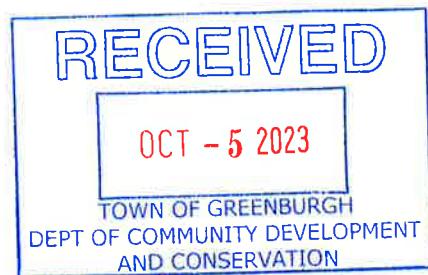




**TOWN OF GREENBURGH  
PLANNING BOARD MINUTES  
GREENBURGH – NEW YORK  
Wednesday – September 20, 2023**



The Work Session of the Planning Board of the Town of Greenburgh began at 7:00 pm on Wednesday, September 20, 2023, and was held both in-person at Town Hall, located at 177 Hillside Avenue, Greenburgh, New York, and online via Zoom-enabled videoconference. It was also simulcast over cable television and the Town of Greenburgh website.

**1. ROLL CALL & ANNOUNCEMENTS**

Present: Chairperson Hugh Schwartz, Thomas Hay, Michael Golden, Walter Simon (Remote Participant), Kirit Desai, Johan Snaggs, and Leslie Davis (7:10 pm arrival, 8:40 pm departure)

Absent: None

Staff: Matthew Britton, Planner, CD&C  
Aaron Schmidt, Deputy Commissioner, CD&C  
Garrett Duquesne, AICP, Commissioner, CD&C (via Zoom)

**2. APPROVAL OF MINUTES**

Chairperson Schwartz stated that he had a revision to the draft minutes of September 6, 2023. He stated that, in the public hearing section, it should be explained that the public hearing was re-opened due to a member of the public arriving late and seeking to provide comments. Mr. Desai requested that his comments about the Town Code being too restrictive in the discussion of Case No. TB 23-05 be included. Mr. Schmidt stated that these revisions would be made. On a motion made by Mr. Hay and seconded by Mr. Desai, the Planning Board unanimously voted to approve the minutes of the September 6, 2023 work session, as amended.

**3. CORRESPONDENCE**

**a. Prospective Planning Board Member Ms. Rose Christ**

Chairperson Schwartz reported that, due to conflicts with her employment, Ms. Christ had to turn down the prospect of becoming an alternate Planning Board member. He stated that the Board is seeking an alternate member, and anyone interested should contact Commissioner Garrett Duquesne with their resume.

**b. 2024 Planning Board Meeting Calendar**

Chairperson Schwartz stated that a draft 2024 Planning Board meeting calendar was distributed, whereby some meeting dates were identified as conflicting with holidays. He advised that the calendar was adjusted so those conflicted meetings would take place on the Tuesday before the regularly scheduled Wednesday meeting date, to avoid such conflicts.

On a motion made by Mr. Snaggs and seconded by Mr. Simon, the Planning Board unanimously voted to approve the revised 2024 Planning Board meeting calendar.

**c. Planning Board Holiday Party**

Chairperson Schwartz stated that, due to travel and other conflicts, the Planning Board's traditional holiday party date of a Friday will be difficult to schedule, and suggested a date of December 20<sup>th</sup> for the party. The Board had no objection.

4. **OLD BUSINESS – WORK SESSION**

- a. **Case No. PB 21-30** Casale, 34-40, 50, 00 & 10 Saw Mill River Road (P.O. Hastings-on-Hudson, N.Y.) – Final Subdivision, Amended Site Plan, Planning Board Steep Slope Permit, and Tree Removal Permit

A work session to discuss the decision of a Final Subdivision, Amended Site Plan, Planning Board Steep Slope Permit, and Tree Removal Permit application for a proposal consisting of the re-subdivision of eight (8) existing tax lots (8.610-421-72, 73, 74, 75, 76, 77, 78 & 79) into one (1) lot. The Applicant is proposing to modify the layout of the site by relocating storage bins to more efficient locations, adding parking, adding storage locations, and other related improvements. The Applicant proposes approximately 1,802 sq. ft. of disturbance to 15- 25% slopes (STEEP SLOPES), approximately 1,873 sq. ft. of disturbance to 25-35% slopes (VERY STEEP SLOPES), and approximately 3,979 sq. ft. of disturbance to 35%+ slopes (EXCESSIVELY STEEP SLOPES). The project requires approximately 1,787 cubic yards of excavation and 287 cubic yards of imported fill, requiring a Fill Permit from the Town Engineer. The Applicant proposes the removal of seven (7) regulated trees and the installation of four (4) planter boxes on the site, in order to satisfy the requirements of Chapter 260 of the Town Code. On June 15, 2023, the Zoning Board of Appeals granted all area variances required in connection with the project, as proposed. The properties consist of approximately 84,992 sq. ft. (1.95 acres) and are situated on the east side of Saw Mill River Road between Farragut Avenue and Holly Place. The properties are located in the LI Light Industrial District and are designated on the tax map of the Town of Greenburgh as Parcel ID: 8.610-421-72, 73, 74, 75, 76, 77, 78 & 79.

Chairperson Schwartz stated that this project is on for the Board's consideration of a Final Subdivision, Amended Site Plan, Planning Board Steep Slope Permit, and Tree Removal Permit approval, and asked if there have been any substantive changes to the plans since Preliminary Subdivision approval. Mr. Schmidt responded that there have not been any substantive changes. Chairperson Schwartz asked if there were any special conditions the Board or members of the public should be aware of. Mr. Schmidt responded that no special conditions have been included that were not already in the Preliminary Subdivision approval.

On a motion made by Mr. Hay and seconded by Mr. Snaggs, the Planning Board unanimously voted to waive the public hearing requirement for the Final Subdivision application.

On a motion made by Mr. Snaggs and seconded by Mr. Hay, the Planning Board unanimously voted to approve the Final Subdivision application.

On a motion made by Mr. Desai and seconded by Mr. Snaggs, the Planning Board unanimously voted to approve the Amended Site Plan application.

On a motion made by Mr. Simon and seconded by Mr. Snaggs, the Planning Board unanimously voted to approve the Planning Board Steep Slope Permit application.

On a motion made by Mr. Snaggs and seconded by Mr. Hay, the Planning Board unanimously voted to approve the Tree Removal Permit application.

- b. **Case No. PB 23-11** Collins, 19 Pine Lane (P.O. Irvington, N.Y.) – Planning Board Steep Slope Permit

A continuation of a work session (September 6, 2023) to discuss a Planning Board Steep Slope Permit application involving the proposed construction of a pergola, retaining walls, and an expanded driveway. The Applicant's proposal also includes stormwater management systems for the new impervious surfaces and landscaping along a steep slope to aid in runoff reduction. The Applicant proposes approximately 343 sq. ft. of disturbance to 15-25% slopes (STEEP SLOPES), approximately 356 sq. ft. of disturbance to 25-35% slopes (VERY STEEP SLOPES), and approximately 50 sq. ft. of disturbance to 35%+ slopes (EXCESSIVELY STEEP SLOPES). The

Applicant proposes approximately 5 cubic yards of excavation, and 0 cubic yards of imported fill. The project has been reviewed by the Town's Building Inspector who, in a memorandum dated July 27, 2023, determined that the following two (2) area variances are required: (1) Minimum distance from patio to side property line, from 10 feet (required) to 8.8 feet (proposed); and (2) Minimum setback from driveway to side yard, from 8 feet (required) to 0 feet (proposed). The property consists of approximately 12,465 sq. ft. (0.29 acres) and is situated on the westerly side of Pine Lane, approximately 70 feet from the intersection of Pine Lane and Mount Pleasant Lane. The property is located in the R-7.5 One-Family Residence District and is designated on the tax map of the Town of Greenburgh as Parcel ID: 7.360-184-9.

Chairperson Schwartz stated that, at the last meeting where this project was discussed (September 6, 2023), the one critical question related to drainage, particularly relating to the potential for runoff to negatively impact the downslope neighbor. Mr. Stephen Anderson, P.E., of Gabriel Senor P.C., representing the Applicant, stated that he submitted a drainage plan to the Town Engineer. Mr. Anderson noted that most of the roof of the existing residence currently is not connected to any drainage system, and stated that the proposed improvements would reduce runoff from the site by 16%. Mr. Simon asked if staff received input from the Town Engineer. Mr. Schmidt reported that he spoke with the Town Engineer, who indicated that if the system were installed as designed, there would be a reduction in runoff. Mr. Schmidt stated that the Town Engineer asked if there had been exploratory test pits performed to determine if there was rock in the area of the proposed cultic units, to which Mr. Anderson stated there have not been any performed as of yet. Mr. Anderson added that he could perform tests for the Board prior to a public hearing.

Mr. Doug Collins, Property Owner, noted that the existing roof leaders flow into a corrugated pipe that discharges directly out to the driveway and ultimately to Pine Lane, inferring that the proposal will provide an upgrade over the existing condition. Chairperson Schwartz recalled that permeable pavers were discussed as an option that could improve stormwater runoff conditions. Mr. Anderson responded that permeable pavers were considered, though they would not function well, due to shallow rock under the proposed driveway. Mr. Hay asked if permeable pavers would work on the northerly driveway. Mr. Anderson responded that he could install a trench drain at the edge of the property line and connect to the cultic units. Mr. Desai suggested the Applicant look into the specifications of permeable pavers, as they may still be an option. Mr. Anderson stated that he would do so. Chairperson Schwartz asked if there were any other questions. There were none.

Chairperson Schwartz stated that the Planning Board is in a position to issue a recommendation to the Zoning Board of Appeals (ZBA) on the two (2) required area variances related to the driveway side yard setback and patio side yard setback. Mr. Hay noted that these are existing conditions. Mr. Anderson stated that the patio extends to 7.7 feet from the side property line and, therefore, the Building Inspector's variance determination memorandum likely needs to be updated. Mr. Schmidt advised that he would communicate this to the Building Inspector's office for review and determination.

Mr. Collins advised that he had two (2) letters of support from neighboring property owners related to the variance application. Mr. Schmidt read the letters, from the owners of 25 Pine Lane and 3 Mount Pleasant Lane, with both property owners having no objection to the requested variances. Chairperson Schwartz noted that no letter was received from the downslope neighbor and recommended the Applicant speak with that owner prior to any public hearing held by the Planning Board. Mr. Schmidt suggested Mr. Collins provide the letters of support as part of the application to the Zoning Board of Appeals.

Chairperson Schwartz stated that there is nothing in the Town Code requiring the Planning Board to issue a recommendation on variances in connection with a Steep Slope Permit application, and any recommendation made is non-binding. He stated that, at a joint meeting with the ZBA several years ago, the ZBA requested the Planning Board provide a recommendation on all variances that also

involve an application before the Planning Board. He opined that the Planning Board has been issuing numerous positive recommendations and may consider issuing more neutral recommendations, particularly when the variances requested by an Applicant have no planning implications. Mr. Schmidt stated that, historically, the ZBA has indicated that it does benefit from Planning Board recommendations on projects requiring variances that are also before the Planning Board for an approval. He added that the Planning Board has traditionally provided neutral recommendations unless there is a compelling reason for the Planning Board to issue a positive or negative recommendation.

Mr. Golden recalled that the ZBA had indicated that the Planning Board had more fact-finding ability, and that was why the ZBA appreciated the recommendations. Mr. Desai felt that the Planning Board sometimes acts as an economic development board, and should be careful to not issue business-driven positive recommendations. Chairperson Schwartz stated that one issue the Planning Board has concerns with is the ZBA interpreting a neutral recommendation as a negative one, and added that the Planning Board has to be careful with the wording of its recommendations. He suggested including in the recommendation that the area variances associated with this project are completely under the purview of the ZBA to legalize, and have no planning implications, though the Planning Board has no issues with the variances as requested.

Mr. Snaggs asked if the Planning Board could set a standard for what it means by a positive, negative, or neutral recommendation, and send that standard along to the ZBA. He felt that a positive recommendation is warranted for this project. Chairperson Schwartz stated that the Planning Board needs to make clear that a neutral recommendation is not a negative, and keep the facts clear. He noted the following: (1) the variances required as part of this project address pre-existing conditions, only; (2) the Applicant has and will continue to be addressing the drainage concerns the Planning Board has; and, (3) Pine Lane prohibits on-street parking. Mr. Golden added that, when issuing a recommendation, the question for the Planning Board is if there is a planning issue involved with the variances, and he felt that for this project, there is no planning issue.

Chairperson Schwartz reiterated his suggestion to consider issuing a neutral recommendation for this project, but that the recommendation clearly indicate that the Planning Board has no issue with the variances. Mr. Hay noted that, if the ZBA is used to the Planning Board issuing positive recommendations and the Planning Board went neutral on this project, it may be viewed negatively. He suggested the Planning Board set standards for its recommendations moving forward, but issue a positive recommendation for this project. Mr. Golden disagreed, opining that the Planning Board should issue a neutral recommendation and make it clear that the recommendation is not negative. Ms. Davis opined that, if the Planning Board issues too many positive recommendations, a neutral recommendation may seem like a negative recommendation. Mr. Schmidt stated that after the Planning Board votes on a recommendation for this project, staff can draft a recommendation for review. He asked if the Applicant submitted its application to the ZBA as of yet. Mr. Collins responded that he has not.

Chairperson Schwartz conducted a straw poll of Planning Board members on if they would vote for a neutral or positive recommendation. All Board members except Mr. Snaggs indicated they would vote neutral. Mr. Snaggs indicated he would vote positive. Chairperson Schwartz asked staff to prepare a draft neutral recommendation with language that the Planning Board has no issue with the variances, as currently proposed. He stated that he could speak with the ZBA Chairperson ahead of its meeting, to make clear that a neutral recommendation is not to be perceived as a negative recommendation. Mr. Golden asked if the Applicant could be provided an opportunity to review the draft recommendation once prepared. Mr. Schmidt responded that this could be done.

5. **PUBLIC HEARING AND PUBLIC DISCUSSION**

*Full transcripts of the items on for public hearing and public discussion will be made available through the Department of Community Development and Conservation, and will be posted on the Town of Greenburgh website.*

- a. **Case No. PB 23-16** Little Dragon Daycare, 130 Central Park Avenue North (P.O. Hartsdale, N.Y.)  
– Planning Board Special Permit (Child Daycare Facility)

A continuation of a public hearing (September 6, 2023) to discuss a Planning Board Special Permit (Child Daycare Facility) involving the proposed re-use of a former nursery space into a children’s daycare facility. The facility is proposed to hold up to 30 children in three (3) separate classrooms. The daycare is proposed on the bottom floor of a church, and the entrance will be locked during operating hours, with only emergency responders having access via a lock box. The Applicant proposes the addition of a 324 sq. ft. playground in the front yard, surrounded by six (6) feet high vinyl privacy fencing. The Applicant requires a waiver from the Planning Board for landscaped buffer areas around the playground. The Applicant has identified parking spaces for parent drop-off and pick-up of children, and is proposing the addition of a striped crosswalk in the parking lot. The property consists of approximately 33,977 sq. ft. (0.78 acres) and is situated on the easterly side of Central Park Avenue North, at the intersection of Central Park Avenue North and Jane Street. The property is located in the CA Central Avenue Mixed-Use Impact District and is designated on the tax map of the Town of Greenburgh as Parcel ID: 8.250-185-7.

*On a motion made by Mr. Snaggs and seconded by Mr. Hay, the Planning Board unanimously voted to close the public hearing.*

6. **OLD BUSINESS – WORK SESSION (CONTINUED)**

- a. **Case No. PB 23-16** Little Dragon Daycare, 130 Central Park Avenue North (P.O. Hartsdale, N.Y.)  
– Planning Board Special Permit (Child Daycare Facility)

A work session to discuss the decision of a Planning Board Special Permit (Child Daycare Facility) involving the proposed re-use of a former nursery space into a children’s daycare facility. The facility is proposed to hold up to 30 children in three (3) separate classrooms. The daycare is proposed on the bottom floor of a church, and the entrance will be locked during operating hours, with only emergency responders having access via a lock box. The Applicant proposes the addition of a 324 sq. ft. playground in the front yard, surrounded by six (6) feet high vinyl privacy fencing. The Applicant requires a waiver from the Planning Board for landscaped buffer areas around the playground. The Applicant has identified parking spaces for parent drop-off and pick-up of children, and is proposing the addition of a striped crosswalk in the parking lot. The property consists of approximately 33,977 sq. ft. (0.78 acres) and is situated on the easterly side of Central Park Avenue North, at the intersection of Central Park Avenue North and Jane Street. The property is located in the CA Central Avenue Mixed-Use Impact District and is designated on the tax map of the Town of Greenburgh as Parcel ID: 8.250-185-7.

Mr. Schmidt reported that staff prepared a draft decision on the Special Permit application and Planning Board Waivers request. He stated that the waivers relate to the required 10-foot wide landscape buffers surrounding the outdoor play area. Mr. Schmidt indicated that site-specific conditions have been added, including limiting the use to a daycare, requiring parent drop-off and pick-up to be in specified spaces on the site, and limiting employee parking to the rear of the site. Chairperson Schwartz asked if there were any questions from the Board. There were none.

On a motion made by Mr. Simon and seconded by Mr. Desai, the Planning Board unanimously voted to classify the proposed action as a *Type II* action, under SEQRA.

On a motion made by Mr. Hay and seconded by Mr. Snaggs, the Planning Board unanimously voted to approve the Special Permit (Child Daycare Facility) application.

On a motion made by Ms. Davis and seconded by Mr. Desai, the Planning Board unanimously voted to approve the 10-foot wide landscape buffer waivers for all sides.

b. **Case No. TB 23-05** NineDot Energy, *Chapter 285-37.1 Battery Energy Storage System – Zoning Text Amendment (Referral from Town Board)*

A continuation of a work session (June 7, 2023 and September 6, 2023) to discuss a Zoning Text Amendment referral from the Town Board related to a petition seeking to amend Sections 285-37.1D(18)(b) and (d), and add (g), to facilitate a future application for a 10,000 sq. ft., 40,000 kWh capacity Battery Energy Storage System (BESS) at 444 Saw Mill River Road, P.O. Elmsford, N.Y. The Applicant proposes to amend Section 285-37.1D(18)(b) to increase the capacity of Tier 2 BESS from 6,000 kWh to 8,000 kWh in the One-Family Residence, CA, CB, DS, IB, LOB, OB-1, and UR Districts. The Applicant additionally proposes to amend Section 285-37.1D(18)(b) to increase the capacity of Tier 2 BESS from 12,000 kWh to 30,000 kWh in the OB, GI, LI, PD, and PED Districts, and increase the maximum combined footprint of BESS facilities in those districts from 3,500 sq. ft. to 12,500 sq. ft. The Applicant proposes to amend Section 285-37.1D(18)(d) to increase the maximum height of a Tier 2 BESS facility from 10 feet to 12 feet. The Applicant proposes to add Section 285-37.1D(18)(g) to provide for additional planting requirements if trees are removed as part of a BESS application.

Chairperson Schwartz stated that the Planning Board has to make a decision on what type of recommendation to the Town Board it desires to issue or, if it is not sure, to request additional time from the Town Board. He indicated he would like to go around and hear each member's thoughts on the various proposed amendments. Mr. Desai asked how the proposed amendments compare with the NYSERDA model law, and if anything has changed in the last two (2) years. Mr. Robert Gaudio, Esq., of Snyder & Snyder, representing the Applicant, responded that he was not aware of any changes to the NYSERDA law, but noted that the Town's law is much more restrictive. Chairperson Schwartz added that the NYSERDA Model Law is a template for communities to consider when seeking to adopt a local law. Mr. Desai asked how New York City regulations on these types of facilities compares with what is being proposed. Mr. Gaudio responded that, depending on the type of equipment, the setback requirements for these types of facilities in New York City can be as low as ten (10) feet, whereas the Town requires 100 feet, which can be waived down to 50 feet. Chairperson Schwartz noted that New York City's requirements are brand-specific, something the Town does not do. Mr. Desai opined that the Town's ordinance should be flexible with regards to technology, and put the onus on the Applicant for setbacks.

Chairperson Schwartz questioned how the Planning Board, which does not have expertise on this subject, can recommend amending the local law without knowing what has changed. He stated that the committee formed to draft the original local law had an opportunity to confer with experienced professionals, Fire District officials, and a consultant prior to recommending a law to the Town Board for adoption. Ms. Davis asked if, as a Board without the knowledge and experience, the Board should err on the side of being more conservative. Mr. Desai asked why. Chairperson Schwartz responded that there is the increased potential for danger, noting that New York State has had five (5) BESS fires in the last year alone. Mr. Gaudio noted that there are dangers with everything.

Mr. Simon recalled that, when the Town's local law was written, it was known that there would be improvements to the technology. He felt that the argument to increase the square footage makes sense, but the increase in capacity must be taken seriously, especially with the Governor putting together a task force to investigate BESS facilities. Mr. Simon explained that, in his technical background, when dealing with unknowns, he would take extra caution and account for extra possibilities. He felt the Board should err on the side of caution when it does not have all the information. Mr. Gaudio responded that it has been the Applicant's opinion from the beginning that the existing law is too restrictive. He opined that there is nothing inherently less safe based on the proposed amendments, pointing out that no changes to the setbacks or lot sizes are proposed, and the existing code requires various reports, training, bonding, and fire department reviews. Mr. Snaggs

ask if a BESS unit being added in and of itself make the facility less safe. Mr. Gaudioso responded that it does not, as all batteries are UL listed and have to meet very specific criteria. Mr. Golden noted that adding a BESS unit does increase the risk that there will be a fire. Mr. Gaudioso responded that, under the current Code, BESS facilities could be sited on adjacent lots, and asked if that would be any less safe, even though currently permitted.

Mr. Desai requested the Applicant provide information on the number of BESS units installed versus the number of fires. Mr. Anthony Santamaria, Director of Development Engineering and Planning, of NineDot, the Applicant, responded that he could provide the statistics and stated that, while the chance for a fire may be increased through the addition of more BESS units, the danger is not increased. Chairperson Schwartz stated that approximately 400 BESS facilities have been installed up to last year. Mr. Robert Sciortino, Senior Project Developer, of NineDot, the Applicant, stated that capacity is more important than the number of facilities. Chairperson Schwartz agreed that capacity matters, but stated he was also concerned with proliferation. He stated that if the Applicant was instead before the Planning Board and sought variances, it would be a different discussion. Chairperson Schwartz stated that the Board could not just look at one site with the proposed amendments, it must review and consider the potential implications across the entire Town.

Mr. Simon asked if it is infeasible to build BESS facilities under the current law. Mr. Santamaria responded that developers of these facilities need to be able to maximize the scale. Mr. Gaudioso noted that, while other lots may be affected by the proposed amendments, those lots may not be as ideal as the proposed lot. Chairperson Schwartz noted that a Tier 3 BESS facility is required to be within a certain distance of a substation, and that there are other ways of limiting BESS facilities. He noted that the proposed amendments would primarily impact lots situated within one (1) fire district of the Town. Mr. Gaudioso stated that, if in the recommendation to the Town Board, additional restrictions are recommended by the Planning Board, it is something the Board certainly may consider. Chairperson Schwartz brought up the possibility of the Applicant applying for a variance from the current regulations. Mr. Gaudioso responded that he would be concerned about the precedent such a variance could set. Chairperson Schwartz acknowledged the precedent concern but noted that the Board has limited discretion with a special permit application.

Mr. Hay stated that he was not inclined to recommend a significant change to the Town's local law passed two (2) years ago without serious justification, and more than doubling the capacity of a BESS facility is a significant change. Mr. Gaudioso asked how the 3,500 sq. ft. and 12,000 kWh maximums were reached for the existing law. Chairperson Schwartz responded that they were selected as conservative numbers. Mr. Gaudioso opined that the law is overly conservative, though it does permit larger capacity facilities than what the Applicant proposes. Chairperson Schwartz stated that the Board requested information about what has changed with BESS facilities to make them safer, and felt that there has not been enough documentation provided to amend the zoning ordinance. Mr. Desai opined that the Town should not be overly restrictive as neighboring municipalities take opportunities from the Town.

Chairperson Schwartz stated that he would like to review each of the proposed amendments. He opined that the proposed amendments to increase BESS capacity from 6,000 kWh to 8,000 kWh and height from 10 feet to 12 feet were technical changes that he would consider voting to issue a positive recommendation on. The Board agreed.

On a motion made by Mr. Hay and seconded by Mr. Desai, the Planning Board unanimously voted to issue a positive recommendation to the Town Board on the proposed zoning text amendments: (1) to amend Section 285-37.1D(18)(b) to increase the capacity of Tier 2 BESS from 6,000 kWh to 8,000 kWh in the One-Family Residence, CA, CB, DS, IB, LOB, OB-1, and UR Districts; and (2) to amend Section 285-37.1D(18)(d) to increase the maximum height of a Tier 2 BESS facility from 10 feet to 12 feet.

Chairperson Schwartz asked Board members for their opinion on the proposed amendment to increase capacity from 12,000 kWh to 30,000 kWh. Mr. Desai stated he would vote to issue a positive recommendation. Mr. Snaggs stated he would support a negative recommendation. Mr. Golden stated that, due to the local law being only two (2) years old and the Applicant not providing information on what, if any, improvements have been made to make these facilities safer, he would support a negative recommendation. Mr. Hay stated he would also support a negative recommendation on this proposed amendment. Chairperson Schwartz stated he would also vote to issue a negative recommendation on this amendment, but encouraged the Applicant to consider a variance application. Mr. Simon stated that he would support a negative recommendation, and added that the Town should be open to taking a look at the local law in the future, as more information becomes available.

Chairperson Schwartz asked Board members for their opinion on the proposed amendment to increase the BESS facility footprint from 3,500 sq. ft. to 12,500 sq. ft. Mr. Desai stated that, considering additional space is needed for ancillary equipment, and more space can make it easier to gain access to in the event of an incident, he would vote to issue a positive recommendation. Mr. Snaggs stated he also would support a positive recommendation, as nothing else would be changing. Mr. Simon, Mr. Golden, Mr. Hay, and Chairperson Schwartz all stated they would support a positive recommendation. Chairperson Schwartz asked Board members for their opinion on the proposed amendment to increase the tree replacement requirements for BESS facilities. The Board unanimously indicated they would support a positive recommendation.

Chairperson Schwartz directed staff to prepare a draft recommendation and draft report, and indicated that the Applicant would be given a copy of the drafts ahead of the Board's October 4, 2023 meeting.

**7. NEW BUSINESS – WORK SESSION**

**a. Case No. PB 22-07 Chick-fil-A, 20 Tarrytown Road (P.O. White Plains, N.Y.) – Site Plan, Special Permit (Quick Service/Fast Food Restaurant), and Tree Removal Permit**

A work session to discuss a Site Plan, Special Use Permit (quick service/fast food restaurant), and Tree Removal Permit application involving the proposed construction of a new quick service/fast food restaurant building, with related improvements. The Applicant proposes to construct a new, 5,000 sq. ft., 94-seat (74 interior, 20 exterior) quick service/fast-food restaurant, with a double-lane drive-thru. The property has existing curb cuts on Old Kensico Road and on County Center Road. The Applicant proposes to relocate the curb cut on Old Kensico Road and add a curb cut to County Center Road. The Applicant proposes to include 113 parking spaces (80 striped, 33 credited for drive-thru), where 143 spaces are required. A total of thirty (30) off-street parking spaces, dedicated for employee parking only, are proposed to be situated on an adjacent lot located within the City of White Plains zoned Business (B-3), requiring approval from the city. The following area variances are required: (1) side yard setback to detached canopy, from 40 feet (required) to 6.8 feet (proposed); (2) Tarrytown Road side yard setback to principle building, from 40 feet (required) to 36.8 feet (proposed); (3) County Center Road side yard setback to principle building, from 40 feet (required) to 5.4 feet (proposed); (4) County Center Road side yard setback to accessory storage building, from 40 feet (required) to 16.2 feet (proposed); (5) total of two side yards, from 80 feet (required) to 42.2 feet (proposed); (6) distance from off-street parking to principal building, from 10 feet (required) to 7.7 feet/0 feet for the parking lot/drive-thru (proposed); (7) off-street parking spaces, from 143 (required) to 113 (proposed); (8) distance from off-street parking to front lot line, from 20 feet (required) to 3.4 feet (proposed); (9) distance from off-street parking to side lot line (County Center Road), from 10 feet (required) to 2.4 feet (proposed); (10) distance from off-street parking to side lot line (Tarrytown Road), from 10 feet (required) to 2.2 feet (proposed); and (11) height of exterior lighting, from 14 feet (permitted) to 27 feet (proposed). The Applicant proposes to remove several landscaped trees in the existing parking area, requiring a Tree Removal Permit from the Planning Board, and has prepared a landscaping plan providing for 19 trees and 270 shrubs, as replacement. The Applicant seeks waivers from the Planning Board for the required 10-foot landscaped buffers on all sides of the property. The Applicant has prepared a traffic impact study, which has been reviewed



by the Town's traffic consultant for this project. The subject properties consist of approximately 75,065 sq. ft. (1.7 acres) and are situated on the northerly side of Tarrytown Road, at the intersection of Tarrytown Road and Old Kensico Road. The properties within the Town of Greenburgh are located in the DS Designed Shopping District, are designated on the tax map of the Town of Greenburgh as Parcel ID: 7.570-328-1 & 2, and in total consist of approximately 55,912 sq. ft. The properties within the City of White Plains are located within the B-3 Business District, are designated as Parcel ID: 125.57-3-1 & 2, and in total consist of approximately 19,153 sq. ft.

Following Chairperson Schwartz's introduction of the project, Mr. Charles Gottlieb, Esq., of Whiteman Osterman & Hanna LLP, representing the Applicant, provided a detailed presentation of the Applicant's proposal involving the proposed construction of a new, 5,000 sq. ft., 94-seat (74 interior, 20 exterior) quick service/fast-food restaurant, with a double-lane drive-thru on the subject site. He stated that, while numerous area variances are required, all involve improvements over existing conditions. He reported that the Applicant met with the Westchester County Planning Board to discuss the project. He stated that the County primarily expressed concern regarding pedestrian access. Mr. Gottlieb opined that the project would increase pedestrian access to the site. Mr. Hay noted that vehicles in the drive-thru queue likely would be visible from Tarrytown Road.

Mr. Timothy Freitag, P.E., of Bohler Engineering, representing the Applicant, continued the presentation of the project, specifically reviewing all the elements of the site layout plan. He noted that a dense hedgerow is proposed along Tarrytown Road which would limit visibility. Mr. Hay asked if vehicles arriving from County Center Road would be entering the drive-thru by crossing in front of the proposed restaurant. Mr. Freitag responded that vehicles would likely go around the parking lot, and stated that the Applicant is considering signage or striping to encourage this movement. He noted that the Applicant studied existing Chick-fil-A restaurants and was able to determine what it deemed necessary with respect to off-street parking spaces. Mr. Simon stated that he had visited a Chick-fil-A in Charlotte, North Carolina, and observed the drive-thru queue backing up into the parking lot such that cars could not turn in to or pull out of parking spaces. He requested the Applicant consider that concern and if cars would back up into the adjacent roadway. He asked that supporting data be provided. Mr. Freitag responded that he could compare that site to the proposed location, and report back to the Board. Chairperson Schwartz requested that the Board compile questions it may have on the project and submit them to Mr. Schmidt, so that he may transmit them to the Applicant ahead of the next meeting.

Mr. Freitag stated that the other locations studied supported the Applicant's proposed drive-thru capacity with fifty (50) off-street parking spaces in the Town for customers, and thirty (30) off-street parking spaces in the City of White Plains for its employees. Chairperson Schwartz asked how many employees would be working at one time. Mr. Freitag responded that approximately fifteen (15) employees work per shift, with overlap around lunch time. Mr. Hay asked what separates the building from the employee parking lot, noting that he is concerned with employees walking through the drive-thru area to gain access to the building. Mr. Freitag responded that there will be a four (4) foot high retaining wall, and employees would walk along the County Center Road sidewalk to access the building. He added that the Applicant worked to minimize pedestrians crossing the drive-thru and that the drive-thru has a sliding door where employees will hand deliver food to waiting vehicles. Chairperson Schwartz asked if employees would be running food out even in the winter months. Mr. Freitag responded that they would be. Chairperson Schwartz asked when trucks would access the site. Mr. Freitag responded that truck deliveries would be at off-hours, typically between 10:00 pm and midnight. Chairperson Schwartz expressed concern with this, noting that there are nearby residential properties, and requested the Applicant look further into this. Mr. Simon requested that the Applicant review traffic patterns along Old Kensico Road, taking into account the former Nesto's deli, which could be re-occupied in the future.

Mr. Philip Greely, P.E., of Bohler Engineer, representing the Applicant, stated that he prepared a traffic study analyzing the site and which included an analysis of the morning, noon, and

afternoon/evening peaks of the proposed use. He stated that he met with the White Plains Traffic Commissioner about the traffic signal at the intersection of Old Kensico Road and Tarrytown Road, who requested the Applicant perform upgrades to the signal if White Plains is unable to do so in time for the restaurant's opening, if approved. Mr. Greely stated that the driveway on Old Kensico Road is proposed to be shifted away from the intersection to allow for more stacking, and Old Kensico Road is proposed to be improved with a dedicated left-turn lane onto eastbound Tarrytown Road. He noted that the Project Team has had initial discussions with the NYSDOT on various proposed improvements, as Tarrytown Road is a NYS roadway. He indicated that Mr. John Canning, P.E., of Kimley-Horn, the Town's Traffic Consultant for this project, requested details on the grand opening traffic plan, which are being worked on. Mr. Greely added that modifications to the striping along the traffic circle at Old Kensico Road and County Center Road are proposed. Chairperson Schwartz requested that the Applicant work to discourage customers from traveling into the neighborhood to the north of the site. Mr. Greely responded that he understood the concern.

Mr. Canning stated that he reviewed the project in detail and, while the Applicant has made some improvements to the original plan, he still had some concerns. He stated that his biggest concern was with the first few weeks of opening, and felt that a more detailed grand opening traffic plan is needed. Mr. Canning stated that there were questions raised about counting drive-thru queuing spaces as off-street parking spaces, which he felt it was reasonable to do. He noted that it would be helpful to know the maximum amount of employees expected on-site at one time. Mr. Canning stated that the sensitivity analysis prepared by the Applicant indicated that, without improvements to the intersection of Old Kensico Road and Tarrytown Road, the delay would increase by 24 seconds, but with the mitigation proposed, the delay would be reduced to 10 seconds. Mr. Canning expressed concern with truck deliveries after-hours, as there are residential units across the street, and requested the Applicant look into if the trucks can avoid backing up, in order to limit noise. Finally, he recommended that a condition be included in any approval of the project requiring that the left-turn egress to Old Kensico Road be reviewed perhaps one (1) year after opening, and be modified if it has been determined to have been an issue.

Chairperson Schwartz thanked the Applicant for the presentation, opining that the current proposal is an improvement from that which was presented at the pre-submission conference. He requested Board members provide Mr. Schmidt with their questions so the Applicant can address them in time for the October 4, 2023 Planning Board meeting. Mr. Schmidt noted that the Applicant would have a chance to respond to Mr. Canning's comments as well. Chairperson Schwartz stated that he would like to declare intent for the Planning Board to serve as lead agency.

On a motion made by Mr. Desai and seconded by Mr. Simon, the Planning Board unanimously voted to declare its intent to serve as lead agency for the purpose of a coordinated SEQRA review.

Mr. Schmidt stated that he would circulate the lead agency notice of intent. Chairperson Schwartz asked staff to reach out to the City of White Plains and invite them to future Board meetings. He indicated that he would like to have this project on for a public discussion prior to a recommendation to the Zoning Board of Appeals on the requested area variances.

**8. ESTABLISH DATE FOR NEXT MEETING**

The next regularly scheduled meeting of the Greenburgh Planning Board will be held on Wednesday, October 4, 2023, and will begin at 7:00 pm.

**9. ADJOURNMENT**

The September 6, 2023 work session of the Town of Greenburgh Planning Board was adjourned at 10:08 pm.

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Respectfully submitted,



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Aaron Schmidt  
Deputy Commissioner,  
Department of Community Development and Conservation