Town of Rotterdam
Planning Commission
March 10, 2020

Approval of the Summary of Minutes February 18, 2020


2. Action Repair Inc. – 502 Harlem Street. The applicant requests a Waiver of Site Plan/Special Use Permit Public Hearing review to operate an auto repair shop in ±2,346 square foot existing tenant space on a ±11,200 square foot parcel.

3. Town of Rotterdam. Report and Recommendation to the Town Board to amend Chapter 270 of the Code of the Town of Rotterdam, entitled “Zoning” to include 270-167 D (7) entitled “Parking and Signage” to allow signage for educational and religious buildings that are being repurposed for commercial/residential use.

4. Change of Zone/Senior Living District – Whispering Pines Senior Living Community. Report and Recommendation to the Town Board for the adoption of a Local Law establishing a Senior Living District and allowing for a Change of Zone for property located in Rotterdam, New York 12306, known as Tax Map Nos. 71.5-1-5.112 (2188 Helderberg), 71.5-1-7.1 (2196 Helderberg), 71.5-1-5.111 (2200 Helderberg), 71.5-1-9 (2204 Helderberg), 71.5-1-8.111 (No Address), 71.5-1-8.112 (2208 Helderberg), 71.5-1-10.21 (2212 Helderberg) and 71.9-2-21.11 (Brown’s Farm). The Town Board recommends a Change of Zone from Agricultural (A-1) to Senior Living District (SLD) for a project to be known as the Whispering Pines Senior Living Community. The Whispering Pines Senior Living Community is to generally consist of the construction of 125 single-family homes (town homes or detached), 119 independent living units, 108 memory care units, 144 assisted living units, reconfiguring the existing 18-hole executive golf course into a 9-hole executive golf course that includes a new 2,500 s.f. clubhouse and 1,300 s.f. maintenance building on ±90 acres. A total of 496 residential units are proposed and will be developed in up to four (4) phases over an estimated four (4) year period, depending upon market demands. This will be accompanied by the addition of sewer and water infrastructure and roadways, as well as stormwater management features.
DPW Comments
March 10, 2020


1. Final Fees Due: Minor Subdivision Lot Fees $160.00
   Parkland Fees 750.00
   Advertising No bill yet

2. The Rotterdam Zoning Board of Appeals granted a variance for lot frontage on February 11, 2020 with the following conditions:
   a. Driveways shall be installed according to the proposed subdivision plans with placement of T-turn arounds for the driveways.

3. Pin and cap all lot corners prior to Chairman’s Signature.

4. Add note to subdivision plan: “Approval is conditioned upon receiving access and utility permits from the Schenectady County Public Works Department for Fort Hunter Road.”

5. Add note to subdivision plan: “Road frontage variances from the Town of Rotterdam Zoning Board of Appeals were granted on February 11, 2020.

6. Add note to subdivision plan: “Water lines shall not be installed underneath driveways.

7. Add note to subdivision plan: “Driveways on all lots shall contain a “t-type” or similar turnaround area for vehicles to preclude backing out of the driveways onto Fort Hunter Road.”

8. Add note to subdivision plan: “Perc and deep hole tests should be performed in the exact septic locations and witnessed by the Building Inspector and Schenectady County Health prior to the issuance of building permits.”

9. Prior to Chairman’s Signature, the applicant shall provide a grading plan, show limits of disturbance on final subdivision plans and calculate area of disturbance. Planning Commission restricts land clearance and house locations on proposed development if proposed total disturbance is to be under 1 acre in size. Alternatively, the applicant should prepare a SWPPP which will need review and approval of a Town Designated Engineer.
SEQR Requirement: 6 NYCRR 617 Unlisted Action. Rotterdam Planning Commission declared lead agency on February 4, 2020. A Draft Negative Declaration has been prepared by the Town Planner and is attached for your consideration.

Involved/Interested Agencies
Schenectady County Economic Development and Planning
Schenectady County Department of Health
Schenectady County Department of Public Works
New York State Department of Environmental Conservation – Region #4
Rotterdam Police Department
Fire District #3
Mohonasen School District
February 10, 2020

Town of Rotterdam
Office of the Planning Commission
John F. Kirvin Government Center
1100 Sunrise Boulevard
Schenectady, NY 12306

Attn: Mr. Peter Comenzo, Senior Planner

Re: SEQR Lead Agency
Douglas Hewitt
1040 Fort Hunter Road
(T) Rotterdam, Schenectady County

Dear Mr. Comenzo:

We are in receipt of the above referenced application for Douglas Hewitt located at 1040 Fort Hunter Road for a proposed two lot subdivision. We have reviewed the application and have the following comment:

- The applicant must obtain a County Highway Work Permit for any work that will be performed in the Schenectady County right-of-way including driveways and all utility work.

This agency has no objection to the designation of the Town of Rotterdam as lead agency for SEQR compliance.

Sincerely,

[Signature]

Paul J. Sheldon, P.E.
Director of Engineering

Cc: File
## ZONING COORDINATION REFERRAL

**SCHENECTADY COUNTY DEPT. OF ECONOMIC DEVELOPMENT & PLANNING**

Recommendations shall be made within 30 days after receipt of a full statement of the proposed action.

<table>
<thead>
<tr>
<th>FROM:</th>
<th>Municipality:</th>
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<tr>
<td>☑ Planning Board</td>
<td>Town of Rotterdam</td>
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<tr>
<th>TO:</th>
<th>(tel.) 386-2225</th>
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<tbody>
<tr>
<td>Schenectady County Department of Economic Development and Planning Schaffer Heights, 107 Nott Terrace, Suite 303 Schenectady, NY 12308</td>
<td>(fax) 382-5539</td>
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<th>ACTION:</th>
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<tr>
<td>☑ Zoning Map Amendment</td>
<td>☐ Special Permit</td>
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<tr>
<td>☐ Zoning Code/Law Amendment</td>
<td>☐ Use Variance</td>
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<tr>
<td>☐ Subdivision Review</td>
<td>☐ Area Variance</td>
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<tr>
<td>☐ Site Plan Review</td>
<td>☐ Other (specify)</td>
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| PUBLIC HEARING OR MEETING DATE: | March 10, 2020 |

| SUBJECT: | Doug Hewett — 1040 Ft. Hunter Road. Two (2) Lot Subdivision: Lot 1 = ±3.39 acres with proposed residence, Lot 2 = ±2.19 acres with proposed residence. Engineer: ABD Engineering, LLP. |

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### REQUIRED ENCLOSURES:

1. Public hearing notice & copy of the application.
2. Map of property affected. (Including Tax Map I.D. number if available)
3. Completed environmental assessment form and all other materials required by the referring body in order to make its determination of significance pursuant to the state environmental quality review act.

---

1. This zoning case is forwarded to your office for review in compliance with Sections 239-l, 239-m and 239-n of Article 12-B of the General Municipal Law, New York State.

2. This material is sent to you for review and recommendation because the property affected by the proposed action is located within 500 feet of the following:

   - ☑ the boundary of any city, village or town;
   - ☑ the boundary of any existing or proposed County or State park or other recreation area;
   - ☑ the right-of-way of any existing or proposed County or State parkway, thruway, expressway, road or highway;
   - ☑ the existing or proposed right-of-way of any stream or drainage channel owned by the County or for which the County has established channel lines;
   - ☑ the existing or proposed boundary of any County or State-owned land on which a public building or institution is situated;
   - ☑ the boundary of a farm operation located in an agricultural district, as defined by Article 25-AA of the agriculture and markets law. The referral requirement of this subparagraph shall not apply to the granting of area variances.

---

**SUBMITTED BY:**

Name: Peter Comenzo  
Title: Sr. Planner

Address: 1100 Sunrise Boulevard Schenectady, NY 12306

E-mail: pcomenzo@rotterdamny.org  
Phone: 518-355-7575 Ext 338

**RECEIVED**

Date: 2/6/20
PLANNING & ZONING COORDINATION REFERRAL

Case No. R-09-20
Referring Officer Peter Comenzo

Applicant Doug Hewett
Municipality Rotterdam

Considerations: Vacant 5.58 acre parcel, requesting subdivision approval to create a 2.2 and 3.4 acre residential lot. Public water is provided. Individual septic is proposed. Located on the westerly side of Fort Hunter Road (CR 71) approximately 900 feet south of Curry Road.

RECOMMENDATION

Receipt of zoning referral is acknowledged on February 11, 2020. Please be advised that the undersigned Commissioner of Economic Development and Planning of the County of Schenectady (having under the Schenectady County Charter the powers and duties of a County Planning Board) has reviewed the proposed action stated on the opposite side of this form and makes the following recommendations:

☐ Approve of the proposal.
☐ Defer to local consideration (No significant county-wide or inter-community impact)
☑ Modify/Conditionally Approve. Conditions:
   Schenectady County Highway Department approval of curb cut locations.

☐ Advisory Note:

☐ Disapprove. Reason:

*A recommendation of approval should not be interpreted that the County has reviewed all local concerns and/or endorses the project; rather the proposed action has met certain County considerations.

Section 239-m of the general Municipal Law requires that within 30 days after final action, the referring body shall file a report of the final action it has taken with the Schenectady County Department of Economic Development and Planning. A referring body which acts contrary to a recommendation of modification or disapproval of a proposed action shall set forth the reasons for the contrary action in such report.

[Signature]
Ray Gillen, Commissioner
Economic Development and Planning

Date
6NYCRR PART 617
State Environmental Quality Review
NEGATIVE DECLARATION
Notice of Determination of Non-Significance

Date: March 10, 2020

This notice has been prepared in accordance with Article 8 of the Environmental Conservation Law by the Town of Rotterdam Department of Public Works Department
(Reference: 6 NYCRR 617.5 Unlisted Action)

SEQRA Status: Type I ( )
      Type II ( )
      Unlisted (X)

Conditioned Negative Declaration: Yes ( )
      No (X)

Owner: Douglas Hewitt
       2186 Ghents Road
       Schenectady, NY 12306

Location: Vacant land between 1032 & 1040 Fort Hunter
       Schenectady, NY 12303

Tax Map Number(s): 59.17-2-33.11

Zoning: Agriculture (A-1) Zoning District

Action: Two (2) Lot Minor Subdivision of an existing ±5.58 acre parcel: Lot 1 = ±3.39 acres (proposed single family residence), Lot 2 = ±2.19 acres (proposed single family residence).
Reasons Supporting This Determination:
(See 617.7(a)-(c) for requirements of this determination)

This project was conducted as a SEQR coordinated review. The applicant has supplied an Environmental Assessment Form and the Planning Commission has or has caused to complete Part 2 of this checklist.

The action is for a Two (2) Lot Minor Subdivision of an existing ±5.58 acre parcel: Lot 1 = ±3.39 acres (proposed single family residence), Lot 2 = ±2.19 acres (proposed single family residence). The proposed lots are served by municipal water. On-site septic systems are proposed and percolation tests were performed by the project engineer and witnessed by the Schenectady County Department of Health. Both lots are able to be served by conventional septic systems.

The proposed lot areas are adequate and variances were obtained from the Rotterdam Zoning Board of Appeals for roadway frontage requirements on February 11, 2020. As a condition of approval, driveway T-Turnarounds were required.

After a review of the application materials, Environmental Assessment Form, and comments received on this proposal, the Planning Commission of the Town of Rotterdam has determined that this proposal will not have a significant adverse impact on the environment.

The Planning Commission has considered the following criteria to determine if this proposal has significant adverse impacts on the environment:

(i) a substantial adverse change in existing air quality, ground or surface water quality or quantity, traffic or noise levels; a substantial increase in solid waste production; a substantial increase in potential for erosion, flooding, leaching or drainage problems;
(ii) the removal or destruction of large quantities of vegetation or fauna; substantial interference with the movement of any resident or migratory fish or wildlife species; impacts on a significant habitat area; substantial adverse impacts on a threatened or endangered species of animal or plant, or the habitat of such a species; or other significant adverse impacts to natural resources;
(iii) the impairment of the environmental characteristics of a Critical Environmental Area.
(iv) the creation of a material conflict with a community's current plans or goals as officially approved or adopted;
(v) the impairment of the character or quality of important historical, archaeological, architectural, or aesthetic resources or of existing community or neighborhood character;
(vi) a major change in the use of either the quantity or type of energy;
(vii) the creation of a hazard to human health;
(viii) a substantial change in the use, or intensity of use, of land including agricultural, open space or recreational resources, or in its capacity to support existing uses;
(ix) the encouraging or attracting of a large number of people to a place or places for more than a few days, compared to the number of people who would come to such place absent the action;
(x) the creation of a material demand for other actions that would result in one of the above consequences;
(xi) changes in two or more elements of the environment, no one of which has a significant impact on the environment, but when considered together result in a substantial adverse impact on the environment; or
(xiii) two or more related actions undertaken, funded or approved by an agency, none of which has or would have a significant impact on the environment, but when considered cumulatively would meet one or more of the criteria in this subdivision.

The Planning Commission has also considered the reasonably related long-term, short-term, direct, indirect and cumulative impacts, including other simultaneous or subsequent actions, which are:
(i) included in any long-range plan of which the action under consideration is a part;
(ii) likely to be undertaken as a result thereof; or
(iii) dependent thereon.
(3) The significance of a likely consequence (i.e., whether it is material, substantial, large or important) has been assessed in connection with:
(i) its setting (e.g., urban or rural);
(ii) its probability of occurrence;
(iii) its duration;
(iv) its irreversibility;
(v) its geographic scope;
(vi) its magnitude; and
(vii) the number of people affected.

The environmental effects of the above described action were discussed at the Planning Commission Public Hearing held on March 10, 2020 at the Rotterdam Town Hall, 1100 Sunrise Boulevard, Rotterdam, NY 12306. Adoption of this negative declaration was moved by XXXXXXXXXX, seconded by XXXXXXXXXX, and approved by the Rotterdam Planning Commission.

John Denny III
Planning Commission Chairman
1. Douglas Hewitt, Vacant Land Located between 1032 & 1040 Fort Hunter Road, Rotterdam, NY – Tax Map #59.17-2-37 located in the Agriculture (A-1) Zoning District. Petitioner requests variances as prescribed in the Town of Rotterdam Zoning Code being Chapter 270-21 entitled “Yard and Property Line Requirements,” and Chapter 270-22 entitled “Lot Area.” The applicant would like to subdivide an existing 5.58 acre parcel into two (2) lots. The variances are as follows:

   **Lot 1: Vacant Lot with Proposed Single Family Residence (±3.39ac)**

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<thead>
<tr>
<th>Required</th>
<th>Proposed</th>
<th>Variance</th>
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<tr>
<td>Front Property Line</td>
<td>150 feet</td>
<td>56.83 feet</td>
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   **Lot 2: Vacant Lot with Proposed Single Family Residence (±2.19ac)**

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<th>Proposed</th>
<th>Variance</th>
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<tr>
<td>Front Property Line</td>
<td>150 feet</td>
<td>56.83 feet</td>
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a. **Mark Blackstone on behalf of ABD Engineers representing this application.**
   *
   *Tabled from January 15, 2020.

b. **Representative addressed five (5) criteria to the Board.**
   Mr. Blackstone explained this plan is Scheme B as it was more acceptable to the Board than Scheme A which was presented in January to the Board. The frontage for both lots is 56.83’ which he will refer to the round number of 57’. The houses will sit approximately 250’ from the road. The highlighted area of the map is where the lots become equal in lot width and mitigates any issues on the lots like being able to have a T-turn around driveways. Soil tests were performed and will be redone for the placement of the new houses being towards the rear of the lots. The worst perc test of the two (2) previously proposed lot configurations would still sustain a conventional septic system. There is 109’ of width for the homes. These lots have more property than the rest of the neighborhoods lots. It cannot be achieved by any other means. It is not unreasonable to have one (1) house on a 2.5 acre parcel. It is not a substantial variance with the houses being located in the increase in lot width (highlighted area). There will not be any adverse environmental conditions. It is self-created.

c. **This proposal is not exempt from referral to Schenectady County Planning pursuant to Memorandum of Understanding – April 2011.**
   *
   Schenectady County deferred to local consideration with a comment to obtain County Highway Permits.

d. **Questions/comments from the Board.**
   Mr. Bonacquist and Mr. Melillo concur that all of their questions were answered previously at the January public hearing.

   Chairman Eats stated the new layout is in line with the suggestions of the Board from the January presentation.
e. No Public Comments.

f. Motion to APPROVE with the following condition:

1. Driveways shall be installed according to the proposed subdivision plans with placement of T-turn arounds for the driveways.

g. Motion to APPROVE:  
   
   Mr. Bonacquist

h. Seconded:  
   
   Mr. Stramenga

i. Approved unanimously:

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<tr>
<td>Chairman Eats</td>
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<tr>
<td>Mr. Melillo</td>
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<tr>
<td>Mr. Stramenga</td>
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<tr>
<td>Mr. Bonacquist</td>
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DPW Comments
March 10, 2020

2. **Action Repair Inc. (Lessee) – 502 Harlem Street.** The applicant requests a Waiver of Site Plan/Special Use Permit Public Hearing review to operate an auto repair shop in ±2,346 square foot existing tenant space on a ±11,200 square foot parcel.

1. A public hearing was conducted at the September 3, 2019 Planning Commission meeting. The hearing was closed.

2. **Final Fees Due:**
   
   - 1st Advertising: $34.77
   - 2nd Advertising: no bill yet

3. The Rotterdam Zoning Board of Appeals granted a variance for five (5) parking spaces on February 11, 2020 with the following conditions:
   
   - a. Action Auto Repairs shall be utilized primarily for Action Transportation vehicles only and repairs to public vehicles shall be nominal and include only minor repairs such as oil changes and tune-ups.
   - b. Further sub-leasing of the tenant space to another company and not permitted and will require further review of both the Zoning Board of Appeals and the Planning Board.

4. No outdoor storage of vehicles, trailers, or materials is permitted on this parcel.

5. Compliance with all NYS Building and Fire Codes.

6. Applicant must obtain a Fire Inspection and/or Building Permit and be issued a Certificate of Occupancy from the Town of Rotterdam Building Safety Inspector and/or Building Inspector/Code Enforcement Officer prior to operation.

7. Applicant to comply fully with Town Sign Code and obtain a building permit for any signage.

8. Owner/applicant shall install UL approved key box for emergency personnel. Please contact Fire District #2 for specifics.

9. Any additional subleasing of a portion of the building will require Planning Commission approval of a Special Use Permit.

10. No parking of vehicles for employees or vehicles to be serviced shall be permitted to be parked on the town roadways.

11. All previous notes from prior approval shall be added to the map prior to Chairman’s signature.

**SEQR Requirement:** 6 NYCRR 617 Unlisted Action. A Draft Negative Declaration has been prepared by the Town Planner for your consideration.
6NYCRR PART 617
State Environmental Quality Review
NEGATIVE DECLARATION
Notice of Determination of Non-Significance

Date: March 10, 2020

This notice has been prepared in accordance with Article 8 of the Environmental Conservation Law by the Town of Rotterdam Department of Public Works Department (Reference: 6 NYCRR 617.5 Unlisted Action)

SEQRA Status:
Type I ( )
Type II ( )
Unlisted (X)

Conditioned Negative Declaration:
Yes ( )
No (X)

Owner:
Dominic Leone
1001 Sandy Lane
Schenectady, NY  12303

Lessee:
Action Auto Repair
c/o Raymond Lasky
2557 Hamburg Street
Schenectady, NY  12303

Location:
502 Harlem Street
Schenectady, NY  12303

Tax Map Number(s):
49.17-7-9.21

Zoning:
Light Industrial (I-1) Zoning District

Action: Special Use Permit to operate a motor vehicle repair facility in the existing ±2346 square foot tenant space.
Reasons Supporting This Determination:
(See 617.7(a)-(c) for requirements of this determination)

This project was conducted as a SEQR coordinated review. The applicant has supplied an Environmental Assessment Form and the Planning Commission has or has caused to complete Part 2 of this checklist.

The action is for Special Use Permit to operate a motor vehicle repair facility in the existing ±2346 square foot tenant space. The applicants currently own and operate Action Transportation and are seeking approval to operate motor vehicle repair facility in the existing ±2346 square foot tenant space of a commercial building. Repairs will be minor in nature and primarily for the existing fleet vehicles. No body work or major repairs will occur on-site. The Rotterdam Zoning Board of Appeals granted a variance for the number of parking spaces required on February 11, 2020.

After a review of the application materials, Environmental Assessment Form, and comments received on this proposal, the Planning Commission of the Town of Rotterdam has determined that this proposal will not have a significant adverse impact on the environment.

The Planning Commission has considered the following criteria to determine if this proposal has significant adverse impacts on the environment:

(i) a substantial adverse change in existing air quality, ground or surface water quality or quantity, traffic or noise levels; a substantial increase in solid waste production; a substantial increase in potential for erosion, flooding, leaching or drainage problems;
(ii) the removal of destruction of large quantities of vegetation or fauna; substantial interference with the movement of any resident or migratory fish or wildlife species; impacts on a significant habitat area; substantial adverse impacts on a threatened or endangered species of animal or plant, or the habitat of such a species; or other significant adverse impacts to natural resources;
(iii) the impairment of the environmental characteristics of a Critical Environmental Area.
(iv) the creation of a material conflict with a community's current plans or goals as officially approved or adopted;
(v) the impairment of the character or quality of important historical, archaeological, architectural, or aesthetic resources or of existing community or neighborhood character;
(vi) a major change in the use of either the quantity or type of energy;
(vii) the creation of a hazard to human health;
(viii) a substantial change in the use, or intensity of use, of land including agricultural, open space or recreational resources, or in its capacity to support existing uses;
(ix) the encouraging or attracting of a large number of people to a place or places for more than a few days, compared to the number of people who would come to such place absent the action;
(x) the creation of a material demand for other actions that would result in one of the above consequences;
(xi) changes in two or more elements of the environment, no one of which has a significant impact on the environment, but when considered together result in a substantial adverse impact on the environment; or
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The Planning Commission has also considered the reasonably related long-term, short-term, direct, indirect and cumulative impacts, including other simultaneous or subsequent actions, which are:
(i) included in any long-range plan of which the action under consideration is a part;
(ii) likely to be undertaken as a result thereof; or
(iii) dependent thereon.

3. The significance of a likely consequence (i.e., whether it is material, substantial, large or important) has been assessed in connection with:
(i) its setting (e.g., urban or rural);
(ii) its probability of occurrence;
(iii) its duration;
(iv) its irreversibility;
(v) its geographic scope;
(vi) its magnitude; and
(vii) the number of people affected

The environmental effects of the above described action were discussed at the Planning Commission Public Meeting held on March 10, 2020 at the Rotterdam Town Hall, 1100 Sunrise Boulevard, Rotterdam, NY 12306. Adoption of this negative declaration was moved by XXXXXXXXXXX, seconded by XXXXXXXXXXX, and approved by the Rotterdam Planning Commission.

John Denny III
Planning Commission Chairman
PART III

SPECIAL USE PERMIT/SITE PLAN APPLICATION
General Information

Legal Owner’s Name: **Dominic Leone**
Mailing Address: 502 Harlem St
City: Schenectady State: NY Zip: 12306
Daytime Phone: __________________________ Fax: __________________________

If applicant is not the owner, include the written owner authorization form below (See Part IV) designating the contact to serve as representative. **(Lessee)**

Owner’s Designated Contact: **Ray Lasty, Dominic Leone**
Mailing Address: 2557 Hanover St
City: Schenectady State: NY Zip: 12303
Daytime Phone: 518-391-5196 Fax: __________________________

Project/Proposal Site Area (Acres or sq. ft.): 1,200 SF
Assessor Tax Parcel No.(s) of Proposal Site: 49.17-7-9.21

Adjacent Area Owned or Controlled (Acres or sq. ft.): 0.0 Acres
Assessor Tax Parcel No.(s) of Adjacent Land Owned or Controlled: 49.17-7-9.21 (2 Bedco St)

Street Address of Proposed Site (if any): 502 Harlem

Describe Existing Use(s) on Proposed Site (Such as buildings, well, sewer drainfield and others):

Existing Zoning Classification: **I-1 Light Industrial**

School District: **Mahanosen** Fire District: 2

Water Supply: **5**
LEGAL INFORMATION

Location of Proposal Site (General description by which direction and how far from roads and intersections and other community features): 502 Harlem St.

Name of public road (s) providing access: Consulus Avenue

Width of property fronting on public road: 80'

I have attached a legal description of the proposed site: ☒ yes ☒ no

I have attached a deed of the proposed site: ☒ yes ☒ no

I have attached a lease agreement of the proposed site (if applicable): ☒ yes ( ) no

Purpose for the requested site plan approval (and special use permit if applicable):

Lease 502 Harlem St/ Repair Shop

Auto Transportation Will Service Its Own Vehicles (approximately 30 vehicles) and Service Outside Customers When They Have Time

Cars Will Not Be Parked Outside The Building

Is the proposed use to be temporary or permanent? If temporary, please explain:

Permanent

FILL OUT FOR SPECIAL USE PERMIT APPROVAL ONLY (§ 270-167)

(1) Is the establishment, maintenance or operation of the special use detrimental to or endanger the public health, safety, morals, convenience or general welfare? If not, please explain:

(2) Is the special use injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, and does it substantially diminish and impair property values within the neighborhood? If not, please explain:

(3) Does the establishment of the special use impede the normal and orderly development and improvement of the surrounding property? If not, please explain:

(4) Have adequate utilities, access roads, drainage and/or necessary facilities been or are being provided? If yes, please explain:

(5) Have adequate measures been or will be taken to provide ingress or egress as to minimize traffic congestion in the public street? If yes, please explain:

If you have any additional comments, please attach them on a separate sheet of paper.
PART IV

SURVEYOR/ARCHITECT/ENGINEER VERIFICATION

I, the undersigned, a licensed land surveyor, architect, and/or engineer, have completed the information requested. The legal description has been prepared by me or under my supervision in accordance with the requirements of the Town of Rotterdam regulations and the laws of the State of New York.

Signed: ___________________________  Date: ______________________

Address: __________________________

Phone: ___________________________

FAX: ____________________________

License Number: ___________________

PLEASE AFFIX SURVEYOR/ARCHITECT/ENGINEER SEAL HERE
PART IV

LEGAL OWNER SIGNATURE
(Signature of legal owner(s) or representative(s) as authorized by legal owner)

I, the undersigned, swear or affirm under penalty of perjury that the above responses are made truthfully and to the best of my knowledge.

I further swear or affirm that (I)(we) (am)(are) the owner(s) of record of the area proposed for the previously identified land use action, or, if not the owner(s), attached herewith is written permission from the owner(s) authorizing my actions on his or her behalf.

Name: Dominick Leone
Address: 670 Consalus Ave, Schenectady, NY

Date: 8/15/19
Phone: 518.855.2989
Zip: 12306

Signature of Applicant or Representative

Date: 8/15/19

Signature of Applicant or Representative

Date: 8/15/19

STATE OF NEW YORK)
COUNTY OF SCHENECTADY)

ss: 

SUBSCRIBED AND SWORN to me this 15th day of August, 2019

NOTARY SEAL

JEANNE E. LAMORA
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 01DU6316077
Qualified in Clinton County
Commission Expires January 20, 2023

Notary Public in and for the State of New York
My appointment expires: January 30th, 2023

PART V

(To be completed by the Public Works Department)

Date Submitted: ___________________________ Staff: ___________________________

Total Fees: ___________________________ Receipt #: ___________________________

File #: ___________________________ Complete Application: ___________________________

Rotterdam Site Plan/Special Use Permit Application
4. Dominic Leone, Jr. – 502-504 Harlem Street, Rotterdam, NY, Tax Map #49.17-7-9.21 located in the Light Industrial (I-1) Zoning District. Petitioner respectfully requests that he be granted variances as prescribed in the Town of Rotterdam Zoning Code being Chapter 270-149 entitled “Off Street Parking.” Chapter 270-149(a) “General requirements” states: “For all buildings and structures erected and all uses of land established after the effective date of this chapter, accessory off-street parking shall be provided as required by Table I as related to specific use or occupancy, except where additional parking may be required as a condition for the issuance of a special permit as provided in Article XIX of this chapter. The applicant is proposing to operate a motor vehicle repair facility in an existing 2,346 square foot tenant space. Based upon the calculations from Table I the repair facility requires 19 parking spaces. The applicant is proposing 8 parking spaces inside and 6 outside (14 total) which would require a variance of 5 spaces.

a. Mark Blackstone representing this application.

b. Representative addressed five (5) criteria to the Board.
Mr. Blackstone explained his involvement in this property dates back to 2003 when he represented Mr. Leone for the addition. The Planning Commission placed restriction on the property for no outside storage of vehicles. Now requesting vehicle storage and providing spaces for parking. The volume of work for Action Transportation is not enough to keep Action Auto Repairs full time so Action Auto Repair would like to do other minor repairs inside the building. The minor repairs would be repairs like oil changes and tune ups. Outside there is room for six (6) spaces which he does not anticipate needing. There are eight (8) cars that potentially could fit inside three (3) of which they would like to bank. Currently, there is a break room and storage areas in those spots with partitions but if needed those areas could be three (3) more spots. They do not feel those three (3) spots will be necessary. The repair facility is a one (1) man operation. Action vehicles are kept off site so there will not be any long term storage of vehicles. The zoning code parking requirements may be applicable in many situations but not in this situation. It is a unique situation. It is not an undesirable change to the character of the neighborhood as they cannot store vehicles outside. There is only one (1) employee and he is hardly there. It cannot be achieved by other means. The zoning code as it relates to parking needs to be fine-tuned with the Town Board. No environmental changes or impacts. There is screening provided to the adjoining neighbors. It is a unique situation so to some degree it is self-created but to another degree it is not.

c. This proposal is not exempt from referral to Schenectady County Planning pursuant to Memorandum of Understanding – April 2011.
*Schenectady County deferred to local consideration.
d. Questions/comments from the Board.
Mr. Bonacquist stated it amazes him how they keep the cars moving at the operation on Hamburg Street. He did not realize how many vehicles there were.

Mr. Joseph VanPatten, part owner of Action Repairs stated he has been operating at 502 Harlem since August and has not had any complaints. He needs to offset the cost of running the facility by doing the oil changes and tune ups. The vehicles will be in and out. The area has auto repair facilities in every direction. Mr. Leone gave permission to park vehicles on another property he owns in the area. Mr. Comenzo stated he should get the agreement for the Planning Board.

Chairman Eats stated they have to base decision on how the code is written now but there should be changes to the ordinance. He thought it was just based on the area for the cars and did not know it was based on the entire building including the other side on the building. Chairman Eats stated the existing vehicle currently located outside the building is waiting for an insurance adjuster.

Stephanie DiLallo Bitter stated for SEQR purposes the Board will view this as a Type II reuse of building under SEQR 617.5 Item 18. The Planning Board is reviewing the Special Use Permit as an Unlisted Action so this Board requires no further review.

e. No Public Comments.

f. Motion to APPROVE with the following condition:

1. Action Auto Repairs shall be utilized primarily for Action Transportation vehicles only and repairs to public vehicles shall be nominal and include only minor repairs such as oil changes and tune-ups.

2. Further sub-leasing of the tenant space to another company and not permitted and will require further review of both the Zoning Board of Appeals and the Planning Board.

   Mr. Melillo

   g. Seconded: 

      Mr. Bonacquist

   h. Approved unanimously:

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**ZONING COORDINATION REFERRAL**

**SCHENECTADY COUNTY DEPT. OF ECONOMIC DEVELOPMENT & PLANNING**

Recommendations shall be made within 30 days after receipt of a full statement of the proposed action.

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<tr>
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<th>TO:</th>
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<td>(fax) 382-5539</td>
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<tr>
<td>Schenectady County Department of Economic Development and Planning</td>
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<tr>
<td>Schaffer Heights, 107 Nott Terrace, Suite 303</td>
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<td>Zoning Code/Law Amendment</td>
<td>September 3, 2019</td>
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<td>Zoning Map Amendment</td>
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<td>Subdivision Review</td>
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**SUBJECT:** Action Repair Inc. - 502 Harlem Street. The applicant requests a Waiver of Site Plan/Special Use Permit. Public Hearing review to operate an auto repair shop in 2,346 square foot existing building on a 11,200 square foot parcel.

**REQUIRED ENCLOSURES:**

1. Public hearing notice & copy of the application.
2. Map of property affected. (Including Tax Map I.D. number if available)
3. Completed environmental assessment form and all other materials required by the referring body in order to make its determination of significance pursuant to the state environmental quality review act.

1. This zoning case is forwarded to your office for review in compliance with Sections 239-l, 239-m and 239-n of Article 12-B of the General Municipal Law, New York State.

2. This material is sent to you for review and recommendation because the property affected by the proposed action is located within 500 feet of the following:

- the boundary of any city, village or town;
- the boundary of any existing or proposed County or State park or other recreation area;
- the right-of-way of any existing or proposed County or State parkway, thruway, expressway, road or highway;
- the existing or proposed right-of-way of any stream or drainage channel owned by the County or for which the County has established channel lines;
- the existing or proposed boundary of any County or State-owned land on which a public building or institution is situated;
- the boundary of a farm operation located in an agricultural district, as defined by Article 25-AA of the agriculture and markets law. The referral requirement of this subparagraph shall not apply to the granting of area variances.

**SUBMITTED BY:**

Name: Peter Comenzo

Address: 1100 Sunrise Boulevard Schenectady, NY 12306

E-mail: pcomenzo@rotterdamny.org

Title: Sr. Planner

Phone: 518-355-7575 Ext 338

Date: 8/29/19

**RECEIVED**

SEP 09 2019

TOWN OF ROTTERDAM
PUBLIC WORKS
PLANNING & ZONING COORDINATION REFERRAL

Case No. R-18-19

SEP 03 2019

Applicant Action Repair, Inc.

Municipality Rotterdam

Referring Officer Peter Comenzo

Considerations: Special use permit to operate a auto repair shop in an existing 2,346 SF building. A total of two outside parking spaces are identified.

RECOMMENDATION

Receipt of zoning referral is acknowledged on September 3, 2019. Please be advised that the undersigned Commissioner of Economic Development and Planning of the County of Schenectady (having under the Schenectady County Charter the powers and duties of a County Planning Board) has reviewed the proposed action stated on the opposite side of this form and makes the following recommendations:

☐ Approve of the proposal.

☑ Defer to local consideration (No significant county-wide or inter-community impact)

☐ Modify/Conditionally Approve. Conditions:

☑ Advisory Note:

Applicant should identify for the Town how parking of vehicles awaiting repair will be handled. It appears that the two parking spaces identified on the plans may not adequately serve the proposed use.

☐ Disapprove. Reason:

*A recommendation of approval should not be interpreted that the County has reviewed all local concerns and/or endorses the project; rather the proposed action has met certain County considerations.

Section 239-m of the general Municipal Law requires that within 30 days after final action, the referring body shall file a report of the final action it has taken with the Schenectady County Department of Economic Development and Planning. A referring body which acts contrary to a recommendation of modification or disapproval of a proposed action shall set forth the reasons for the contrary action in such report.

9/3/2019

Ray Gillen, Commissioner
Economic Development and Planning
3. Action Repair Inc. – 502 Harlem Street. The applicant requests a Waiver of Site Plan/Special Use Permit Public Hearing review to operate an auto repair shop in ±2,346 square foot existing building, on a ±11,200 square foot parcel.

Mr. Leone: Hi, I'm Dom Leone and I own the building and this is Jim (James Moloney) and Joe (Joseph VanPatten) and they are going to be renting from Action.

Chairman Denny: What would they like to do there?

Mr. Moloney: First we wanted to thank you for letting us appear today in front of you. Dominic led us to what we needed to do. We are a medical transportation company in Rotterdam on Hamburg Street. I'm the operations manager. We have gotten so big that our repair costs have gone through the roof and we're actually going outside of Rotterdam to do our repairs and the bills are getting out of control. So, we partnered with Joey and he's willing to run a garage. We just want to run a garage right there on Harlem Street so we can bring our repairs in house to save money. That is basically what we are doing. It's a quiet place. It's a good looking building and Joey can speak a little bit more on what is going on in the building if we're allowed to operate.

Mr. VanPatten: I do want to run a licensed automotive repair shop out of there and bring some side work in/outside work in to offset some of the cost of operating and such. That is what we are looking to do there.

Chairman Denny: You are going to be working on your own cars?

Mr. Moloney: Right.

Chairman Denny: And if a person that needs to come in and get an oil change on his car?

Mr. Moloney: Yes. We have a 23 car fleet in Rotterdam for medical transportation, not taxis so we just basically go to hospitals, doctor appointments and that fleet expense is so high on my end, we are just looking for a way to find a quick fix and also make a little extra money on the side by applying for a NYS Work Permit, but our first step is with you.

Chairman Denny: Twenty-three (23) car fleet, where are they going to be parked?

Mr. Moloney: They are parked at 2557 Hamburg Street and that is where I have been for the last four (4) years.

Chairman Denny: We are concerned about how many cars might be...

Mr. Moloney: We are going to keep it down. We are not going to have cars in the street. There is parking for three (3) or four (4) vehicles...

Mr. VanPatten: Parking for three (3), maybe four (4).

Mr. Moloney: My plan is in the future the car is not making money if it's not out in the street. So, we are going to have a spare car in the driveway there so when one of my fleet drivers comes in with a Volkswagen, he immediately leaves. When that car is repaired Joe will make that phone call. It's not going to be a place where cars are going to pile up. The object is to get them in and get them out and also make sure that driver when he drops off, he's not hanging around the garage, it's not any place for him to be, he needs to be out working. It's all going to be done inside. There is AC inside, heat inside, the garage door is not going to be open. Basically, the way Joey explained it, it's a closed environment. We are going to follow every other rule that we need to.

Chairman Denny: Let me poll the Planning Commission to see if they have any questions for you. Mr. Yuille?

Mr. Yuille: I have to tell you I'm concerned about this project. I know the building and you're only taking half of it, the right side? You have a tenant on the other side?
Mr. Leone: That’s correct.

Mr. Yuille: What’s the tenant on the other side?

Mr. Leone: It’s like an internet business storage.

Mr. Yuille: So, he doesn’t have a lot of people coming in and out.

Mr. Leone: He’s in and out. Basically, I never even see him.

Mr. Yuille: I agree with you that it’s a nice building and you’ve kept it up nice over there, but I’m not sure that’s the right fit for you in that building. There are some buildings where your dad owns some on Consalus and Mr. Rosetti had a building over there too...

Mr. Leone: I’m right next door to him. What it is, when they pull the car in, it’s going to be in the building and then it’s done. He’s not going to have any other cars outside, basically.

Mr. Yuille: He can’t, he’s only got two (2) parking spaces.

Mr. Leone: Well there’s three (3).

Joe: We will not use three (3).

Mr. Leone: One in front of the door and there are two (2) on the left side.

Mr. Yuille: I am concerned about that. In the description it sounded like you were going to try and store those vans inside that building.

Mr. Moloney: If you look, we are at 2557 Hamburg Street, the corner of Hamburg and Fifth. We have 19 spaces there. We are also looking for another spot to buy a lot to keep the cars. The majority of my drivers all take their cars home. They are on GPS and they take them home. You might see between six (6) and eight (8) on Hamburg Street but the rest go home with the employee and there are two (2) reasons for that. One I got a better chance of them coming to work because the car is there and the second one is, they don’t leave their car in my lot for the plow because then in the morning at 6 o’clock when I’m answering calls, I have a guy with a plow that wants me to move vehicles. So, the object is not to have the vehicles.

Mr. Yuille: You’re an on call type situation?

Mr. Moloney: They are not on call...

Mr. Yuille: I mean your business, you get calls in.

Mr. Moloney: We are open from 7 a.m. to 7 p.m. At night time there will be no movement and I do understand your concerns and every concern that you have we are going to try to address. The biggest thing is cars in the lot aren’t doing any good for me.

Mr. Yuille: I have been in the building and some of the people that were there before drove Mr. Viscusi crazy when he lived there.

Mr. Leone: They are gone now.
Mr. Moloney: If you look up our business in Rotterdam there hasn’t been any issues on Hamburg Street. It’s not a traditional taxi company. It’s medical. We are dealing with the elderly and we also have a couple wheelchair vans, a couple of stretcher vans and however that’s a good point that I said that. Those vehicles are a little bigger and they will not be serviced on Harlem Street. They are serviced at Adirondack up on Morris Road because it’s too big of a vehicle. A vehicle like that cannot be serviced by us. We can only do the Volkswagens, Jetta’s and a couple of mini vans. They are not loud vehicles, but I can promise you they are not going to be on that lot because my job is at that risk.

Mr. Yuille: It’s going to be a tight fit there. You are going to have to jockey them in and out to get them in there.

Mr. Moloney: That’s correct.

Mr. Yuille: And you said there’s no parking on the street?

Mr. Moloney: There will be no parking by Action on the street. There will be none. I believe Dominic is going to be taking care of the plowing. We are going to make sure there are no vehicles in the way so there is an entrance way and whatever else we can do to please the board we are willing to do. Whatever suggestions you have, we’re willing to follow.

Mr. Yuille: The one concern that I had, he mentioned that he wanted to run a registered shop which could be good for you because he could inspect your vehicles there, but when taking on additional work you get into a job that comes in for a small job and then it ties up a spot.

Mr. VanPatten: Then it stays inside.

Mr. Moloney: We have one lift that we are looking to put in. How many spots?

Mr. VanPatten: Maybe three (3) or four (4).

Mr. Moloney: Again, that’s not on my plan and that’s not using people wisely. They need to be working to get the job done. If it’s something that needs an extended period of time, I do have Adirondack as an alternative because they have been taking care of fleet cars it’s just that the bills are too high. We want to bring them in. The big jobs, they are Volkswagens and it’s not like putting a car together and it actually goes to the dealer when it’s something really big. We’re looking to eliminate oil changes. We change our tires twice a year where I can bring it in house and change tires and I can do three (3) cars a day versus doing 20 cars at Adirondack and the bill is through the roof. It’s just so much easier, but anything big and I don’t know a lot about mechanics, but the jobs that are going to hold a car there are above us.

Mr. Yuille: So, you are just doing routine maintenance?

Mr. Moloney: We want to do maintenance on the fleet. They are brand new cars and they need oil changes, brakes. We do a lot of mileage so we need brake pads and rotors and nothing big. You will not see any tranny jobs. We don’t rebuild motors, we just buy another car. We are really trying to keep it down to where it’s in and out.

Mr. Yuille: That’s all, Mr. Chairman.

Chairman Denny: Mr. Calder?

Mr. Calder: I have the same concerns as Mr. Yuille is the parking and I know that you mentioned that you want to offset some of your expenses by doing outside work and that is going to tie some parking spots up. I don’t know what kind of
outside work you’re going to take but if you are not going to do nothing more than oil changes and grease jobs and change tires, that’s one thing, but if you get into automotive stuff you are going to have a car sitting in the garage and car sitting outside or people want to drop their car off, you have to have a place for them to drop their car off to get work done if you are going to work on it the next day.

Mr. Moloney: That is correct. That is why our plan is to not do anything other than maintenance. Someone needs an oil change, a radiator flush, it needs to be a job that’s in and out, maybe an hour and half to two (2) hours. If we get this far as to have the outside license, we are going to have what we do, what you’re willing to do for outside work, you’re going to have your fees/rates, we are not going to have anything on there that is going to keep cars there for two (2), three (3) days. We want the cars in and out and it’s a little bit of an offset. Maybe some of the employees may want their oil changed. We are not doing any big repairs because we are not built for it. We’re built for maintenance of overheats, change of battery and tire, we do not want to do any heavy machinery work.

Mr. Calder: And you are not going to do any work outsides, none?

Mr. VanPatten: No.

Mr. Moloney: None outside in the driveway, no sir.

Mr. VanPatten: Unless it involves jump starting a vehicle to get it into the garage, that’s it.

Mr. Moloney: No work, no mechanic, no hoist. I have driven by garages in that area and they are probably grandfathered in, but there is literally cars there in the grass with the hoods up. It’s not going to be anything like that.

Mr. Calder: Unfortunately, Hungry Hill has been like that for a very long time.

Mr. Moloney: Well hopefully we can set a trend.

Mr. Calder: The only problem is, sir and I appreciate what you are doing tonight and I understand trying to cut costs, once you get started and get rolling here, we don’t come an inspect you. We kind of have to feel our way through this. I’m uncomfortable with the parking, myself, I got to be honest with you. That is all I have, Mr. Chairman.

Mr. Leone: If he has to have a car left outside, I have a garage around the corner. I have the room and it’s within walking distance so he could just walk over and swap a car out, if he has to.

Mr. Calder: Number of employees that you will have over at the garage?

Mr. Moloney: At the garage is me and Joey and the owner that is not onsite, basically, but right now, Joey. That’s it. I work on Hamburg Street.

Mr. Calder: You said the hours of operation were 7 to 7?

Mr. Moloney: Joey’s hours are Joey’s hours.

Mr. VanPatten: I’m 49 years old. I want to do 8 to 4 or 8 to 4:30 and out the door. That’s what I’m looking to do. No long days. I’m past all that.

Mr. Calder: Mr. Chairman, I’m finished.

Chairman Denny: Mr. D’Alessandro?
Mr. D'Alessandro: I'm not going to bring up the parking issue again. How many bays inside?

Mr. VanPatten: There is one bay but there's enough room for two (2) lifts. It's deep.

Mr. D'Alessandro: You answered the majority of my questions. I'm all set, Mr. Chairman.

Chairman Denny: Mr. Collins?

Mr. Collins: This is a tough one and we kicked this around in caucus. It's a tough decision and it's not that we don't trust you and we've had problems before and I know everything will be addressed but it's one of those when you're on the fence, which way do you go. That is all I have.

Chairman Denny: Mr. DiLallo?

Mr. DiLallo: I hear my fellow commission members comments and just listening to the gentlemen here, I think they are very sincere as he wants to run, what he wants to do. He's not going to clog the street up with cars and he's going to be in and out with these people. I trust him though. That's all I have.

Chairman Denny: Mrs. Flansburg?

Mrs. Flansburg: In looking at your site on Hamburg Street, it's well kept, you have lots of extra spaces out there and I would think you would carry that principle over to this side. I don't know how it would work because according to our notes automobile repair shop requires eight (8) spaces per 1,000 and that would require 19 spaces and it's not even close. So, I do not know how that would work.

There was a notation here to make sure there was no outside storage of vehicles, trailers or other materials that would be permitted there. I kind of agree where Mr. DiLallo is, but I don't know how that sets it up going forward. Like how you get there with just having the three (3) parking spaces.

Mr. VanPatten: Like Mr. Leone stated, he has additional parking around the corner on his site.

Mrs. Flansburg: And you have your site on Hamburg Street, it sounds like the things that you would be doing is either scheduled maintenance...

Mr. Moloney: It is.

Mrs. Flansburg: So, you're not going to have multiple vehicles there at one time.

Mr. Moloney: If the cars are there, I'm not doing my job. They need to go in, they need to come out and they need to be maintained and not wait until something, if you look at some of the vehicles that transport in the area, I'm sure you've seen them all different kinds, our goal is to make sure that we don't wait until it breaks. We want to fix it before it breaks which is damage control.

Mrs. Flansburg: The fact that you are limiting yourself in doing the smaller, the maintenance only or smaller level repair jobs and you have another facility that you are already using for larger vehicles and the larger involved repairs, I just don't know how that works logistically.

Mr. VanPatten: Basically, what he does is he will call me up and ask me what I have going on at the shop right now. I will tell him I have this car here that I'm working on or I'll tell him I don't have anything over here and then he says that he needs to send a car over because a window is not going up and down or that I have two (2) for an oil change. It's
basically scheduled maintenance because I want them in and out. I need room to move. I don’t want a bunch of cars inside the shop.

Mr. Moloney: I don’t know if it’s out of order to ask, is there anything called like a probation period or anything that you can do? Is that something you’ve ever done where you can see how we do?

Chairman Denny: No.

Mrs. Flansburg: We are either permitting it or not permitting it.

Mr. Collins: You guys really seem sincere and like you say if you have new cars you have a standard maintenance schedule you want to perform.

Mr. Moloney: The Hamburg Street office has been there and our vehicles are clean and we’re not reported to the Chamber of Commerce and we are really trying to do something different.

Chairman Denny: Is there anyone in the audience that would like to comment? Please state your name for the record.

Mr. Guidarelli: Joe Guidarelli. So, my question is, the business is an extension of your business, it’s still a separate business so I’m looking at this, I’m on the Town Board and this is all new to me and it’s part of why I’m here. So, are we approving an automobile repair shop or an extension of your business?

Mr. VanPatten: An automobile repair shop.

Mr. Guidarelli: That is what I was questioning, yes. Does it fall under the guides of an automobile repair shop or an extension?

Chairman Denny: I’m going to have our attorney address this project.

Mr. Tingley: This is a special use permit public hearing. Did you close the public hearing yet or no?

Chairman Denny: It’s not really a public hearing.

Mr. Tingley: It is a public hearing. So, go ahead and take any more members of the public and then I can comment.

Chairman Denny: Is there anyone else in the audience that would like to make comments in the public hearing? No comments? I would like to close the public hearing. We are at that point in time.

Mr. Tingley: This is a special use permit and the notes that were with the agenda item indicate that there is a certain number of parking spaces required. I think the Planning Commission has a certain comfort level, it seems with the presentation tonight as why you don’t need that many spaces. Unfortunately, from a legal perspective, we have to make sure that the action that the Planning Commission is taking is proper under the zoning code before it’s taken. So, my recommendation of the Planning Commission tonight is we allow until the next meeting for me to research this particular issue to make sure that it is something that the Planning Commission can act on legally without any further approvals. That would be my recommendation, but it’s only a recommendation.

Chairman Denny: We can table this project to our next meeting.
Mr. Moloney: Mr. Chairman, can I ask one more question? The part that I heard that may change it is the extension and that was a good question because I have two (2) options and it might make it easier, I'm not sure, but if it was an extension and we didn't do outside work, would that make a difference? I see that you have to go through a lot of things to do what you have to do.

Chairman Denny: The amount of area you're renting has to have so many parking spaces. That still exists. That's not going to go away.

Mr. Tingley: Quite frankly, I need to look at that issue and come to a recommendation for the board as to how it can proceed. Sometimes I make recommendations and the Planning Commission chooses to go in a different direction. Again, this is a recommendation.

Chairman Denny: So, what we are going to do is table this to our next meeting.

Mrs. Flansburg: I will make a motion to table it until the attorney has an opportunity to research it.

Chairman Denny: Mrs. Flansburg made the motion. Do I have a second?

Mr. DiLallo: I'll second the motion.

Chairman Denny: Mr. DiLallo seconds the motion. Are there any questions? Please call the vote.

Marlo Carter: Mr. DiLallo?

Mr. DiLallo: Yes.

Marlo Carter: Mr. Yuille?

Mr. Yuille: Yes.

Marlo Carter: Mr. Collins?

Mr. Collins: Yes.

Marlo Carter: Mrs. Flansburg?

Mrs. Flansburg: Yes.

Marlo Carter: Mr. D'Alessandro?

Mr. D'Alessandro: Yes.

Mr. Calder?

Mr. Calder: I think that's your best bet, having us table it. I think there are a few of us up here that would probably deny your request tonight, that's my feeling.

Mr. Moloney: I appreciate your time and it means something and that's your process and we have to respect it, and we will.
Mr. Calder: I vote yes.

Maria Carter: Chairman Denny?

Chairman Denny: Yes.

Motion carried.
2. Action Repair Inc. – 502 Harlem Street. The applicant requests a Waiver of Site Plan/Special Use Permit Public Hearing review to operate an auto repair shop in ±2,346 square foot existing building, on a ±11,200 square foot parcel.

Chairman Denny: I’m going to have our attorney address the parking on this project.

Mr. Tingley: So, at the last meeting, I indicated that I would be looking at the parking issue. Zoning is a local law matter so you might go to some towns where the law authorizes the Planning Commission to set the parking in accordance with what they think is required. That is all over the place in New York State. There are also some towns where the zoning law sets the parking and the Planning Commission doesn’t have the jurisdiction to allow for less. Unfortunately, my review of this town’s zoning code is that the Planning Commission is limited by the number of parking spots that they table and the zoning code requires. So, it’s my opinion and it’s my legal opinion, that’s all it is, is that the Planning Commission doesn’t have the authority to approve the special use permit without meeting the parking requirements.

So, where does that leave you if the Planning Commission agrees with me, that leaves you with two (2) options, one you can ask the Town Board to amend the zoning to allow the Planning Commission the flexibility in a special use permit review to address the parking issue, not just for your project, but for all projects. The other option is to seek an area variance from the Zoning Board of Appeals. If you want to pursue those routes, I suggest you discuss it with the Town Planner. Again, I’m just the attorney up here and I’m not the Planning Commission and I don’t make the decisions, but that is my legal opinion.

Chairman Denny: I’m going to poll the board and see what their thoughts are on this parking problem. Mr. Yuille?

Mr. Yuille: I agree with the attorney. I looked at the buildings that are along Consalus Avenue and some of the other places along there and they have cars all around the building. Unfortunately, your building you can’t even get along side it or behind it and with only three (3) parking spots and I believe 19 are required for the size of that building that I agree it doesn’t fit. That is all, Mr. Chairman.

Chairman Denny: Mr. Calder?

Mr. Calder: I also agree with the attorney. This is the reason we have him here and I think if we went ahead right now after his advice, I think that would be a mistake. If we’re going to do it, we need to do it right and if that is the system, it’s the system that I would follow. To be very honest with you I have some issues with the project myself. I wish you guys could come up with more parking. That’s a beautiful spot up on the hill for automotive shops and such, but two (2) or three (3) parking spots in my estimation doesn’t work. That is really all I have, Mr. Chairman. Thank you.

Chairman Denny: Mr. D’Alessandro?

Mr. D’Alessandro: I agree with Mr. Tingley. I think if we open the door on this it’s going to be a problem with future projects. That’s all I have, Mr. Chairman.

Chairman Denny: Mr. Collins?

Mr. Collins: I agree. We appreciate what you are trying to do up there, but we really can’t go against what we are bound by law to do because then we get ourselves into a sticky situation. Like Mr. Tingley stated, you can reach out to the zoning and work with them and come back. It’s just a matter of putting in the time to try to figure something out. It’s not like we are against your project, we’d love to see you up there, but sometimes our hands are just tied and we don’t really have that much flexibly.

Chairman Denny: Mr. DiLallo?

Mr. DiLallo: No comments.
Chairman Denny: Mrs. Flansburg?

Mrs. Flansburg: Piggy backing off of the others which I had spoken to at the last meeting, I appreciate your project and I like what you are trying to do and I just couldn’t figure out how we could do it with the parking limitations and our attorney has informed us that there is not really an option for us but at least there are two (2) avenues that you can pursue to try to get it back before us again.

Chairman Denny: If you could get a zoning variance for the parking, that would help you as part as being able to use a spot for the garage.

Mr. Tingley: In light of that, there’s an issue that remains on the board which is the public hearing was closed at the last meeting. This board has only 62 days to decide an application once the close of public hearing occurs. In light of the discussion that just occurred if that 62 days is not extended you may find that the decision that comes from the board may not be favorable to your application. So, you have an option to consent to extend the board’s time to decide it until you decide what you want to do and see if the Zoning Board will give you an area variance or if the Town Board will authorize the Planning Commission to adjust the parking issue. So, you can consent to extend that time or if you want to hold the board to the 62 days, then just be aware that you may get a decision which you unfortunately may not like.

Mr. Leone: We would probably like to try to get a zoning change or something like that.

Mr. Tingley: Okay so my suggestion to the board would be to formally request that the applicant consent to extend the time without date pending the Zoning Board’s decision or the Town Board’s decision, whatever avenue he chooses to pursue.

Are you in agreement with that?

Mr. Leone: Yes.

Chairman Denny: I will entertain a motion to extend the date.

Mr. Collins: I will make a motion to extend the date for this applicant so that he can pursue other avenues to push this project forward.

Chairman Denny: Mr. Collins made the motion. Do I have a second?

Mr. D’Alessandro: I’ll second the motion.

Chairman Denny: Mr. D’Alessandro seconds the motion. Are there any questions? Please call the vote.

Marlo Carter: Mr. DiLallo?

Mr. DiLallo: Yes.

Marlo Carter: Mr. Yuille?

Mr. Yuille: Yes.

Marlo Carter: Mr. Collins?

Mr. Collins: Yes.
Marlo Carter: Mrs. Flansburg?

Mrs. Flansburg: Yes.

Marlo Carter: Mr. D’Alessandro?

Mr. D’Alessandro: Yes.

Marlo Carter: Mr. Calder?

Mr. Calder: Yes.

Marlo Carter: Chairman Denny?

Chairman Denny: Yes.

Motion carried.

We are going to extend the date so that you can go get a zoning variance for the parking.

Mr. Leone: What would I have to do, submit the paperwork I have and all that?

Chairman Denny: You can talk to Lisa or Peter and they can give you what you need to do.

Mr. Tingley: Basically, what the Zoning Board does is it gives some relief from the restriction of the zoning law to the applicants that need it and where they can show that they should be entitled to it. Get the application forms and do all that stuff with Peter and you will be on your way.

Mr. Leone: Sounds good, thank you.
3. **Town of Rotterdam.** Report and Recommendation to the Town Board to amend Chapter 270 of the Code of the Town of Rotterdam, entitled “Zoning” to include 270-167 D (7) entitled “Parking and Signage” to allow signage for educational and religious buildings that are being repurposed for commercial/residential use.

1. Town Board referred this proposed zoning code amendment to the Planning Board for report and recommendation on February, 26, 2020.
§ 270-167 Standards for granting permits; additional requirements.

D.
Special use permits, standards, and requirements for adaptive reuse of religious and educational buildings.
[Added 6-26-2019 by L.L. No. 9-2019]
(7) Parking and signage.

(a) Parking: The Planning Board is hereby authorized to modify otherwise applicable off-street parking requirements based upon competent evidence received and deemed acceptable by the Planning Board relating to the parking needs of the proposed adaptive reuse of the former religious or educational building.

(b) Signage: The Planning Board shall determine the size and type of any signage proposed as part of the special use permit and consider location and setting in its deliberations.
RESOLUTION NO. 74.20

WHEREAS, in accordance with § 270-174 of the Rotterdam Town Code, the Town Board must, before public hearing on this matter, refer the matter to the Planning Board of the Town of Rotterdam for report and recommendation thereon; NOW

THEREFORE, UPON MOTION OF Councilmember ____________________,
seconded by Councilmember ____________________.

BE IT RESOLVED BY THE TOWN BOARD AS FOLLOWS:

SECTION 1. The Town Board of the Town of Rotterdam refers to the Planning Board of the Town of Rotterdam for report and recommendation thereon proposed Local Law of the Year 2020 under consideration by the Town Board as follows:

To amend Chapter 270 of the Code of the Town of Rotterdam, entitled “Zoning” to include §270-167 (D)(7), entitled “Parking and signage” for special use permits to allow for the adaptive reuse of educational and religious buildings.

SECTION 2. This resolution shall become effective February 26, 2020.

DATED: February 26, 2020

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LEGISLATIVE REQUEST FORM

DATE: February 19, 2020

TO: Steven Tommasone, Town Supervisor

FROM: Peter Comenzo, Sr. Planner

TITLE OF REQUEST: Refer to Planning Commission for Report and Recommendation to amend Chapter 270 entitled “Zoning”.

TOWN BOARD MEETING: February 26, 2020

Background Information: The purpose of the adaptive reuse of religious or educational buildings section is to foster the renovation and reuse of structures originally constructed for religious or educational uses which have historic, architectural, economic and cultural or other value to the Town and are at risk of becoming underutilized, vacant, or demolished.

The Town Board adopted §270-18, §270-28, §270-38 Special Uses, in the Agricultural, One Family Residential and Two Family Residential zones respectively and added Section D (1)-(7) to §270-167. “Standards for granting permits: additional requirements” on June 26, 2019.

Evaluation/Analysis: The need for signage was not addressed in these new Town Code Sections.

Recommendation(s): Refer to Planning Commission for Report and Recommendation for the addition of §270-167 D (7) (b) Signage.

Attachment/Document(s): Draft Modifications §270-167 D (7)

Compliance with Purchasing Policy: N/A

Effect(s) on Existing Law(s): Updates to Zoning Code Chapter 270

LEGISLATION WILL BE PREPARED BY: Supervisor’s Office
4. **Change of Zone/Senior Living District – Whispering Pines Senior Living Community.**

Report and Recommendation to the Town Board for the adoption of a Local Law establishing a Senior Living District and allowing for a Change of Zone for property located in Rotterdam, New York 12306, known as Tax Map Nos. 71.5-1-5.112 (2188 Helderberg), 71.5-1-7.1 (2196 Helderberg), 71.5-1-5.111 (2200 Helderberg), 71.5-1-9 (2204 Helderberg), 71.5-1-8.111 (No Address), 71.5-1-8.112 (2208 Helderberg), 71.5-1-10.21 (2212 Helderberg) and 71.9-2-21.11 (Brown’s Farm). The Town Board recommends a Change of Zone from Agricultural (A-1) to Senior Living District (SLD) for a project to be known as the Whispering Pines Senior Living Community. The Whispering Pines Senior Living Community is to generally consist of the construction of 125 single-family homes (town homes or detached), 119 independent living units, 108 memory care units, 144 assisted living units, reconfiguring the existing 18-hole executive golf course into a 9-hole executive golf course that includes a new 2,500 s.f. clubhouse and 1,300 s.f. maintenance building on ±90 acres. A total of 496 residential units are proposed and will be developed in up to four (4) phases over an estimated four (4) year period, depending upon market demands. This will be accompanied by the addition of sewer and water infrastructure and roadways, as well as stormwater management features.

1 Town Board referred this proposed zoning code amendment to the Planning Board for report and recommendation on February 26, 2020.
RESOLUTION NO. 71.20

WHEREAS, the Town Board of the Town of Rotterdam hereby reintroduces a local law creating a zoning district in the Town of Rotterdam for the project known as the Village at Whispering Pines, to be known as the Senior Living District; and

WHEREAS, the local law is the same as local law 7 of 2018 and the area rezoned from A-1 to Senior Living District on the Town of Rotterdam Zoning Map is the same; and

WHEREAS, the adoption of the reintroduced local law and the creation of the Senior Living District involves the adoption of a local law setting forth the uses permitted in the District and also amends the Town’s official zoning map setting forth the location of the District; and

WHEREAS, pursuant to the State Environmental Quality Review Act (SEQRA) the Town Board of the Town of Rotterdam has previously declared its intent to be lead agency on March 8, 2017 and on March 9, 2017 duly circulated its notice of intent to be SEQRA lead agency for the review of this Type I Action and no other involved agencies have indicated any objection to the Town Board being lead agency; and

WHEREAS, the Town Board of the Town of Rotterdam pursuant to the requirements of SEQRA, undertook scoping, reviewed and approved the Draft Environmental Impact Statement (DEIS), duly held a public hearing on the DEIS, subsequently accepted a Final Environmental Impact Statement and issued a SEQRA Statement of Findings on July 11, 2018;

THEREFORE, UPON MOTION OF Councilmember  __________________________, seconded by Councilmember  __________________________,

BE IT RESOLVED BY THE TOWN BOARD AS FOLLOWS:

SECTION 1. The Town Board of the Town of Rotterdam hereby introduces local law no. ___ of 2020, which rezones the following properties or portions thereof to a Senior Living District: Tax Map Nos. 71.5-1-5.112 (2188 Helderberg), 71.5-1-7.1 (2196 Helderberg), 71.5-1-5.111 (2200 Helderberg), 71.5-1-9 (2204 Helderberg), 71.5-1-8.111 (No Address), 71.5-1-8.112 (2208 Helderberg), 71.5-1-10.21 (2212 Helderberg) and 71.9-2-21.11 (Brown’s Farm). The local law would change the properties or portions thereof listed above from the Agricultural (A-1) Zoning District to a Senior Living District amending the zoning map to show the boundaries of the Senior Living District.

SECTION 2. The Town Board of the Town of Rotterdam hereby finds that there are no significant adverse environmental impacts from the proposed Senior Living District Local Law or the Project which were not already thoroughly evaluated in the DEIS and FEIS and hereby determines that a Supplemental Environmental Impact Statement is not necessary and the Town Board reaffirms the SEQRA Statement of Findings adopted on July 11, 2018.

SECTION 3. The Town Board of the Town of Rotterdam hereby schedules a public hearing to take place on the local law and zone map change for March 11, 2020 at 7:00 p.m. at the John F. Kirvin Government Center, Town Hall, 1100 Sunrise Blvd, Rotterdam New York 12306 and directs town staff to provide the duly required publication and mailing of the notice of the public hearing.
**SECTION 4.** The Town Board of the Town of Rotterdam hereby refers the local law and the change of zone to both the Town of Rotterdam Planning Board and to Schenectady County Planning Department as required by the Chapter 270 of the Code of the Town of Rotterdam and the NYS General Municipal Law Section 239-m.

**SECTION 5.** This resolution shall become effective February 26, 2020.

Dated: February 26, 2020

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RESOLUTION NO. 72.20

THEREFORE, UPON MOTION OF Councilmember ______________________
seconded by Councilmember ______________________

BE IT RESOLVED BY THE TOWN BOARD AS FOLLOWS:

The Town Clerk of the Town of Rotterdam is hereby directed to publish in the official newspaper of the Town of Rotterdam not less than ten (10) days prior to the date designated for the public hearing provided for by the following public notice:

TOWN OF ROTTERDAM
NOTICE OF HEARING

PLEASE TAKE NOTICE: That the Town Board of the Town of Rotterdam will hold a public hearing on Wednesday, March 11, 2020 at 7:00 p.m. at the John F. Kirvin Government Center, Town Hall, 1100 Sunrise Boulevard, Rotterdam, New York 12306 for the following purpose:

To create a new zoning classification of Chapter 270, "Zoning", Article XXXI, entitled “Senior Living District”, local law _____ of 2020.

BY ORDER OF THE ROTTERDAM TOWN BOARD
DIANE M. MARCO, TOWN CLERK

DATED: February 26, 2020
Daily Gazette: Please publish once on February 29, 2020

Town Clerk
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RESOLUTION NO. 73.20

THEREFORE, UPON MOTION OF Councilmember ___________________,
seconded by Councilmember ___________________.

BE IT RESOLVED BY THE TOWN BOARD AS FOLLOWS:

The Town Clerk of the Town of Rotterdam is hereby directed to publish in the official newspaper of the Town of Rotterdam not less than ten (10) days prior to the date designated for the public hearing provided for by the following public notice:

TOWN OF ROTTERDAM
NOTICE OF HEARING

PLEASE TAKE NOTICE: That the Town Board of the Town of Rotterdam will hold a public hearing on Wednesday, March 11, 2020 at 7:00 p.m. at the at the John F. Kirvin Government Center, Town Hall, 1100 Sunrise Boulevard, Rotterdam, New York 12306 for the following purpose:

To consider the adoption of local law ___ of 2020 establishing a Senior Living District and allowing for a Change of Zone for property located in Rotterdam, New York 12306, known as Tax Map Nos. 71.5-1-5.112 (2188 Helderberg), 71.5-1-7.1 (2196 Helderberg), 71.5-1-5.111 (2200 Helderberg), 71.5-1-9 (2204 Helderberg), 71.5-1-8.111 (No Address), 71.5-1-8.112 (2208 Helderberg), 71.5-1-10.21 (2212 Helderberg) and 71.9-2-21.11 (Brown's Farm). The town board recommends a Change of Zone from Agricultural (A-1) to Senior Living District (SLD) for a project to be known as the Whispering Pines Senior Living Community. The Whispering Pines Senior Living Community is to generally consist of the construction of 125 single-family homes (town homes or detached), 119 independent living units, 108 memory care units, 144 assisted living units, reconfiguring the existing 18-hole executive golf course into a 9-hole executive golf course that includes a new 2,500 s.f. clubhouse and 1,300 s.f. maintenance building on ±90 acres. A total of 496 residential units are proposed and will be developed in up to four (4) phases over an estimated four (4) year period, depending upon market demands. This will be accompanied by the addition of sewer and water infrastructure and roadways, as well as stormwater management features.

BY ORDER OF THE ROTTERDAM TOWN BOARD
DIANE M. MARCO, TOWN CLERK

DATED: February 26, 2020
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2/26/2020
PROPOSED LOCAL LAW NO. ___ OF 2020

SENIOR LIVING DISTRICT (SLD)

A LOCAL LAW to provide for the establishment of a Senior Living District, amending Chapter 270 of the Code of the Town of Rotterdam.

Section 1

(A) BE IT ENACTED by the Town Board of the Town of Rotterdam as follows. This local law shall be known as "No. ______ of 2020 of the Town of Rotterdam" or "Senior Living District" (hereinafter the "District" or the ("SLD")). Chapter 270 of the Code of the Town of Rotterdam is hereby amended by adding thereto Article XXXI, Senior Living District (SLD) as follows:

(B) The Zoning Code of the Town of Rotterdam as adopted July 11, 2001, codified by Local Law No. 5 of 2001, and the Zoning Map of the Town of Rotterdam as set forth therein and made a part thereof, are amended by changing from the existing zoning of Agricultural District (shown on the Town Zoning Map as A-1) and establishing the aforesaid Senior Living District as shown in Exhibit A, which District is designed to contain a Senior Living Complex with a combination of assisted living facilities, memory care facilities, independent living facilities involving apartments, town homes and single family residences, and senior services, including, health care and recreational services all only available to those who reside in the District. The uses are further defined as set forth below in Subsection B - Definitions.

(C) The area of the District consists of approximately 90 acres in the Town of Rotterdam and is identified by the metes and bounds description set forth herein in Exhibit B.

(i) All land uses, development, construction and operation of the facilities within the District shall be conducted in accordance with this legislation and the SEQR determinations adopted with this legislation.

(D) In any instances where specific permitted uses, area or height standards, development guidelines and/or review procedures specifically set forth in this SLD, as the same are specifically applicable to the District, conflict with other general provisions or requirements of the Town of Rotterdam Zoning Code, the particular provisions set forth herein shall take precedence.

(E) Definitions. Where terms are defined in this SLD and are also defined in the Town Code of the Town of Rotterdam, the definition contained herein shall apply to the SLD. In the event a term in this SLD is not defined below, but is defined in the Town Code of the Town of Rotterdam, then that Town Code definition shall apply. This SLD also incorporates by reference the laws and rules of the State of New York that license, regulate and/or govern the uses defined herein when interpreting any proposed
application to the Town of Rotterdam for the establishment of such use, with reference to the Education Law and the Public Health Law of the State of New York.

A. Legislative intent; objectives.

(1) It is the intent of these provisions establishing a Senior Living District to provide flexible use and design regulations to facilitate the development of an integrated senior living community. The Town of Rotterdam Comprehensive Plan recognizes the importance of providing safe, affordable, and accessible facilities and residences for the Town's senior population. This Article specifically encourage comprehensive developments incorporating multi-family residential units, single family homes, assisted living facilities, and recreational facilities, including but not limited to the continued operation and use of a portion of the golfing facilities.

(2) This Article recognizes that, while the standard zoning functions are appropriate for the regulation of traditional neighborhoods and land uses, the Senior Living District provides comprehensive planning for an integrated senior neighborhood. Senior citizens require unique services and specialized living quarters for elderly and retired citizens who wish to live independently, but prefer to live in a community designed to support their needs.

(3) Objectives. To carry out the intent of this Article, a senior living development shall achieve the following objectives:
   (a) Provide a varied choice of the types of environment, residential units, assisted living needs, recreational facilities, including continuation of a portion of the golfing facilities and creation of new recreational opportunities, and open space available to residents the age of 55 and over;
   (b) Create integrated senior living arrangements that allow for fulfillment of the varied needs of senior citizens in a central location without extended commuting;
   (c) Enhance the quality of living for senior citizen populations;
   (d) Increase opportunities for social interaction among senior citizen populations;
   (e) Create an efficient use of land and services resulting in smaller networks of utilities and streets and thereby lowering housing and assisted living costs for seniors;
   (f) Create a development pattern in harmony with the objectives of the Comprehensive Plan; and
   (g) Create a more desirable environment for senior living than would be possible through the strict application of other articles of this chapter.

B. Definitions:

APARTMENT
A residential living unit, including independent, assisted, and memory care units, consisting of one or more separate living spaces contained within a large building or facility that provides common amenities to the apartment unit(s) contained therein.
ASSISTED LIVING
Any entity which provides housing, meals, on-site monitoring, and personal care services in a home-like setting to adult residents.

CAFETERIA/ Food Service/Dining Rooms
An eating establishment located wholly within a common building of the independent living facilities, assisted living facilities or memory care facilities, or any senior services center designed to service the needs of on-site employees, patients, guests, and residents of the SLD. This eating establishment is not considered a retail use.

CLUBHOUSE
A building located on the golf course that may contain a locker room, pro shop, and cafe located wholly within in a common building designed to service the needs of SLD residents, on-site employees, guests and members of the public using the golf course.

ENTRANCE/GATEWAY
An area of greenspace which marks the entrance to a site and is comprised of signage, landscaping and plantings.

FITNESS CENTER
An area located in any of the facilities and/or the senior services center with the primary purpose of facilitating recreation and exercise for residents of the SLD and their guests.

GOLF COURSE
A recreational facility primarily used for the purpose of playing golf, including associated food service and staff offices. The golf course will be open to the public.

INDEPENDENT LIVING UNITS
Senior housing units that are designed for residency by seniors who are capable of living independently, in apartments, townhomes or single-family houses without the need for in-home medical, memory, or other assistive care.

MEDICAL PROFESSIONAL OFFICES AND SERVICES
An office or offices located in a common building of the senior services center of a physician, dentist, or any other licensed professional in the field of medically related services or health and wellness, such as acupuncturist, audiologist, dietician or nutritional counselor, mental health practitioners, licensed clinical social worker, therapist, chiropractor, massage therapist, medical physicist, naturopath, nurse practitioner, occupational therapist, physical therapist, ophthalmologist, optometrist, podiatrist, respiratory therapist, speech or language pathologist, osteopath, and physician assistant. Such services are provided to residents only.
MEMORY CARE
A distinct form of care that specifically caters to patients with Alzheimer's disease, dementia and other types of memory problems. Memory care units provide 24-hour supervised care within the residential facility.

OPEN SPACE
An unoccupied space open to the sky.

RECREATIONAL USES
A golf course, a network of trails, fitness center and other accessory recreational and fitness uses. All such uses will be provided solely to residents of the SDL and their invited guests with the exception of the golf course which will remain open to the public.

SENIOR HOUSING
Buildings and/or facilities which provide housing which is intended for seniors 55 years of age and over, including dormitory housing.

SENIOR SERVICES
Services available to residents and their guests including, but not limited to residential dining and full service kitchen; a fitness center; a swimming pool/spa; a therapy room; a salon; and conference/meeting rooms.

C. Permitted Uses. The following principal uses are permitted as of right, subject to site plan approval by the Planning Board, in the Senior Living District.
   (1) Principal use.
   (a) The principal use permitted in the Senior Living District shall be a Senior Living Development for residents of at least 55 years of age. A Senior Living Development may consist of the following uses:
   (i) The following residential facilities, provided that the residents are at least 55 years old;
      a. Independent living units, including multi-family or apartment units;
      b. Single family homes, including townhomes and condominiums, which shall allow for residents' children who are at least 21 years old to reside with the parent if the resident(s) requires such child's care and the arrangement is approved by the homeowners' association;
      c. Assisted living units, including studios and apartments;
      d. Memory care units, including studios and apartments;
   (iii) Independent living common areas;
   (iv) Senior services within the residential buildings; and
   (v) Recreational Uses, including but not limited to the Golf course and clubhouse, fitness center, trails and other recreational facilities;
(2) Accessory uses. The following uses shall be permitted as accessory to a Senior Living District and, where applicable, shall be provided only to residents of the District and their guests:
   (a) Utility structures and facilities;
   (b) Entrance/Gateway
   (c) Cafeterias/Food Service/Dining Rooms
   (d) Permitted signs; and
   (e) Structures and uses customarily accessory to residential and/or senior living facilities, subject to site plan approval by the Planning Board.

D. Development regulations. Projects in a Senior Living District shall be developed according to the following regulations:

(1) Bulk regulations:
   (a) Maximum number of senior living units: 496.
   (b) Maximum building height: The maximum building height shall be 60 feet. The maximum building height shall not include chimney heights, not to exceed 3 feet over a building’s highest ridge line or roof top mechanical units.
   (c) Lot area: to promote the goal of common ownership of shared open space, all single-family homes and townhomes shall be a part of an established homeowner association that shall be responsible for the operation and maintenance of all open space, utilities, and roadways. Lot area requirements in the Senior Living District are as follows:
      (i) for single family homes, the lot area may be as small as the foundation of the home;
      (ii) for townhomes, the lot area may be as small as the individual portion of such home comprising a single unit;
      (iii) for all other uses, no minimum lot area requirements shall apply.
   (d) Common open space. Not less than 40 percent of the acreage of the property shall be open space. Areas used for recreational purposes including, but not limited to, golf courses, skiing, walking trails and the like, exclusive of any areas covered by structures associated with such uses shall be considered open space. The open space lands may include significant ecological, aesthetic and recreational characteristics. Such open space may consist of wetlands and steep slopes, as well as other resources subject to local, State or federal regulations, including stormwater management areas.

E. Development Criteria.

(1) Generally. The maximum build-out of the site is set forth in the Development Plan attached hereto as Exhibit C.
(2) Development Areas. The Development Areas are shown generally on exhibit C. Area A consists of the assisted living/memory care facilities. Area B consists of the Independent Living facilities/apartments. Area C consists of the golf course and clubhouse. Area D contains the detached (cottages) and attached (townhome) single family units. These are the primary uses in the areas, accessory uses and other uses permitted by this Legislation are allowed in the Areas as well.

(3) Bulk requirements for the proposed uses in the SLD are set forth as follows:

A) Senior Services Facilities:

1) Setbacks and Height Requirements
   a. Front: 290 feet (as measured to overall parcel boundary(s))
   b. Side: 50 feet (as measured to overall parcel boundary(s))
   c. Rear: 50 feet (as measured to overall parcel boundary(s))
   d. Building Height: 60 feet (no more than three stories)

2) Density
   a. Assisted Living: No more than 144 units total containing a mixture of studio, 1 bedroom, 1 bedroom and den and two-bedroom units.
   b. Memory Care: No more than 108 units total containing a mixture of 1 bed semiprivate and private units.
   c. Independent Living: No more than 119 total units containing a mixture of 1 bedroom, 1 bedroom with den, 2 bedroom, and 2 bedroom with den units.

B) Single Family – Townhome:

1) Setbacks and Height Requirements
   a. Front: 30 feet (as measured to the pavement edge of primary roads)
   b. Side: 20 feet between structures & 0 feet between walls of attached townhomes
   c. Rear: 40 feet (as measured to overall parcel boundary(s))
   d. Building Height: 35 feet

2) Density
   a. Townhomes No more than 125 units total (either single family attached—townhome or in single family detached). Units shall be 1,000 to 1,500 square feet in size and may contain a mixture 1 bedroom, 1 bedroom and den, and 2 bedroom units with garages.

C) Single Family – Detached:

1) Setbacks and Height Requirements
   a. Front: 30 feet (as measured to the pavement edge of primary roads)
b. Side: 20 feet (as measured to the adjacent home or structure)
c. Rear: 100 feet (as measured to overall parcel boundary(s))
      50 feet (as measured to other single family detached homes)
d. Building Height: 35 feet

D) Golf Course and Clubhouse:

1) Setbacks and Height Requirements for Clubhouse and accessory structures
   a. Front, side and rear: 50 feet (as measured to overall parcel boundary(s))
   b. Building Height: 40 feet

2) Density
   a. Clubhouse No more than 2,500 square feet total.

F. Parking  Parking may be at grade or in structures.
   (a) Residential uses:
       (i) Single family detached/attached: 2 spaces per unit, which may include driveways and garage spaces.
       (ii) Independent living: 1.5 spaces per unit, inclusive of employees and visitors.
       (iii) Assisted living and memory care: 0.5 spaces per unit, inclusive of employees and visitors.
       (iii) Recreational uses:
           (1) Golf course: 5 spaces for each golf hole and 1 for each employee on shift of greatest employment.
           (2) Other recreational uses: For other recreational/open space uses, the Planning Board shall assign the required number of spaces, giving consideration to the proposed recreational/open space use and the feasibility to share parking capacity with that required for the golf course.
       (iv) Other uses: For any other use not listed herein, the Planning Board shall assign the required number of spaces, giving consideration to the proposed use, its similarity to other uses contained herein, and the feasibility of providing shared parking spaces with other uses.
   (b) Shared parking: When and where it may be achieved, shared parking may be considered to meet the overall parking demands.
   (c) Dimensions for off-street automobile parking spaces. Every such space provided shall be at least nine feet wide and 18 feet long, with the
exception of accessible spaces which shall meet the minimum standards of
the most current version of the Building Code of New York State.

(d) Parking reduction: If, in the judgment of the Planning Board, the required
parking would be excessive, the Planning Board may allow up to 25%
reduction in the total number of parking spaces constructed. Any
development plan shall still set aside the required area for the total parking
demand should it be deemed necessary in the future.

(e) All parking shall be located at least ten feet from the boundary of the
Senior Living District and appropriately screened as determined by the
Planning Board during site plan review.

G. Lighting:
All parking areas shall be adequately lighted. All such lighting shall be shielded
and so arranged as to direct the light away from adjoining residences and prevent
to the maximum extent possible off-site illumination.

H. Street and sidewalk design.
(a) All streets and sidewalks shall conform to the Town's design standards with
respect to paving specifications, horizontal and vertical alignment, site
distances and drainage provisions, except when modified or waived by the
Planning Board during the site plan review process.

(b) Pedestrian, bicycle and cart circulation systems shall be provided as
convenient, safe and attractive links between residential groupings, open
space areas, recreation areas and other senior facilities. Widths may vary
from 4 feet to 8 feet based upon location and use. Materials of construction
may vary based upon location and use.

I. Utilities.
(a) The Senior Living Development shall be capable of being serviced by a
municipal water and sewer district, and may be approved conditioned upon
the necessary creation or extension of such districts or by way of “out of
district” user agreements. For purposes of this section, a municipal water
and/or sewer district shall include such district of any municipality, not
limited to that of the Town of Rotterdam.

(b) To the extent that additional water and sewer infrastructure is required for
the Senior Living Development, such infrastructure shall be designed and
constructed in accordance with the standards of the authorities having
jurisdiction over such infrastructure (municipal and/or State).

(c) All water distribution and sewer facilities not dedicated to the relevant
municipality shall be owned and maintained by the homeowners’
association or the owner of any facilities within the Senior Living
Development. Easements shall be granted to the Town to allow for access
and maintenance to these facilities in case the need arises.

J. Stormwater Management.
(a) All stormwater management facilities shall be designed and constructed in accordance with the Town and New York Department of Environmental Conservation ("DEC") standards.

(b) All stormwater management facilities not dedicated to the Town shall be the responsibility of the homeowners' association.

(c) Pursuant to New York DEC regulations, the homeowners' association shall execute a long-term operation and maintenance agreement with the Town for operation and maintenance of the stormwater management facilities.

K. Establishment of homeowners' association.

(1) Any development in the Senior Living District shall provide for and establish a homeowners' association for the maintenance, preservation and ownership of the common open space, including private streets, drives, service and parking areas and recreational areas.

(2) The applicant shall set forth the terms and requirements of ownership and maintenance of the common space in a homeowners' association agreement. The homeowners' association agreement shall be submitted to the Town when it is provided to the New York State Office of the Attorney General.

L. Site Plan Approval. Review of proposed development in the Senior Living District zoning district shall be accomplished in accordance with the existing site plan provisions of the Town Zoning Code, found in Article XVII of this chapter.

M. Subdivision approval. All or any portion of the land area may be subdivided upon compliance with and in accordance with the requirements of Chapter 249 of the Code of the Town of Rotterdam. Such subdivision approval shall allow the lot lines of units in the Senior Living District to be drawn in accordance with the provisions of this Article.

N. Open development area. The Town Board hereby declares that the Senior Living District will also be an Open Development Area in accordance with New York Town Law § 280-a allowing for building permits to be granted for structures that do not have frontage on a Town, County or State roadway so long as such structures are shown on an approved site plan for a Senior Living Development. The Senior Living District contemplates that there will be numerous structures that comprise the shared senior facilities on common parcels of land.

O. Access ways and Utilities. Access ways (and emergency access ways) to access the Senior Living District from Helderberg Avenue and/or from Keator Drive to serve the uses in the Senior Living District will be allowed on land zoned other than Senior Living District. Utilities may also be installed to serve the Senior Living District and uses in the Senior Living District over land that is zoned other than Senior Living District. The Town Board determines that such access ways and utilities will continue to serve the existing golf course as well as the proposed new uses in the Senior Living District to provide ingress and egress as well as utilities for these Senior Living District uses. No rezoning of the land crossed by and containing the access ways (and emergency access ways) or utilities are required to support these Senior Living District uses.
Section 2

This law is adopted pursuant to the authority provided by section 265 of the Town Law and section 10 of the Municipal Home Rule Law. If provisions of this local law are inconsistent with any Law, then this local law shall, pursuant to the Municipal Home Rule Law, be deemed to supersede any such inconsistent provision.

Section 3

This local law shall be filed in the office of the Secretary of State of the State of New York within five days of its adoption and shall take effect immediately upon such filing.
Exhibit B
Gilbert VanGuilder  
Land Surveyor, PLLC  
988 Route 146, Clifton Park, NY 12065  
383-0634  
FAX 371-8437

Members:  
Gilbert G. VanGuilder, PLS  
Robert A. Wilklow, PLS

Associate:  
Duane Rabideau, PLS

December 6, 2017

SUGGESTED DESCRIPTION  
CHANGE OF ZONE  
WHISPERING PINES  
HELDERBERG AVENUE

All that certain piece, parcel or tract of land situate in the Town of Rotterdam, County of Schenectady, State of New York lying along the northeasterly line of Helderberg Avenue and southwesterly line of N.Y.S. Thruway – Interstate 90, being further bounded and described as follows:

Commencing at the point of intersection of the common division line between lands of W.P. Golf Corporation as described in Book 1227 of Deeds at Page 275, to the South and lands of Armstrong as described in Book 1196 of Deeds at Page 67, to the North, with the northeasterly line of Helderberg Avenue, thence Northeasterly, 135'± to the point of beginning, thence from said point of beginning, Northwesterly along the common division line between said lands of W.P. Golf Corporation, to the East and said lands of Armstrong, to the West, 110± feet to a point in the southeasterly line of lands of Andre as described in Book 1874 of Deeds at Page 126, thence along said southeasterly line and the southeasterly line of lands of Swint as described in Book 1876 of Deeds at Page 914, Northeasterly, 790± feet to a point in the southwesterly line of N.Y.S. Thruway – Interstate 90, thence along said southwesterly line, Southeasterly, 4,250± feet to a point, thence through the lands of Brown as described in Book 965 of Deeds at Page 899 the following three (3) courses: 1.) Southwesterly, 2,030± feet to a point, thence 2.) Northwesterly, 365± feet to a point, thence 3.) Southwesterly, 350± feet to a point in the westerly line of the lands of Pigliavento as described in Book 1907 of Deeds at Page 481 and Book 1327 of Deeds at Page 233, thence along said westerly line and through lands of Brown as described in Book 965 of Deeds at Page 899 and aforesaid lands of W.P. Golf Corporation the following five (5) courses: 1.) Northwesterly, 755± feet to a point, thence 2.) Northwesterly, 15± feet to a point, thence 3.) Southwesterly, 80± feet to a point, thence 4.) Northwesterly, 405± feet to a point, thence 5.) Southwesterly, 60± feet to a point in the northeasterly line the lands of Town of Rotterdam as described in Book 814 of Deeds at Pages 118 & 120, thence along said line and the northeasterly line of lands of Hills as described in Book 1241 of Deeds at Page 242, lands of Young as described in Book 1170 of Deeds at Page 294 and lands of Matarazzo as described in
Book 1771 of Deeds at Page 497, Northwesterly, 590± feet to a point, thence through said lands of W.P. Golf Corporation and lands of LaPrade as described in Book 1722 of Deeds at Page 380 the following six (6) courses: 1.) Northwesterly, 155± feet to a point, thence 2.) Southwesterly, 600± feet to a point of curvature, thence 3.) along a curve to the left having a radius of 100 feet and a length of 135± feet to a point, thence 4.) Southwesterly, 345± feet to a point, thence 5.) Northwesterly 44± feet to a point, thence 6.) Southwesterly, 105± feet to a point in the northeasterly line of Helderberg Avenue, thence along said northeasterly line, Northwesterly 36± feet to a point, thence through the lands of Pallutti as described in Book 1918 of Deeds at Page 183, lands of W.P. Golf Corporation and lands of Armstrong as described in Book 1346 of Deeds at Page 310, the following three (3) courses: 1.) Northeasternly, 105± feet to a point, thence 2.) Northwesterly, 305± feet to a point, thence 3.) Southwesterly, 105± feet to a point in the northeasterly line of Helderberg Avenue, thence along said northeasterly line, Northwesterly 40± feet to a point, thence through aforesaid lands of Armstrong the following two (2) courses: Northeasternly, 105± feet to a point, 2.) Northwesterly, 66± feet to a point in the southeasterly line of lands of Dawson as described in Book 1611 of Deeds at Page 710, thence along said southeasterly and northeasterly lines the following two (2) courses: 1.) Northeasternly, 50± feet to a point, thence 2.) Northwesterly 83± feet to a point, thence through aforesaid lands of W.P. Golf Corporation, Northwesterly 60± feet the point of beginning and containing 84.5± acres of land.

Todd Westerveld
PLS 50,319
At the regularly scheduled public meeting of the Town Board of the Town of Rotterdam, held at the John F. Kirvin Government Center, 1100 Sunrise Boulevard Rotterdam, New York on Wednesday July 11, 2018 at 7:00 p.m., the following resolution was duly adopted:

RESOLUTION NO. 212.18

WHEREAS, the Town Board received a revised application to create a new zoning district in the Town of Rotterdam for the project known as the Village at Whispering Pines, to be known as the Senior Living District; and

WHEREAS, the creation of the Senior Living District involves the adoption of a local law setting forth the uses permitted in the District and also amends the Town’s official zoning map setting forth the location of the District; and

WHEREAS, pursuant to the State Environmental Quality Review Act (SEQRA) the Town Board has previously declared its intent to be lead agency on March 8, 2017 and on March 9, 2017 duly circulated its notice of intent to be SEQRA lead agency for the review of this Type 1 Action and no other involved agencies indicated any objection to the Town Board being lead agency; and

WHEREAS, the Applicant submitted to the Town Board both a draft scoping document and a preliminary draft Environmental Impact Statement as part of the revised application for the zone change and the project; and

WHEREAS, on February 14, 2018, the Town Board declared itself lead agency for the review of the rezoning and the project, issued a positive declaration of environmental significance for the Project and directed that written public comments would be accepted on the draft scoping document until March 14, 2018; and

WHEREAS, on March 28, 2018 after a careful review of the public comments and any comments by the Town Planning Board, Town Planner, Town Designated Engineer, and Town Board, the final written scope with revisions prepared by the Town Designated Engineer (TDE) was approved by the Town Board; and

WHEREAS, the Applicant resubmitted the Draft Environmental Impact Statement (DEIS) for the Project and the DEIS was accepted as complete by the Town Board on April 25, 2018 and the Town Board issued a notice of completion and public hearing on the DEIS, as well as separate notices of public hearing on the local law and the change of zoning;

WHEREAS, the public hearings were duly noticed and held on May 11, 2018 and a stenographic record of all the public comments at the public hearings was created and is included in the Final Environment Impact Statement (FEIS), as well as all written comments received by the Town;

WHEREAS, the substantive public comments were addressed in the FEIS as required by SEQRA, and the FEIS was submitted by the Applicant to the Town and the Town designated engineers for review and comment and all requested revisions to the FEIS were made by the Applicant;

WHEREAS, the Town Board accepted the FEIS as complete and in compliance with the requirements of SEQRA at its meeting of June 20, 2018, and the notice of completion was duly published and the notice and the FEIS was provided to the involved and interested agencies and made available on the Town’s website as required by SEQRA;
WHEREAS, the attached SEQRA Statement of Findings has been prepared and thoroughly reviewed by the Town Staff, Town Designated Engineers and by the Town Board;

THEREFORE, UPON MOTION OF Councilmember SIGNORE, seconded by Councilmember MILLER-HERRERA,

BE IT RESOLVED BY THE TOWN BOARD AS FOLLOWS:

SECTION 1. The attached SEQRA Statement of Findings for the Village at Whispering Pines, the Senior Living Local Law and the Amendment of the Zoning map is hereby approved by the Town Board of the Town of Rotterdam as the SEQRA lead agency.

SECTION 2. As set forth in detail in the attached SEQRA Findings Statement which is incorporated herein by reference, the Town Board determines that the findings considered the relevant environmental impacts, facts and conclusions disclosed in the final EIS; weighed and balanced the relevant environmental impacts with social, economic and other considerations; and provides a rationale for the agency’s decision.

SECTION 3. The Town Board further certifies that the requirements of SEQRA have been met and that consistent with social, economic and other essential considerations from among the reasonable alternatives available, the action is one that avoids or minimizes adverse environmental impacts to the maximum extent practicable, and that adverse environmental impacts will be avoided or minimized to the maximum extent practicable by incorporating as conditions to the decision those mitigative measures that were identified as practicable.

SECTION 4. The Town Board directs that Town Planner duly circulate and file the attached SEQRA Findings Statement with a copy of this resolution as required by SEQRA.

SECTION 5. This resolution shall become effective July 11, 2018.

DATED: July 11, 2018

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I, Diane M. Marco, Town Clerk of the Town of Rotterdam, Schenectady County, New York, DO HEREBY CERTIFY that the foregoing resolution was approved by the Town Board of the Town of Rotterdam on July 11, 2018 and that the foregoing is a true and correct transcript of the original resolution and of the whole thereof and that said original resolution is on file in the Town Clerk’s Office.

I DO FURTHER CERTIFY that each of the members of the Town Board had due notice of the said Town Board meeting.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the Town of Rotterdam this July 13, 2018.

Diane M. Marco, Town Clerk
State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: February 20, 2020

CHARLES JOHN DODSON et al.,
Appellants,

v

TOWN BOARD OF THE TOWN
OF ROTTERDAM et al.,
Respondents.

______________________________

OPINION AND ORDER

Calendar Date: January 17, 2020
Before: Garry, P.J., Egan Jr., Clark, Mulvey and Colangelo, JJ.

The West Firm, PLLC, Albany (Thomas S. West of counsel), for appellants.

Katherine A. McGuirl, Town Attorney, Rotterdam, for Town Board of the Town of Rotterdam, respondent.

Whiteman Osterman & Hanna LLP, Albany (John J. Henry of counsel), for Lecce Junior Living, LLC, respondent.

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Garry, P.J.

Appeal from an order of the Supreme Court (Powers, J.), entered March 18, 2019, which granted defendants' motions to dismiss the complaint.

Plaintiffs own residential properties located in the Town of Rotterdam, Schenectady County adjacent to or opposite a parcel of land owned by defendant Lecce Senior Living, LLC. In July 2018, by a simple majority vote of three to two, defendant
Town Board of the Town of Rotterdam voted to enact Local Law No. 7 (2018) of the Town of Rotterdam (see Code of the Town of Rotterdam ch 270, art XXXI [hereinafter Local Law No. 7]), which rezoned a part of Lecce’s land comprising approximately 90 acres from A-1 agricultural to a newly-created senior living district (hereinafter SLD) to permit the development of a senior residential community (hereinafter the project). Before the vote, plaintiffs and other nearby landowners submitted protest petitions to the Town Board challenging the rezoning, which the Town Board rejected. Following the passage of Local Law No. 7, plaintiffs brought this action seeking an injunction and a declaratory judgment that the zoning change was invalid because it constituted impermissible spot zoning and also because their protest petitions triggered a requirement pursuant to Town Law § 265 that the rezoning must be approved by a supermajority vote.\(^1\) Defendants moved separately pursuant to CPLR 3211 (a) (1) and (7) to dismiss plaintiffs' complaint. Supreme Court granted the motions and dismissed the complaint. Plaintiffs appeal.

Initially, we reject Lecce's contention that plaintiffs failed to exhaust their administrative remedies because they did not appeal to the Town of Rotterdam Zoning Board of Appeals before commencing this action. Plaintiffs' challenge is directed at the legislative action taken by the Town Board in enacting Local Law No. 7, not at any administrative action that the Zoning Board of Appeals would have had the authority to address. We likewise find no merit in defendants' related contention that plaintiffs' challenge is not yet ripe for review because the current plans for the project may eventually be altered in the site plan review process. Local Law No. 7 rezones part of Lecce's property as an SLD and further provides that access ways and utilities that will serve the project may be located outside the newly-created SLD without rezoning. Whether or not the land is used for these purposes, these provisions are legislative actions that plaintiffs have properly challenged by bringing this action for a declaratory judgment (see Matter of Committee to Preserve Character of Skaneateles v Major, 187 AD2d 940, 940 [1992], lv denied 82 NY2d 652 [1993];

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\(^1\) Plaintiffs later withdrew a third cause of action.
Matter of Nassau Shores Civic Assn. v Colby, 118 AD2d 782, 783 [1986], appeal dismissed 68 NY2d 808 [1986]).

In a civil action, a motion to dismiss pursuant to CPLR 3211 (a) (7) requires the court to "give the pleading a liberal construction, accept the facts alleged in the complaint to be true and afford the plaintiff the benefit of every possible favorable inference," and to dismiss the pleading if, upon that analysis, it fails to state a cause of action (Matter of Sullivan Farms IV, LLC v Village of Wurtsboro, 134 AD3d 1275, 1277 [2015] [internal quotation marks and citations omitted]; see Clearmont Prop., LLC v Eisner, 58 AD3d 1052, 1054 [2009]). When a party moves to dismiss the complaint in a declaratory judgment action, however, "the court should make a declaration, even though the plaintiff is not entitled to the relief that he [or she] seeks." A mere dismissal is not appropriate" (Siegel, NY Prac § 440 at 848 [6th ed 2018], quoting Hirsch v Lindor Realty Corp., 63 NY2d 878, 881 [1984]). Upon such a motion, a court is not always precluded from addressing the parties' substantive claims. Where issues of fact are presented, the court should deny a motion to dismiss if the complaint "is sufficient to invoke the court's power to render a declaratory judgment . . . as to the rights and other legal relations of the parties in a justiciable controversy" (North Oyster Bay Baymen's Assn. v Town of Oyster Bay, 130 AD3d 885, 890 [2015] [internal quotation marks and citations omitted]). Where there are no questions of fact and the only issues presented are questions of law or statutory interpretation, "the motion [to dismiss] should be treated as one seeking a declaration in [the] defendant's favor and treated accordingly" (Siegel, NY Prac § 440 at 848 [6th ed 2018]; accord Matter of Tilcon N.Y., Inc. v Town of Poughkeepsie, 87 AD3d 1148, 1150 [2011]). Here, no issues of fact are raised. The resolution of plaintiffs' claims depends solely upon the interpretation of Town Law § 265, Local Law No. 7, and the Town's comprehensive plan — questions of law that the parties have fully briefed. Accordingly, the complaint should not have been dismissed, and we shall review the merits of the issues presented and declare the rights of the parties (see North Oyster Bay Baymen's Assn. v Town of Oyster Bay, 130 AD3d at 890; Spilka v Town of Inlet, 8 AD3d 812, 813 [2004]).
Plaintiffs contend that the rezoning of part of Lecce's property to the newly-created SLD classification constituted illegal spot zoning in that it "singl[ed] out a small parcel of land for a use classification totally different from that of the surrounding area for the benefit of the owner of said property to the detriment of other owners" (Matter of Citizens for Responsible Zoning v Common Council of City of Albany, 56 AD3d 1060, 1062 [2008] [internal quotation marks and citation omitted]; accord Matter of Rotterdam Ventures, Inc. v Town Bd. of the Town of Rotterdam, 90 AD3d 1360, 1362 [2011]). "As a legislative act, a zoning amendment enjoys a strong presumption of constitutionality and the burden rests on the party attacking it to overcome that presumption beyond a reasonable doubt" (Matter of Heights of Lansing, LLC v Village of Lansing, 160 AD3d 1165, 1168 [2018] [internal quotation marks, ellipsis, brackets and citations omitted]; see Asian Ams. for Equality v Koch, 72 NY2d 121, 131 [1988]). To do so, the challenger must show that "there is no reasonable relation between the end sought to be achieved by the [zoning amendment] and the means used to achieve that end" (Matter of Birchwood Neighborhood Assn. v Planning Bd. of the Town of Colonie, 112 AD3d 1184, 1185-1186 [2013] [internal quotation marks and citations omitted]). "Fundamentally, and relevant here, if a zoning amendment is consistent with the municipality's comprehensive plan, it is not spot zoning" (Matter of Heights of Lansing, LLC v Village of Lansing, 160 AD3d at 1168 [citations omitted]; see generally Town Law § 263).

The Town's comprehensive plan states that the Town's senior population is growing and "will continue to have special needs for certain types of housing and services." To address these needs, the plan provides that the Town should "[e]xpand opportunities for housing arrangements to meet the increasing needs of the elderly and disabled" and "[e]ncourage development patterns that promote housing diversity, appropriate non-residential diversity, and conserve natural resources." Local Law No. 7 acknowledges that the comprehensive plan states a need for "safe, affordable and accessible facilities and residences for the Town's senior population," and provides that "[s]enior citizens require unique services and specialized living quarters
for elderly and retired citizens who wish to live independently, but prefer to live in a community designed to support their needs" (Code of the Town of Rotterdam § 270-246 [A] [1], [2]). The principal use in the SLD created by Local Law No. 7 is a residential development for seniors to be made up of a combination of apartments, townhomes, single-family residences, assisted living facilities and memory care facilities, as well as dining, health care and recreational facilities for use only by residents and their guests (see Code of the Town of Rotterdam § 270-248 [A], [B]). We find no inconsistency between these provisions and the comprehensive plan's express recognition of the need for diverse, appropriate housing arrangements for the Town's senior population.

Contrary to plaintiffs' assertion, the rezoning of the SLD does not conflict with the comprehensive plan's recommendations that the existing residential character of the area where the SLD is located should be preserved and that commercial development should take place in another part of the Town. The SLD is a residential district. The inclusion of health and other services for the sole use of residents does not alter that conclusion, particularly in view of the plan's recognition that the residential needs of the Town's senior population include both housing and services. Likewise, the plan's recommendation that the Town should encourage "housing diversity [and] appropriate non-residential diversity" reveals that its references to accessory home care units and incentive zoning to facilitate the development of senior housing were not, as plaintiffs claim, intended to foreclose the development of other forms of housing such as the SLD. We thus find that Local Law No. 7 is consistent with the Town's comprehensive plan and that "[plaintiffs] have failed to demonstrate that the rezoning was arbitrary, unreasonable or unlawful" (Matter of Heights of Lansing, LLC v Village of Lansing, 160 AD3d at 1169; see Matter of Citizens for Responsible Zoning v Common Council of City of Albany, 56 AD3d at 1062-1063).

Plaintiffs' next contention presents an issue of first impression in this state. As factual background, Lecce initially applied for a zoning change in March 2017 but withdrew
the request. Several months later, Lecce submitted a second rezoning application that requested the enactment of Local Law No. 7 rezoning part of its property as a SLD, and included a revised project plan reducing the size of the area proposed to be rezoned and the number of residences included. The revised project plan created 100-foot-wide buffer zones that were not to be rezoned between the SLD and nearby properties; these zones would contain certain improvements that would serve the project. Local Law No. 7 provided that utilities and access ways, including emergency access ways, that served uses in the SLD could be placed on land outside the SLD without rezoning.

Town Law § 265 requires a supermajority vote of at least three fourths of the members of a town board to approve a zoning amendment when the board receives a written protest signed by "the owners of [20%] or more of the area of land immediately adjacent to that land included in such proposed change, extending [100] feet therefrom; or the owners of [20%] or more of the area of land directly opposite thereto, extending [100] feet from the street frontage of such opposite land" (Town Law § 265 [1] [b], [c]). The Court of Appeals has held that "[t]he 100 feet must be measured from the boundary of the rezoned area, not from the boundary line of the property in which the rezoned area is located" (Matter of Eadie v Town Bd. of Town of N. Greenbush, 7 NY3d 306, 312 [2006]). Thus, it is permissible for property owners who seek rezoning to protect themselves from the supermajority requirement by creating a buffer zone at least 100 feet wide between the rezoned area and the property line (see id. at 315; Matter of Ferraro v Town Bd. of Town of Amherst, 79 AD3d 1691, 1693-1694 [2010], lv denied 16 NY3d 711 [2011]). Plaintiffs acknowledge that such buffer zones are permissible without regard to whether the owner created them intentionally to defeat the supermajority requirement (see Matter of Eadie v Town Bd. of Town of N. Greenbush, 7 NY3d at 315). They further acknowledge that, when the 100-foot distance is measured from the boundaries of the SLD, their protest petitions did not include the signatures of the requisite percentage of owners of adjacent and opposing properties. Nevertheless, they assert

\[^2\] In response to the protest petitions, which were signed by approximately 90 landowners, Lecce submitted the affidavit of
that a supermajority vote was required to pass Local Law No. 7 because it provides that certain improvements that serve only uses within the SLD and that are necessary to the use of the SLD may be located on land outside the SLD without rezoning, and the project plans submitted by defendants show that such improvements will be placed in buffer zones between the SLD and the properties of protesting landowners. Plaintiffs assert that these buffer zones do not satisfy the requirements of Town Law § 265, that the 100-foot distance should thus be measured from the buffer zones' boundaries rather than from the SLD, and that, when so measured, their petitions include the requisite percentage of protesting landowners to require a supermajority vote.

The planned improvements in the buffer zone would include access ways, utilities, storm water management facilities, berms, grading and landscaping, as well as an emergency access way required for the project by the New York State Fire Prevention and Building Code. This emergency access way would be created by improving and extending Keator Drive, which is now a Town road for part of its length and then becomes a private gravel road that serves as a driveway for two residential properties and, beyond those properties, is blocked by debris. The emergency access way would consist of a newly-constructed road sufficient to permit the passage of large emergency vehicles extending approximately 560 feet from the existing Town road across the buffer zone and into the SLD. Local Law No. 7 specifically permits this emergency access way, providing that "[a]ccess ways (and emergency access ways) to access the [SLD] . . . from Keator Drive to serve the uses in the [SLD] will be allowed on land zoned other than [SLD]" (Code of the Town of Rotterdam § 270-260). A newly-created emergency turnaround area for large vehicles would also be constructed in the buffer zone area.

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the project's professional engineer, who averred that - when measured from the boundaries of the proposed SLD - the protestors owned only 10.22% of the immediately adjacent land and none of the directly opposite land. The Town Board accepted this opinion in rejecting the petitions.
The question before this Court is whether a purported buffer zone that includes improvements that serve only uses in the rezoned area and are necessary to the planned use of the rezoned area satisfies the requirements of Town Law § 265. As of this writing, no New York court has directly addressed this issue. There is no indication that the buffer zones approved by the Court of Appeals in Matter of Eadie contained improvements that would serve uses in the rezoned area (Matter of Eadie v Town Bd. of Town of N. Greenbush, 7 NY3d at 313-314). Likewise, it does not appear that improvements serving the rezoned area were located in the buffer zones approved in Ryan Homes, Inc. v Town Bd. of Town of Mendon (7 Misc 3d 709, 711-714 [Sup Ct, Monroe County 2005]). A subsequent case from the Fourth Department involved a buffer zone containing a public conservation area and driveways that provided access both to the rezoned area and the conservation area (Matter of Ferraro v Town Bd. of Town of Amherst, 79 AD3d at 1694). There, an administrative determination had been made that the driveways did not have to be rezoned because they served a dual purpose. The Fourth Department rejected the petitioners' contention that the driveways should have been rezoned on the ground that the petitioners had not exhausted their administrative remedies by appealing the administrative determination to the zoning board of appeals, and added, without elaboration, that even if exhaustion was not required, the petitioners' contention lacked merit (id.). Unlike the circumstances presently before this Court, the planned uses of the buffer zone in Matter of Ferraro did not serve only the rezoned area, but also provided benefits to the general public.

At least two cases from other jurisdictions with statutory supermajority requirements have addressed buffer zones containing improvements that benefitted the use of a rezoned area. An Illinois court found that a proposed 30-foot-wide buffer zone that would contain 25-foot-wide access roads serving a rezoned area did not satisfy statutory supermajority

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3 No legislative action was involved; the town board had approved a landowner's amended petition for rezoning and had not, as here, enacted an ordinance creating a new zoning classification.
requirements because the rezoned area and the buffer zone were "so intimately related and the uses thereof so mutually dependent" (Herrington v County of Peoria, 11 Ill App 3d 7, 12, 295 NE2d 729, 732 [1973]). However, the Illinois statute differed significantly from Town Law § 265 in that it did not specify a minimum distance that would constitute "a legally sanctioned buffer or barrier insulating the property from the claims of protestors" (id. at 13). Thus, we agree with the Court of Appeals that the rationale of the Illinois court in Herrington is not useful in analyzing Town Law § 265 (see Matter of Eadie v Town Bd. of Town of N. Greenbush, 7 NY3d at 316).

An Arizona court rejected an argument by neighboring landowners that a buffer zone that satisfied statutory distance requirements was "illusory" because it would contain certain landscaping improvements and a public easement allowing access by residents of the area (Schwarz v City of Glendale, 190 Ariz 508, 511, 950 P2d 167, 170 [1997]). The court found that use of the rezoned area was not dependent upon these improvements and that the easement and landscaping were created for the benefit of neighboring landowners rather than for the rezoned area. However, the court noted in dicta "that the creation of the [b]uffer [z]one could not prevent the application of the super-majority requirement if the rezoned [area] could not be put to its intended use without also making use of the [b]uffer [z]one" (id.).

Here, it does not appear that the SLD can be used for its intended purpose without the Keator Drive emergency access way in the buffer zone, as the road — located at a certain minimum distance from other access ways — is required by the New York State Fire Prevention and Building Code.⁴ Local Law No. 7 states that access ways and utilities located outside the rezoned area

⁴ Storm water management facilities to be included in the buffer zone also apparently have no purpose other than serving uses within the SLD, but it is not clear whether the SLD could be put to its intended use without these facilities. The record does not reveal whether the remaining improvements, such as berms, grading and landscaping, are solely for the benefit of uses in the SLD or are necessary to permit its intended use.
do not require rezoning because they "will continue to serve the existing golf course as well as the proposed new uses in the [SLD]." While it may be true that other access ways in the non-rezoned area have previously served the golf course, that does not appear to be true of Keator Drive, which is presently both private and impassable beyond the terminus of the Town road. Moreover, the project plans call for a gate that will block the emergency access way at the point of access; accordingly, it does not appear that the emergency access way will be available to provide access to the golf course — which, in any event, lies on the opposite side of the SLD — or to serve any purpose other than access to the SLD in emergencies. Likewise, the record does not reveal that the 30-foot-wide emergency turnaround, which will also be constructed in the buffer zone, serves any purpose other than use for the SLD.

Accordingly, the SLD cannot be used for its intended purpose without improvements in the buffer zone that will serve only uses in the SLD and will provide no public benefit. Under these circumstances, we do not find that the purported buffer zone is sufficient to defeat the supermajority requirements of Town Law § 265. Notably, in holding that the distance of a buffer zone from neighboring properties should be measured from the boundary of the rezoned area rather than that of the buffer zone, the Court of Appeals found that this statutory interpretation "is fair, because it makes the power to require a supermajority vote dependent on the distance of one's property from land that will actually be affected by the change" (Matter of Eadie v Town Bd. of Town of N. Greenbush, 7 NY3d at 315 [emphasis added]). Here, land within the buffer zone will actually be affected by the rezoning in such a way that it would neither be fair nor consistent with the spirit and intent of Town Law § 265 to deprive neighboring landowners of the power to require a supermajority vote. We find that where, as here, a proposed buffer zone will contain improvements that benefit only the rezoned area and are necessary to the intended uses of the rezoned area, Town Law § 265 should be interpreted to require the 100-foot distance to opposing and adjacent properties to be measured from the boundary of the buffer zone rather than that of the rezoned area (compare Matter of Eadie v Town Bd. of Town
of N. Greenbush, 7 NY3d at 312; Matter of Ferraro v Town Bd. of Town of Amherst, 79 AD3d at 1693-1694; see also Schwarz v City of Glendale, 190 Ariz at 511, 950 P2d at 170). Plaintiffs have established that when the buffer zone containing the planned emergency access way and emergency turnaround is so measured, the adjacent and/or opposing properties of more than the requisite 20% of protesting landowners are within 100 feet of the property affected by the rezoning. Accordingly, approval of Local Law No. 7 by a supermajority vote of at least three fourths of the members of the Town Board was required and, as Local Law No. 7 was not approved by such a supermajority vote, it was not validly enacted.

Plaintiffs' remaining arguments are rendered academic by this determination.

Egan Jr., Clark, Mulvey and Colangelo, JJ., concur.

ORDERED that the order is reversed, on the law, with costs, defendants' motions denied, and it is declared that Local Law No. 7 (2018) of the Town of Rotterdam is invalid.

ENTER:

[Signature]
Robert D. Mayberger
Clerk of the Court