

1 PLANNING BOARD COUNTY OF ALBANY

2 TOWN OF COLONIE

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SMOKERS CHOICE OF UPSTATE NY, INC.

4 448 SAND CREEK ROAD

WAIVER REQUEST

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6 THE STENOGRAPHIC MINUTES of the above entitled  
7 matter by NANCY L. STRANG, a Shorthand Reporter,  
8 commencing on October 18, 2016 at 7:15 p.m. at The  
Public Operations Center, 347 Old Niskayuna Road,  
Latham, New York.

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

18 ALSO PRESENT:

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20 Kathleen Marinelli, Esq. Counsel to the Planning Board  
21 Joseph LaCivita, Planning and Economic Development  
22 Department  
23 Michael Tengeler, Planning and Economic Development  
24 Department  
25 Amy McCain  
Albert S. Mugrace, RA

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1                   CHAIRMAN STUTO: Next item on the agenda is  
2 Smokers Choice of Upstate New York, 448 Sand Creek  
3 Road, waiver request.

4                   Joe LaCivita, or Mike, to have any comments?

5                   MS. MCCAIN: Excuse me. I may not understand  
6 the process so I might need some clarification. The  
7 previous project was approved in March 2015 and I  
8 thought that the concept approval was for a year; is  
9 that correct?

10                  CHAIRMAN STUTO: Eighteen months.

11                  MS. MCCAIN: And then, they can get a year  
12 after that.

13                  MR. LACIVITA: Yes.

14                  CHAIRMAN STUTO: Okay, a smoker's choice, do  
15 you have any preliminary comments?

16                  MR. TENGELER: The site is that before 48 Sand  
17 Creek Rd. It is in the HCOR zoning district. It is  
18 currently Central News. That is a retail business.  
19 Smokers Choice would like to come in and rehabbed the  
20 building consistent with a retail use and add a  
21 drive-through window. This is approximately 922  
22 square feet increased pavement.

23                  Al Mugrace is here to talk about the project  
24 applicable to the project, and then we can go over  
25 waivers that would be applicable to the project.

1                   CHAIRMAN STUTO: Will turn it over to the  
2 applicant.

3                   MR. MUGRACE: Good evening. My name is Albert  
4 Mugrace and I represent Smoker's Choice. Have a  
5 representative from smoker's choice here with me  
6 tonight; Dwayne Phillips.

7                   Primarily, the project consists a change  
8 tenancy, and new pavement. He is looking to maintain  
9 the building in its present condition with some  
10 internal changes. The biggest change really is in the  
11 exterior proposing to provide a drive-through window  
12 which is shown on the south side of the building. is  
13 Mike was saying previously, the pavement is going to  
14 increase by roughly 900 feet which means we will be  
15 losing about 900 feet of green space.

16                   The parking is going to remain the same amount.  
17 The same amount will be provided. We're going to be  
18 reintroducing in some specific areas new greenery just  
19 try to mitigate the amount of green space that we are  
20 taking away.

21                   We are consolidating the driveway into one  
22 single driveway. Presently, it consists of two  
23 driveways. There is no real rhyme or reason the way  
24 this is currently. I think that this is going to help  
25 the access to Sand Creek Road.

1 I am going to turn it over to Wayne. He has the  
2 knowledge of the business that they plan on putting  
3 here. So, if you have any questions for either of us  
4 go right ahead.

5 CHAIRMAN STUTO: Can you speak specifically to  
6 the waivers that you are requesting? That is really  
7 what we want to learn about.

8 MR. TENGELER: I can do that. I was doing a  
9 little research in the Land Use Law before the  
10 meeting. I just handed out the resolution and if you  
11 can turn the page, I put in a portion of the Land Use  
12 Law 190-47 in regards to parking. Initially, we  
13 thought this would require a pavement setback waiver  
14 because the pavement is now encroaching a little bit  
15 on the rear setback. However, 190-47(g):

16 "No parking area or loading area for multi  
17 family use or nonresidential use except for driveway  
18 entrances and exits and drive-thru lanes shall be  
19 located nearer than 15 feet to the edge of the  
20 sidewalk or frontlane, whichever is closer, or 10 feet  
21 to the side or rear lot line."

22 Basically, what this means is that the  
23 drive-thru lane is actually exempt from that pavement  
24 setback, which was unbeknownst to me when I did the  
25 initial review. But in re-familiarizing myself for the

1 meeting tonight, I came across this in the Land Use  
2 Law. So, I believe that the waiver for the patent  
3 setback is actually not valid and will not be  
4 necessary. However, you're still going to require the  
5 waiver for the green space reduction as well as the  
6 incentive zoning consideration. That is all been  
7 readdressed in the new Resolution that passed out  
8 before the meeting.

9 CHAIRMAN STUTO: What is their payment going to  
10 be?

11 MR. TENGELER: It's also included in your  
12 packet. I believe it's \$14,000.00 and change -  
13 \$14,210.00. That's for 922 square feet of pavement  
14 reduction. Part of the reason why the payment is so  
15 high in conjunction to the minimum square feet that is  
16 being disturbed is that the parcel is pretty small. It  
17 is .27 acres so under 30% of an acre. The 922 square  
18 feet comes out in the zoning formula to \$14,210.00.  
19 That puts them in the second and third increment as  
20 per the associated worksheet.

21 CHAIRMAN STUTO: Can you tell us again where we  
22 are losing green space?

23 MR. MUGRACE: There is a dashed line on the  
24 site plan. So, the existing pavement terminates or  
25 ends at this line in this line (Indicating). we are

1 proposing to do a drive-thru here, which will impact  
2 the green area back here. That's what we're talking  
3 about, basically.

4 CHAIRMAN STUTO: So, it's the driveway between  
5 the two dashed green lines?

6 MR. MUGRACE: Yes, pretty much. Up to this  
7 point, it's presently all paved.

8 CHAIRMAN STUTO: What did you say you are doing  
9 to dress up the front get better?

10 MR. TENGELER: There are some limitations you  
11 packets that show some architectural enhancements; new  
12 windows, canopies as well as new plantings.

13 MR. MUGRACE: Yes, new plantings.

14 CHAIRMAN STUTO: Can describe those?

15 MR. MUGRACE: The new ones are in this location  
16 here (Indicating). We're basically blocking this  
17 drive way which is now paved. That becomes all green.

18 MR. TENGELER: There are actually creating a  
19 little bit more green space in front and they are  
20 eliminating a little bit more and the back.

21 CHAIRMAN STUTO: That's all my questions.

22 MR. LANE: What is the expectation that the  
23 drive-thru is going to offer to reduce on-site  
24 parking? What was the necessity for the need for the  
25 drive-thru?

1 MR. MUGRACE: Dwayne is familiar with the  
2 operation of the business.

3 MR. LANE: To have these other locations with a  
4 drive through?

5 MR. PHILLIPS: Yes.

6 MR. LANE: Where do you have them?

7 MR. PHILLIPS: We have some in Pennsylvania, we  
8 have one Binghamton. We have about 23 Pennsylvania and  
9 New York State.

10 MR. LANE: They don't all the drive-thrus  
11 though?

12 MR. PHILLIPS: We have a total of 60 stores. I  
13 would say approximately 20 have drive-thrus. It is a  
14 convenience factor.

15 MR. LANE: How does it affect the on-site  
16 parking?

17 MR. PHILLIPS: I do not believe that it does.

18 MR. TENGELER: If anything, it would lessen it.

19 MR. SHAMLIAN: Are there some products that you  
20 cannot sell through the drive-thru? during the.

21 MR. PHILLIPS: The products that are sold  
22 through the drive-thru will be very quick, right near  
23 the register; cigarettes, tobacco. I would say the  
24 typical wait time is about 20 seconds. So, that's  
25 pretty quick. Anything else, we would ask them to come

1           inside.

2                   MR. SHAMLIAN: I thought that I saw that the  
3 plan would be to sell beer.

4                   MR. PHILLIPS: That would be inside.

5                   MR. LANE: So, commonly cannot sell beer at the  
6 window.

7                   MR. PHILLIPS: No.

8                   CHAIRMAN STUTO: Are there any other questions  
9 from the Board?

10                   (There was no response.)

11                   Any members of the public want to be heard on  
12 this?

13                   (There was no response.)

14                   MR. LANE: I have one more question. Your  
15 locations in Pennsylvania - aren't stores that sell  
16 beer - aren't they usually state-run operations?

17                   MR. PHILLIPS: None of the Pennsylvania stores  
18 are selling beer. They do have drive-thrus, but just  
19 know beer.

20                   MR. SHAMLIAN: Do you think that you need 10  
21 parking spots?

22                   MR. MUGRACE: That's what was there originally.  
23 We are trying to bring it back to that original  
24 number.

25                   MR. SHAMLIAN: I'm wondering whether or not



1 with the drive-thru whether you really need all of  
2 those.

3 MR. TENGELER: It's a retail use and the size  
4 of the building is not changing. Thus, the parking  
5 requirement is the same. If they were to lose a spot  
6 or two, essentially they would need a waiver for that.  
7 I think the fact that they are closing the one curb  
8 cut and adding green space in the front, I'm satisfied  
9 with that. I think that they meet the code and that is  
10 an important thing. Some of these Smokers Choices  
11 types of places that we've seen - parking at peak  
12 hours can get up there. I think the more, the better.

13 MR. SHAMLIAN: That stretch of Albany Shaker -  
14 there is a curb?

15 MR. MUGRACE: There is in some areas.

16 MR. SHAMLIAN: In front of this property?

17 MR. MUGRACE: Yes, it is curbed.

18 MR. TENGELER: Yes, and the curbing will  
19 continue.

20 MR. SHAMLIAN: The entrance being closed - it's  
21 going to have a curb?

22 MR. MUGRACE: Yes.

23 MR. TENGELER: Also, I would just add that they  
24 are adding the masonry enclosure for the dumpster in  
25 the rear. There has never been one there.

1                   They are essentially bringing the site up to  
2 compliance and in return they are asking for some  
3 consideration for the green space that is lacking in  
4 the process.

5                   CHAIRMAN STUTO: Has the environmental and  
6 complete? Has it then signed off?

7                   MR. TENGELER: Yes, it has been signed-off by  
8 our Attorney's office. Rebecca Nellis Kennedy  
9 signed-off on it. Essentially, it has been deemed an  
10 unlisted action.

11                  CHAIRMAN STUTO: And it looks like Joe has  
12 signed off on it.

13                  MR. TENGELER: Joe signed off on the negative  
14 declaration.

15                  CHAIRMAN STUTO: So, the environmental review  
16 is complete.

17                  MR. TENGELER: Yes.

18                  CHAIRMAN STUTO: I would ask that the  
19 stenographer put the Resolution into the record in its  
20 entirety.

21                  Mike, if you could read the resolves?

22                  MR. TENGELER: Resolved, the Board hereby  
23 recognizes the granting of these waivers to allow for  
24 the reduction of the green space from 28% to 20% is  
25 not hinder the town's objectives to protect it's

1 important natural resources, conserve farmland, create  
2 recreational or wildlife Trail corridor doors, the  
3 preservation of historic resources to protect the view  
4 sheds were scenic roadways.

5 The it further resolved the Board hereby finds  
6 the waiver request reasonable to allow for safe and  
7 reasonable development of the site and grants the  
8 waiver request to allow for the reduction of green  
9 space.

10 The it further resolved the Board hereby grants  
11 the incentive zoning payment in accordance with the  
12 Town of Colonie Land Use Law 120-27 in regards to the  
13 reduction of green space below the required 35%.

14 Be it further resolved these waivers be kept in  
15 the project file in the Office Planning and Economic  
16 Development.

17 CHAIRMAN STUTO: Do we have a motion in this  
18 Resolution?

19 MR. MION: A make that motion.

20 CHAIRMAN STUTO: To have a second?

21 MR. AUSTIN: I will second it.

22 CHAIRMAN STUTO: Is there any discussion?

23 (There was no response.)

24 All those in favor say aye.

25 (Ayes were recited.)

1 All those in favor say nay.

2 (There were none opposed.)

3 The ayes have it.

4 MR. MUGRACE: Thank you very much.

5 CHAIRMAN STUTO: Okay, thank you.

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7 (Whereas the above entitled proceeding was  
8 concluded at 7:27 p.m.)

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CERTIFICATION

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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.

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NANCY L. STRANG

Dated \_\_\_\_\_

