

1 PLANNING BOARD COUNTY OF ALBANY

2 TOWN OF COLONIE

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4 LANGAN AUDI  
723 LOUDON ROAD  
APPLICATION FOR CONCEPT ACCEPTANCE  
5 \*\*\*\*\*

6 THE STENOGRAPHIC MINUTES of the above entitled  
7 matter by NANCY STRANG-VANDEBOGART, a Shorthand  
8 Reporter, commencing on July 28, 2015 at 7:53 p.m.  
at The Public Operations Center, 347 Old Niskayuna  
Road, Latham, New York

9

10 BOARD MEMBERS:  
11 PETER STUTO, CHAIRMAN  
12 LOU MION  
13 TIMOTHY LANE  
14 CRAIG SHAMLIAN  
15 SUSAN MILSTEIN  
16 KATHLEEN DALTON

14

15 ALSO PRESENT:

16 Rebekah Kennedy, Esq., Town Attorney's Office  
17 Joe LaCivita, Director, Planning and Economic Development  
18 Daniel Hershberg, PE, Hershberg and Hershberg  
19 Victor Caponera, Esq.  
20 Joseph Grasso, PE, CHA  
21 Steve Fisher  
22 Rick Waldren  
23 Bill Chaput  
24 Michelle Johnson  
25 Mark Kriss, Esq.

1           CHAIRMAN STUTO: The final item on the agenda is  
2           Langan Audi, 723 Loudon Road. This is an application  
3           for concept acceptance. This is to raze existing  
4           dealership and replace with a 27,630 square foot auto  
5           dealership.

6           Joe LaCivita, do you have any introductory  
7           remarks?

8           MR. LACIVITA: No. We're about 30 minute behind  
9           and Victor wants to get into about a 45 minute  
10          presentation, so I'll need to zoom right into it and  
11          keep this moving.

12          MR. CAPONERA: Thank you very much, Mr. Chairman.  
13          I promise that I won't be that long.

14          What is being handed out to you by different  
15          members of our crew is an elevation of what the  
16          proposed building is going to look like, as well as  
17          a site plan that Mr. Hershberg is giving you so that  
18          you can see it from far distances like Kathy. I  
19          want her to be able to see exactly what we are  
20          doing.

21          For everyone's recollection back in February, I  
22          stood in front of you and we talked about three  
23          waivers that we were looking for on this project.

24          CHAIRMAN STUTO: Is that the last time that you  
25          were here; February?

1           MR. CAPONERA: That was the last time that I was  
2 here on this project.

3           CHAIRMAN STUTO: It seems like more recently.

4           MR. CAPONERA: You've seen me before. Anyway, some  
5 of the waivers that Joe will mention in his letter of  
6 July 16th is parking within the front yard setback,  
7 greater than 20 spaces proposed and a minimum of 20 foot  
8 landscape islands. We talked about that in other  
9 automobile projects that we've had - meaning that when  
10 you get back here, we are asking for a waiver of not  
11 having to have islands back there. Why? Because it's  
12 obvious. Most car dealers now use it for storage. The  
13 other one is that this is the one that's a real corker  
14 in my eyes. Maximum building setback is 20 feet. Route  
15 9, south of Route 2 is not considered a major road and  
16 as such a maximum setback of 20 feet is required and  
17 we're 22.7.

18           Those are the things that we talked about. We  
19 didn't really show you the elevation, but this is  
20 quite a building that is an Audi manufactured  
21 design. If you want to get into a real detail, Mr.  
22 Waldren who is an architect can explain, but it's  
23 one of the most unique skins I've ever seen on a  
24 building.

25           I told you before if you remember that the

1           inside is like a racetrack. The walls actually go  
2           up on a curve and it's pretty amazing when we sat  
3           with Audi.

4                     Right, Steve?

5                     We have Steve Fisher here from the owner's side  
6           as well as Rick Waldren.

7                     Anyway, I just wanted to get into what we are  
8           looking for tonight. We're looking for concept.

9                     The Board asked us the last time to basically  
10          show an elevation from the area because Mr. Chairman  
11          wanted to take a look at the houses. So, what we  
12          did is we had an aerial done. What it shows is  
13          basically the location of the existing facilities.  
14          This is the current Audi site (Indicating). This is  
15          the Toyota site. This is the former Friendly's  
16          site.

17                    I reminded everyone the last time I was here  
18          that the parent company has bought this property.  
19          We also bought the rear vacant piece behind it and  
20          we are proposing to merge the Audi site, the Toyota  
21          site and the rear property which I call the Hoffman  
22          piece into -- it's about a 9 acre site. What this  
23          shows is where the homes are on Old Loudon Road.  
24          There is a story here. I love stories.

25                    Before 2007 when the Town rezoned, the

1 residential zoning district only went back 250 feet,  
2 which is right about here (Indicating). The 250  
3 feet back is about in this area. In 2007 when they  
4 rezoned the Town and we went into our Land Use Law,  
5 what they did was they followed the property line so  
6 now if you look on a zoning map, you'll see the  
7 residential following this unusual property line.  
8 So, therefore, what we have here is when the parking  
9 that is currently established was established, it  
10 was way beyond 50 feet from the rear of the  
11 residential zone. When the Town rezoned it, this  
12 became what is called a legal conforming use.

13 I think that the Board wanted to see where the  
14 homes were located and you can see that there is  
15 quite a distance here. It's pretty wooded here  
16 behind most of the homes. Looking back at the site  
17 plan, what we have designed and Dan was helpful in  
18 doing this - the parking is moved further back from  
19 where it currently is.

20 One of the Board comments was get it 15 feet  
21 back and right now the closest is 17.7 and 17.9.  
22 What you see in the darkened green - that's the  
23 existing parking. The darkened green behind what I  
24 call the Audi site -- which is really Toyota's  
25 property, you'll see the green area here and you'll

1 see that dotted line that kind of runs along the  
2 rear. That's the 50 foot setback. So, the proposed  
3 parking - the darkened gray area is, that's where  
4 the proposed increase in parking is but we stay 50  
5 feet back which is what we are required to do.  
6 Hopefully, that make sense.

7 There are some other things that we talked  
8 about the last time. Joe mentioned in his letter  
9 and I discussed it with him before we started  
10 tonight - there is an easement that runs through the  
11 property that I'm pointing to right here that's  
12 going to be eliminated. It's an old sewer easement.  
13 The Town didn't have a copy of it. Nobody had a  
14 copy of it and I did a title search and it's in 1940  
15 that this easement was created and I showed it to  
16 Joe and he told me out there that he couldn't even  
17 read it. We had a meets and bounds description done  
18 by SY Kim. He prepared it.

19 I talked with the Town Attorney's office, Sue  
20 Pelligrini, and she has looked at it. I have  
21 prepared the document and it's sitting there ready  
22 to be filed.

23 CHAIRMAN STUTO: There is no active sewer line  
24 there?

25 MR. CAPONERA: No. I verified that with Chret.

1           They have gone out and they have looked at it and it's  
2           not using. They are prepared to eliminate it.

3           CHAIRMAN STUTO: Is that our understanding?

4           MR. LACIVITA: Yes. I believe that they scoped it  
5           too.

6           MR. CAPONERA: So, that's pretty much it. This is  
7           what we are looking to do.

8           Oh, by the way, there is also a proposal to  
9           merge these three parcels that I talked to you  
10          about; the Audi piece, the Toyota piece and what I  
11          call the Hoffman piece into this 9.04 acre parcel.

12          CHAIRMAN STUTO: Not the Friendly piece?

13          MR. CAPONERA: No, and I told you the reason why we  
14          didn't do that is because believe it or not, this  
15          Friendly piece used to be a gas station. Believe it or  
16          not, when Friendly's built the Friendly's back in the  
17          70's, what do you think they did? They built the  
18          building right on top of the tanks. Did they remove  
19          them? No.

20          When we were studying the purchase of this,  
21          Steven and I said we better get a Phase I done.  
22          When we took a close look, we realized that was done  
23          and we had the former owner O. Weiss. O. Weiss was  
24          the former owner which was a real estate investment  
25          trust and they went on and they cleaned it up. They

1 did not remove the tanks. They could not remove the  
2 tanks because they are under the building, but they  
3 slurried them. They clean them and they slurry  
4 them. We have a no further action letter from DEC.  
5 It does not meet standards, and so therefore we are  
6 not going -

7 MR. LANE: What does that mean exactly?

8 MR. CAPONERA: What that means in layman's terms is  
9 this: I just found out about this a couple of weeks  
10 ago. We have been dealing with a lot of these issues. In  
11 order to meet standards, the property has to be pure  
12 untouched and uninvolved property. That means that it  
13 has to be back to the original way with no petroleum  
14 product in it. That meets standards. I don't know of  
15 anyone -- DEC really doesn't give those letters anymore.  
16 They always say, closed, does not meet standards.  
17 Anyway, that's why we are not merging that piece right  
18 now.

19 However, when I got the approval for this, I  
20 went ahead and filed a zoning verification and got  
21 it approved both by the Building Department and  
22 there is egress/ingress approvals that are between  
23 the two property owners. Even though it's the same  
24 parent company, this is a different LLC than the  
25 parent LLC. So, that's done and that's on file with

1 the Planning Department also.

2 MR. LACIVITA: Victor, I'm not sure if Dan is going  
3 to get into it, but can you explain the two shadowing  
4 boxes for the people that weren't here for sketch?

5 MR. CAPONERA: Yes, but I want to let Dan do that.

6 MR. HERSHBERG: Daniel Hershberg of Hershberg and  
7 Hershberg with Vic Caponera, Esquire.

8 The two shaded portions of the buildings are  
9 where they vary from the previous building that we  
10 presented. You may recall that we originally had  
11 this building angled to accommodate that sewer  
12 easement which we thought was still active. When it  
13 became inactive, we proposed to square off the  
14 building. It doesn't make sense to build an angular  
15 building on that line anymore. This piece back here  
16 (Indicating) was actually an increase in the  
17 building footprint since the last time that we  
18 presented it at sketch plan. Those two are the  
19 shaded areas.

20 This pavement back here (Indicating), since the  
21 last time that we were here, we were able to do soil  
22 tests back there. It was determined that the soil  
23 here is suitable for porous asphalt. One of these  
24 tests had just marginally one inch per hour, .08  
25 inches per hour. It's more than .5 inches per hour.

1 The other had 11.7 inches per hour. We will design  
2 it at a rate -- I think that the average rate of  
3 this one might have been eight inches per hour.  
4 We'll design it with the safety factor over that  
5 issue, but it still could be used for porous  
6 pavement. So, our goal there would be porous  
7 pavement here.

8 As Victor mentioned here, the dark green shows  
9 areas that are currently paved which would be  
10 removed to accommodate a landscape strip behind the  
11 building. We do show some landscaping in there and  
12 we'll certainly work with the TDE and the Town to  
13 have a proper landscaped area back there.

14 The other issue that was raised was the setback  
15 from the street line. We propose that the parking  
16 be 15 feet back and the building 22.7 rather than 20  
17 and 20. The backs on the building setback should be  
18 20 feet and a minimum parking setbacks will be 20  
19 feet. We would request those wavers.

20 Another issue has to do with the build-out of  
21 the frontage of the site we are talking about. The  
22 building is close enough to the front setback that  
23 we could accommodate that, but rather than do the  
24 80% of the frontage site with some sort of solid  
25 fence, we would propose to do an intensive

1 landscaping on there. We'll work with the TDE to  
2 make certain some tests are done. We think that  
3 essentially we would like that not to require us to  
4 put a fence or a wall along that frontage.

5 CHAIRMAN STUTO: How thick is that stretch of green  
6 there?

7 MR. HERSHBERG: It's 15 feet and actually the  
8 sidewalk here is an asphalt sidewalk.

9 CHAIRMAN STUTO: We've talked in the past with the  
10 car dealerships. They all tend to park on the grass and  
11 we've talked about putting in some physical barrier.

12 I'll ask our Town Designated Engineer to  
13 address that one.

14 MR. HERSHBERG: We haven't talked about that with  
15 the applicant. We think it might be better by  
16 significant landscaping and that would keep them from  
17 parking cars on it, but we can certainly work out an  
18 alternative with Joe Grasso and his group if they think  
19 that something else would work better.

20 CHAIRMAN STUTO: We'll talk it through.

21 If anybody wants to speak, please sign in on  
22 the sheet over there and we'll call your name.

23 I had also asked about the closeness of the  
24 Audi building to Route 9. I think that I asked Joe  
25 to look at it. I know you're asking for a waiver to

1 push it back a little bit further than what the  
2 zoning calls for. The old building was 53 feet -  
3 the transcript says.

4 MR. HERSHBERG: That's correct.

5 CHAIRMAN STUTO: So, we're pulling it closer and I  
6 just wonder if that's appropriate given the other  
7 building and the surrounding area. I'm going to ask the  
8 applicant and the Town Designated Engineer to address  
9 that.

10 MR. HERSHBERG: We picked 22 feet to try to come as  
11 close as we could to the setback. The reason that the  
12 22 feet works is -

13 CHAIRMAN STUTO: I specifically mentioned it at the  
14 last meeting.

15 MR. HERSHBERG: You did; yes.

16 MR. GRASSO: I'm going to jump in. I'll start with  
17 that. We did look at it and we've got a comment letter  
18 dated July 26th and we made comments about the building  
19 setback. We don't have a significant concern over the  
20 proposed building setback at 22 feet. It's in context  
21 with what you see along the corridor for some buildings.  
22 Other buildings are staggered and you'll see them across  
23 the site. For example the Toyota building is set back  
24 three times as far from the road. This building is  
25 about 15 feet closer than the existing Audi dealership

1 than the existing building. Still, it's an attractive  
2 building and it meets the intent of the zoning.

3 MR. HERSHBERG: The 48.53 feet is the existing  
4 setback.

5 MR. GRASSO: And it's going to 22.7.

6 MR. HERSHBERG: We're reducing it by 26 feet.

7 MR. GRASSO: A greater concern of ours was the  
8 parking that is being slid closer to Route 9 and the  
9 exhibit plan does a good job showing where they are  
10 pulling pavement away from the residential properties  
11 and the additional pavement in the back of the site.  
12 They don't shade the new pavement that's going across  
13 the frontage.

14 CHAIRMAN STUTO: What's the gray shading in the  
15 back on that point?

16 MR. GRASSO: The gray shading is the new pavement,  
17 but they don't shade the pavement across the front which  
18 is not only across the front of the Audi piece which is  
19 only going up about 8 feet closer to the road. It's  
20 even greater if you look in front of the Toyota  
21 dealership. There is appreciable greenspace there.  
22 That's where more of our concern is regarding the plan.  
23 That's what we would like to see pushed back to be more  
24 consistently where it is. Not to say that you can't  
25 have some encroachments across the Northway Toyota site,

1 but that's where we think that there is a greatest  
2 opportunity for positive change to the site plan. In  
3 terms of the waivers, obviously, the building not being  
4 20 feet is going to require a waiver which we think --  
5 wherever the Board decides that the right building spot  
6 is, we can support that with a waiver request.

7 The parking not being located within the front  
8 yard, I just spoke of. We'll see if the Board is  
9 supportive of that waiver as proposed. The other  
10 one with greater than 20 parking spaces, a minimum  
11 of 20 square feet of landscaped island shall be  
12 included. The case being made is that it's vehicle  
13 storage for a dealership. It's a unique use and the  
14 appropriateness of islands within that space is not  
15 as beneficial to the Town. I can understand that,  
16 but if you could do an analysis in terms of do you  
17 meet that requirement when you don't look at the big  
18 inventory lot and you look at the other lots that  
19 are more visible from the Route 9 corridor, I don't  
20 think that you are still meeting the intent of the  
21 requirement based on the amount of island provided.

22 Dan, I don't know if that's something that you  
23 want to speak to now, or just provide information as  
24 we get further into the design process.

25 MR. HERSHBERG: If you're talking about us taking

1 maybe the rear line of this building and extending it  
2 across and taking that area there -- we haven't done the  
3 analysis. This comes very close. This area is probably  
4 a little short, but I think that essentially we have  
5 given up some parking at the end and I think that  
6 essentially the area around the buildings - if you count  
7 that area, I don't know whether or not it would meet the  
8 20 square foot. We'd have to do a site analysis of  
9 that. It comes reasonably close.

10 MR. GRASSO: Maybe you can compare it to what we  
11 have out there now with the greenspace. Like I said  
12 before, we're losing a lot of greenspace across the  
13 frontage. When I look at the plan I see us going in the  
14 wrong direction, but prove to us otherwise that we're  
15 not doing that. It dovetails into our next comment  
16 which is seven in the letter. The other ones; two  
17 through six will be addressed as the project advances.  
18 We don't have any concern with those.

19 The plan proposes minimal greenspace and  
20 sidewalk areas adjacent to the proposed building.  
21 Further development of pedestrian access and green  
22 areas around the building should be considered.

23 So, we want to bring that to the Board's  
24 attention. It's pretty clear that when you look at  
25 the color and site plan that they have provided just

1 where those spaces are, they are pretty minimal. We  
2 typically wouldn't see as little landscaped area  
3 around building as we do with this commercial site.

4 Eight is regarding the existing sheds. We know  
5 that there are some sheds that serve the site that  
6 are encroaching on the adjacent property. It wasn't  
7 clear to me if those were being removed, but I also  
8 saw a comment from the Planning Department saying  
9 that they must be removed. So, if you could just  
10 expound on the status.

11 MR. CAPONERA: They're going to be removed.

12 MR. GRASSO: If you could just demonstrate those on  
13 the plan to be removed.

14 Nine is kind of technical item - identifying  
15 exactly where the solid fence is proposed and the  
16 limits of that.

17 In terms of 10 and the stormwater approach, the  
18 one acre threshold dictates whether or not some  
19 stormwater improvements will be required or not.

20 Dan, just in summary, you are looking to do  
21 some stormwater management, are you still confident  
22 that you're going to be under the one acre  
23 threshold?

24 MR. HERSHBERG: I think that we're very close to  
25 that. Again, I think that this area back here is about

1 .7 acres (Indicating) and the rest of the site is pretty  
2 much impervious now, so the increase in pervious area  
3 might be small. I think that we're still under the one  
4 acre threshold.

5 MR. GRASSO: But it will be on disturbed area and  
6 not necessarily your increase. The reason why I bring  
7 it up is we are going to go through concept with the  
8 assumption that you are not having to do it and if it is  
9 required, normally there would be things that you would  
10 be doing at this time in terms so that we would have an  
11 opportunity to review.

12 MR. HERSHBERG: We did submit a feasibility study  
13 assuming that we were going to be running stormwater  
14 treatment on this area using porous asphalt.

15 MR. GRASSO: Understood. The reason that I bring  
16 it up is like we had stated before at sketch and we have  
17 in our letter here, it's a tremendous redevelopment  
18 project and the site doesn't have any stormwater  
19 management features now so there is a tremendous  
20 opportunity to incorporate even some modest stormwater  
21 management features to address some of the run-off from  
22 the existing paved areas as opposed to just trying to  
23 mitigate your additional pavement through porous, which  
24 we also encourage.

25 MR. HERSHBERG: We also had talked about with these

1 longer islands - to depress the islands and make those  
2 islands with landscaping that can accommodate portion of  
3 the stormwater.

4 MR. GRASSO: And that would be great.

5 Regarding the adjacent Friendly's parcel - I'll  
6 call it for a lack of a better term - Victor, you  
7 described access easements -

8 MR. CAPONERA: Reciprocal ingress/egress easements  
9 that have been signed sealed and delivered.

10 MR. GRASSO: So, those are in place and they are in  
11 favor -

12 MR. CAPONERA: Yes, it is signed by both property  
13 owners; 727 New Loudon Road. It's MHL Properties, Inc.,  
14 the parent company and 737 new Loudon Road, LLC which is  
15 the owner of the former Friendly's site. Those are  
16 done.

17 MR. GRASSO: Now will those provide rights from  
18 each of the curb cuts that serve each adjacent property  
19 all the way through?

20 MR. CAPONERA: What it covers, Joe - what the  
21 Planning Department wanted was these are the access  
22 easements here (Indicating). They're shown on the map.

23 MR. GRASSO: But they allow access all the way  
24 through that property to the curb cut? That's the real  
25 intent.

1 MR. CAPONERA: Right. It's cross access to the  
2 curb cuts; absolutely.

3 CHAIRMAN STUTO: You now own the Friendly's site,  
4 right?

5 MR. CAPONERA: Yes.

6 CHAIRMAN STUTO: You're talking about elimination  
7 of curb cuts in your letter, Joe.

8 MR. GRASSO: Well, in the future, you're already  
9 doing something that dovetails into where this project  
10 may evolve in the future and I'm just trying to  
11 understand why you went through it now and you show on  
12 the plan proposed access easements. Just so that we can  
13 understand what is already being done and how this could  
14 dovetail in - because obviously you could sell the  
15 property tomorrow and we wouldn't have any control, so  
16 it's a poor ending for us from a planning perspective.

17 CHAIRMAN STUTO: You said that the easements were  
18 recorded now?

19 MR. CAPONERA: I didn't record them yet. I have  
20 them signed and I believe that I submitted them to Mike  
21 Tengeler. I'm not 100% sure. They are in recordable  
22 form. They are seals and notarized and ready to go.

23 MR. GRASSO: Which I think is great.

24 CHAIRMAN STUTO: Do they specify the exact location  
25 of the easement or is a floating type thing?

1 MR. CAPONERA: No, they specify.

2 CHAIRMAN STUTO: So, it's where it's drawn on the  
3 map on the proposed deed of the proposed easements.

4 MR. CAPONERA: Yes, it says an ingress/egress area  
5 shall mean the description of ingress/egress across  
6 lands located at 737 Loudon Road as defined in the  
7 attached Exhibit A which includes a description of the  
8 areas to ensure free flow vehicular and pedestrian  
9 traffic between the properties at 727 and 737. The 737  
10 is the Friendly's and the 727 -- and it talks about  
11 maintenance and compliance with the laws and  
12 indemnification, covenants running with the land. I got  
13 everything in here.

14 MR. SHAMLIAN: And 727 is going to be what it is  
15 referred to -

16 MR. CAPONERA: Let me just say this again.  
17 Presently, our intension - and by the way I attached a  
18 site plan to this ingress/egress easement and it shows  
19 the location of the areas that are shown on here. I  
20 call it idiot-proofing. So, anyone can look at it and  
21 say yes, that's where they are shown on the map.

22 I want to make it clear again that we're  
23 merging the Audi piece, the Toyota piece and this  
24 rear piece that kind of meanders behind all of these  
25 properties into one parcel. I already have the

1 meets and bounds description done. You should see  
2 the title search on this one. It's about four  
3 inches thick. The current intent is not to merge  
4 the -- for the reasons that I said to you before  
5 because of the contamination issue.

6 MS. MILSTEIN: So, is the plan to just use it for  
7 just for parking?

8 MR. CAPONERA: No. The building has got the  
9 approval. It's gone through the Planning Department to  
10 be used in conjunction with Toyota for offices in  
11 relation to Toyota.

12 CHAIRMAN STUTO: You dodged her question about  
13 parking. She asked if it was used for parking.

14 MR. CAPONERA: Oh I'm sorry. I didn't hear that.

15 MS. MILSTEIN: Is it going to be used for parking?

16 MR. CAPONERA: Yes, absolutely.

17 MS. MILSTEIN: The storage of vehicles and  
18 everything.

19 MR. CAPONERA: Yes.

20 MR. LANE: But that will be maintained. You will  
21 repave that as well?

22 MR. CAPONERA: Ultimately, it probably will be  
23 repaved. We are actually considering increasing the  
24 parking if we can. There are some wetlands back here.

25 MS. MILSTEIN: So, it's for spots.

1 MR. GRASSO: Did that answer your question?

2 MS. MILSTEIN: Yes.

3 CHAIRMAN STUTO: The review of that lot should be  
4 in conjunction with this application, shouldn't it -  
5 both for SEQRA proposes and for site plan?

6 MR. GRASSO: No. It's not part of the application  
7 at all.

8 CHAIRMAN STUTO: Well, it should be. From what he  
9 is describing, it should be. It's part of the  
10 operation. For legal reasons he doesn't want to have to  
11 contaminate a spot and merge with the other parcels. I  
12 understand that.

13 MR. CAPONERA: But we are only dealing with the  
14 Audi site.

15 MR. LACIVITA: We are dealing with the new  
16 building.

17 MR. LANE: Not anything existing. You could  
18 separate them though.

19 CHAIRMAN STUTO: But we're changing the parking lot  
20 in front of the Toyota building and there are phantom  
21 parking spots in front of the Friendly building.

22 MR. CAPONERA: Dan, is this substantially being  
23 changed - the parking?

24 MR. HERSHBERG: Yes.

25 CHAIRMAN STUTO: I think that the whole thing

1 should be taken into consideration.

2 MR. GRASSO: But it's a separate property.

3 CHAIRMAN STUTO: So what? They are in control of  
4 it.

5 MR. GRASSO: I understand.

6 CHAIRMAN STUTO: Maybe they should have an easement  
7 over the whole thing. I don't know. How can you  
8 segment it? Why should you segment it?

9 MR. GRASSO: Well, because it's a separate property  
10 and there is nothing -

11 CHAIRMAN STUTO: That's not a good enough reason,  
12 in my opinion. They want all the benefits and not the  
13 burden -

14 MS. DALTON: So, here is the deal. If it's separate  
15 property, it meets all the greenspace that would go  
16 along with the separate property.

17 MR. CAPONERA: It's got it. It's way beyond.

18 MR. GRASSO: It would go through its own zoning  
19 verification process.

20 MR. CAPONERA: It already has.

21 MR. GRASSO: It's a separate parcel. If it  
22 requires site plan review, then it would be part of a  
23 site plan review application.

24 CHAIRMAN STUTO: Let's hold that thought.

25 MR. CAPONERA: Listen, we don't have any problem

1 with it. If you want to look at the whole thing, there  
2 are no smoke and mirrors here. It is what it is. The  
3 point is that this project, as merged, meets and exceeds  
4 the minimum greenspace. This particular parcel - we  
5 know why we're not proposing to merge it. It meets and  
6 exceeds the minimum greenspace. I've already got an  
7 approved zoning verification for its use and in  
8 conjunction with an automobile dealership with the cross  
9 access easements, and that's already been approved by  
10 the Planning Department. I have the approvals. It  
11 meets all of the criteria.

12 CHAIRMAN STUTO: It's a little bit of a  
13 segmentation, but okay. Let's get going.

14 MR. GRASSO: So, not to make it any muddier, but  
15 why would you not make the physical connection across  
16 the front between the properties that you have dashed  
17 in?

18 MR. CAPONERA: I'm not sure that I know what you  
19 mean.

20 MR. GRASSO: You have it dashed in, but you're not  
21 physically connecting the two sites. What we normally  
22 look for is the actual physical connection between  
23 properties, just like we did on the Aldi's piece.

24 MR. HERSHBERG: There is no reason why we can't.  
25 We have a dotted line showing all the way over.

1           MR. CAPONERA: Remember this is all just happening.  
2           We only just bought this a short time ago; within the  
3           last few months. This process that I have with the  
4           application and getting this approval - this is all just  
5           going on.

6           MR. GRASSO: I think that you were here more recent  
7           than February.

8           MR. CAPONERA: Not for this one. I didn't come  
9           before the Board.

10          MR. GRASSO: No, for this one.

11          Our last thing that I wanted to mention just in  
12          terms of SEQRA - it's an unlisted action. It doesn't  
13          appear that the project will result in significant  
14          environmental impacts. They have provided a short  
15          EAF as part of the application materials which we  
16          don't see any issues with that. Because it's  
17          unlisted, the Planning Board will be able to  
18          establish itself as lead agent at any point in the  
19          process and make its own SEQRA determination on the  
20          site plan review.

21          That's all that we've got at this time.

22          CHAIRMAN STUTO: Okay. I think that you've made  
23          some excellent points. You have made a lot of  
24          significant points. I think that we need to think about  
25          those and go over them.

1 We do have members of the public.

2 Bill Chaput.

3 MR. CHAPUT: Just a quick question. I am at 126 Old  
4 Loudon Road and we have 122 represented here. We were  
5 just wondering what the plans are, present or future,  
6 for this parcel of 124 Old Loudon Road because between  
7 our properties -- also for our immediately behind our  
8 backyards.

9 CHAIRMAN STUTO: That's an excellent question. I  
10 think that we asked it last time.

11 MR. CAPONERA: One of the questions that I believe  
12 was asked was whether or not that was included in  
13 greenspace. I think that you said no.

14 MR. HERSHBERG: No, we can't count it. It's in the  
15 single family residential. We cannot count it.

16 MR. CAPONERA: The other question - I don't think  
17 that you were here the last time.

18 MR. CHAPUT: No, this is the first time for me.

19 MR. CAPONERA: We are not intending on using it for  
20 any pass-thru.

21 MR. CHAPUT: I was afraid of an access road.

22 MR. CAPONERA: Even a Board Member asked about that  
23 and I said no, we're not going to do that. That's going  
24 to stay as is. And good news, if you live next door.

25 And the other aspect of this is see this green

1 area here? Other than what you potentially see  
2 here, possibly parking, but there is a lot of  
3 wetland back there.

4 MR. CHAPUT: Yes, there is. One use for that  
5 wetland is in the wintertime, you can hear the traffic  
6 from our bedroom on Route 9 because the leaves are down  
7 and there is no insulation. Three-quarters of the year,  
8 it's wonderful and I was just hoping that wetland or  
9 not -- I was hoping some of those trees will stay up.

10 MR. CAPONERA: Currently, we have no plans to do  
11 anything with that.

12 MR. CHAPUT: Well, my mind is at ease.

13 CHAIRMAN STUTO: What are the things that look like  
14 parking spots?

15 MR. HERSHBERG: There was a proposal to show what  
16 it would be if we built that. Could we maintain the 35%  
17 green. That was there to show that we could maintain  
18 35% green. It would be developed out with additional  
19 parking, but our proposal is not to develop that for  
20 parking at this time. That was to show the potential  
21 future development of the site.

22 MR. CAPONERA: There are also wetlands back there  
23 too.

24 MR. HERSHBERG: Yes, and there is some mitigation  
25 required back there if we ever decide to do it.

1 MR. LANE: So, are you saying that it's likely or  
2 unlikely?

3 MR. HERSHBERG: It's currently unlikely, I would  
4 say.

5 MR. LACIVITA: We will remove it from the next plan  
6 submission just so that it doesn't cause confusion.

7 MR. HERSHBERG: Unless we propose it, we should  
8 take it out.

9 MR. LANE: And then they would have to come back if  
10 they should decide that later on -

11 MR. LACIVITA: It's not part of the concept plan  
12 right now.

13 CHAIRMAN STUTO: What did the department approve  
14 with respect to the Friendly's piece? It is verbiage?

15 MR. CAPONERA: No, I have an approved zoning  
16 verification. It's in my file back here.

17 CHAIRMAN STUTO: Zoning verification is one thing,  
18 but I thought that you said that the plan -

19 MR. LACIVITA: Victor, I think that it was a change  
20 in tendency for the use as it was simply administrative.

21 CHAIRMAN STUTO: Do you mind if I ask Michelle  
22 Johnson to speak?

23 MR. CAPONERA: By all means.

24 MS. JOHNSON: I'm Michelle Johnson. I'm currently  
25 residing at 122. My questions were pretty much similar

1 to Bill's. We were concerned about the property in  
2 between our two houses and I was concerned just how much  
3 space was going to be left behind our property. Not  
4 that they are doing it now, but the proposed parking  
5 that they had - I don't want to come down to have coffee  
6 in the morning and look out my giant bay window and see  
7 cars and an ugly fence. It kind of killed the property  
8 value for me a little bit.

9 CHAIRMAN STUTO: Do you understand what is being  
10 proposed?

11 MS. JOHNSON: I do understand now. It was kind of  
12 hard to see on the attachment. I got the PDF files and I  
13 couldn't really read it, but now that I'm here and I see  
14 it, I'm more comfortable with what is going on.

15 MR. GRASSO: Can you point to where your house is?

16 MS. JOHNSON: This one right here (Indicating).  
17 I'm on the other side of 124. That's what my concern  
18 was. I'm pretty comfortable with what is going on right  
19 now.

20 This is actually my brother and sister-in-law's  
21 property. We are renting it while he is in the  
22 navy. They can't be here, so they asked me to be  
23 here. Thank you.

24 CHAIRMAN STUTO: Mark Kriss?

25 MR. KRISS: Marion Kriss is a co-owner of that

1 property that we are talking about; 122. I'm an  
2 attorney and I'm her father. Not only did her  
3 sister-in-law, show up, I'm here too.

4 Let me just reiterate what I understood with  
5 respect to the numerous parking spots which probably  
6 aggregate in this wetland area and a little bit  
7 above it. I think that there might be maybe 50  
8 parking spots or somewhere around there. I  
9 understand that there was a suggestion that all be  
10 removed from the perspective plan -

11 CHAIRMAN STUTO: The applicant said that is not  
12 part of the application. It's only to illustrate what  
13 theoretically could be thought about.

14 MR. KRISS: I was concerned because it is  
15 substantially in the wetland designation area; not all  
16 of it.

17 In addition to the parking spots, there is also  
18 a suggested easement over the wetlands for access,  
19 if I read this plan correctly. That also was of  
20 concern to me. If there is no intension of  
21 essentially disturbing any of the property behind  
22 what was the Friendly property, then I'm perfectly  
23 okay.

24 Additionally, there was no ingress or egress up  
25 that parcel on 124.

1           Are there any plans to remove any trees in any  
2 of these areas or any other changes?

3           MR. CAPONERA: No.

4           MR. KRISS: Are there any fences to be erected? Is  
5 there anything to be done in that area behind 122, 124,  
6 etcetera?

7           MR. CAPONERA: You're talking about behind here?

8           MR. KRISS: Yes.

9           MR. CAPONERA: I don't believe so.

10          CHAIRMAN STUTO: And it's not part of the  
11 application.

12          MR. KRISS: I believe that answers all of my  
13 questions. Thank you, Members of the Board and the  
14 applicant and everybody else.

15          MR. CAPONERA: If I can make a point real quick -  
16 regarding this whole layout, it shows here a 50 foot  
17 wide reservation easement. Do you see that on your  
18 plan? It's on the Friendly's site. If you kind of just  
19 take your eye and you go from Route 9 and you follow it  
20 back, guess where it matches up with? This green piece  
21 right here between your properties (Indicating). I'm  
22 guessing that many years ago that there was an idea of  
23 having some kind of a pass-thru there.

24          Here is the good news. When the mother entity  
25 bought the Friendly's piece. I was instructed to

1 eliminate this easement and I have prepared for  
2 filing an eradication of that easement. That's  
3 going to be filed when we get everything done. That  
4 easement is going to be gone. There was actually an  
5 easement to put a sign up there. It was pretty  
6 involved. That's part of the three inches of title  
7 work that we have done with the property.

8 Getting back to the Friendly's piece. In my  
9 hands, I hold the approval from not only the  
10 Planning Department, but also the Building  
11 Department. What it says is the Planning and  
12 Economic Development Department has received and  
13 reviewed plans for the proposed change in use at the  
14 above reference location. Department approval is  
15 granted. Please find your copy of your approved  
16 application materials and what it says in the use is  
17 to utilize the building in conjunction with Northway  
18 Toyota and to utilize the site as and for storage  
19 and sales for new and used automobiles. Former use -  
20 Friendly's ice Cream, specific activity restaurant  
21 and ice cream sales. So, we have that and this was  
22 approved in February of this year.

23 MR. SHAMLIAN: How the rear easement at 727 and 737  
24 - is the one in the rear - is that actually going  
25 through the wetland area?

1           MR. CAPONERA: You're asking me a question that I  
2           can't answer. I will have to defer to his eminence.

3           MR. GRASSO: It would go through wetlands.

4           MR. HERSHBERG: This easement right here  
5           (Indicating) -- actually the wetland is the light blue  
6           line here. This easement goes right through a piece of  
7           federal wetlands.

8                     It was an easement made before the federal  
9           wetlands were even established.

10          CHAIRMAN STUTO: It says proposed access easement.

11          MR. CAPONERA: We just did the ingress/egress  
12          easement.

13          CHAIRMAN STUTO: So, it's an easement that you  
14          can't use. Is that what you're saying?

15          MR. HERSHBERG: Can't use without permitting and  
16          going through a permanent process with the Corp of  
17          Engineers.

18          CHAIRMAN STUTO: So, are you going to go through  
19          that process or is it just sort of -

20          MR. GRASSO: We are okay with the easement going in  
21          place. It's an easement. It grants rights to both  
22          properties. Our concern is that there is a physical  
23          connection covered by an easement over the front  
24          connection between the properties.

25          CHAIRMAN STUTO: That's a different issue though.

1 MR. GRASSO: There is no benefit from our review.

2 CHAIRMAN STUTO: So, it doesn't mean anything to  
3 us.

4 MR. GRASSO: Rights of access; that's it.

5 CHAIRMAN STUTO: Are you driving cars over it now?  
6 Or do you drive out to the street to drive the cars from  
7 site to site? Or is the front one opened now?

8 MR. KRISS: The front one is open. I walk past  
9 there every day.

10 MR. CAPONERA: The physical barrier that is shown  
11 on the site plan - again, I haven't been out there to  
12 look at this, but if you can see this area right here --  
13 Steve, come look. That's where the easement is that we  
14 prepared. Is that being used?

15 MR. WALDREN: Yes.

16 MR. CAPONERA: So, that physical barrier that I  
17 think that Joe is referring to - is that gone?

18 MR. WALDREN: Yes, that's gone.

19 CHAIRMAN STUTO: Are they driving cars through the  
20 back?

21 MR. WALDREN: I don't know that.

22 CHAIRMAN STUTO: Good answer.

23 MR. CAPONERA: Wetland designation changes  
24 frequently.

25 MR. HERSHBERG: That curved piece is actually in a

1 piece of the federal wetlands.

2 CHAIRMAN STUTO: Joe Grasso, can you go back over  
3 the main issues that you think are important?

4 MR. GRASSO: Yes, the building setback from Route  
5 9. Whereas the proposal is to have it 23 feet from the  
6 right of way of Route 9. The building is 48. Not sure  
7 if there are any concerns there.

8 CHAIRMAN STUTO: But you said that you don't have  
9 concerns about that particular point.

10 MR. GRASSO: No. We feel that it meets the intent  
11 of the zoning. It's an attractive building. It's in  
12 context of buildings across the frontage. It's  
13 consistent with the Hess Mart. We were okay with that,  
14 so we didn't comment in our letter.

15 We did comment strongly about the parking  
16 across the front yard; whether or not it's in the  
17 front yard setback or even further back. That's a  
18 substantial change in and the Board should indicate  
19 its support -

20 CHAIRMAN STUTO: Your recommendation is not to  
21 increase parking closer to Route 9 that doesn't already  
22 exist - any further -

23 MR. GRASSO: I wouldn't go that strong. I would  
24 say that it should at least be setback as far as the  
25 Audi building. That would still result in across in

1 front of the Toyota, going 15 feet or so closer to Route  
2 9, which we are okay with.

3 CHAIRMAN STUTO: Correct me if I'm wrong. We  
4 recommend that the layout be revised to at a minimum  
5 maintain the current frontyard pavement setbacks. Is  
6 that accurate?

7 MR. GRASSO: Yes, that was specifically in front of  
8 the Audi. It's hard to see on the plan, but there is an  
9 existing row of parking adjacent to the Audi site --  
10 taking that line and basically going straight across.

11 MR. HERSHBERG: What Joe is talking about is a line  
12 that is right about here (Indicating).

13 MR. GRASSO: It would basically be consistent with  
14 the front of the Audi dealership which is a lot easier  
15 to see on the plans, so that's how I'm describing it.

16 MR. HERSHBERG: Rather than that, can you say that  
17 it can be no closer than the alignment of the new Audi  
18 building which is 22.9 feet back? That's clearly  
19 identified rather than the variations that pavement  
20 setback is not exactly parallel to Route 9. So, if we  
21 made it no closer than the alignment of the Audi  
22 building, we'd have to redesign our parking  
23 significantly, but it would allow us to use that  
24 alignment all the way across.

25 CHAIRMAN STUTO: Joe, what do you think about that?

1 MR. GRASSO: We are okay with that.

2 The next comment is regarding the amount of  
3 landscaped area within the front areas of the site  
4 visible from Route 9 around the buildings and within  
5 the landscaped islands.

6 We just don't think that it is consistent with  
7 what you would typically see for a commercially  
8 developed site along the corridor. The limited  
9 areas of landscaping are extremely minimal. Along  
10 the whole Toyota building you can look at the plan  
11 and see that it's devoid of any landscaping. So, we  
12 would look for a more robust landscape treatment.

13 CHAIRMAN STUTO: Does anyone disagree with that?

14 (There was no response.)

15 Keep going.

16 MR. GRASSO: That's really it. Those are the big  
17 ones.

18 CHAIRMAN STUTO: What about the frontage  
19 requirement? You made a comment on that; solid fence.  
20 I see it in several spots here.

21 MR. GRASSO: Obviously, there is the 80-foot  
22 build-out thing with dealerships. We haven't always  
23 required a fence which we are supportive of as long as  
24 there is some articulation across the front. We would  
25 support the use of berming and landscaping. They have

1 reflected a lot of landscaping, actually, on the concept  
2 site plan. We wanted to make a comment just to reaffirm  
3 that was something that we think is still important  
4 across the frontage. We are not concerned about cars  
5 parking on the greenspace as much as we were 20 years  
6 ago because there seems to be much more willingness of  
7 dealership owners within the Town to respect the  
8 greenspace as provided on the frontage.

9 MR. CAPONERA: Lou can certainly speak to that.

10 MR. MION: I strongly disagree.

11 MR. GRASSO: I will say that there are always  
12 examples of cars parked on greenspace, but not as  
13 prevalent as they used to be. I think that with this  
14 type of dealership, if it's appropriately landscaped and  
15 curbed -

16 CHAIRMAN STUTO: I would like to see a little  
17 fencing and a little bit more dressed up. I like the  
18 physical barrier too.

19 MR. GRASSO: And we have done that on some sites  
20 where we have done short sections of 20 feet of fence  
21 and then landscaping in between. We have seen that  
22 done. I just didn't want to say that it has to be all  
23 fenced to meet the intent of the Code. We look at car  
24 dealerships a little bit unique based on the need for  
25 strong visibility from the corridor.

1           CHAIRMAN STUTO: I don't disagree with that, but I  
2 forgot what we did with that physically; like curbing or  
3 high curbing or short fence that just doesn't allow them  
4 to pull up.

5           MR. GRASSO: Would you be open to a staggered or a  
6 combination -

7           MR. HERSHBERG: Again, when you're talking about a  
8 combination of landscaping and some sections of  
9 architectural fence, we can certainly work with that and  
10 revise our plan and come back again.

11          CHAIRMAN STUTO: Any other comments or questions  
12 from the Board?

13          MR. SHAMLIAN: The sidewalk in front is currently  
14 asphalt. Are we looking to try to start to migrate to  
15 real proper dedicated sidewalk along that corridor?

16          MR. GRASSO: I would actually need to take a closer  
17 look at it to see. I know that we are going to be doing  
18 some curbing work there in revising the curb cuts. I'd  
19 like to talk to DOT just to get their understanding of  
20 how they expect the sidewalk to be used and maintained  
21 so that we don't create an inconsistency along the  
22 corridor.

23          MR. SHAMLIAN: I think that we required Mavis to do  
24 some; didn't we?

25          MR. GRASSO: I don't think that we reviewed that

1 project.

2 MR. SHAMLIAN: I don't think that it was across the  
3 entire front, but I think that they had to do something  
4 like that.

5 MR. GRASSO: It's a great comment and it dovetails  
6 into a lot of things like, do we do the dropped curbs or  
7 other obstructions there. It's something that we'll  
8 have to look at further as we work through the process  
9 and the plans.

10 CHAIRMAN STUTO: The designated parking spots in  
11 front of Friendly's - what is that supposed to be --  
12 what now appears to be greenspace?

13 MR. LACIVITA: It's all green in there.

14 CHAIRMAN STUTO: But there are lines on that  
15 drawing.

16 MR. LACIVITA: That's where the tanks were. Again,  
17 this is a separate parcel and a separate project.

18 MR. HERSHBERG: You may be correct. Those dotted  
19 lines may be an assemblance of a potential future  
20 application. We will take out those dotted lines.

21 MR. CAPONERA: I have the approved site plan that  
22 was approved by Planning Department and it shows no  
23 parking there. There are too many dotted lines.

24 MR. GRASSO: Just a caveat to that is we are  
25 pushing for a physical connection - a curbed paved

1 connection between the two sites across the frontage.  
2 It is something that we would supportive of.

3 MR. CAPONERA: That's not a problem.

4 MR. SHAMLIAN: If we want to have some say in what  
5 happens to the Friendly's site, then we don't allow them  
6 to have that connection.

7 MR. GRASSO: Say that again, one more time.

8 MR. SHAMLIAN: If we would like to have the  
9 Friendly's site come before the Board, then we don't get  
10 the connection. Then, they can't move cars back and  
11 forth easily.

12 MR. GRASSO: Okay, got it.

13 MR. HERSHBERG: I thought that the goal was to  
14 provide for that interconnection. Again, we can show it  
15 as rather than a dotted easement, we can show it as a  
16 hard line to be constructed now or leave it as the  
17 easement is in the deed.

18 MR. CAPONERA: It was required when I brought this  
19 application in when we bought the Friendly's piece in  
20 order to get approval. I don't know what department. I  
21 can't remember. I'd have to go through all my sheets  
22 and I can't remember the last time I was in here with  
23 you guys on this. I do know that was one of the  
24 requirements to getting this approved. The question  
25 was: Are you going to use the Friendly's site in

1 conjunction with the Toyota site? Yes. What are you  
2 going to use it for? Automobile sales - no service, but  
3 sales with offices. Okay, if you do it, you have to  
4 provide cross access easements.

5 I don't know if it was the DPW Department. I  
6 don't know what department it was. I'm sure that I  
7 have it in here. That's why we did it. We weren't  
8 going to, but they required it.

9 CHAIRMAN STUTO: You're showing them both. They  
10 could just drive across.

11 MR. CAPONERA: Listen, I don't have a problem with  
12 this being included in this. It's all part and parcel.

13 MR. FISHER: What's the question?

14 MR. CAPONERA: The Board is concerned that we are  
15 separating out the Friendly piece from the Audi  
16 proposal, the Toyota proposal and the merger of the  
17 properties. Having knowledge of what we are trying to  
18 accomplish here, I don't have as much of a problem with  
19 it. It's all going to be used together regardless. The  
20 only reason why we separated it out is because the fact  
21 that it was a gas station, period. Otherwise, I would  
22 be merging the whole thing. That's the only reason why  
23 we did it.

24 Listen, don't think for a second that we're  
25 just for some reason trying to segregate that out;

1 we're not.

2 MS. DALTON: I think that the bottom line is that  
3 it's in the Town's best interest to have that easement  
4 and having cars moving away from Route 9. It might have  
5 given us extra piece of bargaining points with the other  
6 parcel, but it's not in our best interest to do it --  
7 it's not in the Town's best interest to do it.

8 MR. CAPONERA: I don't care if you consider it.  
9 It's irrelevant.

10 CHAIRMAN STUTO: Are you planning on changes on the  
11 Friendly's piece to make it all look like one cohesive  
12 thing?

13 MR. CAPONERA: Right now, no.

14 CHAIRMAN STUTO: So, if that were part of it --  
15 I'll ask both the.

16 Joes. Would you recommend any changes on the  
17 Friendly piece?

18 MR. GRASSO: Yes, we have comment 11 where we said  
19 clarification as to the use of the parcel should be  
20 provided. Should this parcel begin to operate in  
21 conjunction with the dealership, the potential for the  
22 elimination of additional curb cuts should be evaluated.

23 CHAIRMAN STUTO: I think that we should consider it  
24 all together.

25 MR. GRASSO: We would look for the curb cut right

1           there to be eliminated and a physical connections  
2           between the properties to be made.

3           MR. HERSHBERG: So, we tie it together and  
4           eliminate the curb cut.

5           MS. DALTON: That would also allow you to improve  
6           the greenspace in the front and the build-out.

7           MR. CAPONERA: The thing that we were looking at  
8           when we looked at the site is the possibility of adding  
9           more parking for storage of vehicles in the back.  
10          That's where the wetlands came in. I think that it's  
11          pretty constrained in terms of what you can do.

12          MR. LACIVITA: Victor, on that Board approval which  
13          was just the change in tenant and the minor site change  
14          that we did, did we open up that secondary opening?  
15          Friendly's, I thought, had the two openings already  
16          existing. So, those are already existing.

17          MR. CAPONERA: You mean the egress?

18          MR. HERSHBERG: They currently have two curbcuts.

19          MR. LACIVITA: We didn't open any. That's what I'm  
20          getting at. They are already existing.

21          MR. HERSHBERG: Rather than showing this as an  
22          easement, if we actually make the physical connection in  
23          here and we eliminated that curb cut, I think that Joe  
24          was saying that the potential for eliminating the curb  
25          cut should be explored. We can certainly take it up and

1 make the hard connection and eliminate that curb cut  
2 since it doesn't do much since this building operates in  
3 conjunction with Toyota. It's something that we can  
4 consider now and coming in for preliminary final.

5 CHAIRMAN STUTO: And also the landscaping. You  
6 need to modify your parking.

7 MR. CAPONERA: That's the only thing that we were  
8 looking at. Can we possibly get some more parking, but  
9 as these good folks have said, it's fairly constrained  
10 and wetlands would prevent it. So, I think that what we  
11 are talking about here is incorporating that even though  
12 it's a separate piece of property, so you understand the  
13 whole concept.

14 MR. HERSHBERG: The only thing that we really have  
15 to change with this application is to show the  
16 connection in there and if our client approves,  
17 eliminate that curb cut and that could be done - even  
18 though it's on an adjoining property, I think that could  
19 be done as part of this site plan.

20 CHAIRMAN STUTO: Right and whatever appropriate  
21 landscaping.

22 MR. CAPONERA: And eliminate a lot of the dots.

23 MR. LACIVITA: Victor, from a clarity standpoint,  
24 when it comes to the project, that's a separate parcel;  
25 separate and distinct. I'd rather see the application

1           come in from the Friendly's location adjoining the  
2           parcel and leave the two separate and not have it all  
3           wrapped up in this.

4           CHAIRMAN STUTO: I don't know if I agree with that,  
5           Joe.

6           MR. LACIVITA: From a legal standing - I mean, this  
7           is not part of the project right now. You're merging  
8           everything else to be that part of the project. We can  
9           take the comment, but the work should be done to amend  
10          that site plan and not this one. That's the way that I  
11          see it. We have to get a legal decision on that. I  
12          would prefer doing it that way. I can't see how the  
13          Board can encumber another separate and distinct site by  
14          having another applicant doing work on another site.

15          CHAIRMAN STUTO: They are the same owners, Joe.

16          MR. LACIVITA: Are they the same owners, Victor?

17          MR. CAPONERA: Legally, they're not. It's the same  
18          parent, if you know what I'm saying.

19          MR. LACIVITA: Right now there are two separate  
20          entities.

21          MR. CAPONERA: It's another name for the reasons  
22          that I already talked about. Otherwise, it would still  
23          be owned by MHL.

24          MR. SHAMLIAN: If everybody is in agreement whether  
25          it comes in as one or it comes in more or less, next

1 time, all together, we can act on both of them more or  
2 less at the same time.

3 CHAIRMAN STUTO: Well, one might be a minor and one  
4 would be major.

5 MR. CAPONERA: I understand where you are coming  
6 from, legally, but I also understand where the Board is  
7 coming from. You just want to see the whole gamut. I  
8 see it.

9 MS. DALTON: I think that there is some value if  
10 you're going to treat it like one parcel and you're  
11 going to pave it. If it's one parcel, then having the  
12 front build-out and make it look like it is one business  
13 makes a lot of sense. Frankly, it's in your best  
14 interest as well as ours because it looks like a  
15 business. So, legalities aside, I agree that from a  
16 legal standpoint. Certainly we can't require you to do  
17 that, but I think that from a planning standpoint,  
18 asking you to at least give some consideration to how  
19 you're going to do that when you come back, makes sense.

20 MR. CAPONERA: I 100% understand. I understand  
21 where you are coming from and I understand where the  
22 Board is coming from. I don't have any problem with  
23 that.

24 MR. HERSHBERG: Quite honestly, if we work it out  
25 with our client we should show it on this plan

1           regardless of whether or not it becomes part of a  
2           separate site plan application.

3           MR. CAPONERA:   Which we may have to do.

4           MR. HERSHBERG:   It makes sense to visually be able  
5           to show the change as it effects the adjoining property  
6           even though it might require a separate application from  
7           the 737 Loudon Road, LLC as the applicant for that  
8           portion of it.  For visual purposes, there is no reason  
9           why we can't display it on the same site plan.  It might  
10          require two separate plans.

11          MR. CAPONERA:   We will do it.

12          MS. MILSTEIN:   What are the zoning regulations with  
13          the car dealership as to building size, parking spot --  
14          isn't there anything?

15          MR. GRASSO:    No.

16          CHAIRMAN STUTO:  Let's wrap this up.  I think that  
17          we are ready and at that point.

18          We have an application here for concept  
19          acceptance, which is not an action under SEQRA and  
20          not a binding act of the Planning Board.

21          I think that we have enunciated the conditions  
22          that we want to be considered before we come back  
23          and before us and that would be the alignment of the  
24          parking across the front.  I think that the Board  
25          articulated that they wanted it to be no closer than

1 the front of the proposed Audi location.

2 In the amount of landscaping and fencing - we'd  
3 like you to consider beefing that up both for the  
4 aesthetics which is in the Land Use Law of the  
5 frontage that you're supposed to have and also to  
6 act as some kind of barrier. If you have fencing  
7 with the landscaping, that's fine. Some kind of  
8 barrier to prevent parking in the greenspace.

9 In addition, the Planning Board has articulated  
10 that they would like you to consider a hard  
11 connection between the Friendly's location and the  
12 parcel that is going to be newly merged in front of  
13 the Toyota store, and also consider closing off that  
14 curb cut closest to that connection.

15 MR. CAPONERA: The southerly curb cut.

16 CHAIRMAN STUTO: Southerly, yes. We've also heard  
17 from the neighbors and the applicant has made statements  
18 to the effect that the parking that is shown in the  
19 greenspace will be eliminated from the next application  
20 drawing.

21 Also, incidentally, the parking in front of the  
22 Friendly's will be eliminated - that's on the  
23 current greenspace. That the Old Loudon Road number  
24 124 will not be used for ingress and egress. That's  
25 not part of this application, and all the area that

1 is green as shown on that map is not proposed for  
2 development.

3 Were there any other conditions?

4 MR. GRASSO: Yes. The removal of the sheds - the  
5 non-compliant sheds and that the landscaping will  
6 include both review of the foundation plantings as well  
7 as the islands within the parking lot, as well as  
8 investigate the need for reconstructing the sidewalks  
9 across the project frontage.

10 CHAIRMAN STUTO: Okay, good; thank you.

11 MR. CAPONERA: I didn't hear the last one, Joe.

12 MR. GRASSO: Investigate the need to reconstruct  
13 the sidewalks across the project frontage.

14 CHAIRMAN STUTO: Any other conditions?

15 MS. MILSTEIN: I don't know about conditions, but  
16 still my preference is have the added buildings farther  
17 back than it is right now.

18 MR. GRASSO: The other thing that it does by  
19 bringing the building up is that it will cut off your  
20 views -- car dealerships are about inventory and large  
21 lots. That's what typically you see when the building  
22 gets pushed back, it's an expansive parking field.  
23 Having that building up front will cut off your sight  
24 lines as you go up and down the corridor, which we think  
25 has a certain improvement to the corridor. It's a

1 subjective thing, but it's something that you might not  
2 be aware of until you look at it on the plan.

3 CHAIRMAN STUTO: It breaks up the sea of vehicles.

4 MR. LANE: It's going to be an attractive building.

5 MR. GRASSO: It is a dynamic looking building.

6 MS. MILSTEIN: I'm not saying put it back 40 feet,  
7 but another 10 feet.

8 CHAIRMAN STUTO: Can we at least look at that?

9 MR. HERSHBERG: I think that essentially if we are  
10 going to move it back further, we are going to have to  
11 redesign the parking. The parking at the rear will tie  
12 up the parking between that building and Route 9 and my  
13 guess is that it will do just what Joe Grasso just said.  
14 It will increase the viewscape to be dominated by parked  
15 vehicles as opposed to our very nice architecturally  
16 pleasing building. I think that essentially locating it  
17 closer to the roadway is better.

18 MR. LANE: A lot of what we see before us -- I will  
19 generally agree with Susan. That's where they generally  
20 want to be is further back. In this case, I will have  
21 to agree with you folks. I think that this is better.

22 MR. HERSHBERG: Also, the building next door is up  
23 close, too. If we hide behind that building, it takes a  
24 lot of the architectural pleasing features that are in  
25 the building and makes it less visible to cars on the

1 corridor.

2 MS. MILSTEIN: I just like buildings back from the  
3 road. That's just my personal feeling. Move it back  
4 some. I'm not saying that it has to be 20 feet. I just  
5 don't like the buildings close to the road. That's my  
6 personal opinion.

7 MR. GRASSO: It doesn't make the site plan  
8 unworkable to push the building back 10 feet. I will  
9 say that it's not. There will be some impacts to the  
10 parking, but there is a lot of parking inventory  
11 provided so it's really just a subjective thing as a  
12 decision of the Planning Board.

13 MR. SHAMLIAN: If the building gets moved back then  
14 does the parking get moved back another 10 feet too?

15 MR. GRASSO: That would definitely impact the lot.

16 MS. MILSTEIN: Depending - maybe you could  
17 eliminate a few. Does it really matter? How many  
18 parking spots are there between both of them? Does  
19 anyone know?

20 MR. HERSHBERG: We have 498 spots shown, but that  
21 included 51 net new, so it's 447. Inventory for a  
22 dealer of this size, that's a very small number. I'm  
23 saying what Rick is thinking. That's very hard to run  
24 two dealerships with 447 cars.

25 MS. MILSTEIN: But that doesn't include the

1 Friendly's parking spots.

2 MR. HERSHBERG: No, it does not.

3 MR. CAPONERA: By the way, one of the things that  
4 Dan didn't talk about is that there is an easement that  
5 is behind this building that is in place that can't  
6 change. It becomes a matter of functionality, what can  
7 you do? It's a power easement.

8 CHAIRMAN STUTO: I see the water main easement.

9 MR. HERSHBERG: This is actually a power easement  
10 to get to Amaranda Hess. This is the Watervliet water  
11 easement that goes all the way down here (Indicating) .

12 CHAIRMAN STUTO: Some kind of easement to Hess.

13 MR. HERSHBERG: That's to Amaranda Hess.

14 MR. LACIVITA: Can I just ask a question for  
15 process here? We're getting close to having a concept  
16 again which is a non-binding that would allow the  
17 project to go forward. From what I'm hearing from what  
18 I would almost consider a polling of the Board, we have  
19 one asking to move it back and all the rest like where  
20 it's sitting currently. We're asking tonight for  
21 concept. We can work the process through and see if we  
22 can shift the building because of whatever it may be. I  
23 think that might be the way that we move forward and not  
24 try to say can we shift the building tonight, but work  
25 it through the process and move forward and hopefully

1 grant concept tonight.

2 MR. CAPONERA: The building may fall within the 100  
3 feet of the residential zone too.

4 MR. HERSHBERG: We currently have 100.7 feet off of  
5 the residential zone. So, if we try moving it back 10  
6 feet, now we now have to move it over further to keep it  
7 from encroaching -

8 MR. LACIVITA: It compromises the development of  
9 the site.

10 MS. DALTON: I wanted to see on the aerial photo in  
11 a bigger view -- it looks like on this little one like  
12 the test building is already up.

13 MR. GRASSO: That's the canopy.

14 MR. HERSHBERG: The front of the building probably  
15 about 30 feet back. It's about 48 feet in the back and  
16 we proposed the building right here (Indicating).

17 MS. DALTON: So, it would kind of be adjacent to  
18 the end of this canopy.

19 MR. HERSHBERG: It is more consistent with the  
20 alignment of the Hess building. Actually, if you take  
21 the far corner and connect it in with the Hess building,  
22 you're probably going to be at a point maybe 30 feet  
23 back.

24 MS. DALTON: I think that it looks more consistent.

25 MR. HERSHBERG: Like I think that Joe Grasso said,

1           there is a variation and setbacks up and down this  
2           corridor and making it 22.9 feet doesn't make it stand  
3           out like a sore thumb. There are various buildings that  
4           are up closer.

5           MS. DALTON: My main concern would have been if we  
6           had been jutting it all the way forward, it was  
7           inconsistent with everything that is around it. It's  
8           not. It actually makes it more consistent with  
9           everything that is around it.

10          MS. MILSTEIN: That, to me, looks like a wall. I  
11          like the stagger. That's my personal opinion. This is  
12          a massive project.

13          CHAIRMAN STUTO: It's time to take a vote. We have  
14          all the conditions that we listed. I think that we were  
15          all in agreement. We can take a vote like that and  
16          Susan can try to amend it, I guess. That's one  
17          suggestion.

18          MS. DALTON: I think that at this point we give  
19          concept and they can just review it and see what it  
20          would take to move it because it might not even be  
21          possible to just move it back.

22          CHAIRMAN STUTO: Look at moving it back; is that  
23          what you're saying?

24          MS. DALTON: Yes, just take a look at it.

25          CHAIRMAN STUTO: You want to make that motion?

1 MS. MILSTEIN: I'm fine with it, as long as they  
2 look at it.

3 CHAIRMAN STUTO: Okay, the conditions that we  
4 already enunciated plus examine very closely moving the  
5 building further off of Route 9.

6 MR. HERSHBERG: I would say that the only other  
7 concept condition that you put on, I'm aware of. But  
8 doing a study of that means essentially could we move it  
9 back further? Yes. But it would greatly impact our plan  
10 because you also have to slide it over further to honor  
11 the 100 foot back from the residential zone.

12 CHAIRMAN STUTO: You said that you have 110 feet.

13 MR. HERSHBERG: We have 100.7 feet. Just moving  
14 the building back 10 feet means we'd have to slide this  
15 building over which would change the entire geometry of  
16 the area along side it. I think that essentially it  
17 would be a potential massive change for us to slide it  
18 back. So, if this Board thinks that it's something that  
19 we should consider that we should include, we would  
20 include it, but I heard that there were significant  
21 concerns by the Board that maybe leaving it up at 22.9  
22 feet isn't the worst thing in the world. Asking us to  
23 do a further study of that, I think, complicates our  
24 steps going forward. I think that it would be better to  
25 accept the 22.9. That also affects the setback of the

1 parking. We agreed to not have the parking closer than  
2 the Audi building. If we move that back, it's going to  
3 impact parking more. I would strongly recommend that  
4 the concept acceptance not include studying moving the  
5 building closer.

6 CHAIRMAN STUTO: I'm going to ask Joe Grasso for  
7 his opinion.

8 MR. GRASSO: I really think that we should leave  
9 the building where it is. I think that it's in a good  
10 spot. I think that it's zoning consistent than pushing  
11 it back and I think that it provides some other benefits  
12 regarding the aesthetics of the site by leaving it  
13 where it is.

14 CHAIRMAN STUTO: Somebody want to make a motion  
15 either way?

16 MR. MION: I'll make a motion without moving the  
17 building back and with all the other conditions.

18 MR. LANE: Second.

19 CHAIRMAN STUTO: Discussion?

20 MS. MILSTEIN: All I'm saying is 10 feet. Could it  
21 be eight feet? Could it be five feet? I'm just  
22 suggesting 10 feet.

23 MR. MION: What I'm hearing is that if you move it  
24 back one foot, it's a lot; is that correct?

25 MS. MILSTEIN: That's in their opinion. That's how

1           they designed it, but that's why we are here at the  
2           Planning Board. It's not up to them. There are  
3           conditions that we want or if we want an alternative, we  
4           do it all the time. We ask people to make changes.

5           MR. LACIVITA: Daniel, can your study show no if  
6           you were to look at this? We don't need to look at it  
7           tonight. If we include the condition that we look at  
8           it. You can XYZ your comment to be whatever it may be.  
9           You look at the study and yes, this is the compromising  
10          of the site to amend to -

11          MR. HERSHBERG: I can certainly look at it and  
12          dictate why we don't think that moving it back does and  
13          we can do that. I really think that the concept  
14          acceptance ought to be more clearly -

15          MR. LACIVITA: I'd love to have it clean tonight.

16          CHAIRMAN STUTO: Well, we have a motion and a  
17          second. Susan made her point. I'm prepared to support  
18          the motion. I'm convinced that it's okay where it is.

19          Any other comments?

20          There being no further comments, all those in  
21          favor say aye.

22          MR. MION: Aye.

23          CHAIRMAN STUTO: Aye.

24          MS. DALTON: Aye.

25          MR. LANE: Aye.

1 MR. SHAMLIAN: Aye.

2 CHAIRMAN STUTO: All those opposed, say nay.

3 MS. MILSTEIN: Nay.

4 CHAIRMAN STUTO: We have one in the negative. The  
5 motion passes.

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9 (Whereas the above referenced proceeding was  
10 concluded at 8:55 p.m.)

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CERTIFICATION

I, NANCY L. STRANG, 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 L. Strang

Dated \_\_\_\_\_

