

Town of Halfmoon Planning Board

May 11, 2009 Minutes

Those present at the May 11, 2009 Planning Board meeting were:

Planning Board Members: Steve Watts – Chairman
Don Roberts – Vice Chairman
Rich Berkowitz
Marcel Nadeau
Tom Ruchlicki
John Higgins
John Ouimet

Alternate
Planning Board Member: Jerry Leonard

Senior Planner: Jeff Williams

Town Attorney: Lyn Murphy

Town Board Liaisons: Paul Hotaling

CHA Representative: Mike Bianchino
EDP Representative: Mike McNamara

Mr. Watts opened the May 11, 2009 Planning Board Meeting at 7:00 pm. Mr. Watts asked the Planning Board Members if they had reviewed the April 13, 2009 Planning Board Minutes. Mr. Roberts made a motion to approve the April 13, 2009 Planning Board Minutes. Mr. Berkowitz seconded. Motion carried.

Mr. Watts asked the Planning Board Members if they had reviewed the April 27, 2009 Planning Board Minutes. Mr. Roberts made a motion to approve the April 27, 2009 Planning Board Minutes. Mr. Berkowitz seconded. Motion carried. Mr. Ouimet abstained due to his absence from the April 27, 2009 Planning Board Meeting.

New Business:

09.039 NB Stewart's Shops, Store #112 @ 1403 Route 9, #127 @ 454 Route 146, & #292 @ 2 Vosburgh Road – Signs

Mr. Mike Bombard stated the following: Stewart's would like to modify the existing 4 FT x 8 FT signs at Shop #112, 127 and 292. We are looking to modify the face of those signs to include an automated L.E.D. price sign, which would be a cleaner and safer operation for us. We would be removing a 2 FT x 5 FT sign below the existing 4 FT x 8 FT sign at Shop #127. Mr. Roberts asked if the signs had exposed neon. Mr. Bombard stated no they are not neon. Mr. Higgins asked if the signs flashed or move in any way. Mr. Bombard stated the following: No they do not. The signs are a static price sign and the only time you would see any movement is when we change the price from one digit to the next. It would be an instant flash and then it would

stay that way until we make another change. Mr. Higgins asked if the signs would be on when the stores are closed. Mr. Bombard stated no, the signs are wired to be off when the store is not open.

Mr. Roberts made a motion to approve the 3 sign applications for the Stewart's Shops Stores #112, #127, and #292 contingent upon there is no neon, flashing or moving signs. Mr. Ouimet seconded. Motion carried.

09.040 NB Bimbo Bakeries USA, 20 Corporate Drive – Change of Tenant & Sign

Mr. Ralph Lysogorski, of Bimbo Bakeries, stated the following: The proposal is to change the existing sign on the front of the building from George Weston Bakeries, who is our former owner from Canada, to Bimbo Bakeries. We are now owned by Bimbo out of Mexico. Mr. Watts asked about the derivation of the name "Bimbo". Mr. Lysogorski replied that this is the name of the company from Mexico that purchased this business and it is pronounced "Beembo". The sign would not have any neon or lights. The sign would be 4.16 FT x 7.58 FT and one-sided. Mr. Higgins asked if they would have the same hours of operation. Mr. Lysogorski stated everything would remain the same as George Weston Bakeries; only the name is changing. Mr. Higgins asked if there would be more trucks. Mr. Lysogorski stated there would be no more trucks.

Mr. Higgins made a motion to approve the change of tenant and sign application for Bimbo Bakeries USA. Mr. Nadeau seconded. Motion carried.

09.041 NB Matt's Cape House, 1663 Route 9 – Sign

Mr. Daniel Sweeney, the applicant, stated the following: I would like to place an interchangeable reader board sign to the bottom of the existing sign. The sign dimensions would be 3.3 FT x 8 FT, two-sided, internally lit and would be white with black letters. Mr. Roberts asked if the sign would be used for changeable messages. Mr. Sweeney stated yes that is correct. Mr. Roberts asked if the changeable lettering would be done by hand and if the sign would be illuminated. Mr. Sweeney stated the sign would just have 8-inch black letters that would be placed on a florescent-lighted background. Mr. Watts stated good luck and when you advertise please make sure you advertise as being located in Halfmoon.

Mr. Roberts made a motion to approve the sign application for Matt's Cape House. Mr. Nadeau seconded. Motion carried.

09.042 NB Saratoga Academy, 1524 Route 9 – Change of Tenant & Use

Mr. Ouimet recused himself from this item and Mr. Leonard sat in for him. Mr. Michael Christensen, Headmaster of Saratoga Academy of the Arts & Sciences, stated the following: We opened this year in Clifton Park and we are looking to expand and move our operation. We are excited to have the opportunity to move into the Town of Halfmoon. The facility that we targeted for a potential expansion is the property at 1524 Route 9, which is owned by Dr. Lewis Morrison. We are proposing to occupy the bottom portion of the building, which is approximately 4,200 SF and convert that into classroom space for young learning. Our initial plan would be for our primary grades to operate out of that facility. There would be 3 classrooms; kindergarten and first grade. The following year we would be expanding to another part of the Town and the facility at 1524 Route 9 would become our pre-school feeder into our main building. That would be the long-range plan in the use of the building at 1524

Route 9. We are anticipating that there would be busing required to that facility for one year only and after that it would revert to a pre-school use with parental drop-offs. Mr. Berkowitz asked if Mr. Christensen had contacted the Shenendohowa Transportation Department to see if the buses could turnaround at that site. Mr. Christensen stated yes and they had suggested that we would have to possibly do some alterations. We have a copy of the site plan so we would have to come back for that because that is something that we are considering on how they would do the turnarounds. We would have to do something that would allow them to come in and out. Mr. Berkowitz asked do you know how you are going to do that. Mr. Christensen stated I have been talking with them about that and there are a couple of possibilities. One would be opening a separate entrance to allow the buses to come in and swing back out or to widen the area on the end of the parking lot to allow the buses to swing around. Mr. Berkowitz asked if they would have buses the first year or second year. Mr. Christensen stated the following: Just for the first year and the first year only. In that building we are anticipating somewhere between 40 and 50 children during the first year. The maximum in that building would be 60. Again, for the first year in which the busing would be anticipated, that is actually a rather small number of children to be bused. About half of our children would require busing so we wouldn't have 50 buses coming in, there would probably be about 2 buses. Mr. Higgins stated the following: The problem is when the buses are there with their lights on obviously it is going to affect the flow through the lot for people dropping their children off. Also, would the other entrance that you are talking about be on Route 9? Mr. Christensen stated no. Mr. Higgins stated you mentioned a second entrance and asked where would that be. Mr. Christensen stated to access that portion of the property you have to enter the Halfmoon Executive Park and then head down inside and then you would turn into the property. Mr. Higgins asked so you are not going to add another entrance on Route 9. Mr. Christensen stated no. Mr. Higgins stated if you were to add another entrance that would require New York State Department of Transportation (NYSDOT) approval. Mr. Christensen stated yes, correct. Mr. Watts stated so you do recognize that you would have to come back with a site plan revision? Mr. Christensen stated yes. Mr. Watts stated so you are here tonight for a conceptual discussion. Mr. Christensen stated correct. Mr. Watts asked are you getting ready to open in September. Mr. Christensen stated correct. Mr. Berkowitz asked if they would have a playground area. Mr. Christensen stated the following: That would be part of the site plan as well. We have mapped out the area and Dr. Morrison owns both of the buildings that are on that site. There is a large treed area that would be opened up for the playground. We plan to excavate and put in a retaining wall to place the playground equipment in that area. Mr. Higgins asked is that part of what was on the original site plan as green space that was going to remain as green space? Mr. Christensen stated I don't know that and I would have to find that out. There are two possible spaces where that could go. Mr. Higgins stated the original site plan had a certain amount of green space and a buffer area that was not supposed to be touched and the way you are talking it sounds like you would have to clear a lot of that area. Mr. Christensen stated that is news to me because I was unaware of that. Mr. Watts stated in 2002 the proposal was for 40% green space and asked Mr. Williams if he had looked at that with the green space and parking. Mr. Williams stated the following: When we talked with Mr. Christensen we did mention to him that he needed a playground area and green space could be an issue and he asked me the requirements for that 20% green space. I don't know if a playground meets the green space requirements. Mr. Nadeau stated it sounds like the concept is okay but we need to know that everything would fit in that area. Mr. Christensen stated the following: We are waiting to get the original mechanical drawings of the building. If Dr. Morrison does not have them then we would need to get them from the Town. It is my

understanding that Dr. Morrison put in a request for that but I am not sure if that actually happened or not. Mr. Williams stated I talked to Dr. Morrison's son and I told him to check with the Building Department to see if they had the building plans.

This item was tabled for the applicant to produce bus traffic and playground information on a site plan.

09.043 NB The Fairways of Halfmoon, 17-19 Johnson Road – Addition to Site Plan/Special Use Permit (Golf Cart Storage Building)

Mr. Duane Rabideau, of Gilbert VanGuilder and Associates, stated the following: I am representing the Fairways of Halfmoon for a special use permit for an addition to the golf course facilities. We are requesting a 4,000 SF, 40 FT x 100 FT, golf cart storage building for storage during the winter. The photos show where the building is going to be located and the "X" marks the spot. I visited the site and this seems to be the best place for the building. The colors are going to be the same colors as the main building and the approximate height would be about 13 FT. Mr. Roberts asked is it possible to locate the proposed building further from the existing homes? Mr. Rabideau stated the following: No, because the driving range is there and from the photos you can see that it is wooded in the back of that house and there are some pine trees for additional screening. If you go any further, there is going to be a major problem with the driving range. Mr. Higgins asked would this only be used in the winter for cart storage? Mr. Rabideau stated that is correct. Mr. Higgins asked where are the carts stored now? Mr. Rabideau stated the carts are stored under the main building. Mr. Tanski stated the carts are stored outside during the summertime and we put them inside during the wintertime. Mr. Higgins asked are you going to use that area for something else. Mr. Tanski asked if Mr. Higgins was referring to the area under the main building. Mr. Higgins stated yes. Mr. Tanski stated the following: No, we just don't have the room to negotiate the 85 cars during the wintertime. The reason why we are proposing the golf cart storage building is because from November until the first part of April it is hard to negotiate downstairs with all the carts because we just have no room and we can't leave them outside all winter. Mr. Nadeau asked how many neighbors would be affected by this and how many would see this looking out their backyards? Mr. Tanski stated maybe one or two. Mr. Higgins asked didn't you use the old barn for the first couple of years for cart storage in the winter? Mr. Tanski stated the old barn is used for maintenance. Mr. Berkowitz asked if there was room down by the old barn to put this facility? Mr. Tanski stated that would be too far away. Mr. Berkowitz asked even if you only used it once a year? Mr. Tanski stated the following: We wash our carts and we put them away and it just wouldn't work. As it is it's too far away but it is the only possible place where we could put it. Mr. Roberts asked how far off of the property line is this proposed to be? Mr. Rabideau stated 17 FT. Mr. Watts asked will there be any kind of buffering? Mr. Tanski stated there is a wooded tree line behind the building, which is pretty dense. Mr. Nadeau asked what about in the wintertime? Mr. Rabideau stated there are some pine trees right on the edge of it and the rest are deciduous trees. Mr. Nadeau stated I am asking these questions because we would hold a public hearing and obviously the neighbors are going to want to know this as well. Mr. Ruchlicki asked when you free up the space where the carts are currently being stored do you have any proposed plans for that space to be re-used for something else? Mr. Tanski asked for the cellar? Mr. Ruchlicki stated yes. Mr. Tanski stated no like I said, we just need to be able to negotiate down there; we can't put products down there and it is hard to move the beer and soda down there and all the other stuff we store for the pro-shop. We can't even bring the Christmas decorations up without moving 25 or 30 carts. It has got to the point where we want to do something. Mr. Higgins stated the following: I remember the neighbors' reactions at a

few previous public hearings for this site and I am a little confused because if your maintenance equipment is in the barn and you have to bring the maintenance equipment almost daily onto the golf course. Now if this is just going to be used for winter storage of the golf carts, I don't understand why you couldn't put a building down by the barn because you are only going to move them down there once. Mr. Tanski stated the following: It is not a question of moving down there just once during the course of the year. I have 50 carts that are leased and 35 carts that are mine. These carts come out for tournaments and stuff like that. It would be very very tough to do it being that far away. Plus we bring the carts up to the banquet house, we wash them, we gas them up and then we would have to run them all the way down to the barn and by the time we got them there, they would be dirty. Mr. Watts asked would the carts be utilized in the building during the summer also? Mr. Tanski stated the following: Correct. We would take a cart out and clean it and then bring it back and it is not like we are going to be there everyday. We are not going to do any maintenance on them or anything like that. The maintenance is done once a year from Club Car. They come in the spring and they do the maintenance and then I don't see them until next year. Mr. Berkowitz asked would you be washing the carts and gassing them up there? Mr. Tanski stated no that is not our plan. Mr. Higgins asked what is the access to that building; would it be directly off of the road or are you going to make a golf path? Mr. Tanski stated we are going to make a golf cart path off of the existing driveway. Mr. Higgins stated obviously you have to have a road going to it for vehicles to get to it also and asked if that was correct. Mr. Tanski stated just an 8 FT wide cart path would be fine. Mr. Roberts stated thinking of the neighbors, why couldn't you put it adjacent to the parking area. Mr. Tanski stated we can't because when people are on the driving range they are going to hit it. Mr. Roberts asked well do they hit the parking lot now? Mr. Tanski stated all the time. Mr. Roberts stated it just seem with such a large area you could find a better location away from the neighbors. Mr. Tanski stated my question to Mr. Roberts is why can't I put it there because I own the property? Mr. Roberts stated sure you do but I am thinking about the neighbors. Mr. Tanski stated the following: Well the neighbors don't think about me. I'm trying to do the best I can and I'm trying to run a business. I can't put that building next to the driving range because the golf balls are going to bang out the windows. I didn't just pick this spot to irritate my neighbors; it is the only place I could put it because the barn is too far away. It has no activity from November 1st until April 1st. Nobody will even walk out there and nobody would be there for 5 or 6 months of the year. I don't see where anybody is going to have to complain about noise and we won't even have lights out there. The building would be in total darkness, there is no heat and I don't see how this should upset anybody. Mr. Ouimet stated the following: I think in anticipation of the public hearing, you are going to have to be able to explain why you can't put it in another place on your property. Obviously you can use your property for whatever legitimate use you want to make of it, but it is clear to us that the neighbors will possibly raise an objection to the building being built exactly where you are proposing right now. Mr. Tanski stated the following: I understand what Mr. Ouimet is saying and I agree with him. My neighbors didn't want me to build a golf course in the first place; let alone build a banquet house. I am fighting a losing battle if I am trying to satisfy my neighbors. Mr. Ouimet stated I don't think it is a question of trying to achieve satisfaction, I just think it is a question of being able to answer that question; "why couldn't you build it somewhere else?" Mr. Tanski stated I thought about putting it all the way over on the other side but I have a huge septic system over there and I probably have \$30,000 or \$40,000 tied up in that and so I really can't put there. I am going to have the same issue with neighbors on that side from Roman Drive as I am going to have over here and probably more so. Could I move it down a little farther; I probably could and not put any windows in it but is that going to

satisfy everybody? I don't know because I think no matter where I put it, there are just certain people up there that don't like having the course there. Mr. Ruchlicki asked where is the septic system located that you have been talking about relative to the banquet house? Mr. Tanski showed Mr. Ruchlicki where it was located on the plans at the southeast end of the parking lot. Mr. Nadeau asked what neighbors would be impacted there? Mr. Tanski stated Roman Johnson is located there; the Krasuski's and all the way back to Michaels and all those neighbors in that area. My property backs up to all the properties that are on Roman Drive. Mr. Ruchlicki stated you are proposing to build the building across from the parking lot and asked why can't you put in right behind the sand trap? Mr. Tanski stated the following: Because I have a banquet house there and I do weddings and I don't think it would be esthetically good looking to put it out behind the banquet house. Plus golf balls would hit it because everybody tees off here. Mr. Ruchlicki asked where are they teeing off from? Mr. Tanski showed Mr. Ruchlicki the location. Mr. Ruchlicki asked and they are teeing off from across the road? Mr. Tanski stated it is a driveway. Mr. Berkowitz asked how tall is the billing? Mr. Tanski stated 13 FT. Mr. Berkowitz asked if it was possible to lower it and also screen it? Mr. Tanski stated the following: I tried to design the building so that it would look good. If you can visualize part of the roof going up and then coming down and then I have a shed roof coming out to make it look like a carriage house. So it is not going to look like a pole barn and it is going to be a good-looking building. I plan on putting a metal roof on it, which will probably cost about \$15,000. I plan on putting aluminum windows in it and the same siding I have on the buildings. Mr. Berkowitz asked could you screen it from some of the neighbors with a fence or some trees? Mr. Tanski stated I don't have a problem with that. Mr. Ouimet stated I would ask Mrs. Murphy if there are any other restrictions on the property that would impact on what Mr. Tanski wants to do here. Mrs. Murphy asked Mr. Williams when they got their approval for the banquet house wasn't there some sort of condition that there not be additional development on the property? Mr. Williams stated that is something that I would have to research. Mrs. Murphy stated I thought there was an additional restriction agreed to by the applicant at the time that the expansion for the banquet house occurred, but I could be wrong. Mr. Nadeau stated I thought there was a snack bar or something that was going to be done then that didn't go over because the neighbors didn't care for that. Mr. Tanski stated the following: No. Originally when I was going to build the golf course, it was going to be snack bar and obviously it turned out to be a lot more than a snack bar. I wanted to put the banquet house over in that general area and then neighbors complained about it and then we moved it over and made it contiguous with the existing building. To answer Mrs. Murphy's question; as far as my recollection there is nothing in there that says it but obviously the Planned Development District (PDD) or the special use would speak for itself. Mr. Watts stated we will take a look at the special use permit and also get some history from Mr. Bianchino. Mr. Nadeau stated again, you might want to keep in mind that you may need an alternate site because I think if the public has as much input as they did before it could be a difficult situation. Mr. Tanski stated the following: I understand that but where do we draw the line? If there is nothing in my special use permit that says I can't do it, where do my rights come in as an applicant and as a landowner to be able to do something like this? Mr. Nadeau stated again you are saying that you don't want it over in that other area because it affects your part of the grounds but you don't have a problem putting in on the other side, which is going to affect your neighbors. Mr. Tanski stated I understand that. Mr. Higgins stated the following: And if this wasn't a special use permit and this was in a commercial zone or a residential zone; there would be either a 25 or a 50 FT rear yard setback. Mr. Tanski stated the following: I understand what Mr. Higgins' is saying and I agree with him but it is not a commercial zone. I can pull it back farther

whether it is 17 FT or 20 FT. I will do what the Board wants but I don't think it will make a difference to my neighbors. Mr. Nadeau stated the following: It just seems with such a large site that there would be some other area to put it besides right next to the neighbors. Again, it is your site and your property but it seems like there would be some other area to put it and not create an issue with the neighbors. Mr. Tanski stated the following: The thing that everybody has to understand here, and I never really understood it myself until I had a golf course, that 99.9% of the people who golf really can't golf. So when they try to hit a straight golf ball it goes to the left, it goes to right and I had car windows get knocked out and they have even knocked out some of the globes on my lights and they put holes in the side of my buildings. Mr. Nadeau stated I wish we had known that before we approved it. Mr. Tanski stated my point being; that the farther we go away from that area the more arrant shots it's going to take. Mr. Watts stated at this point I think we have raised concerns and asked the Board if they felt comfortable with scheduling a public hearing. Mr. Higgins stated I personally would feel more comfortable getting the research done to make sure that it's not against what was previously approved by this Board. Mr. Ouimet stated it seems to me that this would just prolong the inevitable. Mr. Watts stated if that is in fact the case, we will do the research and then make the point.

Mr. Berkowitz made a motion to schedule a public hearing for the May 26, 2009 Planning Board Meeting. Mr. Ouimet seconded. Motion carried.

09.044 NB Reo Subdivision, 50-54 Farmview Lane – Minor Subdivision

Mr. Bob Reo, the applicant, stated the following: I own the 100+-acres currently known as an extension of Farmview Lane. I am proposing to split that up into two 14-acre lots for my two sons for single-family homes. Currently I am in the process of building a barn on the larger parcel. Mr. Higgins asked if this parcel was part of Farmview? Mr. Reo stated the following: No, it never was. I am accessing off of Farmview and I spoke with the Town before I put the drive off of the cul-de-sac. Mr. Watts asked are your future plans for residences? Mr. Reo stated the following: I am going to build my own residence. Right now I built a barn with a garage on it just to have a base to work out of. In the past couple of years I planted probably about 30+-acres of hay and we are going to basically just use it to run the barn and we have horses and that is what we are going to use it for. Mr. Watts stated this will keep our open space advocates very happy. Mr. Reo stated hopefully.

Mr. Nadeau made a motion to set a public hearing for the May 26, 2009 Planning Board Meeting. Mr. Berkowitz seconded. Motion carried.

09.045 NB Klamsteam Marina Tavern LLC, 32 Clamsteam Road – Change of Tenant

Mr. Shawn Brimhall, the applicant, stated the following: We are proposing and have gone through the process with Mr. Jerome to purchase the existing Klamsteam Marina Tavern. My wife and I plan to run the tavern basically the same way Mr. Jerome did. Mr. Higgins asked have you in fact purchased the property at this point. Mr. Brimhall stated the following: Yes we have and the deed is on file with the County Clerk. We are in the process now of obtaining the liquor authority license, the Health Department permits and the Canal Corporation permits. Mr. Higgins asked what is the Canal Corporation permit. Mr. Brimhall stated there are two existing Canal Corporation permits for the dockage that is in front of the tavern and in front of Mr. Jerome's former residence. Mr. Watts asked for more of an explanation about the business,

business hours and the number of employees. Mr. Brimhall stated the following: It is a tavern that has been in existence since 1932. It is a full-service restaurant with a bar area with seating for 16. The Town has the occupancy at 175 but basically you can seat just under 100 people at the current configuration. The tavern is open year round and in addition to the tavern there is a 16 FT marina across the Town right-of-way in the cove coming in off the area of the Twin Bridges. Mr. Ouimet asked do you have a permit from the Town to cross the right-of-way. Mr. Brimhall stated I don't know that one was ever done with Mr. Jerome. Mr. Ouimet stated I don't know that either but if you are going to cross over the Town right-of-way I think you are going to need to explore whether or not you need a permit. Mr. Brimhall stated I have spoke with Supervisor Wormuth in March and she said that at some point it might need to be visited. Mr. Ouimet stated okay, I just wanted to make sure that you were aware of it. Mr. Brimhall stated yes. Mrs. Murphy stated you are using the term "right-of-way", which would imply an easement and asked if they meant a strip of Town property or that you have legal access rights to it? Mr. Brimhall stated I do not know and there is nothing in the deed that states there is legal access through the Town property. Mrs. Murphy stated okay. Mr. Watts asked what is the approximate square footage or dimensions of this Town property? Mr. Brimhall stated it is probably 50 to 60 FT. Mrs. Murphy stated the following: Do you have a map that shows that strip as being owned by the Town? I have the site plan but it doesn't have a border towards the water. Mr. Brimhall stated no it does not because we didn't survey the property and this is one of the things that Supervisor Wormuth added was that at some point it may need to be surveyed because there is property on both sides of the road that is part of the deed. Mrs. Murphy stated you said you had permits from the Canal Corp. Mr. Brimhall stated there are existing permits from the Canal Corporation for the dockage that is already there. Mrs. Murphy asked do you know when they expire? Mr. Brimhall stated they come up due as the season starts so they will be coming in within the next couple of weeks for renewal. Mrs. Murphy stated okay. Mr. Brimhall stated the following: The Canal Corporation requires a \$2 million dollar liability and that is included in our insurance policy. Supervisor Wormuth also suggested that if we do have to visit the right-of-way issue that we should add the Town as a rider on to that to protect the Town's access across the property. Mr. Watts asked do you store any equipment or boats or anything on what is the Town's property? Mr. Brimhall stated the following: No, not on the Town's property. I don't have anything on the Town's property at all. Mr. Watts asked if it was completely vacant land? Mr. Brimhall stated it is right now. Mr. Watts asked what does "right now" mean? Mr. Brimhall stated the following: I have not stored anything there but I can't speak for what has been done in the past. Anything that has been stored there over the winter does not belong to me or to Mr. Jerome to the best of my knowledge. I'm in the process now of doing a substantial amount of cleanup to the area. Mr. Watts stated so there are no boats or trailers stored there. Mr. Brimhall stated the following: No boats, trailers or anything has been stored on that side of the road. The dockage has always been stored in front of Mr. Jerome's former house that he shares with his son on a deed. Mr. Jerome has a substantial amount of property on the riverside of the road. Mr. Watts asked if Mr. Jerome still owns that property. Mr. Brimhall stated yes, that is still Mr. Jerome's property. Mr. Watts asked have you applied to the State Liquor Authority for your license? Mr. Brimhall stated the following: Yes we have. We filed with the Town back in March for the notification and all of that paperwork was dropped off to the State Liquor Authority three or four weeks ago. Mr. Watts stated okay and asked if they were operating under the old liquor license? Mr. Brimhall stated we are currently operating under Mr. Jerome's business, as it still exists even though we purchased the building. Mr. Ruchlicki asked are you going to be able to use that area that Mr. Jerome has been storing the docks in? Mr. Brimhall stated the

following: Yes. I am going to rebuild the docks to make them easier to maneuver. Currently Mr. Jerome has 20 FT docks and they are not easy to handle and I want to make something that I can handle easier and to be able to move them around. Mr. Higgins asked are you aware that this applicant came before this Board several years ago to try and expand and do some other things at this location and because it was an expansion of a pre-existing non-conforming use it was denied. Mr. Brimhall stated I am not familiar with that at all. Mr. Higgins stated I just want to make sure that you are aware that this is a pre-existing non-conforming use and it cannot be expanded upon. Mr. Brimhall stated correct. Mr. Higgins stated so it's only as it is used presently is what it can only be used for. Mrs. Murphy stated unless they obtain a variance from the Zoning Board of Appeals because this Board could not approve any expansion of a pre-existing non-conforming use. Mr. Brimhall stated at this point I don't plan on any expansions. Mr. Watts asked so you are not going to put a second or third story on? Mr. Brimhall stated no, I have no need for that right now. Mr. Higgins stated the plans do not show the parking and asked Mr. Williams if there was sufficient parking available? Mr. Williams stated I talked to Mr. Brimhall about it and with the gravel area he felt 50 cars would fit into it and our parking requirements came up with about 38 parking spaces would be required. Mr. Higgins asked if the parking spaces would be 10 FT x 20 FT? Mr. Brimhall stated yes. Mr. Watts asked is that utilized now for parking? Mr. Brimhall stated yes it is. Mr. Watts asked so have you had any real parking issues there? Mr. Brimhall stated no, not at all. Mr. Nadeau stated I don't think and I don't recall that there have been any issues with the parking at that site. Mr. Watts asked Mrs. Murphy if the Board could approve the change of tenant/change in use application but then the further investigation would be made relative to the Town property issue and asked if that was correct. Mrs. Murphy stated the following: Yes that can be approved but what this Board couldn't do is approve the utilization of the Town property to run the marina because this Board does not have the authority to do that. So, if and when that becomes an issue in the future, the permitting processing that occurred towards Route 9 might happen down your way. We are just trying to determine where exactly the Town property is that you are crossing. Mr. Brimhall stated yes, that is why I met with Supervisor Wormuth last month. Mrs. Murphy stated any approval I would suspect that this Board made would be conditioned upon there being no storage of property on Town property. Mr. Brimhall stated that is fine. Mr. Higgins stated I just want to make sure I understand and if we approve it, it would be a change of tenant but should we exclude the use of the Town property at this point specifically? Mrs. Murphy stated this Board would be approving a change of tenant and the Board is in no way authorizing them to cross Town property so their rights are exactly what they were with the previous owner. Mr. Higgins stated so we are also not authorizing the use of the marina. Mrs. Murphy stated the following: The applicant is not changing the use. The applicant is not asking the Board to change the use, he is asking the Board for the change in tenancy. This Board does not have the authority to look at the use because the Board is not being asked to. Mr. Higgins stated I guess that is what I am saying; the proposal would be a change of tenant for the tavern itself and that is it, not the marina or anything else? Mrs. Murphy stated the following: No, it is a change of tenant for the use that is a pre-existing non-conforming use. The use encompasses the marina and the property. I am advising Mr. Brimhall that the Board's ability to approve a change in tenancy does not equate to permission for him to cross Town property. So, the applicant is in the same position as he was before. Mr. Higgins stated I am agreeing with Mrs. Murphy but by saying that the Board is allowing him to run a marina with no access to it. Mrs. Murphy stated but we're not doing that. Mr. Higgins stated the following: Then the marina should not even be listed here then. Maybe I am misunderstanding this. Mrs. Murphy stated I know and I think it is just a legal distinction. Mr. Higgins stated I just want to make sure that

we are doing it correctly. Mrs. Murphy stated the following: You are doing it correctly because if you were asking me to come in and approve that use, I would have a much more difficult time with it. He is not doing that; he is saying that he is just a new tenant doing the same exact thing in a pre-existing non-conforming use. By calling it a pre-existing non-conforming, he is already putting before this Board that he knows that what is happening there shouldn't necessarily have been happening there, but it has been going on for so long that this Board doesn't have the authority to say "no you can't do it anymore". Mr. Watts stated and the issue still exists relative to the Town property and the marina and that is still an issue that has to be resolved.

M. Ouimet made a motion to approve the change of tenant application for Klamstream Marina Tavern, LLC for the tavern/restaurant use conditioned upon there being no storage of property on Town property. Mr. Roberts seconded. Motion carried.

Old Business:

07.105 OB

Verizon Wireless, 15 Route 236 (Woods Plaza) – Commercial Site Plan (Cell Tower)

Mr. Bianchino, of Clough Harbour & Associates LLP (CHA), recused himself from this item and Mr. Mike McNamara, of Environmental Design Partnership (EDP) sat in for him. Mr. Michael Cusack, Attorney of Young-Summer, stated the following: I am here tonight with Mr. Rick Andras from the Radio Frequency (RF) Engineering Department and Ms. Chris Howell from Real Estate WFI. When we were here at the public hearing on March 23, 2009, we got the very clear indication that the public was in favor of the stealth alternative between the two towers that we were looking at. There were questions raised about what we could do to further move things around on the site for landscaping purposes to make sure that the landscaping was addressed in all directions. On March 30, 2009 I forwarded a revised plan that showed the layout tweaked somewhat to allow for landscaping to be added as the facility takes on additional users. As I expressed at the public hearing our concern was to make sure that we were not cutting down existing vegetation to plant new vegetation and that the landscaping that was in place now would be allowed to continue on as long as feasible. The way that it comes out on the plan is that we know where Verizon's equipment needs to be placed and we think T-Mobile is coming in as an applicant and this facility is specifically designed to take them on as an applicant at the point in time that they elect to go forward. We know where their equipment would go; kind of in the back right-hand side of the lot where there isn't any vegetation right now. That leaves the area closest to the parking, that would at some point in time, depending on the size of what the third user brings in, would need to be modified and that is where the additional landscaping would need to be addressed down the road. We think it can be done and subject to your approval. That is what we are proposing. The Planning Department had 2 other questions; one was received on Friday on the fee of the theoretical fall zone of the tower in the event of a catastrophic tower failure. What we did between Friday and tonight was we talked to one of the manufacturers that we deal with who makes these facilities and asked them to give a letter that we could give to the Board tonight to describe the safety factors that go into the design. I think the way it is designed is there are three tiers of flexibility or failure and the first component is that they put in a 25% over-design or safety factor into the structural stability of the facility itself. So it meets all applicable industry codes for wind loading and weather and it has a factor built into it that that exceeds the requirement. Because they have them in places like Florida where we are prone to hurricanes and where there are a lot of tornadoes out west and things like that, the second approach that they used

for these facilities is that they build into the facility a point, which is the weak point of the structure at a height, and if you really have a catastrophic weather event, the facility itself will bend or flex and it will be apparent on a visible inspection that there is something that needs to be repaired. Those are the two main things that come into play in our part of the country. Last but not least is the total catastrophic failure or a catastrophic weather event and if that happens the manufacturer believes they can have this facility designed so that the part that separates comes apart within 50 FT of the base of the structure. We have 40 FT to the back setback but what I would submit to you is that if we get through those first two levels of design failure, you are in a whole different type of situation anyway. All of your trees are typically going to be down in that situation, telephone poles are going to be down, any light poles in parking lots are going to be down and everything is going to be down and it is going to be a really nasty set of circumstances to get there. With that in mind I just wanted to give you some background on how they approach this in the northeast to make sure that the facility can withstand our severe weather. Mr. Watts asked when is the last time you heard of a tower failure? Mr. Cusack stated we haven't had any failure on these stealth facilities. Mr. Watts stated we kind of talked about this a little bit earlier and we mentioned a nuclear event. Mr. Casack stated the following: It is designed to handle a wide array of events. I always point out the picture of Hiroshima with the Dome Museum, if you look to the left of it there is a lattice tower still standing. There was a comment that came in from a person along Lape Road and they offered their property to us. We went out and looked at the property and it has a stream and some wetlands going through it, it is about a 1/2-mile further away and it doesn't offer as good of a service standpoint from our prospective. Most importantly, we cross out of the commercial zoning that we are in now where the facility is allowable and cross into residential zoning where we would need a use related variance relief under New York's Rosenberg Decision and that is more of an intrusion on the local land use scheme so we decided that wasn't a very good alternative. Mr. Ruchlicki stated you talked about the structural integrity of the tower and are you relating to just a regular monopole or the stealth design? Mr. Cusack stated there are two different heights involved here. Mr. Ruchlicki stated what I really want to know is for instance; we had an ice storm this past winter and with the stealth design if that gets loaded with ice like a regular tree would, will it break down? Mr. Cusack stated no and we do have the two towers that we gave to the Board as examples that you could go look at that did survive all of the weather events of the last two years. Mr. Watts asked where are we at; did we decide on the stealth or the monopole? Mr. Williams stated the following: There are two scenarios before the Board; one is which tower; the conventional or the monopine and the second one Mr. Cusack described was for a Verizon tower the first carrier where they would build a compound just large enough to house all their equipment and then as a second co-locator came in, he would expand that compound to put his equipment in and take down vegetation to fit that. Therefore, we preserve more vegetation with just one carrier at this time and then second carrier would have to remove a little bit more vegetation. Mr. Cusack is offering that as a scenario to preserve more of the existing vegetation that is already there. Mr. Watts asked what is the probability of a second carrier co-locating? Mr. Cusack stated the following: We think the probability of the second carrier coming in as pretty good, which would be T-Mobile. That is why the spot that we show on the plan for their equipment currently has no vegetation there. So that would be a relatively simple fence expansion. What Mr. Williams' is saying is correct; when that third user comes in; depending on the size of the equipment. If the third carrier brings in a shelter, it is going to need a little bit more landscaping attention than if they put in a concrete pad with a couple of refrigerator sized cabinets on it. I think it would be the third carrier that would trigger it but we are only fencing it for one at this time. Mr. Watts stated

why don't we do it for two carriers at this point and asked if that would be more cost effective for you guys? Mr. Cusack stated there is no objection from our standpoint if he wants to take the fence, it would be along the backside where the rectangular pad is shown on the plan. That is the area that we would leave for that second carrier. Mr. Watts stated the following: Wouldn't it be better just to do it? Why wait because the probability is good to get there and it is not going to affect anybody? Mr. Cusack stated it doesn't affect us. Mr. Higgins stated the lower big dishes that were shown on one of the early drawings I asked you about and you said that was for a direct line of site communication system that may come in somewhere down the road? Mr. Cusack stated that's right. Mr. Higgins asked so are they going to be on or not? Mr. Cusack stated the following: We don't know at this point. We would like to try to make a link possibly back to the site that we call Gray's Corners that is in Halfmoon down by Exit 8 or possibly up to the Solar Town Park up off of Route 146. It all depends on whether we can get site line going to one of those facilities. Mr. Higgins stated but those dishes would have to be above tree line also. Mr. Cusack stated the following: They would and if we are shooting to the north, there is no tree line going to the north and if we are shooting to the west, towards the Northway, there is no tree line there. However, in the other directions there is a tree line and that is why we can't go south or east. Mr. Higgins stated but with the stealth version there would be camouflage around those also. Mr. Cusack stated that is correct. Mr. Higgins stated I know you talked extensively about the break zone and I just want to make sure that I understand and asked with the conventional tower the break zone is within your property at this point? Mr. Cusack stated the following: The conventional tower did fit when we first presented this application and we had enough distance to make it fit and then two things happened because we filed this in 2007. We changed our standard design and we have now put lightning rods on the top of all of our towers so that added 4 FT to the top so we were over the distance there by a couple of feet. Then when we started to go back into the site plan, one of the significant points that came up was make sure you're not taking away any parking and not even a few feet of parking. So, we had to push our fence back or our lease area back and that had the effect of limiting the amount of space for our foundation. So, as that moved back, then our foundation had to move back a couple of feet so we lost 2 or 3 FT here and there and that is why it is over by a couple feet on the conventional. But, yes it did originally fit and now it is a handful of feet over on the conventional. On the stealth facility, which has different height considerations, which I can talk about if you want me to, that is 12 FT over the north property line because of the additional stealth work. Mr. Higgins stated okay, so on the conventional tower the total including the 4 FT for the lightning arrestors is 90 FT. Mr. Cusack stated the plan shows the top of the lightning rod as 94 FT. Mr. Higgins asked and the other tower with the stealth including the top tree branches is how many feet? Mr. Cusack stated that one is 105 FT. Mr. Higgins asked is it 105 FT including the lightning arrestors on that one? Mr. Cusack stated yes because it is built into the branches itself. Mr. Higgins stated so in actuality it is only 11 FT difference in height? Mr. Cusack stated that is correct. Mr. Higgins stated I for one, was always under the impression it was a 15 or 18 FT difference. Mr. Cusack stated right, depending on the type of a tree you approve as a Board, but the one we are proposing is at the top of the steel plus 5 FT of the bushing material. Mr. Higgins stated but overall height including everything is 105 FT, where with the conventional tower instead of 90 FT we are now at 94 FT? Mr. Cusack stated that is correct, because of the rod. Mr. Ouimet stated the original design you said you changed to add a lightning arrestor on top? Mr. Cusack stated yes. Mr. Ouimet stated did that design change cause you to fall outside the collapse zone? Mr. Cusack stated it may have put us a foot or two outside. Mr. Ouimet stated the following: So, you were not within the collapse zone based on your own original design and

that is before the Board told you that you couldn't use parking spots and you had to move the pad and any of that other stuff? You were outside the collapse zone by your own design on the original plan? Mr. Cusack stated no we were in it when we applied in 2007. Mr. Ouimet stated so you applied without the lightning arrestor? Mr. Cusack stated we applied without the lightning rod and that is now a new requirement. Mr. Ouimet stated but you couldn't build the tower without a lightning arrestor today? Mr. Cusack stated we could but then the antennas become the ground point for lightning strikes and then that is a point of failure and that is why we changed it. Mr. Ouimet stated the following: Right, just to be clear my point is I don't want anybody to be confused that by the Board asking you to move one way or another we are causing you to fall outside the collapse zone. I want it to be clearly understood that the design of the tower itself irrespective of the movement of the position of the base causes it to be outside of the collapse zone. Mr. Cusack stated that is correct. Mr. Watts asked are we at the point where we are ready to give an approval to either the 94 FT or the 105 FT tower? Mr. Higgins stated yes, I believe that was the calculation that I came up with.

Mr. Berkowitz made a motion to approve the commercial site plan (cell tower) for Verizon Wireless for a 105 FT tall monopine cell tower and for the compound to be completed for all future carriers (co-locators). Mr. Ouimet seconded. Motion carried.

07.076 OB Harvest Church, 303 Grooms Road – Special Use Permit/Addition to Site Plan

Mr. Scott Lansing, of Lansing Engineering, stated the following: I am also here tonight with Pastor Paul Tabano from the Harvest Church and other associates of the Harvest Church as well. We are here tonight to ask the Board's consideration for an approval of a special use permit and the addition to the site plan for the existing Harvest Church site. The overall parcel is approximately 14-acres. The parking for the church building is just about directly in front of the building. The addition is shown in the darker area on the plans, which also includes a storehouse in the back portion of the parcel. We have worked extensively with CHA on a lighting plan with their comments and the Board's comments and we are here tonight again requesting the Board's consideration for approval of both the special use permit and the site plan addition. Mr. Watts asked Mr. Bianchino if he had an opportunity to review the submission. Mr. Bianchino stated yes, the last outstanding item we had was regarding test pits and the stormwater management areas to make sure that the depth of the basins was not below the water table and that information was provided and I think we are all set on that. Mr. Watts asked Mr. Bianchino if they were all set with any traffic issues, if the traffic study had been reviewed and there is no need for the construction of a turn lane or anything? Mr. Bianchino stated correct. Mr. Higgins stated the following: I do see that there is quite a few land-banked parking spaces and I just wanted to comment that I thought that was a good idea with this particular application. Obviously if they are needed in the future, they can be added. They are trying to keep as much green space on the site as possible and I think the applicant and our engineer have responded to this Board's requests. Thank you.

Mr. Roberts made a motion to grant final approval for the special use permit/addition to site plan application for Harvest Church. Mr. Ouimet seconded. Motion carried.

08.058 OB The Home Depot, 4 Halfmoon Crossing – Addition to Site Plan (Outdoor Seasonal Sales)

Mr. Ian McCarthy, Architect for McCarthy Kerekes, LLC, stated the following: This is a continuation of last October 14, 2008 and I believe there were 3 specific comments that the Board had concerns with and I am here to address those specific comments. Regarding the curb cut issue; I believe in 2007 the manager of the Home Depot store at that time had come before you and one of the conditions at that time was to alter the interior curb radii to the entrance at Halfmoon Crossing Blvd. and with that eliminate one interior parking space. The required number of parking spaces on the original plan was 581 parking spaces and this plan has a total of 578 parking spaces. I would like to note one correction; the plan that you have before you illustrates a modification to the radius coming off of Halfmoon Crossing Blvd. and that is not proposed. It was just the interior radius. On the plan it is referenced at the interior and on the inbound side it would be 15 FT radius. The existing radius I think was 5 or 6 FT standard interior parking lot radius. We're accommodating the ability for trucks to maintain that movement. I was at the site earlier today and it is evident that the tractor-trailer itself probably goes over that curb and you can see a divot in the lawn area. So by pulling back that curb, increasing the radius and also eliminating that parking space, it would rectify that issue with the tractor-trailers and also address your concern from the 2007 approval. I believe the Board was given a picture of the tent and I would like to mention that the plan actually says an area of 4,000 SF. The tent itself is actually only 2,700 SF. The 4,000 SF referenced on this plan references an area that extends beyond the limits of the tent for vehicular safety of the tent and so the tent doesn't encroach into the roadway. The purpose of the tent is only a twice seasonal event; once in the spring for a two week period and once in the fall for a two week period if the manager elects to do that. This spring has already come and gone so that tent is not an option and if the manager elects to do it, we would only be talking about the fall. Mr. Berkowitz stated the store has lived without a tent for as long as the store has been opened. Mr. McCarthy stated I believe the store was approved in 1989 and opened in 1990. Mr. Berkowitz stated so you have lived without the tent for 19 years. Mr. McCarthy stated the following: Again, it is an option and it is only intended to be twice a season. The tent is not intended to be there throughout the entire season. Mr. Berkowitz stated no other store in this Town has a tent. Mr. McCarthy stated the following: The other discussion was the seasonal sales that is to the east or to right of the garden center. The original application approval had seasonal sales in that same location or as an alternate in the front parking field and that was an area of 12,000 SF. This area is being reduced in total, excluding the tent, to an area of 10,420 SF. That number is derived without the site maintenance storage area. In fact that 800 SF has been removed and that won't be there at all. Mr. Watts asked if the Board had the plan that they were revising. Mr. McCarthy stated as of tonight I am eliminating that 800 SF that is the site maintenance feature and then the exterior curb radius to the boulevard would remain as is. It is just the interior radius that is changing and that was the intent. Mr. Higgins stated I recall when you were here previously, we asked questions about the storage at the rear of the store with the pallets and things like that and you haven't mentioned anything about that. Mr. McCarthy stated the following: Right, that was the third concern that I haven't discussed yet. Denoted on the plan are specifically two areas; the area center or to the left is the Home Depot's pallet area and the pallets are picked up on a weekly basis. Pallets are recyclable and that is where they put the pallets for recyclable purposes. The area on the right or adjacent to the loading area is cardboard recycling and the cardboard recycling is picked up once they have 10 bales of cardboard. There is a low fence with a guardrail in front of the truck well and one of the thoughts that I discussed with Mrs. Zepko was to consider putting vinyl slats in the fence

area that would effectively screen that recyclable material. Mr. Watts asked where is the material stored now? Mr. Williams stated the cardboard bales are stored behind the building. Mr. McCarthy stated they have some other crated material that would be relocated to the seasonal sales locations and then once that takes place, that area will be for the cardboard bales. Mr. Berkowitz asked where are the pallets stored. Mr. McCarthy stated the pallets are stored in the area adjacent to the loading docks. Mr. Higgins asked what is stored in that temporary outdoor storage area? Mr. McCarthy asked if Mr. Higgins was referring to the area behind the store further to the lumber area? Mr. Higgins stated correct. Mr. McCarthy stated the following: I think that's actually a staging area where their flatbeds from their distribution centers; for lumber, dimensional material and 4 FT x 8 FT ply goods are coming into that receiving area. So effectively, the forklift is going to remove everything off of those flatbed deliveries and it is dropped on that concrete pad. Some of it is organized against the back of the building and then it is cycled into the store. Mr. Higgins asked if that was part of the original approved plan? Mr. McCarthy stated yes. Mr. Ouimet stated the following: I'm really not following what Mr. McCarthy is saying here. Let's go to the plan and let's look at the back of the store and then look to your left; there is two designated temporary storage areas. Mr. McCarthy stated correct. Mr. Ouimet asked is that what you are referring to as the staging areas? Mr. McCarthy stated that is correct. Mr. Ouimet asked how long do goods remain outside the building before they're actually integrated into the store? Mr. McCarthy stated typically the turnaround time is 48 to 72 hours. Mr. Ouimet stated so it takes 48 to 72 hours to "stage" the goods before you move them in? Mr. McCarthy stated that is correct. Mr. Berkowitz asked once this temporary storage area is cleared within 48 to 72 hours; when does the next truck unload to fill up that storage area again? Mr. McCarthy stated those trucks come on a weekly basis. Mr. John Grey, of the Home Depot, stated the following: That back area is where our lumber DC trucks come in with pressure treated and white wood lumber. We get 2 trucks and sometimes 3 trucks a week this time of year and when we hit the fall and winter months it would be 1 truck a week. The material is never outside in the winter. It is only outside in the busy spring season and into the early summer when we get a lot of trucks in because of the volume that we do. Our pressure treated and white wood trucks come 2 to 3 times a week so it is revolved in. Mr. Berkowitz asked so is there something back there all the time? Mr. Grey stated the following: Not all the time, but definitely during a holiday, like Memorial Day that is coming up, we will have extra stock out there so we don't run out of pressure treated and decking and things like that. We would have this material stored outside but then it comes back in by the time the holiday is over. Mr. Watts asked is that all wood product that you store out there and asked would you leave snow blowers out there? Mr. Grey stated they wouldn't last and to answer Mr. Watts' question; no nothing like that, it would be mainly lumber that is rotated. Mr. Watts stated so it is just lumber and it is dropped off the truck and it is just sitting there. Mr. Grey stated it is put up tight to the building and then it is brought inside in the early evening. Mr. Watts asked how high is the lumber stacked? Mr. Grey stated security wise, they only let us go 3 lifts high and that is our procedures and we can't go any higher than that for safety reasons. Mr. Watts asked how high is 3 lifts high? Mr. Grey stated probably at the most 10 to 12 FT depending on the size of the unit. Mr. Berkowitz asked how is it secured back there? Mr. Grey stated it is banded with metal or plastic straps. Mr. Berkowitz asked is it braced in any way so it doesn't tip over? Mr. Grey stated it is put right up against the building and it is very stable and there is nothing that is going to tilt or fall or anything. Mr. Nadeau stated the following: I've seen trucks unloading there and like they said they bring them into that rear door there. Maybe it is mislabeled there and it shouldn't be called "staging". Mr. Watts asked does anybody have any objection to how they are using the

term "staging"? Mr. Roberts stated I don't. Mr. Ouimet stated the following: To "stage" it, I don't have any objection but the fact that it is not temporary is what I have an objection to. If it is temporary that means at some point in time it is not there but if it is being replaced on a regular basis, it is not really temporary. Mr. Roberts stated I think what they mean is it is temporary for the items because they move them in and they move them out. Mr. Ouimet stated yes but the storage is not temporary. Mr. Roberts stated it is a storage area and asked what is the difference? Mr. Watts stated the following: I would go to define it as a storage area for wood product only because we have had a history with some of our big box stores of pushing the limits of what they can do and we just don't want junk out there. If it says on the plans "temporary outdoor storage area" then the next manager or whoever comes in might define that differently. Mr. Nadeau stated that is what I'm saying and I think they should take the "storage" wording out of there and put "staging area for inventory product turnover". Mr. Watts stated right, it is not stored too high and I don't think you'd see it from the building if you are going to put vinyl slats in the fence and asked if that would work? Mr. McCarthy stated yes, I agree, it is the "lumber staging area". Mr. Watts stated okay, that is what we will call it. Mr. Nadeau stated the following: Has there been any issues of garbage or storage in the back there that somebody has complained about? Because I believe the buffering is pretty solid back there to the apartments. Mr. Watts stated the following: At this point, no. We have had to go over there and get after them to clean up and there have been different code enforcement issues. I was over there a few weeks ago and they had to use part of the parking lot for tractors and things that were in a roped off area for sale. Mr. Higgins stated the following: I think that part of it is that this is not the only store in this Town that we have to deal with on this. So, if we give leniencies or operational procedures to you, we also have to keep it consistent and be willing to give it to the others. The other people apparently built their buildings big enough to house what they need to. Where every time you come in it seems like you're trying to push a little bit more here or there and I think the question was asked before "if the building isn't big enough then why don't you put an addition on?". We asked you about the pallet storage and where that was done, we asked you about the cardboard storage and where that was done and you come back with the same exact things. So, my question is; if this is a permanent storage area, then maybe you need to expand the building and put that storage inside where it should be and where it is not all laying around outside the back of the building. Regardless of whether the building can be seen or not, we are looking at safety considerations and everything else. I'm not talking about the lumber receiving; I'm talking about the pallet and cardboard storage areas. Mr. McCarthy stated the following: Those items being recyclables are specifically outside the building and they are stored up against the building. Those things would not typically be stored inside the building. Mr. Higgins stated the following: So, you don't care if your cardboard gets wet and things like that? Where was it stored before now? Mr. Ouimet asked are you saying that it has always been stored outside the building. Mr. McCarthy stated yes. Mr. Ouimet asked doesn't that pose a bit of a security problem for you if some kids go by and light the pallets and/or the cardboard on fire and that could jeopardize your whole building? Mr. Nadeau stated they have been there for 20 years and they have not had any issues. Mr. Ouimet stated that doesn't mean that it can't happen. Mr. Roberts stated but a lot of things can happen. Mr. Watts stated the following: Reading from our last Planning Board Minutes of 10/14/08; "the item was tabled and the Board asked the applicant for more information on the tent sale area, a better description on a temporary storage area and information on curb and access improvement to the site". So we apparently still have the same questions to a degree that we had on 10/14/08. Mr. Higgins stated also we questioned about the trailers that they have for sale and asked in what area are the trailers. Mr. Grey stated

there are no trailers. Mr. Berkowitz asked what have we done with other stores with outside storage of pallets, cardboard and garbage because we should be consistent with all the big box stores. Mr. Williams stated Wal-Mart has a little fenced-in compound where they bring their recyclables in the back corner of the site and Lowe's has a crusher compactor in the back corner of their site. Mr. Watts stated and the Wal-Mart site is also protected by a berm at the rear of the site. Mr. Berkowitz stated I just want to be consistent with everybody. Mr. Nadeau stated but note again, you can't see that area behind the Home Depot. Mr. Berkowitz stated just because you can't see it doesn't mean it is not there. Mr. Nadeau stated again, they have been there for 20 years and it hasn't been an issue and if it's not broke, we don't want to fix it. Mr. Berkowitz stated I don't have a problem with seeing it back there but it could be fenced-in. Mr. Higgins stated but as Mr. Berkowitz said; I think we need to be consistent with all the similar type of stores that we have in Town. Mr. Grey stated the following: Mrs. Zepko came to the store and told us we had to move the drop trailers and I know that Lowe's has those trailers on their property so, how are you being consistent? Mr. Higgins asked if those trailers were for the pallets and cardboard? Mr. Grey stated the following: Yes, trailers for the pallets, the cardboard, as well as a couple of appliances and things like that. We had the drop trailers on our property at the Home Depot and we were told that they had to come off the property to be in compliance. We took those out and we were told to get rid of the sheds and we got rid of the sheds. Mr. Watts stated the following: We will look into that. I know we've had the unfortunate experience with Lowe's and with Home Depot. Unfortunately these two stores have caused us some consternation and trouble. And then when you go over and say "you're not doing it right over here" then the fingers point across the road. It would be nice if both places were compliant and we didn't have to go find people and for your edification Lowe's was fined a substantial amount of money. Mr. Grey stated the following: I have been at the store for 2 years now and anything that Mrs. Zepko asked me personally I comply with her requests. I have gotten rid of our shed displays; our trailers and I have done everything she has asked us to do because we want to be compliant. Mr. Watts stated right, but also recognize that Lowe's was fined a substantial amount of money. Mr. Grey stated I am not even worried about that. Mr. Watts stated the following: Well, you say the other stores are doing it and we have been very consistent in the Town. Places like Wal-Mart had to construct extra storage areas as well as the Cracker Barrel and Hess because they all had seasonal things and they wanted to put trucks on the property to store their seasonal Christmas items, which started in October and lasted until February. So, I think we do a good job dealing these types of issues as a Town. Be that as it may, I will look into that drop trailer issue or whatever for the storage. Mr. Berkowitz asked do we want temporary storage for pallets, cardboard and wood products; because I think that is fine but should it be secured somehow like Wal-Mart has? Mr. Williams stated Wal-Mart has a fenced-in area where the bottle recyclable trailer is in the back corner. Again, it is fenced-in and there is a big open trailer where they put their returnable bottles and they keep bales of cardboard in there also to be picked up. Mr. Watts asked in the trailers. Mr. Williams stated in a fenced-in compound on site. Mr. McCarthy stated the following: It is my understanding that typically in the Wal-Mart, and this may not be true here, in terms of how they do receiving, they receive perpendicular to the back of the building and there is a fairly large surface area. Our intent, and what has been going on, is that you have the single drive and the width that is required to maintain fire accessibility and the product is neatly against the back of the building. The lumber material that we discussed is wood product, it is palletized and then next to that are empty pallets and they are just stacked up. Regarding your question earlier about providing additional information, the additional information as we are discussing this evening is the area directly behind the middle of the store for pallets. Again, it is wood

product and it is stacked up the same as the incoming lumber product is stacked. A machine compresses the cardboard bales and it is wrapped and it's like going through a car crusher but it's just cardboard and it is not loose cardboard. The consideration that I had discussed with Mrs. Zepko was that we have an existing fence that is along the loading dock and that is a cyclone fence and the idea was to add vinyl slats into that. There is a very dense screen behind the store and you have the store itself so the only exposure of where you might see something from the front of the store is at the site line at the edge of the garden center and catching the corner of that area. So simply filling in the cyclone fence with the vinyl slats will adequately screen any of that product. Mr. Watts asked how high is the fence? Mr. McCarthy stated it is a guardrail so it is 42 inches in height. Mr. Higgins asked wasn't the note #1 area previously approved last year or the year before? Mr. McCarthy stated the following: You are probably referring to the approval from 2007 and in 2008 we came in late October. Mr. Grey was a new store manager and corporate was not aware that the manager before Mr. Grey had acted and performed something that nobody else knew about with having to come back before the Board regularly for seasonal sales. It wasn't until there was the violation in March/April 2008 that we became aware of this situation. This plan that you see before you is a modified plan of the October 14, 2008 meeting. Mr. Higgins asked what was the original seasonal area that we approved and is that in note #1? Mr. McCarthy stated when the store was originally approved in 1989; there was one specific area that was 12,000 FT that was that entire area leaving the drive lane adjacent to the garden center open and that entire area being seasonal sales. We had a concern that if that didn't function properly, a option of of 12,000 FT was out in the front parking lot. Mr. Higgins stated now instead of 12,000 FT we are now up to over 11,000 SF? Mr. McCarthy stated the number would be 10,420 FT less the 2,700 SF of the tent. Unlike these other areas, which are intended to be throughout the season, that referencing the 4,000 SF in the front parking lot that was only a 2-week duration in the spring and fall. Mr. Watts asked are you going to leave the tent up all the time? Mr. McCarthy stated no, because there is a requirement from the Building Department to secure a permit to put up a temporary structure like that and also satisfy the fire department. Mr. Higgins asked is the seasonal tent going to go up twice a year for a 2-week period? Mr. McCarthy stated the following: Yes, that was the intent. It is not something that was going to be there from March all the way through October. Mr. Higgins asked what are you asking for tonight? Mr. McCarthy stated what I described to you was that it was only something that would happen twice for a 2-week period, spring and then fall. Mr. Higgins stated as Mr. Watts said, so the tent would be put up for 2 weeks then it would be taken down. Mr. McCarthy stated that is correct. Mr. Berkowitz asked what would be under the tent? Mr. McCarthy stated I had submitted information with that and typically what would be in the tent would be patio furniture and rug remnants. Mr. Berkowitz stated would those items stay out there for a full 2 weeks or would it go in and out? Mr. McCarthy stated it would stay in the tent and the sides of the tent would be closed up and then secured. Mr. Berkowitz asked with the rug remnants, what happens if it rains? Mr. McCarthy stated it is a tent. Mr. Berkowitz stated what if the rain water goes under the tent? Mr. McCarthy stated nothing is lying on the macadam and it would be up off the pavement. Mr. Watts stated the last document that I have in the file relative to the seasonal tent states "the first proposed modification is the seasonal sales area and third proposed modification is to establish an area in the front parking field in which to erect a tent for the display of merchandise on a seasonal basis during peak spring and summer months; an example can be found at the Home Depot store in the Town of Wilton, NY." How long is the tent up in the Town of Wilton? Mr. McCarthy stated as far as I understand it's only a twice season event. Mr. Watts stated I am looking at that document and the letter from the 25th that we received from the Home Depot didn't say

that. Mr. McCarthy stated the following: You're correct, it did not say that and it was not clear. What I would like to offer this evening is that Mr. Grey has already been through the spring season and for this season we are not going to do that tent for this year and take it off the plan because it doesn't exist. Mr. Watts asked so you don't want it for this calendar year at all? Mr. McCarthy stated let's just drop that conversation because there is no tent. Mr. Berkowitz asked should we discuss this now in case they want the tent next year so we can decide whether we want it or not so we don't have to waste our time every year. Mr. McCarthy stated I would just like to offer that we drop that tent. Mr. Watts stated the tent is dropped. Mr. Watts stated so we are now down to the proposed seasonal sales areas. Mr. Higgins asked so you are not going to use the 4,000 SF area at all and that is crossed off this plan totally? Mr. McCarthy stated the following: That is correct, the reference to the 4,000 SF was for the tent. The tent was 90 FT x 30 FT so that is 2,700 SF and we simply depicted an area that that tent would fit on which happened to occupy that area over the parking spaces. Mr. Higgins asked so that whole area is not going to be used other than for parking? Mr. Watts stated it would only be the parking lot. Mr. Higgins stated so the only two areas that we are dealing with are the 2,400 SF and the 5,200 SF and asked is that correct? Mr. McCarthy stated that is correct. Mr. Higgins stated because you already took the 800 SF and I just want to make sure that we are all on the same page. Mr. Berkowitz asked what is going to go in the other two areas? Mr. McCarthy stated that would be product that typically would be at the garden center and in-season you'd have the various types of material such as; soil, mulch and stone. Mr. Berkowitz asked would those materials be loose or bagged? Mr. Grey stated it is bagged. Mr. Watts stated the approval that we will give tonight is for this year for the seasonal storage; that is depicted on the plan, install the vinyl slats in the fence, restrict the area in the back to the wood product, pallets and bound cardboard and then you would come back again next year for a seasonal approval. Mr. McCarthy stated we will amend this plan and the official plan will reflect these things that we have just discussed. Mr. Higgins stated the following: I agree with the storage in the rear with the pallets and the cardboard. But, could we ask the applicant to maybe take a look at it and hearing the concerns of the Board maybe they can come up with a more permanent solution to that stuff in the rear because I want to make sure that we are handling everyone the same. Also, when can we expect to see the curb altered? Mr. McCarthy stated we will review with Home Depot Corporate to get an estimate for the curb work and try to get that done around June or July. Mrs. Murphy asked would you say that the curbing would be done by July 30th? Mr. McCarthy stated yes that would be the target date.

Mr. Nadeau made a motion to approve the addition to site plan (outdoor sales) application for the Home Depot from May 11, 2009 until September 15, 2009 contingent upon no tent sales area; rear storage area for lumber, baled cardboard and pallets only, front curb to be altered and a new site plan would need to be submitted. Mr. Higgins seconded. Motion carried.

09.001 OB Clifton Temple Baptist Church, 142 Lower Newtown Road – Special Use Permit/Addition to Site Plan

Mr. Joe Starr, of Starr Builders, stated the following: I am here representing Temple Baptist Church and I believe we have addressed all the concerns with CHA. We are here tonight looking for an approval. Mr. Watts stated we will need to schedule a public hearing before an approval can be granted.

Mr. Berkowitz made a motion to set a public hearing for the May 26, 2009 Planning Board Meeting. Mr. Ruchlicki seconded. Motion carried.

Mr. Ruchlicki made a motion to adjourn the May 11, 2009 Planning Board Meeting at 8:47 pm.
Mr. Ouimet seconded. Motion carried.

Respectfully submitted,
Milly Pascuzzi
Planning Department Secretary