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PLANNING DEPARTMENT

TOWN HOUSE
335 ROUTE 202
SOMERS, NY 10589

Town of Somers

WESTCHESTER COUNTY, N.Y.



John Currie, Chairman
Fedora DeLucia
Christopher Foley
Vicky Gannon
Nancy Gerbino
Eugene Goldenberg
John Keane

**SOMERS PLANNING BOARD
AGENDA
APRIL 11, 2012
7:30 P.M.**

MINUTES Consideration for approval of Draft Minutes for February 8, 2012

DISCUSSION

1. WRIGHT'S COURT SITE PLAN

[TM: 17.11-1-5]

Request for modification of the Condition of the creation of the conditional access easement over Site B in favor of the property on which the IIForno Restaurant is located.

Resolution No. 2009-17

PROJECT REVIEW

2. CVS PARKING AMENDED SITE PLAN

[TM: 17.15-1-13]

Application of Urstadt Biddle (owner) and CVS Pharmacy (applicant) for Amended Site Plan Approval for property located at the Somers Towne Centre, 325 Route 100, for the alteration to the parking area and walkway in front of the CVS Store. Additional accessible parking spaces will be created from (3) existing.

Application submitted on March 6, 2012.

Next Planning Board Meeting, May 9, 2012

Agenda information is also available at www.somersny.com

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2

SOMERS PLANNING BOARD MINUTES
FEBRUARY 8, 2012

ROLL:

PLANNING BOARD

MEMBERS PRESENT:

Ms. DeLucia, Mr. Keane, Acting Chair Foley
and Ms. Gannon

ALSO PRESENT:

Town Planner Sabrina Charney Hull
Consulting Engineer Joseph Barbagallo
Town Attorney Joseph Eriole
Planning Board Secretary Marilyn Murphy

ABSENT:

Mr. Currie, Ms. Gerbino and Mr. Goldenberg

The meeting commenced at 7:30 p.m. Planning Board Secretary Marilyn Murphy called the roll. Acting Chairman Foley noted that a required quorum of four members was present in order to conduct the business of the Board.

APPROVAL OF DECEMBER 14, 2011 MINUTES

Acting Chairman Foley noted that Planning Board Secretary Marilyn Murphy prepared and submitted for the Board's consideration the approval of the draft minutes of the Planning Board meeting held on December 14, 2011 consisting of twenty (20) pages.

1 Acting Chairman Foley asked if there were any comments or questions
2 from members of the Board on the draft minutes of December 14, 2011
3 and no one responded.

4
5 Acting Chairman Foley asked the Planning Board Secretary if there were
6 any comments or questions on the draft minutes of December 14, 2011
7 from members who are absent this evening.

8
9 Planning Board Secretary Murphy noted that there was no communications
10 on the minutes from Planning Board members who are absent this evening.

11
12 The Acting Chair asked if there was a motion to approve the December 14,
13 2011 draft minutes.

14
15 On motion by Ms. Gannon, seconded by Ms. DeLucia, and unanimously
16 carried, the minutes of December 14, 2011 were approved.

17
18 **TIME-EXTENSION**

19
20 **SUSAN HAFT/RIDGEVIEW DESIGNER BUILDERS, INC**
21 **FINAL CONSERVATION SUBDIVISION**
22 **[TM: 16.12-1-41 & 42]**

23
24 Acting Chairman Foley said that this time-extension request relates to the
25 application of Susan Haft/Ridgeview Designer Builders Inc. for a five lot
26 Conservation Subdivision for property located east of Lovell Street,
27 north of where Lovell Street and Benjamin Green Lane meet. He noted that
28 this application received conditional subdivision approval on August 5,
29 2010.

30
31 Acting Chair Foley acknowledged for the record receipt of a letter dated
32 February 7, 2012 from Geraldine Tortorella of the law firm Hocherman,
33 Tortorella & Wekstein, LLP requesting a fifth time-extension from the
34 current deadline of February 21, 2012.

35
36 Acting Chairman Foley asked the applicant's representative to give an
37 explanation for the request for a time-extension for Susan Haft/Ridgeview
38 Designer Builders Subdivision.

39

1 Adam Wekstein, Esq. of the law firm Hocherman, Tortorella & Wekstein,
2 LLP, the applicant's attorney, explained that he is asking the Board's
3 consideration for a fifth 90-day time-extension . He explained that the
4 additional time-extension would be from February 21, 2012 to and including
5 May 21, 2012.

6
7 Acting Chair Foley explained the reason for the request for the time-
8 extension is due to the condition of approval that requires the payment of
9 funds and/or posting of security which the applicant is not prepared to
10 undertake at this time given the current economic conditions.

11
12 The Acting Chair asked if there were any comments or questions from
13 members of the Board and no one replied.

14
15 The Acting Chair asked staff if they had any objection to the Planning Board
16 issuing the requested time-extension.

17
18 Town Planner Hull responded that she had no objection to issuing the
19 requested time-extension.

20
21 Consulting Engineer Barbagallo mentioned that at the last meeting there
22 was discussion in reference to starting construction for the infrastructure to
23 accomplish completion of the infrastructure before filing the subdivision plat.
24 He asked Attorney Wekstein if he had an update on this request.

25
26 Attorney Wekstein said that there was a request to the Town Board to allow
27 construction of the infrastructure before posting bonding but that request
28 was not entertained by the Town Board.

29
30 Acting Chair Foley noted that there was a consensus of the Board to grant
31 the fifth request for a time-extension.

32
33 On motion by Ms. DeLucia, seconded by Ms. Gannon, and unanimously
34 carried, the Board moved to grant a fifth 90-day time-extension to Susan
35 Haft and Ridgeview Designer Builders, Inc. to the period of Conditional
36 Final Subdivision Approval from February 21, 2012 to and including May
37 21, 2012.

38
39 **DECISION**

40

1 **MCENTEGART STEEP SLOPES, TREE PRESERVATION AND**
2 **STORMWATER MANAGEMENT AND EROSION AND SEDIMENT**
3 **CONTROL PERMITS [TM: 36.12-2-6]**
4

5 Acting Chairman Foley noted that the Planning Board will be reviewing the
6 draft Resolution of Approval and making a decision on the application of
7 the Marino Group, LLC and Patricia McEntegart for Steep Slopes, Tree
8 Preservation and Stormwater Management and Erosion and Sediment
9 Control Permits. He said that this application is for the proposed
10 construction of a single family residence on the East side of Amawalk Point
11 Road which is a private road that travels north from Route 35 at a point
12 approximately 100 yards east of the intersection of Route 35 and
13 Tomahawk Street. Acting Chair Foley stated that this application was last
14 discussed at the January 25, 2012 Planning Board meeting whereby the
15 Board closed the Public Hearing and directed that a revised draft resolution
16 be considered this evening.

17
18 The Acting Chair asked the applicant's representative if he had any
19 comments on the draft resolution.

20
21 Timothy Allen, the applicant's engineer, said that he reviewed the draft
22 resolution and found the resolution acceptable.

23
24 The Acting Chair asked if there were any comments or questions from
25 members of the Board on the draft resolution.

26
27 Ms. Gannon suggested adding the date that the Planning Board
28 determined the proposed activity to be a Type II Action. She also
29 asked that language be added to condition 1, under the conditions attached
30 to the Steep Slopes Protection Permit to read, The excavated material
31 must be removed immediately and disposed of *in accordance with*
32 *applicable law.*

33
34 The Acting Chair asked Consulting Engineer Barbagallo if he had any
35 comments on the draft Resolution.

36
37 Consulting Engineer Barbagallo said that based on discussion at the last
38 meeting he added a Whereas clause on page 3 to read *the Applicant*
39 *provided an alternative layout of the proposed residence and driveway by*
40 *the drawing sheet titled "Alternative Site Plan" ... He also reviewed the*

1 Town Code and calculated the amount of the securities to be calculated
2 under all three chapters of the Town Code and added sections a. and b.
3 under "Be It Further Resolved".
4

5 The Acting Chair said that there was a consensus of the Board to Approve
6 Resolution 2012-01.
7

8 On motion by Ms. DeLucia, seconded by Ms. Gannon and unanimously
9 carried, the Board moved to adopt Resolution 2012-01 as amended,
10 granting of Conditional Steep Slopes Protection, Tree Preservation and
11 Stormwater Management and Erosion and Sediment Control Permits to the
12 Marino Group, LLC (owner) and Patricia McEntergart (applicant) for the
13 Chairman's signature.
14

15 DISCUSSION

17 WRIGHT'S COURT SITE PLAN 18 [TM: 17.11-1-5]

19
20 Acting Chairman Foley noted that this discussion relates to Planning Board
21 Resolution 2009-17 granting Conditional Site Plan Approval; Special
22 Exception Use Permit for Location within the Groundwater Protection
23 Overlay District and Stormwater Management and Erosion and Sediment
24 Control Permits to Hallic Place Development, LLC for Wright's Court. He
25 mentioned that the application is for the development of two lots separated
26 by Scott Drive which runs in a northerly direction from Somers Town
27 Turnpike (Route 202) at a point slightly west of the Il Forno Restaurant.
28

29 Acting Chairman Foley acknowledged for the record a letter dated January
30 25, 2012 from Adam L. Wekstein of the law firm Hocherman, Tortorella &
31 Wekstein, LLP, counsel for Hallic Place Development. He commented that
32 the applicant's attorney advised that all conditions of the resolution have
33 been fulfilled except the one relating to the required legal instruments. All
34 legal documents relating to the site maintenance responsibilities and the
35 cross access easement are provided for review and approval by staff and
36 the Town Attorney prior to filing the documents. Acting Chair Foley
37 indicated that the resolution does not set fourth any description of what is
38 meant by the phrase *cross access easement*. He noted that his
39 recollection was confirmed by Attorney Wekstein's letter that the conditional
40 access easement is meant to benefit the neighboring party on which the Il

1 Forno Restaurant is located. Acting Chair Foley mentioned that Silvio
2 Management Corp, the owner of the property where the Il Forno
3 Restaurant is located has refused to sign the instrument prepared by
4 Attorney Wekstein's office to create the cross access easement. He noted
5 that Attorney Wekstein feels that his client cannot meet the requirement for
6 the creation of the Il Forno Easement because the establishment thereof
7 remains solely within the power of a third party over whom he has no
8 control. Acting Chair Foley said that on this basis Attorney Wekstein is
9 asking the Planning Board to eliminate the requirement of the Il Forno
10 Easement.

11
12 The Acting Chair asked the applicant's representative if he had any
13 comments.

14
15 Adam Wekstein, the applicant's attorney, explained that all the legal
16 instruments have been signed by the applicant and approved by staff and
17 the Town Attorney. He said that he has had several conversations with the
18 attorney for the Il Forno Restaurant and was told that the owner of the Il
19 Forno Restaurant is unwilling to sign the easement for a number of
20 reasons.

21
22 Acting Chair Foley asked if Attorney Wekstein has something in writing
23 saying that the owners of the Il Forno Restaurant will not sign the access
24 easement.

25
26 Attorney Wekstein indicated that he has nothing in writing but the attorney
27 for the owner of the Il Forno Restaurant said that the owner of the Il Forno
28 Restaurant is not willing to live with the condition requiring that his parking
29 lot come into compliance with the Town's parking requirements. He also
30 does not want to bear the costs of building the connection and he fears that
31 the Town will use this easement to create the connection even if he is not
32 before the Board seeking an approval. Attorney Wekstein said that the
33 owner of the Il Forno Restaurant wants an indemnification from the
34 applicant for any liability that may occur as a result of the connection.
35 He commented that the owner of the restaurant also said that if he makes
36 the connection he will lose three parking spaces.

37
38 Attorney Wekstein stated that if the Board is concerned he will provide an
39 affidavit detailing the chronology.

40

1 Town Attorney Eriole advised that having something in writing has value for
2 the record. He stated that the Planning Board to eliminate the condition for
3 the cross access easement will have to modify or eliminate the condition.

4 Town Attorney Eriole noted that the Board will have to make a finding that
5 whatever the reasons for that condition are no longer sufficient. He opined
6 that the concerns of the owner of the Il Forno Restaurant seem reasonable.

7
8 Acting Chair Foley mentioned that Attorney Wekstein said that the owner of
9 the Il Forno Restaurant is unwilling to bring the parking lot up to Code.

10
11 Attorney Wekstein said that the owner of the Il Forno did not say he was
12 unwilling to bring the parking lot up to Code but that he did not want that
13 requirement to be in the cross easement.

14
15 Acting Chair Foley asked why that condition to bring the parking lot up to
16 code is an issue in the draft cross access easement.

17
18 Attorney Wekstein said that the restaurant has parking across the street,
19 Route 100, and the access easement will use up all the parking on the
20 Wright's Court site. He noted that this topic was discussed throughout the
21 process.

22
23 Acting Chair Foley mentioned that if you did not know about this application
24 other than the resolution you would not realize that it benefits the Il Forno
25 Restaurant. He stated that he is concerned how you define this condition.

26
27 Mr. Keane said that his recollection for the access easement was two fold;
28 one, a safety issue, two, zoning for the Business Historic Preservation
29 District. He mentioned that there is a safety problem within the hamlet and
30 he opined that the business owners in the hamlet should all cooperate with
31 each other.

32
33 Ms. Gannon noted that she did not receive a copy of the cross access
34 easement and she felt that the Whereas clause in the Resolution did not
35 have a lot of defining characteristics.

36
37 Attorney Wekstein said that the cross access easement was only provided
38 to staff and the Town Attorney.

39

1 Mr. Keane asked the Board to assume that the cross access easement
2 was eliminated from consideration and there will be parking areas behind
3 the buildings on the northern most end of the property. He said that people
4 will park there and go into the restaurant and the Board recognizes that will
5 happen. Mr. Keane noted that the people would not have to park across
6 the street which is a safer situation. He asked if it is necessary that Il Forno
7 is a part of the easement.

8
9 Acting Chair Foley questioned why the applicant can't grant the easement.

10
11 Attorney Wekstein said that Il Forno does not have to be part of the
12 easement. He stated that the applicant is willing to give an easement to Il
13 Forno but if they will not sign the easement there is no force and effect. He
14 noted that the easement can be given to the Town and they can assign it to
15 whoever they wanted.

16
17 Attorney Wekstein opined that it is not legal to ask the applicant to solve a
18 pre-existing problem. He noted that traffic studies show that development
19 of the site works without any connection.

20
21 Mr. Keane said that the issue the Planning Board was considering at the
22 time was not access for Il Forno but to try and meet the Business Historic
23 District design guidelines.

24
25 Attorney Wekstein noted that the easement was going to be conditional
26 and may not work with the development of the property. He said that if
27 there is a mechanism that gives the easement to the Town the applicant
28 will do that but the law says that the easement must be given to someone
29 who has property that benefits from it.

30
31 Town Planner Hull said that she spoke to the owner of Il Forno and he
32 stated that his parking conforms to Code.

33
34 Acting Chair Foley said that the draft easement states that the parking must
35 be in conformance.

36
37 Ms. DeLucia noted that the applicant is requesting the elimination of the
38 cross access easement.

39

1 Acting Chair Foley suggested because the condition is worth while for long
2 term planning that the applicant try again to work out the issue with the
3 owner of the Il Forno Restaurant.

4
5 Town Planner Hull explained that the Il Forno Restaurant offers parking
6 across the street. She said that the applicant is concerned that the
7 restaurant's customers will use their parking instead of parking across the
8 street.

9
10 Town Attorney Eriole said that it is not clear to him why a third party would
11 agree to pay to comply with a condition in the applicant's approval. He
12 noted that the applicant can make a record that the condition should not
13 apply.

14
15 Attorney Wekstein stated that the easement is a value to the property. He
16 stressed that the applicant was told that the condition was acceptable and if
17 the Board did not state that things would have gone in a different direction.

18
19 Acting Chair Foley said that the Board will review the draft easement and
20 hopefully allow this condition to remain in place.

21
22 Town Attorney Eriole commented that if the Board modifies the condition
23 there should be support in the record. He said that the Board can review
24 what was said in the previous minutes and compare them to the easement.

25
26 Mr. Keane stressed that the Board needs more information and justification
27 on the Board's decision. He mentioned that the Code can also be reviewed
28 to see if it has to be altered.

29
30 Attorney Wekstein said that in discussion with Mr. DiNardo he said that the
31 easement was supposed to give Il Forno the right to park on the Wright's
32 Court site.

33
34 Ms. Gannon said that the applicant's attorney offered to provide an
35 affidavit.

36
37 Attorney Wekstein noted that he will provide an affidavit, a copy of the draft
38 access easement, and the Board after reviewing the information can make
39 a decision.

40

1 Town Planner Hull asked that the affordable units that will be provided be
2 marketed according to the County's Fair and Affordable Housing marketing
3 strategy so they can be counted toward the settlement agreement. She
4 said that she will provide the information to Attorney Wekstein.

5
6 Attorney Wekstein indicated that once he understands the information he
7 will discuss it with the applicant.

8 9 **INFORMAL DISCUSSION**

10 11 **STEVENS PRELIMINARY SUBDIVISION** 12 **[TM: 15.12-2-1]**

13
14 Acting Chairman Foley mentioned that the discussion relates to the
15 application of Roy Stevens for approval to subdivide into three lots,
16 a 9.81 acre parcel which lies just west of the bike trailway in the vicinity of
17 Green Tree Road, which is a dead end road running west from Tomahawk
18 Street (Route 118) and terminating in a cul-de-sac 100 yards east of the
19 North County Trailway. He noted that this matter has been under
20 consideration for several years and was last discussed by the Planning
21 Board at their March 12, 2008 meeting.

22
23 Acting Chair Foley indicated that the issue that has created the greatest
24 amount of debate and no doubt will continue to in the future relates to the
25 fact that access to the site is being proposed by either an extension of
26 Green Tree Road or a shared 16-foot driveway connecting to Green Tree
27 Road and with either proposal the North County Trailway will be
28 transversed. He noted that there are wetlands and steep slope issues.

29
30 The Acting Chair acknowledged for the record receipt of a letter dated
31 January 12, 2012 from Jeffrey Contelmo, P.E. of the firm Insite
32 Engineering, Surveying and Landscape Architecture, PC, requesting an
33 informal appearance to review updated layouts, wetland delineations,
34 discussions with the NYS Department of Transportation (DOT) concerning
35 the proposed trailway crossing, establish a process to proceed with an
36 Open Development area and review issues with a Stormwater Pollution
37 Prevention Plan (SPPP). The Acting Chair stated that three drawings, a
38 Conventional Subdivision Map, Open Development Area Map and Soils
39 Map were also submitted. He also noted that a memorandum from Town

1 Planner Hull was also received summarizing the application and a brief
2 summary of her initial response to the applicant's recent submission.

3
4 The Acting Chair asked the applicant's representative to give a
5 presentation.

6 Richard Williams, the applicant's engineer, mentioned that a different
7 design professional appeared before the Board on this application and
8 he wanted to discuss the application, the new layouts and the procedure for
9 moving forward on an open development area.

10
11 Engineer Williams noted that the project is located off of Green Tree Road
12 which intersects with Route 118. He mentioned that the Town right-of-way
13 (ROW) intersects with the North County Trailway which forms the eastern
14 boundary of the subject property. Engineer Williams said that there is a
15 stream on the southern portion of the property that flows east to west and
16 an off site Town wetland. He noted that another Town wetland is located
17 on the southern portion of the Town right-of-way. Engineer Williams
18 mentioned that the original wetland flagging was done in 2004 and updated
19 in 2007. He stated that Evans Associates Environmental Consultants
20 delineated the wetland in accordance to Town Code in April 2011. Engineer
21 Williams showed the Board an Open Development Map and explained that
22 this property does not have frontage on an existing Town road. He
23 indicated that the proposal is for a three lot subdivision with access to the
24 site with a common driveway with each lot serviced by individual septic
25 and wells. Engineer Williams mentioned that the common driveway will
26 have to cross the bike path. He noted that there is an existing 16 ½ foot
27 easement, which was obtained by the owner and the NYS DOT. He said
28 that as part of the agreement the DOT cannot unreasonably withhold a
29 Highway Work Permit from the applicant. Engineer Williams commented
30 that there were Highway Work Permits issued for that crossing but have
31 expired. He explained that the DOT recognizes that multiple users would
32 be accessing the site safety improvements were recommended and made
33 conditions of the Highway Work Permit. He said that the safety
34 improvements include a locked gate installed and maintained by the
35 permittee and subsequent owners, speed bumps, stop signs and all
36 pertinent items on the permit application review check list. Engineer
37 Williams stated that another condition is that the 16.5' wide drive shall
38 serve underdeveloped lands northwest of the trailway ROW which should
39 be limited to a maximum of four (4) residential units to insure safe access.

1 Town Planner Hull stressed that the DOT receives its information from the
2 property owner when they request the Highway Work Permit. She
3 questioned if it was DOT judgment that 4 lots can be created on this
4 proposal.

5
6 Engineer Williams said that he is pointing out that the DOT recognizes the
7 amount of use that potentially can come across the driveway and
8 incorporated that information in their safety requirements.

9
10 Engineer Williams noted that he provided a Conventional Subdivision Plan
11 so the maximum lot count can be established. He said that the applicant is
12 looking to develop the open development area and part of that process is a
13 recommendation to the Town Board from the Planning Board. Engineer
14 Williams mentioned that he would like to discuss the development of the
15 Stormwater Pollution Prevention Plan (SPPP) which he would like based
16 on the open development area understanding that the Conventional
17 Subdivision Plan is used to establish the lot count. He stated that he will
18 provide the necessary calculations and explanations that the Conventional
19 Subdivision Plan conforms to the stormwater standards of the State, Town
20 and Department of Environmental Protection (DEP).

21
22 Mr. Keane said that the street has to be shown on a plat approved by the
23 Planning Board. He noted that the Planning Board has to determine if this
24 proposal is adequate with respect to Health, Safety and Welfare in order to
25 meet the special circumstances to put the road on the map.

26
27 Engineer Williams explained that with an open development area there is
28 no frontage on an improved town road with the Town Board having the
29 authority to approve for development without frontage.

30
31 Town Attorney Eriole said that allowing a Subdivision off a common
32 driveway and not a public road that section of Town Law does not speak to
33 the applicant being able to develop a cluster plan until the applicant
34 qualifies separately under the provisions of the Code that relate to the lot
35 count under the Conventional Plan and then having the Board approve the
36 Cluster Plan. He stressed that this also has to be justified by benefits to
37 the Town.

38

1 Acting Chair Foley opined that the Conventional Plan does not comply and
2 the Board needs a complying Conventional Plan to prove the lot count and
3 then the Board can decide if the alternative is worth while.
4

5 Mr. Keane said that the Board has to determine if they will allow the
6 extension of Green Tree Road. He noted that the proposal is for the
7 access to go across the northern end of the wetland and through the buffer.
8 He stressed that there has to be compelling reasons as to why it is
9 appropriate to impact the wetland.
10

11 Mr. Keane also said that he has a problem with the DOT condition for a
12 locked gate.
13

14 Engineer Williams stressed that the North County Trailway has
15 approximately 28 crossings with public right-of-ways. He indicated that
16 there are five crossings in the Town of Somers, two driveways, two county
17 roads and one State Highway. He said that the crossings happen and the
18 applicant has a piece of property that is cut off from the existing ROW by
19 the bike path and is looking to develop his property.
20

21 Ms. DeLucia read from the minutes of March 12, 2008, *Engineer Bayer*
22 *explained that the DOT set standards with gates on both sides with*
23 *homeowners only having access to the gates.* She said that there has to
24 be provisions for emergency vehicles to get through the locked gates.
25

26 Ms. DeLucia mentioned a letter from former Town Engineer Gagné in
27 which he says that *the application parcel is effectively land locked and is*
28 *located on the west side of the County bike path and has no frontage on an*
29 *approved road...The project application is similar to another project*
30 *reviewed by the Planning Board in the past with no successfully resolve.*
31 She said that the application was the Martine application and she will
32 review the application to see why it was not resolved.
33

34 Ms. DeLucia read parts of a memo dated March 5, 2008 from Kathleen
35 Pacella, Town Clerk, *The Town Attorney said that the Town Board had the*
36 *authority not the obligation to declare an Open Development area which*
37 *would then allow the Planning Board to allow the property to be accessed*
38 *via a driveway. Councilman Meyer said as a matter of policy it was a bad*
39 *idea to have the driveways crossing the trailway. Supervisor Murphy said*

1 *that they had not gotten a recommendation from the Planning Board, it was*
2 *simply to review and comment.*

3
4 Acting Chair Foley commented that it does not appear that this lot can be
5 accessed from any other direction. He said that since this application was
6 before the Board in 2008, work has been done with the neighbor to the
7 North, Somers Realty, and it deserves a look to see if access can be done
8 in another way.

9
10 Consulting Engineer Barbagallo asked that the size of Wetland A be
11 confirmed and that it is not hydraulically connected to another watercourse
12 system. He said that wetland and the wetland buffer mitigation has to be
13 part of the site plan.

14
15 There being no further business, on motion by Ms. Gannon, seconded by
16 Mr. Keane, and unanimously carried, the meeting adjourned at 9:15 P.M.
17 and the Chair noted that the next Planning Board meeting will be held on
18 Wednesday, March 14, 2012 at 7:30 P. M. at the Somers Town House.

19
20
21
22 Respectfully submitted,

23
24
25
26 Marilyn Murphy
27 Planning Board Secretary
28
29

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HENRY M. HOCHERMAN
OF COUNSEL

April 9, 2012

Via Electronic Mail

Hon. John Currie, Chairman
and Members of the Planning Board
Town of Somers
Town House
35 Route 202
Somers, New York 10589

Re: Wright's Court – Request for Modification of Condition

Dear Chairman Currie and Members of the Planning Board:

As you are aware, we represent the recipient of the approvals for Wright's Court, Hallic Place Development, LLC ("Hallic"). We last appeared on this matter at your Board's meeting of February 8, 2012, requesting that any requirement that Hallic provide an easement over Site B in favor of the property on which the Il Forno restaurant is located (the "Il Forno Easement") be eliminated. Since that meeting we have been communicating with the attorney for owner of the Il Forno property, Silvio Management Corp. ("Silvio"), in an attempt to obtain Silvio's agreement to enter into a revised version of the easement. We have modified the draft that was provided to your Board, which had previously been approved by the Town attorney, in an attempt to address Silvio's concerns. Our efforts have been unsuccessful; therefore, we respectfully ask that you give our request further consideration at your meeting of April 11, 2012.

In response to the discussion which occurred at your Board's February meeting, I have prepared an affirmation setting forth a chronology of my efforts to obtain the Silvio's agreement. Attached hereto is a copy of the affirmation which includes as exhibits correspondence between Silvio's attorney and me and the most recent draft of the proposed Il Forno Easement, which has been redlined to show the proposed changes. We believe that the stance in the most recent letter from Silvio's counsel effectively forecloses the inclusion of any condition in the easement which would require compliance with the parking requirements of the Town's Zoning Ordinance (Please note that Silvio has at all times

HOCHERMAN TORTORELLA & WEKSTEIN, LLP

Hon. John Currie, Chairman
and Members of the Planning Board
April 9, 2012
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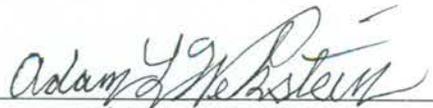
maintained that its parking complies with zoning.).

It is my understanding that the Town's planning consultant previously provided the Board with copies of minutes of your meetings of February 13, 2008, December 10, 2008, and September 9, 2009, at which the issue of the Il Forno Easement was addressed. In addition, submitted herewith is a copy of my letter of October 6, 2008, in which we made clear that Hallic was only willing to agree to a cross-access easement with Il Forno if that easement is conditioned on the requirement that the Il Forno site comply with the minimum parking requirements of the Zoning Ordinance. Please note that the substance of this position was reflected in the memoranda of Frederick P. Clark Associates, Inc., of October 22, 2008 and September 2, 2009.

We hope this additional information proves helpful and look forward to addressing your Board.

Respectfully submitted,

Hocherman Tortorella & Wekstein, LLP

By: 
Adam L. Wekstein

ALW:cv

Enclosures

cc: *(via electronic mail)*

Ms. Sabrina D. Charney Hull

Roland Baroni, Esq.

Joseph Eriole, Esq.

Mr. Thor Magnus

PLANNING BOARD OF THE TOWN OF SOMERS

**AFFIRMATION OF ADAM L. WEKSTEIN
REGARDING WRIGHT'S COURT**

Adam L. Wekstein, an attorney duly licensed to practice law in the State of New York, affirms under penalties of perjury as follows:

1. I am a member of the law firm of Hocherman Tortorella & Wekstein, LLP, attorneys for Hallic Place Development, LLC ("Hallic"), the party which obtained approval from the Town of Somers Planning Board (the "Board") for the development of Wright's Court. I submit this affirmation in support of Hallic's request that the Board eliminate any requirement that Hallic provide an access easement across Site B in favor of the property occupied by Il Forno Restaurant (the "Il Forno Easement"). On information and belief the property occupied by Il Forno is owned by Silvio Management Corp. ("Silvio").

2. Following approval by Somers Town Attorney, Roland Baroni, Esq., of the form of the legal instruments required under the Board's approval of Wright's Court, Hallic executed the instruments, including the Il Forno Easement, together with the associated tax forms.

3. Upon receipt of the executed instruments from Hallic, I called Richard DiNardo, who I believe to be a principal of Silvio, on January 4, 2012 to advise him we would be sending him the Il Forno Easement for his review. I asked that he review and execute it. My recollection is that his principal question to me was whether the easement would give Il Forno the right to use the parking spaces on Site B of Wright's Court. I told him it would not.

4. On January 5, 2012, I forwarded a copy of the proposed easement to Mr. DiNardo, together with the associated TP-584 tax form. Attached hereto as Exhibit 1 is a copy of my

covering letter. A copy of the letter was simultaneously sent to Sabrina Charney Hull and Roland Baroni, Esq.

5. On January 10, 2012, Mr. DiNardo telephoned me regarding the proposed easement and indicated he had asked his attorney, Denis Timone, Esq., to review it. He specifically asked whether there was "another piece" to the easement, asking questions suggesting that he thought that the easement should provide the Il Forno Property with the right to park on Site B. I explained that Hallic had never agreed to an easement giving the owner of Il Forno the right to use the parking on the Wright's Court property, had refused to do so before the Board, and that the requirement for the easement as a condition of approval related only to access.

6. On or about January 19, 2012, Mr. Timone advised me that his client did not want to execute the proposed easement, indicating that Mr. DiNardo was concerned, among other things, that Silvio could be compelled under the easement to construct the connection between Il Forno's parking lot and that on Site B and, in turn, that creating the connection would eliminate three parking spaces on the Il Forno Property. Mr. Timone requested that I provide him with a letter indicating that this easement was a condition of site plan approval for Wright's Court and that it did not impose any obligations directly on the owner of Il Forno. Annexed hereto as Exhibit 2 is a copy of my letter of January 20, 2012 to Mr. Timone. In it I reiterated my request that the owner of Il Forno execute the agreement, but requested that if it was unwilling to do so, that Mr. Timone advise me that this was the case.

7. On January 24, 2012, Mr. DiNardo telephoned me and stated that he would not be signing the easement. I then contacted both Mr. Baroni and Ms. Hull, who agreed that it would

be appropriate for me to seek your Board's approval to eliminate any requirement for the Il Forno easement. I formally made such a request by letter dated January 25, 2012.

8. On January 25th Mr. Timone contacted me and requested copies of the executed resolution of approval for Wright's Court and other documents relating to the requirement for the Il Forno Easement. In response, I forwarded to him the Resolution and the negative declaration, as well as minutes of the meetings at which the Board discussed the Il Forno Easement.

9. On February 8, 2012, in advance of the Board meeting, Mr. Timone told me, in substance, that his client: did not want to expend any funds in connection with the Il Forno Easement, was seeking elimination of any condition requiring that the Il Forno Property comply with the parking requirements of the zoning ordinance (stating that his client believed the Il Forno Property was already zoning-compliant) and to add a provision indemnifying his client for damages incurred under the agreement.

10. I appeared at your Board's meeting of February 8, 2012, and summarized my efforts. Your Board sought further information, including a copy of the Il Forno Easement and a chronology of the events relating to our efforts to obtain the Il Forno Easement. The purpose of this affirmation is to provide such a chronology.

11. At the meeting, the Board and the Board's attorney expressed concerns regarding certain aspects of the Il Forno Easement, including that it may impose onerous obligations on the owner of Il Forno that involve the expenditure of funds, potential liability, and an obligation to construct the connection between the two parking lots in the event Silvio chooses to exercise the option.

12. In response to the meeting, on February 9, 2012, I forwarded by electronic mail copies of the draft Il Forno Easement and the cross-access easement between Site A and the Town Hall property to Ms. Hull and Mr. Baroni.

13. After considering the Board's comments and those of Il Forno, Hallic authorized our firm to modify the easement to address some of the concerns which had been voiced. Hallic also decided that to obviate the need for Il Forno's owner to construct that portion of the connection between the properties which would be located on Site B by, subject to the Board's approval, modifying the site plan so that the parking lot on Site B would be extended to the boundary line with the Il Forno Property in the area where the connection between the parcels is envisioned.

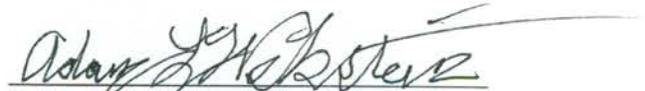
14. We revised the proposed Il Forno easement and forwarded it by e-mail to Mr. Timone on March 5, 2012. A copy of the revised draft easement, which is redlined to show changes that were made to the draft previously provided to your Board, is annexed hereto as Exhibit 3. Among other things, in the draft we removed the express reference indicating that Il Forno's property does not meet current zoning, modified it so that it would be premised on the assumption that the parking lot and drive aisle would extend to Site B's boundary with Il Forno, included a provision expressly stating that Silvio was not compelled to construct the connection by the Il Forno Easement, eliminated a provision regarding liens, and provided that each party was to maintain the improvements on its own site at its own expense.

15. On March 23, 2012, I received an e-mail from Mr. Timone setting forth his client's comments with regard to the revised access agreement. A copy of that communication is annexed hereto as Exhibit 4. The comments were unacceptable to Hallic as we believe that they

would effectively eliminate any provisions from the Il Forno Easement which conditioned its effectiveness on the Il Forno Property being in compliance with the parking requirements of the zoning ordinance. It also requested that Hallic reimburse the owner of Il Forno the sum of \$2,000 dollars for attorneys' fees incurred.

16. Accordingly, being unable to obtain an agreement to the Il Forno Easement which is consistent with the easement terms accepted by the Board during the approval process, Hallic will be returning to the Board to pursue its pending request to eliminate any requirement that Hallic provide an easement across its property to allow travel between the Il Forno Property and Scott Drive. In connection therewith, Hallic will, if the Board deems it advisable, extend the parking lot to the common boundary line with the Il Forno Property in the area where the future connection would be located.

Dated: White Plains, New York
April 9, 2012


Adam L. Wekstein

HOCHERMAN TORTORELLA & WEKSTEIN, LLP
ATTORNEYS AT LAW

ONE NORTH BROADWAY, SUITE 701
WHITE PLAINS, NEW YORK 10601-2319

GERALDINE N. TORTORELLA
ADAM L. WEKSTEIN

NOELLE CRISALLI WOLFSON

TEL: (914) 421-1800
FAX: (914) 421-1856
WEB: WWW.HTWLEGAL.COM

HENRY M. HOCHERMAN
OF COUNSEL

January 5, 2012

Via Federal Express

Mr. Rick DiNardo
Il Forno Trattoria
343 Route 202
Somers New York 10589

Re: Wright's Court – Route 202, Town of Somers

Dear Rick:

As you are aware, we represent Hallic Place Development, LLC, the owner of the Wright's Court project. Enclosed is an access easement over so called "Site B", which adjoins the property on which the Il Forno Trattoria is currently located (the "Il Forno Parcel"), together with the associated TP-584 Tax Form. As you will recall, the Planning Board's approval of Wright's Court requires the establishment of a conditional access easement running in favor of the Il Forno Parcel. A copy of the Planning Board's resolution is enclosed for your information. The enclosed easement instrument is intended to fulfill the approval condition.

In order for the easement to become effective and be recorded in the Westchester County Clerk's Office both it and the associated tax form need to be executed on behalf of Silvio Management Corp. ("Silvio Management") It is my understanding that the authorized signatory for Silvio Management is Silvio Dinardo. On the easement and associated tax form I have taken the liberty of marking the locations where his signature should be affixed and the location where that signature must be notarized.

If the documents are acceptable, please arrange to have them executed on behalf of Silvio Management. You should, of course, feel free to contact an attorney if you have any questions or concerns regarding the legal instruments.

HOCHERMAN TORTORELLA & WEKSTEIN, LLP

Rick DiNardo.

January 5, 2012

Page 2

Thank you in advance for your courtesy in this matter.

Very truly yours,

Hocherman Tortorella & Wekstein, LLP

By: 
Adam L. Wekstein

cc: *(via electronic mail w/o encs.)*
Roland A. Baroni, Jr., Esq
Ms. Sabrina D. Charney Hull
Mr. Thor Magnus
Geraldine N. Tortorella, Esq.

HOCHERMAN TORTORELLA & WEKSTEIN, LLP
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FAX: (914) 421-1856
WEB: WWW.HTWLEGAL.COM

HENRY M. HOCHERMAN
OF COUNSEL

January 20, 2012

Via Federal Express

Dennis J. Timone, Esq.
293 Route 100, Suite 106
Somers, New York 10589

Re: Access Easement over Wright's Court

Dear Dennis:

I am writing to follow up on our telephone conversation regarding the legal instrument that I forwarded to your client, Rick DiNardo, which would establish an access easement over Site B of the Wright's Court development in favor of the property on which the Il Forno Restaurant is located (the "Il Forno Property") to become effective under certain specified circumstances. Enclosed for your information is a copy of the easement agreement and TP-584 tax form. Based on our conversation, it is my understanding that Mr. DiNardo is reluctant to have Silvio Management Corp. ("Silvio"), the owner of the Il Forno Parcel, execute the easement based on concerns that the easement could compel Silvio to create physically and maintain the connection between the Il Forno Property and Site B and to incur other obligations.

As we discussed, the enclosed easement was prepared to fulfill a condition of the approval of Wright's Court by the Town of Somers Planning Board. Contrary to what your client may have believed, nothing in the approval required the owner of Wright's Court, Hallic Place Development, LLC ("Hallic"), to grant the Il Forno Property any rights to use the parking spaces within Wright's Court. While the approval condition concerned only access, it still potentially provides the Il Forno Property with the benefit of a secondary means of ingress and egress to and from a signalized intersection.

I do not believe the terms of the easement require the owner of the Il Forno Property to construct the connection between the two properties or otherwise take any action unless that owner chooses to exercise its easement rights. Indeed, assuming the Il Forno Property comes into compliance

HOCHERMAN TORTORELLA & WEKSTEIN, LLP

Dennis J. Timone, Esq.
January 20, 2012
Page 2

with the conditions set forth in the easement, I believe that the owner of the Il Forno Property has the ability to elect when and whether it wants to exercise its rights under the easement (see Section 2). In other words, even if Silvio executes the easement, unless it makes an affirmative election on notice to construct the connection and utilize the easement, it would still have no obligations under the easement agreement. Of course, if Silvio ultimately elects to utilize the easement to gain access across Site B, it does bear certain obligations with respect to, among other things, permitting, construction, maintenance and repairs, indemnification and insurance.

Accordingly, I respectfully renew my request to Mr. DiNardo that Silvio execute the easement and the accompanying tax form, which were previously forwarded to him. I would also request that if Silvio is unwilling to execute such documents Mr. DiNardo or you provide a written response indicating that to be the case.

Please contact me if you have any questions or wish to discuss the matter further. Thank you for your courtesy in this matter.

Kind regards.

Sincerely,

Hocherman Tortorella & Wekstein, LLP

By: 

Adam L. Wekstein

ALW:cv

Enclosure

cc: Mr. Thor Magnus
Mr. James O'Keeffe
Geraldine N. Tortorella, Esq.

WordPerfect Document Compare Summary

Original document: S:\# MATTERS\Nordic Custom Builders 0083\Hallic Place - Somers 001\Documents\Declaration Re Il Forno Easement Rev 9-27-11.wpd

Revised document: S:\# MATTERS\Nordic Custom Builders 0083\Hallic Place - Somers 001\Documents\Declaration Re Il Forno Easement Rev 2-29-12.wpd

Deletions are shown with the following attributes and color:

~~Strikeout~~, Blue RGB(0,0,255).

Deleted text is shown as full text.

Insertions are shown with the following attributes and color:

Double Underline, Redline, Red RGB(255,0,0).

The document was marked with 28 Deletions, 34 Insertions, 0 Moves.

ACCESS EASEMENT OVER SITE B

THIS EASEMENT AGREEMENT is made as of the day of ,
201—2, by and between Hallic Place Development, LLC, a New York limited liability company
having its principal office at c/o Nordic Custom Builders, LLC, 125 Greenwich Avenue,
Greenwich, Connecticut 06830 (“Grantor”) and Silvio Management Corp., a New York
corporation, having its principal office at 147 Rolling Hills Road, Thornwood, New York 10594
 (“Grantee”).

W I T N E S S E T H :

WHEREAS, Grantor is the owner of a parcel of real property located north of
Somerstown Road (New York State Route 202 (“Route 202”)) and on the east side of Scott Drive
 (“Grantor’s Site B”) in the Town of Somers (the “Town”), County of Westchester and State of
New York, which is identified as Sheet 17.11, Block 1, Lot 5 on the Official Tax Map of the
Town of Somers (the “Tax Map”) and more fully bounded and described in Schedule A annexed
hereto and made a part hereof; and

WHEREAS, Grantor also owns a parcel of real property located north of Route 202 and
on the west side of Scott Drive in the Town (“Site A”); and

WHEREAS, Grantee is the owner of a parcel of real property located north of Route 202
and east of Grantor’s Site B (“Grantee’s Property”) in the Town, County of Westchester and
State of New York, which is identified as Sheet 17.11, Block 1, Lot 4 on the Tax Map and more
fully bounded and described in Schedule B annexed hereto and made a part hereof; and

WHEREAS, as of the date hereof, Grantee’s Property is improved with a building used
and occupied for a restaurant use, which restaurant is known as “Il Forno”; and

~~WHEREAS, parking for the Il Forno restaurant use does not meet current zoning requirements for off-street parking applicable to Grantee's Property, there not being enough parking spaces to serve the restaurant use on Grantee's Property; and~~

WHEREAS, pursuant to Resolution No. 2009-17 (the "Resolution") of the Town of Somers Planning Board (the "Planning Board"), adopted by the Planning Board on November 18, 2009, Grantor has been granted, among other things, conditional site plan approval for the development of Site A and Site B for office and mixed-use (office and residential dwelling space) buildings (the "Development"); and

WHEREAS, a copy of the site plan for the Development, which was approved by the Resolution, is annexed hereto as Schedule C (the "Site Plan"); and

WHEREAS, during the course of the approval process for the Development, Grantor made representations to the Planning Board that it would grant Grantee a conditional easement in favor of Grantee's Property over a portion of Site B for access only to and from Grantee's Property and Scott Drive over the parking lot on Site B, such access easement to become effective and Grantee to have the right to exercise any rights thereunder only if and when each of the following conditions is satisfied and in effect: (i) the parking lot on Site B as shown on the Site Plan has been substantially completed and a certificate of occupancy for the building on Site B has been issued; and (ii) the number, size and dimensions of parking spaces provided on Grantee's Property, whether for Il Forno or some other use of Grantee's Property, meet the minimum off-street parking requirements and parking space design specifications as then in effect for the use(s) on Grantee's Property, as such requirements are set forth in the Zoning Ordinance of the Town of Somers (or any amendment thereof), without any variances or waivers

from any board or agency of the Town; and (3) the driveways or drive aisles providing access to Grantee's parking spaces comply with the requirements of the Town Zoning Ordinance (and any amendment thereof) without any variances or waivers from any board or agency of the Town; and

WHEREAS, Grantor wishes to grant to Grantee and Grantee wishes to accept from Grantor a conditional easement over a portion of Site B on the terms and conditions set forth herein.

NOW, THEREFORE, Grantor grants to Grantee and Grantee accepts from Grantor an easement over the area marked ~~"Il Forno Connection Easement"~~ on the Site Plan in Schedule D ~~and the drive aisle and parking lot~~ on Site B lying between the ~~Il Forno Connection Easement~~ Grantee's Property line and Scott Drive (collectively the "Access Easement" or "Access Easement Area") for the sole and limited purpose of permitting vehicles to pass and repass over the Access Easement Area to get to and from Grantee's Property and Scott Drive, together with a temporary grading and construction easement (the "Temporary Grading Easement") in, on, over and upon ~~the Il Forno Connection Easement to improve that area to create a connection between~~ so much of the Access Easement Area as is necessary to connect a driveway on Grantee's Property ~~and to the parking lot~~ drive aisle on Site B (the "Il Forno Connection"); subject, however, to the terms and conditions set forth herein.

Section 1. Effective; Il Forno On-Site Parking Compliance Condition. The easements granted herein shall not become effective and Grantee shall have no rights under this Agreement unless and until the improvements on Site B shown on the Site Plan in Schedule C are substantially complete and a certificate of occupancy (temporary or permanent) for the

building to be constructed on Site B is issued.

It shall be a prerequisite to the continued effect of the easements and to Grantee's exercise of any of its rights under this Agreement that there exist on Grantee's Property the minimum number of parking spaces as required under the Town Zoning Ordinance (Chapter 170, as the same may be amended, restated or recodified from time to time) in effect at the time Grantee elects to exercise its rights hereunder (without waiver or variance of such requirements) for the use(s) on Grantee's Property, and that such spaces and the means of access thereto (i.e. driveways and/or drive aisles) conform with all applicable requirements of the Town Zoning Ordinance then in effect (without waiver or variance) (hereinafter referred to as the "Parking Compliance Condition").

Section 2. Limitations on Obligations of Grantee. Nothing herein shall compel Grantee to construct the Il Forno Connection or otherwise compel Grantee to exercise its rights under this Agreement, provided, however, that once Grantee constructs the Il Forno Connection or otherwise takes action evidencing an election to exercise its rights hereunder it will be responsible to fulfill all of its obligations set forth herein.

Section 3. Construction of the Il Forno Connection. At such time as Grantee elects to exercise any of its rights under this Agreement, Grantee shall be required to construct the Il Forno Connection at its sole cost and expense and at no cost or expense to Grantor, subject to the requirements set forth herein.

a. Notice to Grantor. At such time as Grantee elects to exercise any of its rights under this Agreement, Grantee shall give Grantor written notice thereof together with documentary evidence sufficient to demonstrate that the Parking Compliance Condition is

satisfied ("Election Notice"). Grantor shall have thirty (30) days from receipt of the Election Notice to consent to Grantee's exercise of its rights under this Agreement, which consent will not be withheld unless Grantee is in default of any of its obligations under this Agreement or the conditions precedent to the exercise of Grantee's rights hereunder have not been met.

b. Permits/Approvals. Before commencing any activity permitted within the ~~Il Forno Connection~~Access Easement Area pursuant to this Agreement, the Grantee, at its sole cost and expense and at no cost or expense to Grantor, shall obtain any and all permits and/or approvals required by any local, County, State or Federal board or agency for such activity (the "Approvals"). To the extent required, Grantee shall obtain Grantor's consent to obtain any such permits, which consent shall not be unreasonably withheld or delayed. Grantee shall provide copies of the Approvals to Grantor at least fifteen (15) days prior to commencing any construction within the Il Forno Connection Easement.

In the event that a notice of violation of any local, County, State, or Federal law for activities within the Access Easement Area is served on Grantor, based on Grantee's acts or failure to act, Grantor shall serve written notice of the violation on Grantee in accordance with the Notice provision of this Agreement. In the event that Grantee fails to take action to cure the violation within ten (10) days after receipt of the written notice thereof, Grantor shall have the right to cure the violation. Grantee shall be liable for any fines, penalties, or other costs, including, but not limited to, professional consultants' fees, court costs, or attorneys' fees, if any, incurred by Grantor to cure any violations issued for the Access Easement Area or levied against Grantor as a result of Grantee's actions. Grantor shall serve notice of the fines, penalties, or other costs or fees together with an invoice in their amount on Grantee pursuant to the Notice

provision of this Agreement. Grantor shall be reimbursed by Grantee for the costs and expenses of such action within fifteen (15) days of receipt of such notice. Any amounts not paid within the prescribed period shall accrue interest at the maximum rate permitted by law and any overdue amounts shall be a lien against the Grantee's property, which can be enforced by Grantor in the same manner as a judgment against Grantee.

~~_____ c. Liens. Grantee shall pay any contractor hired by it or its contractors who has performed any work or provided any supplies or materials for such work within the Il Forno Connection Easement in full in a timely fashion. In the event any such contractor files a mechanic's or other lien against Grantor's Property on account of labor, supplies, and/or materials provided for any work performed within the Il Forno Connection Easement on behalf of Grantee, Grantee shall immediately take action to have the lien discharged including, without limitation, the substitution of a bond for such lien. In the event such lien is not discharged by the Grantee within fifteen (15) days after receipt of written notice thereof from Grantor in accordance with the Notice provision of this Agreement, Grantor may take such steps as Grantor deems appropriate to discharge the lien and shall be reimbursed by Grantee for the costs and expenses of such action, including attorneys' fees, within ten (10) days after receipt of notice thereof in accordance with the Notice provision of this Agreement, together with an invoice in the amount of such costs and expenses. Any amounts not paid within the prescribed period shall accrue interest at the maximum rate permitted by law and any overdue amounts shall be a lien against the Grantee's Property, which can be enforced by Grantor in the same manner as a judgment against Grantee.~~

dc. No Disturbance of Grantor's Use of Site B. Grantee shall construct, maintain and repair the Il Forno Connection in such a manner as not to interfere with or render unsafe Grantor's use, enjoyment of, or access to Site B and that of its contractors, subcontractors, employees, agents, tenants, invitees and guests.

Section 4. Maintenance of the Il Forno Connection Easement. Grantee shall maintain those improvements within the Il Forno Connection Easement which are located on Grantee's Property in a safe manner at its sole cost and expense and at no cost or expense to Grantor. ~~The maintenance and repair obligations set forth herein shall include, but shall not be limited to: (1) snow plowing of the driveway located in the Il Forno Connection Easement; (2) removal of fallen leaves, branches and other debris in the Il Forno Connection Easement; (3) repairs required to keep the Il Forno Connection Easement in good condition; and (4) repair or replacement of the improvements within the Il Forno Connection Easement, as necessary.~~

~~—————~~ Except as otherwise provided herein and for so long as Grantor uses the building to be constructed on Site B in accordance with the Approved Site Plan and the Resolution, Grantor shall maintain the improvements in the parking lot on Site B at its sole cost and expense and at no cost or expense to Grantee. The maintenance and repair obligations of the respective parties set forth herein in this paragraph shall include, but shall not be limited to: (1) snow plowing ~~of the parking lot on Site B;~~ (2) removal of fallen leaves, branches and other debris ~~in the parking lot on Site B;~~ and (3) repairs repair and replacement of improvements required to keep the Il Forno Connection Easement and parking lot on Site B in good condition; ~~and (4) repair or replacement of the parking lot improvements, as necessary.~~

Section 5. Damage and Repairs. In the event that Grantee's use or maintenance of the Access Easement Area or any part thereof results in damage to Grantor's property, Grantee shall repair and restore the damaged portion of Grantor's Property to the same condition it was prior to the damage. Any maintenance or repair work required pursuant to this Section shall be completed by Grantee at its sole cost and expense and at no cost or expense to Grantor. Grantor shall provide Grantee with written notice of any damage to Grantor's Property in accordance with the Notice provision of this Agreement.

In the event that Grantee fails to take action to cure the damage within ten (10) days after receipt of the written notice thereof, Grantor shall have the right to repair such damage to Grantor's Property. Grantor shall serve notice of the repair on Grantee pursuant to the Notice provision of this Agreement together with an invoice in the amount of such costs and expenses. Grantor shall be reimbursed by Grantee for the costs and expenses of such repair within fifteen (15) days of receipt of such notice. Any amounts not paid within the prescribed period shall accrue interest at the maximum rate permitted by law and any overdue amounts shall be a lien against the Grantee's Property, which can be enforced by Grantor in the same manner as a judgment against Grantee.

Section 6. Landscaping. Grantee shall not permit, plant or install any landscaping or other vegetation within or upon the ~~H-Forno-Connection~~Access Easement Area.

Section 7. Lighting, Signs and Structures. Grantee shall not permit, install or construct any lighting, signs or structures, including, but not limited to, sheds, garages, storage containers, walls, pillars, banners, mechanicals, fencing or gates, within or upon the ~~H-Forno-Connection~~Access Easement Area.

Section 8. No Parking. Grantee expressly acknowledges and agrees that this Agreement does not permit Grantee or its contractors, subcontractors, employees, agents, tenants, invitees or guests to park on Site B under any circumstances at any time. If Grantor finds that Grantee, its contractors, subcontractors, employees, agents, tenants, invitees or guests are parking on Site B, Grantor shall give written notice to Grantee of the violation and Grantee shall monitor and supervise the use of the Access Easement Area to prevent the violation. If the violation continues despite Grantee's efforts, Grantee stipulates, acknowledges and agrees that Grantor shall have the right to erect a barrier across the ~~H-Forno-Connection~~Access Easement Area to prevent access to the parking lot on Site B from Grantee's Property until such time as the parties work out a mutually acceptable arrangement to prevent parking by Grantee, its contractors, subcontractors, employees, agents, tenants, invitees or guests on Site B.

Section 9. Indemnification and Insurance. Grantee shall defend, indemnify, and hold harmless Grantor from and against any liability, loss, cost, or expense associated with claims for personal injury or property damage arising out of the use or maintenance of the Access Easement Area by Grantee, its contractors, subcontractors, employees, agents, tenants, invitees or guests . Grantee shall maintain general liability insurance in the minimum amount of \$1,000,000.00 per occurrence/\$2,000,000.00 aggregate, insuring it and Grantor against claims for personal injury or property damage arising out of or relating to the use, maintenance, upkeep, or repair of the Access Easement Area and the improvements therein. Grantor shall be named as an additional insured on such policy. Upon reasonable request, Grantee shall provide proof of such insurance to Grantor.

Section 10. Notices. Any notices required or permitted to be given hereunder shall be in writing and be hand-delivered, mailed by Certified or Registered Mail, Return Receipt Requested, or sent by a recognized overnight courier, with postage, freight, and any other charges prepaid, with a receipt therefor, addressed as follows, or at such other address as directed by a party pursuant to a notice given in accordance with this paragraph:

If to Grantor: Hallic Place Development, LLC
c/o Nordic Custom Builders, LLC
125 Greenwich Avenue
Greenwich, Connecticut 06830

- or -

The address of the Owner of Site B
as it appears on the Official Tax
Records of the Town of Somers

If to Grantee: Silvio Management Corp.
147 Rolling Hills Road
Thornwood, New York 10594

Such notice shall be deemed to have been given when received if delivered by hand, five days after such notice is mailed if sent by Certified or Registered Mail, or one day after such notice is deposited with a recognized overnight courier in the manner designated herein if sent by overnight delivery.

Section 11. Duration. Any provision of this Agreement to the contrary notwithstanding, upon the occurrence of any of the following events, the Access Easement (including the Il Forno Connection Easement) shall *ipso facto* terminate, and shall be of no further force and effect as to Site B: (i) at any time after the Il Forno Connection is constructed~~made~~, the Parking Compliance Condition is not met on Grantee's Property; or (ii)

Grantor demolishes the building on Site B; or (iii) Grantor ceases to use Site B in accordance with the Approved Site Plan and Resolution. Upon such termination, if Grantor shall so request, Grantee shall execute a document in form suitable for recording with the Westchester County Clerk, confirming the termination of the Access Easement ~~(including the H-Forno Connection Easement).~~

Except as otherwise provided in this Agreement, the easements, covenants, restrictions, and rights created hereunder shall run with the Grantor's and Grantee's Properties in perpetuity and shall bind their respective heirs, executors, administrators, personal representatives, successors and assigns. Nothing in this Section shall be construed to prohibit Grantor's modification or redevelopment of the improvements on Site B in accordance with all applicable codes, rules and regulations, subject to Grantor obtaining the permits and approvals required therefor.

Section 12. Arbitration. Any dispute arising hereunder may be submitted for binding arbitration to the American Arbitration Association, or any successor organization in accordance with the Rules of such organization for arbitration in Westchester County, and the costs of such arbitration shall be borne by the party whose position is not upheld by the arbitrator's decision.

Section 13. Applicable Law. This Agreement shall be construed by and controlled under the laws of the State of New York. The venue for any action arising hereunder or relating hereto shall be Westchester County.

Section 14. ~~13~~. Amendment and Waiver.

a. This Agreement may not be amended or modified except by a writing signed by the Parties.

b. The failure to assert any rights or remedies available to a Party under this Agreement shall not be deemed to waive any rights or remedies created by this Agreement. All waivers of any rights or remedies created by this Agreement must be in a writing signed by the Party alleged to have waived its right or remedy.

Section 15. Severability. Invalidation of any one of the provisions of this Agreement by judgment or court order shall not affect the validity of any other provision which shall remain in full force and effect.

Section 16. Neutral Gender. Whenever the sense of this Agreement may make it necessary or appropriate, any singular word or term used herein shall include the plural and any masculine word or term shall include the feminine and neuter genders, and vice versa.

IN WITNESS WHEREOF, the undersigned have executed this Agreement on the day and date first above written, intending the same to be recorded in the Office of the Clerk of the County of Westchester, Division of Land Records.

Hallic Place Development, LLC

By: _____
Thor Magnus, Member

Silvio Management Corp.

By: _____
Silvio Dinardo, President

ACKNOWLEDGEMENT

STATE OF NEW YORK)
) ss.:
COUNTY OF WESTCHESTER)

On the day of , in the year 201—2, before me personally came Thor Magnus, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF NEW YORK)
) ss.:
COUNTY OF WESTCHESTER)

On the day of , in the year 201—2, before me personally came Silvio Dinardo, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

RECORD AND RETURN TO:

Geraldine N. Tortorella, Esq.
Hocherman Tortorella & Wekstein, LLP
One North Broadway, Suite 701
White Plains, New York 10601

AFFECTS TAX MAP:

Section: 17.11
Block: 1
Lots: 5 and 4
Town of Somers

Exhibit 4

DENIS J. TIMONE, ESQ.
Attorney and Counselor at Law
293 Route 100, Suite 100
Somers, NY 10589

TEL. (914) 669-0900

FAX (914) 669-0902

Email: timonelaw@verizon.net

Admitted in
New York and Wisconsin

FAX COVER SHEET

DATE: March 23, 2012
TO: Adam Wekstein
Email: A.Wekstein@htwlegal.com
Re: Silvio Mgmt/Hallic Place

ORIGINAL: [] Ordinary Mail [] By Hand
[] Certified Mail [] Overnight Mail
[X] Retained

MESSAGE:

Adam:

I have had further discussions with Rick DiNardo reference the access agreement.
Rick has three main points:

1. No reference to parking on his property
2. Installation of access is not mandatory
3. Attorney's Fees

1. Parking:
 - a. Page 3, ii – omit or reword without "minimum off-street parking, etc."
 - b. Page 5, first full paragraph omit
 - c. Page 11, I – omit
2. Mandatory installation question I believe is covered by Page 5, Section 2
3. Attorney's Fee – Rick wants Grantor to pay my fee which will be no more than \$2000.00.

Add: No liability to Grantor in the event Grantor does not exercise its right to construct and use access easement add to Page 5, Section 2.

Page 2

Question: Rick has no desire or intention to construct the access easement. He will agree to easement as an accommodation to Grantor. Will the Town of Somers insist on the construction of the easement as a condition to granting Grantor final approval for Site B?

Please review and advise.

Denis J. Timone, Esq.

cc: Mr. R. DiNardo

PAGES (including cover): 2

CONFIDENTIALITY NOTICE

The information contained in this facsimile message is legally privileged and confidential information intended for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this facsimile is strictly prohibited. If you have received this facsimile in error, please immediately notify us by telephone and return the original message to us at the above address at our expense via The United States Postal Service. Receipt by an unintended recipient is not a waiver of our attorney-client privilege. Thank you.

HOCHERMAN TORTORELLA & WEKSTEIN, LLP
ATTORNEYS AT LAW

ONE NORTH BROADWAY, SUITE 701
WHITE PLAINS, NEW YORK 10601-2319

HENRY M. HOCHERMAN
GERALDINE N. TORTORELLA
ADAM L. WEKSTEIN

TEL: (914) 421-1800
FAX: (914) 421-1856
WEB: WWW.HTWLEGAL.COM

OF COUNSEL:
MARSHALL S. SCHIFF

NOELLE V. CRISALLI

October 6, 2008

Via Hand Delivery

Hon. Fedora DeLucia, Chair,
and Members of the Planning Board
Town of Somers
Town House
335 Route 202
Somers, New York 10589

Re: Wright's Court - Revised Submission to the Planning Board

Dear Chair DeLucia and Members of the Board:

As you are aware, we represent Hallic Place Development, LLC (the "Applicant"), with respect to its application for approval of Wright's Court. The application seeks site plan approval, a special exception use permit necessitated by the site's location in the Groundwater Protection Overlay District, and an Erosion and Sediment Control Permit. The public hearing on the application took place during three Planning Board meetings and was closed at the meeting of December 12, 2007. During the course of the hearing a number of issues were raised by the public, the Board's staff, and members of the Planning Board. Most of those issues were addressed in materials which were previously submitted and our presentations to the Board. However, with this letter we are submitting revised plans, expert reports, and other materials to address what we perceive to be any outstanding issues.¹ Because we are submitting an expert report establishing the consistency of the proposal with the Historic District and the standards and purposes of the BHP regulations, well pumping test results, and plans that have been modestly revised to adhere to the recommendations made by the Applicant's architectural historian, we respectfully request that the Planning Board reopen the hearing so that the public will have an opportunity to comment on the new materials and modifications to the plans.

Submitted with this letter are copies of the following:

¹ Please note that we appeared on an informal basis at the Planning Board's meeting of February 13, 2008.

HOCHERMAN TORTORELLA & WERSTEIN, LLP

Hon. Fedora DeLucia, Chair,
and Members of the Planning Board
October 6, 2008
Page 2

1. Revised site plan, consisting of 10 sheets, including conceptual alternative plans, prepared by Kellard Sessions Consulting, P.C., and last revised October 1, 2008;
2. Revised floor plans and elevations, consisting of 10 sheets;
3. Responses to the Town Engineer's letter of December 31, 2007, prepared by Kellard Sessions Consulting, P.C., and dated October 2008;
4. Responses to comment made at the Planning Board's public hearing session of December 12, 2007, prepared by Kellard Sessions Consulting, P.C., and dated October 2008;
5. Contextual review of Wright's Court, prepared by Richard Henry Behr Architect P.C., and dated October 2008;
6. Curriculum Vitae of Richard Henry Behr;
7. Reports regarding the well pumping test programs for 339 Somerstown Road (Parcel A) and 341 Somerstown Road (Parcel B), prepared by Leggette, Brashears & Graham, Inc., and dated October 2, 2008;
8. Letter from Leggette, Brashears & Graham, Inc., dated October 2, 2008, addressing potential impacts of fertilizer, pesticide and de-icing on the groundwater aquifer;
9. Landscape Plans prepared by Rosedale Nurseries, consisting of two sheets and dated October, 2007;
10. Letter from C. Powers Taylor, dated October 3, 2008, regarding the substitution of new plant species for those identified by the Town's Planning Consultant as being invasive; and
11. Affidavit of Gary Stluka, dated August 5, 2008.²

The Applicant's revised plans have been modified to reduce the scale of the project and, as noted, to meet the recommendations of the Applicant's architectural historian, Richard Henry Behr. In accordance with such recommendations, among other things, the roof lines of the buildings fronting on Somerstown Road have been revised so that they are now parallel to that road, the gables on the

² Mr. Stluka's affidavit memorializes that following the project's informal review at your Board's meeting of February 13, 2008, the Chairman of the Landmark's Advisory Committee, in the presence of another member, told Mr. Stluka, the Applicant's architect, that while he liked the design of the project, "he could never fully back any development scheme for the property on which the Project is proposed" and that the Chairman and the other member of the committee said that "any development which would be acceptable to them would never be financially viable."

HOCHERMAN TORTORELLA & WEKSTEIN, LLP

Hon. Fedora DeLucia, Chair,
and Members of the Planning Board

October 6, 2008

Page 3

buildings have been eliminated, and the amount of detailing on the buildings has been reduced. The reduction in the scale of the project is consistent with the conceptual plan which was shown to your Board at the informal presentation in February. Specifically, Building B has been reduced by 17 percent from 5,116 square feet down to 4,241 square feet. The plans show side-yard setbacks of 18 feet on Parcel A³ and 25 feet on Parcel B. They also include alternative layouts which were prepared in response to comments of Planning Board members regarding potential repositioning of buildings between Parcel A and Parcel B.

The report of the Applicant's architectural historian concludes that the scale, massing, design and spacing of the project is consistent with the contributing buildings in the BHP District, the pattern of development therein, and the requirements of the BHP regulations. It further concludes that Wright's Court will "provide for a viable mixed-use development which is *critical* to the maintenance of the Hamlet as the community, economic and governmental center of the Town" and "should be promoted as a model in the encouragement of sensitive future mixed-use development in the Hamlet." The expert report also includes a proposed streetscape in Appendix H depicting the appearance of the proposed buildings and their relationship with the surrounding development. The streetscape further confirms the consistency of the project with the Historic District.

At prior meetings, the Planning Board asked the Applicant to include affordable housing units in the development and provide access easements both to the municipal property, to the west, and the Il Forno restaurant property, to the east. As we represented at the Board's informal meeting of February 13th, the Applicant has agreed to designate three of the seven housing units (the three units in Building B) as affordable housing, even though the Town Code imposes no requirement that such housing be provided in the BHP District. The Applicant has previously agreed to provide an access easement to the Town Hall property. In contrast, due to concerns regarding the severe shortfall of parking for the restaurant on the property to the east of Parcel B and the fact that the traffic from and parking demand of the restaurant would pose unacceptable burdens on the residential tenants of Wright's Court, the Applicant is unwilling to grant an unrestricted cross-access easement to that property. However, as indicated at your Board's February meeting, the Applicant is willing to provide a conditional cross-access easement with respect to the Il Forno property. Specifically, the easement would be effective so long as the property to the east of Parcel B has a sufficient number of parking spaces on site to meet the minimum parking requirements for the use of that property under the Zoning Ordinance (without variances). Any such easement would be operative during time periods in which the parking on what is now the site of Il Forno complies with all parking requirements which are then in effect.

³ The 18-foot setback is consistent with the input received from the Board at the meeting of December 12, 2007.

HOCHERMAN TORTORELLA & WEKSTEIN, LLP

Hon. Fedora DeLucia, Chair,
and Members of the Planning Board

October 6, 2008

Page 4

We look forward to appearing before your Board at its next available meeting, and trust that at the meeting the Planning Board will vote to schedule a public hearing session.

Respectfully submitted,

Hocherman Tortorella & Wekstein, LLP

By:



Adam L. Wekstein

ALW:cv

cc: Guy L. Gagné, P.E.
Ms. Sabrina D. Charney Hull
Kristen L. Holt, Esq.
Mr. Thor Magnus
Mr. Eamonn Ryan
John Kellard, P.E.
Mr. Anthony Kunny
Gary Stluka, AIA
Richard Henry Behr, AIA
Mr. Powers Taylor
Mr. Michael J. Shortell
Philip J. Grealy, P.E.

January 26, 2012

Sabrina Charney Hull
Town Planner
Town of Somers
335 Route 202
Somers, NY 10589

Subject: **CVS/pharmacy Store # 0531**
325 Route 100
Somers, NY 10589



Massa Montalto Architects, PC
Office Center 66
3297 Route 66
Neptune, NJ 07753
Phone 732.918.2300
Fax 732.918.2351
www.mma-architects.com

Dear Ms. Charney Hull,

This letter is being sent to you by our firm, Massa Montalto Architects, on behalf of our client, CVS/pharmacy, to request approval from the Town of Somers to allow for the alteration of the parking spaces at the CVS/pharmacy located at 325 Route 100.

Our request is being generated in response to a customer inquiry received by CVS asking if it was possible to increase the number of accessible parking spaces located directly in front of the CVS store entrances. In the inquiry the author noted there is often difficulty finding an accessible space available at this particular CVS location. As a result, our office was contracted by CVS to perform an ADA survey of the site to determine the feasibility of the inquiry.

The scope of work identified for this project is focused on the parking area and walkway located directly in front of the CVS/pharmacy store entrances only. All other parking spaces at this site are existing to remain and will not be altered by this scope of work. The work proposed entails the demolition of existing curb ramps & a portion of the sidewalk adjacent to the building, removal of existing parking signs, striping & pavement markings, the application of new striping, access aisles & pavement markings, and the installation of new curb ramps, & parking signage. Enclosed is a copy of the construction documents indicating the proposed scope of work in greater detail.

By implementing these changes we will have increased the number of accessible spaces located in front of CVS from 2 to 4, maintained access aisles meeting the requirements set forth by the State of New York, and provide a continuous level "zero curb" surface from the accessible parking to the curb ramps. The proposed work will reduce the overall number of spaces throughout the entire site by 1 space.

Thank you for your time. Please call if you have any questions or require additional information.

Respectfully Submitted,




John Montalto, RA, AIA.
Massa Montalto Architects, PC

**TOWN OF SOMERS
PLANNING BOARD
APPLICATION FOR SITE PLAN APPROVAL**

Application Processing Affidavit must also be completed. Click here for form.

- I. IDENTIFICATION OF APPLICANT:**
- A. Owner: URSTADT BIDDLE PROPERTIES, INC. Applicant: CVS PHARMACY (CURRENT TENANT)
 Address: 321 RAILROAD AVE GREENWICH, CT 06830 Address: ONE CVS DR, WOODS HOLE, MA 02545
 Tele #: 203.863.8200 Tele #:
- B. Architect: MASSAMONTALTO ARCH. Engineer: N/A
 Address: 3297 RT 119, HERTFORD, MA Address: _____
 Tele #: 732.918.2300 Tele #:
- C. Surveyor: N/A Tele #: _____
 Address: _____

- II. IDENTIFICATION OF PROPERTY: (TOWNE CENTRE AT SOMERS)**
- A. Identifying Title: CVS PHARMACY 325 ROUTE 100 SOMERS, NY 10589
 B. Tax Map Design: Sheet: 7.15 Block: 1 Lot(s): 13
 C. Zoning District: _____
 D. Street which property abuts: ROUTE 100
 E. Does property connect directly into State or County highway? YES
 F. Is site within 500 feet of Town Boundary? NO
 G. Total area of site: 10.8 ACRES Area of site activity: 1743 (SIDEWALKS & PARKING SPACE STRIPING)
 H. Site coverage: _____ % Building coverage: _____ %
 I. Affected Wetland Area: N/A Wetland Buffer Area: N/A
 J. Affected Steep Slope Area: 15%-25% N/A Over 25% N/A
 K. Existing building size: CVS: 14,270 New/additional building size: 14,270 (NO CHANGE)
 L. Existing parking spaces: 403 New parking spaces: (LESS 1) = 402

III. APPLICATION FEE:
 \$500 base fee plus \$50 per 1,000 sq. ft or part thereof plus \$25 per parking space to be paid by certified check to the Town of Somers.
 Wetland Permit Fee: \$200 min. fee + \$100 per 5,000 sf. of regulated area or proposed area to be disturbed.
 Steep Slope Fee: \$150 min. fee + \$75 per 10,000 s.f. of regulated area or proposed area to be disturbed.
 Total Fee: _____ Date Paid: _____

- IV. DOCUMENTS TO BE SUBMITTED WITH THIS APPLICATION:**
- Submit 14 copies of all correspondence and plans to the Planning Board.
- A. 14 copies of Site Plan with north arrow and location map drawn to scale of 1" = 1,000'.
 B. Survey Map defining precise boundaries of property.
 C. Copies of all existing and proposed deed restrictions or covenants applying to the property, including covenants and agreements restricting use, and establishing future ownership and maintenance responsibilities for all private roads, recreation and open space areas.
 D. Preliminary Architectural Drawings to be submitted to Planning Board prior to public hearing for referral to Building Inspector and Architectural Advisory Review Board.
 E. Environmental Assessment Form.
 F. Proof that taxes have been paid.

It is the responsibility of the applicant to be knowledgeable of the law. The following are available at the Town Clerks Office: Master Plan, Zoning Ordinance, Site Plan Regulations, State Environmental Quality Review (SEQR) and Environmental Quality Review, Wetland and Steep Slope Ordinances of the Town of Somers.
 All revised plans shall be accompanied by a letter indicating what changes were made. All costs incurred by the Town for professional services and SEQR review will be paid by the applicant.
 By submission of this application, the property owner agrees to permit Town Officials and their designated representatives to conduct on-site inspections in connection with the review of the proposal. The property shall be identified on site as being proposed for site plan approval.

 Signature of Applicant

 Signature of Owner

Date: 1/19/12

Date: 1/25/12



617.20
Appendix C
State Environmental Quality Review
SHORT ENVIRONMENTAL ASSESSMENT FORM
For UNLISTED ACTIONS Only



PART I - PROJECT INFORMATION (To be completed by Applicant or Project Sponsor)

<p>1. APPLICANT/SPONSOR Massa Montalto Architects for CVS Pharmacy</p>	<p>2. PROJECT NAME CVS Pharmacy, Parking Alteration</p>
<p>3. PROJECT LOCATION: Municipality Somers, NY County Westchester</p>	
<p>4. PRECISE LOCATION (Street address and road intersections, prominent landmarks, etc., or provide map) CVS Pharmacy at Somers Towne Centre 325 Route 100 Somers, NY 10589</p>	
<p>5. PROPOSED ACTION IS: <input type="checkbox"/> New <input type="checkbox"/> Expansion <input checked="" type="checkbox"/> Modification/alteration</p>	
<p>6. DESCRIBE PROJECT BRIEFLY: Alterations to the parking area and walkway directly in front of CVS Pharmacy. -Existing spaces & access aisles to be repainted & signed, (2) additional accessible parking spaces will be created from (3) existing. -Existing curb ramps, sidewalks & signs will be altered per current ADA standards.</p>	
<p>7. AMOUNT OF LAND AFFECTED: Initially <u>.04</u> acres Ultimately <u>.04</u> acres</p>	
<p>8. WILL PROPOSED ACTION COMPLY WITH EXISTING ZONING OR OTHER EXISTING LAND USE RESTRICTIONS? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If No, describe briefly (1) parking space will be lost from the overall parking count in the shopping complex.</p>	
<p>9. WHAT IS PRESENT LAND USE IN VICINITY OF PROJECT? <input type="checkbox"/> Residential <input type="checkbox"/> Industrial <input checked="" type="checkbox"/> Commercial <input type="checkbox"/> Agriculture <input type="checkbox"/> Park/Forest/Open Space <input type="checkbox"/> Other Describe:</p>	
<p>10. DOES ACTION INVOLVE A PERMIT APPROVAL, OR FUNDING, NOW OR ULTIMATELY FROM ANY OTHER GOVERNMENTAL AGENCY (FEDERAL, STATE OR LOCAL)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If Yes, list agency(s) name and permit/approvals:</p>	
<p>11. DOES ANY ASPECT OF THE ACTION HAVE A CURRENTLY VALID PERMIT OR APPROVAL? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If Yes, list agency(s) name and permit/approvals:</p>	
<p>12. AS A RESULT OF PROPOSED ACTION WILL EXISTING PERMIT/APPROVAL REQUIRE MODIFICATION? <input type="checkbox"/> Yes <input type="checkbox"/> No</p>	
<p style="text-align: center;">I CERTIFY THAT THE INFORMATION PROVIDED ABOVE IS TRUE TO THE BEST OF MY KNOWLEDGE</p> <p>Applicant/sponsor name: <u>John S. Montalto, RA</u> Date: <u>1-26-12</u></p> <p>Signature: </p>	

If the action is in the Coastal Area, and you are a state agency, complete the Coastal Assessment Form before proceeding with this assessment

PART II - IMPACT ASSESSMENT (To be completed by Lead Agency)

A. DOES ACTION EXCEED ANY TYPE I THRESHOLD IN 6 NYCRR, PART 617.4? If yes, coordinate the review process and use the FULL EAF.
 Yes No

B. WILL ACTION RECEIVE COORDINATED REVIEW AS PROVIDED FOR UNLISTED ACTIONS IN 6 NYCRR, PART 617.6? If No, a negative declaration may be superseded by another involved agency.
 Yes No

C. COULD ACTION RESULT IN ANY ADVERSE EFFECTS ASSOCIATED WITH THE FOLLOWING: (Answers may be handwritten, if legible)

C1. Existing air quality, surface or groundwater quality or quantity, noise levels, existing traffic pattern, solid waste production or disposal, potential for erosion, drainage or flooding problems? Explain briefly:

C2. Aesthetic, agricultural, archaeological, historic, or other natural or cultural resources; or community or neighborhood character? Explain briefly:

C3. Vegetation or fauna, fish, shellfish or wildlife species, significant habitats, or threatened or endangered species? Explain briefly:

C4. A community's existing plans or goals as officially adopted, or a change in use or intensity of use of land or other natural resources? Explain briefly:

C5. Growth, subsequent development, or related activities likely to be induced by the proposed action? Explain briefly:

C6. Long term, short term, cumulative, or other effects not identified in C1-C5? Explain briefly:

C7. Other impacts (including changes in use of either quantity or type of energy)? Explain briefly:

D. WILL THE PROJECT HAVE AN IMPACT ON THE ENVIRONMENTAL CHARACTERISTICS THAT CAUSED THE ESTABLISHMENT OF A CRITICAL ENVIRONMENTAL AREA (CEA)?
 Yes No If Yes, explain briefly:

E. IS THERE, OR IS THERE LIKELY TO BE, CONTROVERSY RELATED TO POTENTIAL ADVERSE ENVIRONMENTAL IMPACTS?
 Yes No If Yes, explain briefly:

PART III - DETERMINATION OF SIGNIFICANCE (To be completed by Agency)

INSTRUCTIONS: For each adverse effect identified above, determine whether it is substantial, large, important or otherwise significant. Each effect should be assessed in connection with its (a) setting (i.e. urban or rural); (b) probability of occurring; (c) duration; (d) irreversibility; (e) geographic scope; and (f) magnitude. If necessary, add attachments or reference supporting materials. Ensure that explanations contain sufficient detail to show that all relevant adverse impacts have been identified and adequately addressed. If question D of Part II was checked yes, the determination of significance must evaluate the potential impact of the proposed action on the environmental characteristics of the CEA.

Check this box if you have identified one or more potentially large or significant adverse impacts which **MAY** occur. Then proceed directly to the FULL EAF and/or prepare a positive declaration.

Check this box if you have determined, based on the information and analysis above and any supporting documentation, that the proposed action **WILL NOT** result in any significant adverse environmental impacts **AND** provide, on attachments as necessary, the reasons supporting this determination.

1-26-12

_____ _____
 Name of Lead Agency Date

_____ _____
 Print or Type Name of Responsible Officer in Lead Agency Title of Responsible Officer

_____ _____
 Signature of Responsible Officer in Lead Agency Signature of Preparer (If different from responsible officer)

Somers Bourse
Centre

AFFIDAVIT TO BE COMPLETED BY CORPORATION OWNER

STATE OF ~~NEW YORK~~ ^{CONNECTICUT})

ss:

COUNTY OF FAIRFIELD)

WILLING BIDDLE, being duly sworn, deposes and says that he resides at 321 Railroad Ave in the County of Greenwich, State of CT that he is the PRESIDENT of _____
(Title)

URSTADT BIDDLE PROPERTIES INC.
(Name of Corporation)

which is the owner in fee of all property shown on plat entitled _____
Town Centre @ Somers, application for approval of which is herein made. That said URSTADT BIDDLE PROPERTIES INC.
(Name of Corporation)

acquired title to the said premises by deed from Towne Centre at Somers recorded in the Office of the Clerk of the County of Westchester on _____ in Liber _____ of Conveyances at Page _____ → 6/11/11
401250

That the statements contained herein are true to the best of deponent's knowledge and belief, and are made for the purpose of obtaining the approval of the submitted application by the Planning Board of the Town of Somers. 371

(Signed) Willing L. Biddle
WILLING L. BIDDLE
President

Sworn to before me this 15th day of March, 2012.

Wendy G. Bocuzzi
(Notary Public)

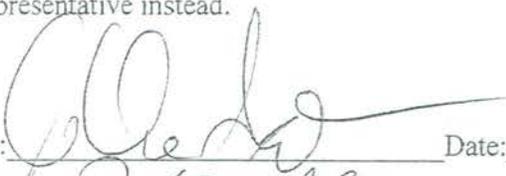
WENDY G. BOCCUZZI
NOTARY PUBLIC
COMMISSION EXPIRES NOV. 30, 2013

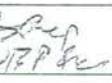
APPLICANT ACKNOWLEDGEMENT

By making this application, the undersigned Applicant agrees to permit Town officials and their representatives to conduct on-site inspections in connection with the review of this application.

The applicant also agrees to pay all expenses for the cost of professional review services required for this application, as referred to in §133-1 of the Code of the Town of Somers. As such, an Escrow Account, according to §133-2 of the Code of the Town of Somers, may be required.

It is further acknowledged by the Applicant that all bills for the professional review services shall be mailed to the Applicant, unless the Town is notified in writing by the Applicant at the time of initial submission of the application that such mailings should be sent to a designated representative instead.

Signature of Applicant:  Date: 1/19/12

Signature of Property Owner:  Per UTPP  Date: 1/25/12
(if different from applicant)

TOWN OF SOMERS
WESTCHESTER COUNTY, NEW YORK
CHAPTER 67 "APPLICATION PROCESSING RESTRICTIVE LAW"

CERTIFICATION

I hereby certify that to the best of my knowledge no outstanding fees are due and owing to the Town of Somers for the following property:

Section 17.15 Block 1 Lot 13
Property Address TOWNE CENTRE AT SOMERS
CVS PHARMACY, 325 RT 100 SOMERS, NY 10589
Permit Applying For ZONING & BUILDING

Furthermore, I hereby certify that to the best of my knowledge no outstanding violation (as that term is defined for the purposes of the Application Processing Restrictive Law, Paragraph 4D) of local laws or ordinances of the Town of Somers exist with respect to the above cited property or any structure or use existing thereon.

Signed [Signature]
(Owner of Record)

Signed [Signature]
(Applicant for Permit)

Dialogue UP ^{1/2 fed + 13/2 the}
properties etc.
(Print Name)

A. DE. SALVO
(Print Name)

Date 1/25/12

Date 1/19/12

CONFIRMATIONS

Zoning Enforcement Officer

Date: _____

Director of Finance for Fees

Date: _____

CVS
TP
app. 1/13/12

COMMITMENT & INTEGRITY
DRIVE RESULTS

709 Westchester Avenue | Suite L2
White Plains, New York 10604
www.woodardcurran.com

T 800.807.4080
T 914.448.2266
F 914.448.0147



MEMORANDUM



TO: Town of Somers Planning Board
CC: Marilyn Murphy, Planning Board Secretary
FROM: Robert Wasp, EIT on behalf of Joseph C. Barbagallo, P.E., BCEE
DATE: April 6, 2012
RE: CVS Pharmacy Store #0531
Site Plan Application and Erosion and Sediment Control Permit
Somers Town Centre
TM: 17.15-1-13, NS

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GENERAL

The following is a summary of our initial review of the documents received related to the amended Site Plan application for the existing retail store. The Application proposes the alteration of the existing parking spaces and walkway in front of the CVS pharmacy store. Existing features will be replaced with new storefront parking spaces, featuring additional handicapped accessible spaces, as well as reconstructed walkways and ramps. The proposed redevelopment is entirely located within existing impervious surfaces. There are NYSDEC and Town regulated freshwater wetlands located to the west of the existing parking areas.

DOCUMENTS REVIEWED

- Cover Letter by Massa Montalto Architects, P.C, dated January 26, 2012.
- Town of Somers Planning Board: Application for Site Plan Approval, dated January 25, 2012.
- NYSDEC State Environmental Quality Review: Short Environmental Assessment Form, by John S. Montalto, RA, dated January 26, 2012.
- "CVS Pharmacy" drawing sheets: "T-1", "ES-1", "D-1", "AS-1" and "AS-2" by Massa Montalto Architects, P.C., dated September 16, 2011, revised January 26, 2012.

PERMITS AND APPROVALS REQUIRED

- Town of Somers: Amended Site Plan Approval
- Town of Somers: Stormwater Management and Erosion & Sediment Control Permit

DISCUSSION

The following is a summary of our comments at this time. It should be noted that additional comments may be added following completion of a site walk by the Planning Board or upon receipt of additional documents or information.

1. The Applicant shall revise drawings to show limits of disturbance and will include a note specifying total land disturbance in square feet.
2. Based upon the provided drawings, it appears the total proposed land disturbance is less than 5,000 square feet. Although it is noted the proposed activities are to occur entirely



within existing impervious surfaces, runoff from disturbed surfaces has the ability to impact nearby stormwater infrastructure. The Applicant shall prepare a satisfactory Erosion & Sediment Control Plan, which describes erosion and sediment control practices to be followed during construction. The Erosion and Sediment Control Plan shall depict the location of drain inlet protection practices, as well as temporary material stockpiles and shall describe the proposed sequence of construction. The Applicant shall provide construction details for erosion and sediment control practices, consistent with the NYSDEC New York Standards and Specifications for Erosion & Sediment Control, latest edition.

3. The Applicant shall provide additional information to describe existing Site stormwater infrastructure. The Applicant shall revise drawings to show the location of any drainage structures within the vicinity and drainage path of the proposed limits of construction.
4. Westchester County Geographical Information Systems maps depict NYSDEC and Town regulated wetlands to be located to the west of the existing shopping center parking lots. The Applicant shall revise existing condition site plan drawings to show the location of nearby wetlands and shall show 100 foot wetlands buffers.
5. The Applicant shall provide additional information to identify if any utilities are located within the proposed area of disturbance. The Applicant shall depict all impacted utilities on revised drawings.
6. The Town of Somers requires topography to be depicted on drawings included as part of a Site Plan application. This requirement may be waived at the discretion of the Planning Board. From an engineering perspective, we are comfortable with waiving this requirement providing that the Applicant describes the drainage path of stormwater runoff produced from the proposed work area.

Please feel free to call me at anytime at 914-448-2266 with any questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Robert P. Wasp".

Robert P. Wasp, EIT
Assistant Consulting Town Engineer

On behalf of,

A handwritten signature in cursive script, appearing to read "Joseph C. Barbagallo".

Joseph C. Barbagallo, P.E., BCEE
Consulting Town Engineer