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April 25, 2012

Hon. Grace Cardone, Chairwoman
Town of Newburgh Zoning Board of Appeals
1496 Route 300
Newburgh, New York 12550

Re: Appeal of Families for a Better Town of Newburgh, Trent, Brown & DeAngelo as to Fantasy Island Strip Club located at 5266 Route 9W (Town of Newburgh Tax Map, Section 20, Block 2, Lot 30.21

Dear Ms. Cardone, and all Board members:

I submit this letter on behalf of my clients who brought this appeal. This letter supplements the record presently existing, and also responds to (1) the March 22, 2012 submission of John Cappello, Esq. on behalf owner of the subject property, and (2) the April 24, 2012 letter of Gerald Canfield, Code Compliance Officer/Supervisor for the Town of Newburgh.

This appeal involves three challenges to two separate but related decisions of Mr. Canfield. Both of these challenges relate to the relocation and expansion of the adult use strip club on Route 9W, known as "Fantasy Island," that is owned by Santa Monica Holdings, LLC.

The first challenge objects to the written decision of Mr. Canfield dated August 5, 2010, which appears to permit the relocation and expansion of the strip club by allowing the use of nude dancing under the rubric of "entertainment" as a permitted or accessory use to an eating and drinking place. Appellants argue that entertainment of any kind is not allowable in the Town's "B" zoning district where this strip club is located, either as a permitted use or as an accessory use.

The second challenge is that even if entertainment were generally to be allowed by this Board as a proper accessory use, Fantasy Island's entertainment component of nude dancing does not fit within the Town's definition of accessory use, as the nude dancing is neither "clearly subordinate" nor "clearly incidental" to its principal eating and drinking place use. Indeed, the stripping of the "performers," and their nude dancing, is the *raison d'être* of the property owner's business.

The third challenge objects to Mr. Canfield's decision to allow substantial improvements to the strip club property, related to its relocation and expansion, without the issuance of any permits, such as a clearing and grading permit, or a building permit.

Although not challenging the integrity or thoughtfulness of Mr. Canfield in reaching his conclusions, we strongly object to Mr. Canfield's noted decisions, and believe them to be incorrect and contrary to the Town Code. I also wish to underscore that the appellants' objections as to what was an apparent interpretation of the Zoning Code by Mr. Canfield by his August 5, 2010 letter is an interpretation that goes to all entertainment uses within the B zoning district, not an interpretation within the scope of the recently enacted moratorium by the Town Board; that moratorium prohibits only those interpretations "which would authorize the expansion or alteration of an adult-oriented business." This appeal seeks no such relief.

Below are the supplemental statements and argument of the appellants in this appeal.

THE STRIP CLUB'S ILLEGALITY AS AN "EATING AND DRINKING PLACE (WITH ENTERTAINMENT)"

In this appeal appellants challenged the August 5, 2010 decision of the Code Compliance Department of the Town that seemed to authorize the use of adult entertainment as a valid accessory, or otherwise permissible, use in connection with the permitted use of an eating and drinking place. (See ZBA Application description of the appeal under the subject "OTHER"). In Mr. Canfield's April 24, 2012 submission to this Board he states that at no time did he intend by his challenged decision of August 5, 2010 to authorize any kind of entertainment, including adult entertainment, as an accessory use or otherwise. Instead, Mr. Canfield now clarifies his August 5, 2010 statement and effectively concludes that entertainment is not a use that is permitted either as of right or

as an accessory use under the Zoning Code. He further clarified that in his August 5, 2010 letter decision, the decision that is a subject of this appeal, he only was stating that there has been a practice by his Department of not enforcing the unpermitted entertainment uses in the Town and that "the Code Compliance Department would not change its enforcement practice with regard to a single site or applicant," *i.e.* the property that is the subject of this appeal. I believe that it is clear that this clarification by Mr. Canfield supports the appellants' position in this appeal that the Fantasy Island eating and drinking place cannot legally have any entertainment, including adult use entertainment.

THE FAILURE OF THE CODE COMPLIANCE DEPARTMENT TO REQUIRE A CLEARING AND GRADING PERMIT, AND NOT TO ISSUE STOP WORK ORDERS

Mr. Canfield's April 24, 2012 clarification submission to this Board, posits that no clearing and grading permit was required of the property owner because it had site plan approval from the Planning Board. He concludes that Planning Board site plan approvals are exempt from the requirements of a clearing and grading permit, referring to Town Code Section 83-7(P).[1] I agree with Mr. Canfield that this is the appropriate section of the Code, but I believe Mr. Canfield is in error in his reading of the Code language. The Code section is quoted here, with the relevant proviso underscored for emphasis:

> "The following activities are exempted from [clearing and grading] permit requirements:
>
> P.
>
> Activities performed in conjunction with site plan approvals and subdivision approvals granted by the Planning Board following the effective date of this chapter, so long as said activities are not commenced until after the grant of a permit/approval and so long as the application for said activities has been reviewed for conformance with this chapter and approval has been conditioned upon compliance with the standards set forth in § 83-10, and further provided that the activities shall be subject to and not exempt from the provisions for inspections, enforcement, penalties and revocations set forth in § 83-14."

[1] Although Mr. Canfield actually cited to Code Section 87-3(P), it is clear that this was a typographical error, and that Mr. Canfield meant to refer to Code Section 83-7(P). His quote correctly quotes Section 83-7(P).

Thus, in order for Santa Monica Holdings, LLC site plan approval to be exempt from a clearing and grading permit it is required that its application had been "reviewed for conformance with [Chapter 83 – Clearing and Grading Control Law of the Town of Newburgh] and [site plan] approval has been conditioned upon compliance with the standards set forth in § 83-10 . . . ." Simply having a Planning Board site plan approval is not enough to be exempt from having to obtain a clearing and grading permit. More analysis is needed. Further, the fact that a soil and erosion control plan was approved as part of the site plan approval is not enough to be exempt from having to obtain a clearing and grading permit. More analysis is needed.

Section 83-10 details no less than 25 standards, all of which must be complied with in order to satisfy the exemption set forth in § 83-7(P). The reason for the necessary adherence to all of the 25 standards otherwise needed if one were applying for a Clearing and Grading permit without site plan approval, is obvious. If indeed in the course of a site plan review and approval the same meticulous standards contained in § 83-10 were accomplished, then there is no need to duplicate that effort. However, if any of those 25 standards were not part of the Planning Board review and approval, then Santa Monica Holdings, LLC must satisfy those standards that were not approved as part of the Planning Board review. The mechanism for a review of those Chapter 83 standards that were not part of the Planning Board review is to apply for and receive a separate clearing and grading permit.

There is no evidence that the Planning Board's review included all 25 standards, or that the Code Compliance Department inquired as to whether the Planning Board had complied with all 25 standards in their review. Further, and without a doubt, the Planning Board Site Plan Approval (attached to this letter) was not "conditioned upon compliance with the standards set forth in § 83-10 . . . " as required by the § 83-7(P) exception. The Resolution of Site Plan Approval for Santa Monica Holdings, LLC has 11 very detailed Specific Conditions and 3 General Conditions, but none of them require compliance with the standards set forth in § 83-10.

Also, and as an added emphasis that the planning board review conducted in accordance with the Town Code is insufficient, and cannot be substituted for strict

compliance with the 25 standards set out in § 83-10, Section 83-4 of the Clearing and Grading permit requirements specifically and clearly provides:

> "Where [Chapter 83 – Clearing and Grading Control Law of the Town of Newburgh] imposes greater restrictions or requirements than are imposed by the provision of any law, ordinance, including Chapter 185, Zoning, regulation or private agreement, this chapter shall control. Where greater restrictions or requirements are imposed by any law, ordinance, including Chapter 185, Zoning, regulation or private agreement than are imposed by this chapter, such greater restrictions or requirements shall control."

As a result of the above, Santa Monica Holdings, LLC does not fit within any exception to the Code requirement that a clearing and grading permit must be obtained. Thus, any work accomplished to date on the property site was illegal, and a stop work order should be issued. This Board should uphold the appellants' challenge to the work accomplished by the property owner without the required Clearing and Grading permit, and its challenge to the failure of the Code Compliance Department to issue a stop work order.

TIMELINESS OF THE APPEAL

The property owner objects to this appeal, arguing that the filing of the appeal was more than 30 days after the Town Planning Board issued a conditional site plan approval, more than 60 days after Mr. Canfield issued his August 5, 2010 opinion letter, and more than sixty days after the clearing and grading work allegedly began in "late November 2011." Each of these arguments lacks merit.

The appellants in this appeal are not challenging the decision of the Planning Board in granting conditional site plan approval; thus, the property owner's timeliness objection is inapposite. Although the site plan approval was apparently based upon Mr. Canfield's August 5, 2010 opinion letter, Messrs. Trent and Brown, and Ms. DeAngelo were unaware of the existence of this letter, and the opinion/decision expressed therein, until January 26, 2012, January 26, 2012 and February 12, 2012 respectively. This was made known to this Board by a statement read into the record at your March 22, 2012 public hearing. See also the accompanying affidavits in this regard. Therefore, the Zoning Board of Appeals Application by appellants, challenging Mr. Canfield's August 5, 2010 opinion letter, was filed within 60 days of their knowledge of this opinion letter. *See, e.g., Iacone v. Building Dept. of Oyster Bay Cove Village*, 32 A.D.3d 126, 128 (2d

Dept. 2006) (petitioners objecting to the issuance of a building permit had demonstrated that they had first learned of the building permit several months after the 60-day period had lapsed. The Court held that the petitioners "could not reasonably be charged with actual or constructive knowledge earlier than that," and thus their appeal to the ZBA was timely). *See also, Farina v. Zoning Board of Appeals of City of New Rochelle*, 294 A.D.2d 499 (2d Dept. 2002). Thus, the appellants' appeal challenging Mr. Canfield's August 5, 2012 is timely.

Also, notwithstanding the representation of the property owner's attorney, Messrs. Trent and Brown, and Ms. DeAngelo were not aware that any of the initial clearing and grading work at the property site were related to the expansion and relocation of the Fantasy Island strip club until December 26, 2011, January 1, 2012, and January 1, 2012 respectively. More importantly, Messrs. Trent and Brown, and Ms. DeAngelo were not aware that such clearing and grading work was being accomplished without the proper permits in place until February 12, 2012, January 3, 2012, and January 2, 2012, respectively. The time to file an appeal of the issuance of a building permit is 60 days of having knowledge of such issuance. *See, e.g., Iacone, supra. Farina, supra.* In this matter, where no building permit was issued (though it ought to have been) the only logical analogous trigger for the running of the sixty days is when the appellants became aware of Mr. Canfield's failure to issue the permit. The appellants here were not aware of the failure of Mr. Canfield to issue a clearing and grading permit until the dates noted above, all of which are within 60 days prior to the filing of the application for this appeal. Thus the appeal on the issue of whether Mr. Canfield failed to require a clearing and grading permit is timely.

APPELLANTS' STANDING

The property owner also asserts that the individual appellants in this appeal lack the legal standing to bring this appeal. Essentially, the property owner argues that the individual appellants are too distant from the property to be within the "zone of interest" intended by the Town's Zoning Code, and will suffer no harm in being in close proximity to the proposed substantially enlarged strip club that has access from and to DeVito Drive. As noted in the accompany affidavits, the individual appellants live in a range from less than one-quarter mile to one mile from the property site of the strip club. They

also note that such proximity of the proposed strip club (1) will result in a decline in their property values, especially as they and all their family and guests (including any prospective buyers) are required to travel on DeVito Drive whenever entering onto Route 9W, passing immediately adjacent to the enlarged strip club, and (2) will have an adverse impact on each of them owing to the increased traffic on DeVito Drive that the project will generate. The nature of each of these adverse impacts affect the individual appellants in a manner that is different in both kind and degree from the harm that will be suffered by those Town residents far removed from the strip club location, as well as the general public.

The property owner contends that the individual appellants' properties are not included on the public hearing notices because they are located more than 500 feet from the property, and the Town required notice of the public hearing only to be sent to all property owners within 500 feet. The property owner incorrectly represents the applicable law in support of its assertion that because the individual appellants reside more than the required public hearing notice distance they lack standing. According to case law, the "zone of interest" proximity requirement is presumptively met if an individual challenger's property is located within the statutory distance to receive notice. However, failing to be within this presumptive zone of interest distance does not necessarily preclude a finding of standing. See, *Matter of Sun-Brite Car Wash*, 69 N.Y.2d 406 (1987). In *Sun-Brite Car Wash* the Court of Appeals found that the "fact that a person received or would be entitled to receive, a mandatory notice of an administrative hearing because it owns property adjacent or very close to the property in issue gives rise to a presumption of standing in a zoning case." (Emphasis supplied). *See also, Center Square Ass'n., Inc. v. City of Albany Bd. of Zoning Appeals*, 9 A.D.3d 651 (3d Dept. 2004). It noted however, that "even in the absence of such notice it is reasonable to assume that, when the use is changed, a person with property located in the immediate vicinity of the subject property will be adversely affected in a way different from the community at large; loss of value of individual property may be presumed from depreciation of the character of the immediate neighborhood." *Sun-Brite Car Wash, supra* at 413-414. The "zone of interest" test is not a test to determine standing based upon a particular distance from the property that is the subject of the appeal as the

property owner here contends. Rather, the zone of interest test relates to whether the nature of the "interest to be protected is within the zone of interest" *i.e.*, whether the interests petitioner seeks to protect fall within the concerns of the zoning law. *Rosch v. Town of Milton Zoning Bd. of Appeals*, 142 A.D.2d 765 (3d Dept. 1988).

In *Parisella v. Town of Fishkill*, 209 A.D2.d 850 (3d Dept. 1994), a case transferred from the Second Department, the petitioner's property was located 1,700 feet away from the rock and gravel quarry that had been issued a use variance to permit the temporary production of asphalt. The Appellate Division held:

> "Standing exists when a party challenging an administrative act can show that such action will have a harmful effect and that the resulting harm is different from that suffered by the public at large (*see, Society of Plastics Indus. v. County of Suffolk,* 77 N.Y.2d 761, 774, 570 N.Y.S.2d 778, 573 N.E.2d 1034). In that regard, an allegation of close proximity alone may give rise to an inference of injury enabling a nearby owner to challenge an administrative determination without proof of actual injury (*see, Matter of Sun–Brite Car Wash v. Board of Zoning & Appeals of Town of N. Hempstead,* 69 N.Y.2d 406, 414, 515 N.Y.S.2d 418, 508 N.E.2d 130). Moreover, standing should be liberally constructed so that land use disputes are settled on their own merits rather than by preclusive, restrictive standing rules (*see, Matter of Rosch v. Town of Milton Zoning Bd. of Appeals,* 142 A.D.2d 765, 766, 530 N.Y.S.2d 321). * * * Here, the petition alleges that petitioner's property is in close proximity to the asphalt plant, permitting an inference of harm and, further, that the harm is different from that of the public at large (*see, Matter of Heritage Co. of Massena v. Belanger,* 191 A.D.2d 790, 791, 594 N.Y.S.2d 388). Additionally, petitioner alleges that the operation ***852** of the plant will injure her by reason of increased air emissions, increased noise and offensive odor, all of which, by reason of petitioner's proximity to the plant, are different in kind and degree from injury to the public at large. Accordingly, the petition should not have been dismissed."

Thus, based upon the foregoing, if an individual appellant resides within the area to which a public hearing notice was given – here 500 feet of the subject property -- there is an entitlement to an inference that he or she will be adversely affected by the determination in a way different from the community at large, and does not, therefore, have to demonstrate any specific injury. However, if the appellants are not located within the 500-foot notice distance, the appellants must satisfy the standing requirements by

showing that they are in close proximity, and that they will be adversely affected in a way different from the public at large. Appellants have demonstrated this by the above, the accompanying affidavits, and prior submissions.

Finally, for the Families for a Better Town of Newburgh appellant to have standing it must show:

> "First, . . . one or more of its members [must] have standing . . . . Second, an association must demonstrate that the interests it asserts are germane to its purposes so as to satisfy the court that it is an appropriate representative of those interests. Third, it must be evident that neither the asserted claim nor the appropriate relief requires the participation of the individual members. These requirements ensure that the requisite injury is established and that the organization is the proper party to seek redress for that injury." Society of Plastics Industry, Inc. v. County of Suffolk, 77 N.Y.2d 761, 775 (1991)).

This three-pronged standing requirement for associations has been met in this instance by (1) the individual appellants having standing as demonstrated above, (2) the prior statement read into the record that "the association was formed with the specific purpose of protecting the rights of Town citizens in opposing adult uses in the Town that are not properly authorized to exist or to expand," and (3) neither this appeal or the relief requested in this appeal require any participation of any of the individual members of the association.

For all of the foregoing reasons, this Board should grant the relief requested.

Respectfully submitted,

Richard B. Golden

RESOLUTION OF APPROVAL

SITE PLAN

ARB

FOR

SANTA MONICA HOLDINGS, LLC

Nature of Application

Santa Monica Holdings, LLC has applied for approval of a Site Plan permitting the use of the property identified herein for an eating and drinking establishment (with entertainment) and for approval of architectural renderings by the Planning Board sitting as the Architectural Review Board.

Property Involved

The property affected by this resolution is shown on the Tax Maps of the Town of Newburgh as parcel(s) 20–2–30.21.

Zoning District

The property affected by this resolution is located in the B zoning district of the Town of Newburgh.

Plans

The Site Plan materials considered consist of the following:

1. Completed application form and Environmental Assessment Form.

2. Plans prepared for Santa Monica Holdings, LLC as follows:

Author	*Title*	*Last Revision Date*
Minuta Architecture, PLLC	Title Sheet	January 10, 2011
Minuta Architecture, PLLC	Bulk Table and Proposed Site Layout	January 10, 2011
Minuta Architecture, PLLC	Landscape Plan and Legend	January 10, 2011
Minuta Architecture, PLLC	Site Details	January 10, 2011
Minuta Architecture, PLLC	Dumpster & Generator Enclosure Details	January 10, 2011
Minuta Architecture, PLLC	Site Details	January 10, 2011
Minuta Architecture, PLLC	On-site Traffic Circulation and Existing Site Plan	January 10, 2011
Minuta Architecture, PLLC	Site Lighting Plan	January 10, 2011
Minuta Architecture, PLLC	Conceptual Design Renderings	January 10, 2011
W.E. James Associates	Survey	November 2, 2009
The Chazen Companies	Grading, Erosion and Sediment Control Plan	January 10, 2011
The Chazen Companies	Utility Plan	January 10, 2011
The Chazen Companies	Site & Sanitary Sewer Details	January 10, 2011
The Chazen Companies	Water System Details	January 10, 2011
The Chazen Companies	Erosion & Sediment Control Details & Notes	January 10, 2011
The Chazen Companies	Storm Sewer & Stormwater Management Details	January 10, 2011
The Chazen Companies	Post Development Drainage Area Map	January 10, 2011

History

DATE OF APPLICATION

The application was filed with the Planning Board on December 15, 2009.

PUBLIC HEARING

A public hearing on this application was convened on January 20, 2011 and closed on the same date.

SEQRA

Type of Action:

This matter constitutes an unlisted action under the State Environmental Quality Review Act.

Lead Agency:

The Town of Newburgh Planning Board is the lead agency in regard to this action. The Planning Board's status as lead agency was established on August 5, 2010.

Declaration of Significance:

A negative declaration was issued on December 16, 2010.

GML 239 Referral

This application has been referred to the Orange County Planning Department for review and report. The Planning Department has reported that this matter is one for local determination, there being no significant inter-municipal or countywide considerations found to exist.

Findings

The Planning Board has determined that approval of the Site Plan will substantially serve the public convenience, safety and welfare; and will not otherwise be unduly detrimental to the public health, safety, comfort convenience or

welfare, subject to compliance in full with conditions hereinafter imposed pursuant to Section 185-57 (H).

The Planning Board has further determined that strict compliance with the Town of Newburgh Design Guidelines prohibition upon parking in the front yard should be waived here. The lot in question has two front yards, an existing building, and wetlands toward the rear portion of the lot. Thus application of this prohibition is nearly impossible here. Moreover, landscaping providing screening are part of the proposal and achieve the objectives of the design guidelines; here, the protection of the views from public roadways. Therefore, the Planning Board hereby modifies application of the design guidelines to this applicant so as to allow parking in the front yard because the public interest will be protected and the development is otherwise in keeping with the general spirit and intent of the design guidelines. On balance, the Planning Board also elects not to require sidewalks of this applicant because the construction of sidewalks would interfere with the landscape screening provided in order to allow waiver of the prohibition upon parking in the front yard.

The Planning Board has further determined that strict compliance with the Town of Newburgh Design Guidelines prohibition upon the maximum height of lighting poles would not make sense in this matter because to require complying poles would create unworkable light distribution; the number and height of the lighting poles proposed is a proper balance between effective lighting and the scale of the parking area involved. Therefore, the Planning Board hereby modifies application of the design guidelines to this applicant so as to allow use of the lighting poles shown on the plans because the public interest will be protected and the development is in keeping with the general spirit and intent of the design guidelines.

The Planning Board has further determined, in its capacity as Architectural Review Board, that the renderings submitted and approved on January 20, 2011 are architecturally appropriate and blend into the existing character of the neighborhood. Said renderings are hereby approved. A copy of said renderings,

signed by the Chair simultaneously with this resolution are on file in the Building Inspector's office. No building permit nor certificate of occupancy shall be issued except for structures consistent with these renderings.

Resolution of Approval

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

Specific Conditions

1. The plans shall not be signed until receipt of a letter from the Planning Board Engineer certifying that the deficiencies in the plans noted in his memo of January 17, 2011 have been remedied to his satisfaction.

2. The plans shall not be signed until receipt of a letter from Karen Arent, the Town of Newburgh Landscaping Consultant, certifying that the deficiencies in the plans noted in her memo of January 18, 2011 have been remedied to her satisfaction.

3. The plans shall not be signed until receipt of a letter from BC Planning, LLC certifying both that the map notes required by a certain resolution of the town board dated July 15, 2009 have been added to the plans and that the certificate and acknowledgment required by that same resolution has been properly executed and delivered to the Town or, in lieu thereof, that the applicant has fully paid the landscape security and inspection fee required by this resolution.

4. This approval is further subject to review and approval by the

Town of Newburgh Highway Department of the proposed curbing along DeVito Drive, including review of the existing catch basin.

5. This approval is subject to approval by the New York State Department of Transportation of the proposed driveway utilization, utility locations and parking lot configuration in substantially the same location as shown on the plans. Should the New York State Department of Transportation require changes in either the location or configuration from what is shown on the plans, the applicant must return to the planning board for further review.

6. This approval is subject to and conditioned upon delivery of written approval by the Orange County Department of Health [subsurface sanitary sewer disposal system].

7. This approval is subject to and conditioned upon delivery of written approval by the New York State Department of Environmental Conservation [subsurface sanitary sewer disposal system approval (SPDES)].

Architectural Review Board Approval

8. No building permit shall be issued authorizing construction of structures inconsistent with the architectural renderings submitted to, and approved by, the Architectural Review Board as part of this approval, nor shall any certificate of occupancy be issued for any structures constructed except in conformance with such renderings. Karen Arent, the Town's Landscape Architect, shall review the building plans when submitted to the Building Department in order to insure compliance with the approved architectural renderings. Karen Arent, the Town's Landscape Architect, shall also inspect the work before a cer-

tificate of occupancy is issued to insure compliance with the approved architectural renderings.

Landscape Security & Inspection Fee

9. Pursuant to 185-57 (L), together with 163-9 (B) [incorporated therein by reference], as well as 185-50 (D), this approval shall be subject to the applicant posting, with the Town Clerk, a performance security, in an amount to be fixed by the town board upon recommendation of the town's landscape consultant in order to secure timely completion and appropriate maintenance of the landscaping improvements depicted on the plans, satisfactory to the Town Board, Town Engineer and Town Attorney as to form, sufficiency, manner of execution and surety. The performance security shall recite that all improvements secured thereby shall be completed within three year(s) of this approval and maintained for a period of two years thereafter. The Town's Landscape Architect, is hereby authorized to periodically inspect the site in order to insure compliance with this condition. A separate inspection fee in an amount in accordance with Section 104-2 (G)(6) shall be submitted and deposited in an escrow account to cover the cost of the Town's Landscape Architect services. The applicant shall be required to pay the required landscaping security to the town before any building permit for any building or structure is issued. The amount of the landscape security may be adjusted (upon recommendation of the Town's landscape consultant) if warranted due to changes in the market pricing of the required landscape materials. The applicant shall be required to pay the required landscaping inspection fee in the amount of $2,000 to the town before the plans are signed.

Stormwater Improvement Security & Inspection Fee

10. Prior to the signing of plans or issuance of a building permit, the applicant shall deliver a performance security to the Town Clerk, pursuant to Section 157-10 (B) of the Code of Ordinances of the Town of Newburgh, in order to guarantee to the town that the applicant will faithfully cause to be constructed and completed the required public stormwater improvements shown on the plans. The performance security shall be in an amount set by the Town Board and shall be satisfactory to the Town Board and Town Attorney as to form, sufficiency, manner of execution and surety. A period of three (3) years shall be set forth in the document of surety within which required improvements must be completed. An inspection fee in an amount in accordance with Section 104-2 (A)(8) shall also be paid to the Town prior to signing of the plans. A separate inspection fee in an amount in accordance with Section 104-2 (A)(8) shall also be submitted and deposited in an escrow account to cover the cost of the Town's periodic inspection of the erosion control measures to be implemented by the applicant.

Outdoor Fixtures & Amenities

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

General Conditions

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

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

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

A FAILURE to comply with the general condition immediately above in a timely manner shall result, without further action, in a lapsing of this approval.

In Favor 5 Against 0 Abstain _____ Absent 2

Dated: January 20, 2011

_____

JOHN P. EWASUTYN, CHAIRPERSON
TOWN OF NEWBURGH PLANNING BOARD

STATE OF NEW YORK)
)ss:
COUNTY OF ORANGE)

I, JOHN P. EWASUTYN, Chairman of the Planning Board of the Town of Newburgh, do hereby certify that the foregoing is a true and exact copy of a Resolution maintained in the office of the Town of Newburgh Planning Board, said resulting from a vote having been taken by the Planning Board at a meeting of said Board held on January 20, 2011.

_____

JOHN P. EWASUTYN, CHAIRPERSON
TOWN OF NEWBURGH PLANNING BOARD

I, ANDREW J. ZARUTSKIE, Clerk of the Town of Newburgh, do hereby certify that the foregoing Resolution was filed in the Office of the Town Clerk on _____.

_____

ANDREW J. ZARUTSKIE, CLERK
TOWN OF NEWBURGH

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N-10.03

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

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IN THE MATTER OF THE APPEAL OF FAMILIES FOR A BETTER TOWN OF NEWBURGH, ROBERT TRENT, CLARENCE BROWN AND ROSALIE DEANGELO,

FOR AN INTERPRETATION OF THE TOWN CODE AND A REVERSAL OF CERTAIN DETERMINATIONS OF GERALD CANFIELD AS SET FORTH IN THEIR APPLICATION TO THE TOWN OF NEWBURGH ZONING BOARD OF APPEALS DATED FEBRUARY 24, 2012.

TRENT AFFIDAVIT IN SUPPORT OF ZBA APPEAL

----------X

ROBERT TRENT, residing at 32 Hopeview Court, Newburgh New York 12550, being duly sworn, deposes and says, as follows:

1. I am a party to this appeal and I make this affidavit in support of my appeal. I make the following statements upon my personal knowledge, except any statement not to be upon information and belief, and as to those statements I believe them to be true.

2. I first learned that the strip club property, located at the intersection of State Route 9W and DeVito Drive, was being improved to move and/or enlarge their business on December 26, 2012. On February 12, 2012, I learned that such work was being performed without a permit from the Town's Building/Code Compliance Department.

3. I first learned on January 26, 2012 of the existence of a letter opinion by Mr. Canfield, the Town's Code Compliance Officer, dated August 5, 2010, which appeared to permit nude dancing at the above-noted strip club by concluding that such dancing was entertainment and was, therefore, permitted when related to the use of the strip club as an eating and drinking place.

4. The above-noted strip club is located less than one (1) mile from my residence on Hopeview Court. Owing to the Town restricting my only other access to Route 9W to

an ingress only road, I am, and all of my family and guests are, required to use DeVito Drive to access Route 9W and pass directly adjacent to the strip club. The close proximity of my home to the strip club affects me in a negative way that differs in kind and degree from the harm that will be suffered by those Town residents far removed from the strip club location, and the general public. The close proximity of the strip club to my property affects me by the added traffic on DeVito Drive and the adverse impact on the value of my home that will result from the permitting of this strip club with entertainment.

5. Clearly, given the above, I fall within a zone of interest of the effect of the decisions/interpretations, and the failure to enforce the Zoning Code, by Mr. Canfield from which I appeal to this Zoning Board of Appeals.

ROBERT TRENT

Sworn to before me this
25th day of April, 2012.

Notary Public

LISA ALVARADO
Notary Public, State of New York
No. 01AL6101150
Qualified in Orange County
Commission Expires November 3, 20 15

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

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IN THE MATTER OF THE APPEAL OF FAMILIES FOR A BETTER TOWN OF NEWBURGH, ROBERT TRENT, CLARENCE BROWN AND ROSALIE DEANGELO,

FOR AN INTERPRETATION OF THE TOWN CODE AND A REVERSAL OF CERTAIN DETERMINATIONS OF GERALD CANFIELD AS SET FORTH IN THEIR APPLICATION TO THE TOWN OF NEWBURGH ZONING BOARD OF APPEALS DATED FEBRUARY 24, 2012.

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DEANGELO AFFIDAVIT IN SUPPORT OF ZBA APPEAL

ROSALIE DeANGELO, residing at 39 DeVito Drive, Newburgh New York 12550, being duly sworn, deposes and says, as follows:

1. I am a party to this appeal and I make this affidavit in support of my appeal. I make the following statements upon my personal knowledge, except any statement not to be upon information and belief, and as to those statements I believe them to be true.

2. I first learned that the strip club property, located at the intersection of State Route 9W and DeVito Drive, was being improved to move and/or enlarge their business on January 1, 2012. The following day, on January 2, 2012, I learned that such work was being performed without a permit from the Town's Building/Code Compliance Department.

3. I first learned on February 12, 2012 of the existence of a letter opinion by Mr. Canfield, the Town's Code Compliance Officer, dated August 5, 2010, which appeared to permit nude dancing at the above-noted strip club by concluding that such dancing was entertainment and was, therefore, permitted when related to the use of the strip club as an eating and drinking place.

4. The above-noted strip club is located less than one quarter (1/4) of a mile from my residence on DeVito Drive. Owing to the Town restricting my only other access to Route 9W to an ingress only, I am, and all of my family and guests are, required to use DeVito Drive to access Route 9W and pass directly adjacent to the strip club. The close proximity of my home to the strip club affects me in a negative way that differs in kind and degree from the harm that will be suffered by those Town residents far removed from the strip club location, and the general public. The close proximity of the strip club to my property affects me by the added traffic on DeVito Drive and the adverse impact on the value of my home that will result from the permitting of this strip club with entertainment.

5. Clearly, given the above, I fall within a zone of interest of the effect of the decisions/interpretations, and the failure to enforce the Zoning Code, by Mr. Canfield from which I appeal to this Zoning Board of Appeals.

Rosalie DeAngelo

ROSALIE DeANGELO

Sworn to before me this
25th day of April, 2012.

Victoria Calliano

Notary Public

VICTORIA CALLIANO
NOTARY PUBLIC, STATE OF NEW YORK
NO. 4884719
QUALIFIED IN ROCKLAND COUNTY
COMMISSION EXPIRES AUGUST 14, 2013