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5 **SOMERS PLANNING BOARD MINUTES**
6 **SEPTEMBER 9, 2009**
7

8
9 **ROLL:**

10
11 **PLANNING BOARD**

12 **MEMBERS PRESENT:** Chairman DeLucia, Mr. Keane,
13 Ms. Gerbino, Mr. Goldenberg,
14 Mr. Foley and Ms. Gannon
15

16 **ALSO PRESENT:** Town Engineer Gagné
17 Town Planner Charney Hull
18 Consultant Town Planner Brown
19 Town Attorney Holt-Cinque
20 Planning Board Secretary Murphy
21

22 **ABSENT:** Mr. Knapp
23

24 The Meeting commenced at 7:35 p.m. Planning Board Secretary
25 Marilyn Murphy called the roll. Chairman DeLucia said that a
26 required quorum of four members of the Board being present called
27 the meeting to order.
28

29 The Chair explained that the minutes of the August 26, 2009 Planning
30 Board meeting have not been completed and will be submitted for
31 approval at the September 23, 2009 meeting.
32

33
34 **PROJECT REVIEW**
35

36 **WRIGHT'S COURT SITE PLAN [HALLIC PLACE]**
37 **[TM: 17.11-1-5, 18]**
38

39 Chairman DeLucia said that the first matter on the agenda is the
40 Project Review of the application of Hallic Place Development,

1 LLC/Wright's Court for Site Plan Approval, Special Exception Use
2 Permit for the Groundwater Protection Overlay District, and
3 Stormwater Management and Erosion and Sediment Control Permit.
4 She noted for clarification purposes, the applicant is Hallic Place
5 Development, LLC and the name of the action is Wright's Court
6 (formerly Hallic Place Development). The Chair mentioned that the
7 property is located within the Business Historic Preservation B-HP
8 Zoning District, owned by Mr. Thor Magnus, a principal of Nordic
9 Custom Builders, Inc. of Greenwich, Connecticut. She said that the
10 proposed project involves the development of two lots on the
11 opposite side of Scott Drive referred to as Site A and Site B where it
12 intersects with Somerstown Turnpike, U.S. Route 202, with access
13 proposed off of Scott Drive. She explained that the application has
14 undergone project name changes such as Hallic Place Development,
15 Barlow Court, and Wright's Court/Hallic Place. She mentioned that
16 this project was originally discussed at a June 11, 2003 Planning
17 Board meeting and thereafter many additional meetings, and
18 discussions were held. The Chair indicated that the Board classified
19 the project as a Type I Action under SEQRA and declared their intent
20 to be Lead Agency on October 19, 2005. She said that a Public
21 Hearing was opened on October 24, 2007, closed and then reopened
22 on October 29, 2008. She noted that this application was last
23 discussed at the January 14, 2009 Planning Board meeting whereby
24 the Board requested the applicant to submit revised plans based
25 upon the layout which the Board preferred and moved to close the
26 reopened Public Hearing with a 10-day written public comment
27 period, and the applicant waived the 62-day time period for the
28 Board's decision and to continue until the applicant provided notice to
29 the Board that they must act within the 62-day time period from the
30 Board's receipt of such notice. The Chair said that on August 17,
31 2009 Planning & Engineering received a submission by hand delivery
32 of revised plans and documentation by applicant and requested the
33 Board to be referred to the ZBA for the necessary variances and to
34 issue a Negative Declaration under SEQRA. The Chair said that on
35 August 25, 2009 we also received by fax a letter from John Kellard,
36 P.E. of Kellard Sessions Consulting, P.C. clarifying a discrepancy in
37 the plans.

38

39 The Chair said that the Conservation Board (CB) only lists the initials
40 of their members at the bottom of their memos. She noted that the

1 Board should know who attended the meeting and if there was a
2 quorum. The Chair opined that the CB should not go beyond their
3 mission by commenting on planning issues. She mentioned that the
4 Planning Board welcomes members of the CB and the Open Space
5 Committee to attend Planning Board meetings so they can express
6 any concerns they may have.

7
8 Mr. Keane mentioned the minutes of April 14, 2009 from the Open
9 Space Committee (OSC) where they speak about a joint meeting of
10 the Open Space Committee and the Conservation Board (CB). He
11 said that "Mr. Merker of the CB explained that the three charges of
12 the CB are wetlands, steep slopes and tree preservation but the CB
13 often look at projects beyond their purview because they think it is
14 important." He said that Mr. Barnhart, Co-Chair of the OSC,
15 concurred that the OSC does the same. He opined that it is
16 appropriate to let these Boards know that they should stay within the
17 purview of their charge.

18
19 Kristen Holt-Cinque, Town Attorney, advised that the discussion on
20 the CB has nothing to do with the Wright's Court application and
21 should be tabled until another time.

22
23 The Chair asked Adam Wekstein, the applicant's attorney, if the CB
24 asked about Planning Board issues when he appears before them.

25
26 Attorney Wekstein said he only met with the CB once but it was not
27 on this application. He noted that the comments in the February 6,
28 2009 CB memo mentioned two points that relate to the viability of the
29 parking setup and turning radius of cars in the parking lot which is not
30 within their purview.

31
32 Mr. Foley speaking as a former CB member explained that the
33 temptation is constantly there for the CB to look at all aspects of the
34 applications that they are reviewing. He said that notwithstanding the
35 limited jurisdiction of the CB he does not mind their comments. He
36 noted that the members of the CB have good intentions.

37
38 Mr. Keane said that because of the CB comments the Board has to
39 go through the sorting out process to decide what is germane and
40 what is not.

1 Ms. Gannon opined that the risk is that the applicant receives a mixed
2 message and in fairness to the applicant they have to respond to the
3 comments of the Planning Board. She said that the direction should
4 be from the Planning Board and not other boards on planning issues.
5 Ms. Gannon noted that there is a potential for confusion even among
6 well intentioned people.

7

8 The Chair asked Town Planner Hull to send a memo to the CB
9 requiring them to put the full name of the members who actually
10 attend the meetings on their memos. She suggested that CB
11 members take turns and come to the Planning Board meetings.

12

13 Mr. Keane said that the CB should stay within their purview.

14

15 Mr. Foley said that the purview of the CB includes advisory
16 recommendations on site plan applications. Mr. Foley noted that the
17 Code lists the duties of the Conservation Board which are review and
18 make advisory recommendations to the Planning Board on site plan
19 applications.

20

21 Town Engineer Gagné stated that the advisory recommendations on
22 site plans issues by the CB have to relate to environmental issues.
23 He said that it has always been the understanding that the
24 environmental issues are the charge of the CB.

25

26 Mr. Keane asked if there is a denial of an application by the CB what
27 does that entail. He questioned if the denial of a wetland or steep
28 slopes permit needs a supermajority vote by the Planning Board for
29 approval.

30

31 Mr. Foley agreed that a supermajority vote to overturn decisions on
32 wetlands, steep slopes and tree preservation is needed by the
33 Planning Board, however, the CB can advise on site plan
34 applications.

35

36 Town Engineer Gagné noted that the CB is starting to move out of
37 the realm in advising on steep slopes and wetlands and are into site
38 plan issues and that is not what the Code intended but the Code does
39 not exclude the CB from making recommendations.

1 Mr. Keane suggested that the CB provide a second section in their
2 memos where they give recommendation on issues that are not
3 under their purview.

4
5 Town Attorney Holt-Cinque reiterated that this issue should be
6 continued at a later date in order to review the authority of the CB.

7
8 The Chair acknowledged for the record receipt of the following: a
9 letter dated January 23, 2009 from Florence S. Oliver, Town
10 Historian, drawing the Board's attention to Article 170-18.1 A. and B.
11 of the Somers Town Code; a copy of a Resolution dated January 16,
12 2009 received on February 3, 2009 from the Town Clerk that the
13 Town Board at a Regular Meeting held on January 15, 2009 had no
14 comments and unanimously adopted the Resolution; a memo dated
15 February 6, 2009 from the Conservation Board with concerns and
16 recommendations; She said that the CB only lists the initials of
17 members at the bottom of their memo and the Board should know
18 who attended the meeting by full names and whether there was a
19 quorum. The Chair noted that the CB should not go beyond their
20 mission by commenting on planning issues. She said that the
21 Planning Board welcomes the CB to attend Planning Board meetings
22 to express any concern and that this also applies to the SOSOC. The
23 Chair asked if the Board wishes to so advise the CB and the SOSOC; a
24 letter dated and received on August 25, 2009 from Westchester
25 County Deputy Commissioner Edward Burroughs, AICP with approval
26 of buildings on Site A arranged around a landscaped central
27 courtyard and to construct sidewalks and recommends the
28 establishment of public easements and making all seven residential
29 units affordable; a memo dated August 20, 2009 from Town Engineer
30 Guy L. Gagné, P.E. to the Board having no objection to granting
31 waivers on the setbacks and making a positive recommendation to
32 the Zoning Board of Appeals (ZBA) to consider necessary variances.
33 She noted that the waivers and variances are more fully described on
34 pages 4 and 5 of the Town Consultant's review memo to the Board
35 dated September 2, 2009; a memo dated September 3, 2009 from
36 Town Engineer Gagné with comments from the Building Inspector on
37 behalf of the Fire Prevention Bureau; a review memo dated
38 September 2, 2009 with comments on the applicant's latest
39 submissions from our Planning Consultants Frederick P. Clark
40 Associates, Inc. by Sarah L. Brown, Senior Associate/Planning,

1 Joanne P. Meder, AICP, Vice President/Planning, Marilyn Timpone
2 Mohamed, ASLA, AICP, Senior Associate/Planning/Environmental
3 and Michael A. Galante, Executive Vice President. The Chair
4 explained that the review memo concludes that a determination of
5 significance under SEQR should not be made until after all additional
6 information that is relevant to the environmental review has been
7 provided, adequately addressed and considered by the Board and
8 that the Board can only adopt a Positive Declaration or a Negative
9 Declaration; and a memo dated September 3, 2009 from Planning
10 Consultants Sarah Brown and Joanne Meder attaching a preliminary
11 draft Part 2 of the Full Environmental Assessment Form (EAF) for the
12 Board's review and discussion and, if required, Part 3 for evaluation.
13 The Chair stated that Part 2 cannot be finalized until the applicant has
14 responded to all outstanding review comments for identification and
15 analysis. She said that for the Board's information, the revised full
16 EAF (Part 1—Project Information) was initially submitted on May 14,
17 2003, revised March 2006, December 15, 2006 and (Last Revised)
18 May 23, 2007.

19
20 The Chair asked the applicant's representative to give as brief as
21 possible a presentation on the recent submission for the benefit of the
22 public.

23
24 John Kellard, the applicant's engineer, said that at the January 14,
25 2009 Planning Board meeting the Board gave clear direction to
26 proceed with a sketch referred to as Alternate B. He explained that
27 the Board requested alternatives and held a Public Hearing on
28 Alternate A. He mentioned that the Board directed the applicant to
29 proceed with sketch plan B. Engineer Kellard stated that new
30 landscape plans were provided along with minor revisions to the
31 architectural plans for the building that will be moved onto site A. He
32 said that a Stormwater Pollution Prevention Plan and a Hydrologic
33 Analysis by LBG Engineering Services was submitted.
34 Engineer Kellard placed the final construction plan with the original
35 plan below on the easel in order for the Board to see the comparison.
36 He explained that Alternative B flipped the larger building on Site B
37 with the smaller A-2 building on Site A which would create a less
38 intense use on parcel B. Engineer Kellard noted that this creates a
39 significant reduction in the building footprint, floor area, office and
40 apartment use and site coverage to the extent of 1/3 or a 26% to 31%

1 reduction in the values on the property. He noted that the number of
2 parking spaces has been reduced to 13-parking spaces. He said that
3 the setback will now be 92-feet and will move the improvements
4 closer to Route 100. He mentioned that the front of the building will
5 be setback 45-feet from the front property line. Engineer Kellard
6 explained that the amount of septic area in the rear of the property
7 has also been reduced and will be moved away from the residential
8 area and will have less infiltration units. He mentioned that the
9 sidewalks remain the same and the 15-foot setback on the eastern
10 end of the side yard adjacent to the Il Forno Restaurant has been
11 maintained. Engineer Kellard acknowledged that the Board has the
12 ability to reduce the setback if the building separations between the
13 off site building and the applicant's building are maintained more than
14 30-feet. He said that this will allow all the improvements, buildings
15 and the walkways outside of the drip line of the large beech tree.
16 Engineer Kellard stated that the benefits the Board was looking for to
17 reduce the impacts on Site B are achieved with the Alternative B
18 plan. He indicated that the intensity on Site A will increase the
19 building footprint, floor area, office space and apartment site
20 coverage will increase by 5 to 10%. He commented that there will be
21 the same square footage as the original plan. He noted that the key
22 change on Site A is the parking area. Engineer Kellard mentioned
23 that there is enough parking on Site B to accommodate full use of
24 Site B for medical offices. He explained that there is a two-way
25 pattern coming into Site A from the entrance and the two-way pattern
26 to the western property line is maintained because some day that
27 may be extended into the Town Hall property. Engineer Kellard
28 explained that the parking spaces to the northern portion of the
29 property will have a similar setback to the rear property line and not
30 infringe further to the north and there will be a one-way pattern along
31 that area and the parking spaces will be angled parking. He noted
32 that the emergency access has been maintained on the site, even
33 though he does not agree with the need for it. Engineer Kellard
34 stated that the Bureau of Fire Prevention wants the emergency
35 access through the courtyard. He mentioned that there will be a
36 grassed crete lane.

37

38 Engineer Kellard mentioned that the septic and the infiltration system
39 were expanded slightly on Site A to accommodate the additional
40 square footage. He noted that a new crosswalk has been added

1 across Scott Drive. He explained that previously there were three
2 apartments on Site B but now there will be two one-bedroom
3 affordable units on this site. He said that there will be a one-
4 bedroom affordable unit on Site A in the western building.

5
6 The Chair indicated that there will be three (3) affordable units but
7 noted that Ed Buroughs, Deputy Commissioner of the Westchester
8 County Planning Board, wants seven (7) affordable units.

9
10 Ms. Gerbino said that the applicant is providing 42% affordable units.

11
12 Engineer Kellard noted that waivers and variances are needed from
13 the Zoning Board of Appeals. He indicated that two waivers are
14 required on Site B, under Section 170.1.L the maximum front yard
15 requirement is 40-feet and the Board can grant this waiver and the
16 second waiver is under Section 170.17.1.M. for the side yard
17 requirement which is "15/25" feet but this can be waived by the
18 Planning Board to not less than 15-feet or at least 30-feet of
19 separation is provided between buildings on adjacent lots that are
20 closest to the common lot line.

21
22 The Chair mentioned the issue of the Il Forno shared parking.

23
24 Adam Wekstein, the applicant's attorney, stated that the applicant is
25 not willing to give a shared parking easement to Il Forno but will give
26 a conditioned easement for access conditioned on the Il Forno lot
27 coming into compliance on its own lot with the parking requirements
28 that are in effect.

29
30 Attorney Wekstein noted that the variances from the ZBA are needed
31 because of the switch of the two buildings. He mentioned that the
32 applicant's preferred plan does not require any variances from the
33 ZBA.

34
35 Mr. Goldenberg opined that the people who created the Business
36 Historic Preservation District (B-HP) did not have this development in
37 mind. He asked why all the apartments in this development are not
38 affordable.

39

1 Mr. Goldenberg mentioned that Mr. Peace of the Landmarks
2 Committee felt that the buildings are too large and the applicant is not
3 making any concession to make the buildings smaller.

4
5 Attorney Wekstein responded by saying that the B-HP District
6 envisioned waivers for certain specific purposes. He noted that the
7 variance that is requested is for the front yard on the site to preserve
8 the large tree.

9
10 Mr. Keane stated that the preservation of the Beech tree is a large
11 concession on the applicant's part.

12
13 Ms. Gerbino said that the applicant has reduced the size of the
14 buildings.

15
16 The Chair asked that the trees along Scott Drive that are bent out of
17 shape be replaced with nice landscaping.

18
19 Engineer Kellard noted that Rosedale Nursery on the Landscaping
20 Plan show that the bent trees along Scott Drive have been replaced.
21 He said that the Landscaping Plan shows a stonewall with
22 landscaping behind the wall which will create the residential entry
23 statement. He mentioned that the Stormwater Pollution Prevention
24 Plan (SWPPP) has been submitted and if there is positive feedback
25 from the Board on Alternate B a submission will be made to NYC
26 Department of Protection (DEP). Engineer Kellard said that there
27 will be full infiltration up to the 100-year storm of all stormwater from
28 the improvements on the property. He mentioned that the stormwater
29 plan on Site A has a reduction from 50-80% of the peak flows coming
30 off the property, and Site B has an 8-12% reduction and the
31 combined total shows a 40% reduction of stormwater runoff from the
32 property. Engineer Kellard said that pollutant calculations are in the
33 SWPPP which show a reduction of 6-54% on Site A and 10-42% on
34 Site B depending on what pollutants are being looked at. He noted
35 that a maintenance program was provided of the stormwater facilities
36 in the SWPPP and as part of the State requirements easement
37 agreements are provided that give the Town rights to come onto the
38 property to verify that the system is being maintained.

39
40 The Chair asked how the medical waste will be handled.

1 Engineer Kellard said that separate medical waste haulers will be
2 used to handle medical waste.

3

4 Mr. Keane noted that the removal of medical waste will be reviewed
5 by the Health Department and a licensed health hauler must be used.

6

7 The Chair said that she is concerned about the septic system.

8

9 Engineer Kellard mentioned that LBG Engineering Services
10 submitted a report specific to the septic system and medical use.

11

12 The Chair asked the Town Engineer to summarize his two memos to
13 the Board for the benefit of the public.

14

15 Town Engineer Gagné opined that the applicant has revised the plan
16 in accordance with the recommendation of the Planning Board. He
17 noted that there will be fine tuning after the applicant comes back
18 from the ZBA. Town Engineer Gagné said that he issued a memo
19 dated September 3, 2009 in reference to the emergency access after
20 speaking with the Building Inspector. He mentioned that the Building
21 Inspector was clear that the Fire Prevention Bureau requires the
22 emergency drive in order to have a safe access for ambulance calls,
23 as well as the use of a ladder truck for a second story emergency.
24 Town Engineer Gagné explained that the surface will be such that it
25 will not look like a road but will look like lawn.

26

27 Mr. Keane asked the Fire Prevention Bureau to comment and provide
28 data on the collapsed danger zone and provide the technical
29 reference that requires the proposed emergency access. He said
30 that if the access is not within the collapsed danger zone is it within
31 the collapsed building zone. Mr. Keane said that the concern is
32 safety.

33 Attorney Wekstein said that he met with the Building Inspector to
34 convey that the applicant did not approve of the location of the
35 emergency access and was told that the access is primarily for
36 ambulances. He said that the Building Inspector agreed that the
37 State Fire Code does not require the proposed access way. Attorney
38 Wekstein stressed that he cannot be in the position where the Board
39 issues site plan approval and when the applicant asks for building

1 permits they will not be issued by the Building Inspector because he
2 feels the buildings are not safe.

3
4 Mr. Keane asked if there is no citation what is the basis for the
5 Building Inspector's opinion.

6
7 The Chair mentioned that Planning Consultant Sarah L. Brown,
8 Senior Associate/Planning of Frederick P. Clark Associates, is
9 present this evening to review her memo to the Board dated
10 September 2, 2009. The Chair said that as we have done in the past,
11 the Town Attorney, Town Engineer, Town Planner, members of the
12 Board and the applicant's representatives may interject their
13 comments and/or questions during the review and discussion.

14
15 Sarah L. Brown, Town Planning Consultant, noted that under B.
16 Zoning Issues-Dimensional Standards and Requirements of her
17 memo dated September 2, 2009, *With regard to the revised layout,*
18 *note the following variances and waivers that are necessary:*

19
20 *a. Variances for Site A*

- 21
- 22 • Section 170.17.1E.- a maximum floor area of 14% is
23 allowed in the B-HP District. However, the applicant is
24 proposing a maximum floor area of 14.9%.
 - 25 • Section 170.17.1.E – a maximum floor area of 8% is
26 allowed for nonresidential uses in the B-HP district.
27 However, the applicant is proposing a maximum floor
28 area of 8.81% for nonresidential uses.
 - 29 • Section 170.17.1.0 – The minimum distance required
30 between buildings in the B-HP District is 15 feet. The
31 applicant is proposing a distance of 11 feet between
32 Building "A-2" and the existing building.
 - 33 • Section 170-17.2.A (7) – In the B-HP District, sidewalks
34 are required to be compatible with the character of the
35 pedestrian walkway that has been installed along the
36 frontage of the Elephant Hotel site. It is noted that the
37 Town Zoning Ordinance specifically refers to the use of
38 tinted concrete stamped with a brick pattern that matches
39 the color and design layout of the brick walkway installed
40 along the frontage of the Elephant Hotel site, in the

1 absence of any supplementary design guidelines
2 document promulgated by the Town of Somers. A
3 variance will be required for the use of brick for the
4 sidewalk.

5
6 Mr. Keane agreed that the waiver to lot A and B for the use of the
7 brick surface sidewalks instead of concrete should be requested from
8 the ZBA and if the brick sidewalk is good enough for the Elephant
9 Hotel it is good enough for Wright's Court.

10
11 Town Consultant Planner Brown said that use of brick surface
12 sidewalk has been the consensus of the Board for a long time.

13
14 Attorney Wekstein said that the applicant will be glad to go to the ZBA
15 for the sidewalk variance but does not want to be caught in between
16 Boards because the Town Board wants stamped concrete.

17
18 Engineer Kellard said that a sidewalk variance is also needed for
19 Site B.

20
21 *b. Waiver for Site A*

22
23 Town Consultant Planner Brown mentioned that the waiver is to
24 reduce the side yard to 15 feet which the Board can waive as part of
25 the B-HP District.

26
27 *c. Waiver for Site B*

28
29 Town Consultant Planner Brown explained that the maximum front
30 yard requirement is 40 feet but in order to preserve the Beech tree
31 the building has been moved back 45 feet. She said that the side
32 yard has been reduced to 15 feet.

33
34 *d. Other Environmental Impact Issues*

35
36 Town Consultant Planner Brown said that the applicant has indicated
37 that they will agree to the use of organic pesticides and herbicides as
38 a condition of approval.

39

1 Attorney Wekstein said that two letters have been submitted from
2 LBG giving their professional opinion that the materials on this site
3 will not go below the root zone of the plantings. He mentioned that
4 Note 4 on the Landscape Plan has details on what type of materials
5 will be used.

6
7 Mr. Keane said that he does not recollect any discussion on
8 phosphorous free fertilizer. He opined that as a condition of approval
9 that phosphorous free fertilizer is used unless a soil test can
10 demonstrate that phosphorous is needed to reconstitute the soil.
11 He said that his concern is that pollutants will wind up in the pond
12 next to Heritage and then eventually in the stream and the reservoir.

13
14 Attorney Wekstein said that he recollects that the initial plantings
15 would be scouted to see if phosphorous is needed for the initial
16 plantings and thereafter will not be used on site. He noted that he will
17 check with Rosedale Nursery to make sure this is what is proposed
18 by the landscaper.

19
20 Town Engineer Gagné stated that the phosphorous issue will be in
21 the Resolution.

22
23 The Chair asked if anyone knows the hours at the Il Forno Restaurant
24 and no one responded. She suggested limited parking under the
25 shared parking.

26
27 Attorney Wekstein noted that a cross easement is not just about the
28 use that is there today but is about future planning. He said that
29 there will be residential housing on this site and if you invite people to
30 park on this site there will be a real problem. He said that he does
31 not want to solve the Il Forno parking problem at the expense of the
32 occupants of Wright's Court. He mentioned that the applicant is
33 considering a cross access easement as opposed to parking.

34
35 Town Attorney Holt-Cinque clarified that the Planning Board can
36 request that the applicant consider the cross easement but cannot
37 require it.

38
39 Town Consultant Planner Brown referenced page 6 of her memo and
40 mentioned that on the Landscape Plan there is a new proposed

1 feature for the entrance to Scott Drive. She stated that the Planning
2 Board will have to give the applicant direction on this proposal.
3 Town Engineer Gagné suggested discussing the entrance to Scott
4 Drive after the applicant returns from the ZBA.

5
6 Attorney Wekstein said that he would like to discuss the entrance to
7 Scott Drive and other issues because the ZBA cannot take action
8 until the Board issues a Negative Declaration.

9
10 Mr. Keane said that the Board has to define the action which will help
11 when the Board is working on the Determination of Significance.
12 He commented that before the Board reviews Part 2 they should
13 have a clear idea of what the action is. He noted that the Board
14 should understand the newly prepared SWPPP and all its
15 documentation. Mr. Keane noted that if the Board decides on a
16 Negative Declaration there must be a cogent rationale for this
17 determination. He mentioned that the single issue when the Board
18 determines significance is the proximity of this application to the
19 Elephant Hotel. Mr. Keane opined that this may be the only issue
20 that rises to the level of significance.

21
22 Ms. Gannon asked for more information and update on the lighting
23 plan and clarification on the Stormwater Pollution Prevention Plan
24 (SWPPP).

25
26 Town Consultant Planner Brown said that she will work with Attorney
27 Wekstein to make sure that all the revisions are updated in the EAF.
28 She noted that at the next meeting she will define the action and
29 review Part 2 with the Board.

30
31 The Chair said that as to the waivers Town Engineer Gagné has no
32 objection to the Planning Board granting the waivers. She asked if
33 there is a consensus of the Board to grant the requested waivers.

34
35 On motion by Mr. Keane, seconded by Mr. Foley, and carried, (Mr.
36 Goldenberg voting nay) the Board moved to grant the applicant a
37 waiver to allow for a 45-foot front yard setback where 40 feet is
38 required for Lot B, and for waiving the side yard setback to 15 feet for
39 Lot B, and for Lot A 18 feet where 25 feet is required.

40

1 The Chair said as to the variances the Town Engineer has no
2 objection to the Planning Board referring the applicant to the ZBA
3 with a positive recommendation. She asked if there is a consensus
4 of the Board to refer the applicant to the ZBA.

5
6 On Motion by Ms. Gerbino, seconded by Mr. Keane, and carried, (Mr.
7 Goldenberg voting nay) the Board moved to refer the applicant to the
8 Zoning Board of Appeals with a positive recommendation to consider
9 the necessary variances to Lot A which includes the minimum
10 distance of 11-feet between buildings where 15-feet is required, in
11 addition to area variances mentioned in the Town Consultant's
12 September 2, 2009 review memo to the Board and in accordance
13 with the Town Engineer's August 20, 2009 memo to the Board and
14 granting a variance for Lot A and B for the use of the brick surface
15 sidewalks in place of stamped concrete.

16
17 Mr. Goldenberg questioned why the Planning Board is asking for a
18 variance for the use of brick surface sidewalks when the Town Board
19 stated that they want stamped concrete sidewalks.

20
21 The Chair directed the applicant to revise the plans, provide sufficient
22 additional information, including updating the EAF, provide any and
23 all information requested by the Town's Consultants, Town Engineer,
24 Town Planner and the Planning Board, adequately addressed and
25 relevant to the environmental review to be analyzed by the Board,
26 and at a later meeting, for the Board to consider the whole action and
27 criteria for determining whether or not the proposed Type I action will
28 have a significant adverse impact on the environment under §617.7--
29 Determining Significance.

30
31 The Chair said that if all the outstanding issues are provided and
32 adequately addressed by the applicant, the Board will review this
33 application at the October 7, 2009 Planning Board meeting.

34
35 **TIME-EXTENSION**

36
37 **GRANITE POINTE SUBDIVISION**
38 **[TM: 27.05-3-2 and 5]**

39

1 Adam Wekstein, the applicant's attorney, said that he sent a letter
2 dated September 3, 2009 to the Board requesting additional time
3 for the preparation of the Supplemental Final Environmental Impact

4 Statement (SFEIS). He noted that the applicant is working towards a
5 remedial action clean up plan on the Granite Pointe site that the
6 Department of Environmental Conservation (DEC) will be comfortable
7 with. Attorney Wekstein stated that the plan should be approved by
8 fall or early winter.

9
10 The Chair suggested that the Board grant a one-year time-extension.

11
12 The Chair asked if there was a consensus of the Board to grant a one
13 year instead of a six-month time extension from September 10, 2009
14 to September 10, 2010.

15
16 On motion by Mr. Keane, seconded by Ms. Gannon, and
17 unanimously carried, the Board moved to grant Granite Pointe
18 Subdivision a one-year time-extension from September 10, 2009 to
19 September 10, 2010 to prepare and submit to the Board the draft
20 SFEIS.

21
22 **SEQRA ACTION**

23
24 **HOMELAND TOWERS LLC AND NEW CINGULAR**
25 **WIRELESS (AT & T) [38.17-1-5]**

26
27 Chairman DeLucia noted that the Zoning Board of Appeals (ZBA)
28 Notice of Intent to act as Lead Agency under SEQRA received on
29 September 2, 2009 on the application of Homeland Towers LLC and
30 New Cingular Wireless PCS LLC (AT&T) to erect a
31 telecommunications facility to be located at 121 Route 100, the
32 Amato property. She said that the Planning Board, as an Involved
33 Agency, has 30 calendar days within which to object. The Chair
34 mentioned that Town Planner Hull has submitted to the Board for
35 review and acceptance a written formal objection to the ZBA acting
36 as Lead Agency. The Chair noted that the Board may want to look at
37 Somers Code §92-8. Procedures; designation of lead agency;
38 determination of need.

39

1 Town Planner Hull referenced her draft memo to the ZBA dated
2 September 3, 2009 and noted that she changed the wording; the
3 Planning Board's extensive experience to *knowledge* and added the
4 word *supports* the Planning Board's formal objection.

5
6 Mr. Keane reminded the Board that Town Attorney Baroni at the last
7 meeting stated that the Board only has to object to the ZBA acting as
8 Lead Agency and does not have to give reasons for the objection.
9 He opined that the Board should just state their objection and note
10 that the Planning Board would like to be lead agency on this project.

11
12 Town Planner Hull said that the letter to the ZBA should read that the
13 Planning Board objects to the designation of lead agency by the ZBA
14 and prefers to be lead agency for this project.

15
16 The Chair asked if there is a consensus to send the ZBA the Board's
17 objection.

18
19 On motion by Ms. Gannon, seconded by Mr. Goldenberg, and
20 unanimously carried, the Board moved to send a written formal
21 objection to the ZBA acting as Lead Agency and that a coordinated
22 review be undertaken on the application.

23 24 **SCHEDULE PUBLIC HEARING**

25 26 **WOODED ACRES SUBDIVISION PERFORMANCE BOND**

27
28 Chairman DeLucia noted that the Board will discuss scheduling a
29 Public Hearing on the reduction of the Performance Bond of Wooded
30 Acres Subdivision by F. Travis Hopkins of Lafayette Street
31 Properties, Inc. She said that the property is a 16-lot subdivision
32 located on the south side of Moseman Avenue and the east side of
33 Pines Bridge Road. The Chair mentioned that according to a memo
34 dated September 2, 2009 to the Board from Town Engineer Gagné
35 the Town Board by Resolution dated March 17, 2008 authorized a
36 reduction of \$89,809 of the Wooded Acres Subdivision Performance
37 Bond Amendment No. 1 from the initial amount of \$708,258 to
38 \$618,449. She explained that the original bond is in the form of
39 Irrevocable Standby Letter of Credit issued under M&T Bank No.
40 SB906401-2000 in the initial amount of \$708,258. The Chair noted

1 that the applicant is requesting a further reduction of \$489,950 of the
2 performance bond from the reduced amount of \$618,449 by
3 \$128,499. She commented that Town Engineer Gagné is
4 recommending that the Performance Bond be reduced from \$618,449
5 by \$225,180. She noted that this is a decrease of \$96,681.

6
7 The Chair asked Town Engineer Gagné why he wanted the change in
8 the reduction of the performance bond.

9
10 Town Engineer Gagné said that when he reviewed the “As-Built”
11 drawing and conducted a site inspection the reduced amount by
12 \$225,180 is the amount he arrived at in contrast to the applicant’s
13 representative’s request.

14
15 The Chair asked if there were any comments or questions from the
16 members for Town Engineer Gagné.

17
18 Ms. Gerbino asked for clarification as the applicant’s representative,
19 Engineer Timothy Allen, asked for a \$128,499 bond reduction for
20 Wooded Acres.

21
22 Town Engineer Gagné explained that the applicant’s representative’s
23 memo is incorrect in the amount he is asking to be reduced.

24
25 Town Engineer Gagné noted that this is the performance bond for all
26 the subdivision improvements. He said that there was one
27 performance bond for all the construction activities.

28
29 Mr. Goldenberg commented that he has never seen a work sheet
30 stating all the work that has been completed in order to reduce the
31 bond. He asked to see a work sheet showing the bond reduction.

32
33 Town Engineer Gagné explained that he is designated as the Town’s
34 agent and that the file can be reviewed in the Planning and
35 Engineering office.

36 The Chair asked Town Engineer Gagné if he had any objection to
37 scheduling a Public Hearing and he responded that he had no
38 objection to the scheduling of the Public Hearing.

39

1 The Chair asked if there was a consensus to schedule a Public
2 Hearing for the first Wednesday, October 7, 2009.

3

4 On motion by Ms. Gerbino, seconded by Ms. Gannon, and
5 unanimously carried, the Board moved to schedule a Public Hearing
6 on the reduction of Wooded Acres Subdivision Performance Bond for
7 Wednesday, October 7, 2009 at 7:30 p.m. at the Somers Town
8 House.

9

10 **BOARD COMMENTS**

11 Chairman DeLucia said that the next item on the agenda was Board
12 Comments. She explained that the Planning Board has asked Town
13 Planner Hull for clarification of the Building Inspector's memo dated
14 August 26, 2009 to the Town Planner regarding the application of
15 Saint Joseph's Church and John F. Kennedy High School.

16

17 Town Planner Hull said that the determination that the Church is an
18 accessory building is incorrect and if the Church is considered a
19 principal building the applicant will have to go to the Zoning Board of
20 Appeals (ZBA) to obtain a variance for the lot coverage. She
21 explained that if the Church is considered an accessory building the
22 Building Inspector's interpretation stands. Town Planner Hull noted
23 that this issue has been brought to the Town Attorney's attention and
24 Kristen Holt-Cinque will update the Board.

25

26 Town Attorney Holt-Cinque said that Town Attorney Baroni spoke
27 with Neil Alexander, the applicant's attorney, and he will speak with
28 the applicant about subdividing the property. She advised that this
29 will not affect the Public Hearing which is scheduled for September
30 23, 2009. She noted that if this issue is not resolved by the Public
31 Hearing the Board can open the Hearing and adjourn the Public
32 Hearing until the subdivision application is provided.

33

34 Town Planner Hull explained that if it is determined that a subdivision
35 cannot be done the applicant will go to the ZBA for a variance to
36 allow the structure to exceed the current lot coverage standard. She
37 mentioned that if the subdivision is allowable the Board will proceed
38 with the subdivision application and the property will be subdivided

1 from the school. She stated that the SEQRA process will have to be
2 reopened.

3

4 Mr. Keane asked what the rationale is for doing this. He said that the
5 applicant should just go to the ZBA to receive a variance as a
6 principal building.

7

8 Town Planner Hull explained that the only way the applicant can go to
9 the ZBA for the variance is if they cannot do the subdivision.

10

11 Mr. Keane said that based on Section 170-10.B.2 there are two
12 buildings that qualify as principal buildings, High School and the
13 Church/Rectory.

14

15 Mr. Keane noted that he had no idea what question was posed and
16 who asked the questions to the Building Inspector and what his
17 factual response was. He said that the Board has to know what basis
18 this determination was made on.

19

20 Mr. Foley said that the Building Inspector determined that the
21 proposed Church is an accessory building. He opined that the way
22 the Building Inspector went off track was on the list of permitted
23 accessories because he called the Church an accessory use.

24

25 Mr. Keane mentioned that the principal building use would be the
26 High School which qualifies as a religious education building under
27 Section 170-10.B. of the Zoning Code and the other buildings on this
28 site will be accessory buildings. He asked what the proposed Church
29 building is designated as, is it a principal building or an accessory
30 building. He advised that the Code states that if it is not less than 2
31 acres any combination thereof shall be a principal use (Church,
32 Parish House or a building for religious education).

33

34 Mr. Foley said that the idea about a subdivision application invites
35 complications and questioned how subdividing the property solves
36 the lot coverage problem.

37

38 Town Planner Hull noted that the Building Inspector read her memo
39 where she states that the buildings were both principal uses and as
40 principals uses they exceed the lot coverage allowance. She said

1 that the Building Inspector disagreed and issued a memo determining
2 that the church is an accessory building.

3
4 Mr. Foley asked the date of the memo from the Building Inspector
5 and was told that the memo was dated August 26, 2009. He said that
6 he is worried about a timeline.

7
8 Town Engineer Gagné said that the Building Inspector feels that his
9 determination has been applied to other Churches that have schools.

10
11 Mr. Keane stressed that words in the Code are undefined and even
12 the word building is undefined. He said that the Board can restate its
13 position saying that it considers the current school building to be a
14 principal building and principal use based on the definition in Section
15 170-10.B. and any and all other buildings on the site, as they
16 currently exist, are accessory buildings. He indicated that by adding
17 the Church that meets the definition under Section 170-10.B. as a
18 principal use and principal building and therefore those two buildings
19 together in combination because of the square footage exceed the
20 4% allowance under the Code in a residential area, and based on this
21 it will require a variance from the ZBA.

22
23 Town Engineer Gagné said if this is the case, the Planning Board will
24 grant a positive recommendation to the ZBA.

25
26 Mr. Foley said that viewing this issue from the accessory use side the
27 Code lists nine types of accessory uses in a residential district but
28 there is no reference to a house of worship on the list. He stressed if
29 you view this from the prospective of what is a principal use this is
30 one, or from the perspective of an accessory use the proposed
31 church is not one, and you have the same resolve.

32
33 Mr. Keane said that if the Town Attorney is not clear on what the
34 Planning Board is asking, he will be operating in a vacuum.

35
36 Ms. Gannon indicated that under Town Law there are guidelines on
37 the functions of the Zoning Board of Appeals. She said that it might
38 say if someone other than an aggrieved party can have a
39 determination looked at.

40

1 Town Planner Hull said that maybe the Building Inspector would be
 2 willing to hold or reverse his opinion based on the reading of the
 3 Code.

4
 5 The Chair said in discussion with the Building Inspector on the
 6 language of his memo he stated that the Church is an accessory
 7 building to the school. She suggested that the section of the Code
 8 be used when making determinations.

9
 10 The Chair said that for everyone's information, the Planning Board
 11 meeting dates change in October and November to the 1st and 3rd
 12 Wednesday of the month and there will be only one meeting in
 13 December, which is the first Wednesday, December 9, 2009.

14
 15 There being no further business, on motion by Mr. Goldenberg,
 16 seconded by Ms. Gannon, and unanimously carried, the meeting
 17 adjourned at 10:00 P. M.

18
 19 Chairman DeLucia noted that the next meeting of the Planning Board
 20 will be held on Wednesday, September 23, 2009 at 7:30 P. M. at the
 21 Somers Town House.

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 24
 25
 26
 27
 28
 29
 30

Respectfully submitted,

 Marilyn Murphy
 Planning Board Secretary

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