

1 PLANNING BOARD COUNTY OF ALBANY
2 TOWN OF COLONIE

3
4 *****
5 FAIRFIELD INN AND SUITES
6 5 FORTS FERRY ROAD
7 REVIEW AND ACTION ON CONCEPT ACCEPTANCE
8 AND FINAL PLANS
9 *****

10 THE TAPED AND TRANSCRIBED MINUTES of the above
11 entitled proceeding BY NANCY STRANG-VANDEBOGART
12 commencing on April 6, 2010 at 9:49 p.m. at the
13 Public Operations Center 347 Old Niskayuna Road,
14 Latham, New York 12110

15 BOARD MEMBERS:

- 16 CHARLES J. O'ROURKE, CHAIRMAN
- 17 THOMAS NARDACCI
- 18 MICHAEL SULLIVAN
- 19 TIMOTHY LANE
- 20 ELENA VAIDA
- 21 PETER GANNON
- 22 PAUL ROSANO
- 23 PETER STUTO, Jr. Esq., Attorney for the Planning
24 Board

25 Also present:

- 26 Joe LaCivita, Director, Planning and Economic
27 Development
- 28 Brad Grant, Barton and Loguidice
- 29 James Boglioli, Esq., Benderson Development
- 30 Jack Fahey
- 31 Tim Nichols

1 CHAIRMAN O'ROURKE: Next is Fairfield Inn
2 and Suites, Forts Ferry Road. A four story
3 125 room, free standing restaurant and retail
4 proposal.

5 Mr. Boglioli is here. Glad to see you
6 again.

7 MR. BOGLIOLI: This project is at
8 5 Forts Ferry Road. For the board, here is a
9 map. Here is Troy Schenectady Road, here is
10 Forts Ferry Road with Wade Road Extension and
11 this is our property (Indicating).

12 It fronts on Forts Ferry and it fronts on
13 the access road to the shopping center, which
14 is the Target shopping center, which you're
15 probably familiar with.

16 This currently has an existing warehouse.
17 That warehouse was abandoned. We're proposing
18 to redevelop this site. This has mostly been
19 cleared and the only thing standing at this
20 point is the warehouse.

21 With respect to the project, the right-in
22 and right-out access is proposed on
23 5 Forts Ferry Road. The only full access is
24 proposed along the shopping center access.

25 It's a four story hotel. The first floor

1 square footage is 17,600 square feet. There
2 are 125 rooms. We are proposing a small out
3 parcel building. It will be a 2,200 square
4 foot restaurant and an 8,500 square foot
5 retail area proposed. Proposed are 203 parking
6 spaces. The project does not require any
7 variances. It's in the H4 district and it
8 complies with all the zoning requirements. Of
9 our area, 35% is dedicated to greenspace. Our
10 stormwater detention area is in this area
11 (Indicating) and we are proposing significant
12 green around all of the buildings, along the
13 front and along the side as well as the area
14 over here (Indicating). We'll discuss what
15 we've done to mitigate this area here since
16 concept approval.

17 Concept approval was issued in
18 June 27, 2006. A negative SEQRA declaration
19 was issued at that time. There have been no
20 significant changes in this project since that
21 time. This is very similar to what was brought
22 to the board except we addressed the
23 additional comments.

24 We resubmitted this in March of 2008 and
25 the board had asked why there was a two-year

1 delay. I can tell you that we are in the
2 business of building buildings.

3 When the concept approval was granted,
4 the then Planning Board requested that we have
5 no full access on Forts Ferry Road and that
6 the access be off the shopping center access.
7 We do not control the shopping center access.
8 That approval required that we go to the owner
9 of the shopping center and get a written
10 easement. They had to get approval from Target
11 at their corporate headquarters. That took two
12 years to negotiate that easement.

13 As soon as we had that easement, we
14 submitted that to the town on March 18, 2008.
15 We then waited a year without comment from the
16 town and we were lucky enough at that point
17 that the town recommended a TDE be added to
18 the project.

19 We met with that TDE in February of 2009
20 and we have worked with the TDE since that
21 time to address all the comments and concerns
22 on this project. We believe that we have
23 addressed his comments.

24 On October 13, the PEDD issued a letter
25 saying that we have met all of their concerns.

1 On December 21, 2009 the TDE issued a letter
2 and there were seven, I believe, housekeeping
3 comments and I'll discuss those. We have
4 addressed all the TDE's concerns.

5 I just want to go over all the issues
6 with respect to concept and the other issues
7 that we addressed. As I noted, we did provide
8 a written access easement. There were some
9 additional pedestrian connections between the
10 buildings and to get to the shopping center.
11 We have planters for this area of the building
12 and additional plantings around the motel and
13 we have added that. We were asked to provide a
14 landscaping berm in this area (Indicating) to
15 prevent any headlights from shining into this
16 potential residential neighbor. All parking
17 with headlights would be facing that direction
18 (Indicating). We did add the berm before we
19 landscaped the berm so that there would be no
20 impacts in that way.

21 This is known as the Golden property. We
22 were asked to provide a future access point.
23 This property is already developed so they
24 could cross into our property with cross
25 access. On the site plan it's shown - you

1 can't see it here but it is about here and we
2 did provide the future access that we were
3 requested to provide.

4 There were 17 technical comments and I
5 believe most of them were addressed.

6 We asked the board to approve this. We
7 addressed all the comments. We worked with the
8 TDE and we're very excited about this project.

9 CHAIRMAN O'ROURKE: Thank you. I'd just
10 like to take two minutes and speak.

11 I'm very upset that this project has
12 taken four years to come before this board. As
13 much as I went off about the project that's
14 been 11 years and some of the difficulties
15 that project has had, this project in my
16 opinion should have been before this board
17 much, much sooner. I think that sometimes
18 people involved don't look at it like it was
19 their own 401K because if they invested in
20 their 401K and got no return for four years,
21 they would probably stop. So, we're certainly
22 happy that this project has come before us so
23 that we can let them get building.

24 The difficulty that I have is with the
25 concept expiring. Again, I think that it's all

1 been addressed and my plan is tonight to
2 reaffirm concept this evening and then act on
3 final all in the same breath. That's just to
4 get around any of the boloney and tie ups that
5 have happened over the course of these four
6 years.

7 With that said, Brad, would you just take
8 us through the project?

9 MR. GRANT: We offered several comment
10 letters. The first was March 24, 2009. A
11 number of the issues back then had to do with
12 the storm drainage. As he was saying the storm
13 drainage is at the rear of the property but
14 connects to an existing drainage system that
15 has some limitations. There is a 12-inch pipe
16 that we see as the outflow from the detention
17 facility. One of the things that when we
18 worked with Jim Gillespie of Bohler was the
19 sizing the detention basin, following their
20 water quality wetland find. We were able to
21 work through and get enough volume. We wanted
22 to avoid the fickle finger of fate of the
23 people down in the adjacent shopping plaza
24 pointing at this project as the cause of a
25 drainage problem. I was happy that we were

1 able to work though that. It was eliminated in
2 our last comment letter. It did have the seven
3 items. There was Mike Lyons with Planning's
4 comments and there is some fairly substantial
5 impact fees being in the airport GIS area.
6 Those will be taking place over one-third
7 payments through the process.

8 MR. NARDACCI: What is the dollar amount
9 of those, Brad?

10 MR. GRANT: Well, \$117,947 was the
11 figure.

12 CHAIRMAN O'ROURKE: About \$5 a square
13 foot, right?

14 MR. BOGLIOLI: About \$5 a square foot.

15 MR. GRANT: We worked through
16 departmental comments, hold harmless
17 agreements and the condition of the sewer in
18 back and tying into it some verification via
19 test pits. One thing that will be required
20 when the actual tenant is known for the front
21 building is that is going to have grease traps
22 because it's likely to have food service.

23 MR. BOGLIOLI: At this point we don't
24 have plans for the front building.

25 MR. GRANT: But the provisions for those

1 have been made. A lot of this was
2 housekeeping. I'm just looking for anything
3 substantial. It's a busy area right now. I
4 hope they finish that bridge for you and don't
5 pull the plug on that.

6 CHAIRMAN O'ROURKE: Is your plan to start
7 construction now?

8 MR. BOGLIOLI: We are trying to mobilize
9 and start construction. We're not able to
10 really time it because of the element of the
11 approval. With the time that it's taken to get
12 this back from the board, we've lost one hotel
13 chain.

14 MR. GRANT: There will be a demolition
15 permit required for the existing facility
16 that's there.

17 CHAIRMAN O'ROURKE: That will be done
18 this year, right?

19 MR. BOGLIOLI: I would hope so.

20 MR. GRANT: What's there now would not
21 win any architectural awards.

22 CHAIRMAN O'ROURKE: It is not.

23 Tom?

24 MR. NARDACCI: Just a brief comment and a
25 couple of questions.

1 First, it's a great project and a
2 redevelopment of a site. We talked a lot about
3 redevelopment, the town administration, the
4 Planning Department, the Planning Board have
5 all consistently said that redevelopment of
6 parcels is a priority. We've tried to expedite
7 the process. We can't speak for things that
8 happened five, six, or seven years ago but in
9 the last two years we would take full
10 responsibility for.

11 Your company has the ability to
12 exemplify -- the Fresh Market project is a
13 model that we should be looking at. I just
14 want to say that I appreciate you coming back
15 with another redevelopment project. Hopefully
16 the next time that we'll see you, we'll have
17 another redevelopment project. Hopefully it
18 doesn't take you four or five years. It should
19 take you nine months or less. I think that's
20 our goal here.

21 Certainly this area of town has seen a
22 lot of development and a lot of action and
23 this would be a nice addition.

24 The landscaping plan, I thought, was
25 really good. There are a lot of trees on the

1 site. We don't see that a lot. We're always
2 asking for more trees, asking for more green.
3 I thought that was nice that there was a
4 detailed landscaping plan.

5 You don't need any waivers on the
6 parking. It's exactly what's required and the
7 greenspace on the site will meet the 35%
8 greenspace requirements, correct?

9 MR. BOGLIOLI: That's correct.

10 MR. NARDACCI: As far as just a couple of
11 dumpsters on the site, they'll be enclosed?

12 MR. BOGLIOLI: Yes, and screened.

13 MR. NARDACCI: I think that's it.

14 CHAIRMAN O'ROURKE: Thanks, Tom
15 Paul?

16 MR. ROSANO: I don't have anything.

17 CHAIRMAN O'ROURKE: Elena?

18 MS. VAIDA: I think that everything looks
19 great. Regarding the issue that I have - and
20 it's not really an issue. It's really more
21 wording.

22 I just consulted with our attorney on
23 this, but as far as I'm concerned the purpose
24 of the concept approval process is so that you
25 get an idea from the Planning Board what the

1 feelings are and if changes need to be made to
2 the plan.

3 It seems that you've done everything that
4 was asked of you to do over the years. You
5 changed the plans, you went and got an
6 easement, which I can imagine was a lot of
7 work and expense. So, the fact that the
8 concept approval has lapsed doesn't concern me
9 and I actually don't think that the Land Use
10 Law actually requires that to be in place
11 prior to an approval for final approval. I say
12 that because when I read through the Land Use
13 Law again today on this issue, it would appear
14 that if you brought this before the board and
15 we had rejected the concept you still would
16 always have the option of bringing it before
17 the board for final approval even if we
18 rejected the initial concept.

19 So, I don't see where it's a prerequisite
20 and I'd be more comfortable -- the reason I
21 say this is because we have turned other
22 applicants down who have had passed the
23 deadline - the two-year deadline and they're
24 not grandfathered in. So, rather than start a
25 precedent and saying okay, we'll renew it now

1 or we'll accept it now, I just would prefer
2 going right to the merits of the project. It's
3 not necessary. I think that you did everything
4 that you were supposed to do and I'd be ready
5 to vote for the project without it.

6 MR. BOGLIOLI: Just for the record, we
7 were granted concept approval when the code
8 changed. We were granted an extension. Every
9 year we asked for a request for that
10 extension. I have the letters that I have
11 submitted. When I got your e-mail that the
12 concept had expired, we were as in shock as
13 the board was. I just want to submit those
14 letters because the board should have them.

15 MS. VAIDA: And I think that we've been
16 notified of that. I believe that there needs
17 to be a change in the Land Use Law on this.

18 MR. LACIVITA: Would you consider an
19 extension on the concept on that?

20 MS. VAIDA: It's not even necessary.

21 MR. LACIVITA: I'm saying that I think
22 that the timeline is too tight when you find
23 projects like this.

24 MS. VAIDA: The Land Use Law says that
25 you really can't go beyond two years. There

1 are no exceptions and there's not anything
2 written in the Land Use Law. So, I am not
3 comfortable doing it, personally. Other
4 members may be.

5 I'm also comfortable going forward with
6 the project. I think that he did everything
7 that he was supposed to. I don't think that
8 it's going to stand in the way of giving him
9 an approval if everyone wants to give him an
10 approval, which is where I'm leaning. That's
11 just the way that I feel.

12 MR. LACIVITA: That's the question that
13 I'd have. A project like this did everything
14 asked of them. Then they hit another brick
15 wall and they're trying to market things and
16 do certain things that they have to do for the
17 project in the concept timeframes that the
18 Land Use Law put on him. One is to get rid of
19 concept timeframes or we extend it to be more,
20 you know, whatever the concept is going to be.
21 Maybe you have five years to get the project
22 done. Whatever works. When you have a
23 developer here that has done absolutely
24 everything that he's been asked to do -

25 MS. VAIDA: Right, and what I'm saying is

1 that doesn't stand in his way of moving
2 forward just because it expired. The whole
3 purpose is just to get on the same page with
4 the Planning Board so that the project can
5 move forward. He did all of that. It's a
6 technicality. It's not a requisite to getting
7 final approval having a valid concept approval
8 in place that hasn't expired.

9 CHAIRMAN O'ROURKE: Timeframes do have
10 their merits when reasonably done. It's been
11 the history within this town sometimes to not
12 be reasonable.

13 MR. LANE: It's different then if they
14 let the project sit for two years.

15 MR. NARDACCI: I think that part of it
16 too is with some of the internal discussions
17 that we've had about allowing applicants to
18 come in and do sketch plan review not outlined
19 in the Land Use Law. It allows us a chance to
20 review the project. I'm not a lawyer but it's
21 very vague. It says even if you're denied
22 concept, you can still submit a final plan.
23 There's nothing that says that you have to
24 have concept and then have to have a final.

25 MS. VAIDA: Correct.

1 MR. STUTO: Also, the Town Attorney and
2 the Supervisor's office have been actively
3 discussing the revising these items in the
4 Land Use Law and to move away from the
5 formality of the concept approval and just
6 have a sketch plan review formally put in here
7 so that the Planning Board can take the bull
8 by the horns.

9 CHAIRMAN O'ROURKE: So, your
10 recommendation is to just leave concept alone.

11 MR. STUTO: Elena, you have reversed
12 yourself.

13 MS. VAIDA: I know that I have. That's
14 what I said.

15 MR. STUTO: The old staff used to say, do
16 you want to reaffirm concept and there was
17 questions made - did they put in a new
18 application fee, did they redo an application
19 because it's already expiring after the two
20 years.

21 MR. BOGLIOLI: The staff did require that
22 we submit a new application.

23 MR. STUTO: I don't see any harm in doing
24 concept.

25 CHAIRMAN O'ROURKE: That was my only

1 thought.

2 MR. NARDACCI: Are there other projects
3 where we approved concept and then filed -

4 CHAIRMAN O'ROURKE: Yes, there are two
5 other ones.

6 MR. NARDACCI: It's the exception, but
7 we've done it.

8 CHAIRMAN O'ROURKE: Right, but it was to
9 get around the extension.

10 MR. STUTO: And it's from over substance.
11 I would say that this board has the authority
12 that if they have adequate information in
13 front of them to make a final determination, I
14 don't think that there is any harm in doing
15 the concept.

16 MS. VAIDA: No, I'm saying that we can
17 make a final.

18 MR. STUTO: Right, and I'm saying that
19 there is no harm in doing concept, as well.

20 MS. VAIDA: I guess that we need to get
21 that clarified if that's the prerequisite to
22 going to final.

23 MR. STUTO: I wouldn't say that you could
24 skip concept approval.

25 MS. VAIDA: I would say that you can.

1 MR. STUTO: You could skip the whole
2 process here for concept?

3 MS. VAIDA: You could if you want. I
4 don't think that a smart builder would do
5 that. I think that you could though.

6 MR. STUTO: This talks about upon concept
7 acceptance plan - right under final site plan
8 review and approval. Upon acceptance of
9 conceptual plan by the Planning Board or in
10 the event that the applicant wishes to proceed
11 with the rejected conceptual plan, the
12 applicant shall prepare and submit a final
13 plan. Those are two alternatives; either
14 concept - acceptance or rejection. I would
15 argue that you have to go through at least
16 that process.

17 MS. VAIDA: Okay, I wouldn't disagree
18 with that. I don't think that we need to get
19 so hung up on whether it expired or not but we
20 do need to be consistent.

21 CHAIRMAN O'ROURKE: I think that we do
22 need to worry about the expiration.

23 MR. NARDACCI: The consistent thing to do
24 would be approval for concept as well. We have
25 done it in the past.

1 CHAIRMAN O'ROURKE: That's my only thing.
2 We're going to treat Benderson the same way
3 that we're going to treat Vandeloo, and the
4 same way that we're going to treat anybody
5 that comes before this board, in my opinion.

6 MS. VAIDA: That's what I'm trying to do.
7 I just think of other applicants that have
8 been before us whose concept expired and we
9 didn't go forward with the project because
10 they were outside the time limit.

11 MR. STUTO: Those were probably a lot
12 more years. The board didn't have the adequate
13 materials in front of them to act on them.

14 MR. NARDACCI: Those applications came in
15 with the expectation from the applicant that
16 we already had it before, just do it
17 again - sort of a situation. He didn't go
18 through the due diligence that this project
19 has gone through in working through
20 everything.

21 MS. VAIDA: And the other difference is
22 that they have written documentation from our
23 attorneys granting extension. Whether that is
24 the way to do it or not, they have it.

25 MR. BOGLIOLI: We have one extension in

1 writing in 2007 and the rest we called after a
2 meeting and were advised that we had
3 extensions. Sometimes getting written
4 documents in the past was not always easy.

5 CHAIRMAN O'ROURKE: Okay, anybody in the
6 audience?

7 Yes, sir.

8 MR. FAHEY: That adds to my confusion.
9 Concept expired in June of 2008 after their
10 second extension. If they knew that they were
11 getting lied to by somebody, they could have
12 had a freedom of information request in a few
13 minutes.

14 The plan itself - I consider there to be
15 substantial change in the original concept.
16 That was the right-in and right-out to Forts
17 Ferry Road. Prior to this, it was just the
18 access from the Target driveway, or whoever
19 owns it. Right up the road there is a right-in
20 and right-out and our local motorists treat
21 that as a suggestion. They take lefts-in and
22 lefts-out despite the geometry. That road is
23 going to be very close to the Northway and the
24 traffic light. I think there were 45 p.m.
25 peaks. With what's going on now with rejected

1 development on the other side of 7 and no left
2 turns into Albany RV, the hotel that was
3 proposed over there and the two restaurants,
4 Forts Ferry Road is just going to get beat up
5 more. The road is already starting to
6 deteriorate but with the traffic backing up at
7 those lights, people would be hard pressed to
8 use that right-in and right-out. If they do,
9 they try to take a left-out of there, there's
10 going to be accidents on that road.

11 Just to speak to your conversation up
12 there about concept expiring after two
13 years - you saw tonight earlier that nine
14 years of concept and hanging on and hanging on
15 leaves everybody with that mess. So, in two
16 years the applicant comes in and gets an
17 extension and another extension. At least the
18 applicant lets you know that they're alive.
19 They let you know what their plans are and you
20 can communicate with them with whatever
21 changes you want.

22 I'm looking forward to the old plan going
23 away, too.

24 Can you take those other remaining trees
25 on the other side of the road? The sunlight

1 peaks that road every day. Seriously, you
2 cannot see that road at certain times of the
3 day.

4 MR. BOGLIOLI: If I can just address that
5 comment. The plan was granted concept approval
6 for a right-in and right-out. It is discussed
7 in the minutes before the board at that time.
8 We actually submitted plans with full access
9 and we removed this -

10 CHAIRMAN O'ROURKE: Right, at concept.

11 MR. BOGLIOLI: It's a condition of the
12 town for emergency access. Most hotels require
13 two accesses. The traffic study was submitted
14 for this project to the board, also. We did
15 have traffic testimony from Creighton Manning
16 from 2006, so this is the plan that we're
17 asking for approval for.

18 CHAIRMAN O'ROURKE: Anybody else in the
19 audience?

20 MR. FAHEY: I didn't see that in the
21 minutes about Forts Ferry Road at all. There
22 were 13 conditions attached to the concept
23 acceptance and none of those speak to that.
24 The extensions are not in there either. They
25 were discussed, I know that.

1 MR. BOGLIOLI: It's right here. We were
2 only showing that there was one driveway and
3 we had to create another access point. I was
4 at that meeting. For the record I'm stating as
5 an attorney that we had proposed a right-in
6 and right-out.

7 MR. FAHEY: It was my recollection that
8 there were two access points off the private
9 road and no access on Forts Ferry.

10 I'm reading from Joe's June 27, 2006
11 minutes.

12 The applicant does not wish to have
13 direct access to Forts Ferry Road and desires
14 to have two access drives on the Latham retail
15 driveway for each of the two building's uses,
16 as well as that provides emergency access to
17 the site.

18 So even the applicant, according to the
19 minutes, the record that the town has, is on
20 the second page of the minutes of that meeting
21 of June 27, 2006. It's in the first paragraph.

22 Access proposed solely from the Latham
23 retail driveway.

24 CHAIRMAN O'ROURKE: That can't be the
25 case because it talks about Member Herman in

1 favor of the current access points and
2 interior traffic pattern pending a signed
3 agreement with Latham retail center.

4 MR. FAHEY: That was condition number 12
5 of the signed agreement of the Latham retail
6 for the two accesses off that driveway. That
7 was condition 12 on page three.

8 MR. BOGLIOLI: The issue was full access.
9 I was at that meeting. The issue was full
10 access on Forts Ferry Road and regardless of
11 what the issue was then, this is the plan
12 that's been proposed and the TDE has been over
13 it.

14 CHAIRMAN O'ROURKE: I agree.

15 MR. BOGLIOLI: It's a hotel and the fire
16 safety needed to have more than one access.
17 Legally we have the right to have one access
18 on Forts Ferry Road.

19 CHAIRMAN O'ROURKE: Yes, Tim.

20 MR. NICHOLS: I just wanted to say that
21 is part of the commitment and change. If
22 you're going from a full access to a partial
23 access, that's a significant change in my
24 view.

25 The other question that I had really has

1 to do with the process of tearing down the
2 current building and given what's going on at
3 Exit 6 and the traffic jam that's creating
4 now, are there any restrictions and guidelines
5 as to how they're going to possibly use
6 Wade Road versus Route 9 and Route 2 so that
7 they're not coming down Forts Ferry Road and
8 Mill Road as they demolish the building and
9 bring in new equipment?

10 MR. NARDACCI: Sir, they did submit a
11 demolition plan. That's part of the plans that
12 were reviewed. Just so you know, that is in
13 there and there is a demolition plan. With
14 regards to traffic, they're not in here.

15 MR. BOGLIOLI: Before I get any
16 construction trucks in Colonie, we have to
17 meet with the town and all the parties to
18 discuss the issue such as where the trucks
19 will come in. We'll abide by any conditions in
20 working with the town. We don't want any
21 trucks going through any residential
22 neighborhoods. That's not the way that we
23 operate. We'll work with the town with that.

24 MR. NARDACCI: It says contractor will
25 provide traffic control and generally accepted

1 safe practices in conformance with the Manual
2 of Uniform Traffic Control as well as federal,
3 state highway impact roadway rights of way.

4 MR. NICHOLS: I'm talking about the
5 actual demolition. There are already issues
6 right now at Exit 6 and that's been going on
7 for quite awhile.

8 CHAIRMAN O'ROURKE: Tim, I hear what
9 you're saying but again, it shouldn't impact
10 this gentleman from developing the property
11 that he bought four years ago. Let's just make
12 sure that we're reasonable in asking him to
13 work with Planning and Economic Development as
14 they demolish it to keep the trucks out of the
15 neighborhood.

16 MR. LANE: Can we put in a requirement
17 that they could be kept off of certain roads?

18 CHAIRMAN O'ROURKE: I don't know if we
19 can do that.

20 MR. STUTO: Do you have any objection to
21 that?

22 CHAIRMAN O'ROURKE: The neighborhoods to
23 the north.

24 MR. BOGLIOLI: We would keep them out of
25 the neighborhoods to the north. We would just

1 have to get back on Troy Schenectady Road.

2 CHAIRMAN O'ROURKE: Either Wade Road
3 Extension to the end, and up Sparrowbush -

4 MR. BOGLIOLI: Yes, we would agree to
5 that.

6 CHAIRMAN O'ROURKE: And out.

7 MR. BOGLIOLI: Yes, that's fine.

8 CHAIRMAN O'ROURKE: Or off of Route 7.
9 You'd come up to Wade Road Extension and you'd
10 go right to Sparrowbush or left to Route 7 and
11 just keep them out of the neighborhoods.

12 MR. BOGLIOLI: We're fine with that.

13 MR. FAHEY: One more question, C.J.

14 Do you have a tenant yet for the retail
15 restaurant?

16 MR. BOGLIOLI: We have no tenant yet.

17 MR. FAHEY: That concerns me. There are
18 enough signs around and across seven at Latham
19 retail there are three empty stores, two of
20 which have never been rented. I don't like
21 seeing that anywhere in the town.

22 MR. BOGLIOLI: This is an approval. It
23 doesn't mean that we're going to construct
24 that building. With the current market, I'm
25 not going to construct a building without a

1 tenant. If the hotel goes up and there isn't a
2 tenant, then they're not going to want to
3 spend the money to put up the building.

4 CHAIRMAN O'ROURKE: They're paying \$5 a
5 square foot. They're going to want to build
6 it.

7 MS. VAIDA: Does the setback need to be a
8 condition or was it resolved?

9 MR. GRANT: I think that needs to be a
10 condition. The 30 feet in front is a sewer
11 easement.

12 MR. BOGLIOLI: I didn't know if that was
13 still an issue. I can address that to the
14 board.

15 There is a 30 foot sewer easement on this
16 property so I can push the building within
17 that setback. There is no parking in front of
18 the building. That's the intent, I believe, of
19 that section of the code. We've met that in
20 the spirit of that condition.

21 CHAIRMAN O'ROURKE: I wish it was a
22 70 foot sewer easement. That's how much that
23 Land Use Law makes sense.

24 MR. NARDACCI: We have to vote on a
25 waiver?

1 CHAIRMAN O'ROURKE: Yes.

2 So, I'm looking for a motion on the
3 waiver in terms of the front setback from 30
4 to 50.

5 MS. VAIDA: I'll make that motion.

6 MR. ROSANO: Second.

7 CHAIRMAN O'ROURKE: All those in favor?

8 ***(Ayes were recited.)***

9 CHAIRMAN O'ROURKE: Opposed?

10 ***(None were opposed.)***

11 CHAIRMAN O'ROURKE: You have your waiver.

12 I'm looking for a motion -- Joe, you want
13 to read off any contingencies?

14 MR. LACIVITA: The only condition that
15 I've heard and I know Brad just spoke of one
16 which I didn't get a chance to write down is
17 to work with Planning and Economic Development
18 to keep the trucks out of the neighborhoods.

19 I know Brad; you talked about the
20 easement or the waiver?

21 MR. GRANT: That was the waiver.

22 MR. LACIVITA: That's the only thing that
23 I had.

24 CHAIRMAN O'ROURKE: And any outstanding
25 items?

1 MR. LANE: They would just provide the
2 route that they're coming in and out.

3 MR. STUTO: Well, he's agreed not to go
4 into the neighborhoods.

5 MR. BOGLIOLI: Right, I've agreed on the
6 record not to go into the neighborhoods.

7 MR. LACIVITA: And any departmental
8 comments or TDE comments.

9 CHAIRMAN O'ROURKE: Yes those need to be
10 addressed and the mitigating funds are paid.

11 MR. LANE: Do we have to reaffirm
12 concept?

13 CHAIRMAN O'ROURKE: Yes, we do have to
14 reaffirm concept.

15 MR. LANE: I'll make a motion.

16 CHAIRMAN O'ROURKE: I have the motion. Do
17 I have a second?

18 MR. NARDACCI: Second.

19 CHAIRMAN O'ROURKE: All in favor?

20 **(Ayes were recited.)**

21 CHAIRMAN O'ROURKE: Opposed?

22 **(There were none opposed.)**

23 CHAIRMAN O'ROURKE: Concept has been
24 affirmed.

25 Now, do I have a motion on the final

1 approval?

2 MR. ROSANO: I'll make a motion.

3 MR. SULLIVAN: I'll second.

4 CHAIRMAN O'ROURKE: All in favor?

5 ***(Ayes were recited.)***

6 CHAIRMAN O'ROURKE: Opposed?

7 ***(There were none opposed.)***

8 CHAIRMAN O'ROURKE: Good luck.

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(Whereas the proceeding concerning the above

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entitled matter was adjourned at

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10:26 p.m.)

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CERTIFICATION

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

11
12
13
14 **NANCY STRANG-VANDEBOGART**

15
16
17 **Dated May 10, 2010**