project and found it acceptable. Our comment
17 goes on to describe exactly what Mr. Shaw
18 described as to how it was going to function.

19 We noted that the swale along the
20 County right-of-way is going to need to be
21 carefully graded to assure drainage. The culvert
22 currently doesn't drain well because of the
23 topography in front of this site. It is
24 addressed on the grading plan and we're just
25 making note of that. We would recommend a

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negative declaration for the project based on the submissions to date.

CHAIRMAN EWASUTYN: Bryant Cocks, Planning Consultant?

MR. COCKS: Yes. Previously it was mentioned that the Department of Public Works and the Orange County Health Department will need to approve this project. We also need approvals from the DOT for the crossing at the water main, and also from the City of Newburgh for sewage flow. The town engineer has sent a request for approval on May 29th but we haven't received anything back at this time.

With the site plan layout the applicant has addressed most of our comments.

They moved the parking from the building and provided a stonewall and some landscaping. As mentioned, the seventy-five foot buffer requirement was -- didn't need to be addressed because there was a hundred-foot wetland buffer back to the site.

Other than that, I think everything has been previously addressed with my comments.

CHAIRMAN EWASUTYN: Thank you.

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Karen Arent, Landscape Architect?

MS. ARENT: I was just -- I'm asking for a couple more trees on the site. Just trees. And also --

MR. SHAW: Are you disappointed that she didn't?

MS. ARENT: And a couple evergreen trees to help screen the back of the building from Rock Cut Road.

We discussed at work session that you're not going to be submitting architectural plans, but once they are submitted we would request that you review the landscaping proposed in front of the building and coordinate that better with the architecture.

MR. SHAW: Okay.

MS. ARENT: And you will need a landscape cost estimate.

The other question I have is about free-standing signs. If you think you're going to have one, that's something you might wait on also.

MR. SHAW: Absolutely. The signage goes with the architecture.

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MS. ARENT: We should add that to the review of the architecture, the signage.

And then just a minor comment on the fence and the concrete footings. It should be shown in a sleeve. Just put the sleeves in because they're finding the fences remain standing longer and straighter with the sleeves.

The landscape pond in the front per DEC guidelines, the stormwater quality area.

That's it.

MR. SHAW: Fine.

CHAIRMAN EWASUTYN: Comments from Board Members one more time. Frank Galli?

MR. GALLI: No additional comment.

CHAIRMAN EWASUTYN: Cliff Browne?

MR. BROWNE: Nothing more.

CHAIRMAN EWASUTYN: Ken Mennerich:

MR. MENNERICH: No questions.

CHAIRMAN EWASUTYN: Tom Fogarty?

MR. FOGARTY: No comment.

CHAIRMAN EWASUTYN: John Ward?

MR. WARD: No comment.

CHAIRMAN EWASUTYN: The first item that I'll move for is to declare a negative

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declaration for the site plan for Nine Rock Cut Road.

MR. MENNERICH: So moved.

MR. WARD: Second.

CHAIRMAN EWASUTYN: I have a motion by Ken Mennerich. I have a second by John Ward. 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. FOGARTY: Aye.

MR. WARD: Aye.

CHAIRMAN EWASUTYN: Myself yes. So carried.

The next motion I'll move for is the Planning Board has the -- it's discretionary whether or not we want to have a public hearing for a site plan. I'll move to poll the Board Members to see whether they want a public hearing or they want to not move for a public hearing. I'll start with Frank Galli.

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MR. GALLI: No.

MR. BROWNE: No.

CHAIRMAN EWASUTYN: Ken?

MR. MENNERICH: No.

CHAIRMAN EWASUTYN: Tom?

MR. FOGARTY: Yes.

CHAIRMAN EWASUTYN: John?

MR. WARD: Yes.

CHAIRMAN EWASUTYN: I'll vote no. So at this point the majority rule is that we won't have a public hearing.

MR. SHAW: Thank you.

CHAIRMAN EWASUTYN: The next item, I'll just have the conditions for preliminary approval discussed by Attorney Dave Donovan.

MR. DONOVAN: What we have is compliance with the conditions as indicated by each of our consultants as well as the approval from the City of Newburgh relative to the sewage, and any other agency approvals that are required. We're also deferring the ARB -- if the Board is going to proceed for a preliminary, deferring the ARB approval until final.

CHAIRMAN EWASUTYN: Okay. There's an

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understanding with that ARB approval. We'll
revisit the landscaping when we do that.

MR. DONOVAN: Correct.

CHAIRMAN EWASUTYN: The signage would
also be deferred to site plan approval.

Any other comments from Board Members.

(No response.)

CHAIRMAN EWASUTYN: So I'll move for
that motion then, to grant preliminary site plan
approval for the lands of Nine Rock Cut Road.

MR. GALLI: So moved.

MR. FOGARTY: Second.

CHAIRMAN EWASUTYN: I have a motion by
Frank Galli. I have a second by Tom Fogarty.
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. FOGARTY: Aye.

MR. WARD: Aye.

CHAIRMAN EWASUTYN: Myself. So

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NINE ROCK CUT ROAD LLC

carried.

MR. SHAW: Thank you. Have a nice weekend.

(Time noted: 7:30 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: July 20, 2009

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

----- X
In the Matter of

IL CENA COLA RESTAURANT
(2007-45)

228 South Plank Road
Section 60; Block 2; Lot 51
B Zone

----- X

SITE PLAN & ARCHITECTURAL REVIEW BOARD

Date: July 2, 2009
Time: 7:30 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
THOMAS P. FOGARTY
JOHN A. WARD

ALSO PRESENT: DAVID DONOVAN, ESQ.
BRYANT COCKS
PATRICK HINES
KAREN ARENT
GERALD CANFIELD

APPLICANT'S REPRESENTATIVE: ANDREW HENNESSY

----- X

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

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IL CENA COLA RESTAURANT

MR. BROWNE: The next item of business we have is Il Cena Cola Restaurant for a site plan and ARB being represented by --

MR. HENNESSY: Andrew Hennessy.

MR. BROWNE: -- Andrew Hennessy. Thank you.

MR. HENNESSY: Good evening. We're back with the project at 228 South Plank Road. We're proposing an addition to the existing restaurant. It's located within the B zoning district. We're served by municipal water and sewer.

The existing building is approximately 3,320 square feet. We're proposing an addition of 13,000 plus or minus for a total of 16,330.

Since the last meeting we did attend the workshop. We addressed, I believe, most of the comments if not all of the comments from the consultants.

As you know, a couple -- the two major issues on this job seem to be the flood plain and parking. I guess the best thing to start with I think is the flood plain. We presented the flood

1 plain data in the package to the Planning Board
2 as well as a survey that indicated the plotted
3 flood plain on the site which doesn't exactly
4 coincide with FEMA's maps. But in either case we
5 believe that it shows the existing building is
6 outside the flood plain. The proposed addition
7 will clip the flood plain just a bit in the back
8 but we're proposing to raise it above the flood
9 plain level.
10

11 CHAIRMAN EWASUTYN: Okay. Timing may
12 be a matter as it relates to the flood plain
13 issue. None of the Planning Board Members really
14 can speak on it but we'll have Pat Hines, our
15 Drainage Consultant, and Jerry Canfield educate
16 us all as to where we might be within the last
17 three weeks for flood plain.

18 Pat and Jerry.

19 MR. HINES: I'll jump in. In the
20 process of how we were reviewing this project,
21 and actually since our last work session, the
22 Town of Newburgh has adopted revised flood plain
23 regulations. It wasn't something the Town chose
24 to do, it was something forced on the Town by
25 FEMA based on the new flood plain mapping that

1 was sent to the Town. In order for the Town to
2 comply with the FEMA regulations for flood
3 insurance they had to adopt a flood plain
4 ordinance. The Town also adopted a couple of
5 additional requirements that were suggested by
6 FEMA. Those requirements may impact your
7 project. They're so new that I don't think Jerry
8 nor I can answer how significant they are, but I
9 do know that one of them is compensating storage
10 for any fill material placed in a flood plain.
11 You put a hundred yards in somewhere, you need to
12 take out a hundred yards on your property.
13 Previously it was one foot higher was okay, and
14 if you didn't raise the water surface elevation
15 in the flood plain more than one foot, that was
16 also -- the Town could also issue a permit.
17 Those regulations have changed and may impact how
18 the project is currently designed.

19
20 I would suggest that, number one, you
21 and your engineer get a copy of the revised flood
22 plain regulations and then we have a work session
23 to get a handle on this.

24 One of the other sections that they
25 approved was a prohibition of doing substantial

1
2 improvements to buildings within the flood plain,
3 and that is defined in there as I think fifty
4 percent of the cost of the structure. It may be
5 different than that but that's what I believe it
6 is. So this may be considered a substantial
7 improvement within the flood plain, so we need to
8 take a look at that impact on your project.

9 The regulation is quite long and it was
10 forced on the Town in order to comply with the
11 flood plain management and insurance program from
12 FEMA.

13 MR. HENNESSY: The actual flood plain
14 itself is based on the same data we provided in
15 our package, no? Is there additional new data?

16 MR. HINES: The mapping is the same
17 mapping, it's just the requirement. As you said,
18 the corner of the building is in the flood plain.
19 The fill that you're putting in in the vicinity
20 of the parking lot to raise the parking lot up.
21 In some sites even the fill to raise the building
22 up may be an issue for development of the site.

23 MR. HENNESSY: Are we in agreement that
24 the existing building is outside the flood plain?

25 MR. HINES: I can't answer that yet.

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IL CENA COLA RESTAURANT

MR. HENNESSY: Based on the maps we submitted --

MR. HINES: We're going to have to resolve that one.

MR. CANFIELD: We're looking at because it's an addition to the existing building. It's a play on definitions here. Is it considered that; yes, the original building is in the flood zone because it now all becomes one. That's what we're looking at. To be quite frank with you, we don't have a definitive answer on that. We're kind of looking at it as yes it is, but to give all the parties the benefit of the doubt, as Pat said if we can suggest to the Board which we discussed at the work session, a work session where we have the opportunity to sit down with you and review your data with compliance with the new regulations and perhaps come to some good understanding in applying the new regulations to your project.

MR. HENNESSY: Are these new regulations available on a website or --

MR. CANFIELD: Yes. I can supply them for you.

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IL CENA COLA RESTAURANT

MR. HINES: I don't know if they are on the website yet.

MR. CANFIELD: They may not be on the website yet but I can supply it for you.

MR. HINES: And they are that new. I think it was like at the June 21st or something, the Town Board meeting they adopted them.

MR. CANFIELD: Within the last two weeks.

MR. HINES: Unfortunately.

I had some other clean-up items. We want that to be through a saddle type tap.

The existing water main on one side of the street needs to be shown.

The stormwater management report. They modeled their outlet lower than the existing elevation of the pond.

MR. HENNESSY: He said he can adjust that.

MR. HINES: That needs to be adjusted. We'll work that out also at the work session. I realize we're struggling with the flood plains, but we are too with the new regulations.

MR. HENNESSY: I thought we had a

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IL CENA COLA RESTAURANT

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handle on it this time.

CHAIRMAN EWASUTYN: As a matter of fact, it's so new we just received it recently and that we're just going to discuss in general under Board Business tonight. I'll give you my copy because I have that available now.

MR. DONOVAN: Just for some additional clarification, they need to be adopted by today so that properties that are in the flood plain qualify for flood insurance. Periodically FEMA remaps, and they have all over Orange County. If municipalities don't adopt this local law, properties that are -- for instance, my office in the Village of Goshen is in a flood plain. I wouldn't qualify for flood insurance. It was time sensitive, it was required to be adopted by today. And while it may be unfortunate for certain properties, it's also a benefit for other properties that are definitely in the flood plain because they don't qualify for flood insurance unless the municipality has adopted the local law.

CHAIRMAN EWASUTYN: Okay.

MR. HENNESSY: It sounds like this is

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IL CENA COLA RESTAURANT

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all so new we all need to review this. When would the next work session be?

MR. COCKS: July 28th.

CHAIRMAN EWASUTYN: I think for the benefit of the plan itself, and since you're here, I'll have Dave Donovan discuss with us what is proposed for parking, what is required, and then what may be an issue -- what could possibly be an issue with not having adequate parking. Right now he is in compliance?

MR. DONOVAN: As I understand it, correct.

MR. HENNESSY: May I add one thing before we start?

CHAIRMAN EWASUTYN: Can we hear from the owner?

We're trying to think about it as far as a service business, and in order to satisfy your customers you would want to make it convenient. We just wonder if you do have enough parking available and will you continue then to provide a service that your customers will be looking for, and what happens if your business is as successful as we hope it will be and you don't

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IL CENA COLA RESTAURANT

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have enough parking? What happens then?

THE APPLICANT: Do you have the piece of paper?

MR. HENNESSY: Salli has made an agreement with the owner of the supply company across the street, Algonquin. He's willing -- I have a letter here. He's willing to --

CHAIRMAN EWASUTYN: You can give that to our attorney.

MR. HENNESSY: He's willing to provide up to thirty-seven spaces on Friday, Saturday and Sunday as needed. I think that coupled with the valet parking. Obviously we would need to address, and I mentioned, to make sure fire services could get in, but there is room on site and a valet situation to park more cars. I believe your consultants said something along the neighborhood of fifty-four. I haven't checked that to see what that looks like.

CHAIRMAN EWASUTYN: How do you see the safety issue of even the people who are parking the cars going across Route 52? I mean just describe to me visually how you see this working.

THE APPLICANT: It's going to be valet

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IL CENA COLA RESTAURANT

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parking. We'll probably be okay.

CHAIRMAN EWASUTYN: Excuse me?

THE APPLICANT: Valet parking.

MR. HENNESSY: It will only be valet across the street. We wouldn't have customers running across 52.

THE APPLICANT: Customers will not cross. It just will be valet parking.

CHAIRMAN EWASUTYN: So they would pull into the site, they would get out of their vehicle and then someone would drive their vehicle across the street?

THE APPLICANT: Yes. Yup.

CHAIRMAN EWASUTYN: I'll just open it up for discussion. Frank?

MR. GALLI: Well, the only problem with that is 52 is pretty heavily traveled nowadays. It's a safety concern for, first the customers, but if it's going to be valet parking it's probably just a few kids. I'm sure he's not going to -- most of them hire kids, young adults to do it. I just hope there's not a safety issue where someone gets hurt. That's my concern about the parking across the street. It's on the turn.

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I mean it's right before the turn. When you come off the Thruway, you come around that turn, Algonquin pops up on you. There's plenty of visibility from Dairy Queen coming up. When you come the other way there's not a lot of visibility, especially at night. During the day I could see it being possibly all right. At night I think you have to be real careful there.

MR. HENNESSY: We don't foresee this being a nightly occurrence, though. I think this is going to be an occasional occurrence when you can't handle the parking. If this was nightly it would be great for business. We don't see that happening.

MR. GALLI: Hopefully it does. Did he ever look into next door? There's an old beat up shack house there.

MR. HENNESSY: The property just to the --

THE APPLICANT: Smith, yeah. The Smith property.

MR. GALLI: They're not willing to sell it?

THE APPLICANT: We'll look maybe later,

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later on.

CHAIRMAN EWASUTYN: Cliff Browne?

MR. BROWNE: I just have a concern that was brought up during work session. We discussed this and there was a situation similar to yours where a person hired or rented a space and it lasted about a month because of whatever happened. The question and the concern would be in making these arrangements with Algonquin Supply, would this arrangement be long term and go through future owners of that property for your benefit? Whoever owns Algonquin property now sells it six months from now, that goes away.

MR. DONOVAN: That's one of the things we discussed earlier. If we identify that the parking is inadequate and that off-site parking is required, it becomes a condition of approval if we can demonstrate that, obviously. Then we would need something that's obviously a little more formal than this, A. B, it's a condition of site plan approval, it's got to last as long as the site plan lasts.

MR. HENNESSY: I understand. I mean in our opinion it's probably never going to be used.

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I mean this really would be an extreme case. As far as guaranteeing that it will always be there, we'll have to speak with the owner about that and see what we can do. That's all I can --

CHAIRMAN EWASUTYN: Ken Mennerich?

MR. MENNERICH: I guess the -- you know, the concern on the agreement that brought up the legal agreement and whether that would be formulated or not. You know, the suggestion to get the property just to the west of you certainly would be a better solution, and it would also allow the site not to be so packed full. Right now it seems like the site, because of the pond and the stream and everything, everything is packed on the site so you don't really have much spare space there. If you could get that property to the west, that certainly would give you a lot more options on how you arrange this site.

MR. HENNESSY: Is it for sale or --

THE APPLICANT: I don't know.

MR. HENNESSY: I'm not sure if that's possible.

CHAIRMAN EWASUTYN: Tom Fogarty?

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MR. FOGARTY: I agree with Ken. We were talking about that and I was out there and I noticed that the building right to the west is -- I know it's not occupied. I don't think you can live -- it's kind of delapidated. It would be a solution to this problem to put the additional parking over there. I understand the valet parking is only going to be on an occasional basis. I agree something has to go along with making that a permanent thing with the other property. It is, I think, a solution to the problem. I would rather have one person running across 52 with the valet parking rather than having cars with a few people in them.

MR. HENNESSY: We don't want customers crossing. I don't think that's the type of business, you know, that we're looking to do here. It's going to be an upscale business. You're not going to have your customers running across the highway.

MR. FOGARTY: Thanks.

CHAIRMAN EWASUTYN: John Ward?

MR. WARD: It's been covered. Thank you.

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IL CENA COLA RESTAURANT

MR. GALLI: John, just one more comment on that. If you can't purchase the property maybe you can make an arrangement, an agreement for parking there. Clear out a spot between you and them and have the parking there for the safety issue being on the same side of the road. You could make some kind of agreement with them instead of opposite. I know Algonquin Supplies is set up for the parking but if Algonquin Supplies becomes part of the site plan, if I'm not mistaken it's got to be paved, it's got to have lines and it's got to have a couple other things to become part of the site plan. I don't know if that gentleman is going to want to do all that.

MR. HENNESSY: I don't view it as part of the site plan. It's more of an overflow contingency that we do have an overflow lot, we have a place to put those extra cars.

MR. GALLI: Instead of looking across the street you might want to look next door as far as not purchasing it but some kind of parking.

MR. HENNESSY: We'll certainly approach

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IL CENA COLA RESTAURANT

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the owner there and see what we can work out.

CHAIRMAN EWASUTYN: All right. Besides the motion to set this up for a work session, which I believe, Bryant, you said was the 23rd, --

MR. COCKS: 28th.

CHAIRMAN EWASUTYN: -- I apologize, we'll take a moment to discuss that at some point in time we have to declare our intent for lead agency. We're going to have to refer this to the Orange County Planning Department.

Bryant, I think there may be also a requirement to refer this to the ZBA for a front yard variance because what is required is 50 feet and what is proposed is 34.4 feet.

MR. COCKS: Yes.

CHAIRMAN EWASUTYN: So these are outstanding items that would have to be addressed.

MR. HENNESSY: Right. You had mentioned the ZBA last time. I still don't quite understand the logic behind sending us since we're not increasing that nonconformity, but you had told me that that's the way you handle things

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IL CENA COLA RESTAURANT

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here, so -- because the addition on its own would be fully conforming.

CHAIRMAN EWASUTYN: I think what we're saying, and that's still outstanding, the purpose of it is not to say whether you agree or disagree or there's no logic to it. These are items that have to be addressed.

I'll turn to Bryant Cocks at this point, our Planning Consultant, to make a recommendation to the Planning Board as far as the outstanding items. Should we declare our intent for lead agency or should we first refer it to the ZBA? Dave Donovan, I'll refer to you also on this. We do have this issue.

MR. DONOVAN: I can speak to that issue. By a number of decisions rendered over a number of years, the ZBA has determined that when you have a pre-existing nonconforming condition and you do something on the site that alters that condition, you need a variance from the original condition. You've increased the degree of the nonconformity. You've taken a building of X square feet and you've made it into a building of X plus square feet, therefore it requires a

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variance. There's a number of decisions that have held that in the Town of Newburgh.

In terms of -- I'll just weigh in my two cents if you will. The referral issue to the ZBA, I think the ZBA would like to see the issue of the flood plain resolved so you really kind of know what's going to happen on the site before there is a referral.

CHAIRMAN EWASUTYN: Thank you. I was looking for that clarification.

Recommendations for intent for lead agency, referring to the Orange County Planning Department, should we hold that decision until after we have the consultants' work session?

MR. COCKS: I think Orange County Planning Department would have comments about the flood plain issues. If we haven't figured out what the exact, I think it would be early to send it to them. They're going to have a bunch of comments that don't reflect what the new regulations would be since they're so new.

CHAIRMAN EWASUTYN: Okay. Is everyone in agreement? Okay. I would hope that you would, Pat, try maybe to get Jim Osborne present.

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IL CENA COLA RESTAURANT

MR. HINES: I can do that.

CHAIRMAN EWASUTYN: Also Jerry from the
Town.

I would move to set this for a
consultants' work session for the 28th of July.

MR. GALLI: So moved.

MR. MENNERICH: Second.

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

MR. GALLI: Aye.

MR. BROWNE: Aye.

MR. MENNERICH: Aye.

MR. FOGARTY: Aye.

MR. WARD: Aye.

CHAIRMAN EWASUTYN: Myself. So
carried.

Thank you.

(Time noted: 7:51 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: July 20, 2009

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

----- X
In the Matter of

LANDS OF MARY & MICHAEL KEENE
(2006-50)

North side of Pavilion Drive off Route 9W
Section 9; Block 1; Lot 4
AR Zone

----- X

THREE-LOT SUBDIVISION

Date: July 2, 2009
Time: 7:51 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

BOARD MEMBERS: JOHN P. EWASUTYN, Chairman
FRANK S. GALLI
CLIFFORD C. BROWNE
KENNETH MENNERICH
THOMAS P. FOGARTY
JOHN A. WARD

ALSO PRESENT: DAVID DONOVAN, ESQ.
BRYANT COCKS
PATRICK HINES
KAREN ARENT
GERALD CANFIELD

APPLICANT'S REPRESENTATIVE: STEVEN PAULI

----- X

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

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MR. BROWNE: The next item of business we have is the Lands of Mary and Michael Keene. It's a three-lot subdivision being represented by Patricia Brooks.

CHAIRMAN EWASUTYN: I had received a call, and I returned the message, that a Mr. Pauli would be here this evening. He was questioning whether or not he had received all the reviews from our consultants. That was yesterday. That was last night I had a message. I returned his call and he said he'd give me a call this morning to let me know if he hadn't received the review comments, who he could contact, but I never heard back from him.

I think we'll move forward with the next item on the agenda and we'll carry through until the end.

(Time noted: 7:52 p.m.)

(Time resumed: 8:30 p.m.)

CHAIRMAN EWASUTYN: I think Mr. Pauli is here now. Are you here to represent the next applicant?

MR. PAULI: Good evening. My name is Steve Pauli.

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MR. BROWNE: Being represented by Steve Pauli. Thank you.

MR. PAULI: Okay.

CHAIRMAN EWASUTYN: Do you want to put your maps up for your presentation. I did call you last night. I didn't get a return call.

MR. PAULI: I saw that you called around 6:30. You were putting in some late hours. I tried giving you a call back this afternoon

I believe the last time we were here was March 19th. At that time you referred us to the ZBA. Since then we had -- the Town Board rezoned this property from the B District to the AR, so we were able to accomplish that.

We did get to file with the Orange County Clerk a right-of-way and maintenance agreement between lots 2 and 3. They'll have to share that driveway.

Also we were before the ZBA and they granted our area variance we were requesting.

CHAIRMAN EWASUTYN: Thank you. At this point I'll turn to our consultants for their comments and recommendations.

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Pat Hines, Drainage Consultant?

MR. HINES: We reviewed the revised plans. Our previous comments have been addressed. The wells and septic systems are in accordance with the appropriate codes.

We just have one note that needs to be added to the plan, that a certification will be submitted to the Town of Newburgh Code Enforcement Officer prior to CO. That needs to be on the engineer's plan. That's our only outstanding comment.

CHAIRMAN EWASUTYN: Bryant Cocks, Planning Consultant?

MR. COCKS: As mentioned, variances were granted for the existing house on lot 1, for the front yard setback, side yard setback and lot width. The other two lots, which are going to be the new lots, meet the requirement and didn't need any variances.

The only other comment is the subdivision plans are going to need a surveyor's seal and engineer's seal and signature for final approval next time you submit it. That was all.

CHAIRMAN EWASUTYN: Comments from Board

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Members. Frank Galli?

MR. GALLI: No additional.

MR. BROWNE: Nothing.

MR. MENNERICH: No questions.

MR. FOGARTY: No questions.

MR. WARD: No questions.

CHAIRMAN EWASUTYN: I'll move for a motion to declare a negative declaration for the three-lot subdivision for the Lands of Mary and Michael Keene and to set it for a public hearing -- I believe we have three public hearings scheduled for the 6th. Do you want to look at that for a second? If we have two we'll make this the third. If we have three we'll have to reschedule it to the 20th.

MR. COCKS: This is one of them.

CHAIRMAN EWASUTYN: So I did have it in mind at the time. Good.

Then we'll set this for a public hearing for the 6th of August. I'll move for that motion.

MR. GALLI: So moved.

MR. FOGARTY: Second.

CHAIRMAN EWASUTYN: I have a motion by

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Frank Galli. I have a second by Tom Fogarty.
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. FOGARTY: Aye.

MR. WARD: Aye.

CHAIRMAN EWASUTYN: Myself. So
carried.

If you'd speak to Bryant Cocks.

Bryant, you'll have to notify the
assessor's office.

MR. COCKS: Sure.

CHAIRMAN EWASUTYN: You know the format
for that?

MR. COCKS: Yes.

CHAIRMAN EWASUTYN: Okay. Bryant will
notify the assessor's office to get a mailing
list. We'll then contact you in reference to
picking that list up and you can move forward
with that.

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MR. PAULI: Okay. And it's a similar procedure for when we advertised with the ZBA?

CHAIRMAN EWASUTYN: Correct.

MR. PAULI: We'll follow that, pick up that list.

CHAIRMAN EWASUTYN: You'll review those details. I think that's just subject to -- subject to both sides; correct?

MR. COCKS: Yeah. You just send out a letter.

MR. PAULI: To the adjoining owners. Okay.

MR. HINES: Contact Bryant, though.

MR. PAULI: Okay. Will do.

(Time noted: 8:35 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: July 20, 2009

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

----- X
In the Matter of

ONE SOURCE PURCHASE
(2009-07)

5305 Route 9W
Section 20; Block 2; Lot 56
B Zone

----- X

AMENDED SITE PLAN

Date: July 2, 2009
Time: 7:52 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
THOMAS P. FOGARTY
JOHN A. WARD

ALSO PRESENT: DAVID DONOVAN, ESQ.
BRYANT COCKS
PATRICK HINES
KAREN ARENT
GERALD CANFIELD

APPLICANT'S REPRESENTATIVE: ROMEO FRACCAROLI

----- X

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

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ONE SOURCE PURCHASE

MR. BROWNE: The next item we have is One Source Purchase. It's an amended site plan being represented by Karl Tauffner.

MR. FRACCAROLI: I'm Romeo Fraccaroli.

MR. TAUFFNER: If you don't mind, he prepared all the documentation.

MR. FRACCAROLI: Good evening. I'm Romeo Fraccaroli. The purpose of this is to get an amendment to the site plan. Basically we're staying with the same type of business that was currently on the site. Every building will remain exactly as it is, so there's not going to be any alteration.

The subject parcel is located on the westerly side of U.S. Route 9W between the intersection of Nicole Place and Pine Lane.

The topographic dimension of the property can be described as being generally sloping towards the easterly side of the main road, U.S. Route 9W. The parcel contained within the property is number 5305 9W and is approximately .78 acres.

Currently on the site there is an existing single-family residence with a detached

1
2 garage. There is a barn which is used as the
3 retail business. There's two little sheds that
4 will remain as they are.

5 The purpose of this application, as I
6 said, is to obtain a use permit. There was an
7 antique store until six months ago. The building
8 gross floor area is 2,460 square feet, the first
9 floor gross floor area is 1,360 and the retail
10 space on the second floor is 1,100.

11 As we understand, the antique barn has
12 been actively a retail business for the past
13 twenty years at that location and we're doing far
14 less retail activity with the new business.
15 Instead of selling old products we'll be
16 reselling new customized products to an existing
17 client base and conducting the business we have
18 been doing for thirteen years.

19 The antique barn is less than six
20 months. We would like to begin to operate the
21 barn as soon as possible. The antique barn will
22 be utilized as storage for goods and
23 documentation prior to being delivered to the
24 customer. I believe that this business and new
25 location will enhance the appearance of the 9W

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corridor and we look forward to relocating.

The existing single-family dwelling will remain as is. The first floor gross area is 790 square feet. There is a kitchen, dining room and living room on the second floor, which is 560 square feet, which has two bedrooms and a bath. There is a two-car garage, two storage sheds about 165 and 85 square feet.

We also would like to request a waiver based on Section 185-57 E of the Town of Newburgh Zoning Code because we're leaving pretty much every structure unaltered and we're not planning to change anything.

CHAIRMAN EWASUTYN: Thank you. I'm going to turn to Jerry Canfield who is our Code Compliance Officer. This was referred to us from the Building Department for a use variance. I think we have to have a clearer understanding of the proposed use.

Jerry, your questions?

MR. CANFIELD: We discussed at the work session, and I for one am a little confused as far as what is the commodity and what is it that you do there?

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ONE SOURCE PURCHASE

MR. TAUFFNER: The company --

CHAIRMAN EWASUTYN: For the record,
your name?

MR. TAUFFNER: I'm sorry. My name is
Karl Tauffner. My wife's company, she does
corporate gifts and awards, promotional items.
She produces the awards for AFLAC insurance here
in the northeast and also in the midwest. She
does embroidered items for a couple of national
theater chains. She'll take a shirt such as
you're wearing and embroider their logo on it and
ships them out via UPS. We have clients such as
Bow Tie Cinemas, AFLAC, GE, IBM, the Mid-Hudson
Valley -- excuse me, the Hudson Valley Federal
Credit Union and various fortune 500 companies
as it stands.

Business for the last thirteen years
has been run out of our house and we looked at
this as an opportunity, because my wife's father
recently passed away, her mother came to live
with us, she's selling her house and I'm looking
at having her live in the current house that's on
the property and that way she can be interacting
with us on a continuing basis, daily basis.

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ONE SOURCE PURCHASE

Does that help to explain it? I've got some brochures for the business I'll be happy to hand out if you'd like to see them.

CHAIRMAN EWASUTYN: I think you can leave them. To start reading through them now wouldn't help anyone. I think -- I'm not even sure, what are you going to be doing in the building, what building are you going to be doing it in and are you manufacturing?

MR. TAUFFNER: We don't manufacture anything. We customize. Your name plates there, we may do the engraving. We'll buy the name plates and we'll engrave your name on the name plate.

CHAIRMAN EWASUTYN: When you say we'll engrave them --

MR. TAUFFNER: My wife's company. My wife.

CHAIRMAN EWASUTYN: Where will she be engraving it?

MR. TAUFFNER: Right there in the barn. She has an engraving machine. She also has an embroidery machine, so she'll sew the company logo in the shirt. She deals with the raw goods

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ONE SOURCE PURCHASE

and then personalizes them. Currently all this equipment, everything has been run out of the house. Basically my two-car garage in my basement.

MR. CANFIELD: Will there be any pressing equipment or ironing equipment?

MR. TAUFFNER: No.

MR. CANFIELD: Are the facilities in the building enough to -- facilities meaning the utilities actually.

MR. TAUFFNER: Yes. There's a 200 amp service. That's more than sufficient because I have 200 amp service in my house.

MR. DONOVAN: Can I interrupt for one second? The attorney in me has to come out now. If you could not talk over each other. This young lady is going to have the hardest time getting it straight in the minutes.

MR. CANFIELD: The heating system in the building, do you know what is in there right now?

MR. TAUFFNER: Yes. There's a wood burning stove and there's two propane heaters. They come off a tank on the back of the building

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ONE SOURCE PURCHASE

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which is more than sufficient.

MR. CANFIELD: And the second story of the building, is there access to that?

MR. TAUFFNER: Yes. There's a staircase inside the building that goes directly upstairs.

MR. CANFIELD: Okay. Have you had the opportunity to speak with the building department as far as compliant issues with bringing the building up to compliance with the heating system and electrical? Did you get that far with them?

MR. TAUFFNER: No. They said my first step was to come here. A couple months ago I went in and spoke to, I believe it's Tilford.

MR. CANFIELD: Yes. He runs the building department.

MR. TAUFFNER: Before he could say anything else he said I have to come before you and get the approvals for the property.

MR. CANFIELD: So all of the work to be done then will be in the existing antique barn --

MR. TAUFFNER: Correct.

MR. CANFIELD: -- on both stories?

MR. TAUFFNER: Yes, sir.

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ONE SOURCE PURCHASE

MR. CANFIELD: Okay. How about opening to retail, walk-in business off of the street?

MR. TAUFFNER: We don't typically do that, nor -- we're not set up for that. We're corporate. We're not looking for the coming in for the one shirt for your grandfather for his birthday because we don't stock shirts. We bring them in in quantity when one of our orders comes in.

MR. CANFIELD: How about shipping out or frequency of delivery trucks coming and going?

MR. TAUFFNER: Once a day UPS delivers or picks up, and that's it.

MR. CANFIELD: It delivers the goods, such as the garments or say the raw materials, and then you alter them and whatever you're doing to them and then they're shipped back out?

MR. TAUFFNER: Correct.

MR. CANFIELD: The hours of operation?

MR. TAUFFNER: Typically -- it's in the house right now. We're looking at only 9 to 5.

MR. CANFIELD: Five days a week, six days a week?

MR. TAUFFNER: Five days a week.

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ONE SOURCE PURCHASE

MR. CANFIELD: How many employees?

MR. TAUFFNER: Right now it's just my wife and me.

MR. CANFIELD: So just the two of you in the building?

MR. TAUFFNER: Yes, sir.

MR. CANFIELD: I have no other questions, John.

CHAIRMAN EWASUTYN: The letter from the Orange County Chamber of Commerce which everyone has a copy of, they're wishing you success. We're wishing you success is written in a manner to say in the future as business grows. If you read the letter they were saying you would have more employees.

MR. TAUFFNER: Yes, sir.

CHAIRMAN EWASUTYN: Just a matter of record.

MR. TAUFFNER: We hope the business will grow.

CHAIRMAN EWASUTYN: Before we get into site plan issues, Dave Donovan, Jerry, Bryant and Pat, let's talk about the use, the change of use and the action we may have to take on this and

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ONE SOURCE PURCHASE

what is the change of use. Is it conforming, is it not conforming. We know we can talk about curbing, whether it should be asphalt or whether it should be concrete, and maybe there should be a few more trees. We know that the handicap ramp is not designed based upon ADA standards. Really what I was referring to from the building department was because the change of use, and I'm grappling to understand that now myself. Is there anyone that needs some kind of interpretation as to where we're going with this?

MR. COCKS: Right now I think the antique store would have been retail. What is under retail is personal services, stores, health clubs and fitness facilities. So that use would definitely not apply to this. I'm pretty sure this would just go under business, professional, resource, offices and banks. I wouldn't view it as manufacturing if you're just embroidering or engraving. So I think that would just be under the business use. It would be a change of use in my opinion.

MR. DONOVAN: This is a question for myself. Do we have any issue, Jerry, with the

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ONE SOURCE PURCHASE

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mixed use or is that okay in the B Zone with the,
I'll call it retail residential?

MR. CANFIELD: It's preexisting. Pre-existing nonconforming I guess at best.

MR. DONOVAN: Are we satisfied that that six-month -- what the applicant's testimony is is six months they've been out of business so that we don't have a lapse?

MR. CANFIELD: Twelve months is our requirement.

MR. DONOVAN: And that's consistent with everyone's recollection, that it's six months?

MR. CANFIELD: I couldn't attest to that. I know the building has been vacant for awhile but I couldn't tell you exactly how long.

MR. DONOVAN: And no site plan approval was ever given for the site? It probably predates --

MR. CANFIELD: I believe it predates.

MR. DONOVAN: Which complicates a little bit the change of use aspect. If we talk about when someone has site plan approval and we set thresholds for the use, when someone comes in

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ONE SOURCE PURCHASE

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for an amendment it's easier to track whether it was a change of use or not.

MR. CANFIELD: I'm thinking. Just to think out loud here, a change of use in the site plan, it brings up a lot of other zoning issues which hopefully, Mike, we can -- Dave, we can think out loud together. You have your bulk use requirements that are affiliated with this. My question is then does the applicant then have to go before the Zoning Board for any variances that may be affiliated with this site plan? The very issue of creating the site plan now creates the possibility of the need for variances. Am I correct?

MR. DONOVAN: Let's take a step backwards if we can. Can you tell us, or Jerry do you know, exactly what was going on within the -- what's designated as existing antiques barn on the map?

MR. TAUFFNER: Can I?

MR. DONOVAN: Anyone who knows.

MR. RAAB: I used to visit there all the time. It was an antique sales --

CHAIRMAN EWASUTYN: For the record your

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name, please?

MR. RAAB: My name is Jim Raab, I live at 1176 Union Avenue. I frequented the antique barn quite a bit, bought, I don't know, over a period of time, twelve, fourteen antiques there. I believe the six months is pretty correct, give or take maybe a month one way or another.

MR. DONOVAN: Items of furniture or what exactly?

MR. RAAB: Furniture, iron. A lot of iron I bought for my -- in fact, it was last year I bought for my sister-in-law, they have a lot of wrought iron fences that they had taken off of other estates and things like that. I bought her, I don't know, eighteen feet of wrought iron fence that was considered antique --

MR. TAUFFNER: If I might add --

MR. RAAB: -- for her birthday last July.

MR. TAUFFNER: Mr. Canfield, the only reason I did a site plan is because that's what I was told I needed to do to come before the Board here today. I really don't want to make any changes except for what you may require of me

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for my wife to operate the business there. So in regards to expanding the parking lot, if it wasn't deemed necessary I wouldn't touch the parking lot as it exists today.

MR. CANFIELD: That's not the question. I think the building department was correct in sending you here. What we're sorting out now, and again through the help of your testimony of what you actually do there helps us better qualify it. Now that we've qualified it, now we have to apply what zoning applies to what you told us that you do, and that's the determination that we were just discussing.

MR. TAUFFNER: I believe, if I may, the traffic there as far as customers coming and going will be far less than what was there prior because my wife who does the actual sales, she goes out to meet with the clients at their offices. They've never come to our residence to meet with us there. She's always gone to them. We don't see that changing.

MR. CANFIELD: Okay. Just to back up. Dave, what I was speaking of is on the bulk use table there's two items that potentially could

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require a variance, the front setback for the one building, which actually is the barn. It should be 40 feet and they're showing 12. And then the other is -- never mind. Just one. One variance.

MR. DONOVAN: My concern is a use variance. Since we have a mix, we have a commercial and a residential use, that was my question. In the B Zone, permitted uses, residential uses subject to site plan in use column D, or obviously different types of commercial uses, and I don't know historically in the Town of Newburgh in your B Zone whether you allow mixed uses on the same lot or not.

MR. HINES: Existing residential uses I believe have been allowed to continue.

MR. DONOVAN: And with the commercial component in the barn?

MR. CANFIELD: That's my question.

MR. DONOVAN: We have the same question. Now we have to work on the same answer.

MR. CANFIELD: And the change of use in the sense of the mixed use, although the proposed use is permitted subject to site plan review.

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MR. DONOVAN: Subject to site plan.

Yup.

MR. FRACCAROLI: If I may, can this be treated as an amendment to a site plan that has been operating for the last twenty years?

MR. CANFIELD: If I may answer that. I don't think this accurately is an amendment to a site plan because a site plan never actually existed. This is a change of use which requires a site plan, and that's how you got to this Board.

MR. FRACCAROLI: I believe it was a pre-existing condition for probably twenty years, which, you know -- I guess they have been operating and everybody knew about it. You know, it would seem to me since the time that has now lapsed it would really, you know, qualify under that.

MR. CANFIELD: That's where the change of use comes in. If you were to continually propose sale of antiques and say that the one year did not lapse, then it does not constitute a change of use, it's still antique sales as it was. What you're proposing is where the change

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of use part comes in. That's what brings you here.

MR. FRACCAROLI: As I understand it from Mr. Tauffner, we have a verbal approval from OCPD which is --

MR. TAUFFNER: Sorry. I had a meeting with David Church and discussions with Megan Tannerman and they gave me verbal approvals on this. They said if it did have to go any further, that, you know, the minute they got the letter from you they would Fax it right back. They saw no problem.

MR. CANFIELD: Perhaps John or Dave would like to --

CHAIRMAN EWASUTYN: Just procedurally, we couldn't act on it tonight to grant you approval because under Municipal Law 237-M we're required to refer to the Orange County Planning Department. The Orange County Planning Department has thirty days to act on it. When that thirty-day period is over, then we can act on it. If you had conversations with them, that's fine. We still have to procedurally mail to them.

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MR. TAUFFNER: That's --

CHAIRMAN EWASUTYN: So I think we're -- that's one of the -- we'll call that a procedural aspect of what's before us tonight. In summary, we couldn't give you final approval tonight anyway.

Let's go back to the issue of whether it has to go before the ZBA or not. I'm waiting for a determination and advice.

MR. DONOVAN: I'm working on that.

CHAIRMAN EWASUTYN: Take your time.

MR. CANFIELD: My suggestion would be the front yard setback issue is a given, that it needs to go to the Zoning Board for that. I think perhaps we should request from the ZBA an interpretation of whether they need to grant a variance for the mixed use. I don't know if Dave would agree with me on that.

MR. DONOVAN: Jerry, you're a fine attorney. I guess the answer is, or my advice is if we have this much of an issue, and if the Board has this much of an issue, the same as Jerry and I do, that the appropriate course of action, since it has to go to the ZBA anyway, is

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to request that interpretation as to whether or not the mixed use of the residential and the business as described by the applicant is permissible in the B Zoning District on this lot.

CHAIRMAN EWASUTYN: Comments from Board Members. Frank Galli?

MR. GALLI: I'm confused.

CHAIRMAN EWASUTYN: Cliff Browne?

MR. BROWNE: It seems appropriate that should be, I think, the course of action because there are too many questions for us to make a determination on it right now, and the appropriate place would be ZBA.

CHAIRMAN EWASUTYN: Ken Mennerich?

MR. MENNERICH: I think what's being recommended is the right thing. I kind of wonder myself, though, if the applicant just bought this property and started using that barn the way they were using the business at their own house previously, it wouldn't be an issue.

MR. DONOVAN: No one would know.

MS. TAUFFNER: That's what the County told us to do. The County told us to move the stuff in and start doing this.

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MR. CANFIELD: And your name for the record?

MS. TAUFFNER: I'm Terry Tauffner. I want to continue my business. I'm anxious.

CHAIRMAN EWASUTYN: Thank you for the disclosure.

Tom Fogarty?

MR. FOGARTY: I think we should get that question decided first. However, once we -- I think we should move with as much haste as we can on this. It doesn't seem to me that you're going from being an antique store and now you want to be running a small business out of the same building. It's not like they're putting an addition on or anything else. I think we should be able to resolve this, if we can, as quickly as possible.

CHAIRMAN EWASUTYN: Okay. John?

MR. WARD: I agree with trying to get it done as soon as possible as long as everything is to code and everybody knows what's going on, to make it smooth for you.

MR. TAUFFNER: Thank you.

CHAIRMAN EWASUTYN: So we're going to

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-- Pat Hines?

MR. HINES: I was just going to suggest if they are going to the ZBA for that interpretation, they may want to apply for the variance so if in fact the Board says you need that variance, that they can do that at the same meeting. I'm not sure of the process but --

MR. DONOVAN: You can ask for relief in the alternative. If you understand, the variance or the interpretation to allow you to have the use that you desire of the property so your application in front of the ZBA is complete.

MR. TAUFFNER: Okay.

CHAIRMAN EWASUTYN: So it would be an interpretation of the use and also for the possibility for the front yard variance.

MR. HINES: The interpretation for the use, and if in fact they need a variance then the variance for the use.

MR. DONOVAN: Correct.

CHAIRMAN EWASUTYN: And at the same time we could refer this to the Orange County Planning Department in which case what will happen there is you'll get plans to Bryant Cocks,

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Planning Consultant, Bryant will deliver those plans to the Orange County Planning Department.

MR. COCKS: John, this also has to go to the DOT for a driveway permit. We will have to declare lead agency -- intent for lead agency.

MR. MENNERICH: Will the ZBA also be referring this to Orange County Planning?

MR. DONOVAN: Unfortunately we have to. Yeah. As crazy as that sounds, we have to do two referrals.

CHAIRMAN EWASUTYN: The first motion is to declare -- I'll make it two motions -- two actions in the same motion. To declare our intent for lead agency and to refer it to the Orange County Planning Department.

MR. FOGARTY: So moved.

MR. WARD: Second.

CHAIRMAN EWASUTYN: I have a motion by Tom Fogarty. I have a second by John Ward. I'll ask for a roll call vote starting with Frank Galli.

MR. GALLI: Aye.

MR. BROWNE: Aye.

MR. MENNERICH: Aye.

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MR. FOGARTY: Aye.

MR. WARD: Aye.

CHAIRMAN EWASUTYN: Myself yes. So carried.

I'll have Dave Donovan, Planning Board Attorney, give us the referral -- state for the record the verbal referral that will be going to the ZBA.

MR. DONOVAN: Referral for interpretation as to whether or not the mixed use of the residential and the commercial structure is permitted in the zone as well as a front yard variance for the existing antiques barn. In the alternative, a use variance allowing the mixed use to occur on this lot.

CHAIRMAN EWASUTYN: I'll move for a motion from the Board to make that referral to the Zoning Board of Appeals.

MR. GALLI: So moved.

MR. BROWNE: Second.

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

MR. MENNERICH: Will a letter be sent

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to the effect of --

MR. DONOVAN: Yes.

MR. HINES: I just want to ask, the additional parking lots that you're proposing, that was a result of someone requesting that?

MR. FRACCAROLI: No.

MR. HINES: My fear is that DOT gets a hold of this, what they're proposing there, and says we want you to do a commercial driveway when no one has asked them yet is it okay for the intensity of use that you have to keep what you have. I don't know where the parking -- the paving improvements and such came from.

MR. FRACCAROLI: No. The only reason we did that was kind of to comply -- even though there was a nonconforming issue, you know, to comply at least with the parking area.

MR. CANFIELD: Is there a need for nine parking spaces?

MR. TAUFFNER: No.

MR. CANFIELD: Based on what you had told us, it's just the two of you working there and there is no walk-in business. What are the nine spaces for?

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MR. TAUFFNER: If I may. Because we couldn't get any guidance in the beginning of this process, we, through consultations with my engineers, we wanted to kind of show we were willing to do this to try and bring parking into a conforming, you know, given the space that was there at the barn.

MR. CANFIELD: You based it on the square footage available?

MR. FRACCAROLI: From realizing the floor area they were going to use as retail on the first floor, treat it as a business. The density I believe was 150 square foot per space.

MR. HINES: But my concern is that the driveway access modifications that you've shown under proposed conditions do not in any way meet DOT standards for connection to a State highway because of the curb radiuses and access and the white line. I'm wondering if in this process your engineer has approached DOT with this intensity of use and asked them based on this kind of home occupation that you're doing now and moving in here, is the existing driveway okay. They may say it's, you know, an accessory use to

1 the residence and you don't have to go through
2 the exercise of a twenty-four foot wide
3 commercial driveway, which right now your plan is
4 not approvable by them because if they do go --
5 they have a standard driveway that they do not
6 bend from, and it's not this one.

8 MR. FRACCAROLI: We utilized the same
9 curb cut on the access drive.

10 MR. HINES: I guess what I'm suggesting
11 is you try to utilize the same curb cut you have
12 today if you can sell DOT on that intensity of
13 use. I'm hearing that, you know, everyone is in
14 favor of getting you open here and keeping you
15 moving, but we're adding a step in the process
16 here that may not go as fast as anyone thinks is
17 going to happen.

18 CHAIRMAN EWASUTYN: So the question is
19 we have a motion before us by -- that was moved
20 by Tom Fogarty and seconded by John Ward to
21 declare our intent for lead agency and referral
22 to the Orange County Planning Department. Is it
23 that we now should have discussion to amend that
24 motion and just refer this to the Orange County
25 Planning Department?

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MR. HINES: No. I'm okay with the original motion, but we also need at some point to send it to DOT under the proposed condition, and that's going to be another --

CHAIRMAN EWASUTYN: That's why we're declaring our intent for lead agency. Also we'll be coordinating with the DOT. So what are you suggesting?

MR. HINES: I'm suggesting they meet with DOT sooner rather than later and discuss their application with the DOT.

MR. FRACCAROLI: Could we amend the plan?

MR. TAUFFNER: So we just amend the plans to keep it the way it is.

MR. HINES: I don't know how you got nine parking spaces and this paving scheme. The intensity of use you described seems to just continue your home occupation in this building that was an antique store. This is opening up a project here --

MR. BROWNE: Big project.

MR. HINES: -- for DOT. If you sent this to them and said we're going to put a

1 commercial use in here and put a commercial
2 driveway, which you're going to need a DOT
3 highway permit and a whole other set of plans
4 with a DOT permit associated with it when no one
5 has yet asked them the question is what's here
6 okay.
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8 CHAIRMAN EWASUTYN: Can we refer this
9 plan, before they amend it, to the Orange County
10 Planning Department?

11 MR. HINES: I think that's okay.

12 CHAIRMAN EWASUTYN: That's my first
13 question.

14 MR. HINES: Maybe put a note on there
15 that you're pursuing both avenues.

16 CHAIRMAN EWASUTYN: Can we still move
17 forward with the motion before us to declare our
18 intent for lead agency? They'll be amending
19 their site plan to not show the improvement to
20 the existing driveway or curb cut, and they'll be
21 reducing the parking. Is that --

22 MR. HINES: I'm talking out loud here.

23 CHAIRMAN EWASUTYN: I'm trying to
24 follow it.

25 MR. HINES: They're doing a lot of

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improvements to the site they may or may not need.

MR. MENNERICH: They should probably do that before they go to the ZBA I think.

MR. HINES: We're showing nine parking spots, there's paving here, there's handicap accessible space. DOT is going to want that curbed and they won't let you use asphalt curbing.

MR. TAUFFNER: We'll have the plans amended next week.

CHAIRMAN EWASUTYN: Plans submitted next week doesn't mean anything to any of us because our agendas -- we're working on our August agenda at this point. In order to accommodate you in a timely manner, the earliest we could put you on an agenda would be the 6th of August.

MR. TAUFFNER: Okay.

MR. FRACCAROLI: That's fine. I'll make sure that the plans are amended.

MR. HINES: You need to have these conversations -- there's no reason to amend them to take it away if DOT says you're going full

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blown DOT access road. The problem here was no one knew what your use was until you just described it to us tonight.

CHAIRMAN EWASUTYN: Let's stop for a second. Can we refer them to the ZBA --

MR. HINES: Clearly --

CHAIRMAN EWASUTYN: -- while they're doing all that?

MR. HINES: Clearly they need the front yard setback.

CHAIRMAN EWASUTYN: We have a motion on the table by Frank Galli. We have a second by Cliff Browne. We had discussion on the motion. I'd like to move forward with the motion first to refer them to the ZBA. Can we do that?

MR. HINES: I believe so, yes.

CHAIRMAN EWASUTYN: Thank you. We may want to reconsider amending the first motion.

Let's move forward with the motion that's before us now. We have a motion by Frank Galli. We have a second by Cliff Browne. We had discussion of the motion. Any further discussion of the motion?

(No response.)

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CHAIRMAN EWASUTYN: Okay. Then I'll
move for a motion to refer them to the ZBA. Roll
call vote.

MR. GALLI: Aye.

MR. BROWNE: Aye.

MR. MENNERICH: Aye.

MR. FOGARTY: Aye.

MR. WARD: Aye.

CHAIRMAN EWASUTYN: Myself. So
carried.

We have to keep this in context and
move forward because we're going from all over
the place and that's not how we can properly
operate this meeting.

Okay. Let's conclude what is being
recommended, what is being suggested and are we
going to schedule this for the August 6th
meeting.

MR. HINES: Well --

CHAIRMAN EWASUTYN: We got one thing
done.

MR. HINES: I'm kind of talking out
loud. Because of the intensity of use that we
heard, and I didn't know what it was until a half

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hour I guess now.

MR. CANFIELD: We have to think on our feet here.

MR. HINES: It looks like the improvements they're proposing are more than what would be necessary to get this business operating with owner occupied utilizing the other residence as they said, and one or two cars a day and the UPS truck. They're doing a lot of site improvements here. Our suggestion and our comment was because they're changing the access drive they need DOT approval.

CHAIRMAN EWASUTYN: Dave, I don't know if you can answer this. What agenda do you think they might get on with the ZBA, because if they get on the agenda for the last meeting in July --

MR. DONOVAN: They will not. That agenda I think is full.

CHAIRMAN EWASUTYN: So they can resubmit to us on August 6th with what would be their revised plan, --

MR. HINES: Mm'hm'. What I'm suggesting --

CHAIRMAN EWASUTYN: -- then we could

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take all these actions then, and they still have to go before the ZBA, and sometime in September, based upon the ZBA decision, we can act on this.

MR. HINES: Yes. And critical to that is their engineer's conversation with the DOT, is this okay with you or do we need to have a commercial access.

MR. FRACCAROLI: I hear you.

MR. CANFIELD: You still have a motion to refer them to the ZBA now.

CHAIRMAN EWASUTYN: That passed. The only thing I might ask the Board to do is rescind the motion made by Tom Fogarty, seconded by John Ward to refer -- to declare our intent for lead agency and refer it to the Orange County Planning Department, and then in that same motion I'll move to set this up for the August 6th Planning Board meeting. Does that make sense?

MR. CANFIELD: Mm'hm'.

MR. HINES: I think what I heard in their cover letter, they were asking for that small site plan waiver that the Board can grant. Is that what I heard?

MR. FRACCAROLI: Right.

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CHAIRMAN EWASUTYN: I'm not specific as to the verbiage. What is that?

MR. HINES: Similar to what was the Machetti --

MR. CANFIELD: 185 --

MR. HINES: Small site plans can receive I think -- I don't know on the square footage, I didn't review that, can get a waiver of the site plan review process. If you remember the Machetti application, that was the only one in the years I've been here that was considered because of extenuating circumstances. It was less than 25,000 --

MR. CANFIELD: 2,500.

MR. HINES: I believe that had a mixed use in the same zone.

MR. FRACCAROLI: If you'd like I can read you --

CHAIRMAN EWASUTYN: I don't want you to read it.

MR. HINES: I'm talking out loud here because we just caught up to the application a couple minutes ago.

CHAIRMAN EWASUTYN: If he's looking to

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waive it, we're saying based upon a decision that the ZBA makes, then he can go ahead and operate his business.

MR. HINES: Based upon the decision the ZBA makes and DOT makes, because if DOT comes in and says this is a commercial operation and needs a commercial driveway, then they're doing the site plan changes that would need your approval.

CHAIRMAN EWASUTYN: For the record, this would never have a formal site plan that we approve?

MR. CANFIELD: That's correct.

CHAIRMAN EWASUTYN: Okay. So the motion before us -- do you want to discuss that?

MR. DONOVAN: If I may be so bold, my only suggestion in that regard is wait until you know exactly what the site plan looks like before you make that determination.

CHAIRMAN EWASUTYN: Okay. I'll move for a motion to rescind the motion made by Tom Fogarty, seconded by John Ward to declare our intent for lead agency and to circulate to the Orange County Planning Department, and in that same motion the applicant will be presenting to

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us at our August 6th meeting a revised site plan.
Is that what we'll call it? Okay. I'll move for
that motion.

MR. MENNERICH: So moved.

MR. WARD: Second.

CHAIRMAN EWASUTYN: I have a motion by
Ken Mennerich. I have a second by John Ward.
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. FOGARTY: Aye.

MR. WARD: Aye.

CHAIRMAN EWASUTYN: Myself. So
carried.

What will happen is in the course of
the next week or so we'll get a revised narrative
letter, we'll receive at the Planning Board
office ten copies of the revised site plans,
you'll work to speak with Bryant Cocks, our
Planning Consultant, he'll advise you as to the

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ONE SOURCE PURCHASE

mailing address of our consultants to send the revised plans to. Okay. You'll call our office to arrange an appointment when you're ready to resubmit the revised plans and narrative letter and we'll schedule you for that.

MR. FRACCAROLI: Yes.

MR. HINES: Critical to all that is a meeting with DOT.

CHAIRMAN EWASUTYN: Bryant, pencil that in for the 6th.

(Time noted: 8:30 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: July 20, 2009

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

----- X

In the Matter of

LOT #5 OF FALLYN ESTATES (2009-05)

LOT #6 OF FALLYN ESTATES (2009-06)

Final Approval

----- X

BOARD BUSINESS

Date: July 2, 2009
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
THOMAS P. FOGARTY
JOHN A. WARD

ALSO PRESENT: DAVID DONOVAN, 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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FALLYN ESTATES

106

MR. BROWNE: Lot 5 of Fallyn Estates, final approval.

CHAIRMAN EWASUTYN: I'll refer at this point to Jerry Canfield. I think we had left off, Jerry, that you were going to review that. Do you want to update us as to both lot 5 and 6?

MR. CANFIELD: Yes. At the last meeting the outstanding item was the requirement of the applicant to submit building plans, which they did at the last meeting. They submitted the plans. I did review them and they do display compliance with the minimum requirements for the square footage, and also the appearance of two separate buildings. With respect to the Zoning requirements and Planning Board requirements, the plans submitted do comply.

CHAIRMAN EWASUTYN: Does anyone -- you have the resolution before you?

MR. DONOVAN: I do.

CHAIRMAN EWASUTYN: For the Board would you please.

MR. DONOVAN: I guess it was earlier granted subdivision approval, so any conditions that were imposed then remain in full force and

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effect.

We need a letter from the Town fire inspector certifying any deficiencies identified in his letter have been satisfied. The same with Garling Associates. This is a little particular. I'll read this verbatim. Construction is proposed at or very near the edge of a wetlands buffer, therefore the possibility of mislocation of the structure is extremely high. In order to minimize this possibility the applicant has agreed that a survey of the proposed foundation stakes in the field shall be conducted and a copy delivered to the building department before any excavation or pouring of concrete is conducted. This is hereby made a specific condition of this approval. There also needs to be a common driveway easement and maintenance agreement satisfactory to the Planning Board Attorney. There is Architectural Review Board approval required . Landscape security and inspection fees need to be posted as well as stormwater improvement security and inspection fees. There are outdoor fixtures and amenities that need to be installed in accordance with the plan, as well

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FALLYN ESTATES

108

as multi-family fees which need to be paid as well.

CHAIRMAN EWASUTYN: Any additional comments from our consultants in reference to that?

MR. HINES: Some of those are just the general ones he puts in there, no stormwater, no lighting.

MR. CANFIELD: No outdoor fixtures or amenities.

MR. HINES: Mike gave you his boilerplate there.

MR. DONOVAN: Well, I didn't write it. I'm glad you're here to correct it.

CHAIRMAN EWASUTYN: I'll move for a motion to grant final approval to lots 5 and 6 of Fallyn Estates subject to the final review of the resolution by Mike Donnelly for its conformance with the action that we're going to be taking this evening.

MR. MENNERICH: So moved.

MR. FOGARTY: Second.

CHAIRMAN EWASUTYN: I have a motion by Ken Mennerich and a second by Tom Fogarty. Any

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FALLYN ESTATES

109

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. FOGARTY: Aye.

MR. WARD: Aye.

CHAIRMAN EWASUTYN: Myself yes. So
carried. Thank you.

(Time noted: 8:38 p.m.)

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

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DATED: July 20, 2009

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

----- X
In the Matter of

LONGVIEW FARM
(2006-39)

Request for a Six-Month Extension of Preliminary
Subdivision Approval

----- X

BOARD BUSINESS

Date: July 2, 2009
Time: 8:38 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
THOMAS P. FOGARTY
JOHN A. WARD

ALSO PRESENT: DAVID DONOVAN, ESQ.
BRYANT COCKS
PATRICK HINES
KAREN ARENT
GERALD CANFIELD

----- X

MICHELLE L. CONERO
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LONGVIEW FARM

112

MR. BROWNE: The next item we have under Board Business is Longview Farm. We received a letter from Thomas DePuy dated June 18, 2009 requesting a six-month extension of the preliminary subdivision. The current approval expires June 18, 2009. With this extension the approval will be valid through January 14, 2010.

CHAIRMAN EWASUTYN: I would like to make two parts to the motion. I would like it to be set up for the consultants' work session on July 28th to update the Board on the progress of this subdivision.

So again I'll move for a motion to extend the approval until January 14, 2010 and set up a consultants' work session on July 28th.

MR. MENNERICH: So moved.

CHAIRMAN EWASUTYN: I have a motion by Ken Mennerich.

MR. WARD: Second.

MR. BROWNE: John, a clarification. The schedule for the consultants' work session to update the Board, there must be something there.

CHAIRMAN EWASUTYN: Longview Farms I guess is looking at maybe getting some kind of --

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LONGVIEW FARM

113

begin talking about bonding and securities to see what their position may be on that in the long run when it comes to approvals.

MR. BROWNE: Okay. So it's really not to update the Board, it's just for their edification?

CHAIRMAN EWASUTYN: Yup. What may be allowed to them.

MR. BROWNE: Okay. Thank you.

CHAIRMAN EWASUTYN: I have a motion by Ken Mennerich. Do I have a second?

MR. BROWNE: I think it was already seconded.

CHAIRMAN EWASUTYN: By whom?

MR. BROWNE: John.

CHAIRMAN EWASUTYN: By John Ward. Any further 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. FOGARTY: Aye.

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LONGVIEW FARM

114

MR. WARD: Aye.

CHAIRMAN EWASUTYN: And myself. So
carried.

(Time noted: 8:40 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
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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)

Amended Site Plan Approval

----- X

BOARD BUSINESS

Date: July 2, 2009
Time: 8:40 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
THOMAS P. FOGARTY
JOHN A. WARD

ALSO PRESENT: DAVID DONOVAN, ESQ.
BRYANT COCKS
PATRICK HINES
KAREN ARENT
GERALD CANFIELD

----- X

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H&L RENTALS

116

MR. BROWNE: The next item is HL Rentals. It's an amended site plan approval.

CHAIRMAN EWASUTYN: Jerry, I think this has to go before the ZBA.

MR. CANFIELD: I don't believe so, John. I wasn't aware of that.

MR. COCKS: I actually reviewed the project. It was right on the setback line, the side of the building, the side setback. Once the fire escape was put on the side of the building, now it doesn't conform to the side setback.

MR. CANFIELD: Was it just a stairway? There's an exemption for stairways.

MR. COCKS: I asked you that one day. I said is that actually part of the structure and you said yes, the fire escape would be part of the structure.

CHAIRMAN EWASUTYN: Did they get away with the sprinkler?

MR. GALLI: They got the waiver.

CHAIRMAN EWASUTYN: As a result of getting the waiver they had to put in this -- one of the requirements was they had to put in a stairway; correct? I think that's what happened.

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H&L RENTALS

117

MR. COCKS: A fire escape. From the second floor there's a fire escape going out.

MR. CANFIELD: Because of the sprinkler variance they received.

CHAIRMAN EWASUTYN: Is the requirement now to refer this to the ZBA or --

MR. COCKS: When I talked to Jerry I thought he said it was part of the structure so that it would be required to go to the ZBA because now it doesn't conform to the setback. I wasn't aware there was a stairway exemption.

CHAIRMAN EWASUTYN: Of course we didn't attach a copy of that letter. Do you have it, the one from HL Rentals?

MR. DONOVAN: Jerry, I'm looking at the same but it doesn't make a lot of sense because it talks about chimneys that are not higher than one foot from the ground as well.

MR. CANFIELD: On roofs, steps or terraces. Chimneys, steps, returns not higher than one foot from ground level.

MR. HINES: He's showing a roof or a landing?

MR. CANFIELD: There's a building code

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H&L RENTALS

118

requirement requiring an awning over an exit door to prevent snow accumulation. Yes, it does need to go to zoning.

CHAIRMAN EWASUTYN: So we're referring this to the Zoning Board of Appeals for a side yard variance?

MR. CANFIELD: Side yard setback.

MR. GALLI: Just a question. What if the Zoning Board refuses him a fire escape? Does he now have to go back and get sprinklers?

MR. CANFIELD: It's my understanding, Frank, the reason this variance was granted was because the site plan displayed a water line. However, the water line, as it was explained to the fire bureau, was owned by the City of Newburgh and they would not grant the rights of tying into it.

MR. GALLI: But there is a Town line coming up on the other side of the road.

MR. CANFIELD: Which would be -- then they would have to bear the expense of boring under 52. It's on the other side.

MR. GALLI: Or there's a boring already down on 52 at the City line right near our

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H&L RENTALS

119

driveway. There's already a bore under there, or sleeve, and then it could come up this side I guess. I don't know.

MR. CANFIELD: It's possible. It's possible.

To answer your question, they would then have to go back to the fire bureau and reexamine it.

MR. GALLI: I'm just saying what if that happens. I'm not saying they're going to deny it. If they do deny it.

CHAIRMAN EWASUTYN: The motion before us is to refer this to the ZBA for a side yard variance?

MR. DONOVAN: Correct, Mr. Chairman.

CHAIRMAN EWASUTYN: I'll move for that motion.

MR. FOGARTY: So moved.

CHAIRMAN EWASUTYN: I have a motion by Tom Fogarty.

MR. WARD: Second.

CHAIRMAN EWASUTYN: A second by John Ward. Any discussion of the motion?

(No response.)

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H&L RENTALS

120

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

MR. GALLI: Aye.

MR. BROWNE: Aye.

MR. MENNERICH: Aye.

MR. FOGARTY: Aye.

MR. WARD: Aye.

CHAIRMAN EWASUTYN: Myself. So
carried.

Dave, you'll have Mike Donnelly prepare
a letter.

MR. DONOVAN: Yes, I will.

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

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

----- X

In the Matter of

DISCUSSION BY DAVID DONOVAN

Proposed Local Law Amending Chapter 185 Entitled
"Zoning of the Code of the Town of Newburgh and the
Zoning Map of the Town of Newburgh to Rezone a
Parcel at NYS Route 17K and Arbor Drive

----- X

BOARD BUSINESS

Date: July 2, 2009
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
THOMAS P. FOGARTY
JOHN A. WARD

ALSO PRESENT: DAVID DONOVAN, ESQ.
BRYANT COCKS
PATRICK HINES
KAREN ARENT
GERALD CANFIELD

----- X

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MR. BROWNE: Discussion time. This is an assumption, that Dave is going to cover this for Mike.

MR. DONOVAN: Sure.

MR. BROWNE: Proposed local law amending Chapter 185 entitled "Zoning of the Code of the Town of Newburgh and the Zoning Map of the Town of Newburgh to Rezone a Parcel at New York State Route 17K and Arbor Drive."

MR. DONOVAN: I think the Board is probably familiar with this property. It's actually the subject of a pending application in front of the ZBA and the ZBA has deferred action. This is a map change and you're supposed to, under proposed amendments that involve a change in the map under 185-60, Subdivision B-2, report to the Town Board on four different factors, whether the use permitted by the proposed change would be appropriate in the area concerned; whether adequate public school facilities and other public services exist or can be created to serve the needs of any additional residences likely to be constructed; C, whether the proposed change is in accordance with any existing or

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2 proposed plans in the facility; and D, whether
3 the proposed amendment is likely to result in an
4 increase or decrease in the total zone
5 residential capacity of the Town and the probable
6 effect thereof. Those are the things you have to
7 report on. If you have other things you want to
8 tell the Town Board, you can certainly do that.

9 As I understand it, this zone change
10 would affect one piece of property which is
11 presently in a residential zone but it's been
12 operated for various types of commercial uses for
13 the past thirty-four years.

14 CHAIRMAN EWASUTYN: Is everyone
15 familiar with the piece?

16 MR. GALLI: Is that the John
17 Schoonmaker Homes?

18 MR. DONOVAN: Across the street.

19 MR. WARD: The dental office.

20 MR. DONOVAN: It was apparently a bank,
21 a gas station prior to that. It's now proposed
22 to be a dry cleaner at the present time.

23 MR. MENNERICH: I'll make a motion that
24 the Planning Board have Mike prepare a letter
25 addressing the four points.

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CHAIRMAN EWASUTYN: Okay. I have a motion by Ken Mennerich. Do I have a second of the motion?

MR. WARD: Aye.

CHAIRMAN EWASUTYN: I have a second by John Ward. Any discussion of the motion?

MR. BROWNE: Yes. By addressing the four points what are we suggesting that Mike address, or say, or comment?

CHAIRMAN EWASUTYN: I think generally what happens in the case of Town Board actions like this, unless we thought of something that was of a negative impact to say the least, then we would write about that. If not, we would go along with the proposed amended change as written.

MR. BROWNE: Is there anything with spot zoning with this request to change the zoning?

MR. DONOVAN: If I may, the local law was referred to the ZBA as well. The ZBA lacks the authority the Planning Board has. By code the Planning Board reports back to the Town Board. The ZBA is going to write a letter

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2 indicating that they would like a more
3 comprehensive evaluation done of that, just
4 because that speaks to the issue you just raised.
5 It's kind of odd that you have to report on the
6 four items, some of which have no applicability
7 at all. That's why I say in addition to that if
8 you have a recommendation or a thought to the
9 Town Board, this is the forum to communicate that
10 as a Planning Board.

11 MR. BROWNE: What else is along that
12 corridor as far as in that immediate area?

13 CHAIRMAN EWASUTYN: I think you have --
14 across the street more or less you have -- Al
15 Tracillo has a garage and tire service he does
16 all his repairs at.

17 MR. GALLI: The Gulf station.

18 MR. WARD: RDs. They just opened up
19 Anchor Rentals.

20 MR. BROWNE: But they're already zoned
21 appropriately.

22 MR. WARD: There have been businesses
23 there the whole time. I don't know exactly if
24 they are B or --

25 MR. GALLI: Schoonmaker Homes was

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there.

MR. BROWNE: Talking about changing the zone for the one parcel. How does that affect everything else along the same strip?

MR. WARD: The question is if they change this how does that affect Schoonmaker Homes? Are they going to go for business or residential? You know, they're across the street, but being there's businesses all through there and it's an established business, he's just trying to get it the right way. He's not going to open up a bar. People were concerned about what type of business. More or less he's trying to do it the right way. He's going all green with the dry cleaning, with the machinery. He's going with the expense. I don't see a problem with just that little bit because --

MR. BROWNE: The issue I have is not particularly that specific business per se that he wants to do but, okay, a year goes by, what happens just down the road. I'm looking ten years down the road.

MR. WARD: That's why the issue came up as an established business, whether it's going to

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be a bar or whatever type of business. He only can do so much in that little corner. It's not -- it's like a quarter acre. It's not a big -- it's a small corner.

MR. FOGARTY: Are there homes in that area?

MR. GALLI: Colden Park is right behind it.

MR. WARD: Across the street is Exitir.

MR. DONOVAN: If I could add one other element. They initially approached the ZBA and asked for a use variance, but obviously they're not going to qualify for that. The provision in the code says a preexisting, nonconforming use can convert to another nonconforming use so long as the intensity of that use is the same or less than the existing nonconforming use. That's what they're asking for. If in fact somebody else came in presently under the residential zone and asked for a more intense nonconforming use, they would need a use variance, which is certainly not impossible. There's a much higher level of scrutiny than the ZBA would give before they would approve a use variance. It's a fact.

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2 MR. FOGARTY: My only question is right
3 now there are restrictions because it's
4 residential. The use variance put certain
5 restrictions on what they can do in that area.
6 When you turn it over to business does that give
7 them more of an opportunity to obviously do more
8 things and you're still now in a residential
9 area? How is that going to impact that
10 residential area? Now it will be full business
11 which will make it less restrictive on what they
12 can do.

13 MR. CANFIELD: If they change the zone
14 to say a B, your bulk use requirements restrict
15 what type of business can go there. Not only
16 what type of business but what size lot. Like
17 John had said, based on the given size of this
18 lot pretty much restricts what it can and can't
19 be. Any change of use in the future for
20 something that's not permitted in the B Zone or
21 let's say not compliant with the bulk use
22 requirements, i.e. lot size, frontage, depth and
23 all of that, it's still a change in use that
24 doesn't comply with any of these regulations, and
25 that will require it to come back before the

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Zoning Board, and perhaps this Board. So you have another shot to review what goes there.

The only thing that can go there without one of these boards is what's applicable in the new zone tables, the new zone being the B Zone, and the requirements such as lot width, lot size and what have you. That's a pretty restrictive list of uses. Anything other that's not applicable in those bulk use requirements will be back before this Board or the Zoning Board. So that's your stop gap so to speak to kind of have a handle on what goes there in the future.

MR. GALLI: Jerry, coming up 17K, isn't the right side IB, the left side B and then it stops at that property? He's the last property -- he's the first property residential, R-1?

MR. COCKS: Yes.

MR. GALLI: So everything below him is B, across the street is IB, and he's the first one for residential. It's not really residential if you've ever seen it.

MR. FOGARTY: I haven't seen it.

MR. GALLI: That's always been a

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commercial looking lot as far as the gas station or whatever was there. It's been empty for a while I think.

MR. COCKS: The lot is just under half an acre. That takes out half, almost three-quarters of the allowable uses in the B Zone. So it's really restricting it just by lot size.

MR. BROWNE: I'm okay with that, what I just heard.

CHAIRMAN EWASUTYN: I think generally how Mike would do this, Mike would basically summarize that we were in favor of the proposed amended zone changes. That's normally how we would discuss this. You and Mike have to memorialize that letter to where it makes more sense.

MR. BROWNE: Following this discussion John, I'm okay with it.

CHAIRMAN EWASUTYN: So then one more time I'll poll everyone that we're in favor of having Mike Donnelly prepare a letter to the Zoning Board -- to the Town Board in reference to the proposed local law entitled zoning for the -- rezoning of New York State Route 17K and Arbor

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AMENDMENT TO CHAPTER 185

Drive?

MR. GALLI: Yes.

MR. BROWNE: Yes.

MR. MENNERICH: Yes.

MR. FOGARTY: Yes.

MR. WARD: Yes.

CHAIRMAN EWASUTYN: Yes.

Thank you.

(Time noted: 8:55 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: July 20, 2009

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

----- X

In the Matter of

DISCUSSION BY DAVID DONOVAN & GERALD CANFIELD

Proposed Town of Newburgh Local Law Amending Chapter
185 Entitled "Zoning of the Code of the Town of
Newburgh - Flood Plains"

----- X

BOARD BUSINESS

Date: July 2, 2009
Time: 8:55 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
THOMAS P. FOGARTY
JOHN A. WARD

ALSO PRESENT: DAVID DONOVAN, ESQ.
BRYANT COCKS
PATRICK HINES
KAREN ARENT
GERALD CANFIELD

----- X

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CHAIRMAN EWASUTYN: The next one we'll leave up to Cliff Browne to present.

MR. BROWNE: Dave Donovan again addressing this proposed Town of Newburgh local law amending Chapter 185 entitled "Zoning of the Code of the Town of Newburgh - Flood Plains."

CHAIRMAN EWASUTYN: That one we might want to go to Pat Hines and Jerry Canfield because we almost discussed this. I think we have. That's something they had to comply with; correct?

MR. DONOVAN: Absolutely.

CHAIRMAN EWASUTYN: That one there is just --

MR. DONOVAN: I should add, don't feel compelled to say excuse me for interrupting you. Shut me down any time you want.

CHAIRMAN EWASUTYN: That's not how -- like in the case of tonight when we were going back and forth with One Purchase, I think we have to really consolidate where we are, and that's why I may express myself somewhat differently. Otherwise I work for you, you know. You don't work for me. We'll always understand that.

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I guess the beauty of what you're saying is by them complying with this, the people who wouldn't have been eligible for flood plain insurance will now be eligible. It's really --

MR. DONOVAN: It's a necessity.

MR. HINES: You've heard Jerry and I reference the new flood plain maps on occasion. FEMA had issued those and this is a follow up to that. This regulation adopts those new maps as part of the code and allows the Town to continue to qualify for flood insurance.

There were a couple options there that we had a meeting on with the Town, Jim Osborne, the Town supervisor, Jerry and myself, and I recommended -- many of the municipalities my office represents, we recommended they adopt those additional requirements, not only for additional flood plain protection but by doing that you gain community rating system points which means every 500 points that you can gain under FEMA's program you can save for properties outside of the flood plain 5 percent on your insurance. Strangely enough, for properties in floods plain it's 10 percent on your insurance

1 premiums, which for some properties can be a
2 significant amount of money. Properties in flood
3 plains are very expensive to insure. We made the
4 recommendation that they adopt those. The Town
5 Board, to the best of my knowledge, did do that
6 and that's the ordinance that you have -- the
7 changes to the ordinance that you have before you
8 tonight.

9
10 CHAIRMAN EWASUTYN: Questions from
11 Board Members. Frank Galli?

12 MR. GALLI: Keep raining and we don't
13 need the flood plain.

14 CHAIRMAN EWASUTYN: Cliff Browne?

15 MR. BROWNE: No.

16 CHAIRMAN EWASUTYN: Ken Mennerich?

17 MR. MENNERICH: Basically this is for
18 information. They're not asking for any
19 comments?

20 MR. HINES: FEMA didn't give you much
21 flexibility.

22 CHAIRMAN EWASUTYN: I thought we should
23 discuss it since we got a copy of it.

24 MR. FOGARTY: How often does FEMA
25 change the flood plain?

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AMENDMENT TO CHAPTER 185

MR. CANFIELD: The last change was
1984.

MR. FOGARTY: Good.

MR. CANFIELD: Not too often.

MR. FOGARTY: That's good.

MR. WARD: No comments.

CHAIRMAN EWASUTYN: So then again, Mike
Donnelly or Dave will write a letter saying we're
in favor of the proposed change.

MR. MENNERICH: I don't think we need
to send a letter.

MR. DONOVAN: It's adopted. The
deadline was today, so --

CHAIRMAN EWASUTYN: So then it's just
informational.

Are you in the flood plain where you
live?

MR. MENNERICH: I don't think so.

MR. HINES: You'd know.

CHAIRMAN EWASUTYN: You'd need a rider.

MR. HINES: Your mortgage company would
send you a letter.

MR. DONOVAN: You would pay a big
premium each year.

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MR. MENNERICH: We're up above the
water quite a bit.

(Time noted: 9:00 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: July 20, 2009

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BOARD BUSINESS

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

----- X

In the Matter of

~ QUARTERLY SITE INSPECTION

~ COMPARISON OF NEW APPLICATIONS

----- X

BOARD BUSINESS

Date: July 2, 2009
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
THOMAS P. FOGARTY
JOHN A. WARD

ALSO PRESENT: DAVID DONOVAN, ESQ.
BRYANT COCKS
PATRICK HINES
KAREN ARENT
GERALD CANFIELD

----- X

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BOARD BUSINESS

CHAIRMAN EWASUTYN: We could begin discussing a quarterly site inspection in August giving everyone a chance to golf and everything. Sometime in August we'll do it. Okay. Be prepared at our meeting on the 16th, which is the scoping session for Gateway, to just have that available.

Remind me I have to put that under Board business also, for the site inspection.

MR. BROWNE: Comparison of applications.

CHAIRMAN EWASUTYN: Dina never got around to doing it. We have the program but --

MR. CANFIELD: We didn't get to that yet.

CHAIRMAN EWASUTYN: I'll move for a motion to close the Planning Board meeting of July 2nd.

I wish everyone a happy July Fourth. Remember, we have a public scoping session on the 16th.

MR. WARD: Were we supposed to ask about going out on a Saturday?

CHAIRMAN EWASUTYN: That we're going to

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BOARD BUSINESS

set the date on the 16th. At our meeting on July
16th we'll formalize that.

MR. WARD: Thank you.

CHAIRMAN EWASUTYN: I have a motion to
close the meeting by --

MR. FOGARTY: So moved.

MR. MENNERICH: Second.

CHAIRMAN EWASUTYN: -- Tom Fogarty, a
second by Ken Mennerich. I'll ask for a roll
call vote starting with Frank Galli.

MR. GALLI: Aye.

MR. BROWNE: Aye.

MR. MENNERICH: Aye.

MR. FOGARTY: Aye.

MR. WARD: Aye.

CHAIRMAN EWASUTYN: And myself. So
carried.

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

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DATED: July 20, 2009