

TOWN OF WALLKILL PLANNING BOARD

MEETING

OCTOBER 17, 2007

MEMBERS PRESENT: G. Lake, W. Capozella, R. Carr, A. Dulgarian, T. Hamilton,  
C. Najac, H. Ross

MEMBERS ABSENT: None

OTHERS PRESENT: J. Bacon, D. McGoey

1. PUBLIC HEARING 7:30 P.M. - **COOPER** - 2 LOT SUBDIVISION - Route 302 -  
(10-1-2.21) #29-05

G. Lake: Public Hearing started at 7:30 P.M. M. Hunt read the Public Hearing notice.

M. Hunt: NOTICE IS HEREBY GIVEN that a PUBLIC HEARING of the Planning Board of the Town of Wallkill, Orange County, New York, will be held at the Town Hall at 99 Tower Drive, Building "B", Middletown, New York 10941 in said Town on the 17<sup>th</sup> day of October, 2007 at 7:30 P.M. or as soon thereafter as the matter can be heard that day on the application of James and Loretta Cooper, P.O. Box 199, Circleville, New York; Dorann M. Nicholson, 14 Lendle Lane, Circleville, New York; Thomas Phillips, P.O. Box 120. 21 Lendle Lane, Circleville, New York; Ronald J. Fontana, 7 Lendle Lane, Circleville, New York; for approval of a two lot residential subdivision and lot line change, located on Lendle Lane, Circleville, New York, under Article III, Section 4, Paragraph G of the Subdivision Regulations of the Town of Wallkill. All parties of interest will be heard at said time and place. S/Gary Lake, Chairman

G. Lake: Your name for the record, please.

D. Yanosh: My name is Dan Yanosh representing the applicant.

G. Lake: Go ahead.

D. Yanosh: This is a lot line change on these lots on Lendle Lane. It was an unofficial private road until a couple of years ago when the Town of Wallkill adopted a resolution making Lendle Lane a private road. The back lot #3 back here which is presently .05 acres. We're going to make it .13 acres with the Nicholson property. The Fontana lot is across the street. Recently it was .56 acres. We're going to add a tenth of an acre by the garage. The

lot in the middle which is owned by Phillips is .16 acres, a small lot created many years ago. That will be .43 acres. The remaining acreage will be subdivided into two lots. Lot #1 will have 4.10 acres, lot #2 will have 9.61 acres. Also, all of these lots will be serviced off that private road Lendle Lane. The existing lots have single family houses on them. The new lots will have single family houses with wells and septic systems.

G. Lake: Thank you. Let me go through the Board before I go to the Public..

A. Dulgarian: No.

H. Ross: No.

R. Carr: I will wait.

W. Capozella: I will wait.

C. Najac: I will wait.

T. Hamilton: Wait.

G. Lake: Is there anyone from the Public who wishes to comment on this application?

**MOTION to close this PUBLIC HEARING at 7:39 P.M. made by A. Dulgarian and seconded by T. Hamilton.**

**A. Dulgarian: Aye**

**H. Ross: Aye**

**R. Carr: Aye**

**W. Capozella: Aye**

**C. Najac: Aye**

**T. Hamilton: Aye**

**G. Lake: Aye**

**MOTION CARRIED. 7 AYES**

G. Lake: Do you have Mr. McGoey's comments?

D. Yanosh: Yes.

G. Lake: Do you want to go over them?

D. Yanosh: The open area development road was approved by the Town Board. We are in with the Department of Environmental Conservation for the approval of the road widening. The Attorney just has to look at the maintenance agreement. Lot #4 about the removal of trees. We will try and leave as many as possible and keep as rural. There probably won't be many coming down. I would say right now it looks pretty good. We will work with Mr. McGoey and the Fire Company as to how wide they want that road to go back into the back. Plans have been sent to the Department of Transportation. It comes out onto Route 302. We can put one other house on here without no problem. Thomas Ptak, the engineer will be signing it. We have to do some grading around the houses. That will be done when the septic systems are done and everything is finished that way when that going on. I have a note on here about the walls being retained already. We have no problem. We like the rural character of the neighborhood in the back there. There is a right-of-way presently that goes along and is shown on sheet #1. It goes to the back that way, back to the Town of Wallkill property. We have no problem keeping it that way. If you want to make it wider or something like that we can do it with no problem at all. The septic systems will be approved by Eustance & Horowitz.

G. Lake: Single family, Mr. Yanosh, correct?

D. Yanosh: Correct.

G. Lake: Let me go through the Board.

A. Dulgarian: What are these lot lines coming together? I see the first, what's existing. Now, the second, what's proposed is the Phillips piece?

D. Yanosh: The Phillips piece is lot #4, in the middle the small little existing house. It's a small little lot.

G. Lake: How long has it been there?

D. Yanosh: Probably with a subdivision map in the 1950's probably.

A. Dulgarian: Are those lines delineated on the larger drawing?

D. Yanosh: Sheet one shows the existing layout. It shows the A, B, C, D around it, the Phillips lot.

A. Dulgarian: Yes.

D. Yanosh: You go to sheet #2 we show the proposed lot lines which will extend.

A. Dulgarian: Okay.

D. Yanosh: It will also match lot #3, that line will go through that way. It makes lot #3 a lot bigger and will get more of a front yard. Right now the property line is right across their front door. Again, it was created back in the 1950's.

A. Dulgarian: Your property does not go all the way back to the old railroad bed, does it?

D. Yanosh: Yes it does. Mr. Fast owned a piece of property back there. He donated that land to the Town. That's when the Town put the road in by Eustance & Horowitz by the gas station. That is all owned by the Town of Wallkill.

A. Dulgarian: I have nothing further.

H. Ross: Are you specifying a turn-around in there?

D. Yanosh: We do show a "T" turn-around at the end.

G. Lake: Anything else, Mr. Ross?

H. Ross: That's it.

R. Carr: I have nothing.

W. Capozella: My only comment is it's a private road. I have no faith in maintenance agreements. There's nobody in charge. Who's going to vote on it? Who's going to take

care of it? To me, those things always become problems, to say the least. You have one lot here that nobody has built on yet. They're going to say I don't even own a home yet and I pay a maintenance fee. It's always questionable with the verbiage.

D. Yanosh: Well, what this is. This is not something new. These houses on Lendle Lane, or three houses there today plus the big houses have been there for years. They have an agreement amongst themselves right now because Mr. Cooper plows most of the time, paves and takes care of the maintenance. It's in existence today. There's no real backing. That's why I went to the Town Board and got that Local Law. There is nothing else you can do. Again, right now today with the subdivision Mr. Cooper can put a house on that vacant piece of property. It's your option.

W. Capozella: The only thing I can see is I haven't heard (not clear).

J. Bacon: Mr. Yanosh, was it because you have those two lots that are far back on the lots would it make more sense to have them be the ones that are responsible for that long driveway and then at some point have the other lot #3 come on board? Then, the three by the road don't feel as though they're taking care of it all.

D. Yanosh: We can probably make lot #2 since most of the road goes through that way so, we could probably make lot #2 a leader, maybe.

J. Bacon: I was going to ask you if you could think about that. It just doesn't make sense to have the three guys that are really close to Route 302 to be responsible for the new piece.

D. Yanosh: We can work out some language on that.

W. Capozella: That's my question. The three previous homes here and now you have someone in the back here. Nothing else.

C. Najac: I have nothing.

T. Hamilton: I have nothing.

G. Lake: I have never heard of any problems down there and I live out there. It's a tight little community sitting down in there. I really don't see any problems except what Mr. Bacon brought up, maybe making sure that the back house can get out both ways..

D. Yanosh: You mean to proportion it.

G. Lake: I think we just have to make sure that they can always get out. The back section, it's longer than the front so maybe just work something up for Mr. Bacon to look at so that it is proportionate or as equal as possible. Does anybody have anything else on this?

H. Ross: Where would you put the mail boxes?

D. Yanosh: They are on the end now.

**MOTION for a NEGATIVE DECLARATION subject to all of Mr. McGoey's comments and this Board's comments made by A. Dulgarian and seconded by C. Najac.**

**A. Dulgarian: Aye**

**H. Ross: Aye**

**R. Carr: Aye**

**W. Capozella: Aye**

**C. Najac: Aye**

**T. Hamilton: Aye**

**G. Lake: Aye**

**MOTION CARRIED. 7 AYES**

**MOTION for PRELIMINARY SUBDIVISION and LOT LINE CHANGES made by A. Dulgarian and seconded by R. Carr.**

**A. Dulgarian: Aye**

**H. Ross: Aye**

**R. Carr: Aye**

**W. Capozella: Aye**

**C. Najac: Aye**

**T. Hamilton: Aye**

**G. Lake: Aye**

**MOTION CARRIED. 7 AYES**

2. PUBLIC HEARING 7:35 P.M. - **SAWKA** - 5 LOT SUBDIVISION (Re-approval) Hubbard Road (6-1-24.23) #48-02

G. Lake: Public Hearing started at 7:30 P.M. M. Hunt read the Public Hearing notice.

M. Hunt: NOTICE IS HEREBY GIVEN that a PUBLIC HEARING of the Planning Board of the Town of Wallkill, Orange County, New York, will be held at the Town Hall at 99 Tower Drive, Building "A", Middletown, New York 10941 in said Town on the 17<sup>th</sup> day of October, 2007 at 7:30 P.M. or as soon thereafter as the matter can be heard that day on the application of Nicholas E. Sawka for approval of a five lot subdivision at 57 Hubbard Road, cross road Prosperous Valley Road, under Article III, Section 4, Paragraph G of the Subdivision Regulations of the Town of Wallkill. All parties of interest will be heard at said time and place. S/Gary Lake, Chairman

G. Lake: Your name for the record, please.

E. Johnson: My name is Ernest Johnson. I'm the surveyor on the project.

G. Lake: Okay. Go ahead tell us what you've done since you were here last.

E. Johnson: Yes. We have a five lot subdivision off of Hubbard Road, with an open area development type of road going through it. Since the last time we were here we made changes to the stormwater report drainage concerns that Mr. McGoey had. We've changed the map to meet all the comments, I believe that wanted except for some on the drainage report and with that for Preliminary Approval.

G. Lake: Let me go through the Board before I go to the Public.

A. Dulgarian: Not at this time.

H. Ross: After the Public.

R. Carr: I will wait.

W. Capozella: I will wait.

C. Najac: After.

T. Hamilton: Just one quick question though. Do we have any plans that have an engineer stamp on them?

E. Johnson: I will have them stamped and approved and brought back.

T. Hamilton: The set I have doesn't have it on.

D. McGoey: I have a stamp on mine but no signature.

E. Johnson: We'll correct that and bring them in tomorrow.

D. McGoey: They changed engineer's. The former engineer stamped the Preliminary plans and signed them.

G. Lake: You're going to get it on the other maps?

E. Johnson: Yes.

G. Lake: Okay. Anything else, Mr. Hamilton?

T. Hamilton: That was the main thing for me.

G. Lake: We can do it subject to . . .

D. McGoey: I'm not recommending approval tonight.

G. Lake: Right. Is there anyone from the Public who wishes to comment on this application?

**MOTION to close this PUBLIC HEARING at 7:51 made by A. Dulgarian and seconded by H. Ross.**

**A. Dulgarian: Aye**

**H. Ross: Aye**

**R. Carr: Aye**

**W. Capozella: Aye**

**C. Najac: Aye**

**T. Hamilton: Aye**

**G. Lake: Aye**

**MOTION CARRIED. 7 AYES**

G. Lake: Do you have Mr. McGoey's comments?

E. Johnson: Right.

G. Lake: Do you want to go through them?

E. Johnson: Yes. The first one, is the conflict between the driveway cross sections. We've made those changes. We've now made the changes on a new set of plans that we will submit Monday, numbering the sheets in order. The stormwater report will be in. The changes that Mr. McGoey requested will be in his office Monday morning. The mutual use of the maintenance agreement is up to the Town engineer.

G. Lake: Go ahead. Let me go through the Board.

A. Dulgarian: Mr. Johnson, is this plan any different than the plan we approved?

E. Johnson: Yes. The changes . . .

A. Dulgarian: The one that lapsed?

E. Johnson: The one that lapsed. The only changes in the plan was, if you remember the first set of comments we had and one of them was that the contouring wasn't right on the first set of plans. Some of the contours as well and that changed. So, then when we changed . . . When we got the contouring on there the way it was supposed to be, that changed the stormwater report. We no longer needed a retention line. We could get rid of it. All the

water would go through swales toward the back end of it. That was the recommendation of the Town engineer. Now, so far, we agreed on that?

D. McGoey: No.

E. Johnson: Not yet, but we made changes to it but we don't think there's a need for the detention pond yet.

D. McGoey: I do not show whether you do or you don't.

E. Johnson: Okay.

D. McGoey: I need more information.

E. Johnson: That's basically the only change except for the fact that we increased the two lots on the top, lots #4 and #3 to meet the current zoning from where they were.

A. Dulgarian: Mr. McGoey, what makes this application different from others that we would normally, when there is like outstanding engineer's issues, we would a lot of times make it approved subject to you reviewing it and giving it the blessing. Obviously you feel that there is so much wrong right now that we need to look at this plan, is that correct?

D. McGoey: Yes. The stormwater management, I don't think I want to agree with their engineer on the stormwater management. It may change the subdivision plan significantly.

A. Dulgarian: Alter the lot sizes, etc.?

D. McGoey: Not lot sizes but you're going to have lots that have a major responsibility with the stormwater management plan on the lot. And also, he proceeded to construct the roadway and I don't want to have to be able to give him that opportunity again until we get the stormwater management straightened out.

A. Dulgarian: Do you feel strongly enough that we should . . .

D. McGoey: The engineer screwed up the contours the last time. They went out and started to build the road. I want to make sure it's right.

A. Dulgarian: I have nothing else.

H. Ross: Nothing.

R. Carr: Nothing else.

W. Capozella: Let's go back a minute. Note #7, I just don't see why it says that the Town of Wallkill Justice Court. It actually mentions that if there is a problem we go to the Town of Wallkill Court. I don't know why this is even on the plans.

J. Bacon: It's in the maintenance agreement.

W. Capozella: I understand what you're trying to say.

E. Johnson: And, we've basically using the standard maintenance agreement that you've used. It wasn't one that we wrote on our own. It's been the standard one that's on most of the maps that have been filed.

W. Capozella: Again, I don't know who wrote it. I'm just questioning why it says go to the Town of Wallkill Court when it may never get there. It may go to County Court. That's usually where some of these things end up.

E. Johnson: If that's a change that you want then obviously that's not a hard thing to change on the map.

W. Capozella: You know, unless this was written by the Town and they want this thing in there but . . .

G. Lake: Why don't we have Mr. Bacon look into that and find out where it came from and then maybe come up with something. Is that what you're looking for?

W. Capozella: Well, no. I'm just saying we're not the court. You know what I mean. We're saying in this agreement that if there is a problem with the maintenance agreement we're going to the Town of Wallkill Court. I can tell you where there are instances where it goes to County Court, you're not going to go to the Town of Wallkill Court and chances are we're not even supposed to go to the Town of Wallkill Court.

G. Lake: Right. So, what you're saying is take out the Town of Wallkill and just say what ever gas ti be court wise.

W. Capozella: Why does the maintenance agreement say go to the Town of Wallkill Court when probably it's not even legal to have in there. That's what I'm saying. Maybe I'm

wrong but again, I'm questioning it.

G. Lake: Anything else, Mr. Capozella?

W. Capozella: No.

C. Najac: According to Mr. McGoey, we need to Table this.

G. Lake: Anything else, Mr. Najac?

C. Najac: No.

T. Hamilton: I think it should be tabled also.

G. Lake: Yes. It sounds like you still have a couple of headaches to clear up.

E. Johnson: Can I ask just a quick question. Since Mr. McGoey says we can't get Preliminary Approval subject to his technical comments, can we keep the Public Hearing open and come right back after you've reviewed that?

D. McGoey: I don't think we want to keep the Public Hearing open.

G. Lake: In fact, I already closed the Public Hearing.

E. Johnson: Oh, okay.

G. Lake: So, what I'm going to do is ask you to waive the sixty two day time frame?

E. Johnson: Okay.

G. Lake: That being the case, the applicant waives the sixty two day time frame. That way, clean up the stormwater management. We did get an e-mail today and it will be in the record and if you want to get a copy call the office tomorrow. It's from a neighbor and maybe you can also respond to some of that. There are a couple of things on there about building, debris and a couple of other things.

E. Johnson: Okay.

G. Lake: That, you will have to deal with your applicant. We received that here in the office.

E. Johnson: Will I see MaryLynn for that?

G. Lake: See MaryLynn.

**MOTION to TABLE for further review with applicant waiving the sixty two (62) day time frame made by A. Dulgarian and seconded by W. Capozella.**

**A. Dulgarian: Aye**

**H. Ross: Aye**

**R. Carr: Aye**

**W. Capozella: Aye**

**C. Najac: Aye**

**T. Hamilton: Aye**

**G. Lake: Aye**

**MOTION CARRIED. 7 AYES**

3. **WALLKILL MINI STORAGE** (Access) - SITE PLAN/SPECIAL USE PERMIT - Extension to Final - Gibbs Court (50-2-66) #56-06

G. Lake: Your name for the record, please.

G. Bergman: My name is Gerald Bergman with Clough Harbor Associates.

G. Lake: Go ahead.

G. Bergman: We are here to request an extension to our Conditional Final Approval.

G. Lake: I will let the Board know that he did send a letter in on time. The need for this extension?

G. Bergman: We still have some issues with a maintenance agreement.

J. Bacon: I got the access parking easement.

G. Bergman: We couldn't find anything on the drainage. I went through the Planning Board's records also. Nobody disagrees that there wasn't one. Unfortunately the owners are all changed now. I do have a possible solution.

D. McGoey: Just so the Board doesn't get involved in that. This is a commercial subdivision with joint stormwater maintenance facility. Everybody drains into two separate systems for stormwater flow. When that was approved, was that the property owners would maintain those ponds. Obviously something fell through the cracks.

T. Hamilton: Does that go back to Scali?

D. McGoey: After Scali.

G. Bergman: This was the Shop Rite original approval.

T. Hamilton: The original one was the one that the Town approved back in . . .

D. McGoey: That was Scali.

T. Hamilton: There were problems at that time.

G. Bergman: I think that one may be straightened out. That's the big pond. That is mentioned in what I gave you. The big pond is, in fact, mentioned and the agreement is pretty clear on the maintenance agreement with that. The small pond on our parcel that on the end of the cul-de-sac.

G. Lake: Okay, so you want to get back to a work session with Mr. McGoey and Mr. Bacon?

G. Bergman: Yes I do.

G. Lake: And, throw something out as to how you're going to resolve this.

A. Dulgarian: I have a question.

G. Lake: Okay. Go ahead.

A. Dulgarian: When did we receive the request for the extension?

M. Hunt: June 29, 2007.

A. Dulgarian: June 29<sup>th</sup> and we have them on now?

G. Lake: Yes.

A. Dulgarian: It seems strange.

G. Lake: No. I asked MaryLynn whether we had the letter in on time.

A. Dulgarian: So, now is the extension going from July 3<sup>rd</sup> to January 3<sup>rd</sup>.

G. Bergman: Yes.

A. Dulgarian: You already used up three months of the extension.

G. Bergman: Well, we've been working on this also.

A. Dulgarian: No. I'm just trying to figure out the time frame.

G. Lake: It's just a balancing act we try to deal with. Anybody else?

**MOTION for a SIX MONTH EXTENSION to CONDITIONAL FINAL made by H. Ross and seconded by C. Najac.**

**A. Dulgarian: Aye**

**H. Ross: Aye**

**R. Carr: Aye**

**W. Capozella: Aye**

**C. Najac: Aye**

**T. Hamilton: Aye**

**G. Lake: Aye**

**MOTION CARRIED. 7 AYES**

4. **BERMAN** - 14 LOT SUBDIVISION - Extension to Preliminary - Route 17K (5-1-3.2) #66-04

G. Lake: Your name for the record, please.

D. Yanosh: My name is Dan Yanosh, surveyor for Mr. Berman.

G. Lake: Just so I don't forget, Board, he did have his letter in on time. Go ahead.

D. Yanosh: Again, we need a six month extension for Preliminary Approval. We're in the Health Department finishing up all the rest of the items that Mr. McGoey had on his list. One other question I have to bring in front of the Board is the cemetery. We did locate the cemetery out there. It does show on the plan. I'm working with the Historical Committee as to what we do with those things. In the zoning it says the Planning Board has the sole discretion, fencing, small plants or whatever. I've tried to talk to them and maybe put up a little sign by the cemetery. We gave it to Mr. Ward for him to look at and to say that this is a historical site, stay away one hundred feet or whatever. I'm sure Mr. Ward is also looking at changing this law for other cemeteries that are in violation today. Circleville Presbyterian Church, it will always be in violation because of houses within two hundred feet of the cemetery. For this case here, my client is willing to put up a small posted rail fence around that cemetery site. He will clean it up a bit and get the brush out. It's pretty well defined. He knows where it is.

G. Lake: I think that's reasonable. I will go through the Board.

A. Dulgarian: I might have the language wrong but what's the occupancy (not clear)?

D. Yanosh: Of the cemetery?

A. Dulgarian: Yes.

D. Yanosh: I have no idea.

A. Dulgarian: I thought it was just a couple.

D. Yanosh: The cemetery itself probably takes up an area (not clear).

D. McGoey: There are probably three stones out there.

D. Yanosh: There might also be other buried as well.

A. Dulgarian: Okay.

D. Yanosh: I was out there with the Historical Society and we can tell where it lines up.

D. McGoey: It's heavily loaded with briar bushes and you can't get in there. The only way to get in is to cut that all out. It really needs to be cleaned up.

A. Dulgarian: They are going to clean it up?

D. Yanosh: Yes.

A. Dulgarian: I have no problem with the extension.

H. Ross: No problem with the extension. Can we see the detailing of the fencing around the cemetery on the plans?

D. Yanosh: Sure.

R. Carr: I have nothing else.

W. Capozella: Nothing.

C. Najac: Nothing.

T. Hamilton: Mr. McGoey, you haven't received comments from your March report?

D. McGoey: I haven't received them on the plans.

D. Yanosh: Again, we will do all of those things. We will get another plan sent out.

D. McGoey: I would get the agreement to Mr. Bacon on the Conservation Subdivision Law. You don't have to do that after Final Approval.

D. Yanosh: We're working on the road dedication. We're working on the lighting district. Was the lighting district approved or not? The drainage district, we're working on those documents. We will check on the conservation notes.

G. Lake: How long have you been in the Health Department?

D. Yanosh: Probably about four months.

G. Lake: Anything else, Mr. Hamilton?

T. Hamilton: No.

**MOTION for a SIX MONTH EXTENSION to PRELIMINARY APPROVAL made by H. Ross and seconded by R. Carr.**

**A. Dulgarian: Aye**

**H. Ross: Aye**

**R. Carr: Aye**

**W. Capozella: Aye**

**C. Najac: Aye**

**T. Hamilton: Aye**

**G. Lake: Aye**

**MOTION CARRIED. 7 AYES**

5. **ORANGE REGIONAL MEDICAL CENTER** - SITE PLAN/SPECIAL USE PERMIT - East Main Street (78-1-87) #60-06

G. Lake: Before we get started why don't we divide it. Let's do the Findings's Statement first and then we will go into the Site Plan. I think that would be easier on everybody. Your name for the record, please. I do realize they will both cross over a little bit.

A. Cutignola: My name is Ann Cutignola with Tim Miller Associates. We submitted our Finding's Statement to the Board on October 3, 2007. Mr. McGoey submitted a comment memorandum of October 9, 2007. We have revised the findings to address all of those comments. We're looking for the Board to adopt the Finding's Statement this evening.

G. Lake: Mr. McGoey, you did have a work session on all the items that you had stated?

D. McGoey: Yes. After I issued my comments of October 9, 2007 a couple of days after that we had a work session here at Town Hall. We went over my items point by point and I have since looked at the Finding's Statement and they've incorporated the information that I had asked for. I have no problems with it.

A. Cutignola: There were two letter requested. One from the Fire Department There is a letter from the Fire Department stating that they're satisfied and then the letter from the County.

G. Lake: You were going to meet with the Fire Department, correct?

A. Cutignola: You know, I did speak to Mr. Jaques about the purpose of that meeting and the Orange Regional staff had initiated that meeting and, it was a meeting not related to the findings. It was a meeting to deal with the Site Plan issues as they go forward. I told them I was happy to attend that meeting but that meeting was not about the Fire Department issues with the findings.

G. Lake: Okay.

A. Cutignola: And, he didn't really feel that we were necessary at that meeting but I did speak with him.

G. Lake: So, basically somebody within your group met with the Fire Department as far the project is progressing and how they're going to get into the project and things like that?

A. Cutignola: The circulation plan on site isn't really an issue. They had comments and we've addressed those comments.

G. Lake: I will go through the Board.

A. Dulgarian: I have nothing.

H. Ross: I have nothing.

R. Carr: The only concern I have and Mr. McGoey can correct me if I'm wrong but it's just the timing on the other mitigation and will be in the Developer's Agreement and the Conditions . . .

D. McGoey: Site Plan approval. We recommended in the hospital agreement to enter into the Developer's Agreement with the Town and the County..

A. Cutignola: On page 16 of the Finding's Agreement, we did. Should we call it a Developer's Agreement or do you want to word it differently and, we will take care of that. There was a letter from the County clarifying their involvement and the hospital is prepared.

W. Capozella: I have two comments. On page 8 in the third paragraph, there's a proposed stormwater management to maintain flow rates is less than the pre-development that you have right now. Basically you're going to be taking all the water, but we don't really know.

D. McGoey: It's in the drainage input section.

W. Capozella: The only other thing and, it's just a comment. You don't really talk about any solution on water or sewer energy. I know it's a hospital and you're going to have the water regulated with sensors and things like that. Those are the things that I would have liked to have seen. The less water that's used, the better off it is. Obviously the hospital is a big project and it would probably be even cost effective in the long run.

A. Cutignola: We're are anticipating.

W. Capozella: You just didn't mention it or anything about that..

A. Cutignola: No. The findings, we're talking about the process as a whole.

G. Lake: Anything else, Mr. Capozella?

W. Capozella: No.

C. Najac: The only concern I have is the mitigation timing and the traffic issues. That's it.

T. Hamilton: Unable to hear.

G. Lake: The only other comment I wish to make as far as the traffic goes, I just sat down

with Mr. McGoey. It's not in a letter but we did talk about it a little bit and the County basically said they would move forward on it.

**MOTION to accept the FINDING'S STATEMENT made by R. Carr and seconded by T. Hamilton.**

**A. Dulgarian: Aye**

**H. Ross: Aye**

**R. Carr: Aye**

**W. Capozella: Aye**

**C. Najac: Aye**

**G. Lake: Aye**

**MOTION CARRIED. 7 AYES**

G. Lake: Now, your Site Plan.

A. Cutignola: In addition, what we're hoping for tonight is the granting of the Special Use Permit acknowledging the height waiver and then Preliminary Approval. The Preliminary Approval would be contingent on how fast posting the two hundred thousand dollar construction bond so the project could move forward and committing to a pre-construction at Mr. McGoey's suggestion.

G. Lake: What was that, height and what else?

A. Cutignola: The Special Use Permit for the hospital and then acknowledging of the height restriction. The building itself is approximately one hundred feet high but the extension of the elevator shaft that goes up. For your information that is one of the issues we've discussed with the Fire Department. They were interested if they were going to reach the top of the building with their existing equipment and we had to provide them with a spot on the site where their truck and one hundred foot ladder can get them onto the roof. That was what

their concern was.

G. Lake: It was the height if everybody remembers I think it was about two or three meetings ago, we did discuss this a little bit. Basically she just brought us up to date. Let me go through the Board. Do you have any questions at all with any of the items?

A. Dulgarian: No.

H. Ross: I agree.

R. Carr: No problems. Just one further question in terms of the traffic mitigation. What happens and it's something that Mr. Hamilton has brought up, what happens if one or the other applicants does not go forward and does not do their part of the mitigation? What happens then and how would you cover that in the agreement?

D. McGoey: The hospital in the Finding's Statement, I believe, has committed to complete the improvements.

R. Carr: Regardless of the listing of who is responsible?

A. Cutignola: The one gray area was the corner adjacent to Exit 122. At the present we've been back and forth. The hospital in that area has motivated them to put increased priority on this project in that area. We are hopeful that it will all work out. The only other parties involved is the Tetz mitigation on Midway Drive.

R. Carr: That's it.

W. Capozella: Nothing else.

C. Najac: Nothing.

T. Hamilton: Nothing.

G. Lake: Mr. Bacon, can I do the Preliminary Approval that would cover the height waiver, or the Special Use Permit separate?

J. Bacon: I would have you do the Special Use Permit separate.

A. Dulgarian: Put the height waiver in with Preliminary Approval?

J. Bacon: Yes I would.

**MOTION for a SPECIAL USE PERMIT subject to all of Mr. McGoey's comments and this Board's comments made by A. Dulgarian and seconded by H. Ross.**

**A. Dulgarian: Aye**

**H. Ross: Aye**

**R. Carr: Aye**

**W. Capozella: Aye**

**C. Najac: Aye**

**T. Hamilton: Aye**

**G. Lake: Aye**

**MOTION CARRIED. 7 AYES**

**MOTION for PRELIMINARY APPROVAL with waiver on height subject to all of Mr. McGoey's comments and this Board's comments made by A. Dulgarian and seconded by R. Carr.**

**A. Dulgarian: Aye**

**H. Ross: Aye**

**R. Carr: Aye**

**W. Capozella: Aye**

**C. Najac: Aye**

**T. Hamilton: Aye**

**G. Lake: Aye**

**MOTION CARRIED. 7 AYES**

6. **LIBERTY PEST CONTROL** - SITE PLAN/SPECIAL USE PERMIT - Extension to Conditional Final - Route 302 (22-3-7) #81-06

G. Lake: Your name for the record, please.

D. Yanosh: My name is Dan Yanosh surveyor for Liberty Pest Control.

G. Lake: Go ahead.

D. Yanosh: Mr. DePuy's office is finalizing the drainage requirements for the stormwater management plan from Mr. McGoey's comments since the beginning. We re-graded the whole site and now have been working with his office and they are pretty close to getting it finalized. We did get the bill from Eustance & Horowitz the other day on the septic system.

G. Lake: I will go through the Board.

A. Dulgarian: I have no problem.

H. Ross: Nothing further.

R. Carr: Nothing.

W. Capozella: Nothing.

C. Najac: Nothing.

T. Hamilton: Nothing.

**MOTION for a SIX MONTH EXTENSION on Conditional Final made by H. Ross and seconded by R. Carr.**

**A. Dulgarian: Aye**

**H. Ross: Aye**

**R. Carr: Aye**

**W. Capozella: Aye**

**C. Najac: Aye**

**T. Hamilton: Aye**

**G. Lake: Aye**

**MOTION CARRIED. 7 AYES**

7. **FOXWOOD** - 7 LOT SUBDIVISION - Final - Mount Hope Road (62-1-16) #57-06

G. Lake: Your name for the record, please.

J. Atzl: My name is John Atzl with Atzl, Scataza & Zeigler representing the applicant.

G. Lake: Go ahead.

J. Atzl: What we done actually, we've gone out and done additional test holes and percolation tests and we brought up a testing design plan that we're going to have to submit to Orange County Health Department. We sent it to off to Orange County Health for the location of a test well. They've located the test well on lot #4 and we've also per this Board, this Board asked us to send this project to the Middletown Department of Public Works which we've done and we have not received any response from them. I have a copy of the transmittal and the Fed Ex track if the Board would like to see it.

G. Lake: Can you make a copy of that available for the record?

J. Atzl: Sure. I have an extra copy right here.

G. Lake: Thank you. You say you have to put a test well on?

J. Atzl: A test well, yes. One test well on lot #4 they requested.

G. Lake: Okay.

J. Atzl: We have comments from Mr. McGoey and most of them were detailed comments and technical comments. I believe we do have to add to the bulk table the Town Board had changed the zoning slightly requiring a lot frontage minimum which we will add to the bulk table. The other comments were more technical in nature as far as the cross section for the driveway. We had provided a driveway profile. We've provided the site distance. Mr. McGoey asked for to certify the site distance on the map.

D. McGoey: On the map.

J. Atzl: That is not a problem. Really most of the stuff is minor in nature and respectfully request that the Board grant us Preliminary and a Negative Declaration tonight.

G. Lake: Site distance, Mr. McGoey on the actual speed, have they done that? Do you know?

D. McGoey: Yes.

J. Atzl: We have it at the prevailing speed on sheet #3.

G. Lake: Okay.

D. McGoey: Based on my experience I don't have a problem with it but I generally ask it for everybody.

T. Hamilton: Are we looking at it from all directions?

D. McGoey: Yes.

G. Lake: I will go through the Board.

A. Dulgarian: Yes. We've seen variations of this and I have no problem letting them move forward at this point.

H. Ross: I agree.

R. Carr: Nothing.

W. Capozella: Can you refresh my memory on lot #1? We have lots #2 through #5 all building lots. Lot #1?

J. Atzl: Lot #1 is the large lot which contains the existing home.

W. Capozella: Okay. The whole rear portion of lot #1 is in the conservation easement. There won't be any frontage requirement.

G. Lake: Anything else, Mr. Capozella?

W. Capozella: No.

C. Najac: Nothing.

T. Hamilton: Nothing further.

**MOTION for a NEGATIVE DECLARATION subject to all of Mr. McGoey's comments and this Board's comments made by T. Hamilton and seconded by C. Najac.**

**A. Dulgarian: Aye**

**H. Ross: Aye**

**R. Carr: Aye**

**W. Capozella: Aye**

**C. Najac: Aye**

**T. Hamilton: Aye**

**G. Lake: Aye**

**MOTION CARRIED. 7 AYES**

**MOTION for PRELIMINARY SUBDIVISION APPROVAL subject to all of Mr. McGoey's comments and this Board's comments made by A. Dulgarian and seconded by R. Carr.**

**A. Dulgarian: Aye**

**H. Ross: Aye**

**R. Carr: Aye**

**W. Capozella: Aye**

**C. Najac: Aye**

**T. Hamilton: Aye**

**G. Lake: Aye**

**MOTION CARRIED. 7 AYES**

8. **BEAMESDERFER** - LOT LINE CHANGE - Shaw Road (24-1-55.4) #72-07

G. Lake: Your name for the record, please.

D. Yanosh: My name is Dan Yanosh, surveyor for the applicant.

G. Lake: Go ahead.

D. Yanosh: It's a simple lot line change. We're going to take 2.54 acres of land from the "Stillwagner" property and add it to the Beamesderfer property. There's nothing on the property right now. Mr. Beamesderfer has a barn for horses that has already been approved from the Planning Board. The house up in the front conforms to code.

G. Lake: I will go through the Board.

A. Dulgarian: I think it's reasonable. I don't see any negative impacts at all.

H. Ross: I agree.

R. Carr: I have no problem.

W. Capozella: Who owns what?

D. Yanosh: The Stillwagner's own 5.31 acres and Mr. Beamesderfer owns the property in the back.

W. Capozella: I have nothing else.

C. Najac: Nothing.

T. Hamilton: Nothing.

**MOTION for a NEGATIVE DECLARATION subject to all of Mr. McGoey's comments and this Board's comments made by W. Capozella and seconded by C. Najac.**

**A. Dulgarian: Aye**

**H. Ross: Aye**

**R. Carr: Aye**

**W. Capozella: Aye**

**C. Najac: Aye**

**T. Hamilton: Aye**

**G. Lake: Aye**

**MOTION CARRIED. 7 AYES**

**MOTION for LOT LINE CHANGE subject to all of Mr. McGoey's comments and this Board's comments made by H. Ross and seconded by W. Capozella.**

**A. Dulgarian: Aye**

**H. Ross: Aye**

**R. Carr: Aye**

**W. Capozella: Aye**

**C. Najac: Aye**

**T. Hamilton: Aye**

**G. Lake: Aye**

**MOTION CARRIED. 7 AYES**

9. **ORRIO'S** - LOT LINE CHANGE - 36 Ingrassia Road (49-1-23) #75-07

G. Lake: Your name for the record, please.

D. Yanosh: My name is Dan Yanosh, surveyor for the applicant.

G. Lake: Okay.

D. Yanosh: This is Orrio's Restaurant on Ingrassia Road in the RA zone. There is an existing house and restaurant on tax lot #24. His son, Allen live son tax lot #23. There's a stream that goes between the two properties. We propose to do a lot line change which now encroaches through Mr. Orrio's house over to the stream. The stream would be owned by the restaurant, tax lot #24. The zone used to be M-I and since the last zone change the Master Plan is saying this is in the RA zone. They are not conforming lots to begin with so, we would probably have to go before the Zoning Board of Appeals for relief.

G. Lake: You haven't done that yet?

D. Yanosh: No. It's pre-existing, non-conforming.

G. Lake: Mr. Bacon, does he have to appear before the Zoning Board of Appeals?

J. Bacon: Yes.

G. Lake: I will go to the Board.

A. Dulgarian: I have nothing.

H. Ross: Send him to the Zoning Board of Appeals.

R. Carr: I have no problem.

W. Capozella: Nothing.

C. Najac: Nothing.

T. Hamilton: Nothing.

G. Lake: Okay. You need to appear before the Zoning Board of Appeals, I guess, for the non-conforming. Anything else he has to go for?

D. McGoey: No. I just wanted to let the Board to know he kept the stream on the restaurant side because they use that stream. You're changing the lot size.

A. Dulgarian: He's going to the Zoning Board of Appeals for the use or for the setbacks?

D. Yanosh: Setbacks.

**MOTION to refer to the ZONING BOARD OF APPEALS for non-conforming and setbacks made by R. Carr and seconded by A. Dulgarian.**

**A. Dulgarian: Aye**

**H. Ross: Aye**

**R. Carr: Aye**

**W. Capozella: Aye**

**C. Najac: Aye**

**T. Hamilton: Aye**

**G. Lake: Aye**

**MOTION CARRIED. 7 AYES**

10. **POA** (Passero Prosthetics) - Rykowski Lane (60-1-95) #78-07

G. Lake: Your name for the record, please.

T. DePuy: My name is Thomas DePuy representing the applicant.

G. Lake: Go ahead.

T. DePuy: The applicant is proposing an 11,375 square foot building. What I handed out is we've also shown a future expansion, just to show the build-out on the property. We're going to call in Phase II just to design the overall project. Basically they're looking to build the 11,375 square foot first, maybe in the future they would be expanding it with Phase II. In the rear of the property we will be collecting the stormwater off of this area here. We're proposing (not clear) and a pocket pond which will discharge down to the adjacent area. This is all flood plain of the Wallkill River down in here. Basically all of our development is happening out of the flood plain but we will be required to do a flood place development because we're also building a pond. Basically we're going to be getting our sewer service from the existing sewer over here and there is an existing water service that exists out here on Riverside Drive which we would be tapping into.

G. Lake: Okay. Since you've been here last, you know, to kind of get a better handle on the new zoning that we've been dealing with, it seems that you do fall under that new zoning where this lot isn't big enough to support this under our new zoning. Again, I knew we had this discussion the last time and we did some research on it. Unfortunately, and I will let Mr. Bacon touch on it and explain it to everybody on this Board. Him and I have talked about it and tried to figure it out a little bit because I believe this Board as a whole thinks this is a very good project. I'm not speaking for the Board but that's the feeling I got the last time when you were here. We have this problem now and I will have Mr. Bacon just explain that section a little bit.

J. Bacon: What the Board might have known was that the lots on either side of this lot are in the same ownership. When the new zoning comes in on the filed map is it is now non-conforming.

T. DePuy: We're 186.74.

J. Bacon: It's exactly only fourteen feet from meeting the two hundred foot requirement. Again, because these lots are in common ownership essentially to realign the lots to conform

to the zoning.

R. OJ. Smith: What about Section 62?

J. Bacon: It doesn't apply because again, this lots are in common ownership. The clause is actually under Section 249-9b.

R. J. Smith: My name is R. J. Smith and I am a principle of one of the lots. A property owner in good faith under the previous zoning goes out and gets all the approvals, invested all of the infrastructure; water, sewer, roads, everything had to be done. The purpose of that section unilaterally to make a zoning ordinance retroactive to say previous approvals are no longer valid. That's the purpose of that section. To say we have to comply in every other way (not clear). If you're going to take all the economic investments that's been put into this development.

G. Lake: I think the problem is that

J. Bacon: I understand that you want to make the invested rights with these particular lots. If you had made those substantial improvements then you can have an argument but essentially you're improvements are on areas that are servicing.

G. Lake: Our problem is Mr. Smith is we have the laws that we have to go by. It's a learning process for us at this point. We don't have the power to give that relief of that fourteen feet.

R. J. Smith: That's the law that we would use for our Attorney. That's what this is about because you can't adopt a law that says that previously approved subdivision is now no longer valid and you have to have that portion to also say that this law will not intend to invalidate any previous approvals. That's what this says. We reviewed it with our counsel and that's when we came in and had a discussion and we went to a work session and went over that. So, we're happy to get a memorandum of law to address that issue. Otherwise the zoning law if it's taken to court would be rendered invalid because you've enacted a law that could say all the other subdivisions with all the other infrastructure residential or non-residential and all of that investment has been made and they adopt a law and now that investment is wiped out and those lots are no longer valid lots. That's why you have Section 62 to protect the integrity of the zoning.

T. Hamilton: That's going to be between our Attorney, the applicant's Attorney, and the Attorney for the Town Board who made up these laws. That's where this has to go. Like

Mr. Lake said, we can't do anything at this point.

A. Dulgarian: He can go before the Zoning Board of Appeals and obtain a variance.

T. Hamilton: I think the applicant doesn't want to have to do this with every single lot that he's got.

R. J. Smith: They're all one hundred fifty feet and they complied with the previous zoning laws.

G. Lake: What we've been told basically and I will put it very simple. This is the new law and this is what you have to go by. This isn't the first time somebody has come in. My suggestion I guess would be at this point if you want it to go as quick as possible go to the Zoning Board of Appeals for this one and at the same time get everybody together and straighten it out.

R. J. Smith: There's no question.

J. Bacon: For residential subdivisions actually are under Section 265A, I think it is and that is if it's a filed plan then you basically have two years worth of (not clear). It's a bit of a learning process in the new zoning.

A. Dulgarian: I hate to put you on the spot but now I'm really curious. If that was in independent ownership on the lots of either side of it he wouldn't have to be here.

J. Bacon: Right.

A. Dulgarian: So, he could sell that lot and then the person can build on it.

J. Bacon: Well, at this point now it was in common ownership at the time of the zoning so, actually if he sold that lot it should come up in the title report that the new zoning is in place.

R. J. Smith: You just approved lot #14, the adjoining lot. You just approved the Site Plan and they're getting ready to close next week. That was for the Nursery School. Now in addition to all of the infrastructure, the water and sewer line for every lot in and all the engineering work that has been done.

J. Bacon: The new zoning now makes the lot non-conforming but that's the way the code is written.

R. J. Smith: The language of merging the lot when you have previously created non-conforming lots like in Mechanicstown where you have fifty foot lots, long before there was any approval processes. Article 62 says this law shall not affect any previously subdivision or Site Plan and that's what we have here. We have a previously approved subdivision and now according to the law we have to redo it.

G. Lake: Listen, Mr. Bacon why don't we table it for tonight and get all the attorney's together and put them back on the next meeting. I can't let the Planning Board go ahead now with our Attorney saying we have to do this. I don't disagree with you. We've talked about that if the lots are there. Mr. Bacon and I had the discussion already so, I think it's something that will have to be worked out between now and the next meeting. We will put you back on the next meeting to pick up where we're leaving off tonight and have the answer one way or the other. Now, at the same time do you want to go before the Zoning Board of Appeals you think and get ready for that or are you just going to have this meeting and come back in two weeks and take it from there?

T. Passero: My name is Thomas Passero and I'm the proposed owner of the building. My question is about the timing because of the lease.

G. Lake: We will put you back on two weeks from today.

T. Passero: I appreciate that very much.

G. Lake: Let all the attorney's iron this out. We're not lawyers so we have to rely on one. I know he has done research on this but we have to find out how to solve it. Mr. DePuy, this comments are you going to be able to handle them all?

T. DePuy: Yes. No problem.

G. Lake: We can schedule the Public Hearing date. Let me go through the Board.

A. Dulgarian: I think it's all been said. I think this is a good project and it's a shame it is caught on a technicality but let's see where it goes.

H. Ross: I agree.

R. Carr: You know, the only thing is it relates to the width of the lot because it just seems like there should be more buffering between the parking, etc. If you move the building back

T. DePuy: We can't. We meet all the other criteria.

R. Carr: When I said go back (not clear). Somehow I just would like to see some additional buffering and that drainage easement, what type is that an underground?

T. DePuy: Yes, it's a thirty six inch pipe underground.

R. Carr: So, you can't even . . .

T. DePuy: We're going to propose some landscaping down that curve line all the way.

R. Carr: That's my concern, the landscaping. I have no problem with the project itself. It just seems like if you could shift it a little towards the one side, I don't know.

T. DePuy: That's the minimum under the new zoning.

R. Carr: That's my only concern is that it's real tight. The Nursery School, is where?

T. DePuy: They're right next door.

R. Carr: Just whatever you can do to buffer.

W. Capozella: Nothing else.

C. Najac: The sidewalk we can get between now and the Public Hearing.

R. J. Smith: The conclusion on that one was that we would agree to a sidewalk district. We show the sidewalk but we will delete it and say prior to the district.

C. Najac: As long as you're prepared to build it later.

G. Lake: Anything else, Mr. Najac?

C. Najac: No.

T. Hamilton: Nothing.

**Applicant referred to the ZONING BOARD OF APPEALS with a positive recommendation on lot width made by A. Dulgarian and seconded by C. Najac.**

**A. Dulgarian: Aye**

**H. Ross: Aye**

**R. Carr: Aye**

**W. Capozella: Aye**

**C. Najac: Aye**

**T. Hamilton: Aye**

**G. Lake: Aye**

**MOTION CARRIED. 7 AYES**

**MOTION to schedule a PUBLIC HEARING for November 14, 2007 made by W. Capozella and seconded by H. Ross.**

**A. Dulgarian: Aye**

**H. Ross: Aye**

**R. Carr: Aye**

**W. Capozella: Aye**

**C. Najac: Aye**

**T. Hamilton: Aye**

**G. Lake: Aye**

**MOTION CARRIED. 7 AYES**

11. **ADVANCED CHEMICAL** - SITE PLAN - Excelsior Avenue (76-1-2) #76-07

G. Lake: Your name for the record, please.

Mr. Mondello: My name is Mr. Mondello

G. Lake: Go ahead.

Mr. Mondello: It's all up to me.

G. Lake: What do you want to do? This is a pre-existing building.

Mr. Mondello: It's a pre-existing building on Excelsior Avenue that we're trying to use. I guess the building has been there since probably in the 1950's.

G. Lake: Was it previously used as a storage type business?

Mr. Mondello: It's been for electrical, also plumbing and what we do is janitorial service and supplies. We would do the same thing. We would have storage and we're going to have (not clear) and we were asked to do a few changes since my last meeting.

A. Dulgarian: You were there then with what we here on September 24<sup>th</sup>?

Mr. Mondello: Yes.

G. Lake: Mr. Bacon, I think the big question is does this fall into, it's not like the same use? It was like a supply house then. Instead of warehousing plumbing or electrical stuff, he's warehousing soaps and cleaners and restaurant supplies, etc.

J. Bacon: Not clear.

G. Lake: I'm assuming your going to have an office out of there?

Mr. Mondello: We're going to have an office and storage area. We have one box truck that we may use. They were asking us for additional parking spaces and the only way we could do that properly is to remove the fencing that's there.

J. Bacon: He said it was previously occupied by electric supply and contracting.

G. Lake: Right.

J. Bacon: The applicant proposes to storage and have a wholesale of restaurant and chemical supplies?

Mr. Mondello: That's kind of a, it's almost not correct. We're not retailing anything. It's for cleaning contractors that do cleaning work. They do restaurant owners. We deliver everything. Most of our customers all come in to buy.

G. Lake: You are similar to E. A. Morse?

Mr. Mondello: That's correct.

G. Lake: Oh, okay.

J. Bacon, I suppose, Mr. Lake, that the use is still going to be non-conforming and I would feel more comfortable if the Zoning Board of Appeals would do an interpretation. Expanding, that's one of the big issues because you try to avoid expanding a non-conforming use. I think it's really a question for Mr. Jaques or the Zoning Board of Appeals.

G. Lake: I will go through the Board.

A. Dulgarian: First off, I do believe that it's a reasonable use for what's been happening there over the years but I do agree that when it's not the same non-conforming use and that we should cover ourselves by what Mr. Bacon had advised.

G. Lake: Which one, going to the Zoning Board of Appeals or the Building Inspector?

A. Dulgarian: Either way, to have some other entity besides ourselves saying that this is okay. I don't think it's up to us to make that determination. This building is what it is. It has been there for a long time in a residential neighborhood. I agree with Mr. McGoey's comments #2 that it would be nice even though it's very restricted there, that we do something to beef up the landscaping even if it's minor planting. Everyone that comes back to us and does improvements on an existing parcel that was used for another use we require them to do whatever can be done within reason. I know we can't bring it up to the current specifications but there's got to be something you can do. I think, again, that it is a good use.

H. Ross: I agree going to the Zoning Board of Appeals for them to make that decision.

R. Carr: I have nothing to add.

W. Capozella: Nothing.

C. Najac: Just what Mr. Dulgarian had said.

T. Hamilton: I agree having this go before the Zoning Board of Appeals.

G. Lake: We're going to have to send you before the Zoning Board of Appeals to ask for the non-conforming use.

A. Dulgarian: An interpretation?

G. Lake: An interpretation or a non-conforming. We're not denying it. We're just sending him there to make sure.

**MOTION to refer applicant to the ZONING BOARD of APPEALS for an interpretation and/or non-conforming made by H. Ross and seconded by A. Dulgarian.**

**A. Dulgarian: Aye**

**H. Ross: Aye**

**R. Carr: Aye**

**W. Capozella: Aye**

**C. Najac: Aye**

**T. Hamilton: Aye**

**G. Lake: Aye**

**MOTION CARRIED. 7 AYES**

12. **SCARPULLA** - SITE PLAN/SPECIAL USE PERMIT - 517 Bloomingburg Road (4-1-2.1) #115-04

G. Lake: Your name for the record, please.

K. Duggan: My name is Kevin Duggan of Fellenzer Engineer representing Mr. Scarpulla and with me is Thomas Farrell, the Attorney for the project. This has been a project that's been sitting around with legal issues for quite some time on the agreement, use, parking and all of that. Mr. Scarpulla is going to occupy lot #2. I believe the agreement . . .

T. Farrell, Esq. Do we have plans?

K. Duggan: I brought new plans but these are the same. I've updated them a little bit.

G. Lake: This is the old dance studio out there?

K. Duggan: It was Franco Electric.

G. Lake: Okay. Go ahead.

K. Duggan: Basically this project is a, you have an existing repair garage on one side, Originally the building was an auction pavilion with an apartment on what is lot #2. There was a parking agreement and it's spelled out on the second sheet. I think you remember it very well. Basically it says that the person on lot #1 has rights to the parking from 6:00 A.M. to 5:00 P.M. and lot #2 has parking rights from 5:00 P.M. to 6:00 A.M. There's been some requests as we've been going back and forth through the project. One of the other things was that the original septic system for lot #2 is actually over on lot #1. The Board has asked us to try and separate those and we're still in the middle of working on that with Eustance & Horowitz to get the final approval on that. The real issue here is Mr. Scarpulla is saying he is going to come in and comply with the parking requirements that are spelled out in the agreement. He will only operate from 5:00 P.M. to 6:00 A.M. and is what he is allowed to do according to the agreement. With that, he is looking to open his . . .he has a karate school that he wants to open in the front part of the building.

A. Dulgarian: Isn't it open now?

Mr. Scarpulla: No.

K. Duggan: I haven't been in there myself but I don't believe so. This has been sitting around six or eight months something along that line because of issues that had to be resolved. I believe at this point he's looking to say he's going to comply with the agreement that was set forth by a previous Board and put on the plans.

G. Lake: So, does he own the property now?

K. Duggan: He owns lot #2.

Mr. Scarpulla: George Johnson owns lot #1 next door.

T. Farrell, Esq. George Johnson bought it from Steve Eckert who owns both of these. He came in with Dan Yanosh back in 2000 and got the Board to agree to this subdivision before the one lot, I believe lot #1. The Board insisted that there be a parking lot agreement between the two lots. Mr. Johnson wanted to repair cars. He needed it during the day. Mr. Eckert was going to sell it to an auction house. They needed it at night so it was the perfect marriage. Mr. Johnson has been there since and now Mr. Scarpulla owns the property, He bought it from Mr. Eckert a couple of years ago. He's been going through this process so he can use the property in a profitable way. They want to continue to honor the agreement that they made in 2000 between Mr. Johnson and Mr. Eckert at that time. That agreement is a public record. It's been on file and it was attached to the subdivision map which you approved back in 2002.

G. Lake: First of all, there's a conflict and that's why it's been so long. I don't know how long you've been involved with it but it wasn't that we put it aside.

K. Duggan: No. That's why I said the legal issues were working their way.

T. Farrell: I was involved in both of these transactions back in 200 but I was not involved in the Planning Board approvals back in 2000. I think Mr. Johnson brought his Attorney in and it was Mr. "Stoloff" from Monticello. He had Dan Yanosh. They did all of that.

G. Lake: Have you looked at them?

D. McGoey: The maps?

G. Lake: Both of you on the agreements. He says it all solved.

J. Bacon: I would say if the hours of operation are okay, I don't have a problem.

D. McGoey: The hours of operation should be put on the Site Plan.

J. Bacon: The other thing is I just received the Site Plan.

T. Farrell: They're on the Site Plan. They're on the Subdivision Map that you guys approved

in 2000. That's where he has the hours of operation.

K. Duggan: Do you want me to go through Mr. McGoey's comments?

D. McGoey: Do you have any problems with any of them?

K. Duggan: No. I have a couple of comments I'll just respond to you. Item #1 is what we were just talking about. Item #2, Eustance & Horowitz. We held off on everything until the legal part of this is resolved. I do have comments from Eustance & Horowitz and I will get back in front of them. Item #3. The well has been in place for over a year. Originally when it went in it had some overflow. That was resolved. That's been sitting there since September 2006. That's a resolved issue. The newest set of plans for item #4. I revised the plans to say that the well has been existing. Item #5. At the southeasterly corner I've added some dogwood, etc. Item #6 the parking is actually twenty six (26) now which if you look at the bottom right is the requirement. I needed twenty five. I have twenty six with two handicap shown. I believe I have addressed all the comments with the exception of item #2.

G. Lake: I will go through the Board.

A. Dulgarian: The first question is going to be the septic tank. Weren't you supposed to have a stand alone septic?

K. Duggan: We're working on that as I said. If you look on the . . . We were on hold. I was asked to hold off on doing any of that until the legal issues were resolved.

A. Dulgarian: So, you're looking for approval without having a stand alone septic tonight?

K. Duggan: We're using the existing system until such time. That was part of the original agreement. They were allowed to have that septic system in place.

A. Dulgarian: What is the time frame to get a well and septic going?

K. Duggan: I don't believe there was ever a time frame put on. He was allowed to operate with the septic over on that property. There was nothing put in any agreement that says he had to get a stand alone. It was requested by this Board when we started this process.

A. Dulgarian: I will come back to that. Just common sense, why are the handicap spots all the way in the back by the woods when the building is up front?

K. Duggan: I can move them any place.

A. Dulgarian: Doesn't it make more sense to have them up front where perhaps they are needed.. I know you have to show them and everything but . . .

K. Duggan: That's not a problem.

A. Dulgarian: That is a concern of mine. That can be fixed with an eraser and a pen.

K. Duggan: That's fine.

A. Dulgarian: Now, you're showing these spots in the back here, they're not changed. Are they going to be changed?

K. Duggan: Yes. If you look on the plans right here

A. Dulgarian: At the edge of . . .

K. Duggan: If you look right here.

A. Dulgarian: You have six spaces right here.

K. Duggan: Well, we're required to have twenty five and the two. We wanted to show that we could meet all our criteria without a variance.

A. Dulgarian: Even though you're showing it here you're not looking to change ut at all with the agreement or anything?

K. Duggan: No. We're looking to abide by the agreement but we do comply just so you understand the requirements.

A. Dulgarian: Mr. McGoey, what's your thoughts on that septic?

D. McGoey: It's got to be in a better situation than it is now. They're sharing a septic.

A. Dulgarian: Yes but he's not proposing to having the septic in right now.

D. McGoey: He will need it for his Certificate of Occupancy.

K. Duggan: We have an existing septic that operates currently and is in compliance right now. It was the Board's request to separate the lots even though the original Board allowed the septic system to be as it was. There are two separate septic systems. They're not connected between the two buildings right now. Lot #2 has a septic system that's independent from lot #1. It just happens to be on lot #1. So, we have an operating septic system. It was the Board's request to try to separate and bring that septic into our property.

A. Dulgarian: Are you within the one hundred feet because it looks really close?

K. Duggan: This is where I have to work with Eustance & Horowitz and probably end up with the Health Department. The existing or the proposed septic is outside the one hundred foot zone. The expansion area would be within the one hundred foot zone. We may never have to use that. Any time you use an expansion system you have to come back to the Engineer of the Town or, in this case, it would be Eustance & Horowitz for approval to use the extension area. The darker part is the proposed active septic system and we are outside the one hundred foot well zone.

A. Dulgarian: So, it's up to them to get approval?

K. Duggan: We'll bring it to Eustance & Horowitz and they will comment.

A. Dulgarian: Mr. Lake, my opinion is he should be able to use his building within the agreement and if that's what he wants to do, I have no problem with that. The parking is shown. I do believe that the handicap spaces should be accessible. My entire stumbling block on this is I believe each lot should have their own septic and I will leave that up to the rest of the Board to determine. Other than that, the guy has to be able to use his building by the agreement.

G. Lake: You have two septic systems working out there?

K. Duggan: Correct.

G. Lake: Just that one is on the other property?

K. Duggan: Right now, they are both currently on lot #1.

G. Lake: But, they're independent, one for the garage and one for this?

K. Duggan: Correct.

N. Scarpulla: Can I comment on this? The septic tank is on my property. The leach fields is on the other property. And it is a separate system from Mr. Johnson's.

A. Dulgarian: So, he doesn't have his own stand alone either?

K. Duggan: Yes he does. If you look at the two boxes.

A. Dulgarian: I don't have all the details.

K. Duggan: They are independent systems.

H. Ross: I have a concern about the septic systems.

K. Duggan: I will be honest with you. We wanted to go out and fiscally dig up and make sure but at the time, you're talking the existing?

H. Ross: Correct.

K. Duggan: We asked Mr. Johnson for permission to go out and investigate because that's actually what the Board asked us. We were denied permission to go and dig up the front of his property so, we have no ability without his permission. This was based on the original plans that were provided from the original subdivision of the property.

H. Ross: The approximate date of that?

K. Duggan: Around 2000.

H. Ross: I just want to make sure that you're outside the one hundred feet for sure.

N. Scarpulla: From the existing leach field to the new well, it's definitely past the one hundred feet.

H. Ross: Nothing else.

R. Carr. The only question, I really didn't have that much. What would happen if you had a problem with the septic leach field?

N. Scarpulla: What we can do, we have a legal wording in that agreement to get it for maintenance.

K. Duggan: We didn't see any reason to dig it up.

R. Carr: I agree. It is as it is and you just can't deny the use of the building. It would be much better if everything was where it belongs.

N. Scarpulla: I definitely want to put the septic system in as soon as possible. Nobody benefits this more than me to have the septic system on my property. In ten years, if I want to sell it I want to be able to sell it cleanly and with obstructions and not have to go through this again.

R. Carr: I have nothing further.

W. Capozella: I really don't have much. The septic, there is so much pre-existing here why did we even start to recommend that he go with another septic system to service it? I mean, he always had it this way. It's pre-existing and then we go and tell him to do something with the septic.

D. McGoey: I think there was a dispute between the two properties.

W. Capozella: Well, it's pre-existing. Apparently we did something in 2000 to try and clean this all up and now we're asking him to do a whole bunch of other things when he's already got it.

C. Najac: No. I thought it had something to do with the parking.

N. Scarpulla: The whole agreement has been the parking. The septic system, I agree with Mr. Capozella. I'm not really sure what happened to have a septic system that way but I want it on my property like I said. I don't want to have to go through this ten years from now if I sell it, a different Board, etc. I definitely want to do it so it is on my property regardless of

whether we can use or maintain the existing one now I would like to have everything on my own property so that it stands on its own.

C. Najac: I agree with that. I think you should be able to stand on your own.

N. Scarpulla: The both of us has one hundred percent of the parking.

C. Najac: You're laying out your septic system the correct distance?

N. Scarpulla: Correct. I put the well in but it has cost me so much money already and I wanted to wait until I made sure that we were going to move forward before I proceeded any more with engineering fees and the septic construction.

T. Hamilton: I think it's good planning to have the septic on each lot so each could stand on it's own if you do sell without have to rely on somebody elses.

N. Scarpulla: I agree.

K. Duggan: We agree that we should move forward with it but at the same time we're asking the Board if we have an existing septic can we start operating a this point and time?

G. Lake: If it's working.

K. Duggan: It's working and that's our request.

G. Lake: Anything else, Mr. Hamilton?

T. Hamilton: No. Is there a way of putting a time limit on it?

D. McGoey: A temporary Certificate of Occupancy.

T. Hamilton: We don't want to wait five or ten years for them to put the septic in.

K. Duggan: We'll file plans by Monday or Tuesday with Eustance & Horowitz. We want to get the approvals for that as quickly as possible. Do you want to put a six month time period on it to make sure it's there? Obviously we wouldn't be able to construct within six months because it will be the middle of winter.

G. Lake: I think Mr. McGoey said before recommending a temporary Certificate of Occupancy. That way the Building Department it always have it on their screen and it never goes away.

D. McGoey: It will give you one year.

K. Duggan: That would be acceptable to us.

T. Hamilton: One more item. All these existing shrubs that are along the building. We want it to look the way it was back then. There is nothing alive

N. Scarpulla: I don't know if you've been out there but we put new shrubs and red mulch along the front

T. Hamilton: I just remember the last time I was out there nothing was alive. That's all I have.

G. Lake: Mr. McGoey, I have one question. Banking of the parking. There is a lot of parking out there. Do we do anything like that on this or does it even fall under that category?

D. McGoey: No.

J. Bacon: It would have to be a mixed use.

G. Lake: I mean, the guy has twenty six parking spots on his property alone. There's a bunch on the other side. They can share it. Here's an opportunity to do away with maybe ten parking spots to keep the front a little nicer maybe.

K. Duggan: If that were the case, I would recommend that we get rid of the six that we would end up backing out close to the road.

T. Farrell: The private agreement that they signed in 2000 was recorded and plus the Board wanted to make sure that it didn't get lost and insisted that it be put on the subdivision map. You would have to get Mr. Johnson to agree.

G. Lake: Okay.

A. Dulgarian: That's not the question you're asking, is it? You're saying that he has the twenty six spots because he's allowed to use the spots over by the garage why have all those extra ones in the front.

G. Lake: That's what I'm saying.

N. Scarpulla: All those in the front are pre-existing.

G. Lake: I'm saying why not bank five or ten spots what ever it is because some day he may

have to build them and it would be like we did for Quick Chek. This way he could get a little bit more green on that area.

A. Dulgarian: The only ones you're building are the ones toward the back?

K. Duggan: Actually. The ones in the front of the building are actually all blacktopped and pre-existing anyway. We can certainly re-stripe for the handicap spaces. I have no problem doing that. The count stays the same. It's just a matter of moving here to there.

G. Lake: I think he's going to be advised by his Attorney not to even talk about this because of how long it's taken him to get through the process.

**MOTION for a NEGATIVE DECLARATION subject to all of Mr. McGoey's comments and this Board's comments made by H. Ross and seconded by W. Capozella.**

**A. Dulgarian: Aye**

**H. Ross: Aye**

**R. Carr: Aye**

**W. Capozella: Aye**

**C. Najac: Aye**

**T. Hamilton: Aye**

**G. Lake: Aye**

**MOTION CARRIED. 7 AYES**

**MOTION for SITE PLAN approval subject to all of Mr. McGoey's comments and this Board's comments made by H. Ross and seconded by T. Hamilton.**

**A. Dulgarian: Aye**

**H. Ross: Aye**

**R. Carr: Aye**

**W. Capozella: Aye**

**C. Najac: Aye**

**T. Hamilton: Aye**

**G. Lake: Aye**

**MOTION CARRIED. 7 AYES**