

1 PLANNING BOARD COUNTY OF ALBANY  
2 TOWN OF COLONIE

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5 HEARING REGARDING THE PROPOSED LIA TOYOTA 126 CAR  
6 PARKING EXPANSION REVIEW AND ACTION ON CONCEPT  
7 SUBMISSION LOCATED AT 2116 CENTRAL AVENUE  
8 \*\*\*\*\*

9 THE TAPED AND TRANSCRIBED MINUTES of the above  
10 entitled proceeding BY NANCY STRANG-VANDEBOGART  
11 commencing on August 25, 2009 at 7:04 p.m. at the  
12 Public Operations Center 347 Old Niskayuna Road,  
13 Latham, New York 12110

14

15 BOARD MEMBERS:

16 TOM NARDACCI, ACTING CHAIRMAN  
17 MICHAEL SULLIVAN  
18 ELENA VAIDA  
19 GEORGE B. HOLLAND, JR.  
20 CHARLES J. O'ROURKE  
21 TIMOTHY LANE  
22 PETER STUTO, Jr. Esq., Attorney for the Planning  
23 Board

24

25 Also present:

26 Joseph LaCivita, Director, Planning and Economic  
27 Development

28 Mike Lyons, Planning and Economic Development

29 Brad Grant, Barton & Loguidice

30 Joe Grasso, Clough Harbour & Associates, LLP

31 Dan Hershberg, Hershberg & Hershberg

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1           ACTING CHAIRMAN NARDACCI: First item on  
2 the agenda is Lia Toyota which is reviewing  
3 action on concept submission for a 126 car  
4 parking expansion at 2116 Central Avenue.

5           Our town designated engineers, Clough  
6 Harbour, has reviewed this project.

7           Joe, do you want to start out and give us  
8 a summary?

9           MR. GRASSO: Basically this project first  
10 came into the town for a DCC review on April  
11 22<sup>nd</sup>. The applicant submitted a concept  
12 application June 17<sup>th</sup>. It went through a review  
13 and then a resubmittal by the applicant and  
14 went before the board for the first time for  
15 concept review and possible determination. We  
16 issued a comment letter dated April 18<sup>th</sup>, which  
17 I'll go through after Dan Hershberg's  
18 presentation by the applicant.

19           ACTING CHAIRMAN NARDACCI: Mike, does the  
20 department have anything in particular?

21           MR. LYONS: No, just know that this does  
22 require the board to act on findings if they  
23 do decide to grant concept acceptance for this  
24 project to allow parking in the front yard.

25           ACTING CHAIRMAN NARDACCI: The applicant,  
Mr. Hershberg?

          MR. HERSHBERG: Thank you Mr. Acting  
Chairman.

          My name is Daniel Hershberg. I'm from the  
firm of Hershberg and Hershberg. I'm here  
today representing Lia Toyota.

          This project is the completion of the  
frontage of Central Avenue from Lia Toyota.  
They had acquired three additional buildings  
which they have demolished and they want to  
continue their parking arrangement.

          We received the comments from Joe Grasso  
and from Mike Lyons and I think that I'm  
prepared to direct my attention to those  
comments.

          The main comment had to do with providing  
another delivery entrance. There are already  
two entrances to the site. This one right here  
(Indicating) is a full service entrance access  
to Lia Collision and service building. It's  
called the main entrance where people are

1 directed to buy cars. This is where the  
2 showroom is (Indicating). Service and  
3 collision is back to the rear of the building.  
4 We thought a separate entrance for delivery  
5 would be beneficial, based upon New York State  
6 DOT's review and their comments regarding the  
7 spacing of driveways. We're willing to give  
8 that up. So, we would say essentially that we  
9 would eliminate the driveway at this location  
10 here but nothing else in the layout of this  
11 area would change. We would just eliminate  
12 that driveway.

13 We're also proposing additional driveways  
14 that exist along Central Avenue as the other  
15 buildings have been demolished so that the end  
16 result will be in compliance with the access  
17 situation that DOT is trying to have done to  
18 reduce the number of curb cuts on the roadway.

19 As Mike mentioned, we do want a variance  
20 to park in the front yard. We want to be able  
21 to continue the frontage and the same  
22 arrangement over here (Indicating).

23 We understand the comments about the  
24 street trees planted here and to be continued.  
25 The applicant is willing to do that. To make  
it more consistent, we'll use a larger  
diameter tree so that they cannot be as out of  
scale with the additional trees that have been  
previously planted.

We do believe that the landscaping  
arrangement currently on this portion of the  
site can be continued. We also would like a  
waiver with regard to the requirement that we  
build a wall or fence.

The third item that we'd like a variance  
for is a bicycle rack. The applicant claims  
that he has never had anybody ride a bicycle  
to his car dealership. That's not to say that  
somebody might not in the future. The fact is  
that normally people are driving there. None  
of his employees arrive by bicycle. So, the  
need for a bicycle rack is superfluous. We  
would ask that be changed.

The rest of the comments are received, as  
noted in the Albany Pine Bush letter. I am  
very familiar with what they are talking about  
with native vegetation. I always point out

1 that we do have a little spot on the site here  
2 (Indicating) that we think would be more  
3 suitable use. Hemlock is native to the Albany  
4 Pine Bush. We don't normally use Pitch Pine as  
5 it doesn't provide much screening. They don't  
6 grow very quickly. They are not very dense. I  
7 think that the letter indicates that Hemlocks  
8 are native species to the Albany Pine Bush.  
9 That's another change that we would not like  
10 to make.

11 We would also review the lighting  
12 requirement. We do have a lighting plan that  
13 we would like to submit. We will review the  
14 lighting request as well.

15 This site is pretty much graded. There is  
16 not an awful lot of material that will be  
17 taken off of that site. However, we have in  
18 the past have made available and sometimes the  
19 Albany Pine Bush have asked for sand from the  
20 project and they use that material to build  
21 dunes.

22 We do have a plan that has only one tree  
23 per island. We would change that on these two  
24 islands (Indicating) and add a second tree and  
25 another one down here so that there would be  
two shade trees per island, as requested.

We are aware of the GEIS needs. What we  
are really asking for are three waivers;  
parking in the front yard, a waiver with  
regard to the fence due to what we're doing on  
the balance of the site, and the bike racks.

ACTING CHAIRMAN NARDACCI: With the  
Lishakill/Kings Road area GEIS, do you know  
what the mitigation fees are?

MR. HERSHBERG: The mitigation fees are  
set. I can tell you for a fact that Lia always  
thinks that they're too high. We pass them on  
to them and they pay them.

ACTING CHAIRMAN NARDACCI: Do you have a  
sense of what the amount is?

MR. LYONS: We actually don't have the  
traffic mitigation back from the CDTC yet.  
Once we get that back we can talk to Dan and  
the applicant.

MR. HERSHBERG: On this particular  
project, the road is primarily driven by  
employees and visitors to the site.

1 MR. LYONS: Just briefly, water is based  
2 on the square foot of new buildings. Since  
3 this is being merged to a parcel with existing  
4 buildings on it that are already paved and  
5 mitigation is based on square footage of  
6 buildings, the traffic mitigation would be  
7 relatively inexpensive.

8 ACTING CHAIRMAN NARDACCI: Before we take  
9 questions from the board, we'll turn it over  
10 to our town designated engineer, Joe Grasso.

11 MR. GRASSO: Dan, can you just describe  
12 the stormwater management?

13 MR. HERSHBERG: Sure. This particular  
14 portion of the site - we were up there and we  
15 noticed that the soil was primarily Colonie  
16 sands. It's a very poor soil.

17 John Dzialo has been pushing people to  
18 use porous pavement whenever you can. We do  
19 have a stormwater management system, in fact,  
20 because a lot of this area had been previously  
21 paved and we did build this new building and  
22 change the footprint of this building. We do  
23 have two stormwater management basins. One at  
24 this location and one at this location  
25 (Indicating) and they use sand filters. This  
area here, rather than having to increase the  
size of that basin, we think we can  
accommodate strictly with porous pavement so  
it allows the water to penetrate to the  
pavement.

People don't believe it but it lands on  
the asphalt and it disappears. If you've never  
seen porous pavement function, go out during  
the rain and look at some of those porous  
pavements. It really does land on the pavement  
and go right through it. Porous asphalt is a  
great product. I've used it for 25 years in  
the City of Albany in the Pine Bush area and I  
think that it's a good product.

According to DEC regulations  
requirements, we do have to do infiltration  
tests on the soil to prove the infiltration  
rate and then we do have to provide a certain  
depth of stone for storage of water and  
cleaning of water. That's what we're using for  
the stormwater management. John Dzialo had

1 indicated that he would like us to use that  
2 surface.

3 MR. GRASSO: We had only a few comments  
4 and I'll read through them.

5 You mentioned about the third curb cut  
6 and we think that it will be an improvement to  
7 the plan. We also applaud the use of porous  
8 pavement for the stormwater management specs.

9 The applicant is requesting a waiver to  
10 allow parking in the front yard. It would  
11 appear that the proposed parking is consistent  
12 with surrounding development. We thought that  
13 the board should consider that waiver.

14 The street frontage of the existing site  
15 contains a row of mature deciduous street  
16 trees that we recommended be extended across  
17 the site's frontage during the DCC review. The  
18 plans depict a mix of low shrubs in the front  
19 yard that are not consistent with the existing  
20 street frontage. We continue to recommend a  
21 row of street trees be incorporated into the  
22 front yard. The use of significantly sized  
23 trees should not significantly impact  
24 visibility of the inventory of vehicles.

25 The preliminary plans include a lighting  
26 fixture and the intent is to be used as  
27 lighting the other lot and that should be  
28 acceptable.

29 The response letter indicates that porous  
30 pavement be utilized and as such the existing  
31 stormwater management area will not require  
32 modification. Calculations should be provided  
33 documenting conformance with the New York  
34 State DEC stormwater design manual.

35 The applicant has requested a waiver of  
36 the zoning requirement for a decorative wall  
37 or fence along 80% of the project's site  
38 frontage.

39 Given the fact that this is an  
40 expansion of an existing site which does not  
41 have any such feature and the adjoining  
42 properties also do not exhibit any such  
43 feature, a waiver of this requirement should  
44 be considered. If a decorative wall or fencing  
45 is deemed necessary by the board for the  
46 project to be consistent with the intent of  
47 the zoning requirement, the entire site

1 frontage should be reviewed for opportunities  
2 rather than just the expanded parking area.

3 Copies of the comments were received from  
4 DOT for the new curb cut on Route 5 and should  
5 be provided to the town office and the  
6 Planning Board to provide coordinated review  
7 of the application.

8 The applicant has requested a waiver from  
9 the Planning Department from a bike rack being  
10 installed on the site and although we support  
11 the accessibility of bicycles, given the type  
12 of retail operation, site location and because  
13 the project does not involve a substantial  
14 increase in use of the site, a bike rack does  
15 not appear warranted.

16 MR. NARDACCI: Thanks Joe.

17 Are there questions from the board?

18 Mike?

19 MR. SULLIVAN: Actually, my first  
20 question which was answered was about the  
21 third curb cut.

22 The other one that I had was basically  
23 about the porous pavement. I've never heard of  
24 that. I was wondering is it on a base of  
25 crushed stone.

MR. HERSHBERG: Actually, you do a layer  
of crushed stone. The crushed stone that you  
use underneath it is different than the  
crusher run that you normally use, which has a  
mixture of large stones, medium stones and  
small stones and some dust. It uses number  
three stone which is a large stone without any  
filler so that there is a lot more storage  
capacity from the stone; 57% of every inch is  
occupied by stones. The way that the stones  
angle in, it voids. So it has a lot of void  
storage in it.

Below that we have a layer of material  
and then it gets to the natural sand. The key  
element with regard to porous pavement is the  
subsoil. There are adaptations for people that  
use porous pavement and they have storage  
capabilities in the stone.

I'm not really in favor of that in the  
northeast because the storage of the water

1 below the stone in the winter would create  
2 problems. Porous soils are defined by the  
3 percolation rate. Conditionally, Colonie sand  
4 has a perk rate of uppers of five to 10 inches  
5 per hour so it's a very rapidly draining soil.

6 The porous pavement doesn't look exactly  
7 like the pavement out in the parking lot. We  
8 call it popcorn because it has more voids in  
9 it. It has larger particles in the surface.  
10 Most asphalt that you're looking at is sand.  
11 It's very fine dust and sand. On a porous  
12 pavement, you're actually looking at the  
13 various size of stone because the mix of the  
14 aggregate favors stones.

15 A concern of this might be when you paint  
16 a line on it, it doesn't have that nice neat  
17 crisp line because the pavement goes up and  
18 down in those little voids so consequently you  
19 have somewhat of a ragged line. Those are the  
20 only two concerns that people complain about.  
21 The functionality of it is wonderful.

22 By example, we put one in Albany 22 years  
23 ago and they just determined that they wanted  
24 to repave it and they repaved it by ripping up  
25 the porous pavement and putting down a new  
26 lawyer of porous pavement because the  
27 stormwater management regs have not gone away.  
28 That was a case where it lasted 22 years.

29 Most people will tell you that an average  
30 asphalt pavement will last along the time  
31 period of 15 to 20 years. You're not giving up  
32 anything with the life of the pavement using  
33 porous pavement.

34 The other concern is that you have to  
35 clean it because the dirt gets into the voids.  
36 I found that once a year during the springtime  
37 you vacuum clean it. You can't just use a  
38 brush on it, you have to use something like a  
39 vacuum. They do have parking lot trucks. A lot  
40 of people see them going around parking lots  
41 in the early morning. They go around and they  
42 vacuum up stuff and they have brushes on them  
43 to sweep everything up. Once a year with that  
44 is enough to keep porous pavement functioning  
45 perfectly fine. It's not a high-maintenance  
46 thing.

47 MR. SULLIVAN: I was concerned about

1 rutting in like a thin layer but you said that  
2 they have one that performed well for 20 years  
in a parking lot.

3 MR. HERSHBERG: If you want to take a  
4 look at 302 Washington Avenue, the BBL  
5 headquarters is all porous pavement except for  
6 the main driving lanes. United Jewish  
7 Federation in Albany and the new building out  
there is porous pavement. There are a lot of  
places that they're using it. It's primarily  
in the Pine Bush because the sand here is so  
forgiving with regard to the rain.

8 As a matter of fact, the only concern is  
9 what happens to the grade over the years and  
we found that it really doesn't degrade at all  
because of the very porous nature of the soil.

10 MR. SULLIVAN: Thank you.

ACTING CHAIRMAN NARDACCI: C.J.?

11 MR. O'ROURKE: I had a couple. Some of  
them were answered.

12 I also wasn't aware of the porous  
pavement. Is that a three inch mix?

13 MR. HERSHBERG: You can do it two ways.  
14 You can either put a Type II binder underneath  
it and then put in a two inch layer of porous  
15 asphalt, or you can do it in a single layer of  
three inches; much like you would do it in  
16 what some would call a driveway mix. You can  
do it either way.

Your grade control is a key element.

17 MR. O'ROURKE: And your client is aware  
18 that it does need to be cleaned?

19 MR. HERSHBERG: Oh, yeah. I think that  
they do a great job of maintaining their sites  
so I don't think that they would give up on  
20 the pavement.

21 MR. O'ROURKE: When you said John Dzialo  
actually preferred it, I wished that he would  
include that in his memos to this board. His  
22 memo to us doesn't even mention that it's  
preferred by the department.

23 MR. GRASSO: C.J., that's a comment that  
24 he brought up during the DCC review where he  
recommended that they use that. Maybe that's  
why.

25 MR. O'ROURKE: I was happy to see the  
curb cut go away, too.

1           The only other comment that I have is the  
2 Highway Safety Committee and the comment from  
3 Ken Pirro just putting it off to DOT. It's my  
4 understanding that our Highway Safety  
5 Committee should be giving their  
6 recommendation in terms of whether it's safe  
7 or not. It's not really a big point now  
8 because they've said that they are not going  
9 to do the curb cut, but I'd like to see our  
10 town departments make assessments when the  
11 board needs them.

12           Other than that, I have no problem with  
13 the bike rack going away, the parking waiver  
14 or the fence issues.

15           ACTING CHAIRMAN NARDACCI: I thought that  
16 you'd be fighting for the bike rack.

17           MR. O'ROURKE: I thought about it.

18           ACTING CHAIRMAN NARDACCI: Elena?

19           MS. VAIDA: I actually was wondering  
20 about the bike rack, believe it or not. I'm  
21 not usually the bike rack fanatic here.  
22 They're trying to encourage pedestrian and  
23 bicycle usage along Central Avenue. That's  
24 part of the goal, I believe. Why would putting  
25 in a bike rack be a big deal?

          MR. HERSHBERG: Actually on this piece of  
property, the bike rack wouldn't go here  
(Indicating), the bike rack would rightfully  
go in the front of the main building, I would  
assume. Anybody with a car for service doesn't  
need a bike because they're driving their car  
in for service.

          MS. VAIDA: Unless they want to bicycle  
in to work.

          MR. LYONS: When I get my van serviced  
there, I put the bike in the van and use that  
when I drop my car off.

          MR. HERSHBERG: Then you don't even need  
that bike rack.

          Again, I don't want to make an issue over  
it. If this board doesn't want to grant the  
waiver, we'll find a proper spot for a bike  
rack. I know that none of the employees use  
bikes.

          MS. VAIDA: I would actually like to see  
a bike rack. I think that it encourages usage  
and people see it and maybe will think of

1 using their bikes. He said none of his  
2 employees ride their bikes to work but you  
3 don't know what the future holds and I don't  
4 think that it's a big deal.

5 MR. HERSHBERG: No, it's not and again,  
6 it's not a financial big deal and there are  
7 plenty of projects near that building where we  
8 can pick a spot to put it. I just requested  
9 the variance because I did not see a need for  
10 it based upon the current business.

11 MS. VAIDA: The reason that the  
12 decorative wall or fencing with the low level  
13 landscaping -- the reason that you're seeking  
14 a waiver on that is why?

15 MR. HERSHBERG: The goal here was to try  
16 to make it look like that and based upon the  
17 request from the TDE and from my clients; they  
18 would extend the mature trees. I think that  
19 it's not going to look unattractive. It does  
20 provide some screening for the cars. A lot of  
21 those are not fully mature. When they get more  
22 mature, they'll provide more screening for the  
23 cars.

24 MS. VAIDA: So it's because it's not on  
25 the other parcels and to make it look  
consistent?

MR. HERSHBERG: That's exactly right.

MS. VAIDA: I don't have anything further

ACTING CHAIRMAN NARDACCI: George?

MR. HOLLAND: No questions.

ACTING CHAIRMAN NARDACCI: Tim?

MR. LANE: I don't have any questions but  
just one comment.

I would wish that they would consider the  
pitch pines as opposed to the hemlock. They  
drink up a lot of water for one thing and they  
do have a distinctive look. They are very  
distinctive trees and it might give it an  
eye-catching thing to see them out there as  
opposed to the hemlock. That's just a personal  
opinion.

MR. HERSHBERG: My position was that we  
would be using it for the screening purpose.  
We were trying to screen the cemetery side. As  
a visual screen, the pitch pines just don't  
work. They work more as isolated lawn

1 plantings and we've used an awful lot of  
2 those.

3 ACTING CHAIRMAN NARDACCI: Okay, my  
4 opinion is that I don't see a need for a bike  
5 rack here. There are certainly times when it  
6 makes sense. We've included them in a lot of  
7 projects. With a site like this it doesn't  
8 seem like it makes a lot of sense.

9 I don't have any issues with the other  
10 waiver requests.

11 Mike, what is our action here tonight?

12 MR. LYONS: Basically to prepare findings  
13 for the waiver for the parking in the front  
14 yard.

15 ACTING CHAIRMAN NARDACCI: It's just the  
16 parking in the front yard. My question is that  
17 if there were four members that weren't happy  
18 with one thing, really, we just need a waiver  
19 for the front yard?

20 MR. LYONS: Yes.

21 ACTING CHAIRMAN NARDACCI: Okay.

22 MR. O'ROURKE: I'll make the appropriate  
23 motion for the parking in the front. My  
24 position would also be to eliminate the need  
25 for the fence and the bike rack.

ACTING CHAIRMAN NARDACCI: Excuse me,  
C.J., we have to consider SEQRA?

MR. O'ROURKE: I'm sorry.

ACTING CHAIRMAN NARDACCI: Is this an  
unlisted SEQRA action?

MR. LYONS: I would recommend that the  
board adopt the findings of a negative  
declaration contingent upon the payment of  
mitigation from the Lishakill/Kings Road area  
GEIS. Based on that, we find that the project  
is consistent with the findings statement with  
the GEIS in that area and we recommend that  
the board declare a negative declaration.

ACTING CHAIRMAN NARDACCI: Is there a  
motion?

MR. LANE: I'll make the motion that we  
accept the neg dec.

MR. HOLLAND: I'll second the motion.

ACTING CHAIRMAN NARDACCI: All those in  
favor?

**(Ayes were recited.)**

1 MR. GRASSO: Are you going to do public  
comment?

2 ACTING CHAIRMAN NARDACCI: Sorry about  
3 that. We'll open it up now for public comment  
before we take the motion on the wavier.

4 Is there anyone form the public that  
would like to comment on this project?

5 **(There were no responses.)**

6 ACTING CHAIRMAN NARDACCI: Thanks, Joe.

7 Now, we'll entertain a motion on the  
waiver.

8 MR. O'ROURKE: I would make the  
appropriate motion to give the parking waiver,  
9 the elimination of the fence with regard to  
the land use and the elimination of the bike  
rack.

10 ACTING CHAIRMAN NARDACCI: Okay, a motion  
has been made. Is there a second?

11 MR. SULLIVAN: I'll second it.

12 ACTING CHAIRMAN NARDACCI: All those in  
favor?

13 MR. SULLIVAN: Aye.

14 MR. HOLLAND: Aye.

15 MR. LANE: Aye.

16 ACTING CHAIRMAN NARDACCI: Aye.

17 MR. O'ROURKE: Aye.

18 ACTING CHAIRMAN NARDACCI: Opposed?

19 MS. VAIDA: Nay. And that's because of  
20 the inclusion of the bike rack, which I didn't  
21 think that we were going to make part of the  
22 waiver.

23 ACTING CHAIRMAN NARDACCI: Mike, did you  
get that?

24 MR. LYONS: Yes.

25 I also need a motion for concept  
acceptance.

MR. O'ROURKE: Yes, I move to accept it.

21 MR. GRASSO: Just to clarify: That motion  
is going to address our comments and all the

22 curb cuts.

23 MR. O'ROURKE: Yes, that's all part of  
it. That's my understanding.

24 MR. STUTO: Just for clarity you might  
25 want to make a new motion. We just did a  
motion on the waivers. Perhaps somebody wants  
to recommend a motion on concept acceptance

1 with the conditions set forth in the  
2 department letter and the town designated  
3 engineer letter.

4 ACTING CHAIRMAN NARDACCI: I think that's  
5 a good move.

6 Is there a motion on concept acceptance  
7 as Peter just laid out?

8 MR. LANE: Can we do that and leave it up  
9 to Lia to decide on the bike rack and leave  
10 the bike rack portion off because it doesn't  
11 necessarily have to be or are we beyond that?

12 MR. LYONS: The findings that the board  
13 needed to do were about parking in the front  
14 yard. It didn't need to include the bike rack  
15 and it didn't need to include the 80%. Those  
16 are recommendations. Those are shoulds and not  
17 shalls in the Land Use Law. So, really the  
18 only waiver that was required from the board

19 is that there be parking in the front yard.

20 Through a concept acceptance motion, you  
21 can put the bike rack up to the applicant and  
22 let them decide and/or elimination of the  
23 third access drive as presented this evening  
24 as well as addressing the various TDE comments  
25 that were provided.

ACTING CHAIRMAN NARDACCI: Okay, if a  
motion was made to grant the waiver and  
include those two other items, does that still  
stand? The motion was made and accepted?

MR. LYONS: Right, the motion for the  
waiver was made.

ACTING CHAIRMAN NARDACCI: And included  
the parking wavier but also the issue relating  
to the bike rack as well as the fencing. It  
makes it pretty clear.

MR. LACIVITA: Can we amend that motion,  
Peter?

MR. STUTO: Yes, you can do anything that  
you want. There is nothing improper about the  
way that you did it. Mike's point is that the  
parking is a mandatory requirement. We need to  
have written findings for that wavier. C.J.  
put in the other two waivers which is how it  
reads in the letters. There is nothing that is  
improper in doing that, in my opinion. We've  
already done the SEQRA and now we're looking

1 for a motion on concept acceptance,  
2 conditioned upon the other conditions within  
3 the two letters; the letter from the town  
4 designated engineer and the DCC. If anybody  
5 wants to amend that motion and put the bike  
6 rack back in, they can.

7 MR. LANE: We already voted on it without  
8 the bike rack, but if it's not too late and we  
9 have to add in the plan acceptance, then to  
10 step back and not necessarily include that  
11 portion of C.J.'s original motion.

12 MR. STUTO: To take out the other two  
13 components of C.J.'s motion? We can do that, if  
14 you want to take them separately.

15 ACTING CHAIRMAN NARDACCI: I think that  
16 we had a motion that was made that was clear.  
17 It clearly outlined issues that came up that  
18 were before us. A vote was taken and those  
19 issues are now clear on direction for the  
20 applicant as well as for the board.

21 MR. O'ROURKE: That's my understanding.

22 ACTING CHAIRMAN NARDACCI: I prefer to  
23 move ahead from there to concept.

24 MR. O'ROURKE: Mr. Chairperson, I will  
25 make that appropriate motion in regard to the  
concept submission.

ACTING CHAIRMAN NARDACCI: Okay, so we  
have a motion now to grant concept acceptance  
with conditions outlined by DCC and the TDE  
and the various town departments.

MR. LYONS: And that includes the curb  
cuts.

ACTING CHAIRMAN NARDACCI: Okay, a motion  
has been made; is there a second?

MR. SULLIVAN: I'll second.

ACTING CHAIRMAN NARDACCI: All those in  
favor?

**(Ayes were recited.)**

ACTING CHAIRMAN NARDACCI: Opposed?

**(There was none opposed.)**

ACTING CHAIRMAN NARDACCI: Granted.

**(Whereas the proceeding concerning the above  
entitled matter was adjourned at 7:35 p.m.)**

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**CERTIFICATION**

*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 October 2, 2009*