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PLANNING BOARD COUNTY OF ALBANY  
TOWN OF COLONIE

\*\*\*\*\*  
BERKSHIRE BANK  
98 WOLF ROAD  
APPLICATION FOR CONCEPT ACCEPTANCE  
\*\*\*\*\*

THE STENOGRAPHIC MINUTES of the above entitled  
proceeding BY NANCY STRANG-VANDEBOGART, a Shorthand  
Reporter, commencing on July 12, 2011 at 8:33 p.m.  
at the Public Operations Center  
347 Old Niskayuna Road, Latham, New York 12110

BOARD MEMBERS:

PETER STUTO, CHAIRMAN  
MICHAEL SULLIVAN  
TIMOTHY LANE  
LOUIS MION  
KATHLEEN DALTON  
PAUL ROSANO  
THOMAS NARDACCI  
ELENA VAIDA, Esq., Attorney for the Planning Board

Also present:

Joe LaCivita, Director, Planning and Economic  
Development  
Joe Grasso, PE, Clough Harbour and Associates  
Daniel Hershberg, PE, Hershberg and Hershberg

1                   CHAIRMAN STUTO: The next project we have  
2 is the Berkshire Bank, 98 Wolf Road;  
3 application for final site plan review.

4                   Joe, do you want to bring us up to date  
5 as to where we are?

6                   MR. LACIVITA: We're here for final. It's  
7 a 2,600 square foot branch bank. It's been  
8 under TDE review by Clough Harbour and Joe  
9 Grasso.

10                  From your packets this evening, you'll  
11 see that we have SEQRA in there. There are a  
12 couple of small waivers that we're looking to  
13 do and we're asking the Board for the final  
14 site plan approval this evening.

15                  CHAIRMAN STUTO: Joe Grasso, do you want  
16 to go through your commentary?

17                  MR. GRASSO: Yes, just to expand upon  
18 what Joe said, the project is up for final  
19 site plan review. We issued a comment letter  
20 dated June 15<sup>th</sup> on preliminary final plans,  
21 which identify 18 items. The applicant's  
22 consultant has made a follow-up resubmission  
23 to us in response to those, and substantially  
24 addressed most of the comments. I'm sure that  
25 he'll discuss those comments in his

1 description of the project.

2 Included in that June 15<sup>th</sup> letter was a  
3 draft resolution for the three waivers. We  
4 prepared that draft resolution based on  
5 previous discussions of the project during  
6 previous Planning Board reviews, as well as  
7 information that was provided by the applicant  
8 during the various site plan submissions.  
9 Because the building proposed is less than  
10 4,000 square feet, it qualifies as a Type II  
11 SEQRA action and no additional SEQRA review is  
12 required. You'll see documentation in your  
13 packet to that effect, so there is nothing  
14 more regarding the SEQRA. So, the two things  
15 under consideration by the Planning Board  
16 tonight are final site plan approval and  
17 approval of the waiver findings or any  
18 modifications to those that the Planning Board  
19 may deem appropriate.

20 CHAIRMAN STUTO: Okay, I have a review  
21 letter. Before we give it over to the  
22 applicant -- Joe, is the proposed resolution  
23 for the waivers in our package?

24 MR. LACIVITA: Yes.

25 MR. GRASSO: It's on the back of the

1 letter.

2 CHAIRMAN STUTO: Okay, we'll turn it over  
3 to the applicant for comment.

4 MR. HERSHBERG: Thank you Mr. Chairman.  
5 My name is Daniel Hershberg from Hershberg and  
6 Hershberg. I'm here today representing  
7 Berkshire Bank.

8 With me is Terrance from BBL Construction  
9 Services and he brought with him a sample of  
10 the stone which was requested.

11 CHAIRMAN STUTO: Thank you.

12 MR. HERSHBERG: This is a sample of the  
13 block and that is the block that is shown on  
14 the elevation that you should have. It  
15 actually is the lower portion of the building.  
16 The plan has changed slightly in response to  
17 comments.

18 First was the issue of why we need the  
19 overly wide driveway by the front of the  
20 building which caused us to have to put the  
21 fence into the sewer easement. The answer is  
22 that we ran turning templates for a dumpster  
23 truck getting around here (Indicating). We did  
24 not need the extra space, so we shortened the  
25 pavement up. We originally had like a 30-foot

1 wide pavement here and we shortened it up to  
2 24 feet. That leaves more greenspace on the  
3 site and that dispensed area can be totally  
4 out of the sewer easement. So, we don't have  
5 to go with a hold harmless agreement between  
6 us and Pure Waters.

7 There were some other changes that we  
8 did, we revised some landscaping, as  
9 requested.

10 CHAIRMAN STUTO: I need to stop you for  
11 just a second. Where are we on greenspace?

12 MR. HERSHBERG: The greenspace on this  
13 side is -- the backside only is 36.2. The  
14 green area for the entire site, including the  
15 back site is 34. If you were to remove the  
16 road taking at the rear that was turned over  
17 to the Town, you'd have 39.9 percent green. So  
18 this goes right back to that original  
19 agreement, a copy of which was attached to the  
20 information from an earlier Planning Board  
21 determination. This was due to the fact that  
22 the developers had agreed to dedicate a piece  
23 of property for the road that they determined  
24 would allow a lesser greenspace requirement in  
25 the future. That affected this area as well as

1 the pharmacy area, which at the time was  
2 Jerry's Bike Shop when this project was first  
3 approved.

4 The sidewalk connection is here so that  
5 pedestrian access is more clearly. We put a  
6 crosswalk into the building. We moved the  
7 canopy back so that it lined up with the curb  
8 so that there will be no problem.

9 There was a question raised by Fire  
10 Safety as to whether or not there would be a  
11 problem getting underneath the canopy. We  
12 moved it back so that it lines up with the  
13 curb so that there is no reason to have any  
14 conflict with that canopy. We addressed some  
15 questions regarding sewer laterals. Overall,  
16 there doesn't appear to be any issues.

17 We got a memo yesterday from Adam [SIC]  
18 Wans from the stormwater office. We've already  
19 made those changes. We relocated the silk  
20 fence and some other items that you said you  
21 wanted us to do. So, I think that we're all  
22 set with the comments that we received.

23 Joe's letter had a number of issues that  
24 were addressed. We sent a letter out on  
25 June 26<sup>th</sup> or so that went through all the

1 items. We listed all of Joe's items and we  
2 addressed them. We think that all of the site  
3 issues that were raised have been fully  
4 addressed at that time or were minor issues  
5 raised in that letter. We don't think that  
6 there are any unresolved site plan issues with  
7 regard to this project.

8 We'd be happy to answer any questions  
9 this Board may have.

10 CHAIRMAN STUTO: Do you have any more  
11 comments, Joe?

12 MR. GRASSO: Yes, I do. There are two  
13 more things that I think I'd like to highlight  
14 for the Board.

15 There was a previous comment made by our  
16 office regarding the use of imitation stone.  
17 The design guidelines don't recommend the use  
18 of imitation stone. What we discussed during  
19 the concept review was if they could provide a  
20 sample at the time of final to allow the  
21 Planning Board to determine whether or not the  
22 stone is appropriate and has a more natural  
23 look and blends with the colors and so forth.

24 CHAIRMAN STUTO: Well, we've looked at it  
25 and everyone seems to be smiling. Is there

1 anyone that doesn't like the stone?

2 ***(There was no response.)***

3 MR. GRASSO: So, the stone is fine.

4 The other comment in the design  
5 guidelines is that it does not recommend floor  
6 to ceiling windows and we raised the issue  
7 regarding the elevations that were previously  
8 provided at concept that the windows still are  
9 shown all the way down to the floor. That's  
10 inconsistent with the design guidelines and we  
11 continue to recommend that the normal sill  
12 height be provided on those windows to better  
13 conform with the design guidelines.

14 MR. LANE: What is the reasoning for  
15 that, Joe?

16 MR. GRASSO: They have not responded why  
17 the windows go down to the floor. I think that  
18 it's to make it more in scale with the  
19 building and more of a residential scale  
20 structure in this setting.

21 MR. LANE: So, really it's residential -  
22 MR. GRASSO: It's not. It's more of a historic  
23 context of building design than a commercial  
24 and a contemporary type of architecture.

25 MR. NARDACCI: I can understand that.



1           There are some projects that come in like  
2           Chipotle was like full glass. The issue on  
3           this is that this is the same exact design as  
4           the one on Route 9. I went over there after  
5           our meeting a couple of times and just looked  
6           at it. It looks nice. It doesn't stick out. It  
7           fits in with the siding and the stone. It  
8           doesn't look out of whack.

9           MR. HERSHBERG: The translucent glass  
10          doesn't actually go down to the floor.

11          CHAIRMAN STUTO: My personal opinion is  
12          that it would look better the way that it was  
13          suggested in the design. They look like  
14          sliding glass doors, here.

15          Is there any reason why you didn't  
16          conform to the suggestion?

17          MR. HERSHBERG: We brought it to  
18          Berkshire Bank and they pointed to their  
19          building on Route 9. They're trying to set  
20          that as a prototype. In fact, they're  
21          proposing the same building in North  
22          Greenbush. It has become their prototype for a  
23          2,600 square foot bank. They would like to  
24          keep it and that's why they asked us not to  
25          change it and keep the stone and window

1 patterns. We would have to change it in an  
2 unusual way to comply with the design  
3 standards. We brought it to Berkshire Bank and  
4 they'd prefer not to do it.

5 MR. ROSANO: I have to agree with Tom.  
6 It's really not something new. And with the  
7 fencing and everything else in the front, I  
8 don't have a problem with this.

9 MR. LANE: And for this sitting in a  
10 residential area, it just doesn't seem to be  
11 an issue.

12 MR. NARDACCI: Tim makes a good point. If  
13 it was at the corner of a residential  
14 neighborhood, maybe it would be more of an  
15 issue. I think the stone is nice.

16 MR. GRASSO: That's not a waiver item.  
17 It's just a recommendation to conform with the  
18 guidelines. I support the design guidelines,  
19 but I can see the points made. If I had a  
20 personal preference, I would rather see the  
21 stone.

22 CHAIRMAN STUTO: Are you done with your  
23 presentation?

24 MR. HERSHBERG: I think that I'm pretty  
25 much done with the presentation unless Joe has

1 some other issues that he'd like to address.

2 MR. GRASSO: There were some very minor  
3 comments raised by the other departments that  
4 have looked at this and feel that the comments  
5 have been addressed or will easily be  
6 addressed in a subsequent plan submission. I  
7 think that it's ready for a Planning Board  
8 determination and consideration of the  
9 waivers.

10 In terms of the greenspace, it's  
11 34 percent. We discussed it at length at  
12 concept and the reason why this site was  
13 allowed to go under was because the site gave  
14 up a part of their property for public road to  
15 the back of the site.

16 There was a previous comment from the  
17 Planning Board regarding what would be the  
18 applicable incentive zoning fee if you said  
19 that was applicable to the one percent  
20 reduction in greenspace. It's about \$45,000.  
21 Obviously, it's a substantial amount that had  
22 not been assessed to the project as of this  
23 time.

24 CHAIRMAN STUTO: Let's delve into that a  
25 little further. The applicant is stating that

1           there is some kind of contract and I remember  
2           that assertion being made. I remember a  
3           document being shown. I don't know if it's for  
4           us to determine whether there was actually a  
5           contract or not. Are you suggesting that they  
6           pay, or that we waive it?

7                     MR. GRASSO: We agree with the Planning  
8           Staff determination that the fee not be  
9           assessed and it's not applicable because the  
10          property would have, in fact, met the  
11          greenspace requirements had it not conveyed  
12          property for a Town road after the site was  
13          initially developed.

14                    MS. VAIDA: The value of the property  
15          that they conveyed is \$45,000?

16                    MR. GRASSO: No. What I was referring to  
17          is if you take the one percent reduction in  
18          greenspace - because 34 percent greenspace on  
19          the overall parcel is what is proposed and  
20          35 percent is required. So, the calculation is  
21          that you take the one percent of the project  
22          site size -- the site is about 420,000 square  
23          feet.

24                    MR. HERSHBERG: The site is about  
25          458,000.

1 MR. GRASSO: Okay, and that would be  
2 times the incentive zoning fee. That's like  
3 \$11 a square foot. So, it's roughly \$45,000 or  
4 \$50,000 which would be the applicable fee.

5 CHAIRMAN STUTO: What about this  
6 suggestion? Deferring that decision of the  
7 waiver of the fee. I don't know if we have  
8 adequate information. You have an opinion, but  
9 I'd like to defer that to the Town Attorney's  
10 office.

11 MR. GRASSO: We discussed this at  
12 concept.

13 MR. HERSHBERG: Mr. Chairman, I think  
14 that we discussed this fully.

15 CHAIRMAN STUTO: I was never convinced.

16 MR. HERSHBERG: I know you weren't, but  
17 we did discuss it quite thoroughly that the  
18 document said that the additional traffic  
19 intersection and access road connecting at  
20 Sand Creek Road include a parcel that was  
21 constructed and dedicated to the Town. The  
22 proposed roadway would only be a 50-foot right  
23 of way with which would be a substandard for  
24 the 60-foot right of way. The decision to  
25 accept a 50-foot commercial right of way would

1 be at the Town Board level. Once the party  
2 that owns Jerry's Bike Shop comes to an end,  
3 that would increase the Windsor Development  
4 greenspace to 32 percent.

5 So at the time that they approved this  
6 agreement, they essentially said that  
7 32 percent was what was agreed to as a target  
8 to this entire project. It goes on further to  
9 say that if the Jerry's Bike Shop property is  
10 obtained by Windsor Properties, the balance of  
11 that property would be dedicated to increase  
12 the available greenspace to 32 percent for  
13 this project. So, at the time that this is  
14 approved, the greenspace was actually less  
15 than 32 percent. If you had taken out this  
16 property here and not considered the advantage  
17 of having this count as greenspace where we  
18 put the roadway in, this entire property was  
19 something less than 32 percent green. They had  
20 accepted the fact that because the applicant  
21 at the time was willing to dedicate this as a  
22 public highway - a portion of their  
23 property - that they be granted exemption. The  
24 way that I see it, it's down to 32 percent  
25 green. We're at 34 percent green in the final

1 analysis. I think that essentially it may not  
2 be a contract, but because this was passed by  
3 a motion on July 21, 1987 by a vote of six to  
4 zero, there is a statement in there at the  
5 bottom of the page.

6 The proposed site would go up to  
7 32 percent green by the included life estate  
8 parcel as part of the site. If the corner  
9 parcel would be acquired by Windsor Plaza at a  
10 later date, consideration may be given to  
11 distribute the greenspace provided and that  
12 the total of all three parcels be a minimum of  
13 35 percent. That, essentially, was before the  
14 subtraction of that area.

15 I think that it's clear that the 32  
16 percent was the target of this site and we're  
17 now at 34 percent. I would challenge the fact  
18 that we never really had a contract for that.  
19 This is a Planning decision that I doubt very  
20 much that we contracted with the Town of  
21 Colonie to guarantee that we would build up to  
22 32 percent green.

23 MS. VAIDA: I have another question.  
24 Wouldn't it be fair to say that this is like a  
25 redevelopment of this parcel?

1           MR. HERSHBERG: No. This piece was always  
2 left out. It was never dedicated as anything.  
3 The middle area here was a stormwater  
4 management area (Indicating). This piece was a  
5 blank area right along Wolf Road adjoining a  
6 major building. It was always intended for  
7 development. I don't think that anybody had  
8 proposed that it not be developed.

9           MR. NARDACCI: The bike shop was where  
10 CVS is.

11          MR. HERSHBERG: Right.

12          MS. VAIDA: I thought that there was a  
13 house there or something at one time.

14          MR. HERSHBERG: There might have been. It  
15 might have been in an older situation, but it  
16 was incorporated into the site as far as  
17 process. I think that it was foreseen that  
18 this entire parcel would eventually come under  
19 one ownership. It turns out that CVS has  
20 subdivided this and they have been affected by  
21 impact fee computation also. I think that by  
22 showing you that there is 34 percent  
23 green -- where the original Planning Board  
24 decision talks about the site being 32 percent  
25 green means essentially that I think that



1 we've met the test. I concur, Mr. Chairman,  
2 there is nothing that I would call a contract.

3 MS. VAIDA: What I'm trying to say is  
4 that if it's a redevelopment, then you  
5 wouldn't have to worry about that because the  
6 Land Use Law allows you to be at whatever your  
7 current greenspace is, if it is redevelopment.

8 MR. HERSHBERG: But if we count that  
9 currently - if this project wasn't built, the  
10 total existing site without this would be  
11 37 percent green. We're using up five percent  
12 of the greenspace by building this.

13 MR. ROSANO: Dan, what if you just take  
14 yes as an answer from Elena. I think that  
15 you'd be much better off.

16 MS. DALTON: Your particular parcel, by  
17 itself, as you reported was 36.2 percent.

18 MR. HERSHBERG: It is.

19 MS. DALTON: Take it and run.

20 CHAIRMAN STUTO: Is that a separate  
21 subdivided lot?

22 MR. HERSHBERG: No.

23 CHAIRMAN STUTO: Here is the thing. We're  
24 not acting as attorneys. Elena hasn't  
25 researched the issue. I'm not leaving \$45,000

1 on the table because I think that it's a good  
2 idea. If the rules provide for that, I have no  
3 objection to that. If the historical record  
4 supports that, I have no objection. But it's a  
5 legal question. I think that it deserves to be  
6 looked at by the Town Attorney. If you owe it,  
7 you owe it; and if you don't owe it, you don't  
8 owe it. I have no personal stake in it, one  
9 way or the other. I'm not convinced that  
10 you've met it. I'm still confused by why we  
11 would be bound by that. You haven't met the  
12 threshold of convincing me, personally. So,  
13 that's where I stand. I'm not going to vote to  
14 that extent. I would defer that opinion to  
15 those who could make a legal determination on  
16 whether it's owed or not owed. The argument  
17 can be made to them. It is a legal question,  
18 in my mind. It's not a matter of discretion.

19 MR. HERSHBERG: Could the site plan  
20 approval and the waivers be granted  
21 conditional upon a decision regarding whether  
22 any incentive fee was due to the greenspace by  
23 the Town Attorney?

24 CHAIRMAN STUTO: That's where I would be.

25 MR. NARDACCI: I would support that. I

1 just read the concept and there is nothing in  
2 the concept minutes. It was never settled.

3 CHAIRMAN STUTO: If you're right, there  
4 should be nothing to be worried about.

5 MR. HERSHBERG: I'm not worried. It's not  
6 my \$45,000.

7 CHAIRMAN STUTO: Does anyone have a major  
8 problem with that?

9 ***(There was no response.)***

10 CHAIRMAN STUTO: Joe, you're done?

11 MR. GRASSO: Yes.

12 CHAIRMAN STUTO: This is a Type II action  
13 so no further SEQRA review is required. I  
14 guess we're in the position to consider a  
15 motion for final site plan review.

16 What should we do first? Can we take them  
17 jointly?

18 MR. GRASSO: I would do the resolution  
19 first accepting the plans.

20 MS. DALTON: I think that it can be said  
21 that if it's settled by the Town Attorney's  
22 office - that doesn't change whether or not  
23 we're approving anything else.

24 MR. ROSANO: That should be the first  
25 part, though.

1                   CHAIRMAN STUTO: Do we have a waiver  
2 resolution on the action? I'd like to ask  
3 counsel as to how we should propose this  
4 motion? We can consider the resolution on the  
5 waivers contingent upon the main motion being  
6 passed.

7                   MS. VAIDA: Yes, you can do it like you  
8 did on the last one in an omnibus fashion.

9                   CHAIRMAN STUTO: Would the Board consider  
10 an omnibus resolution including a resolution  
11 on the waivers? We have all read then and Joe  
12 has described on the back of his June 15, 2011  
13 letter.

14                   With that considered, final site plan  
15 approval, with all the conditions in Joe  
16 Grasso's letter having been met, in addition  
17 to any outstanding Town departmental comments  
18 having been met, and the decision on whether  
19 there is a greenspace waiver fee due will be  
20 deferred to the Town Attorney.

21                   Is there anything else that needs to be  
22 in that motion?

23                   MS. VAIDA: Just the understanding that  
24 you would be signing off on that written  
25 waiver because that is what is required - that

1 everybody has read it over and I assume that  
2 he agrees with the findings.

3 MR. LANE: The Town Attorney might agree,  
4 but it's still the Chair that has to sign off.

5 CHAIRMAN STUTO: We talked about that at  
6 the beginning; that the resolution on the  
7 waivers was part of this.

8 So you have the resolution on the  
9 waivers, final site plan review, conditions in  
10 Joe's letter, departmental conditions and the  
11 determination of the greenspace fee will be  
12 left to the Town Attorney.

13 MR. NARDACCI: Before we entertain a  
14 motion, can I make a brief comment?

15 CHAIRMAN STUTO: Yes.

16 MR. NARDACCI: I want to make a comment  
17 about the project. I don't have any questions,  
18 but I think that it's very important to  
19 mention the projects on Wolf Road. This went  
20 from February 15, 2011 to July - in a five  
21 month time frame. This is a very important  
22 commercial corridor. It's just something that  
23 I'd like to say for the record so we have it.  
24 It's a good project.

25 CHAIRMAN STUTO: I agree that this is a

1 good project. I like the project. I personally  
2 support it. I think that it shows that the  
3 process went pretty well with this. The TDE  
4 having been involved is very, very helpful and  
5 the applicant has been very good and very  
6 professional.

7 Any other comments before we take a  
8 motion?

9 MR. GRASSO: I want to clarify this  
10 greenspace issue because when I read the  
11 information, this isn't a question of the  
12 allowable greenspace for the parcel being at  
13 32 percent. It's understanding that after the  
14 site was initially developed, there was a  
15 certain right of way given to the Town for  
16 access purposes. If you took that area into  
17 consideration and looked at the currently  
18 proposed development, you would have, in fact,  
19 over 35 percent greenspace on the site. So,  
20 that's what we're going to ask the Town  
21 Attorney to review the legalities of; not  
22 relative to the minutes.

23 CHAIRMAN STUTO: No, the entire record  
24 back to the initial conveyance of that right  
25 of way.

1 MR. GRASSO: Just so the Board is  
2 understanding of the facts and agreeable of  
3 the facts and the way that they are presented  
4 by the site plan application.

5 MS. VAIDA: So, it was originally in  
6 compliance, but for the action to the Town -

7 MR. GRASSO: Right, I just don't want to  
8 get hung up on this 32 percent thing. That's  
9 never what we substantiated our determination  
10 based on. I agree with Mike Lyons that was the  
11 case, as well.

12 CHAIRMAN STUTO: That's how I understood  
13 it.

14 MR. GRASSO: Okay. I just want to be  
15 clear that when we go to the Town Attorney,  
16 that we're asking the appropriate question.

17 CHAIRMAN STUTO: Right, so that he's  
18 looking at the entire record.

19 Any other comments?

20 ***(There was no response.)***

21 MR. MION: I'll make that motion.

22 MS. DALTON: Second.

23 CHAIRMAN STUTO: All in favor?

24 ***(Ayes were recited.)***

25 CHAIRMAN STUTO: All opposed?

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

CHAIRMAN STUTO: The ayes have it.  
Motion to adjourn?

MR. MION: I'll make that motion.

MR. LANE: Second.

CHAIRMAN STUTO: All in favor?

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

CHAIRMAN STUTO: All opposed?

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

CHAIRMAN STUTO: The ayes have it.

***(Whereas the proceeding concerning the above  
entitled matter was adjourned at  
11:30 p.m.)***



**CERTIFICATION**

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

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14 **NANCY STRANG-VANDEBOGART**

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17 **Dated August 31, 2011**  
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