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PLANNING BOARD  
TOWN OF COLONIE

COUNTY OF ALBANY

\*\*\*\*\*  
REVIEW AND ACTION ON WAIVER FOR PAVEMENT  
FOR KEELER SMART CAR 1075 TROY SCHENECTADY ROAD  
\*\*\*\*\*

THE TAPED AND TRANSCRIBED MINUTES of the above entitled  
proceeding BY NANCY STRANG-VANDEBOGART commencing on  
June 9, 2009 at 9:58 p.m. at the Public Operations Center 347  
Old Niskayuna Road, Latham, New York 12110

BOARD MEMBERS:

THOMAS NARDACCI, Acting Chairman  
MICHAEL SULLIVAN  
GEORGE B. HOLLAND, JR.  
CHARLES J. O'ROURKE  
TIMOTHY LANE  
PETER STUTO, Jr. Esq., Attorney for the Planning Board

Also present:

Joseph LaCivita, Director, Planning and Economic Development  
Mike Lyons, Planning and Economic Development  
Dan Tompkins, Environmental Design Partnership

1                   ACTING CHAIRMAN NARDACCI: Okay next on the  
2 agenda is Keeler Smart Car; review and action on waiver  
3 for pavement in the front yard.

4                   MR. TOMPKINS: I'm Dan Tompkins and I'm from  
5 Environmental Design Partnership.

6                   This application has to do with Keeler Smart  
7 Dealership, which is an existing dealership.

8                   I think George is the only one familiar with it.  
9 Approximately 2 years ago, this was converted from the  
10 Clark Music Store. The main Keeler campus is over in  
11 this area here (Indicating). The closest franchise  
12 would be the Mercedes Benz. There is a fair amount of  
13 parking in this area here of pavement (Indicating).  
14 This is where Clark Music was. This was a conversation  
15 so the existing building remained and that's part of  
16 our history.

17                   This obviously was built years and years ago. The  
18 former ordinances were in effect. They observed an  
19 approximate 50 foot setback and they even angled the  
20 building. At that time, there was this one curb cut  
21 here (Indicating) and then there was a curb cut in this  
22 area as well (Indicating). So, there was a circular  
23 pattern for a fairly limited amount of parking  
24 immediately in front of the music store.

25                   When this was converted to the Smart Auto

1 franchise, at that point there was some pavement  
2 installed here (Indicating). This curb cut was removed  
3 and a little pavement was installed here (Indicating).  
4 The building was completely renovated.

5 Also there was a small stormwater detention  
6 basin. That was installed here (Indicating). Another  
7 stormwater detention basin was installed here  
8 (Indicating). Now, since they've gotten into the  
9 building and started occupying it, it was obvious that  
10 they could use a little more display area along  
11 Route 7. Part of the problem is that it was an actual  
12 fairly limited amount of parking spaces along the road  
13 and they sit a little low. That's not noted in the  
14 narrative, but they do sit a little low relative to  
15 Route 7.

16 Now in being familiar with the Smart  
17 Car - they're not even 9 feet long. They're not  
18 particularly tall. They are a small car and with the  
19 traveling public. They're not going to be in the same  
20 masses as a normal car. That's the beauty of it. They  
21 could use a little more presence.

22 There is also a portion of this business that  
23 sells used cars. All car franchises sell pre-owned  
24 cars. It's just the nature of the beast. It's not  
25 centralized. Mercedes has its own pre-owned BMW that's

1 to the west of it and Honda to the west of that. They  
2 all have their pre-owned section. Smart is no  
3 different.

4 They are requesting additional pavement. A  
5 logical place for additional pavement is over to the  
6 east of the store. This allows us to simply box out an  
7 additional area. We could also box out an additional  
8 area here a little bit (Indicating) and put a proper  
9 trash. Right now there isn't one. Frankly we thought  
10 that they would use a centralized one off site. This is  
11 a separate one. This is a one and a quarter acre parcel  
12 that's not working out. They need their own enclosure.  
13 So, that's proposed for that.

14 This area (Indicating) sits relatively high - the  
15 detention basins. What we want to do is add the  
16 pavement and we want to broaden out this detention  
17 basin to accommodate the extra drainage flow from the  
18 surfaces. It's very simple but because of the new  
19 regulations and because this building is at an angle,  
20 the front yard on the east side of this building is  
21 actually about 78 feet. So, everything that we want to  
22 do requires that front yard parking waiver for the  
23 predominant amount of additional pavement that we want.  
24 We could use this (Indicating) and we could use that  
25 (Indicating) and it doesn't require the waiver. This is

1 the area in question (Indicating). There is a two-car  
2 display pad here and they'd just like to straighten out  
3 this edge here so that they can park a car parallel to  
4 that edge. That's it.

5 If there are any questions, I'd be glad to answer  
6 them.

7 ACTING CHAIRMAN NARDACCI: So this paved area in  
8 the front, this is where you're going to have display  
9 cars up here in the front right?

10 MR. TOMPKINS: Right. There may be some customer  
11 parking here (Indicating) and we can inventory the  
12 storage; anything that's not immediately there for  
13 display but it's new inventory and you've got to put it  
14 someplace. That location would be over here  
15 (Indicating).

16 ACTING CHAIRMAN NARDACCI: Will they be Smart  
17 Cars or will they be other used -

18 MR. TOMPKINS: They might be pre-owned, or they  
19 might be Smart.

20 ACTING CHAIRMAN NARDACCI: It would seem to me  
21 that passing by the site that the cars are buried -

22 MR. TOMPKINS: It sits down low. In answer to  
23 getting the franchise - it was a competitive the get  
24 the franchise. In getting the franchise and recycling  
25 the site, if you will, and recycling the building it

1 does sit a couple feet low.

2 ACTING CHAIRMAN NARDACCI: Are there any comments  
3 from the board?

4 MR. SULLIVAN: Is the entire inventory of Smart  
5 Cars currently stored on the site?

6 MR. TOMPKINS: I don't have an answer to that  
7 question.

8 FROM THE FLOOR: I would say that 50% of the  
9 inventory is stored behind Mercedes. In addition, all  
10 the service cars are dropped off in the front of the  
11 building so there is service there and they are put  
12 back there for the customers to have service.

13 ACTING CHAIRMAN NARDACCI: C.J.?

14 MR. O'ROURKE: I've got a couple.

15 I'm looking at a memo dated December 3, 2008 to  
16 Robert Higgins, who is a planning aide. Who is he?

17 MR. LACIVITA: He's now in stormwater.

18 MR. O'ROURKE: At this point he was -

19 MR. LACIVITA: He was with us at that time.

20 MR. O'ROURKE: In the third paragraph down it  
21 says proposed row of seven parking spaces also on the  
22 Mercedes Benz site that is shown on the zoning  
23 verification application site plan has been omitted for  
24 this site review in order to keep the overall impact of  
25 the area below 10,000 square feet.

1                   MR. TOMPKINS: That's correct. If you look at the  
2 drawing where that referred to a row of cars that is  
3 shown on the verification, the other thing that was  
4 omitted, frankly -

5                   MR. O'ROURKE: Do me a favor and explain. I  
6 understand what it means. Explain to the board what it  
7 means. What does the 10,000 threshold mean?

8                   MR. TOMPKINS: Well, our goal is to keep the  
9 impact less than 10,000 square feet. It's qualifies as  
10 a minor application.

11                   MR. O'ROURKE: Thank you.

12                   Did you see that Joe, this memo?

13                   MR. LACIVITA: Yes.

14                   MR. O'ROURKE: So, I'm a little bothered by that.

15                   MR. TOMPKINS: Why would that bother you?

16                   MR. O'ROURKE: Well, because to keep that row out  
17 and keep it as minor, does what?

18                   MR. TOMPKINS: Well, it does two things. First of  
19 all, what I didn't know when I wrote that memo is that  
20 had I kept that row of cars and had we insisted on the  
21 two-car display pad here (Indicating) and we'd actually  
22 have had two applications because you can't spill over.  
23 This is a separate tax parcel that we have to keep as a  
24 separate tax parcel. So, the question was asked: Do we  
25 really want that? Does this really add as a point of

1           diminishing returns, if you will - is this that  
2           adventurous? The answer was no. This is much more  
3           advantageous here. Both of those are greenspace. So,  
4           that's what we did and that's what our strategy was.

5                   MR. O'ROURKE: So, when was the property  
6           purchased, you had to know that the building was tilted  
7           and below site.

8                   MR. TOMPKINS: Oh, yeah.

9                   MR. O'ROURKE: I mean, you did do diligence.

10                  MR. TOMPKINS: Well, sure.

11                  MR. O'ROURKE: So, then, why when you asked for  
12           and put in the pad - - what I guess I'm getting at  
13           is - - you're a smart guy. How does this sneak up on  
14           you that now you need additional parking when you had  
15           to know?

16                  MR. TOMPKINS: Well, actually you don't always  
17           know. You don't always know exactly how some things are  
18           going to work out on a day to day basis.

19                  MR. O'ROURKE: But you knew the zoning.

20                  MR. TOMPKINS: Yes. I'm not quite sure I  
21           understand your question.

22                  MR. O'ROURKE: I'm just trying to get how two  
23           years ago they let you put the pad in for the display  
24           pad, right?

25                  MR. TOMPKINS: We're talking about -

1 MR. O'ROURKE: The front display pad.

2 MR. TOMPKINS: Okay, correct.

3 MR. O'ROURKE: And that's not even quite finished  
4 yet?

5 MR. TOMPKINS: That's right.

6 MR. O'ROURKE: So, that's what I'm saying. It  
7 kind of bothers me that that was improved two years ago  
8 and that's not done and now you're back before the  
9 board to get a waiver for the Land Use Law to allow  
10 additional parking up in front of the building.

11 MR. TOMPKINS: The reason that it's not done is  
12 instead of making it out of concrete, we wanted to pave  
13 it. We wanted a display pad with pavement rather than  
14 concrete. We decided not to go ahead and finish it in  
15 pavement because if this gets approved, now we can pave  
16 it all in one job. The mobilization cost to just come  
17 in and put some pavement down - - it wouldn't make  
18 sense until this is all worked out.

19 It's parked on and it's crusher run. It will be  
20 paved when this is paved. That's just the decision that  
21 makes the most sense.

22 FROM THE FLOOR: If I could add that the only  
23 base pavement in there is finished coat and is waiting  
24 for this approval.

25 ACTING CHAIRMAN NARDACCI: Mike, do you have a

1 departmental comment?

2 MR. LYONS: It's up to the decision of the board  
3 as to whether they can grant the waiver to the  
4 applicant. There are some conditions that the board has  
5 to look at. One is that the building is on-site and it  
6 was existing. Whether that plays in as a  
7 hardship - - if this was a brand new site coming in  
8 this might be different. If it was a vacant lot, that  
9 might also be different.

10 MR. TOMPKINS: If I could interrupt you for a  
11 second - - folks, there's a separate letter in the  
12 packet that's dated April 10, 2009. It is a specific  
13 request for a waiver from the project and it outlines  
14 the argument for why the waiver should be granted. It  
15 starts on page 2 and page 3. It sets those reasons up  
16 for the record. So, I'd like to just draw your  
17 attention to that. I didn't read that letter during the  
18 presentation, but I wanted to make sure that we're all  
19 aware of it.

20 ACTING CHAIRMAN NARDACCI: We all have that  
21 letter.

22 MR. TOMPKINS: Okay, because that should be part  
23 of the record as we are talking about the reasons for  
24 granting a waiver.

25 ACTING CHAIRMAN NARDACCI: Mike, is there

1 anything else?

2 MR. LYONS: There are provisions in the Land Use  
3 Law that allow the Planning Board to review on a case  
4 by case basis, based on the applicant's proposal  
5 whether the board should justify it.

6 Some of the issues that Dan raises in his  
7 letter - in addition to the configuration of the  
8 site - - it's not a brand new site with a new building  
9 coming onto it and all that building meeting the design  
10 codes as they exist today. Initially, they were under  
11 the old zoning code. At that point in time it allowed  
12 for all the parking that they wanted.

13 MR. O'ROURKE: But if we allow the parking there  
14 and they sell it to John Bob's used cars -

15 MR. LYONS: Once you allow parking in the front  
16 yard, they have the right to park there. You don't  
17 grant a waiver to a specific tenant.

18 ACTING CHAIRMAN NARDACCI: C.J., do you have any  
19 other questions?

20 MR. O'ROURKE: No.

21 ACTING CHAIRMAN NARDACCI: George, do you have  
22 any other questions?

23 MR. HOLLAND: No.

24 ACTING CHAIRMAN NARDACCI: Tim?

25 MR. LANE: No.

1                   ACTING CHAIRMAN NARDACCI: Okay, any members of  
2 the public?

3                   MR. HOLLAND: If you sell cars, you have to have  
4 a place to park them.

5                   FROM THE FLOOR: It's really an accommodation to  
6 our customer base. We've been in business there for  
7 about a year and a half and they need a place to park  
8 their cars. We had an event there on Saturday and we  
9 had 62 Smart Cars in a parade. We probably have 400  
10 cars running around in 16 or 18 months time. They need  
11 a place to bring their cars for service, park them and  
12 pick them up. In this economy, it's a major hardship in  
13 our industry.

14                  MR. LYONS: This dealer has been one of the more  
15 performing dealers when it comes to the parking on  
16 greenspace. I don't recall one letter of notice that  
17 the applicant needed to take cars off the greenspace.  
18 Cars stay where they are supposed to. The cars are  
19 displayed where they are supposed to be. That's one  
20 thing that I can add.

21                  MR. LANE: I have a question for counsel. What is  
22 the definition of meeting the hardship to the waivers?

23                  MR. STUTO: Well, the standard for the waiver is  
24 that they don't use the word hardship, per se. This is  
25 what it says:

1                   For a standard included the word shall or must,  
2                   it is integral to the goals of the district and is  
3                   mandatory. However, the Planning Board may waive these  
4                   standards to the extent that it deems necessary in  
5                   order to secure a reasonable development of the site.  
6                   In such case, the applicant must establish that there  
7                   are no practical alternatives to the proposed waiver  
8                   that would conform to the standard and the Planning  
9                   Board shall issue a written finding stating the extent  
10                  and justification of the waiver.

11                  MR. LANE: So are there any other alternatives?  
12                  Is there parking to the rear? This is it for this lot?

13                  MR. TOMPKINS: We're working with language. We  
14                  have catch basins on site. That's a state catch basin.  
15                  What we're doing is - - our pavement is a little bit  
16                  higher than our detention basin. It's going over the  
17                  surface and it's into the detention basin and they're  
18                  not going anywhere either - then it gets recharged to  
19                  the ground.

20                  In terms of a practical difficulty, if we were to  
21                  try to swap this, now all of the sudden we're getting  
22                  into heavy engineering. We're talking about underground  
23                  piping and all kinds of other stuff that just doesn't  
24                  make any sense. Quite frankly, Mr. Keeler doesn't want  
25                  our detention basin running next to the sidewalk. We

1 want our detention basin here (Indicating). So, this is  
2 a touch higher than here (Indicating). This is where  
3 the water goes. So, maybe you could squeeze some  
4 parking in here (Indicating), but you're putting a  
5 square peg in a round hole. Really, though, this is the  
6 best location.

7 ACTING CHAIRMMAN NARDACCI: Any other questions  
8 or comments?

9 ***(There were no other questions or comments.)***

10 ACTING CHAIRMAN NARDACCI: The chair would like  
11 to entertain a motion to grant this waiver, if someone  
12 would like to make that motion.

13 MR. HOLLAND: I'll make that motion.

14 ACTING CHAIRMAN NARDACCI: Motion by Mr. Holland.  
15 Is there a second?

16 MR. SULLIVAN: I'll second it.

17 ACTING CHAIRMAN NARDACCI: All in favor?

18 ***(Ayes were recited.)***

19 ACTING CHAIRMAN NARDACCI: Opposed?

20 MR. O'ROURKE: I'm opposed.

21 ACTING CHAIRMAN NARDACCI: Waiver carries.

22

23 ***(Whereas the proceeding concerning the above***  
24 ***entitled matter was adjourned at 10:18 p.m.)***

25

**CERTIFICATION**

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*I, NANCY STRANG-VANDEBOGART, Notary Public in  
and for the State of New York, hereby CERTIFY that the  
record taped and transcribed by me at the time and  
place noted in the heading hereof is a true and  
accurate transcript of same, to the best of my ability  
and belief.*

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**NANCY STRANG-VANDEBOGART**

*Dated June 20, 2009*