

1 PLANNING BOARD COUNTY OF ALBANY
 2 TOWN OF COLONIE
 3 *****
 4 VILLAGE OF NEW LOUDON
 5 610-622 LOUDON ROAD
 6 APPLICATION FOR SITE PLAN AMENDMENTS
 7 TO THE APPROVED PLAN
 8 *****

9 THE STENOGRAPHIC MINUTES of the above entitled
 10 matter by NANCY STRANG-VANDEBOGART, a Shorthand
 11 Reporter, commencing on January 21, 2014 at 7:50
 12 p.m. at The Public Operations Center, 347 Old
 13 Niskayuna Road, Latham, New York

14 BOARD MEMBERS:
 15 PETER STUTO, CHAIRMAN
 16 TIMOTHY LANE
 17 LOU MION
 18 KATHY DALTON
 19 TIMOTHY LANE
 20 TINA GOODMAN SEGAL
 21 SUSAN MILSTEIN

22 ALSO PRESENT:
 23 Kathleen Marinelli, Esq., Counsel to the Planning Board
 24 Joe LaCivita, Director, Planning and Economic Development
 25 Tony Fazzone, New Loudon Road Associates
 Dan Cleary, PE, New Loudon Road Associates
 Paul Rosano, Town Board

1 CHAIRMAN STUTO: Okay, we'll call up the third and
2 final project. This is the Village of New Loudon, 610
3 to 622 Loudon Road.

4 I'll read the rest just to get it on the
5 record.

6 This is a request for NCOR height standard of
7 40 to 50 feet, addition of one town house,
8 replacement of 19,500 square foot approved
9 commercial retail to 20 residential units and that
10 will come with other changes as is in the package.
11 This is also a residential elevation change.

12 Joe LaCivita, do you have any other
13 introductory remarks?

14 MR. LACIVITA: Yes, I think that the applicant is
15 here tonight to kind of follow up and get final
16 resolution towards the last time that they were before
17 this Board which was in October of 2013. Part of what
18 was left on the table was the addition of the cupola at
19 50 feet, potential change in some of the existing office
20 retail. and the mixed-use to all residential which I
21 think that the applicant can show the plus points to
22 that. Then finally, adding one additional townhome unit
23 to the back to complement the final project.

24 Again, these are unresolved issues that we had
25 since October and we're here tonight to kind of put

1 resolution to them.

2 CHAIRMAN STUTO: Okay, thank you.

3 We'll turn it over to the applicant. Can you
4 identify yourself?

5 MR. CLEARY: Mr. Chairman, Dan Cleary representing
6 New Loudon Road Associates and Viscusi Homes tonight.

7 Thank you for seeing us again. This is a
8 continuation of when we were here. Some of it is a
9 continuation of when we were here on October 8th.
10 On that night you will recall that we had four items
11 before you.

12 One of them was changing your decision in
13 December from condominiums to town homes which you
14 approved.

15 The last two things were changes that we were
16 requesting that Joe just outlined. One was with
17 regard to the maximum height on the site. The
18 second was with regard to the mix of retail and
19 residential. We were requesting approximately
20 19,000 square feet of retail to 20 units of
21 residential apartments. The last was to add
22 townhomes to the project in the back. There are
23 currently 71 units and this would be the 72nd. We
24 found during construction that we had to put one
25 more unit in.

1 The new business is a minor modification to the
2 elevations that this board approved back in December
3 of 2012. I've submitted the new elevations and the
4 new floor plans. The builder is actually beginning
5 constructing. I believe that he's pulled a building
6 permit under the old elevations but we'd like to
7 actually get the Board's approval to construct the
8 buildings as we're showing them to you tonight so
9 that we can continue on with construction on the
10 town homes.

11 So, Mr. Chairman, what I think that I'd like to
12 do is just start with the old business and just give
13 the Board -- I see some members here that may not
14 have been here back in October and give you a little
15 refresher on what we talked about that night and
16 what we're asking for..

17 The project, just in general, is the Village of
18 New Loudon, a mixed-use project. We've been here
19 before the Board I think for just about three years
20 now. We are under construction. Those of you that
21 have gone by the site, Dunkin Donuts is up and
22 nearing completion. What we refer to as Building D,
23 which is this building here is under construction.
24 Then, this building, which is Building A which we
25 had sold to Bob Marini's group is nearing completion

1 as well. So, effectively all of the retail in
2 commercial along the frontage of the original
3 project which includes Rumors and the bank should be
4 complete by sometime this late spring or summer.

5 The Dunkin Donuts is leased. Our building on
6 the first floor is fully leased and Bob Marini's
7 building - there is a restaurant and his office is
8 above that. So, pretty much it's very active in the
9 front of the project which you all see when you
10 drive up and down. It will be complete very soon.

11 The next part of the project is one of the
12 reasons that we're here tonight. It's what we refer
13 to as Building B. This building which was
14 originally permitted for 24 units of apartments,
15 two-stories of apartments and a first floor of
16 retail commercial space.

17 The second building is C and was permitted
18 originally for 9,000 square feet of commercial
19 retail space. One of the proposals that we had
20 before you back in October was to convert the first
21 floor of Building B and we wanted to add a story to
22 Building C and then use the top two stories for
23 apartments and then the bottom story would remain
24 office commercial space. So, effectively taking
25 this 15,000 square feet here (Indicating) and then

1 adding another 12 units of apartments, and then
2 adding another 4,500 square feet or four units of
3 apartments.

4 CHAIRMAN STUTO: Do you have a side by side
5 elevation?

6 MR. CLEARY: We don't have the elevations of the
7 back two buildings. They haven't been designed. I'll
8 get to that in a minute, but we don't have anything
9 architectural on those at this point; no. We're
10 basically just talking about numbers as far as the
11 zoning is concerned which is we're looking for 20
12 additional units. That will be to replace 15,000 square
13 feet of retail and Building B and eight apartments that
14 will replace essentially 4,500 square feet of retail in
15 Building C and add a story to accommodate that. That's
16 the first request that we had. The additional unit in
17 the back plays into that because it's an additional
18 residential unit.

19 In the original NCOR, it required us to meet an
20 80/20 split of retail and residential. The 80
21 percent residential is the maximum and the 20
22 percent retail was the minimum.

23 Last April when we went through the ODA process
24 with this Board and with the Town Board, the 80/20
25 requirement was waived and taken out of our

1 requirement for the NCOR and there was also a 3,000
2 square foot number which is used in calculating the
3 residential square footage. That was also struck
4 from that.

5 Part of what we have done in this go around is
6 I submitted some density calculations to Joe and to
7 the TDE. What we have done is gone back and used
8 the actual residential square footage or a more
9 conservative estimate of what that is and applied
10 that to that same to see if we meet the spirit of
11 the NCOR. If we take the actual square footage or a
12 conservative estimate of 2,400 square feet for the
13 town homes, and add in the square footage that we're
14 occupying with the apartments in total and divide
15 that by the entire square footage of the
16 development, we're actually still at that 80/20 mix.
17 It's actually 79.8 and 20.2; something like that.
18 Again, I say a 2,400 square foot estimate for the
19 town homes but most of them are about 2,300 square
20 feet or less. So, we're trying to be conservative
21 there and trying again, as we have done with this
22 project all along, to meet the spirit if not the
23 letter of the law for the NCOR. But we are using
24 actual square footage in this case whereas
25 previously the NCOR would have required us to use

1 just a straight 3,000 square feet and that was the
2 number that was in the zoning. It was a point that
3 I tried to make last time that we're continuing
4 trying to meet that.

5 The other thing with regard to the change from
6 retail to apartments - there are a couple of things
7 that happened. First, those of you have known the
8 project from the beginning when we were originally
9 approved - we required a parking waiver from this
10 Board, which was granted. I think that we were
11 about 35 parking spaces short of what would be
12 required if we went by zoning without taking any
13 credits for shared parking. We're currently now
14 overparked from a zoning perspective. Not by much
15 but if we discount the retail which is usually five
16 per thousand and we add in the apartments, we
17 actually reduce the parking demand and exceed what
18 zoning requires us to provide for parking.

19 The other issue that came up with regard to the
20 switch in the past was traffic. In the narrative
21 that we have supplied last September for the October
22 meeting we talked about the fact that again, by
23 switching out 19,000 square feet of retail for 20
24 apartments - the traffic generation of this project
25 is reduced. I believe that the number of trips was

1 something like 20 trips during the peak hour. From
2 our perspective in the long-term looking at the
3 potential traffic signal here, the more traffic
4 coming out, the better. That's in regard to getting
5 a traffic signal. The overall impact of the project
6 goes down by the fact that you are replacing a
7 significant amount of retail with 20 apartments.

8 The other issue that we talked about back in
9 October was height. There was a couple of things
10 that were in play at that time. As I said, Building
11 D here is under construction (Indicating). These
12 are the approved elevations from the Planning Board
13 - from December of 2012. One of the issues that we
14 had with height on this site is the design of the
15 northside of Building D. You'll see that on top of
16 Building D there is an appurtenance, a design
17 feature -

18 CHAIRMAN STUTO: Do you mind showing us where it is
19 on the other drawing?

20 MR. CLEARY: Building D is right here and is
21 currently under construction (Indicating). There is
22 Dunkin Donuts here and Building D and Bob Marini's
23 building (Indicating).

24 The cupola on this building is - if you measure
25 to the top of the cupola, 46 feet and 9 inches.

1 Zoning requires us to be at 40 feet for maximum
2 height. The Building Department in their
3 interpretation includes the cupola as part of the
4 roof.

5 CHAIRMAN STUTO: That's the little tippy thing on
6 the top of the dome, correct?

7 MR. CLEARY: That's correct. It's a design
8 feature. Appurtenances help to draw attention to this
9 location and actually makes kind of the design, if you
10 ask me. The actual dome itself, the roof is only 39
11 feet. That, we could build without any relief
12 whatsoever.

13 The other thing that I want to point out to you
14 is that the chimneys on this building which are
15 exempt under the height requirement in the Zoning
16 Law are exactly the same size as the cupola. One of
17 the things that brought us to you last October was
18 the fact that you had to approve the design that
19 you're looking at here today. Then when we went to
20 Building and we couldn't build it.

21 MR. LACIVITA: Dan, part of that reason - I don't
22 mean to interrupt you - is because the Land Use Law is
23 specific to how they identify height in the Land Use
24 Law. The Land Use Law specifically reads, when it comes
25 to that, it's the vertical distance from the average

1 ground level to the front elevation, main elevation, to
2 the highest point of the edge of roof.

3 When you saw the original elevation that we
4 just saw that was signed, we didn't have height in
5 there because we were looking at only elevation.
6 It's when they came to pulling a building permit and
7 the height requirements were on there. It's equal
8 to the fireplaces, but there is no roof structure on
9 those fireplaces versus the cupola. That's why the
10 Building Department could not allow the cupola
11 because of that. I just wanted to get that on the
12 record.

13 MR. CLEARY: Right, it's a technical reason. We
14 could technically build the dome so that it's sealed and
15 that this just becomes an ornamental feature which would
16 exempt it. Again, you're kind of splitting hairs at
17 this point. We'd like to have it included as part of
18 the height and that's why we requested it.

19 The other reason that we came back with the
20 height issue is the potential of Building B. We
21 more than likely could build three stories of
22 apartments in that particular building. Again, it's
23 permitted now as three-stories with retail on the
24 first floor apartments above. We could build
25 three-stories of apartments under the 40-foot

1 requirement for the Building Department. That's not
2 an issue with us at this point. The problem that we
3 run into is from a sales and marketing standpoint.
4 One of the big things that's come back to us from
5 people who are interested in working with us on this
6 and from our own research is that parking underneath
7 the building is a huge plus for these types of
8 luxury apartments.

9 If we could put parking under the building and
10 covered parking under the building, it would do a
11 few things. First, it would make the apartments
12 much more marketable for us. We're not talking
13 about a full story of parking. We're talking about
14 lifting the building enough to at least get a half
15 story above ground and then the rest below. But we
16 know that if we were to do that it would bump us up
17 against that 40 and more than likely above that up
18 into the 45 or 46 foot range. By putting parking
19 underground it makes it more marketable from our
20 standpoint, but it does some things for you folks as
21 well. It also helps us eliminate some parking that
22 we have in the back here that we could replace with
23 greenspace. The parking for this building for the
24 apartments here (Indicating) was always planned to
25 be in this area so we more than likely would like to

1 eliminate at least one row in that parking and then
2 replace that with some greenspace and some buffer
3 between this building and the town homes in the back.
4 Obviously, the helps with drainage and some of those
5 things, but those are minor with respect to the fact
6 that it helps free up additional parking in the
7 front and helps the overall site work better.

8 So greenspace, additional parking and marketing
9 are really the reasons that we're looking at putting
10 the parking underground. Its a very expensive
11 proposition. It's not cheap, but it really makes
12 the difference as well as how well you can sell
13 these apartments. Again, we're not talking about
14 student housing here. We're talking about top-end
15 apartments similar in design to what we are looking
16 at with the town homes.

17 The other request that we had was, in addition
18 to the height of the cupola, to increase the height
19 for the entire site in order to allow us some
20 flexibility and design to build the apartments the
21 way the market is telling us they want to see them.
22 We had proposed that we do that by adjusting them
23 the height of the site up to 50 feet to give us an
24 overall kind of a buffer in designing that. Again,
25 the height of the building is defined the way that

1 Joe explained it just a little while ago.

2 The other part of that is that we don't have
3 that design yet. We don't have a picture to show
4 you. But in order for you to allow us to build
5 that, we have to come back and show you that picture
6 and have you approve the overall design of the
7 building and those materials; just like we did with
8 Building D or Dunkin Donuts or Rumors. We still
9 have to come back to this Board and have them
10 approve that. So, again, what we're talking about
11 is something on a conceptual level, giving us some
12 design freedom to be able to have the architects
13 look at it. There is some concern with the depth of
14 ground water back there in working with the gray.
15 So, we really can't pit it down at this point until
16 we do a little bit more work, but the fact of the
17 matter is that we know that we'll be coming out of
18 the ground for some distance but we also know that
19 it won't be the full distance. We know that
20 somewhere in between 40 and 50 feet is where that
21 building will end up and more than likely it will be
22 45 to 46 feet; something in that range.

23 That being said, one of the comments that we
24 got last time when we were here and discussing this
25 issue was just the whole scale issue. How do we get

1 our heads around if we were to allow this, what the
2 scale would be. Interestingly enough there is an
3 example right out in the field today. There are two
4 buildings being built; Building B and Bob Marini's
5 building are both going up right now. Believe it or
6 not, the actual scale that we're talking about
7 bumping up the 46 feet would actually be right in
8 line with -- if you're driving up from the south and
9 coming up to the main entrance, you can see that
10 building there (Indicating). The actual height from
11 the ground up to the top is about 46 feet. When our
12 building is built and the cupola is on the chimneys,
13 again, you're at 47 feet at that point. So, the
14 scale -- what we're talking about here even though
15 we're talking about three stories, the size of the
16 buildings are really about the same.

17 The final item that we had was again the 72nd
18 town home unit which is this unit right here
19 (Indicating). Originally, this was a three-unit
20 cluster. When we graded the site and started
21 getting down to the grade, we started to look at it
22 because there was a pretty big gap in that area.
23 The grading and the existing condition plans that we
24 had didn't really reflect accurately how that hill
25 was shaped. We thought that we were putting in a

1 retaining wall and as we graded the site out, it
2 became evident that there was going to be a lot more
3 room there than we thought when we were designing
4 this off of the survey plans. We looked to see if
5 we could get one additional town home unit in there
6 and we could. That's why we added it to what we
7 were requesting from this Board and again, they look
8 exactly the same. It would make that particular
9 cluster a four-unit cluster instead of a three-unit
10 cluster and it is incorporated into the overall mix
11 of residential retail that we talked about just
12 awhile ago.

13 That was the old business. That's what we were
14 here on October 8th for.

15 CHAIRMAN STUTO: Let's break that off for a moment.
16 You're basically asking for under the ODA, the cupola
17 which would exceed the height, the new building that
18 you're looking to go from 40 to 50 is Building B and
19 you're also looking for another town house.

20 MR. CLEARY: Yes.

21 CHAIRMAN STUTO: I normally go to the Town
22 Designated Engineer and the public, but I want to get
23 this issue out on the table because I have discussed
24 this at length with Joe LaCivita, Chuck Voss and with
25 our new Attorney Kathleen Marinelli.

1 This was approved and the Resolution is right
2 here in our folder, under the Open Development Area
3 theory, Town Law Section 280A. I think that I've
4 expressed some opinion that I didn't think that it
5 was the most appropriate vehicle to go forward on
6 that. It is on the record that we did that. The
7 reason is I see that statute as basically an access
8 statute, which permits you to get access to your
9 property if you don't have frontage, which you are
10 normally required to have on a public road. It's
11 done. I don't know if it was the best vehicle to do
12 that. I'm about at the end of the line as a matter
13 of policy, if I'm going any further, utilizing that
14 statute. I don't think that it was the best vehicle
15 to accomplish this project, which I think is a good
16 project. I'll just lay it out on the line.

17 Through the ODA, we deviated from the density
18 requirements that are under the Zoning Law, the
19 setback requirements and now you're asking us about
20 the height requirements and also to add an
21 additional town house.

22 The cupola is as far as I'm personally willing
23 to go as one voting Board Member. I think that you
24 could go to the ZBA or use another vehicle. That
25 may be the most appropriate vehicle to get the other

1 things that you want, but I can't go any further on
2 the ODA to deviate from the height requirement. The
3 normal height requirement there is 40 feet and I'm
4 not willing as a matter of policy to go higher than
5 that. I've thought about it a lot. I just wanted
6 to get that on the table. You can respond to that
7 or not.

8 MR. CLEARY: My question, Mr. Chairman, is you say
9 that you're willing to go and support the cupola but
10 that would also be based on the Planning Board and the
11 Town Counsel's ability to make these changes. So, are
12 you saying that you think that you have the right to do
13 it and you're just not going to do it?

14 CHAIRMAN STUTO: I'm not going to give a legal
15 opinion, but people have expressed that it's an
16 appropriate vehicle and I'm saying it as a matter of
17 policy. I think that either a PDD or getting variances
18 are the better road. I think that it's a better process
19 in order for all the appropriate bodies to see this
20 rather than going through the ODA. The cupola is a
21 relatively diminimous type of change. That's why I'm
22 somewhat comfortable with it, but I'm personally closing
23 the door on that as one Board Member that votes. I'm
24 not going any further than that.

25 MR. CLEARY: I have to respond to that. We were

1 kind of put in this position. We did not create this
2 situation.

3 CHAIRMAN STUTO: What you're saying made a lot of
4 sense. You can still go to the ZBA and get the
5 variance.

6 MR. CLEARY: We have to show hardship in that case.

7 CHAIRMAN STUTO: Then it's my personal opinion that
8 you shouldn't go above 40 feet. That's what the Code
9 says.

10 MR. FAZZONE: We can't go to the ZBA because we
11 don't need a variance. We brought the plan pursuant to
12 the NCOR, which is the Town Law. We haven't broken
13 that. The density and everything that's in the Town
14 Law, is right there. We didn't need any variances for
15 the NCOR.

16 CHAIRMAN STUTO: That's having gone through the
17 ODA.

18 MR. FAZZONE: No, this has nothing to do with the
19 ODA. We did not need a variance for that - everything
20 that's on there is in the Town Law - everything that's
21 in the NCOR. If you read the NCOR, there isn't a single
22 variance that we need.

23 CHAIRMAN STUTO: I disagree with you. Those town
24 houses are all individual lots and they all have
25 setbacks. You also deviated from the 3,000 feet 20/80

1 analysis.

2 MR. FAZZONE: Mr. Chairman, the variance was
3 required because the Building Department does not have
4 building codes that support the new Comprehensive Plan.

5 CHAIRMAN STUTO: Right, that's varying from the
6 Building Code. That's exactly what I said.

7 MR. FAZZONE: No, that's not what you said. What
8 you said was that we needed variances and that we didn't
9 comply with the Comprehensive Plan. That was wrong.

10 CHAIRMAN STUTO: No, not the Comprehensive Plan;
11 the Land Use Law.

12 MR. FAZZONE: The Comprehensive Plan is the law of
13 the Town of the Colonie. It was voted by the Town Board
14 and the PDD is the same as the Comprehensive Plan -

15 CHAIRMAN STUTO: You're not making any sense, to be
16 honest with you. A PDD is one mechanism to do a
17 development. The Comprehensive Plan is a general plan -

18 MR. FAZZONE: It's not general, it's specific.

19 CHAIRMAN STUTO: No, it's not. The Land Use Law is
20 the specific one that has setbacks and requirements and
21 so forth.

22 MR. FAZZONE: The Comprehensive Plan is basically a
23 path to develop the Town. The Town spent tons of money
24 on it. They hired the LA group and worked for six years
25 and every resident in the Town got to speak to it and

1 said, this is what we want the Town of Colonie to be.
2 This is what we want to build in the future and this is
3 how we're going to get there. We followed those rules
4 exactly. We didn't need one variance. When we went to
5 build it, that was in December of 2012, there were no
6 variances. When we went to build it, we couldn't build
7 it because the Building Department doesn't support the
8 Comprehensive Plan that was approved because they never
9 ratified a new Building Department plan for the
10 Comprehensive Plan that was approved. Those are totally
11 different aspects. To say that we didn't meet those
12 requirements and asked for waivers is totally incorrect.
13 We looked at the Comprehensive Plan and followed it 100
14 percent. This matter is going to come up again and
15 again unless we look at the Comprehensive Plan and say
16 it's not just about NCOR, what about all these other
17 Comprehensive Plans -- if you follow the rule of the
18 Comprehensive Plan, we get to the same stage.

19 We were here in December of 2012 and everyone
20 was happy with the plan. The plan was ready to go.
21 The setbacks, the zero lot lines - NCOR requires
22 that. You can't have an NCOR neighborhood with
23 10-foot setbacks. Bob Cordell was here in April and
24 he told you in April of 2013 that we're here on an
25 ODA because we can't let them build what you guys

1 approved. You approved what was in the plan 100
2 percent and you did a great job. The buildings are
3 great and everything looks good. I can't get a
4 building permit because of our building laws don't
5 support our Comprehensive Plan right now.

6 CHAIRMAN STUTO: You can get your building permits
7 now.

8 MR. FAZZONE: He came to tell you that in 2013.
9 The problem is that we haven't been denied - we don't
10 need a variance. We can't go to the ZBA. We don't have
11 anyplace. We're like a developer with no place to go.

12 CHAIRMAN STUTO: I don't see why you can't go to
13 the ZBA and I disagree with what you're saying. I'm not
14 saying that you deviated from the Comprehensive Plan.
15 I'm saying that there are deviations from the Land Use
16 Law, which deal with things like setbacks and height
17 requirements and density for a zone. Now, if you say
18 that those two documents don't jive, I can't speak to
19 that. You have a whole approved plan there.

20 MR. FAZZONE: But I can't build it. I can't get a
21 permit.

22 CHAIRMAN STUTO: What can't you get a building
23 permit for?

24 MR. FAZZONE: The whole ODA process wasn't our
25 doing.

1 CHAIRMAN STUTO: Maybe there was a point at which
2 you couldn't get building permits, but you can get them
3 now.

4 MR. FAZZONE: Mr. Stuto, let me ask you this: Do
5 you think that the ODA is required for access? We have
6 plenty of access. Why did you vote for it in April?

7 CHAIRMAN STUTO: Perhaps I didn't think it all the
8 way through in terms of some of the deviations, but you
9 have individual lots back there that did not have access
10 to a main road. That's why I voted for it.

11 MR. FAZZONE: The ODA as presented in April was
12 because we couldn't get a building permit pursuant to
13 the Town Building Laws - not the Town Land Use Law.
14 That's totally different.

15 CHAIRMAN STUTO: Right, and we voted on that and
16 gave it to you.

17 MR. FAZZONE: I guess that I'm saying that you have
18 a Comprehensive Plan and a Land Use Law that don't jive.
19 Is that the developer's fault? Is that what you're
20 telling me? We've been waiting a year.

21 CHAIRMAN STUTO: Our day to day bible is the Land
22 Use Law when we come here. Those are the rules of the
23 road. It's not our job to make sure that they comply
24 with the Land Use Law. We're not supposed to deviate
25 from the Land Use Law, but it's not our job to draft the

1 Land Use Law so that it complies with the Comprehensive
2 Plan. The Comprehensive Plan is a thing where we
3 studied the Town and said, well, we think that this
4 should be commercial generally and we think that this
5 should be a certain type of neighborhood. Then, the
6 rubber hits the road with the Land Use Law with the
7 specific rules of the road.

8 MR. FAZZONE: The specific rules that you are
9 talking about were not from the Land Use Law, they were
10 from the Comprehensive Plan. The 3,000 square feet -
11 those are all from the Comprehensive Plan.

12 MR. VOSS: It's from the Zoning Code.

13 CHAIRMAN STUTO: Chuck, can you help me?

14 MR. VOSS: There is a distinction. I think that
15 there is a confusion. The Comprehensive Plan sets forth
16 the general intent of how the Town should develop and
17 where and what should happen and in what locations. The
18 Zoning Code, i.e. the Land Use Law which is one and the
19 same, sets forth the parameters for which that growth
20 should occur and how it should occur. The Planning
21 Board by statute is limited into what they can do in
22 terms of what the Zoning Code allows. In other words,
23 the Planning Board doesn't have any more authority other
24 than to implement the Zoning Law and not the
25 Comprehensive Plan.

1 MR. CLEARY: I can clarify that. What Tony is
2 talking about is the Zoning Law. He's talking about the
3 citing of the Zoning Law that in the NCOR district where
4 it talks about design standards and what the Town wants,
5 it's in the Zoning Law - the design guidelines and all
6 of that. That's what he is talking about. When you go
7 from that over to the actual dimensional requirements,
8 that's where we got stuck. It's in the same Zoning Law,
9 but when you went from designing, based on the design
10 standards of the NCOR which we met to the letter - we
11 insisted on it.

12 In our case when we were selling lots inside of
13 the development, you couldn't build it. Everything
14 was going to be considered one lot. Which then took
15 you away from what the whole idea of what the NCOR
16 was. The ODA was what the Town suggested that we do
17 in order to get over that. The question that I have
18 for you, Mr. Chairman, is in the ODA that you
19 approved and the Town Board put into law, they
20 specifically omitted the 3,000 square feet and the
21 80/20 requirement. So, when we're talking about
22 density, this is where I'm confused. You're saying
23 that you're going back to the original Zoning Law,
24 but the Law for this site is now the ODA which does
25 not have that requirement anymore. So, what I'm

1 asking you for is simply what the ODA in the law for
2 this site - what we applied to the site - that's
3 what it is today. That's my understanding of it.
4 Your interpretation of what the ODA is for and Town
5 Council's interpretation are different and I
6 understand that. We're caught.

7 CHAIRMAN STUTO: We approved a plan and you brought
8 it in and thought it was a good plan, and we did do it
9 by the ODA. I'm personally not willing to go any
10 further, for example, with the height requirement,
11 except for the cupola. I'm not willing to go further
12 with another unit, period, under an ODA theory. If you
13 get a variance for either or both of those things -

14 MR. CLEARY: How do I go to the Zoning Board and
15 ask them for a variance against something that's legal
16 and part of the law for this site which is the ODA, the
17 Town Law?

18 CHAIRMAN STUTO: You go in and say, this is the
19 Land Use Law, this is our plan that got approved and you
20 have a Resolution which is an ODA resolution, which
21 provides for certain things. You say, we'd like to
22 build a building that's a little higher. We'd like to
23 build another -

24 MR. CLEARY: My understanding from Town Council is
25 that the Planning Board is that authority and not the

1 Zoning Board. The Zoning Board is the authority if you
2 have one discrepancy such as the cupola. If we wanted
3 to go in and seek relief on the cupola alone, the Zoning
4 Board is the appropriate vehicle for that. We're asking
5 for overall changes to the plan because of the ODA. The
6 Planning Board is now the authority. This is why my
7 client is so frustrated.

8 We got herded into this particular situation to
9 solve a problem. They added these things in and
10 we're trying to take advantage of those and improve
11 our project and now you're telling us that you don't
12 think that it's the right vehicle, although back in
13 April you said you approved it. That's why we're
14 really up against it here. We don't understand.

15 CHAIRMAN STUTO: Kathy just suggested that we go
16 through the rest of the normal process.

17 Are there people here that want to speak on
18 this project?

19 (There was no response.)

20 CHAIRMAN STUTO: Okay, Chuck do you want to go
21 through your presentation?

22 MR. VOSS: Sure and it's really kind of a summary
23 of the discussion that you have heard. I think that
24 those issues are, as Peter laid them out, for the Board.

25 Dan, there was one other issue about the siding

1 of the town homes.

2 MR. CLEARY: I think that we were putting that off
3 until the next discussion.

4 Mr. Chairman, I don't know if you want to wait
5 on that and talk about the exteriors on the
6 condominiums for the town homes or not.

7 CHAIRMAN STUTO: What do you think is a better
8 process?

9 MR. VOSS: At this point, I think that you have
10 bigger fish to fry.

11 MR. CLEARY: To us, there is an issue with building
12 the town homes and getting the right exteriors approved
13 so that he can continue on with this construction.
14 That's to be separate from talking about the overall
15 theory of -

16 CHAIRMAN STUTO: I don't know if it's important for
17 you to get the elevations -

18 MR. CLEARY: It's extremely important to us because
19 he's waiting to get under construction.

20 CHAIRMAN STUTO: Well, then, maybe we should get
21 into that one then and do the easy one first.

22 MR. VOSS: Dan, why don't you give the Board a
23 quick update on that?

24 MR. CLEARY: Since we first proposed this project
25 back during concept plan, we've been working with the

1 Board and showing you the type of comprehensive
2 development that we wanted to do and basically have
3 consistently shown you a style of town home in the back.
4 Viscusi Builders is now at the point where he has a
5 substantial waiting list. He's getting ready to start
6 foundations on the first group of units. It came to our
7 attention when he was in to get a building permit that
8 since the time that we were here in December of 2012
9 when we submitted some schematic floor plans and some
10 schematic exteriors to you, that he had refined those
11 going forward and the exteriors had changed from all
12 brick to brick and some clapboard on the front. There
13 was always clapboard on the back. It was really the
14 front exteriors that had changed a little bit. So, we
15 submitted those new exteriors a little while ago when we
16 became aware of this so that this Board can look at
17 them. Essentially, the difference is the plan that we
18 showed you in December that was submitted for final
19 approval.

20 CHAIRMAN STUTO: Is there a copy of that around?

21 MR. CLEARY: I don't have them tonight, but
22 essentially the whole front was brick. The style of the
23 homes, the dormers, the chimneys, the way that it looks
24 from a design standpoint hasn't changed at all. It's
25 just the matter that when he started refining the design

1 and working with his realtors and his design people,
2 they decided that the all-brick was going to make the
3 community too dark and they needed to lighten it up a
4 little bit and change the materials out front. What
5 they did was introduce a concrete fiberboard that's
6 called hardyboard clapboard which is the same materials
7 that we were using on the back and on the sides
8 previously, but doing these end units with that and not
9 taking a whole brick front across there -- that was
10 their determination based on their research as far as
11 what was going to make the community more appealing. It
12 still ties in with what we're doing up front tying in
13 the brick and the clapboard, the chimneys -- all of
14 these things still tie in together. Again, it's exactly
15 the same design as was proposed to you before. It's
16 just the fact that we're using some clapboard on here
17 and some clapboard here (Indicating).

18 I actually brought the original book that you
19 approved at concept. That original book has been
20 the design guideline basically for this project.
21 This was submitted to you at concept and as part of
22 the demonstration of what this project was going to
23 look like. If you go through this, you'll see this
24 (Indicating). So, it's really going back to what we
25 had originally proposed. We didn't encourage it.

1 The designer just kind of came to that on his own.
2 Again, what we submitted to you a year ago or so was
3 their very first thoughts on what they were going to
4 do back here and the original thought was all brick.
5 Then as they got down the road with studying all the
6 things that a home builder studies with respect to
7 how they're going to sell their homes in marketing
8 them and making the community work, they decided
9 that wrapping the clapboard around the end two units
10 was going to be kind of the magic ball for them.

11 CHAIRMAN STUTO: I have a question because I've
12 talked about it to Joe and to Chuck a lot.

13 You're designing it like that and you're not
14 proposing to let the buyer choose their exterior?
15 That's how Joe explained it to me. You weren't
16 allowing the buyer to choose.

17 MR. CLEARY: There are a lot of variables here.
18 There is the footprint - there are seven different
19 footprints.

20 CHAIRMAN STUTO: These are either four units or
21 three units?

22 MR. CLEARY: They are four-unit blocks or
23 three-unit blocks. There is exterior - the ones that go
24 around the outside are the B-types and the ones on the
25 interior are the A-types. Basically, the difference is

1 the exterior units have garages in the front and the
2 interior units have garages in the rear. You'll see in
3 your packages that there is A and A2. A2 is a
4 three-unit with one brick in the middle and A is a
5 four-unit with two brick in the middle. B is the front
6 garage which goes around the exterior and they're all
7 four-units. Well, we hope they're all four-units.

8 CHAIRMAN STUTO: Do you want to define it now?
9 There is not going to be any variation on what the
10 homeowner's input is.

11 MR. CLEARY: That's a good point.

12 CHAIRMAN STUTO: I think that it effects the
13 overall look at the end.

14 MR. CLEARY: Yes, it does and that's why they
15 changed it from an all-brick to variation materials.
16 Whether or not they'll introduce a lighter brick or
17 stone or something like that, that really again is more
18 of a market driven decision. My discussions with the
19 builder today is that right now, the way that they
20 planned it out, all of the units would be like this
21 (Indicating) with the brick in the center and the
22 clapboards on the ends. He preferred to keep it that
23 way. If we went into changing materials like using
24 stone instead of brick, then it gets into balancing that
25 through the development and then they have to go back

1 and kind of re-think the whole thing. We can't just
2 have a buyer walkup and say, gee I really like stone
3 here and then the guy next to him have brick. That
4 doesn't work. It's got to be within the guidelines of
5 the HOA. Basically, you're either going to buy an
6 end-unit that's clapboard or you're going to buy an
7 interior unit that's brick.

8 CHAIRMAN STUTO: Your final page says "streetscape
9 rendering shows a three-unit and a four-unit".

10 MR. CLEARY: Yes, this is just a perspective
11 representation of what the streetscape would look like.

12 CHAIRMAN STUTO: So, there is brick in the middle.
13 In the three-unit there is one brick and if there is a
14 four-unit there are two bricks in the middle.

15 MR. CLEARY: The brick is in the middle; yes.

16 CHAIRMAN STUTO: I thought that it was buyer's
17 choice.

18 MR. CLEARY: You can't do it that way because then
19 it starts to look like checkerboarding.

20 CHAIRMAN STUTO: Are you proposing the red brick
21 that's on the rendition or are you going with the
22 washbrick as well or something else?

23 MR. CLEARY: Right now, what he's telling me is the
24 red brick. He asked me if I changed my mind and I want
25 to do something a little different, what do I have to

1 do? My response to him was that, it depends on how
2 drastic the change is. The wash brick doesn't really go
3 with the clapboard. You'll see in the book that we
4 presented back through concept, there were some
5 washbrick examples there. There was some lighter brick,
6 but they were the whole unit.

7 CHAIRMAN STUTO: I'll ask Chuck if he has any
8 comments on what is being proposed.

9 MR. VOSS: No, I agree. I think that the concern
10 that we discussed earlier was that you didn't have a
11 clapboard next to a clapboard and a brick or just a
12 random pattern.

13 MR. CLEARY: It's got to be like that. If you're a
14 buyer and you want brick, you're going to live in the
15 middle.

16 MR. VOSS: That flexibility isn't there. I think
17 that the concern was that you would have a checkerboard
18 effect in facades that just wouldn't look right.

19 CHAIRMAN STUTO: Do the Board Members want to speak
20 on this issue?

21 MR. AUSTIN: I like the brick in the middle. I
22 think that it shows a little more uniformity and
23 prevents that checkerboard look.

24 MS. MILSTEIN: I like the brick, quite frankly. Or
25 why not do two brick and one -- I like all the brick,

1 actually.

2 MR. LANE: Two brick and one clapboard with the
3 clapboard in the center. That would give you another
4 variation.

5 MS. MILSTEIN: I just think that this is a luxury
6 development. I want it to look like a luxury
7 development and that's why I like the brick - all brick.
8 Whether it's a different colored bricks, I don't care.
9 You can use white stone, but I like to see all brick and
10 stone all the way through.

11 MR. CLEARY: Well, this is a luxury development and
12 we have taken that into consideration and again, their
13 designers went back and looked at what they had proposed
14 originally and it was an all-brick front. It wasn't an
15 all-brick building, but it was an all-brick front and
16 they came back and said that doesn't give the
17 neighborhood the right feel. They didn't like it and
18 they changed it. I'm going based on what their
19 preferences are and what they think can sell and what
20 they think that they can market and what they think that
21 the overall homeowners association and the neighborhood
22 is going to look like in the long-run. That's what they
23 are going for.

24 MR. AUSTIN: I think that if you go with an all
25 brick exterior it's going to look very commercial or

1 industrial -

2 MR. CLEARY: That was the concern that it was very
3 dark and some of those spaces are narrow and dark and
4 narrow don't always work.

5 MR. AUSTIN: I think that the clapboard breaking it
6 up looks very nice.

7 Do the potential buyers have a choice in
8 colored clapboard, or is it going to be that dusty
9 yellow?

10 MR. CLEARY: I believe that there are only four
11 colors that can be used in the entire development.
12 Obviously, one end and the other end will more than
13 likely be the same color. That's my feeling. But they
14 are four classic colonial colors. There is nothing
15 funky. All of that is controlled with the homeowners
16 association. This was a question that came up the last
17 time.

18 The exteriors are all maintained by the HOA.
19 The doors are the responsibility of the owners and
20 some of the trim around the garage and the doors;
21 that's it. The clapboard has a 50-year warrantee on
22 it and doesn't need paint. It's very hardy durable
23 stuff.

24 MS. MILSTEIN: Can you do two bricks and one of the
25 others and switch it around?

1 CHAIRMAN STUTO: For the three-unit you mean?

2 MS. MILSTEIN: Yes, for the three-unit.

3 MR. CLEARY: I suppose you could. Two bricks at
4 the end and one in the middle when you have three unit.
5 I defer to the builder as far as how he wants to build
6 his community and what it's going to look like and what
7 his customers want. It wouldn't look necessarily out of
8 place, but that's not what they are proposing right now.

9 MR. AUSTIN: I like how the clapboard book-ends -
10 that book-end kind of feeling.

11 MR. CLEARY: I've seen it and it's clearly in what
12 we have presented way back when and the pictures that we
13 had.

14 CHAIRMAN STUTO: We voted on the solid brick and
15 like Susan, I liked that look. I thought that it was
16 rich. I didn't think that it was industrial or anything
17 but I've talked to Chuck and he's talked me into this
18 being a fine design and the materials are good so I'm
19 going to show some flexibility with this. I'll support
20 what you are proposing.

21 MR. CLEARY: I've always said that Chuck has good
22 taste.

23 CHAIRMAN STUTO: Anybody else want to express an
24 opinion?

25 MR. MION: I like what he is presenting, very much

1 so. I think that it breaks it up and sets it off.

2 CHAIRMAN STUTO: Does somebody want to make a
3 motion to accept?

4 MR. AUSTIN: I'll make a motion.

5 MS. DALTON: Is this going to reduce the prices for
6 the end units that are not brick?

7 MR. CLEARY: The price is dependant on a lot of
8 things and if you want a full heavy duty granite
9 kitchen, it probably won't change.

10 MS. DALTON: But as a standard, would an end unit
11 be less expensive than the middle?

12 MR. CLEARY: It depends on how big of a unit you
13 get. They go from anywhere around 2,000 square feet to
14 2,500.

15 MS. MILSTEIN: Then if you have the same one with
16 the exact same things --

17 MR. CLEARY: I'm being told that there is no
18 difference in the cost.

19 MR. FAZZONE: Just for future reference, if you
20 look at the most expensive neighborhoods in the Town of
21 Colonie, brick is on the out. You'll see one brick
22 house in 20. Now there's more fiber cement and
23 clapboard is where it's at right now. The process to
24 make them -- they require no maintenance, there is no
25 crack or seams in the concrete. If you look at the most

1 expensive neighborhoods, brick is in the minority. No,
2 there is no price difference, though. And it's not all
3 the common walls. It's only the front wall.

4 CHAIRMAN STUTO: I think that we have a motion to
5 accept the new elevations by Brian.

6 MR. MION: Second.

7 CHAIRMAN STUTO: Do we have any discussion on that?

8 (There was no response.)

9 CHAIRMAN STUTO: All those in favor say aye.

10 MS. DALTON: Aye.

11 MR. MION: Aye.

12 MR. AUSTIN: Aye.

13 CHAIRMAN STUTO: Aye.

14 MR. LANE: Aye.

15 MS. GOODMAN SEGAL: Aye.

16 CHAIRMAN STUTO: All those opposed say nay.

17 MS. MILSTEIN: Nay.

18 CHAIRMAN STUTO: Okay, we have one negative from
19 Susan.

20 Back to the other issue.

21 Chuck, do you want to make a presentation on
22 what he is proposing? I'll tell you right now that
23 I'm going to ask the Board to cut out the cupola and
24 vote yes on that. On the others I'm going to vote
25 no, whether you want to call it - because I don't

1 like the vehicle, or I don't think that the height
2 should be higher than 40 feet because that's
3 generally a 40-foot zone, that's the way I'm going
4 to be. So, I don't want to waste a lot of time with
5 that. The rest of the Board can talk about that.

6 MR. LACIVITA: Peter, are we allowing the 40-foot
7 cupola under the ODA, or just as its own separate -

8 CHAIRMAN STUTO: I think as an ODA because - I
9 think that it's diminimous and if the developer wants
10 more rationale, I'll give it to them. That's what Bob
11 Cordell recommended to issue a building permit, right?
12 I think that they want to continue to make a
13 presentation.

14 Didn't you have Resolution language, Joe?

15 MR. LACIVITA: You have the Resolution before you
16 as to what was adopted in April 23, 2013 and I proposed
17 this language to adopt it. I have a copy here, as well.

18 An amendment to the ODA is going to read like
19 this:

20 "In accordance with the NCOR height standard of
21 20 feet and where the Land Use Law under Article 2
22 definitions and abbreviations 90-6 defines height as
23 the vertical distance from the average ground level
24 at the front of the main foundation to the highest
25 point of the roof edge unless otherwise specified

1 herein. The ODA shall not be modified to allow the
2 addition of a cupola on Building D and a maximum
3 height of 50 feet."

4 MS. MARINELLI: Can I just make an amendment to
5 that? The Section is 190-6 and not 90-6.

6 CHAIRMAN STUTO: Any discussion on that?

7 (There was no response.)

8 CHAIRMAN STUTO: Do we have a motion?

9 MR. MION: I'll make a motion.

10 CHAIRMAN STUTO: Second?

11 MS. DALTON: I'll second it.

12 CHAIRMAN STUTO: All those in favor say aye.

13 (Ayes were recited.)

14 MS. DALTON: Aye.

15 CHAIRMAN STUTO: All those opposed say nay.

16 (There were none opposed.)

17 CHAIRMAN STUTO: The ayes have it.

18 Does the Board want to hear Chuck's comments on
19 the merits of the other changes?

20 MS. DALTON: Yes.

21 MR. AUSTIN: Sure.

22 MR. VOSS: I'm putting in my comments based on the
23 fact that the letter of the Law -

24 CHAIRMAN STUTO: No, not on the letter of the Law.
25 What do you think about the impacts on density and

1 traffic and scale and all those things?

2 MR. VOSS: Yes, let's start with the parking issue
3 first. I think as Dan very eloquently suggested, by
4 changing the use of Building B and eliminating the
5 retail on the first floor, you're going to be
6 eliminating a certain amount of retail.

7 CHAIRMAN STUTO: Does everybody know what the
8 change is?

9 You might want to restate the change on that.

10 MR. CLEARY: It's currently approved as a
11 three-story building with the first floor at 15,000
12 square feet of retail and two stories of apartment above
13 them; 12 units on each story; 24 apartments. This is
14 behind the Dunkin Donuts and the other building that's
15 going up. It's this building right here.

16 CHAIRMAN STUTO: So, it's two floors of apartments
17 and one floor of commercial. Can you tell us now what
18 they are proposing?

19 MR. VOSS: Now what the proposal is is to basically
20 take the first floor that was retail, convert that to
21 interior parking and residential on the two upper
22 floors.

23 MR. CLEARY: What we are proposing is to convert
24 the first floor to another 12 units of apartments,
25 eliminating the 15,000 square feet of retail and replace

1 it with 12 apartments. The reason that we were
2 requesting the height difference was because we thought
3 that part of this was having underground parking which
4 would lift the building up a little bit and bump up
5 against that 40-feet. That's separate. We're asking
6 separately to convert that building to entirely
7 apartments; 36 apartments versus 15,000 retail and 24
8 apartments.

9 MS. DALTON: And why are you doing this?

10 MR. CLEARY: The reason that we're doing it is
11 because that retail is completely blocked from the
12 street and is not leasing at all. We have a number of
13 people who have expressed interest in working with us on
14 this building as all apartments so we have a lot of
15 interest in that. We also have a lot of interest in
16 people that want the apartments. So, we were looking at
17 basically 50,000 square feet of dead space and 24
18 apartments above it, as opposed to 36 apartments and no
19 dead space.

20 CHAIRMAN STUTO: But they're also adding another
21 floor.

22 MR. CLEARY: No, we're not adding another floor.
23 That's three stories right there.

24 MR. LACIVITA: There are three stories and there
25 are two developers that came into our office, Mr.

1 Marini --

2 CHAIRMAN STUTO: Then why do you need to raise
3 this? You said underground parking. You don't have any
4 elevations. They've been describing to me adding
5 another floor. You're talking about increasing the
6 height.

7 MR. CLEARY: We're not adding another floor. I
8 want to have 12 more units on the first floor where I
9 currently have 15,000 square feet of retail approved.
10 That's one part.

11 MR. FAZZONE: What's happening is that a lot of
12 people want first-floor apartments; either elderly -- a
13 lot of people don't want the stairs or the elevator.
14 They'd rather have apartments there. The way that the
15 buildings are there you can't really see this building
16 back at all. The retailers don't have any visibility
17 whereas the people that want to live there -- there is a
18 much greater demand for residential first floor than
19 there is retail.

20 MS. DALTON: Let me ask you this: Was it envisioned
21 at some point when you were designing this that retail
22 people were going to be primarily serving the patrons of
23 that neighborhood that could see it, whether it was a
24 convenience store, dry cleaner --

25 MR. FAZZONE: I don't understand.

1 MR. LANE: You're somewhat defeating the purpose of
2 why this is a mixed-use. You're kind of backtracking
3 on --

4 MR. FAZZONE: That's an interesting question and I
5 could talk about this for five hours. The mixed-use
6 across the Capital District -- there have been four
7 proposed. This is the only one under construction.
8 Throughout the whole east coast they're everywhere. The
9 biggest mistake made is that there is an assumption that
10 the residential portion will be enough to sustain. It
11 will not sustain retail unless the retail is
12 self-sustaining.

13 The greatest one is Celebration Disney which
14 has a huge development around the retail. The
15 retail is so subsidized by the tax base and the
16 residential; believe it or not. If you've ever been
17 there, the residential is huge. They have a real
18 small downtown. Downtown can't generate enough
19 money to stay self-supporting. What's great about
20 this location and unique to the entire Capital
21 District is that Route 9 is a really great area for
22 businesses.

23 Everyone has different feelings about bringing
24 the buildings up to the street. When you bring them
25 up to the street, you just can't see behind them.

1 So, whether you like it or you don't like it, the
2 fact is that you can't ask your business to go
3 behind them when there is a full brick front. You
4 can ask them, but they won't do it. We've got a lot
5 of empty space and the way that the economy is, you
6 really can't get somebody to go back there in the
7 hopes that they're going to be driving back there.
8 At the same time there are people coming to us
9 saying I have a wheelchair or I don't want to go
10 upstairs and I don't want an elevator. I want to
11 carry my groceries to the first floor. We didn't
12 have them. So, those two things driven together
13 with the new plan to bring the buildings up -- we
14 can build this retail and see how they fill over the
15 next year or 18 months, or why not make more
16 apartments because that's what people want?

17 MS. DALTON: Let me say one more thing then. What
18 you're saying can make sense to me with the exception of
19 the fact that if you then add the underground parking,
20 you can no longer have a third-floor apartment that
21 someone can roll into. You're going to have an
22 apartment that is elevated over the garage.

23 MR. FAZZONE: No, we're going to dig down -- when
24 you think of a car going underground, when you take a
25 ramp - the entire apartment will be underground but

1 because of where the ramp is, it's very possible that if
2 there is a high water table that the building may have
3 to come up two or three feet.

4 MS. DALTON: I get that, but then you don't have an
5 apartment that you can roll into.

6 MR. FAZZONE: You still have a first floor.

7 MS. DALTON: But you can't roll into it. You'll
8 need stairs.

9 MR. FAZZONE: Well, you can park. There is going
10 to be like for handicapped and you can walk right in.
11 You can have a ramp through the walkway and steps. They
12 are going to be ground level. The first floor will
13 always be ground level.

14 MR. CLEARY: The grade actually slopes off so we
15 would use the grade. It might be up a little bit in the
16 front, but you'd be up more in the back. You can have
17 more of the garage exposed in the back. That's what
18 he's talking about.

19 MR. FAZZONE: We would have to figure it out. The
20 front, though, would be even with the parking lot. But
21 the building sides would be exactly the same size.

22 CHAIRMAN STUTO: Tina, did you have a question?

23 MS. GOODMAN SEGAL: I thought that when you first
24 presented you were doing this to two buildings. You
25 were taking the retail out of the two buildings but

1 you're only doing underground parking for one.

2 MR. CLEARY: Correct. Building C which is a small
3 building - it's a 4,500 square foot footprint which was
4 originally approved as two-stories of retail commercial.
5 We're asking to have an additional story. The first
6 floor remains a retail commercial and the next two are
7 apartments - four apartments on each level and a total
8 of eight apartments.

9 CHAIRMAN STUTO: So, you are adding a floor to that
10 one.

11 MR. CLEARY: Yes, we are proposing that.

12 MR. FAZZONE: And that was more parking driven than
13 anything else. The businesses that are there are much
14 more successful than they expected to be. We put that
15 back parking lot on with another 49 spaces. The
16 restaurant and the salon have been using three-quarters
17 of it. If those two floors and that small building are
18 both retail, it would be 10,000 square feet and that
19 would be five per car. We don't want to put that 50
20 spots in there. Again, to be able to make the
21 development not be cost prohibitive and to use the
22 stormwater that's already in place and put an apartment
23 on top, you only need four spots as opposed to the 20
24 that you would need for the retail.

25 Rumors has been very successful. If you look

1 at the codes and the way that we planned as
2 planners, they're off the charts. It's not anything
3 that we can focus on. It was not a mistake that was
4 made here at the Board or by the developers. They
5 just need a lot more parking. We just thought that
6 it would be irresponsible to take those two floors
7 and make it retail because we really don't have that
8 much parking left.

9 MS. GOODMAN SEGAL: And that building does not
10 exceed the 40.

11 MR. CLEARY: No, we're not asking for any height
12 changes on that. It will be underneath the 40-foot
13 height requirement.

14 MR. VOSS: Dan, could I ask you a technical
15 question? Prior to asking for the height request of
16 Building B, were any geotech services done to kind of
17 show where the groundwater is? If you can get down
18 there and get the parking, you don't need the height
19 issue.

20 MR. CLEARY: We did do limited geotechnical in
21 those areas and the groundwater areas are pretty
22 shallow. That's what we are concerned about. We don't
23 want to be boxed in. If we have to be a little higher,
24 we want that flexibility. We know that with three
25 stories of apartments we're going to be getting close to

1 40 feet, so any lift of that at all is going to get you
2 over that 40.

3 MR. VOSS: I think that maybe for the Board to be
4 comfortable with the height issue, it's almost like an
5 area variance requirement. Show the substantial
6 hardship that prevents you from staying under that --
7 where the building basically is now.

8 MR. CLEARY: It's unfortunate that we don't have
9 visuals for you. I know that it's hard to imagine, but
10 that's why I tried to give you an idea that if you look
11 at what's out there today, if you look north at the
12 Marini building, you're looking at 45 feet. So, that's
13 how high it is and that's how high this building is. He
14 meets the height requirement based on the zoning because
15 you measure from the first floor to the flat part of the
16 roof. Just to give you an idea from scale, that's what
17 I'm talking about.

18 MR. AUSTIN: I do like the idea of underground
19 parking for the reasons that you guys should use the
20 marketability for the higher end luxury apartments. And
21 there is going to be more greenspace, too. You'll be
22 getting more greenspace back from those parking spots.

23 MR. CLEARY: I agree with you, but the important
24 part of this -- we talk about height and density
25 interchangeably. We really have to look at them

1 individually. Thirty-six units of apartments, I can
2 still build without underground parking and still meet
3 the height requirement. If I've got 36 units of
4 apartment, I've got a much more marketable building.
5 I've got people that will take those first floor
6 apartments and I've got builders that are wanting to
7 work with us. If I've got a building with two floors of
8 apartments above it and 15,000 square feet of dead
9 retail underneath it, not so much. That building is
10 going to be sitting there for awhile.

11 MR. MION: Apartments instead of dead retail.

12 MR. CLEARY: There is a difference because parking
13 is very, very expensive. Even podium parking like that.
14 In order to make those numbers work, you need more
15 units.

16 MR. FAZZONE: We're not asking for you to approve
17 it tonight. We're just saying as a concept can we look
18 at this now. We're not asking you to approve it. We
19 don't have anything for you to look at. We have a blank
20 piece of paper. We're just saying that we're trying o
21 go with the flow and do what's right and make it work
22 best.

23 MR. CLEARY: We literally have people that are
24 willing to go and spend the money to design it. They
25 just don't want to do it if you're going to turn around

1 and say, no, you can't have it. We're pretty confident
2 that once somebody designs this building and then brings
3 it into you, we'll work together so that we'll be able
4 to figure something out that matches what we are doing
5 inside of the development. That's what we want as well.

6 MR. FAZZONE: That's the same height of the
7 buildings that are going up right now. They're not any
8 higher. They're just the same height.

9 MS. MILSTEIN: You're talking about the cupola
10 height and where the chimneys are, right? So, it
11 appears as solid as opposed to cupola and a couple of
12 chimney's, right? Is that what you're saying?

13 MR. FAZZONE: Probably not because when we try to
14 design on a lower height we could make a flatter roof.
15 Bob's building has a very pitched roof. We've got a
16 very pitched roof because it's more Loudonville looking.
17 We tried to match the arch of the pitch of those roofs
18 on the front of Route 9 with what you see on the houses
19 that are down Route 9, so we want to make it very
20 residential looking. To get the lower height in the
21 back, we can push that building. The overall height
22 would be the same. Those are pretty big buildings.
23 Those out front are pretty big buildings. You've all
24 seen that Marini building. That building in the back
25 that we're talking about now would be no bigger than

1 that. It's not any bigger than that. In fact, if we
2 could get down on the ground -- that's what we were
3 talking about, it's possible that we don't even need
4 this. We might be able to do this at 44 feet or 43
5 feet.

6 MS. DALTON: I think that part of the problem is
7 that there is a concern that this establishes a
8 precedent that people can use the Open Development Area
9 as a way of getting around the other standards. I think
10 that we have to be really clear that if we do decide
11 that this is appropriate in this case, it doesn't
12 establish precedent that this open development use was
13 established to solve a problem prior to this and that
14 these changes were unanticipated at the time.

15 MR. FAZZONE: I don't like the ODA at all, myself.
16 I think that it's wrong. We have a great Comprehensive
17 Plan. The LA Group did a great job on it. There is
18 great direction in there. You did a great job on it.
19 There is great direction in there and it makes sense.
20 The Planning Board approved it. What's happening is
21 that the Building Department is basically saying to the
22 Attorney's office, give the Planning Board the right to
23 do this. If you guys, as a group, decide that this
24 looks great, okay, then let them go build it. Bob
25 Cordell says that we can build it. He needs you to say

1 that. If you keep referring to the Town Board, then we
2 can't do it because the Town Board has never seen this
3 plan. If we go back and say we have 72 units, the Town
4 Board -- this is a matter of first impression. They've
5 never seen this plan. You guys have lived it. We've
6 been together here for three years. This is as much
7 your plan as it is my plan. To go to the Town Board and
8 say can we get a variance on this? They don't know what
9 we're talking about. We've never been there.

10 CHAIRMAN STUTO: You don't go to the Town Board for
11 variances.

12 MR. FAZZONE: The ZBA hasn't seen us. The idea of
13 the Comprehensive Plan was assisting with the
14 development of this Town without going to the Town Board
15 and just going to you guys. If we defer and say go to
16 the ZBA, go the Town Board -- that's all Mr. Cordell is
17 saying; let you guys make the decisions.

18 CHAIRMAN STUTO: We have a member from the public
19 back there.

20 MR. ROSANO: My name is Paul Rosano from the Town
21 Board. I want to take a little exception to what you
22 just said. I'm involved in every project that goes on
23 in this Town. If this were to go forward, I would
24 personally present this to the Town Board and probably a
25 positive recommendation. I want to get that on the

1 record.

2 MR. FAZZONE: I'm just saying that it's a matter of
3 first impression where they have seen it -

4 MR. ROSANO: My job as liaison is that I come to
5 every Planning Board meeting that's happened in the last
6 four years to make sure that everyone on the Town Board
7 is well informed that we don't fly by to make quick
8 decisions. Just to make that clear. I want that on the
9 record. That is just like we have people from the
10 Conservation Committee here to make sure that you follow
11 that set of rules. This is the new Town.

12 MR. FAZZONE: I understand that and I was trying to
13 give some credence to the Comprehensive Plan. We need
14 to make that mean something.

15 MR. ROSANO: I'm also a member of the Land Use
16 Review Committee and you are overusing the Comp Plan.
17 It's a general plan, as I explained to you before.

18 The ODA was caused by the beginning of
19 development back with Berkshire Bank. That caused
20 the ODA. It's not your fault, but that development
21 actually caused the ODA to be put into place. Was
22 it right or wrong? We had to make a decision to get
23 those buildings going. It was the only way that
24 they could do it.

25 As far as the setbacks are concerned, that's

1 actually under review by my committee because I
2 don't agree with the Saratoga plan. Just to let the
3 audience know, the Town Board knows everything that
4 goes on in this meeting.

5 MR. FAZZONE: I just want to explain our problem as
6 a developer. You come into a Town and you follow the
7 Comprehensive Plan because you assume that's what
8 everyone has said that you wanted. That's what everyone
9 says. Follow the Comprehensive Plan. We spent tons of
10 money on this and if you personally don't like it, I
11 understand that. There are some things in there that I
12 don't like, but part of a planning process is to develop
13 some sort of role model so that someone from the street
14 can look at a vacant piece of property and start from
15 somewhere.

16 It was not generating property tax and very
17 little sales tax. It was a blight 10 months out of
18 the year. This is a great project that these guys
19 came up with, with our help. We did it together.
20 To have someone say well, your cupola is two feet
21 too high - we're looking at a \$50 million dollar
22 development and we're picking apart a cupola?
23 Doesn't that seem silly?

24 MR. ROSANO: No, what seems silly is that you
25 revised the plan so many times that half the Planning

1 Board wasn't even on the Planning Board at the time when
2 you started.

3 MR. FAZZONE: That's the same plan that we've been
4 working with. There has been very minimal change to
5 that plan.

6 MR. ROSANO: Except when you're changing
7 elevations.

8 MR. FAZZONE: That elevation was approved December
9 12, 2012.

10 MR. ROSANO: You're not changing elevations?

11 MR. FAZZONE: No, I can show you. You can see
12 that. It's in the Building Department.

13 MR. ROSANO: Are those the plans that they have?

14 MR. FAZZONE: Yes, it's the same plan. We haven't
15 changed it. I apologize, but this is frustrating.
16 That's the same plan that was signed here December 12,
17 2012. We haven't been able to build it for a year.
18 That's an expensive property.

19 MR. ROSANO: It's the same set of plans, but you're
20 taking the retail out. So, is it the same set of plans?

21 MR. FAZZONE: We're talking about the cupola.

22 CHAIRMAN STUTO: They are proposing differences to
23 these two buildings. There is no denying that. We're
24 getting off the point.

25 MS. MILSTEIN: They also came in and they wanted a

1 condo and then it changed tenants. There are constant
2 changes that are going on.

3 MR. FAZZONE: I think that to assume that you are
4 going to do this much development without some
5 modification, I would say that the precedent would be to
6 have these builders come in before you and say, what do
7 you think of this? Not to usher them out instead.

8 CHAIRMAN STUTO: You still have room to do a great
9 project within the 40 foot height requirements and
10 that's where I'm drawing the line.

11 MR. FAZZONE: I totally agree. When you look at
12 Fresh Market you see a bunch of empty space -

13 CHAIRMAN STUTO: If you are proposing a change of
14 use without going over the height, it's a whole
15 different animal. I mean, if you want to go there, we
16 can talk about it.

17 MR. CLEARY: If the Board looks at the merits -

18 CHAIRMAN STUTO: But these things are all
19 interrelated.

20 MR. CLEARY: They're not necessarily interrelated.
21 The change of the use doesn't necessarily mean that has
22 to go higher. It gives us the opportunity to market
23 them with all the parking underneath or to have to go
24 with a full garage which we don't know if we can do, but
25 at least it give us the opportunity to pursue it.

1 CHAIRMAN STUTO: If you want to take a separate
2 vote, we need a clarity of presentation which we don't
3 have here. There has been a lot of misunderstanding
4 about what you're proposing here. For example, whether
5 there is another floor or not another floor. It was
6 presented to me that there was another floor. I'm not
7 sure why the height goes up, but if you just want to
8 stay with the uses and you want to make a presentation
9 on that basis, I would be willing to vote on that. But
10 you are adding another floor to the other building as
11 well and there is no denying that.

12 MR. CLEARY: No. We're not trying to hide
13 anything.

14 CHAIRMAN STUTO: I understand that. To the extent
15 that you're changing uses and/or it appears that your
16 change of uses was integrated with the change in the
17 height. If you're saying that they are separate, that's
18 not how it was presented.

19 MR. CLEARY: Only as far as we were explaining why
20 we were needing the height variance if we had a full
21 apartment building in order to make it more marketable
22 we were expecting that we would prefer to do some
23 underground parking and if we did that underground
24 parking, we would likely have to raise the building in
25 order to accommodate it. To me, you either can make a

1 decision on 36 units of apartments in that building
2 versus 24 and 15 retail. You can look at that change in
3 use based on what the impacts are on the site which is
4 less parking demand and we meet our zoning with regard
5 to parking and less traffic. It gives us 36 units of
6 apartments in that building.

7 MS. DALTON: Don't we make a motion for that?

8 CHAIRMAN STUTO: I would like to hear the
9 presentation again. If you just want to make a change
10 in use presentation, I'd like to hear it again.

11 MR. CLEARY: Right now?

12 CHAIRMAN STUTO: Yes, is that okay with everybody?

13 Okay, point to a building and tell us what you
14 want to do with it?

15 MR. CLEARY: Building B in the rear. Currently
16 it's 15,000 square feet of retail commercial approved on
17 the first floor; 24 units of apartments in two stories
18 above; 12 per story. What we'd like to do there from a
19 use perspective is replace the 15,000 square feet on the
20 first floor with another 12 units of apartments. So,
21 that would make that a 36-unit apartment building and
22 three stories.

23 The other change is Building C which is
24 currently two-story 9,000 square foot building.
25 It's currently approved for 9,000 square feet of

1 retail commercial. What we'd like to do there is to
2 keep the 4,500 square feet of retail on the first
3 floor and then we have two units of apartments - two
4 floors of apartments above that with four units per
5 floor for a total of eight. What we are asking for
6 is to replace 19,500 square feet of retail
7 commercial with 20 apartment units in those two
8 buildings. That's what we're asking for on the use
9 side of things. What that does is brings us into
10 conformance with parking and no longer needs the
11 parking waiver that you granted to us back in
12 December of 2012. It reduced the traffic generation
13 of this project. Those are the two big benefits.
14 It also allows us - from just the way that the
15 parking works on the site - to reduce the parking
16 demand around Building C. That's because of the
17 high demand of Rumors and what we expect to be a
18 pretty high demand for Mr. Marini's building. We
19 don't end up having to have people park on the other
20 side of the world to get to retail over here and
21 again, makes the retail somewhat infeasible. We're
22 still going to have some commercial space on the
23 first floor which will more than likely be something
24 that is more centered around the development, but it
25 will still have to be self-supporting but it's a

1 small space. That's essentially what we want. We
2 want 20 units of apartments to replace 19,500 square
3 feet of retail.

4 CHAIRMAN STUTO: Chuck, can you comment on that?

5 MR. VOSS: Yes, I think that in terms of a use
6 standpoint, I think that it's probably a net bonus for
7 the site.

8 CHAIRMAN STUTO: We're increasing the density,
9 right?

10 MR. VOSS: You're increasing the density a little
11 bit. What you're doing is eliminating a certain number
12 of parking spaces and I don't know if you have the
13 calculation off the top of your head but it's fairly
14 substantial, which I think helps that site in terms of
15 circulation, in terms of stormwater management and some
16 of those other issues. I think that's probable the more
17 reasonable alternative. I don't see necessarily
18 difficulty or problem with that alternative.

19 MR. LANE: And then here is the other single family
20 unit?

21 MR. VOSS: Yes, but to me that's really a
22 non-issue. The other condo unit really has no impact in
23 terms of stormwater from a technical perspective and no
24 impacts in terms of access. It's one additional unit in
25 the back. The space is there, so it's adequate. I

1 think that is reasonable as well. From a use
2 standpoint, I don't see any major concerns switching
3 from the retail components in general to those
4 residential components.

5 CHAIRMAN STUTO: How does everybody else feel about
6 that?

7 MR. AUSTIN: I would like to make a motion that we
8 approve the change in use as stated from the 19,500
9 square feet of retail to 20 apartments.

10 MS. DALTON: I second.

11 MR. LANE: What about the elevation?

12 MS. DALTON: We're not doing elevations right now.
13 Right now we're just doing change of use.

14 CHAIRMAN STUTO: I'd like to exclusively say that
15 we're not exceeding the 40-foot height.

16 MR. AUSTIN: It's not even an issue.

17 CHAIRMAN STUTO: I'm only voting on this - I mean
18 you can come back with whatever you want.

19 MR. AUSTIN: Yes, let's see a plan.

20 MR. CLEARY: We would come back with a plan if we
21 wanted to exceed it and propose it to you, but I'm not
22 asking you anymore for the height difference on the
23 apartment building.

24 MR. FAZZONE: It's not fair to ask you to approve
25 something that you haven't seen. We just want to have

1 to take a look/see and have you take a look at it.

2 CHAIRMAN STUTO: I'm just being explicit that we're
3 not approving any height above 40 feet.

4 Any other comments or discussion?

5 MR. AUSTIN: They might have issues with the water
6 table. That's the thing. That's why they can't go deep
7 potentially because of the water table. They may have
8 to raise the building because the water level -

9 MR. CLEARY: And in fairness to you folks, I don't
10 have any information.

11 MS. DALTON: Don't we have a motion and a second?

12 MR. LANE: I just want to make sure that the full
13 motion is out there including -

14 MR. LACIVITA: Can we identify Building B and
15 Building C?

16 MS. MILSTEIN: I just have a question in general.
17 Before we make these changes, don't we have to give
18 consideration of all the different factors that go into
19 play like traffic or water?

20 CHAIRMAN STUTO: Chuck addressed it to some extent,
21 but it bears repeating. They're saying that it improves
22 traffic and it improves parking.

23 MS. MILSTEIN: But I don't know all the factors and
24 analyze whether this really is a sound change. Has the
25 Town Engineer done that?

1 MR. VOSS: Yes, we looked at it in terms of the
2 overall impacts. There are impacts with a change of use
3 and from retail to residential really are density
4 issues. You're going to be increasing the density on
5 the site a little bit. You're reducing the parking
6 demand as per the Code which again is reducing
7 theoretically the in and out of traffic and the normal
8 daily flow and the peak hour flows and those kinds of
9 things. The applicant has not provided information in
10 terms of the revised traffic analysis.

11 MR. CLEARY: Yes, we have.

12 MR. VOSS: Okay, I didn't see that then. Did you
13 want to present on that just quickly with those results?

14 MR. CLEARY: Yes, I talked about that a little bit
15 earlier.

16 CHAIRMAN STUTO: Okay, let's get the piece of paper
17 that says that.

18 MR. CLEARY: That would be the narrative that was
19 submitted to you back in September. We've actually
20 revised it based on the TDE's comments from the first go
21 around. I submitted the revised narrative.

22 CHAIRMAN STUTO: Joe, is that in our package?

23 MR. LACIVITA: I'm not sure if this one is, Peter.

24 MR. CLEARY: The updated narrative is probably not,
25 but the old narrative should be. The old narrative

1 talks about it in response to the fact that it's about
2 20 car difference in the peak hour - negative. Again,
3 just think about it. You're replacing 10,500 square
4 feet of retail space with 20 apartments. An apartment
5 generates half a trip per hour during the peak hour.

6 MR. VOSS: Dan, let me read your summary analysis
7 here for parking.

8 "Reduction in retail results in a modest peak
9 hour trip reduction of 20 vehicle trips during the
10 peak hour. The morning trip generation is
11 unchanged. The small change does not effect the
12 conclusions or the recommendations of the traffic
13 study as previously presented and approved by the
14 Board."

15 In essence, you're reducing the amount of trips
16 per day with the change of use.

17 MS. MILSTEIN: That's your opinion. Is that
18 something that you would agree or disagree with?

19 MR. VOSS: Yes.

20 MS. MILSTEIN: In the morning people are going to
21 be coming --

22 MR. CLEARY: Because the retail doesn't generate
23 that much traffic in the morning or the evening. Dunkin
24 Donuts does, but people go to work from the apartments
25 so they off-set each other. With the little bit of

1 traffic that the retail generates is off-set by the
2 little bit of traffic that the 20 additional --

3 MS. MILSTEIN: Then you'll have more in the morning
4 from residential.

5 MR. CLEARY: No, you won't. You'll have exactly
6 the same. It's about the same. The 20 additional units
7 is going to generate 10 vehicle trips and the retail was
8 probably like 15 or 20.

9 MS. MILSTEIN: How many bedrooms are in these
10 apartments like the one that you're planning on Building
11 B?

12 MR. CLEARY: They will be one or two bedroom
13 apartments. Our traffic engineer, Creighton Manning,
14 revised that table back in September. We've since
15 updated it based on some of the comments that the TDE
16 had as far as the details in the table, but the overall
17 conclusion is pretty standard. Twenty apartments is
18 going to generate less traffic than 10,500 square feet
19 of retail. Traffic engineers from here up to Albany
20 will tell you that.

21 CHAIRMAN STUTO: But it was a valid question.

22 MR. CLEARY: It is a valid question.

23 MR. AUSTIN: I'd like to ask Joe LaCivita, you've
24 seen this probably a lot more than we have on a day to
25 day basis. What is your general opinion on some of

1 these?

2 MR. LACIVITA: You mean changing the use?

3 MR. AUSTIN: Yes.

4 MR. LACIVITA: As I was saying earlier or tried to
5 say earlier, two developers had come into our office
6 specifically about Building B and Building C with the
7 "what if" scenario if they were to take ownership of
8 those lots. The fact that they would convert that to a
9 three story and they talked about the amenity as if they
10 were to do it, what would be the potential to raise that
11 a little bit to give underground parking because that is
12 a sellable amenity for the use. The ODA that we did
13 back in April which you all have copies of -- we made
14 specific changes to allow this thing to continue to
15 evolve with market conditions. One of the thing that I
16 want to specifically call out is under 190-22G1 when it
17 talks about mixed-use zones, there is a provision here
18 that says -- and this is to the 80/20 rule that says:

19 "No exclusive residential use is allowed in a
20 mixed-use district." We've lifted that. We've
21 lifted that to say that we're going to allow for
22 solid residential uses within that. Not because
23 developers were coming in, but to allow this project
24 to continually evolve with market conditions. So,
25 in my mind, I think that it's a favorable use. In

1 fact one of the developers who is currently
2 marketing the mixed-use office and residential is
3 extremely concerned that behind him he's going to
4 have vacancy on that first floor. Retailers want
5 visibility to Route 9. They're not going to see it
6 here. Although the project was trying to make that
7 village look and feel, we can't build it as we're
8 doing because of the constraints of the Land Use
9 Law. We continually have this type of friction with
10 our own planning processes and I think that you guys
11 did one heck of a job with this ODA as to how this
12 project can morph. We're still not there yet, but
13 the project is still being designed and being built
14 to the way that the original envision was.

15 MR. CLEARY: One of the reasons and incongruity
16 between what the NCOR wanted to achieve and what we
17 could build realistically was that first 15,000 square
18 feet on the first floor -- we had to calculate every
19 unit at 3,000 square feet. A 12 unit apartment had to
20 be 2,000 square feet. A 2,200 square foot town home had
21 to be 3,000 square feet. So, the zoning inflated the
22 residential which made you then have to put in more
23 retail which then had you stuffing retail in where it
24 probably wasn't going to really work. That's what
25 happened with Building B. We put 15,000 square feet of

1 retail in and hoped that we could lease it only to find
2 that now with the ODA the 3,000 isn't there anymore. We
3 used the actual numbers -- we're at 80/20, right on what
4 NCOR wants. We're using our actual number versus the
5 artificial number of 3,000. So, we're still living up
6 to the spirit of the NCOR which is what we have done
7 from day one -- what we've tried to do.

8 When Tony talks about the Comprehensive Plan
9 he's talking about the NCOR design standards and the
10 NCOR idea. That's what we have been trying to
11 achieve.

12 MR. AUSTIN: I do remember when this project first
13 came before us and it was suggested that there be retail
14 behind the front retail and I wasn't completely sold on
15 it either. It just doesn't make a lot of sense.

16 MR. CLEARY: We were thinking that it was going to
17 be class B but for the reasons like Joe said, you've got
18 Bob Marini looking at it saying I don't want to see dead
19 space there. It's going to hurt me. We've got people
20 that are looking at that saying this would be a great
21 place for 36 apartments versus the retail. So, that's
22 why we're back. We have the building to do it if the
23 Board is comfortable with this it. Were only talking
24 about the use.

25 CHAIRMAN STUTO: Okay, any other comments or

1 questions?

2 (There was no response.)

3 CHAIRMAN STUTO: We'll take a vote. All those in
4 favor say aye.

5 (Ayes were recited.)

6 CHAIRMAN STUTO: All those opposed say nay.

7 (There was no response.)

8 CHAIRMAN STUTO: The ayes have it.

9 MR. CLEARY: Did we get the 72nd unit in there?

10 CHAIRMAN STUTO: Pardon me.

11 MR. AUSTIN: I'll take the ball on that one. I'd
12 like to make a motion that we approve the addition of
13 the 72nd town home on the previous plan.

14 MR. LANE: Second.

15 CHAIRMAN STUTO: Any discussion?

16 (There was no response.)

17 All those in favor say aye.

18 (Ayes were recited.)

19 CHAIRMAN STUTO: All those opposed say nay.

20 (There was no response.)

21 CHAIRMAN STUTO: The ayes have it.

22

23 (Whereas the above entitled proceeding was
24 concluded at 9:20 pm)

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CERTIFICATION

I, NANCY STRANG-VANDEBOGART, Shorthand
Reporter and Notary Public in and for the State of
New York, hereby CERTIFY that the record taken 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.

NANCY STRANG-VANDEBOGART

Dated February 5, 2014

