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STATE OF NEW YORK : COUNTY OF ULSTER  
TOWN OF MARLBOROUGH PLANNING BOARD

----- X

In the Matter of

BAYSIDE MIXED USE

Project No. 19-3011  
18 Birdsall Avenue, Marlboro  
Section 109.1; Block 4; Lot 29

----- X

EXTENSION - SUBDIVISION/SITE PLAN

Date: March 2, 2020  
Time: 7:30 p.m.  
Place: Town of Marlborough  
Town Hall  
21 Milton Turnpike  
Milton, NY 12547

BOARD MEMBERS: CHRIS BRAND, Chairman  
BEN TRAPANI  
CINDY LANZETTA  
JOSEPH LOFARO  
MANNY CAUCHI  
JAMES GAROFALO

ALSO PRESENT: JEFFREY S. BATTISTONI, ESQ.  
PATRICK HINES  
VIRGINIA FLYNN

APPLICANT'S REPRESENTATIVE: JUSTIN DATES

----- X

MICHELLE L. CONERO  
PMB #276  
56 North Plank Road, Suite 1  
Newburgh, New York 12550  
(845)541-4163

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CHAIRMAN BRAND: I'd like to call the meeting to order with the Pledge of Allegiance to the flag of our country.

(Pledge of Allegiance.)

CHAIRMAN BRAND: Agenda. Town of Marlborough Planning Board. Revised February 25th. March 2, 2020. Regular meeting 7:30 p.m. On the agenda tonight, Bayside Mixed Use, extension, subdivision/site plan, 18 Birdsall Avenue, Marlboro. The next deadline is March 6th. The next scheduled meeting is Monday, March 16, 2020. A lot to go over this evening.

Jeff, I know there was a question that was brought up about extensions with site plans -- I'm sorry -- yes, site plans and subdivisions. Maybe you just want to clarify that for all of us and then we can go ahead.

MR. BATTISTONI: Sure. If you don't mind, I'll give you kind of a background. New York State law has something called a New York State Town Law. Article 16 of that is called zoning and planning. That's where all the laws are about creation of zoning boards of appeals, planning boards, and all the laws about

1 subdivisions, and site plans, and special use  
2 permits. They all come from that state law.  
3 Then local governments can implement what's in  
4 that state law in their own local codes.  
5

6 Under the State Subdivision Law, a  
7 subdivision approval can be extended for 90 days.  
8 It used to be that there was a limit of two.  
9 That law was amended some time ago and they got  
10 rid of that limit. So in theory, a subdivision  
11 approval can be extended for 90 days over and  
12 over and over again.

13 The Town of Marlborough Town Code still  
14 has the old limit of two in it. Some day that  
15 probably should be updated. But right now that  
16 is there.

17 The application tonight is seeking to  
18 extend the subdivision approval, and that's why  
19 the resolution refers to a 90-day extension.

20 Separate from that, site plan approval,  
21 there's no limit in the state statute about  
22 extensions. There's no limit on how long a site  
23 plan approval applies. Towns are free to do what  
24 they want.

25 So the Town Code in Marlborough says

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that a site plan approval is good essentially for two years. You have to begin construction within one year, you have to complete it in two years. And then the code does allow two one-year extensions. So the two processes are different, and that's based on state law being different.

Bayside is a bit of an unusual application because it had a site plan approval component and also a subdivision approval component.

So I hope that background helps.

MS. LANZETTA: Mm'hm'.

CHAIRMAN BRAND: It did very much. And I appreciate you coming this evening.

MR. BATTISTONI: Okay, sure.

CHAIRMAN BRAND: Any questions from the Board? Comments? Mr. Garofalo.

MR. GAROFALO: With regard to their request, it looks like it's a request for dealing with the subdivision.

MR. BATTISTONI: Correct.

MR. GAROFALO: Is a subdivision 90 days?

MR. BATTISTONI: Yes.

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MR. GAROFALO: So does this fit within the 90 days?

MR. BATTISTONI: Well you're granting a 90-day extension.

MR. GAROFALO: What date would that be? What day would that be from? Would that be from --

MR. BATTISTONI: Well --

MR. GAROFALO: -- the November --

MR. BATTISTONI: -- it says here, towards the bottom of the resolution that I prepared, it's going to begin to run from March 14th, because that's when their approval will expire, and it will last for 90 days. That takes them to June 11th.

MR. CAUCHI: Is that the approval that expires from the two years or --

CHAIRMAN BRAND: That's the subdivision.

MR. CAUCHI: -- the extension of that?

CHAIRMAN BRAND: That's the subdivision, not the site plan. The site plan is the one that has the two-year limit.

MR. CAUCHI: Okay.

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CHAIRMAN BRAND: A subdivision has --  
how long is the original?

MR. BATTISTONI: The original is 180  
days.

CHAIRMAN BRAND: 180.

MR. BATTISTONI: This Board granted a  
re-approval in September for 180 days, and that  
runs until March 14th. I think the applicant  
realizes we're getting close to that, so please  
give me an extension.

This resolution would grant a 90-day  
extension that would run from March 14th until  
June 11th.

CHAIRMAN BRAND: Just for the  
subdivision?

MR. BATTISTONI: Correct. Just for the  
subdivision.

CHAIRMAN BRAND: Okay. Any other  
questions or comments?

MR. GAROFALO: So the approval was on  
September 16th?

MR. BATTISTONI: I think so, yes.

MR. GAROFALO: So it's not 90 days from  
September 16th?

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MR. BATTISTONI: No. It's 180 days. The additional approval is 180 days. Again, that comes from the New York State Town Law.

MR. GAROFALO: Okay. Okay. I certainly do have some questions about some of the conditions. If other people have questions, I'll --

CHAIRMAN BRAND: Go ahead. The floor is yours.

MR. GAROFALO: Okay. On condition B it talks about the approval of New York State Transportation for the 9W access and the utility connections/construction permit. I saw in the materials that you -- that were provided that there is information on the right-of-way and the ability to transfer the right-of-way to DOT. What I didn't see, and maybe it's somewhere else in the file and it's been provided, is information on the actual highway permit. In particular, one of the things that was brought up earlier last year was the question of right out only at the school access for the middle school. I don't know as if that had been finalized with DOT and the school. I know there had been some

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papers with the school dealing with reconfiguring their parking, but I wanted to find out what is the status of the right turn out at the middle school as part of the overall highway permit for redoing the light and providing the access for what's going to become, I guess, a public road.

MR. DATES: A public road on our property.

MR. GAROFALO: Yes.

MR. DATES: Yeah. Okay. That maintains as a right and left out of the school. That was not modified.

In our July 3, 2019 submission we did go through each of these resolution items and where they stand. We did provide correspondence from Lee Zimmer at DOT that says pending completion of the process, which I've provided with this most current submission, Bayside is a permissible project. So we've gone through the plan revisions in coordination with DOT that it's ready for a permit.

MR. GAROFALO: Just so you're aware, I was not part of the Board back then.

I'll, you know, publicly state that I



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have worked with John Collins on both sides of the table, who is now owned by Maser, and I think I've worked with Maser, too. I also have placed, both with the Town Board and this Board, information with regard to this particular project, which is a matter of public record.

What did DOT -- I mean I think it was in January DOT was saying that they wanted to see that right turn out only. Was that a problem that the school district didn't want to do that? What was the status of that particular comment that DOT had made?

MR. DATES: I don't have the exact -- I think that --

CHAIRMAN BRAND: I think he's referring to the original driveway was a right-turn only out, not the road that you'll be constructing for the project.

MR. DATES: The existing driveway from the middle school?

CHAIRMAN BRAND: Correct.

MR. GAROFALO: Right.

MR. DATES: Yes. That, as I stated, maintained a left and a right turn under the

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permit plans that DOT has said are acceptable and ready for permit.

MR. GAROFALO: Okay. Item number E dealing with the Town highway superintendent, the road access permit for the emergency access onto Purdy Road, was that something that you had sent in to the Town --

MR. DATES: Yes.

MR. GAROFALO: -- previously?

MR. DATES: Yes. Again, that July 3, 2019 submission has a letter from Gael Appler accepting the locations of the emergency access and the main entrance.

CHAIRMAN BRAND: Jeff, just for your clarification, for your final copy it's Purdy Avenue.

MR. BATTISTONI: Okay.

MR. GAROFALO: Do you happen to have a copy of that with you?

MR. DATES: Yeah.

MR. GAROFALO: I hope that's a copy that's with the Planning Board secretary.

MR. DATES: Yes. It's dated July 3, 2019. This is a copy of the submission.

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We went down A through H and identified how, at that time, those items were addressed.

MR. GAROFALO: So you've addressed the construction phasing plan review and approval by the Planning Board engineer?

MR. DATES: Yeah. Yeah. I have -- we've provided an updated plan to Mr. Hines, showing to him the change of phases. In my comment at that same time I identified the discussions that we had. Pat was in agreement of the new phase description.

MR. GAROFALO: A copy of that phase description is with the Planning Board?

MR. DATES: He has a copy of the plan.

MR. GAROFALO: Okay. But the Board should have a copy also, because some day we may end up with a new engineer. We want to make sure that the records are in the Town because the Town is going to be -- you're going to be in the Town. The Town is going to stay here hopefully for a very long time.

MR. DATES: Absolutely.

MR. GAROFALO: Those are my -- those are all of my questions, Mr. Chairman. Thank you.

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CHAIRMAN BRAND: You're welcome.

Anything else from the Board?

(No response.)

CHAIRMAN BRAND: All right then. For the application of Bayside Construction, LLC resolution of approval by the Town of Marlborough Planning Board for subdivision; Jen, would you poll the Board?

MS. FLYNN: Chairman Brand?

CHAIRMAN BRAND: Yes.

MS. FLYNN: Member Lanzetta?

MS. LANZETTA: Yes.

MS. FLYNN: Member Garofalo?

MR. GAROFALO: Yes.

MS. FLYNN: Member Trapani?

MR. TRAPANI: Yes.

MS. FLYNN: Member Lofaro?

MR. LOFARO: Yes.

MS. FLYNN: Member Cauchi?

MR. CAUCHI: Yes.

CHAIRMAN BRAND: You're all set.

MR. DATES: If I could just ask one --

CHAIRMAN BRAND: Absolutely.

MR. DATES: Just in line with what Mr.

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Garofalo was going through, the resolution items, as the applicant we see that the only remaining resolution item is A. It's the Board's rec fees and the deferment of all the consultant costs incurred by the Town of Marlborough. As I mentioned, in July we presented how we addressed B through H.

Can I ask the Board to give us what those fees are at this point, because the applicant would like to address those so we can get the subdivision signed, filed, and then we can go and do the business corridor overlay and kind of wrap up the site plan resolution items as well?

MS. FLYNN: I didn't bring that down with me. But also you're going to be charged for today's meeting. That would be the final bill. I mean you have --

MR. DATES: Yes.

MS. FLYNN: So whatever is there.

MR. DATES: Okay. I understand that will come in time. I guess really it mentions recreation fees. I know the Town's fees are \$1,500 a lot. So are we paying --

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MS. FLYNN: That went up to 2,000.

MR. DATES: Oh, it did. I'm sorry.

Okay. So we'll be paying \$6,000 in recreation fees and then the consultant costs? Would that be all that's expected of the applicant at this time?

CHAIRMAN BRAND: I think we'd have to get back to you on that --

MR. DATES: Okay.

CHAIRMAN BRAND: -- just to make sure that -- I don't want to tell you the wrong thing right now. We just want to make sure that we get it right.

MR. DATES: Okay.

CHAIRMAN BRAND: And then Jen will provide you with a detailed --

MR. DATES: Okay.

CHAIRMAN BRAND: -- bill.

MR. DATES: The applicant wants to get that taken care of so we can kind of --

CHAIRMAN BRAND: Absolutely. Okay. All right. Anything else?

MR. LOFARO: Should we accept the minutes from last time?

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CHAIRMAN BRAND: There are none to be had. We just received them today. I don't know if everybody had a chance to look through them.

(Time noted: 7:50 p.m.)

C E R T I F I C A T I O N

I, MICHELLE CONERO, a Notary Public for and within the State of New York, do hereby certify:

That hereinbefore set forth is a true transcription of the recorded proceedings.

I further certify that I am not related to any of the parties to this proceeding by blood or by marriage and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 18th day of March 2020.

  
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MICHELLE CONERO

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STATE OF NEW YORK : COUNTY OF ULSTER  
TOWN OF MARLBOROUGH PLANNING BOARD

----- X  
In the Matter of

TOWN OF MARLBOROUGH CODE

SECTION 134-6

----- X

BOARD BUSINESS

Date: March 2, 2020  
Time: 7:50 p.m.  
Place: Town of Marlborough  
Town Hall  
21 Milton Turnpike  
Milton, NY 12547

BOARD MEMBERS: CHRIS BRAND, Chairman  
BEN TRAPANI  
CINDY LANZETTA  
JOSEPH LOFARO  
MANNY CAUCHI  
JAMES GAROFALO

ALSO PRESENT: JEFFREY S. BATTISTONI, ESQ.  
PATRICK HINES  
VIRGINIA FLYNN

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MS. LANZETTA: I do have a question for Jeff, since we have a couple of minutes. This is in relation to what we've been kind of going back and forth on in regards to undeveloped subdivisions, existing subdivisions. I'm trying to get clarity. I was looking at 134-6 on undeveloped subdivisions in our Town Code. Just so that the rest of the Board understands what I'm talking about, if we had a subdivision that was, let's say, a ten-lot subdivision that was passed and filed but was never built for several years, and it was supposed to have a Town road, would they be able to turn around and put in a private road and stick four houses on that private road? Would that be legal under our present Town Law? Would that be possible -- legal?

MR. BATTISTONI: Bear with me one second. I have that in front of me, so I'm going to read it quickly.

MR. TRAPANI: They probably have to come back in front of us.

CHAIRMAN BRAND: I believe the situation you're referring to is a condition of

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the approval. Correct?

MS. LANZETTA: Well I'm not talking about a specific subdivision. I'm just saying in general.

The point is it's my understanding the building inspector believes that if someone has a subdivision filed, that they're allowed, at minimum, to have -- because we have a private road law that says you can have up to six but certainly four houses on a private road, that somebody, even though they have a different subdivision that's been filed, is allowed to come in and put in a private road and put in four houses. He says that he is obligated to allow somebody to do that. I don't understand if that would be true or not.

MR. BATTISTONI: So I don't know if I'm following that. If I look at 134-6, --

MS. LANZETTA: Yes.

MR. BATTISTONI: -- it says where a subdivision plat filed with the office of the County Clerk is entirely or substantially undeveloped, the Planning Board may require those portions which are undeveloped to be replatted.

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So if you have an old subdivision which is partially built, the Planning Board could require the applicant to come back in for replatting and re-approval. That's what this is saying.

Your question is separate from that, though.

MS. LANZETTA: I guess there were two questions. There was that one, and then the other one, would it be possible for somebody to just go in and put in let's say technically a minor subdivision on an existing, already filed, separate subdivision with four houses and -- could they legally do that?

MR. BATTISTONI: I don't know. Does your code have a limit on the number of houses that can be served by either a private drive or a private road?

MS. LANZETTA: Yes. Well to stay under -- it's a combination. I guess this is a combination, because to stay under the major/minor subdivision law, if you do four lots or less you stay under the -- five lots or less you stay under the -- as a minor subdivision. Our code allows you to have four houses. Six but

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then we're getting into the larger subdivision regulations. You can possibly have six. You can certainly have four houses on a private road.

So does that mean that you don't have to, first of all, follow the original subdivision; and, second of all, you can just go in and put in a private road and have this minor subdivision?

MR. BATTISTONI: I'll have to look at that. I would be concerned that if the original subdivision approval required a Town road, they would be deviating from one of the conditions if they then just used a private road. But I would have to look into that.

MS. LANZETTA: Yeah.

MR. GAROFALO: I'm not sure. For the private roads -- don't they have to get the road accepted by the Town for it to be a public road? So basically they are building a private road and then they're getting accepted as a public road?

MR. TRAPANI: There's different widths I think between a private road and a public road.

MS. LANZETTA: I think it's more the base.

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CHAIRMAN BRAND: The thickness.

MR. GAROFALO: But if they know they're going to build a public road, they build it to the public road standard.

MS. LANZETTA: But I'm saying they changed their mind. They don't want to do a public road. They've changed their mind, so now they're just going to go ahead and put in a private road and put four houses on there.

CHAIRMAN BRAND: Our original conversation this evening began with the State Law on subdivisions. You said the original time that they have for that is 180 days. Doesn't any subdivision that's exceeded 180 days without being built need to come before us again anyway?

MR. BATTISTONI: No. That's just for the approval. In other words, you have to get your plat signed and get it filed with the County Clerk within those time limits. You might find that you have a subdivision that gets filed and the market collapses and you have lots for sale for years and years that just don't sell. So your subdivision is still valid as long as the plat is signed and filed with the County Clerk in

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time.

CHAIRMAN BRAND: But don't they have to file the original plan of what was approved?

MR. BATTISTONI: They do, yes. The original plat is filed with the Town clerk.

MS. LANZETTA: That's what I'm saying. Our Town building inspector said if they turned around and wanted to put four houses on a private road, that he could not deny them COs.

MR. BATTISTONI: Again, I'd have to look at that. I don't know where he's getting his information from. He must have a source for that. I'd like to see what that is.

MS. LANZETTA: Okay.

CHAIRMAN BRAND: It's probably the Code that allows it.

Are you saying that the original subdivision that was approved was more than four?

MS. LANZETTA: Yeah. Yeah.

CHAIRMAN BRAND: Okay. So the original subdivision is more than four.

MR. TRAPANI: Is it a major subdivision?

MS. LANZETTA: Yeah.

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CHAIRMAN BRAND: Which would require --  
you wouldn't be able to do that, but now he's  
just building four and using a private road  
because that's allowable under Town Code pretty  
much?

MS. LANZETTA: Mm'hm'.

MR. GAROFALO: I would think that you  
would have to --

MR. TRAPANI: Come back.

MR. GAROFALO: -- come back and change  
the subdivision so there wouldn't be ten lots  
there.

MS. LANZETTA: That's what I would  
think, but then I'm hearing this -- I guess we  
would have to involve the Town building inspector  
-- the zoning code enforcement officer to be  
involved in that.

MR. BATTISTONI: Is it worth the  
Planning Board sending a notice under 134-6 that  
you're requiring the replatting of that  
subdivision to get the owner back in? It seems  
to me that's something you could consider here.

MR. GAROFALO: If you're going to do  
that, you probably should do it as a general

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letter saying that under the -- you know, if the original approval had a public road and they are now going to put in a private road, that we want them to come back to do it in a more general form and not just pick one --

MS. LANZETTA: I think we have to get the Town zoning code enforcement officer involved in the conversation so we are all on the same page, because I don't know what --

MR. GAROFALO: Yeah. You want him to be able to, A, understand the code and get his opinion on whether or not if you're going to make a change like that to, you know, see what he says about it.

CHAIRMAN BRAND: So Jeff, maybe you can do a little research and then ask the question of the code enforcement officer? See where he is? Okay?

MR. BATTISTONI: Yes.

MS. LANZETTA: Yeah. We keep going kind of around on this.

MR. CAUCHI: Let's see if I get this right. Let's say -- let's put some numbers to it. Let's say it was a subdivision with eight



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lots with a Town road. He got his approval. Some time went by and all of a sudden he changes his mind, he doesn't want to go through the whole expense of a Town road, all the requirements that go with it. He's going to put up four houses and a private road. We're saying that that should be okay, he does not -- he can do that switch from the approval of the eight lots with the Town road to four lots with a private road, he can do that change without coming to us? That the building inspector could go ahead and do that? Is that what's on the table?

MS. LANZETTA: That's what the building inspector was saying.

MR. CAUCHI: All right.

MS. LANZETTA: I'm thinking that that's not the case.

MR. CAUCHI: You're saying that he should come back to us?

MS. LANZETTA: Well that -- yeah, because it's -- otherwise why come to us in the first place?

MR. LOFARO: Any time there's a change why --

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MR. TRAPANI: The major subdivision and everything is signed and everything. Where does that go?

MS. LANZETTA: County.

MR. TRAPANI: To the County. How is the County going to know that it was changed unless it's been changed by us or whomever?

MS. LANZETTA: Yeah.

MR. TRAPANI: They're going to look at it and say oh, it's a major subdivision, they have Town roads and everything else. Come back and say oh, you know, you guys approved it and now we have it as this but it's a private road. I think they would have to come back.

CHAIRMAN BRAND: I like the idea of, you know, requiring them to come back if that's in the code and we can force them to come back and replat it.

MS. LANZETTA: Well I'm not saying that they have to -- this would have come up if we would have had the people coming about the logging situation because that would have raised a lot of questions regarding the particular subdivision that they wanted to log on. I'm just

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saying as a general thing, because the building -- the code enforcement officer said that well they can do certain things on their property. In fact, the letter he sent out -- where is that letter he sent us on the Truncali thing? Do you have that in your file by any chance? The referral on that logging thing. I think he might have said in there that he could -- they could technically put four houses on a private road for that.

CHAIRMAN BRAND: I don't have it here.

MS. LANZETTA: I left it home.

MR. GAROFALO: I could see how it would be reasonable for them to say okay, I'm going to build the public road and only put four houses up and not put the other ones up, but it's the issue of can you just change from a public to a private road.

MR. LOFARO: I agree with what you're saying. Right.

CHAIRMAN BRAND: He's probably under the assumption that since it's allowed, that you could build the four but if you put in the fifth or the sixth, then you have to go ahead and

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construct the road, because the four is allowed.

MR. LOFARO: It doesn't sound like it's written that way.

CHAIRMAN BRAND: I think it is written that way. You're allowed to have four on a private road. He's saying, I'm assuming, that as long as you're only putting up four and four is allowable on a private road, that they're able to do that. But should you put five, six, seven, add those, then they would be bound to put in the Town road.

MR. GAROFALO: You have to put up a bond for a public road.

CHAIRMAN BRAND: Yeah. Sounds like you have your homework --

MR. GAROFALO: A bond would just hang until --

MR. BATTISTONI: I'll look into it and get an answer for you.

MR. CAUCHI: But that's not the talking point right now. The talking point is it was approved for an eight-lot subdivision with a Town road. That work was approved. So now you're going to four homes on a private road. There

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needs some legality to transfer to that right there. So what we're asking is does the code enforcer have the authority to do that or does he need -- the code enforcer needs to send him to us. That's the question, I think, that we're trying to --

CHAIRMAN BRAND: Yeah.

MR. CAUCHI: -- understand.

CHAIRMAN BRAND: I think we have the -- it's clear that we have the right to ask them to come back. Right?

MR. BATTISTONI: 134-6, the Planning Board may require.

CHAIRMAN BRAND: So we absolutely have that within our parameters to be able to do that.

MS. LANZETTA: I can't find that letter right now. We'll look at that letter and see what -- just to make sure that the code enforcement officer understands where we're -- what we're thinking and that we're all in the same --

MR. GAROFALO: The only way we would know, though, is if the code enforcement officer came to us or the applicant came to us.

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BOARD BUSINESS

MR. CAUCHI: Obviously he feels that he doesn't -- he feels he's authorized to do that. That's why we don't have them -- they're not coming to us. The thing is does he have that authorization is what we need to know, and be able to bring it to his attention if he doesn't.

MR. GAROFALO: And decide how do we really want to handle it.

MR. CAUCHI: First we need to know --

MR. GAROFALO: What it is.

MR. CAUCHI: Exactly.

MR. GAROFALO: I agree.

CHAIRMAN BRAND: Anything else?

MS. LANZETTA: No. That's it.

CHAIRMAN BRAND: Motion to close?

MR. CAUCHI: I'll make that motion.

CHAIRMAN BRAND: Is there a second?

MR. GAROFALO: I'll second.

CHAIRMAN BRAND: All those in favor?

MR. TRAPANI: Aye.

MS. LANZETTA: Aye.

MR. GAROFALO: Aye.

MR. CAUCHI: Aye.

MR. LOFARO: Aye.

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BOARD BUSINESS

CHAIRMAN BRAND: Aye.

See you next time.

(Time noted: 8:14 p.m.)

C E R T I F I C A T I O N

I, MICHELLE CONERO, a Notary Public  
for and within the State of New York, do hereby  
certify:

That hereinbefore set forth is a  
true transcription of the recorded proceedings.

I further certify that I am not  
related to any of the parties to this proceeding by  
blood or by marriage and that I am in no way  
interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto  
set my hand this 18th day of March 2020.

*Michelle Conero*

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MICHELLE CONERO