

SUFFOLK COUNTY PLANNING COMMISSION

MINUTES

A regular meeting of the Suffolk County Planning Commission was held at the Evans K. Griffing County Center in the Maxine S. Postal Legislative Auditorium at 300 Center Drive, Riverhead, New York on April 6, 2005 at 12 P.M.

PRESENT:

Robert Martin (Smithtown) - Acting Chairman
Louis Dietz (Babylon)
Charla Bolton (At Large)
Frank Tantone (Islip)
Richard London (Village 5000 & Under)
Richard O'Dea (Riverhead)
Laure Nolan (Village 5000 & Over)
John Caracciolo (Huntington)
Linda Holmes (Shelter Island)

ABSENT:

Linda Petersen (At Large)

ALSO PRESENT:

Thomas Isles - Suffolk County Director of Planning
Andy Freleng - Suffolk County Principal Planner
Claire Chorny - Suffolk County Planning Department
Chris Wrede - Suffolk County Planning Department
Basia Braddish - Suffolk County Attorney
Christine Farrell – Suffolk County Attorney
Kim Kennedy - Aide to Legislator Caracciolo
Peter Lambert – Suffolk County Planning Department
Legislator Caracciolo – District 1
Lisa Greci – East Hampton
Nicole Wachter – Aide to Presiding Officer Caracappa

Minute taken by:

Eileen Schmidt – Secretary

(THE MEETING WAS CALLED TO ORDER AT 12:15 P.M.)

ACTING CHAIRMAN MARTIN:

Good afternoon ladies and gentlemen. The Suffolk County Planning Commission is now in session. Please rise and join us in the salute to the flag, John Caracciolo please.

SALUTATION

ACTING CHAIRMAN MARTIN:

Before you sit could we please have a moment of silence for the Pope and not everybody has to participate.

MOMENT OF SILENCE

ACTING CHAIRMAN MARTIN:

We thank you. Members of the board have you received a copy of the minutes March 6th of '05? Have you noticed any errors or omissions?

MS. BRADDISH:

Yes.

ACTING CHAIRMAN MARTIN:

Yes, Basia.

MS. BRADDISH:

On page three it mentioned Charter section C4-5 it should read C14-5.

ACTING CHAIRMAN MARTIN:

Okay. Any comments?

MR. DIETZ:

Mr. Chairman, I move that the minutes submitted and read be approved as presented.

MS. BOLTON:

Second.

ACTING CHAIRMAN MARTIN:

All in favor signify by say aye. Contrary minded. Abstentions. So moved. **(Vote: 9-0-0-1 Absent: Petersen)** Next is the election of Officers that was tabled.

MR. LONDON:

I move to elect Robert Martin as Chairman.

MR. O'DEA:

Second.

ACTING CHAIRMAN MARTIN:

All in favor signify by saying aye. Contrary minded. Abstentions.

MS. BOLTON:

Abstain.

MS. NOLAN:

Abstain.

MR. DIETZ:

Abstain.

ACTING CHAIRMAN MARTIN:

I abstain.

MR. TANTONE:

Abstain.

MS. HOLMES:

Abstain.

MR. CARACCIOLO:

Abstain.

There was mechanical problems so there are no minutes for this section. There was no nomination for Vice Chairman. The Director reported on departmental activities. Minutes resumed after the Director's Report.

ACTING CHAIRMAN MARTIN:

Are you all right now?

MS. SCHMIDT:

Yes.

ACTING CHAIRMAN MARTIN:

Do you want us to go back; are you okay?

MS. SCHMIDT:

There's not going to be anything there really.

MR. ISLES:

You have all the motions though?

MS. SCHMIDT:

Okay.

MR. ISLES:

That has to be done. If you want to, the next item on the agenda and I'll make it very brief is just....I think we talked about this a little bit, but I did send out to you a copy of a report we just did in the end of February actually came out at the beginning of March. Here again, the significance of this and not to get into too much detail is that when the Legislature and the County Executive approved a new Open Space Bond Act this past fall \$75 million in funds were authorized for open space. The unique twist to this was that for the first time in a County program anyway the provision was allowed whereby the County could take development rights off the properties and make them available for affordable/workforce housing developments. It has nothing to do with local zoning; it only relates to wastewater credits. Any developments must be in accordance with local zoning. So what the purpose of this report is, is the Legislature directed the Department of Planning to actually come up with the administrative process for how this is going to work. And what we've done is we've come up with a three step process whereby we determine the number of credits as we buy open space; we store those credits and keep track of them and then we work towards the assigning the credits.

So it's a three step process, the first step is that we're actually out buying open space. The Planning Department will complete a yield map possibly working with the town if we have any issues with the town that we need to work out. Determine the number of lots that could have come off of the parcel and then placing that in the resolution of the Legislature in terms of when they authorize the purchase of the parcel they also authorize the number of credits that would then be achieved from that parcel.

The second part, the bank is just a tracking system within the Planning Department here again, to track every credit from the cradle to grave so we know where we are. The credits would only be made available within jurisdictions within towns for example; we think that's the way it should be. In the event there's an interest in transferring a credit from cross town boundaries we would say that we would recommend that that be done only with mutual consent by both the sending and receiving town.

And then the last category here again, is the actual rule of credits that'll be working through the County's Department of Economic Development Workforce Housing. It'll be reviewed by both Planning and the Health Department and insuring that the receiving site meets certain criteria that it's not on a parcel that's proposed for open space. We do try to give a preference for smart growth

friendly sites and have provided a suggested rating form for that. So that's essentially it; at this point we have not purchased any properties under this program for open space until this gets approved by the Legislature. It has been submitted and we expect it to be considered in May hopefully. If you have any questions at anytime certainly let me know.

ACTING CHAIRMAN MARTIN:

Did everybody receive a copy of it yet, correspondence? Okay, good. We'll go on now to the presentation.

MS. HOLMES:

Andy, could you send a second copy of this to our supervisor?

MR. ISLES:

Yes, I can do that we have extras. Okay.

MS. HOLMES:

Because I think he might find it helpful.

ACTING CHAIRMAN MARTIN:

For the second presentation by Peter Lambert.

MR. ISLES:

Okay. We have today a relatively brief presentation by Peter Lambert our Principle Planning in the department. Peter works primarily with the planning and research section and he's just got a small report for you today regarding residential rental rates in the County. Peter.

MR. LAMBERT:

Good afternoon. The report I'm talking about should be right in front of you and it's got some text followed by some data followed by some graphs. We have a lot of information about housing values. You see it coming out each month from the multiple listing service and other sources, but we don't have a lot on the rents, the apartment rents and housing rents in the area. So in 1989 I had the idea to just actually go through the Newsday apartment listings and see what are the averages by the number of bedrooms and by town. There isn't all that much data for the east end in Newsday; it's usually Nassau County and the five west end towns so I actually can come up with some averages. So it's a very informal survey, but we do it consistently each year and in 2005 there were 407 listings included in the survey and 166 in Suffolk County. The actual data shows that for example for a one bedroom apartment the average rent in 2005 was \$1,074 and for a two bedroom \$1,420. The values have increased, well, going back in history there were significant increased in the 1980's. The values starting in 1989 when we first started this survey were relatively flat through 1996 and then we saw some increases between '96 and '99 and you can actually see on this

table here on the first page and there's a lot more data and graphs on the following pages.

The largest increases took place between 1999 and 2002 when we had very fast housing appreciation rates and values. Since that year, since 2002 the increases in rents have been relatively flat. And then the final interesting note on these rent data's are that since 2002 the rents have increase only 7% meanwhile the housing values, housing prices have continued to go up dramatically in most cases more than 50% in most towns. So we're seeing a little bit of a leveling off in terms of rents while housing values continue to skyrocket. So that's the basic summary of the report.

ACTING CHAIRMAN MARTIN:

Thank you, Peter. Board members have any questions? Start at the end.

MR. O'DEA:

No.

ACTING CHAIRMAN MARTIN:

Charla?

MS. BOLTON:

No.

MS. NOLAN:

No.

ACTING CHAIRMAN MARTIN:

Dick?

MR. LONDON:

No.

MR. DIETZ:

No question.

MR. CARACCILO:

I have a quick question.

ACTING CHAIRMAN MARTIN:

Yes.

MR. CARACCILO:

You say in this year there were 407 apartments?

MR. LAMBERT:

Yes.

MR. CARACCIOLO:

What was the numbers? Did you fine that the number went up, down from 1989?

MR. LAMBERT:

I track it year to year; it's varied quite a bit from maybe 180 to I think 500 was the highest number.

MR. CARACCIOLO:

You track it the same time each year?

MR. LAMBERT:

I try. I've done it every January except this year I did in March. So it's roughly the same time of year and for two years last year and the year before I did the online listings and there were fewer of those. So I went back to the actual listings in print, but roughly they're the same amount. They do vary from year to year and the two years in 2004 – 2003 they were a little lower because of the online listings, but generally they're pretty consistent.

MS. HOLMES:

Is there any possibility of getting any hard data for the eastern Suffolk towns because I know the issue of rent is a very big one on Shelter Island the availability of rental units as part of the affordable housing crisis?

MR. LAMBERT:

The only thing I can think of that we could be able to do is look at the local newspapers.

MS. HOLMES:

Yes.

MR. LAMBERT:

Generally, there's one major one in each town and look at the listings in there and just get an average from that.

MS. HOLMES:

You think you might?

MR. LAMBERT:

We probably could be able to do relatively easily. The thing I try to do with these is exclude houses for rent. It's sometime a little tricky with the three bedrooms it doesn't exactly say. I'm not sure how many on the east end might just be houses for rent or will they be apartments in houses. Hopefully, there's a big enough sample that we can get.

MS. HOLMES:

Frequently it's apartments in houses and I guess you do have to sometimes know the area to realize when you see apartments for rent that it is frequently within a house and they're people who own houses that have broken them up into rental units so there are several within one house.

MR. LAMBERT:

Right.

ACTING CHAIRMAN MARTIN:

Thank you, Linda. Any other questions?

MR. ISLES:

Just so you know essentially then while we're seeing this almost skyrocketing appreciation of property value for ownership we are not seeing that same level here. This is actually happening nationally too where to some extent rentals are becoming more affordable and ownership for comparable properties and product and so forth. Not to overstate what this is, but here again we look at it as a snap shot just to track where the market is. Peter has checked this against census numbers and the numbers appear to be accurate. Here again, I still think it does point to need for affordable rental housing; it's certainly not saying that the housing is satisfactory the demand is still out there certainly in a large way.

ACTING CHAIRMAN MARTIN:

Thank you. Anybody else have any questions? Thank you, Peter. Let's go on to the next.

MR. ISLES:

Okay. Now we go to the Commissioner's Roundtable.

ACTING CHAIRMAN MARTIN:

Town of Riverhead.

MR. O'DEA:

Town of Riverhead is just this week has a get together at Millbrook Gables which is a seventeen family affordable housing project done with cooperation's of many financial institutions and town government, every level of government the L.I. Housing Partnership, etc. So that was just a nice affair. The town is pursuing the situation with Airbus who's narrowed down to three sites in the State of New York for their production facility. That site that they're considering naturally is the Grumman airfield in Calverton. That's about it.

ACTING CHAIRMAN MARTIN:

Charla.

MS. BOLTON:

Nothing today.

ACTING CHAIRMAN MARTIN:

Laure.

MS. NOLAN:

I have nothing on behalf of Villages, but in terms of the town I believe the Town of Huntington will appoint a citizens advisory committee at its April 19th meeting to continue the master plan process and we hope that the next stage of the process should take approximately nine months.

ACTING CHAIRMAN MARTIN:

Thank you. Richard.

MR. LONDON:

The only think I have to report on is since our last meeting I've attended several Save Open Space meetings. One for the Smoke Run Farm in Stony Brook which was brought out of committee and then was passed I understand by the full Legislature here in this room on I believe it was on March 15th. Then last week we met at I guess I don't know whose office it was the 11th floor of the Dennison Building and Executive Levy was present for that and that was relative to the closure off Yaphank Avenue there of what is known as South Haven Park or Stables. Then they had a meeting yesterday I'm told where an approval of \$525,000 was allocated towards the improvements of the facilities there. In the meantime Suffolk County is losing a lot of open land that had been used either by parks, is park's land or by private owners who have sold it, you know, for other issues. And it's getting to be that, you know, the little bit of open land that we have left we're losing and we're losing it by leaps and bounds. So it's something we all have to, you know, watch at. I certainly am a proponent to keep the open land; open space is essential just for us and our children down the road. That's all I have.

ACTING CHAIRMAN MARTIN:

Thank you, Dick. Lou.

MR. DIETZ:

Nothing.

ACTING CHAIRMAN MARTIN:

Frank.

MR. TANTONE:

The one thing I did want to mention is that and it's actually something that Mr. Isles mentioned to me earlier. We at the Town of Islip just received the Environmental Impact Statement on the Pilgrim State property which will begin

the process of what, you know, we all believe will be a huge project here on Long Island. I haven't even seen it frankly yet because we haven't had a board meeting in the meantime, but we'll keep you posted on the progress on that application as it proceeds.

ACTING CHAIRMAN MARTIN:

Thank you, Frank. John.

MR. CARACCILO:

Yes, Mr. Chairman in Elwood a community typified primarily by its post World War II residential subdivisions and it doesn't have a downtown and it's identified solely by its school districts boundaries. Mark Mediavilla is proposing a new town center which is known as Orchard Park on a 35 acre site that has been part of his family for four generations. Plans for this site on the northeast corner of Jericho Turnpike and Manor Road have been prepared by a nationally renowned planning and architect. And they're proposing to be the first town center to be built in the Town of Huntington in more than a hundred years and the only town center located south of Pulaski Road. It has elements of smart growth; it has elements of next generation workforce housing. It's been filed, nothing has been acted upon. I will keep the Commission informed on the progress of this proposal.

ACTING CHAIRMAN MARTIN:

Thank you, John. Linda.

MS. HOLMES:

Three things, two pieces of good news and one piece of not good news.

ACTING CHAIRMAN MARTIN:

Start us with the good news.

MS. HOLMES:

The good news is that on Friday our town board did adopt an amendment to the town code to make every property owner responsible for controlling run off from their property on to either adjacent property or public property. So we were very pleased about that. The other piece of good news is that the County finally did, the County Legislature finally just on March 24th did approve purchasing their share of a 15 acre open space parcel on Shelter Island which they had arrange to do 50/50 with the Peconic Land Trust, but then the owner demanded to have a closing by the end of December and we were afraid the Legislature couldn't move that quickly. So the PLT stepped in and made the rest of the purchase with the understanding the County would come through with their share and thanks to Legislator Caracciolo for helping to move it forward that has happened.

The very disappointing news is that for the past four years our affordable housing commission has concentrated on one large parcel to continue our affordable

housing. We've only got five affordable houses and this was going to be the next purchase and a group of investors were purchasing the Ryan Horse Farm, some of you have heard about that, and for four years the negotiations went on led by two former supervisors and a former town councilman. And suddenly last fall and into December the principals were not reachable by telephone and finally in February they told the town that the deal was off. That the town was willing to purchase a little over 4 ½ acres of this large parcel for affordable housing and the investors had agreed to that. They upped the price from 30,000 to 50,000 an acre and the town said okay and there's just a great sense disappointment that negotiating in good faith for all that time came to that. And our supervisor would like very much to have material from any of our other towns Huntington in particular because I told them that I had noticed that other towns in Suffolk have a lot of affordable housing provisions built into their subdivision approvals. And we have gotten information from the other east end towns, but Supervisor Williams would really appreciate having information from our other towns. What they're trying to look at now is to find parcels the town already owns and to make affordable housing provisions and whether to have the purchaser have a lease of the land instead of trying to purchase the land as well as mortgage a home. So we really would like some input and if you want to send them directly to Supervisor Williams or if you want to send them to me I'll make sure he gets them, but they are really now feeling like they have to start all over again and it's been very disappointing; but we do have hope that we can move forward. Thank you.

ACTING CHAIRMAN MARTIN:

Thank you, Linda. You had such nice words for Mr. Caracciolo the Legislator who's in the audience and I'd like to recognize him. Everybody knows him I guess he's been around forever. Thank you, Linda.

MR. CARACCIOLO:

Mr. Chairman.

ACTING CHAIRMAN MARTIN:

Yes.

MR. CARACCIOLO:

One thing I want to add. Listening to the comments on affordable housing there's such a stigma associated with that phrase affordable housing that we try to use the word phrase workforce housing. I heard a great phrase the other day called next generation housing and it's housing for the new generation on Long Island rather than workforce, rather than affordable. It tries to give that, you know, era of, you know, our children's housing and we try to do a marketing campaign when we try to switch to workforce housing to get off affordable housing. So I am going to make a proposal that I'm going to use next generation housing from now on.

MS. HOLMES:

That's very nice.

ACTING CHAIRMAN MARTIN:

And if I ignored that?

MR. CARACCIOLO:

Yeah, we're going to pass a motion on that next generation housing from now on.

ACTING CHAIRMAN MARTIN:

How about the people that only got grandchildren now.

MR. CARACCIOLO:

That's the next generation.

ACTING CHAIRMAN MARTIN:

Now it's two generation away to some people, right?

MR. CARACCIOLO:

Okay.

ACTING CHAIRMAN MARTIN:

Okay. We'll give it a lot of consideration.

MR. CARACCIOLO:

Let's try to roll in on that.

ACTING CHAIRMAN MARTIN:

Yeah, we'll give it a lot of consideration.

MS. HOLMES:

Yes, that a nice idea.

ACTING CHAIRMAN MARTIN:

Sure, but keep that on the open agenda list, okay. Thank you, John. Anybody else? Nobody else? Then we go on now to Section A-14.

MR. ISLES:

Mr. Chairman, while Andy is setting up Mr. Tantone mentioned the project of the former Pilgrim State Hospital property. At the last meeting you had on your agenda another large project in that same area which was Deer Park Associates which is a Tangier proposal in Deer Park. Just to inform you you're on a 45 day period to review that. The town requested a postponement at your meeting in March; subsequently I received a letter this week that they requested a postponement this week as well. I also received a letter from the applicant indicating that they're redrafting their plans and I think scaling it down. So just to

make you aware that that's still in the hopper and one of these days it'll pop up, but at this point they're still redrafting it.

MR. TANTONE:

Right.

MR. ISLES:

Today we're reversing the subdivision and zoning presentation. So we're going to start with Andy Freleng with the zoning presentations and then with your consent go to Ted for the other one.

ACTING CHAIRMAN MARTIN:

Yes.

MR. FRELENG:

Good afternoon members of the Commission the first regulatory matter for your review come to us from the Town of Brookhaven. This is the application of V.L. Scannelli, Inc. Jurisdiction for the Commission is that the subject property is within 500 ft. of NYS Rte. 27A otherwise known as Montauk Highway. The applicants are requesting a change of zone from J-5 Business and a Special Permit approval to allow for outdoor storage for an existing establishment on 0.172 acres of land currently zoned J-2 Business in the hamlet of Bellport.

The parcel is located on the west side of Dunton Avenue which is a town road approximately 82 ft. south of Oakdale Avenue which is also a town road. An analysis of the character of the area indicates that the parcel is located in a node of J-2 Business extending into residentially zoned land to the south side of Oakdale Avenue. To the north the subject site abuts vacant J-2 zoned land. To the south the site abuts improved commercial property. The subject property fronts on Dunton Avenue to the east. West and adjacent to the subject site is residentially zone vacant land. So if we take a look at the zoning map real quick you can see the subject site. It's in a little C of J-2 surrounded by A-1 zoning and J-2 goes along the north side of 27A.

The petitioners are seeking to change the zoning classification of the subject property as mentioned from J-5 Business and then pursue -- to J-5 Business and then pursue for the issuance of a Special Permit to allow for outdoor storage. Prior approvals for outdoor storage under the preexisting J-2 zoning have lapsed. Prior to the Brookhaven Code Amendments in July outdoor storage was a legal use in J-2 through a Special Permit from the Zoning Board of Appeals. The petitioner had received that in the past. Presently, outdoor storage is permitted in J-5 Business only by Town Board Special Permit. So the applicant had approvals, they've lapsed. He's coming back for the approvals; he can't get them now under J-2 he needs a change of zone to J-5.

However, the subject property is not an appropriate candidate site for the J-5 Business zone for two reasons. First, the subject property is insufficient in lot area. The town code requires a minimum lot area of 20,000 sq. ft. for the J-5 district. The subject parcel is approximately 7500 sq. ft. or 63% shy of the required lot area. Second, the J-5 category is a High Intensity Business District in an area of J-2 which is Neighborhood Business zoning and it's also adjacent to residential zoning. Permitted uses in the J-5 would be too intense and incompatible with the adjacent zoning in the adjacent residential area. It is conceivable in the future that if the current use was to expire that a J-5 use would come in for application which could be something of the order of a commercial shipyard, boat repair or a motor vehicle fueling station. These are intense uses and in the staff's opinion not compatible with the adjacent residential zoning. Therefore, the issues related to subject application stem from details relating to the proposed zone change being inconsistent with the pattern of zoning and land use in the immediate area.

It's the opinion of the staff that the proposed change of zone constitutes the unwarranted over-intensification of use of the premises. It would tend to establish a precedent for such downzonings in the locale and finally, the premises can reasonably be developed in accordance with the existing J-2 district.

Staff is recommending disapproval for the following reasons as stated one, the premises does not comply with the minimum lot area for the proposed J-5 district. Two, the permitted uses in the J-5 are too intense and incompatible with adjacent the zoning. Third reason for denial would be that the proposed change of zone constitutes the unwarranted over-intensification of the use of the premises. Fourth reason being, it would tend to establish a precedence for such downzonings in the locale. And five, that the premises can reasonably be developed in accordance with the existing J-2 district. That's the staff report to the Commission.

ACTING CHAIRMAN MARTIN:

Thank you, Andy. Board members.

MR. DIETZ:

I'll move the staff report.

MS. BOLTON:

Second.

ACTING CHAIRMAN MARTIN:

All in favor signify by saying aye. Contrary minded. So carried. **(Vote: 9-0-0-1 Absent: Petersen)** Andy.

MR. FRELENG:

Thank you. The second matter also comes to us from the Town of Brookhaven. This is the application of McCarville Realty. The jurisdiction for the Commission is that the subject application is adjacent to NYS Rte. 25 and within 500 ft. of the Village of Lake Grove. The applicants request a change of zone to J-5 Business and a Special Permit approval to allow for the expansion of an existing car dealership on 1.857 acres of land zoned B-Residence and J-2 Business in the hamlet of Centereach.

The parcel is located on the southeast corner of NYS Rte. 25 which is otherwise known as Middle Country Rd. in the area and Coles Drive which is a town road. An analysis of the character of the area indicates the parcel is located in a corridor of J-2 Business zoning along Rte. 25 and extending into residentially zoned land to the south. Quick look at the zoning map indicates that you can see subject parcel here, Village of Lake Grove is located on the other side of this roadway and there is J-2 Business on the north and south side of SR 25.

The petitioners are seeking a zone change classification of the subject property to J-5 Business and then pursue for the issuance of a Special Permit to allow for a Motor Vehicle Dealership. The petitioners claim to have over five acres that would be in conformance, five acres would be in conformance with the minimum lot size for the proposed use in the zone. The acreage claimed to comprise the subject land for the use is broken into three distinct parcels. We'll go back to the site plan. The subject of this zone change is 1.875 acres and is located in the Town of Brookhaven. Another adjacent 0.369 acres is owned by NYS along the SR 25 right-of-way and is alleged to be leasable to the petitioner. Staff was at the site yesterday; the site is basically vacant with some cars parked here. NYS, I don't know if you can see in the site plan in your staff report, but they have a property that belongs to NYS right-of-way and the applicants are claiming that that is leasable to them. The third parcel is located across Coles Drive to the west. Coles Drive is a functioning access street to the residential subdivision to the south of the site. The third parcel is located within the Incorporated Village of Lake Grove. The Lake Grove parcel is the bulk of the land area for the proposed use and is 2.874 acres in size. So just to reiterate this piece of the property which is roughly three acres is in the Incorporated Village of Lake Grove not in the Town of Brookhaven. So we've got roughly one or two acres in the Town of Brookhaven and then a little less than an acre that is part of the right-of-way to the state DOT.

It's the opinion of the staff that the subject property is not an appropriate candidate site for the J-5 Business zone. The subject property is insufficient in lot area. The proposed use in the J-5 zone requires a minimum of five acres. Leased land is not under permanent control of the applicant and hence should not be considered part of the lot area for the proposed zone. New York State is proposing to widen and improve Rte. 25 and the leased land maybe required for the road project and rights terminated to the petitioner is possible. Moreover the

bulk of the required land area for the proposed zone and use is in adjacent municipality separated by a viable residential motor vehicle collector street. This street that runs into (air photo) this street as you can see runs through it's an active street is already overflow parking from the dealership along this street, but this street does serve as a collector street for all the residences in here; one of the only routes to Rte. 25 from this subdivision.

It's the opinion of the staff that the Town of Brookhaven cannot change the zone on properties in another municipal jurisdiction and should not consider leased land as under permanent control of the petitioner. Therefore, the subject property for the requested zone change is really only 1.875 acres and substandard to the minimum lot size for the zone. Issues related to the subject application stem from details relating to the site for the proposed zone change being substandard in lot area. It's the opinion of the staff that the proposed zone change constitutes the unwarranted over-intensification of use of the premises. It would tend to establish a precedent for such zoning actions in the future. And finally the premises could reasonably be developed in accordance with the existing J-2 district. Staff is recommending disapproval then for the following reasons primarily that the premises does not comply with the minimum lot area for the proposed J-5 district. The paragraph that follows that is the rationale for that reason. The second reason for disapproval is that the proposed zone change constitutes the unwarranted over-intensification of the use of the premises. Thirdly, it would tend to establish a precedent for similar zoning actions. And lastly, the premises could reasonably be developed in accordance with the existing J-2 district. That's the staff report.

ACTING CHAIRMAN MARTIN:

Thank you, Andy.

MR. LONDON:

Mr. Chairman.

ACTING CHAIRMAN MARTIN:

Yes.

MR. LONDON:

I recommend the motion for disapproval as per staff.

MR. TANTONE:

Second.

ACTING CHAIRMAN MARTIN:

All in favor signify by saying aye. Contrary minded. Abstentions. Carried 9-0. **(Vote: 9-0-0-1 Absent: Petersen)** Thank you.

MS. NOLAN:
Mr. Chairman.

MR. FRELENG:
Was there a question from the Board?

MS. NOLAN:
I just have a question.

ACTING CHAIRMAN MARTIN:
Sure.

MR. NOLAN:
Do you know what the zoning is of the parcel of property that's in the Village of Lake Grove?

MR. FRELENG:
I can't tell you off the top of my head; I did see it; the dealership is a permitted use in the Islandia, I'm sorry, in the Lake Grove zoning.

MS. NOLAN:
It is?

MR. FRELENG:
Yes.

MS. NOLAN:
Okay.

ACTING CHAIRMAN MARTIN:
Any other questions? The motion carried, thank you.

MR. FRELENG:
Okay. Next matter before the Commission comes to us from the Town of Huntington. This is the application of Tom Stafutti otherwise doing business as Silver Swan Inc. Jurisdiction for the Commission is that the subject property is adjacent to the NYS Rte. 25A and Mill Pond. Small typo on the front of the staff report, it should read 25A. The applicants request a Special Exception permit and a parking variance in order to legalize and expand the existing restaurant/bar on 0.53 acres of land zoned C-6 General Business in the hamlet of Centerport.

The subject parcel is located on the north side of NYS Rte. 25A otherwise known as East Main Street in the area approximately 430 ft. east of Centershore Road. An analysis of the character of the area indicates the parcel is located in a corridor of C-6 General Business zoning along SR 25A. To the north the subject site abuts Mill Pond. To the south the site fronts on NYS Rte. 25A East Main

Street. To the east and west the site is adjacent to improved commercial properties. You can see the site on the air photo. It would be here outlined in yellow to the east is the Thatched Cottage if you're familiar with the area. To the west is another commercial establishment; this is Mill Pond and East Main Street. Could I have the zoning map for a second? Okay, you can see the zoning in the area it is all along this corridor C-6. The exception of the south side of 25A there's a bit of R-80 zoning.

The petitioners are seeking a Special Exception permit to legalize an existing restaurant/bar. Furthermore, the applicants are seeking to expand the establishment by constructing a new 1600 sq. ft. deck for outdoor dining. As a result of the conversion to restaurant/bar and the expansion the subject use will require a parking variance of 22% of the required amount. It is the opinion of the staff that the proposed parking variance constitutes the unwarranted over-intensification of the use of the premises. Moreover, granting the variance may tend to necessitate the use of surrounding roadways for parking purposes during peak demand. Just as an aside, we know the habits of bar/restaurants they tend to get well packed. This site is deficient in the parking and what the staff is mostly concerned about is overflow parking going on to the state route Mill Pond. The staff was there at the site; there's a bad curve coming from the west going around the site so there is a blind curve coming around. Also there's a change in grade that rises up too so knowing the type of use, knowing the overflow parking that typically happens around restaurant/bars particularly during peak holidays and seasons there is a deficiency in the parking spaces provided. Staff believes that this is an over-intensification of use.

So, therefore, issues related to the subject application stem from details relating to insufficient parking for the proposed use located on a state road. Staff is recommending disapproval for the following reasons. The proposed parking variance constitutes the unwarranted over-intensification of the use of the premises and granting the variance may tend to necessitate the use of surrounding roadways for parking purposes during peak demand. That is the staff report.

ACTING CHAIRMAN MARTIN:

Thank you, Andy. Members of the Board.

MR. TANTONE:

I'll move staff.

MR. LONDON:

Second.

ACTING CHAIRMAN MARTIN:

All in favor signify by saying aye. Contrary minded.

MR. CARACCIOLO:

I'll abstain.

ACTING CHAIRMAN MARTIN:

You're abstaining?

MR. CARACCIOLO:

Yes.

ACTING CHAIRMAN MARTIN:

Let see if we have enough votes for eight. We need eight votes. We got eight? Yes, we have eight votes. Okay, very well and one abstention. The motion is carried. **(Vote: 8-0-1-1 Abstention: Caracciolo, Absent: Petersen)** We thank you.

MR. FRELENG:

The next matter also comes to us from the Town of Huntington. This is the application of Jerricel LLC. Jurisdiction for the Commission is that the subject property is adjacent to NYS Rte. 25 affectionately known as Jericho Turnpike in the area.

The applicants are requesting a parking variance in order to convert existing retail space to medical offices on 0.16 acres of land zoned C-6 General Business in the hamlet of Huntington. The parcel is located on the south side of NYS Rte. 25 approximately 577 ft. east of Chickory Place.

An analysis of the character of the area indicates the parcel is located in a corridor of C-6 General Business zoning along the south side of Rte. 25. To the north the subject site fronts on NYS Rte. 25. To the south the site abuts improved detached single family zoning and Homeland Drive, a local town road. To the east and west the site is adjacent to improved commercial properties. Again, from the air photo you can see the site coming around the curve of Jericho Turnpike. You have an existing you can see in the '91 air photo, but there is an existing building right here that you can see in the site plan that was provided. There is no access to this large piece of property in the back which is zone residential. So all the parking must be in the front here. This building which is currently being renovated is an existing building and it currently is being renovated was originally retail space. It's now being converted over to medical office.

The petitioners seek to a parking variance of 41% of the required amount so that they may convert the existing retail space to medical office. The parking required for the use would be 39 vehicles. The applicant is providing 23 stalls. It's the opinion of staff that the proposed parking variance constitutes the unwarranted over-intensification of the use of the premises. Moreover, granting the variance

may tend to necessitate the use of the surrounding roadways for parking purposes during peak demand. So if this medical office depending on how many doctors are practicing within the office tends to overbook as they usually do and then have a large waiting room full of people there is a possibility that the overflow parking will wind up on the state road in a very hazardous area. There is currently no parking allowed on Jericho Turnpike here.

So staff believes that the issues related to the subject application then stem from details relating to insufficient parking for the proposed use located on a state road. Staff is recommending to the Commission then disapproval subject to two conditions. The first condition being that the proposed parking variance constitutes the unwarranted over-intensification of the use of the premises. And two, granting the variance may tend to necessitate the use of the surrounding roadways for parking purposes during peak demand. That's the staff report.

ACTING CHAIRMAN MARTIN:

Thank you, Andy. Board members have any questions? A motion's in order.

MR. O'DEA:

Andy, what's employee, in the back of this you got employee, is that employee parking area?

MR. FRELENG:

I'm sorry where are you reading, Dick?

MR. O'DEA:

On this it reads employee something, I can't make out what that is.

MR. FRELENG:

Patio.

MR. O'DEA:

Oh, patio.

MR. FRELENG:

Oh, on the site plan?

MR. O'DEA:

Yeah.

MR. FRELENG:

Oh, I'm sorry. We don't prepare the site plan; we just reproduce it. I'm still trying to see where you're reading.

MR. O'DEA:

In the middle of the - - there's a little box.

MR. FRELENG:

Oh, that. Yeah, that's an existing patio.

MR. O'DEA:

Does the applicant own that residential piece?

MR. FRELENG:

The applicant owns the residential piece in the back. Could we see the zoning map for a second? Yes, the applicant owns this entire parcel; its split zoned. It's residentially zoned in the back portion. However there's no access from the front to the back. The building, we commented when we went to the site the building goes right to the property lines on both sides.

MR. O'DEA:

Okay. Thank you.

ACTING CHAIRMAN MARTIN:

Okay, Richard?

MR. O'DEA:

Yes.

ACTING CHAIRMAN MARTIN:

A motion's in order.

MS. HOLMES:

I recommend staff.

MR. CARACCIOLO:

Second.

ACTING CHAIRMAN MARTIN:

Okay, Linda and John. All in favor signify by saying aye. Contrary minded. Abstentions. So carried 9-0. **(Vote: 9-0-0-1 Absent: Petersen)**

MR. FRELENG:

And the last matter under municipal zoning actions comes to use from the Town of Islip. This is the application of Doreen & Richard Buckman. Jurisdiction for the Commission is that the subject property is adjacent to CR 13 which is Fifth Avenue. I believe that's the hamlet of Bay Shore.

The applicants requesting an Area Variance in order to subdivide 0.23 acres of land zoned B Residence in the hamlet of Bay Shore. The subject parcel is located on the southeast corner of CR 13 Fifth Avenue and Juliet Street.

Analysis of the character of the area indicates this parcel is located in a large area of Residence B zoning. To the north the subject site fronts on Juliet Street which is a local town road. To the west the site fronts on CR 13; east and south of the subject property abuts improved residential lots with single family detached dwellings.

The petitioners seek to subdivide 9,887 sq. ft. or 0.23 acres into two parcels for the purposes of erecting a one-story dwelling and leaving an existing dwelling on the parent lot. Parcel one is proposed to have the new dwelling on a lot area of 4,387 sq. ft. The minimum lot size in the Residence B zone is 7500 sq. ft. The proposed lot then would be approximately 42% short of the required area. Moreover, Parcel one is intended to be a corner lot. Good planning would dictate that corner lots should always be at a minimum in conformance with the lot area requirements of the zone. Ideally, corner lots should have additional area beyond the minimum lot size of the zone to accommodate mitigations to impacts associated with fronting on two streets. Setbacks, noise issues, the ability to locate pools or accessory structures in the rear yard ideally you would want the minimum area or more area on a corner lot.

Parcel 2 is proposed to leave the existing dwelling on site and create a 4,500 sq. ft. lot. The proposed lot 2 would be 40% short of the required area. It's the belief of the staff that the proposed subdivision is contrary to good planning principles. It would result in the creation of a subdivision with substandard lots that is lots whose areas are less than the minimum require by the zoning classification of the property and it constitutes an over-intensification of land use. As we know, over-intensification could establish a precedent, I'm sorry. This action could establish a precedent for the subdivision of other similar parcels in the area which as we know could overload the road system; could increase the on-street parking and overload and overburden other public facilities.

If you could go to the area map. Fifth Avenue does not currently allow parking on the street. This is the subject property. If they would just split the zone and for whatever reason there was an overflow of parking this would be an over-intensification of the use. You can't see from here, but if you take a look at other lots up and down Fifth Avenue there are similar corner lots and this could set a precedent. We did take a look at the predominate lot pattern in the area and the lot pattern is in general conformance with the zoning requirements. So therefore issues related to the subject applications stem from details relating to subdivisions with insufficient lot area along the County road. Staff is recommending disapproval for the following reasons. The proposed Parcel 1 would be approximately 42% short of the required area. Parcel 2 is proposed to be 40% short of the required lot area and we believe that the proposed relief would constitute an over-intensification of land use and that such an action could establish a precedent for the subdivision of other similar parcels in the area. That is the staff report.

ACTING CHAIRMAN MARTIN:

Thank you, Andy. Board members.

MR. O'DEA:

I'll move the staff.

MS. BOLTON:

Second.

ACTING CHAIRMAN MARTIN:

All in favor signify by saying aye. Contrary minded. Abstentions.

MR. TANTONE:

One abstention.

ACTING CHAIRMAN MARTIN:

One abstention. 8-0-1-0 motions carried. **(Vote: 8-0-1-1 Abstention: Tantone, Absent: Petersen)**

MR. FRELENG:

Thank you.

ACTING CHAIRMAN MARTIN:

Ted, are you ready to go?

MR. KLEIN:

Yes.

ACTING CHAIRMAN MARTIN:

Good.

MR. KLEIN:

Good afternoon. We have two subdivisions to consider today. The first one is entitled Luigi Badenchini and it's referred to us by the Town of Southold. It's located in the hamlet of Cutchogue along Oregon Road. Commission's jurisdiction is the Shoreline on Long Island Sound. The property being considered is 32 plus acres; it's zoned Agricultural Conservation which permits single family dwelling on lots have a minimum size of 80,000 sq. ft. The parcel is mostly level and cleared and that portion is occupied by a sod farm. This is the sod farm here and the remaining area is that's upland to the north and consist of woods and bluff. The applicant is proposing to subdivide the property into five lots pursuant to the new town code the part that's defined as a Conservation Subdivision and satisfying the 75% land preservation and a 75% yield reduction requirement. Of the five lots four will be residential and one agricultural; that agricultural portion here will contain about 23 almost 24 acres. It will have road

frontage and access along Oregon Road. The residential lots there's two here arrange in size from 1.8 acre to 4.36 acres and that would be indicated as Lot 2 on the map, right here.

Almost half if not more than half of the area of Lot 2 if I mentioned this is 04 acres. Over half of that will consist of the right-of-way that goes a distance of approximately 3/4 of a mile from Oregon Road at a width of approximately 25 ft. and this is the only proposed access to those four lots. Okay, so since Lots 1, 2 excuse me Lots 1, 3 and 4 only have access via this common driveway thereby Commission definition landlocked. That landlocked parcel will be one that didn't - - does not have road frontage or access along existing right-of-way or public road. The creation of such lot is contrary to Commission guidelines.

The applicant is proposing to situate the four residential lots on the most northern portion along the wooded portion and along the buff area and erosion coastal hazard line which is approximately here. Issues relating to this subdivision stem from the Commission's policy on the creation of subdivisions adjacent to the shoreline of the Long Island Sound containing bluffs. The creation of subdivisions containing land locked lots and the poorly designed access.

The staff recommends approval subject to the following conditions that are deemed necessary to help preserve the natural and aesthetic attributes of the Long Island Sound shoreline and additional conditions deemed necessary for good planning and land use.

The first condition, the top of the bluff shall be flagged in the field by a qualified professional, verified by the appropriate regulatory agency and shown on all surveys, plans, maps and sketches.

No new residential structure or sanitary disposal facility shall be constructed or otherwise located within the 100 ft. of the top of bluff.

Within 500 ft. top of the bluff there shall no - - shall not be any grading except that may be necessary to control or remedy erosion or to prevent stormwater from flowing over the edge of the bluff. Clearing and cutting within this area shall be limited to the necessary - - to that necessary for proper maintenance and removal of diseased, decayed or dead material and obnoxious plant species. Such clearing and grading shall be subject to the review by the town to insure proper maintenance and preserve the natural bluff.

Number four, - -

MR. ISLES:

That's 50 ft. right, Ted.

MR. KLEIN:

Yeah, within 50 ft. of the top of the bluff.

MR. ISLES:

Right. Okay.

MR. KLEIN:

No stormwater runoff resulting from the development and improvement of the subdivision or any of its lots shall be discharged down the face of the bluff.

Condition five, There shall not be any individual access structure to the beach from Lot 1. Access to the beach shall be limited to a single structure within the 10 ft. wide easement along Lot 2 which is right here on the map and that should serve all the residents of the subdivision. The structure should be designed and constructed in a manner that will result in the least disturbance to the stability of the bluff.

Condition six; the subdivider shall acknowledge in writing to the Planning Board that the creation of this subdivision in no way commits the town or the County of Suffolk to any program to protect this property from bluff or shoreline erosion through the construction of engineering or other works.

Condition seven, the subdivision shall be redrawn so that the proposed panhandle portion of Lot 7, excuse me Lot 2 this part here shall be replaced with 50 ft. right-of-way designed to provide safe vehicle access to all of the lots. This right-of-way maybe improved with a country lane or common driveway that is designed to accommodate vehicles entering and leaving the property at the same time. Furthermore, the angular bend, right here, of the panhandle shall be replaced with a horizontal curve to insure that the 50 ft. wide right-of-way will be capable of accommodating emergency and service vehicles.

Condition eight, whether or not the town purchases development rights of Lot 5 the applicant shall be required to file a covenant and restriction prohibiting the future subdivision. That's the staff report. Any questions?

ACTING CHAIRMAN MARTIN:

Thank you, Ted. Board members.

MS. HOLMES:

I recommend staff approval. (sic)

MR. CARACCILO:

Second.

ACTING CHAIRMAN MARTIN:

All in favor signify by saying aye. Contrary minded. Abstentions. So carried 9-0.
(Vote: 9-0-0-1 Absent: Petersen)

MR. KLEIN:

Okay, the second subdivision application is map of Petervary Nicolette Estates Section 2 referred to the Commission by the Village of Head of the Harbor. Commission's jurisdiction is as adjacent to Rte. 25A and the municipal boundary of the Town of Smithtown and within 500 ft. of the County Park known as Deepwells Farm Historical Park which is right here. The land is predominately wooded; it's approximately 7.2 acres and consists of two tax map parcels one of which is improved with a residential dwelling. Other than this cleared area the parcel remains wooded; it has a gently rolling topography.

The subject is zoned B-1 Residence which permits lots of 20,000 sq. ft or more. I'd like to note that the zoning category is sight specific to this particular parcel. Prior to that it was zoned B Residence which is one acre and the Village acted on changing the zoning in 1991 to enable the owner to cluster his property or to get the yield which he was allowed, but it also mitigate any impacts to the environmental or historic concerns of the area. So this is the only 20,000 sq. ft. zone parcel in the Village of the Head of the Harbor and it was created to facilitate a cluster that the applicant was, you know, proposing back in the late 80's and early 90's.

The Village didn't think they had the cluster authority so they went ahead and gave the applicant the change of zoning to facilitate a cluster with that, it's not legally defined as a cluster. The proposed subdivision will create four residential lots ranging in size from 30,837 sq. ft. to 147,588 sq. ft. (sic) This application represents a re-subdivision of two parcels created from the previous subdivision known as the map of Petervary Nicolette Estates.

The applicant is proposing to subdivide two of those parcels identified as Lot 1 and Lot 26 (sic) of the original subdivision which the Planning Commission reviewed and approved in 1991 subject to six conditions that they deemed necessary for good planning and land use. Of the six conditions, by the way I attached this in your report, of the six conditions Lots 2 and 3 are important to consider when reviewing this current application.

It's also important to consider the notes that were on filed map that are recorded in the County Clerk's office as well as the covenant restrictions recorded in the County Clerk's office as well. All these documents basically say is that Lot 26 which is this portion here shall not be further subdivided, but it does say without Planning Board approval, okay. And one of the other covenants is that there shall be no clearing within 200 ft. buffer, this is the buffer line, within the 200 ft. of the -- it's a natural buffer and it was created by the Village and it's to protect the scenic and historic corridor. It's actually called the North County Road Scenic

and Historic Corridor. And thirdly, access to Lot 6 shall be from the 50 ft. wide Village Road which is right here. That's the only access, you know, permitted to that Lot 6. Okay, the same owner and applicants signed the Declaration which states that these conditions shall run with the land affected in perpetuity. So in contrast to the filed map and the Declaration and Covenants and Restrictions, the applicant is currently proposing to further subdivide Lots 1 and 6 of the original map, clear land and construct a road within the 200 ft. Natural Buffer and is not proposing access from the Village Road.

The staff recommends disapproval for the following reasons. To approve an application that lifts covenants and restrictions to allow development would be contrary to the Commission's objectives to preserve open space, protect scenic and historic corridors and prevent the over-intensification of land use in the area. Such an action could establish a precedent for future subdivisions of this kind which would essentially circumvent both the Village and Planning Board's actions taken over the past years to regulate development in the area. That's the staff report.

ACTING CHAIRMAN MARTIN:

Thank you, Ted. Board members.

MS. BOLTON:

I'll move the recommendation that's in the staff report.

MS. NOLAN:

I'll second it.

ACTING CHAIRMAN MARTIN:

You'll second it, Laure. All in favor signify by saying aye. Contrary minded.

MR. O'DEA:

Questions, questions. Discussion.

ACTING CHAIRMAN MARTIN:

Yes.

MR. O'DEA:

I'm a little confused on this. The top your items 2 and 3, that's from the previous application? What are those?

MR. KLEIN:

Go ahead, what was your question I'm sorry.

MR. O'DEA:

Of these six conditions number 2 and 3 are important to considering in the review of the current - -

MR. KLEIN:

Yeah, that was the previous Commission resolution to approve the larger, the original application of Petervary Nicolette Estates. They approve it with six conditions; two of the three are pertinent to this application.

MR. O'DEA:

Number 2 and number 3.

MR. KLEIN:

Yes.

MR. O'DEA:

Yes. What are they?

MR. KLEIN:

They're attached in your report.

MR. ISLES:

They're a couple of pages back.

ACTING CHAIRMAN MARTIN:

The back of the page.

MR. ISLES:

The condition number 2 prohibits any future subdivision and condition number 3 talks about no direct access from North Country Road. So those are the two that Ted was referring to in his report, but they are attached if you want to read them specifically.

MR. O'DEA:

So this Commission amended - - recommended no further subdivision?

MR. ISLES:

Yes.

MR. O'DEA:

The same wording as is in theirs without Planning Board approval?

MR. ISLES:

The wording in ours doesn't say, it just says no further subdivision.

MR. KLEIN:

Right. In the covenants and - - in the Declaration of Covenants and Restrictions it says that.

MR. O'DEA:

Okay.

MR. ISLES:

So the local determination then was subject - - no further subdivision except with Planning Board approval which they are doing so permissibly they can do that.

MR. KLEIN:

Right. Yes.

MR. ISLES:

I think this just speaks of the intent of this Commission back when you originally looked at it; it was your understanding that this was going to be set aside and not developed.

MR. KLEIN:

Correct.

ACTING CHAIRMAN MARTIN:

But we always approve or disapprove without the Planning Board's first submission. We don't want to take that right away; that doesn't mean that we have to approve it now, right? We disapprove it now and the Planning Board still could act on it anyway they see fit.

MR. ISLES:

Sure, sure.

ACTING CHAIRMAN MARTIN:

But a majority plus the one we're going to need to make it a majority. Is that the question you asked?

MR. O'DEA:

What did the locality do with the recommendations of the Planning Commission in the initial stages? Did they override any of that?

MR. KLEIN:

No.

MR. FRELENG:

No.

ACTING CHAIRMAN MARTIN:

At the time they didn't they accepted it through the Village Board, but also knowing that they did have the opening that if they wanted to re-hear it they had to come back. They couldn't just do it on his own. In other words, the land is already been subdivided.

MR. FRELENG:

If I could jump in.

MR. O'DEA:

We're in two different ballgames.

MR. FRELENG:

If I could jump in.

ACTING CHAIRMAN MARTIN:

I think that's what he's in for. He wants to change a lot I think that's what in for.

MR. FRELENG:

When the Commission disapproved the action one of the conditions provided that there would be no further subdivision on the lot. When the town acted and the applicant filed the map and that's the last page of this staff report the town imposed conditions on the filing of the map. Condition number two is that Lot 26 may not be further subdivided. So they adopted those conditions.

MR. O'DEA:

But it doesn't say that. It says without permission of the Planning Board.

MR. FRELENG:

No, not the filed map.

MR. O'DEA:

No, but this report says that.

MR. KLEIN:

Let me just interject, on the Declaration of the Covenants and Restrictions, you know, signed by the applicant and recorder with the County Clerk's office it does say those words.

MR. O'DEA:

Planning Board.

MR. KLEIN:

Yes. It may not be for the subdivided unless approved by the Village Planning Board. So it opened up the door to this applicant basically.

MR. O'DEA:

So basically, go to the planning board, if they approved it he can subdivide this piece of property.

MR. FRELENG:

Notwithstanding whatever this Commission does.

MR. O'DEA:

The word is oxymoron almost. I mean, the subdivisions go before the planning board.

MR. FRELENG:

Right.

MR. KLEIN:

Unfortunately, the Village was, you know, not, you know, well advised when this original application came through and they didn't, you know, probably, you know, file the proper, you know, covenants or protection of this property to, you know, to maintain its intention as natural, you know, was an open space to be preserved.

ACTING CHAIRMAN MARTIN:

Well, the reason for that wording when any lot is over the zoning classification, say you got a half acre lot an a quarter acre zoning and you prove it's a half acre lot you always have that in it unless further subdivided. And that's a normal condition we always said even if there's no chance of it being divided. We always say, but you can go before the planning board and ask relief on that. They get turn down every day in our town where were had lots of $\frac{3}{4}$ of an acre that want to make to two half acre that's a normal wording we put in. In fact, I think we added one one time on that. If the lot is over the zoning size you always have that condition. So when lot gets filed he can't walk into the building department and get a building permit for two lots. He can only get the one building permit because of that wording in there cannot be further subdivided unless the planning board approves it. I think that's what we did here in 1991 because we did that a lot in them days.

MR. O'DEA:

It's done and I think it's a mistake to do it and it's in Riverhead. Some of their, you go through the files you'll see that it's either cannot be further subdivided or and end the sentence right there if that's what you mandate.

ACTING CHAIRMAN MARTIN:

I think there was a legal question there whether we could do that. I thing we lost one in court or something.

MS. NOLAN:

Yes. I believe, that whoever imposes the covenant and restriction always has the right to lift it so those words would really be meaningless because they always can come back to whoever has imposed that covenant and restriction.

ACTING CHAIRMAN MARTIN:

And I think that's how it came, but I remember it being an issue and we said well, he can always go back to the planning board and ask for it.

MS. NOLAN

Yes.

ACTING CHAIRMAN MARTIN:

But that doesn't mean you have to grant it.

MS. NOLAN:

Correct.

ACTING CHAIRMAN MARTIN:

Okay.

MR. O'DEA:

All right, but true and it's not only just in zoning it's done in clusters today or in leaving open space, etcetera like that it's a different ballgame.

ACTING CHAIRMAN MARTIN:

Do we ever want to take a man's rights for he own land? That means you're saying the same thing with anything rezoned business or not. Just for the restrictions on there it's A-1; it stays A-1 for the next thousand years. He's got a right to come in. Right, that's what this is basically, the same thing.

MR. O'DEA:

I agree.

ACTING CHAIRMAN MARTIN:

Right, that's what this is basically, the same thing.

MR. O'DEA:

And in a negotiation process of approval sometimes that's a bargaining point that they will agree to.

ACTING CHAIRMAN MARTIN:

Well, I don't think that's legal. I don't think you can say he can't come in and apply for the variance. You could just say you don't need no more planning boards or Suffolk County Planning Commission. Just build the way the land is zoned now and I think that's one of the reasons why they set conditions on a map.

MR. O'DEA:

I can see the situation like Andy brought up if this Commission that was their original intention then I think that I could see this.

ACTING CHAIRMAN MARTIN:

Okay. On the future we have that you can make that statement, but let's resolve this now. Are we in favor of this map? Is there a motion?

MR. ISLES:

There's a motion and a second.

ACTING CHAIRMAN MARTIN:

No, we stopped in the middle.

MR. ISLES:

We have a motion and a second.

MS. NOLAN:

There's a motion and a second.

ACTING CHAIRMAN MARTIN:

That's all we have, right. Okay. Are we ready now, everybody? All in favor signify by saying aye. Contrary minded. Abstentions.

MR. O'DEA:

Me.

ACTING CHAIRMAN MARTIN:

So it's 8-1, 8-0-I mean.

MR. FRELENG:

You abstained.

MR. O'DEA:

No, I disapproved.

MR. FRELENG:

You disapproved.

MR. O'DEA:

Against.

MR. FRELENG:

Yes, voted against. **(Vote: 8-1-0-1 Opposed: O'Dea, Absent: Petersen)**

ACTING CHAIRMAN MARTIN:

Is there a motion in order to adjourn?

MR. DIETZ:

I make a motion.

MR. CARACCIOLO:

Second.

ACTING CHAIRMAN MARTIN:

All in favor signify by saying aye. Contrary minded. That's 9-0. **(Vote: 9-0-0-1**

Absent: Petersen)

(*The meeting was adjourned at 2:00 P.M.*)

{ } Denotes Spelled Phonetically