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PLANNING DEPARTMENT

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Town of Somers

WESTCHESTER COUNTY, N.Y.



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

3

**SOMERS PLANNING BOARD MINUTES
APRIL 11, 2012**

4

5

6

7 **ROLL:**

8

9 **PLANNING BOARD**

10 **MEMBERS PRESENT:**

11 Chairman Currie, Ms. DeLucia, Mr. Keane,
12 Ms. Gerbino, Mr. Foley, Mr. Goldenberg, and
13 Ms. Gannon

13

14 **ALSO PRESENT:**

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

18

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

22

23 **MINUTES**

24

25 **APPROVAL OF FEBRUARY 8, 2012 MINUTES**

26

27 Chairman Currie noted that Planning Board Secretary Marilyn Murphy
28 prepared and submitted for the Board's consideration the approval of the
29 draft minutes of the Planning Board meeting held on February 8, 2012.
30 Chairman Currie asked if there were any comments or questions from
31 members of the Board on the draft minutes of February 8, 2012 and no one
32 replied.

1 The Chair asked if there was a motion to approve the February 8, 2012
2 draft minutes.

3
4 On motion by Ms. DeLucia, seconded by Ms. Gannon, and unanimously
5 carried, the minutes of February 8, 2012 were approved.

6
7 **DISCUSSION**

8
9 **WRIGHT'S COURT SITE PLAN**

10 **[TM: 17.11-1-5]**

11
12 Chairman Currie said that this is a discussion on a request for modification
13 of the condition of the creation of the conditional access easement over
14 Site B in favor of the property on which the Il Forno Restaurant is located.

15
16 Chairman Currie noted that Adam Wekstein, Esq. of Hocherman, Tortorella
17 & Wekstein LLP, the applicant's attorney, provided the Board with a letter
18 dated April 9, 2012 asking for consideration for the modification to the
19 creation of the access easement.

20
21 The Chair asked the applicant's representative to give a brief presentation.

22
23 Adam Wekstein, the applicant's attorney, indicated that this is the
24 continuation of the request he made at the February 8, 2012 Planning
25 Board meeting. He said that he is asking the Board to eliminate the
26 requirement that Site B of the Wright's Court development provide an
27 access easement to the Il Forno property. Attorney Wekstein explained
28 that the easement was always intended to be conditioned on the parking
29 coming into compliance. He mentioned that he tried to have the owners of
30 Il Forno sign the access easement. He noted that the problems that the
31 owner of Il Forno had was one: potential liability; and two; the Board's
32 attorney was concerned that the easement was unpalatable. Attorney
33 Wekstein said that he provided a copy of the draft easement to the Board
34 and a chronology of the interaction with the owner of Il Forno and his
35 attorney. He indicated that he redrafted the easement to make it more
36 palatable and eliminate the need to perform construction on the Wright's
37 Court property and eliminate direct statements in the easement indicating
38 the property was not in compliance. He said that each property will bear its
39 own maintenance agreements.

40

1 Attorney Wekstein displayed a map for the Board's review and gave details
2 on the property line and the proposal to build a drive aisle to the boundary
3 of the property line. He said that with the Board's approval he will modify
4 the Site Plan.

5
6 Attorney Wekstein said that he received correspondence from the
7 applicant's attorney and he will not sign an agreement with a condition
8 relating to the Il Forno site parking coming into compliance. Attorney
9 Wekstein noted that the owner of Il Forno believes his parking is in
10 compliance.

11
12 The Chair asked if there were any comments from staff regarding the
13 discussion on the easement.

14
15 Town Planner Hull said that because the owner of Il Forno will not sign
16 the easement she does not have a problem with amending the resolution.
17 She noted that the suggestion to extend the parking lot to the property line
18 is a good idea and will help in the future if an agreement can be reached
19 between the two property owners. Town Planner Hull stated that the
20 condition should be removed from the resolution because the applicant
21 will not receive approval from the owner of Il Forno.

22
23 Ms. DeLucia also said that she had no problem with amending the
24 resolution. She noted that she agreed with the sentence *the connection*
25 *therewith with Hallic and if the Board deems it advisable to extend the*
26 *parking lot to the common boundary line with the Il Forno property in the*
27 *area where the future connection would be located.*

28
29 Attorney Wekstein noted that if the Board agrees he will submit a revised
30 plan to the Building Department.

31
32 Ms. Gerbino asked if the parking lot is extended to the common boundary
33 line will there be a barrier.

34
35 Attorney Wekstein stated that there will be a barrier at the common
36 boundary line.

37
38 Ms. Gannon also felt it is appropriate to amend the resolution. She noted
39 that there will be a sidewalk and if you want to travel from one place to
40 another on foot there will be a safe way to do that.

1 Mr. Foley said that during the discussion at the February 8, 2012 meeting
2 there were elements of the easement agreement that may have poisoned
3 the arrangements and made it unpalatable to Il Forno. He stressed that
4 Attorney Wekstein did a great job removing the aspects of the agreement
5 discussed at the meeting which left a better proposal but left one that is still
6 not acceptable to Il Forno. Mr. Foley said that he also agrees that the
7 resolution be amended.

8
9 Mr. Goldenberg referred to a letter from Attorney Wekstein dated October
10 6, 2008 that asks will the Town of Somers insist on the construction of the
11 easement as a condition to grant final approval for Site B. He noted that
12 there was supposed to be construction of the easement and he questioned
13 if it comes down to money. Mr. Goldenberg said he was under the
14 impression that it was a done deal and now it is not the same agreement
15 that the Board agreed to in 2008.

16
17 Attorney Wekstein said that his proposal is exactly what has been
18 discussed at the last two meetings. He explained that because of the Code
19 the Board wanted the easement. He noted that his position throughout the
20 process has been it is an illegal condition if it was unilaterally apposed as
21 an unconditional easement. Attorney Wekstein stated that the applicant's
22 agreement to the easement was always conditioned on the parking coming
23 into compliance with zoning. He mentioned that he thought that the owner
24 of Il Forno would want the easement but that is not the case. Attorney
25 Wekstein explained that the applicant is willing to grant the easement in the
26 future.

27
28 Mr. Goldenberg suggested that the applicant pay for the construction of the
29 easement.

30
31 Attorney Wekstein stressed that the owner of Il Forno will agree to the
32 easement if the applicant eliminates the condition that the parking comes
33 into compliance.

34
35 Mr. Keane said that this discussion would not be taking place except for the
36 requirements under the Business Historic Preservation District (BHP)
37 guidelines. He noted that the BHP zoning requires connectivity between
38 parking areas behind buildings. Mr. Keane commented that Attorney
39 Wekstein opined that portions of the Zoning requirements are not legal as it
40 applies to the Hallic Place property.

1 Mr. Keane asked about page 10, section 9, of the draft access easement
 2 and questioned that there are no changes in the indemnification and
 3 insurance section. He noted that he agrees that the access easement
 4 should run up to the property line. Mr. Keane suggested that the applicant
 5 put up its own barrier and both developers work things out.

6
 7 Attorney Wekstein explained that if Hallic gets sued as a result of conduct
 8 by a customer of Il Forno that is where the liability insurance comes in. He
 9 commented that there will have to be an enforcement component on the
 10 site. He said that communal parking between the two developments is
 11 problematic.

12
 13 Town Attorney Eriole said that first the Board has to determine if the
 14 condition is appropriate and the reading of the Code to decide if the
 15 planning for the site design allows for connectivity. He noted that it is
 16 difficult for two parties to agree especially when one party is not subject to
 17 the jurisdiction of the Board. Town Attorney Eriole said the Board has to
 18 decide if it is enough for the applicant to design the site so that connectivity
 19 is possible. He noted that if at a future date Il Forno comes before the
 20 Board the Board can talk about the connectivity. He stated that the Board
 21 has the discretion to allow the project to go forward in such a way that
 22 allows the design but not the agreement between the parties.

23
 24 Chair Currie said that the applicant is willing to take the access easement
 25 to the property line.

26
 27 Town Attorney Eriole noted that another condition is the expectation that
 28 the access agreement would be in place. He specified that the Board is
 29 being asked to modify a condition that originally the Board approved. Town
 30 Attorney Eriole stressed that the Board has to make the finding on the
 31 record that the connectivity is not so important in a planning perspective.

32
 33 Town Attorney Eriole mentioned that the owner of Il Forno does not want to
 34 pay for the easement as it was presented because it requires their parking
 35 to come into conformance. He said that he would never ask a client to sign
 36 the agreement as written and felt that it was set up for failure of the
 37 negotiation. He opined that the applicant and the Board should not have
 38 agreed to the condition if they did not have the agreement in hand. Town
 39 Attorney Eriole noted that the Board has to determine if this project can be
 40 approved from a planning perspective without the connectivity. He said if

1 the answer is no, the applicant has a problem but if the answer is yes, the
2 Board has to say that it is comfortable with the design.

3
4 Mr. Keane opined that the Board did not intend to have an agreement but
5 to have a plan that the easement could be executed in the future. He said
6 that it was never an issue on approval or disapproval of the project.

7
8 Town Planner Hull noted that if Il Forno comes before the Board in the
9 future they can request that the two projects be connected. She said that
10 by allowing the applicant to extend to the property line you are preserving
11 that right.

12
13 Town Attorney Eriole stated that the Board has to decide if it has sufficient
14 data from a planning perspective to approve the revised plan and can
15 modify the condition.

16
17 Ms. Gannon noted that Il Forno will lose 3 parking spaces if the easement
18 is created.

19
20 Mr. Goldenberg mentioned that the attorney for Il Forno stated that the
21 grantee has no desire to construct the access easement. He suggested
22 that the applicant pay for the construction of the access easement because
23 the Board wanted this to happen as it is in the resolution.

24
25 Attorney Wekstein explained that the owner of Il Forno will sign the
26 easement if the contingency requiring the parking to come into compliance
27 is exercised out of the easement document. He said that the access
28 easement was to provide a planning mechanism so that in the future the
29 easement would be put into place.

30
31 Mr. Foley said that the grantor has to sign an easement but he asked if you
32 need the grantee to sign an easement.

33
34 Attorney Wekstein explained that if the easement is running in favor of a
35 municipality declarations can be put in to restrict use. He noted that the
36 easement has to be given in favor of an owner of a neighboring property.

37
38 Town Attorney Eriole said that the way this easement is written it includes
39 obligations.

40

1 Mr. Keane suggested a pathway to the property line.

2

3 Town Attorney Eriole said that the Board will have to create a record that
4 the Board took into account something it thought was important as part of
5 the approval is not as important today. He noted that the Board should
6 determine that the connectivity satisfies the Town Code.

7

8 Mr. Foley opined that it is not that the easement is not important it is just
9 that it cannot be accomplished. He suggested that clauses be added that
10 no one is making an allegation and no one is making a concession that the
11 parking is non complying.

12

13 Attorney Wekstein said that in discussion with the attorney for Il Forno he
14 wanted all reference to the parking not being in compliance removed from
15 the document. He said that he cannot speak for Il Forno but he does not
16 believe he will sign the easement even with a change in language.

17

18 Mr. Keane said that he thought the Board wanted a walkway and not a
19 drive through access easement.

20

21 Town Planner Hull stated that the Board always considered a drive through
22 easement for vehicular traffic.

23

24 The Chair called for a poll of the Board.

25

26 Ms. Gannon indicated that the Board has reached an impasse in
27 regard to the Resolution. She said that the path to the edge of the
28 property is the best alternative.

29

30 Mr. Foley said that as a possible way of breaking the log jam he
31 suggested that a qualifier be inserted that there is no admission or
32 allegation of non compliance in reference to parking. He noted that a
33 walkway instead of a drive through may make a difference.

34

35 Ms. Gerbino said that she likes the idea of a walkway as a fall back.

36

37 Mr. Keane said that he never contemplated a vehicular access; he
38 always thought it would be a walkway. He suggested that a
39 pedestrian access go up to the property line. He said that he has no
40 problem with modifying the condition in the resolution.

1 Ms. DeLucia said that she has no problem with modifying the
2 resolution.

3
4 Mr. Goldenberg said that the letter from the Il Forno attorney states
5 that there is no desire or intention to construct the access easement
6 but will sign an easement as an accommodation to the grantor. He
7 opined that the question is who will pay for the construction and he
8 said that if the owner of Wright’s Court pays for the construction of
9 the easement it probably will happen.

10
11 Chair Currie also agreed to the modification of the condition in the
12 resolution.

13
14 Attorney Wekstein stated that the owner of Wright’s Court will not pay
15 for the construction of the easement on Il Forno’s property. He noted
16 that the owner of Wright’s Court will build the easement and pay for it
17 up to the property line.

18
19 Chair Currie acknowledged that there is a consensus of the Board to modify
20 the condition in regard to the access easement in the Resolution.

21
22 Town Planner Hull read from the Somers Code Section 170-17.2 (8)
23 *New curb cuts on the major roadways of U.S. Route 202, N.Y. Route 100*
24 *And N.Y. Route 116 shall be minimized to the maximum extent possible. to*
25 *the extent feasible and as required by the Planning Board in accordance*
26 *with the provisions of §144-8B (5) of the Code of the Town of Somers.*
27 *Vehicular access to sites shall be provided through common driveways*
28 *servicing adjacent properties or through secondary street frontages, provided*
29 *that such frontage is located in a nonresidential zoning district.*

30
31 Town Attorney Eriole said that the discussion is in keeping with that Code
32 provision and that a modification of the condition in the resolution can take
33 place.

34
35 Mr. Foley noted that there will not be any new curb cuts and in that way
36 connectivity is urged and that §170-17.2 (8) is not relevant to this
37 discussion.

38
39 Ms. DeLucia asked Town Attorney Eriole for his advice in regard to the
40 elimination of the access easement condition.

1 Town Attorney Eriole explained that there are new facts that the
2 construction of the easement is not agreeable to the owner of the Il Forno
3 Restaurant and under those circumstances and the Board's understanding
4 that Wright's Court will construct vehicular access to their property line
5 which will run with the land and that the condition can be modified as such.
6 Town Attorney Eriole said that the owner of Il Forno cannot unreasonably
7 reject connectivity in the future.

8

9 Attorney Wekstein said that he is not comfortable with a restrictive
10 covenant. He noted that if the use changes on the site the applicant has the
11 right to come back to the Planning Board to modify the Site Plan.

12

13 Town Planner Hull said that the Code states *that sideyard setbacks in*
14 *minimum side yards where abutting a non residential district shall be 25 feet*
15 *but can be reduced by the Planning Board to not less than 15 feet if at least*
16 *30 feet of separation between buildings on adjacent lots that are closest to*
17 *the common lot line such side lines shall be maintained as a landscape*
18 *buffer except for necessary walkways that provide a direct vehicular*
19 *connection between the subject lot and along a common lot line.*

20

21 Mr. Foley opined that if the driving force 4 years ago was that the perception
22 that the Code called for the access easement he does not agree because
23 the Code relates to curb cuts. He suggested eliminating the condition.

24

25 Town Attorney Eriole said that if connectivity makes sense to the Board
26 from a planning perspective you can show the connection on the plan
27 without requiring approval at this time.

28

29 On motion by Chair Currie, seconded by Ms. Gannon, (Mr. Goldenberg
30 voting nay) and carried, the Board moved to modify the resolution by
31 removing the condition for an access easement.

32

33 Town Attorney Eriole explained that the Board just eliminated the condition
34 in the resolution but now has to plan on how they want to proceed.

35

36 Mr. Keane suggested a pedestrian access to the property line.

37

38 Town Planner Hull explained that the Code required sidewalks along the
39 roadway and in the front of the development. She indicated that another
40 sidewalk would not address the connectivity. Town Planner Hull noted that

1 from a planning perspective the intent is to create areas that will
2 accommodate overflow parking.

3
4 Ms. Gannon clarified that the Board has eliminated the need for a roadway
5 access between the two projects. She said that the Board can discuss
6 pedestrian access.

7
8 Town Attorney Eriole said that by removing the condition the applicant does
9 not have to achieve the agreement with the neighboring property owner but
10 access can still be granted to the applicant's property line.

11
12 Ms. DeLucia directed that the plan be revised and a note added to the
13 amended signed Site Plan.

14
15 On motion by Chair Currie, seconded by Mr. Keane, and unanimously
16 carried, the Board moved to amend Resolution No. 2009-17 Granting of
17 Conditional Site Plan Approval to Hallic Place Development, LLC for
18 Wright's Court and revise the plan to add the note to extend the proposed
19 walkway (sidewalk) to the rear of Building B to the property line for the
20 Chairman's signature.

21
22 **PROJECT REVIEW**

23
24 **CVS PARKING AMENDED SITE PLAN**
25 **[TM: 17.15-1-13]**

26
27 Chairman Currie noted that the Planning Board will review the application
28 of Urstadt Biddle, owner, and CVS Pharmacy, applicant, for Amended Site
29 Plan Approval for property located at the Somers Towne Centre, 325 Route
30 100, for the alteration to the parking area and walkway in front of the CVS
31 Store. He said that additional parking spaces will be created from three
32 existing spaces.

33
34 The Chair asked the applicant's representative to give a brief summary
35 regarding this application.

36
37 John Montalto, the applicant's architect, explained that the proposal is for
38 two addition accessible parking spaces to the CVS portion of the parking
39 lot. He explained that currently there are two accessible parking spaces
40 with a total of 14 parking spaces in the CVS portion of the development.

1 Architect Montalto mentioned that the parking complies with Code. He
2 explained that residents have approached CVS about additional accessible
3 parking spaces. Architect Montalto noted that currently there are 403
4 parking spaces in the development and in order to provide the two
5 additional accessible parking spaces he will have to eliminate three
6 standard spaces which will result in a net loss of one parking space which
7 will bring the parking down to 402 parking spaces in the entire
8 development. Architect Montalto commented that the parking lot will have
9 to be restriped but there will not be any regrading of the pavement but the
10 sidewalk will have to be regraded. He said that the curbs will have to be
11 dropped down to provide access to the two access isles between the four
12 spaces. He explained that the curbs have to be dropped to comply with the
13 ramps back up to the entrance to the store.

14
15 Architect Montalto mentioned that he received memos from the Consulting
16 Town Engineer and the Town Planner. He noted that the comments from
17 the Town Planner in reference to §170-41 indicates that if he can
18 demonstrate that the loss of three standard parking spaces will not effect
19 the availability of parking spaces for the shopping center as a whole she
20 will not have any objection of increasing the number of handicapped
21 parking spaces. He said that there is no general parking problem for the
22 CVS portion of the lot and the elimination of one parking space will not
23 have an effect on the general parking. Architect Montalto stressed that
24 CVS would like to grant the request of the community and install the
25 additional accessible spaces.

26
27 Architect Montalto said that Town Planner Hull indicated that the applicant
28 will need to request a waiver from the Planning Board for those application
29 submission materials that were deemed to be not relevant to this
30 application. The memo said that those submission items should be
31 identified for the file. He noted that he would like to know what items have
32 to be submitted in order to make this application complete.

33
34 Architect Montalto mentioned that another concern is in reference to the
35 Erosion and Sediment Control Plan. He questioned that due to the amount
36 of work is an Erosion and Sediment Control Plan necessary. He stressed
37 that if that detail is necessary CVS will have to hire a civil engineer.
38 Architect Montalto said that there will only be a slight variation of the
39 grading and the plan will show that stormwater will not be directed to any
40 new locations. Architect Montalto stated that this is the first time CVS by

1 regrading a parking lot had to appear before a Planning Board and to be
2 required to have an Erosion and Sediment Control Plan for this type of
3 scope of work.

4
5 Town Consultant Engineer Barbagallo said that when he asked for the
6 Erosion and Sediment Control Plan he did not realize that there would be
7 no regrading just restriping the sidewalk which is under the canopy of CVS.
8 He mentioned that there will not be any change in impervious surface,
9 thereby making the wetland issue a non issue. Town Consultant Engineer
10 Barbagallo said if there is exposed soil make sure that it does not go into
11 the drain. He stated that if the drain inlet is protected that will satisfy what
12 he is looking for.

13
14 Town Planner Hull said that her concern was about the number of parking
15 spaces. She mentioned that she does not have any objection to the
16 reduction in the number of parking spaces but she needs documentation so
17 the Board knows why the parking is being reduced by one space. Town
18 Planner Hull said she needs documentation and Site Plan information on
19 the number of regular and handicapped parking spaces on the site. She
20 requested an accurate accounting of parking at the site and how it is
21 changing over time.

22
23 Architect Montalto said that he will go out to the site and verify the existing
24 parking layout and changes and will show the parking calculations on the
25 plan.

26
27 Ms. Gerbino said that she is interested in what type of vehicles will use the
28 handicap parking and will the spaces be large enough for wheelchair
29 access.

30
31 Architect Montalto indicated that the spaces will be accessed by an 8-foot
32 wide access isle and can be used by vans.

33
34 Ms. Gerbino said that a large population in Town (Heritage Hills) are
35 handicapped and wide handicapped spaces are necessary and she
36 appreciates that CVS is willing to build the larger handicapped spaces.
37 She asked if CVS is making changes in the store aisles.

38
39 Architect Montalto said that CVS intends to bring all 7,000 stores to ADA
40 compliance but it is based on community demands. He mentioned that

1 CVS is presently not making changes to the store aisles but if residents
2 complained they may modify that request.

3
4 Mr. Goldenberg said that he goes to CVS quite often and does not see
5 people struggling for parking spaces. He asked if there will be any
6 obstruction to the area and any proposed shrubbery.

7
8 Architect Montalto said that a 6-foot ramp with a hand rail will be provided
9 which will not be an obstruction. He noted that there will be signage and
10 more access to the sidewalk but there is no proposed shrubbery or change
11 in the landscape.

12
13 Mr. Keane said that he is curious why 4 handicap spaces were selected
14 when maybe only 1 space is necessary. He noted that a lot of people park
15 in the handicapped space and are not handicapped. He stated that there is
16 no enforcement. Mr. Keane asked for the data and justification for the
17 accessible parking spaces.

18
19 Ms. DeLucia directed that the plan be revised and a note added to the
20 amended signed Site Plan.

21
22 Ms. Gannon stressed that not all handicaps are visible to the eye and if
23 they have a handicap sticker it should not be challenged.

24
25 Ms. Gerbino opined that the handicap parking at CVS is not the area that is
26 abused. She mentioned the area at the post office as a problem.

27 The Chair said that Town Planner Hull has commented that if the Board
28 determined that there is no significant visual impact, this action can be
29 classified as a Type II Action under SEQRA.

30
31 On Motion by Ms. DeLucia, seconded by Chair Currie, and unanimously
32 carried, the Board moved that pursuant to 6 NYCRR Part 617 regulations
33 pertaining to SEQRA, and Chapter 92 of the Code of the Town of Somers,
34 the Board determines that the proposed activity to be a Type II Action as
35 not having a significant impact on the environment and therefore no further
36 environmental review is necessary.

37
38 The Chair directed the applicant to provide the information requested by
39 the Board and submit revised plans for the May 9, 2012 Planning Board
40 meeting.

1 The Chair thanked Town Planner Hull for all her years of service to the
2 Town and wished her all the best. He said her leaving is the Town's loss.

3
4 There being no further business, on motion by Ms. Gerbino. seconded by
5 Mr. Goldenberg, and unanimously carried, the meeting adjourned at 9:30
6 P.M. and the Chair noted that the next Planning Board meeting will be held
7 on Wednesday, May 9, 2012 at 7:30 P. M. at the Somers Town House.

8
9
10
11 Respectfully submitted,

12
13 Marilyn Murphy
14 Planning Board Secretary
15
16