

1 PLANNING BOARD COUNTY OF ALBANY

2 TOWN OF COLONIE

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4 TEXAS ROADHOUSE  
105 WOLF ROAD

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6 THE STENOGRAPHIC MINUTES of the above entitled matter  
7 by NANCY L. STRANG, a Shorthand Reporter commencing  
8 on March 20, 2018 at 9:20 p.m. at The Public  
9 Operations Center, 347 Old Niskayuna Road, Latham,  
10 New York

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9 BOARD MEMBERS:  
10 PETER STUTO, CHAIRMAN  
11 LOU MION  
12 CRAIG SHAMLIAN  
13 SUSAN MILSTEIN  
14 BRIAN AUSTIN  
15 STEVEN HEIDER

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ALSO PRESENT:

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Kathleen Marinelli, Esq., Counsel to the Planning Board

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Michael Tengeler, Planning and Economic Development Department

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Joseph Grasso, PE, CHA

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Annemarie Harrington, Greenburgh Farrow

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Bruce Rubin

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Drew Allen

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1                   CHAIRMAN STUTO: Mike, do you have an  
2 introductory comments?

3                   MR. TENGELER: We're here for the last item  
4 tonight. This is Texas roadhouse, 105 Wolf Road.

5                   I think the Board has reviewed the site a  
6 couple of times and the Chipotle Restaurant in front  
7 was the Phase 1. Phase 2 is the Texas Roadhouse that  
8 was built in the back.

9                   The Board saw this for a parking expansion  
10 that happened two or three years ago. They are here  
11 tonight for an additional 23 parking spaces. The six  
12 parking spaces that were referenced -- we didn't end  
13 up agreeing with that interpretation.

14                   There was a discussion that our Senior  
15 Planner and myself had where we differed in opinion.  
16 So, they are here tonight just to clarify the 23  
17 parking spaces.

18                   CHAIRMAN STUTO: Okay, can you make it easy for  
19 us to understand? Existing, and what you are adding to  
20 it?

21                   MS. HARRINGTON: Absolutely, yes good evening  
22 Board. My name is Annemarie Harrington. I'm from  
23 Greenberg Farrow.

24                   As Mike had mentioned, in 2013 when Texas  
25 Roadhouse had received Board approval, they had also

1 sought out the waiver for temporary parking in the  
2 front yard setback. Granted, this waiver was not  
3 pursued because the owner was contemplating a third  
4 pad site.

5 Since opening Texas Roadhouse has enjoyed  
6 steady business and has been running at capacity.

7 Having said that, Mr. Burke has decided to  
8 accommodate Texas Roadhouse's request to add  
9 permanent parking at what would have been the third  
10 pad site, as you can see here, on the exhibits that I  
11 passed out to you. This is along Sand Creek Road.

12 The first waiver is in regard to parking  
13 within the front yard setback. Currently patrons are  
14 parking in illegitimate spaces were unmarked spaces.  
15 The existing site configuration does not allow for  
16 additional parking that anywhere else would comply  
17 with Code. So, after further analysis, this would be  
18 the most feasible site for space for the additional  
19 parking spaces. So, currently there are 202 spaces.  
20 We are proposing 23 for a total of 225. As I  
21 understand the maximum allowed parking spaces for the  
22 area is 228, so we do not exceed that.

23 Two items that I also want to identify is  
24 along Sand Creek Road. We are taking down the split  
25 rail fencing and we are proposing black aluminum

1 fencing with brick columns or brick piers here.

2 Mr. Rubin, a neighboring resident has  
3 expressed concern about a screening issue. Over the  
4 years we have provided evergreen screening, but it  
5 has not succeeded. So, assuming Mr. Rubin is in  
6 agreement with us, we are proposing to take care of  
7 that matter of screening and propose vinyl fencing  
8 there.

9 The second waiver request is with regard to  
10 the green space. Currently the existing green space  
11 is 60,000, plus or minus square feet. We are  
12 proposing a reduction of 3,000 square feet plus or  
13 minus. Hence, the second waiver request. So, this  
14 would be paying a fee in lieu of, which I think comes  
15 out to approximately \$13,650.

16 MR. TENGELER: That is an incentive zoning fee  
17 and the worksheet is in your packets.

18 CHAIRMAN STUTO: How much are we reducing the  
19 green space by?

20 MR. TENGELER: The green space is being reduced  
21 from -- the requirement is 35%. The green space is being  
22 reduced to 34.1%. The amount of green space reduction  
23 calculation is 1,365 square feet at a cost of \$10 per  
24 square foot equates to an incentive zoning payment of  
25 \$13,650 that would be required before we could stamp

1 plans. Again, the other waivers for parking within the  
2 front yard setback -

3 CHAIRMAN STUTO: Can you physically show us  
4 where the spaces are?

5 MS. HARRINGTON: They are here (Indicating). On  
6 the exhibit - on the drawing that I provided you which  
7 is along Sand Creek Road.

8 MR. TENGELER: Due to the logistics of the  
9 sites, there are two front yards; Wolf Road and Sand  
10 Creek Road. It makes it practically impossible to  
11 accommodate more parking without requesting a waiver.

12 CHAIRMAN STUTO: Is it sort of L-shaped?

13 MS. HARRINGTON: Yes.

14 CHAIRMAN STUTO: Because it's not real clear.  
15 You have other hashmarks in a different area, as well.

16 MR. TENGELER: Yes, previously there was porous  
17 pavement that was applied to the site. The owner and  
18 contracting maintenance to the site made an error and  
19 they actually sealed the porous pavement. Part of this  
20 project - the requirement of this project will actually  
21 fix - which, they are required to do so already but this  
22 is also a mandate of our conditions of approval.

23 CHAIRMAN STUTO: So, that his note 9, restore  
24 existing pervious pavement.

25 MS. HARRINGTON: If I may say because the owner

1 had seal coated that area, we were able to temporarily  
2 mitigate and drill holes to allow drainage over the  
3 winter. Once the asphalt plants open up in the spring,  
4 we will be able to fully mitigate that incomplete and  
5 fix that error.

6 CHAIRMAN STUTO: Okay.

7 MS. MILSTEIN: Can you show me where on this  
8 rendition the parking spaces are? I really don't  
9 understand -

10 MS. HARRINGTON: So, if you access the existing  
11 site access off of Sand Creek Road, these spaces are not  
12 currently here. Right now it's all lawn. So, there are  
13 seven spaces as you are accessing the ingress to the  
14 site off of Sand Creek to your left. So, there will be  
15 seven spaces and then just above that there will be 16  
16 spaces totaling 23.

17 MR. HEIDER: I want to bring up one point. On  
18 the lower left, S7 -- it actually has become your salt  
19 shed.

20 MS. HARRINGTON: The salt shed is down here  
21 (Indicating).

22 MR. HEIDER: I think that should be screened.  
23 It's almost 12 months year that you store equipment  
24 there.

25 MR. TENGELER: I agree with you, Chief.

1 MR. HEIDER: They have the concrete barricades  
2 there.

3 MR. TENGELER: I thought it had to do with the  
4 maintenance they were doing on the site. You are  
5 absolutely right. If that's been there and propose to be  
6 there continuously; absolutely.

7 MR. HEIDER: So, there has to be screened or  
8 moved.

9 MS. HARRINGTON: Okay.

10 MR. TENGELER: We can address that on the final  
11 plans.

12 MR. AUSTIN: Did you put vinyl fencing all  
13 along near the residence?

14 MS. HARRINGTON: There is, but I think there is  
15 a spot here at that was not continued.

16 MR. AUSTIN: Mr. Rubin chose not to?

17 CHAIRMAN STUTO: No, he asked for it. I  
18 advocated for it, but he was against it.

19 Let's hear from the residence.

20 Mr. Rubin?

21 MR. RUBIN: My name is Bruce Rubin. I was here  
22 I believe in November or December 2013.

23 Since this time, Mike Tengeler has worked  
24 very well with my brother to try to get the matter  
25 resolved. With respect to the fencing, we would be in

1 agreement with that barrier. We would ask for two  
2 sections of white vinyl fencing with sensitivity to  
3 clearing that area. In other words, it would be  
4 clearing for the fence but there wouldn't be any  
5 extensive clearing. We would be in agreement with  
6 that.

7 I did have one quick question. The reduction  
8 as far as the green space - behind Kenlyn Drive,  
9 which is northeast of the road side, there is an area  
10 which was designated forever natural. I just want to  
11 make sure that will not be impacted by the reduction  
12 of green space that was talked about before.

13 MR. TENGELER: You're talking about the area  
14 behind the restaurant?

15 MR. RUBIN: Yes.

16 MR. TENGELER: I've been working directly with  
17 Commissioner Cunningham, the DPW Commissioner of Public  
18 Works. He is in full support and we both understand the  
19 sensitivity that we are looking to achieve. I am  
20 personally going to attend the preconstruction meeting  
21 to express the need for the sensitivity and I will be  
22 working with Jack Cunningham, hands on. Ideally what I  
23 would like to accomplish at that preconstruction meeting  
24 is that they would hand dig -

25 CHAIRMAN STUTO: The first question he's asking

1 is: You are not reducing the green space behind the  
2 house, right?

3 MR. TENGELER: Minimally. Just to put the fence  
4 up

5 CHAIRMAN STUTO: But that's not in the  
6 calculation, right?

7 MR. TENGELER: No.

8 CHAIRMAN STUTO: The reduction in green space  
9 is not in the calculation. It's not in the forever wild  
10 space. The only disturbance will be to put the fence  
11 posts in, which they say they will do by hand.

12 MR. RUBIN: That's fine.

13 CHAIRMAN STUTO: Are we in agreement on the  
14 type of fence - white vinyl?

15 MR. RUBIN: Yes. That will be the same height?

16 MS. HARRINGTON: Yes, I presume it would be the  
17 same height as the existing fence.

18 MR. RUBIN: I believe the only other issue was  
19 just the general cleanup of that area. If they could  
20 clean the debris from the roadside and that would be our  
21 only request.

22 MR. TENGELER: We will address that at the  
23 preconstruction meeting, too.

24 MR. RUBIN: That's all. Thank you, very much.

25 CHAIRMAN STUTO: Thank you.

1 Drew Allen?

2 MR. ALLEN: My name is Allen. I run the 99  
3 Restaurant, which is the neighbor. I can attest to the  
4 fact that they need more parking space. Those folks are  
5 using my parking spots.

6 Since there is a lot of fencing going on in  
7 here, I don't know if it's possible that they could  
8 put a fence and between our two properties to stop  
9 that from occurring. It's a regular occurrence that  
10 12 or 15 of my spots on a nightly basis are taken up  
11 by people who are walking across 3 feet of green  
12 space to go to the restaurant. Again, like I said,  
13 using my parking spots. Is something like that  
14 possible?

15 MR. TENGELER: There is an easement that runs  
16 all the way from Wolf Road down the entire strip of the  
17 parcel. Actually, it kind of straddles Rubin's border as  
18 well. That is why there was limited landscaping that was  
19 always proposed over there, as is. I would hope that  
20 this additional parking could address the concerns of  
21 the 99 that will now have ample parking.

22 MR. SHAMLIAN: Why can't they put a fence on an  
23 easement, Mike?

24 MR. TENGELER: It's not supported usually by  
25 DPW. Jack Cunningham is making a special concession due

1 to the issues that the Rubins have had over the years.  
2 Running that fence along the easement generally is not  
3 preferred within an easement area. Again, they are  
4 making a concession here through a 30 foot stretch.

5 MR. ALLEN: I'm not even asking for it all the  
6 way to the road. Even if you could just do it up a  
7 little bit beyond where Texas Roadhouse is, so they stop  
8 using all of this of my parking.

9 MS. MILSTEIN: Where is the easement?

10 MR. TENGELER: It runs down the entire strip.  
11 There is a hold harmless agreement that I believe was  
12 memorialized back when the original project came  
13 through.

14 MS. MILSTEIN: So, can exceptions are made then  
15 for the encroachment, for a lack of a better word, on  
16 the easement?

17 MR. TENGELER: They can if they are accepted by  
18 DPW. Generally, they are not. Like I said, Mr.  
19 Cunningham is making an exception here.

20 MS. MILSTEIN: Maybe possibly he could make  
21 another one?

22 MR. TENGELER: He could possibly, but I highly  
23 doubt it. This is a 30-foot strip that he's making the  
24 exception for here.

25 CHAIRMAN STUTO: How many lineal feet are you

1 talking here, sir? Show us where.

2 MR. ALLEN: Even if it was just from the  
3 beginning of their building -- the front of their  
4 building, if it went up 30 feet, I would take 30 feet.

5 MR. SHAMLIAN: They are already parking in the  
6 easement, correct?

7 MR. TENGELER: Right, but the parking doesn't  
8 go into the ground. These are posts that would go into  
9 the ground where there is infrastructure and drainage  
10 infrastructure underground now. They feel that the  
11 conflict. Generally, they want protection of the  
12 infrastructure. They don't like anything within 10 feet  
13 normally.

14 CHAIRMAN STUTO: Can we put boulders in there  
15 or something?

16 MS. MILSTEIN: There are other things beside a  
17 fence that you could put there.

18 MR. TENGELER: Well, anything that goes in  
19 there would have to be accepted by DPW and a hold  
20 harmless agreement would have to be memorialized.

21 CHAIRMAN STUTO: Joe, do you have any  
22 suggestions? I know you're not on this.

23 MR. GRASSO: Yes. If you step back to when we  
24 reviewed this project originally -- I understand the  
25 concern of the adjacent property owner. Our feeling is

1 all the commercial properties along Wolf Road should  
2 provide common rights of access across the properties.  
3 So, I love the fact that somebody is parking over there.  
4 I understand but you have to remember when Texas  
5 Roadhouse - Peter Lynch was the attorney representing  
6 Tom Burke and he fought us really hard to not allow that  
7 cross connection to go in. From a planning perspective,  
8 that's what makes Wolf Road -- that's why there are so  
9 many people here on a Friday and Saturday night. I  
10 understand his concern but it goes totally against -

11 CHAIRMAN STUTO: What across connection help  
12 the situation, or no?

13 MR. GRASSO: His feeling is that it's not going  
14 to help because it's going to encourage more people to  
15 be able to?

16 MR. ALLEN: No, this way my people could go  
17 over and park there. My people know to pull into my lot.  
18 They are so close that they miss there's ample into my  
19 and say oh, I just park here and walk across. If there  
20 is a drive through between the two, then my people could  
21 use their lot, as well.

22 MR. GRASSO: The case that they brought up was  
23 that they didn't want to put this site at a competitive  
24 disadvantage to the neighbor.

25 CHAIRMAN STUTO: Now is the time to get across

1 connection.

2 MR. GRASSO: Normally you can't get the  
3 adjacent neighbor to the table to go negotiate the terms  
4 of that.

5 CHAIRMAN STUTO: Where would you put the cross  
6 connection, if you're going to do it?

7 MR. HEIDER: Is it there quite a great  
8 difference between those two?

9 MR. GRASSO: No.

10 MR. TENGELER: No, it is fairly flat. It will  
11 reduce the amount of parking spaces.

12 MR. GRASSO: You are going to lose like, four  
13 spots. It is a 24 foot wide cross connection and  
14 typically a 10-foot asile.

15 CHAIRMAN STUTO: Where would you put it,  
16 though?

17 MR. GRASSO: It would be typically right in the  
18 back at this location (Indicating). I think it's the  
19 demands with the Texas Roadhouse in the back and not the  
20 Chipotle upfront. I think it would be used more if it  
21 was located in the back.

22 CHAIRMAN STUTO: I like it.

23 MR. ALLEN: Where do you mean when you say the  
24 back?

25 CHAIRMAN STUTO: Towards where you wanted to

1 start the fence.

2 MR. GRASSO: I thought we had a note added to  
3 the plan that is something happened on the adjacent  
4 property where they were in front of the Planning Board,  
5 we could force them. That was probably five years ago.

6 MR. AUSTIN: Wasn't there an issue with the  
7 cross-connect to the Wolf's 111 site and the 99?

8 MR. ALLEN: They were talking about that a few  
9 months ago about possibly opening this up (Indicating)  
10 and going through there.

11 CHAIRMAN STUTO: Yes, but I don't think that's  
12 happening.

13 MR. GRASSO: Yes, that, we can't do.

14 MR. HEIDER: I think that in the Wolf's 111  
15 plan there was a cross connection into the laundry site.

16 MR. GRASSO: Yes, forcing that cross connection  
17 to occur.

18 MR. TENGELER: Planning 101 - you want  
19 connectivity between lots, absolutely. I think in this  
20 case parking is such a premium for Texas Roadhouse -- I  
21 talked to Annemarie about this before. If you shaved a  
22 couple of spots off the front, maybe you could not be  
23 subject to the waiver -- they need all the parking they  
24 can gap. Every single spot is needed.

25 CHAIRMAN STUTO: I would rather take away more

1 green space and give them two more spots, if they're  
2 going to lose and have the connectivity. The  
3 connectivity is pretty important.

4 MR. SHAMLIAN: They are looking for something  
5 and their business is negatively impacting their  
6 neighbor. In my mind, they don't get what they want  
7 unless we do something to help the neighbor next-door.

8 CHAIRMAN STUTO: And help the general public.  
9 How does everybody feel?

10 MR. TENGELER: So, moving forward, we would get  
11 a site plan from -- we would do a new site plan review  
12 for 99 and we would incorporate -- I just want to let  
13 the Board know. They would be a cost and 99 would have  
14 to produce plans, memorialize easements. It's not just  
15 we make the connection. There is an effort and an  
16 expense on 99's part; site plan review, filing of any  
17 cross access easements.

18 CHAIRMAN STUTO: Could you speak for the owner  
19 to that extent?

20 MR. ALLEN: I can't commit them to any  
21 expenses. I can bring that to them. We obviously came  
22 here to talk about having them stop parking and hours.  
23 As you had mentioned previously, Texas Roadhouse is  
24 coming here asking for something -

25 CHAIRMAN STUTO: Does the owner want to

1 connection there?

2 MR. ALLEN: I believe so.

3 CHAIRMAN STUTO: There's going to be a little  
4 expense to that.

5 MR. GRASSO: What there could be as -- you  
6 could modify this plan to basically build an access road  
7 up to the property line and it stops. The 99 parking is  
8 2 feet off the property line. So, you could make the  
9 physical connection. Don't memorialize the easement and  
10 they can do a simple striping exercise on their side so  
11 that they are not coming in with a modified site plan.  
12 They're not changing the pavement. Yes, there parking is  
13 going to reduce by -- the same thing, like Mike said,  
14 four spots, just to try to keep it simple and not burden  
15 it with a complex site plan application on the adjacent.

16 CHAIRMAN STUTO: You're not advocating for  
17 memorializing it?

18 MR. GRASSO: No.

19 CHAIRMAN STUTO: Why not?

20 MR. GRASSO: Because I think this property  
21 owner is going to resist that. What you do no one, I  
22 believe you do to the other. I bet when he goes to the  
23 owner of the 99 and tries to memorialize it with  
24 easements, it's not going go anywhere. That's my  
25 expectation.

1                   CHAIRMAN STUTO: Let's go back to the drawing  
2 board and try to make a connection.

3                   MR. GRASSO: I think if you push it that far,  
4 it's going to fall apart.

5                   MR. TENGELER: So, just so I'm clear moving  
6 forward, both parties are going to speak about it, see  
7 if they agree. If they agree, we will show it on the  
8 final plan. If they don't agree, we will memorialize -

9                   MR. SHAMLIAN: My feeling is if it doesn't come  
10 together, then Texas Roadhouse needs to come up with a  
11 plan to prevent their patrons from parking next door,  
12 however that is, they need to come up with a plan for  
13 that. That onus should not be on 99. That's my feeling.

14                   MR. TENGELER: We could suggest signage be  
15 posted, which we have done on other sites.

16                   MS. HARRINGTON: If I may add, I think Texas  
17 Roadhouse's attempt at solving that issue is by  
18 proposing the 23 spaces.

19                   CHAIRMAN STUTO: Thank you.

20                   MR. GRASSO: May be low shrubs? I know there is  
21 a utility through that easement. So, I know that they  
22 want everything shallow rooted. They don't want any  
23 trees growing there. Maybe a row of solid shrubs or a  
24 hedgerow that is uninviting to walk through --  
25 economically and not be a solid barrier.

1 CHAIRMAN STUTO: Anything else to add to that?

2 (There was no response.)

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5 (Whereas the above entitled proceeding was concluded

6 at 9:50 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.

Dated: \_\_\_\_\_

NANCY L. STRANG  
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