

**OGDEN PLANNING BOARD**

January 14, 2010

**Members Present**

Gary Parker  
Marc Robinson  
Tom Coburn  
Linda DelRegno  
Tony Halaris  
Mary Lou Hetzke  
Jim Marshall

**Members Absent**

**Others Present**

Jack Crooks, Building Inspector  
Dave Widger, Highway Superintendent  
John Freel, Town Engineer  
Dave Pulhamus, Conservation Board  
Michele Hankey, Building Clerk  
Brian Sorochty  
John Nichols

***I. PLEDGE OF ALLEGIANCE***

***II. PUBLIC HEARING- None***

***III. OLD BUSINESS- None***

***IV. CONCEPT***

***Moore Subdivision Section I*** - application of The Nichols Team Inc., 75 Highpower Road, Rochester, NY 14623 for conceptual approval to construct a 6,500 sq. ft. funeral home on an existing 5.0-acre lot. This property is located on the south side of Brockport-Spencerport Road, approximately 2,500' east of Washington Street, between 3395 and 3397 Brockport Spencerport Road. The project will be serviced by public utilities and private leach field. The project will be titled ***Moore Subdivision Section I.*** *Tax Acct #086.030-02-6.4*

*Mr. Crooks read the Planning Board agenda for the members and introduced the application under Concept for this evening. Also, he noted that the Moore Subdivision is actually **Section I** and not Section II as it was written.*

Mr. Nichols: Good evening ladies and gentleman, I am John Nichols of the Nichols Team. It is a pleasure to be in front of the Town of Ogden Planning Board again. As some of you may recall, I think John, Jack, Dave and I have worked together before. The Nichols Team developed the Eber Brothers, Hover-Davis and Superior Technology facilities some time ago. We have applied, as you have heard, for conceptual approval, feedback and comments. We are looking on behalf of an operator to place this facility on this land that is a formally approved residential subdivision that is for sale. All of this is part of an ongoing feasibility analysis to make sure that if this project goes forward, that it will have the approval and permission by the Town of Ogden and the support. There is a small rendering of the facilities architecture, and Brian Sorochty here from DDS Engineers will make a formal presentation. If you have any questions, he or I would be happy to answer them.

Mr. Sorochty: I am Brian Sorochty with DDS Engineers. It has already been touched on here is that this property is the Moore Subdivision. Originally, it was a four lot residential subdivision, serviced by public utilities and private leach fields. The owner has already installed the water main, gas and electric. So, the entire project site is fully serviced by all the public utilities that were originally designed. On lot 1 of the subdivision is where we are proposing our 6,500 sq. ft. funeral home. Obviously utilities will not be a concern with the exception of sanitary service. There is no sanitary in the area, so the project is going to need a leach field. Early on in the process, when we were out doing our field-testing, we also performed perk tests in 3 different locations. So, the area that you see designated for a leach field for this site has already been tested and witnessed by the Health Department. Additional site amenities obviously would be parking lot, lighting and landscaping. We are showing about 700' of new private road and also we would have to have a storm water facility that is going to handle the entire development. This property is zoned residential and your Code allows for this type of use assuming we can get a Conditional Use Permit from the Zoning Board. The site plan that you have in front of you, I believe, meets all the underlying zoning requirements. We have also put on the plan the additional requirements that are in your Code for funeral homes in a residential district. I believe we have met the intent of that Code as well. As John said, we are happy to be in front of you folks. As you can see, we have put a lot of effort and time into this concept plan. Even though we are sort of at the concept stage, there has been a lot of effort put in. We are happy to get your input at this early stage. Quite frankly, what we are hopeful for is to get a favorable recommendation from you folks to the Zoning Board so that we can obtain our Conditional User Permit, which is our next step. That concludes my presentation. Either John or myself would be more than happy to answer any of your questions.

Mr. Parker: Thank you Mr. Sorochty. Are there any comments from the Conservation Board?

**Conservation Board – Dave Pulhams**

Yes, we just have some questions. One was that the onsite drainage and the receiving body of water were not defined on the prints.

Mr. Sorochty: No they were not. Basically, the entire site drains from 531 back towards Route 31. There is a small breakpoint somewhere around in here where it sort of goes west. But the majority of the site all goes to this low point in the northeast corner where we are showing the storm water facility. I believe Dave and John's comments that you will hear shortly, talk about utilizing that frontage lot as part of the storm water facility. What it does from here, is it gets collected along that lot line and then travels to the north side of Route 31 and I am not sure where it goes from that point.

Mr. Pulhamus: And there is also going to be chemicals used in the funeral home business, is there going to be containment to prevent contamination?

Mr. Nichols: Yes.

Mr. Pulhamus: Ok. These are just questions that came up. We assume the leach field is an appropriate size for their maximum number of guests.

Mr. Nichols: Yes and that will come with more engineering.

Mr. Pulhamus: Are there plans to maintain the natural screening to the west and provide screening on the other boundaries because it is a residential area and there will be a lot of people traffic in and out of the parking lot.

Mr. Sorochty: Obviously, the area of clearing is going to be kept to a minimum. The area around the funeral home will be maintained. Obviously, you want to have a nice atmosphere around there. The intention is to maintain the existing natural buffer.

Mr. Nichols: We want to preserve as much of the natural landscape as possible. So, the short answer to your question is yes.

Mr. Pulhamus: Do you know what is going to happen with the other lots?

Mr. Sorochty: Not at this time.

Mr. Pulhamus: One other thing, the offsite parking you have in the front of the building and when you are looking through the Town Code, the parking is suppose to be in the back of the structure.

Mr. Sorochty: That was mentioned...we brought that up with Jack. I am not sure...did we actually resolve the front setback?

Mr. Crooks: That parking is typically reserved for a commercial application and I do not think that in the R-1 it is truly addressed that way.

Mr. Nichols: It is a private drive.

Mr. Pulhamus: It is a private drive. These are just questions that we went through. I am sure that you are aware of any drainage going north into Adams Basin is critical due to the problems that they currently have there.

Mr. Sorochty: Yes, absolutely.

Mr. Pulhamus: Ok, thank you.

Mr. Sorochty: Thank you.

Mr. Parker: Mr. Freel any comments?

***Engineering Comments – John Freel***

I submitted a letter to the Planning Board dated January 6, 2010. In there I have 5 comments. Most of the comments I have are for when more comprehensive plans are developed. I am just giving the design engineer some direction of what we will be looking for rather than waiting for preliminary after he has done it one way and having to back up and re-do it. It just saves some time. One of the things we were really hoping will happen is that lot 5 over on Route 31 can be combined with maybe lot 4 for the entire project for the storm water management. That lot has actually been to the Town 2 maybe 3 times for a residential home to be constructed on that lot and it just does not fit. So, if we can get rid of the property line and use it for storm water management, I think everybody can benefit there and save someone else from looking at that lot to try and build a house on it. So, that is all I have got.

Mr. Parker: Mr. Sorochty any comments regarding that suggestion regarding the retention?

Mr. Sorochty: No, we have discussed that matter already and I do not believe that is much of an issue.

Mr. Nichols: We agree with that.

Mr. Paker: Thank you. Mr. Widger?

***Highway Comments – Dave Widger***

Most of the stuff I have is the same thing. I have no issue as far as the site review. It is nice to actually see something done here after 16 or some years it has been.

Mr. Sorochty: It has been since 1988.

Mr. Widger: It has been a while since it has first come in. The pond works the same, I concur with John on the lot and everyone pretty much agrees with John on the lot. That lot...I did a little research and pulled back some of my notes from what I did before and that lot was actually filled to about 6' deep and then they brought it back about 5 or 10 years later to try and get a house put on it because it was all cat tails originally. So what they did was they filled the lot because we told them no and then they filled it and then they tried to bring it back as a lot later on. So it has a long history. Obviously, I think the applicant understands where we stand on that one. That sub lots are basically unbuildable and that is probably one of them. That was all; the rest was all just drainage issues. We will definitely get into all the drainage going into that corner. As far as anything else on the site, I do not have a whole lot in my search.

Mr. Parker: Thank you. Mr. O'Toole do you have any comments or suggestions?

*Legal Comments – Keith O'Toole*

Yes actually, if I may approach?

Mr. Parker: Sure.

Mr. O'Toole: I do not know if Mr. Sorochty wants to join us...this is the old Herman Klingenger map. If you compare this map the lot lines are essentially the same but for a couple of issues. This does not exist anymore because Route 531 came through, so these lots are clipped and that is fine. They are still good size lots. Based on the aerial that Mr. Widger showed me; I have not been out to the property, but it looks like there is a base for this road, this private drive and it looks like it has already been constructed. You will note that in fact it overlays their proposed parking area. This pond is where essentially they have the old septic field. They are proposing a new leach field. I think what we need to do are a couple of things. First, the easements, which are mapped here, I do not believe they were ever recorded, that is my gut, I do not know. I have not seen an abstract, perhaps you have.

Mr. Sorochty: No I have not. The easements that we showed there were from the utility records. Some of them have been. The ones that I was not sure about were the drainage easements right along the backsides of the houses there on Route 31.

Mr. O'Toole: Well, as far as we are aware those have already been recorded, so we want to get those done. Private drive we want that done as a common driveway and utility easement. I do not know if the Town wants this drainage easement still. If they do, then to the Town of Ogden, if not we will get it dropped of the map. Same with the water main, I assume that is the County but that needs to be decided, I do not know who that is.

Mr. Sorochty: That is Monroe County Water Authority.

Mr. O'Toole: Ok. Their decision needs to be made regarding this. Certainly if you are going to build a parking lot there, I would think we would want to relocate the easement or do something with that.

Mr. Sorochty: We could certainly modify that easement, because the cul-de-sac is no longer going to go there. We just showed that to pull a few plans together.

Mr. O'Toole: Basically, what I would like to see is to have this supercede that and clean it up and make some decisions as to what is happening to these other lots other than the funeral home lot. I mean we are proposing future leach fields; we have got arguably previously approved site plans. I guess what I would like to have made clear is either we are going to update the site plans for the houses or we are going to get all of these references out of here and add notes to the map to make clear that the old site plans are not void and being abandoned by the applicant. I mean one or the other.

Mr. Sorochty: Well, the only reason that we showed those leach field locations was just to illustrate the testing that we went through. Those are not necessarily proposed leach fields at this point. They are potential leach field locations; because the testing that was done on these particular lots would not stand today.

Mr. O'Toole: And that is fine. Decisions need to be made as to where we are going with this stuff and we need to clean house or update it or both. The other issue and this is a planning issue, not a legal issue, but I spoke to Dave Widger about this. Were you guessing on that, that the height of the crown of 531 or?

Mr. Widger: That is no guess that is pretty accurate.

Mr. O'Toole: It is telling me that 531 is higher than the property line here.

Mr. Widger: About 11'.

Mr. O'Toole: Ok, that being the case and in light of the fact that they do not have any short term plans for residential developments unless your client changes his mind, maybe this would be the time to perhaps plant a double or a triple staggered row of evergreens to start that on its way, to make those lots viable for residential development.

Mr. Robinson: Hey Dave? You were saying that, which lot had been filled?

Mr. Widger: Just the one down in front.

Mr. Robinson: Oh just the one down front, ok I am sorry.

Mr. Widger: It is only lot 5 that had been filled.

Mr. Robinson: Ok.

Mr. O'Toole: I offered some earlier comments about berming, but berming is not really going to achieve anything if the road is up here.

Mr. Sorochty: I believe that there is a ditch in between. I believe there is a low point between the shoulder of the road and where the property goes back up.

Mr. O'Toole: The lots are certainly large enough where you could put some landscaping in here I would think to get that going.

Mr. Robinson: Would your client be buying the whole parcel, or just that particular lot.

Mr. Nichols: No, the whole thing and they have no plans for residential development.

Mr. Robinson: So, my next question would be, if they are not doing it in residential, wouldn't it be a good time to be looking at it maybe for some other commercial applications?

Mr. Nichols: Well, what will happen...our clients desire is to put this use on this piece of property. Once that happens, that will probably become a more desirable location for other uses. But they will only obviously be uses that can be granted with a Conditional Use Permit by the Town.

Mr. Robinson: So, when you went for your zoning, would you be looking to rezone or get a Conditional Use for the whole property?

Mr. Sorochty: No, just the one parcel.

Mr. Robinson: Ok.

Mr. Nichols: The question I have is, aren't we filing a new subdivision?

Mr. Sorochty: We had talked about that early and I believe at this point, we decided to leave that lot combination I guess off of this application. It is simple enough to bring it back and that is fine. Initially we have talked about combining these two lots, so that would be one large 5-acre lot. I guess my understanding is that it is an administrative process and I guess we did not want to complicate the issues, because we do not even know what is going in there at this point.

Mr. Halaris: I understand that this is just concept, but wouldn't we treat it all as one subdivision, just multi lots?

Mr. Nichols: Yes.

Mr. Crooks: If in fact they are not going to change those lot designations at this point, I think Mr. O'Toole and I had a discussion earlier today, then I think what would be appropriate, especially given some of the development that is proposed, that those parcels

be noted as not approved for residential development. That takes care of that part and later on if you want to re-subdivide them in any way that you see fit, then we can deal with it at that time. I think because there is a prior commitment, I think that Mr. O'Toole's position is very clear. Let's clean up that old problem that we had before, that old mess and just simply wipe that out and noting on there that it is not approved for development or not approved for residential construction. Keith can help you with the language. That would be my recommendation.

Mr. Nichols: My experience has been that the next user will come in and the lot line might have to shift again, whether they need more or less property. So we decided that we were not going to fool with the lot lines now, but there is really no intention to develop this residentially. We are going to strongly recommend to our client that the small lot there be absorbed into the one next to it, so that we can handle all of the site drainage very well right there.

Mr. Robinson: What was driving the location of where you are putting now versus anywhere else on the lot?

Mr. Nichols: Well frankly, putting it there is a nice investment as far as that road goes and we think it will be valuable, high visibility lots available.

Mr. Robinson: What I am saying is as far as maybe even moving it closer...

Mr. Sorochty: We have to maintain 100' separation to the property line because it is a funeral home and we have a 15' separation from the parking lot to the property line. So the lot kind of gets a little narrower towards the front.

Mr. Robinson: Got it.

Mr. O'Toole: One thing that the Code does require of any business and it really does not matter what the other development is, but if it is certainly residential which it is currently zoned, every business owner has the obligation of providing their own landscaping, their own buffering from the adjoining uses. Obviously this is a concept plan and that is great, but the Code is fairly clear about that. There has to be some landscape buffering and if this is going to be used for residential, whatever the current owner's intentions are, it is currently zoned residential, we must assume it is going to be used that way and there should be some buffering to protect the other lots.

Mr. Halaris: Until such time that it could be changed you are saying?

Mr. O'Toole: No it gets done now, it does not get done later.

Mr. Halaris: That is what I am trying to say. Maybe you are thinking maybe it is something used but it is not. The use is what is permitted for, so that is the way that it has to be treated.

Mr. O'Toole: Yes that is correct.

Mr. Nichols: But that has the potential of lowering the desirability, because I think one of the most desirable aspects of this subdivision is its visibility to the highway. They have no plans to develop this residentially. If that were to occur, I respect the point that it is zoned that way, then if someone comes in here with plans to build a house, it is within your rights to have them plant eight 10' trees. To do that right now, it is an economic driver. It is not that we do not want to spend the money. I think that it limits the marketability in truth, when the intent is to develop this commercial down the street and visibility is a big, big aspect of that.

Mr. Halaris: Well that is why I asked you at the beginning if all these lots were being treated as one subdivision because you look at it as a subdivision. I do not look at each lot individually and whatever is required in an area that's...

Mr. Nichols: I misunderstood the question. What we think is going to happen is one or possibly two more permitted uses will occur here that are business uses and not residential.

Mrs. Hetzke: Shouldn't that be applied for now? If you are not going to follow the Code as far as planting trees and having your buffer around residential...

Mr. Nichols: We are not objecting to buffering around the existing residential, we want to preserve that as much as possible. What I am saying, as landowners right now, we are not opposed to this road. We actually like the fact that it is here. We do not necessarily want to keep our view from that road. We will preserve as much of this buffering as possible that is adjacent to the existing homeowners and we will do whatever is required when we come back in with landscaping plans for Planning Board approval.

Mr. O'Toole: What is this property zoned Chairman?

Mr. Parker: Zoned...

Mr. Crooks: Zoned R-1 and for the record, there is nothing in the R-1 Code that requires buffering. The only thing that they are required to do is get a Zoning Board approval as a Conditional Use. The Zoning Board may impose conditions that they do some buffering or something like that, but there is nothing in the R-1 Code that requires buffering.

Mr. O'Toole: Are you sure about that Jack?

Mr. Crooks: Yes.

Mr. O'Toole: I hate to question you of course.

Mr. Crooks: Well, I have been wrong before. Show me where it is and I would be glad to amend my statement.

Mr. O'Toole: According to their note, additional requirements for funeral homes in a residential district. Landscaping shall be provided along boundaries and parking and loading areas to protect adjacent properties from damage or nuisance.

Mr. Sorochty: Yes that is language directly out of your Code.

Mr. O'Toole: 210-92E

Mr. Crooks: That is in the buffering section that is not in the R-1 section.

Mr. Sorochty: It is in the Code for specific standards for funeral homes in residential districts. I guess I read that and I interpreted it as to protect the existing residences that are currently residential uses. These are not going to be residential uses.

Mr. O'Toole: But they are.

Mr. Sorochty: But they are vacant right now.

Mr. Hetzke: But if they are not going to be, than shouldn't it be re-zoned.

Mr. Sorochty: We are not asking for a re-zoning, we are asking for a Conditional Use Permit.

Mr. Coburn: You cannot ask for a re-zoning until you know what it is going to be.

Mr. Sorochty: Exactly.

Mr. Nichols: This is a provision in the current zone; they do not feel there is a need...

Mr. Sorochty: They are talking about everything else.

Mr. Nichols: When these other plans come in, they will have to come back in and ask for the same thing that is being asked for now.

Mr. O'Toole: Yes but that does not work though. The idea is that when you put in a business, you carry your own weight. That is when we put in the landscaping; we do not stick the next guy that comes down the line and stick him with the bill.

Mr. Nichols: We are not...

Mr. O'Toole: Right now this property is zoned residential, we must assume that it is going to be used for residential purposes. In the R-1...

Mr. Robinson: That is what they are zoned for, and in reality they could still be used for unless you get the zoning changed on it. I understand what you are saying, that it is not your intent, but as it is zoned, it is possible to do that.

Mr. O'Toole: I guess I am curious as to what other commercial uses would go in here, because in the R-1 it is fairly limited.

Mr. Sorochty: Under Conditional Uses it lists a half a dozen or so.

Mr. O'Toole: Golf courses, cemeteries, childcare centers...and even so, I think the obligation is still to put in the landscaping. I was not aware that landscaping drove down commercial property values.

Mr. Robinson: I can understand his point looking at it from a commercial standpoint, wanting the visibility, wanting the traffic to see the business.

Mr. O'Toole: And fine, if that is the case maybe what we do is get rid of these lot lines and push the funeral home out here so that it can be highly visible forever more. It is one or the other.

Mr. Nichols: Please note that we are not anti-landscaping.

Mr. Robinson: We understand. The Code is fairly specific and given what the zoning is on the property, that is kind of what it could be used for.

Mr. Nichols: I heard earlier that there is a note to be put on the plans, not approved for residential.

Mr. O'Toole: No, not approved for building purposes. Which means it does not have an approved site plan at this point, because this project is inconsistent with the underlying site plans which date from 20 some odd years ago.

Mr. Robinson: So let me throw this out to you. What would be your objection to having it all rezoned to Light Commercial of some sort? And that would open up the doors for you to do a lot of different things.

Mr. Nichols: I cannot speak for my clients.

Mr. Robinson: I am just throwing it out there.

Mr. Nichols: It seems practical. It would depend on the additional expense and the time it would take.

Mr. Halaris: Do they approve spot zoning changes?

Mr. Crooks: Not going to fly.

Mr. Halaris: Not going to fly? I did not think so. I just asked Jack...

Mr. Crooks: The Board would look at that like spot zoning.

Mr. Halaris: Spot zoning is not permitted.

Mr. Robinson: Ok.

Mr. Sorochty: What if a strip of land here was preserved with a condition should a residential use be provided here that the area would have to be populated with the appropriate landscaping. Just to preserve the space between the lot line and the parking lot, make it a condition. This way if anything happens in the future that is residential there, then the owner would be required to put it in at that time.

Mr. O'Toole: Well, I guess we would want a letter of credit for that too. We are not in the debt collection business that is why we do letters of credit.

Mr. Sorochty: Would you need a letter of credit if it were a condition of the approval. That way no other site plan could be approved on this site unless that issue was resolved.

Mr. O'Toole: I guess I am not sure that gets us there if you are going to do that than eliminate the lot lines. Merge it all into one big fat lot. That eliminates the issue.

Mr. Robinson: That may be the better alternative because you do not even know where those property lines are going to end up eventually anyway.

Mr. Sorochty: Well, they have to be very similar to the way that they are now because it is a 5-acre requirement, so there is not much leeway.

Mrs. Hetzke: What is the reason for not putting it closer to 531?

Mr. Nichols: Reserving the most valuable piece of property.

Mrs. Hetzke: Oh, that is right. Sorry, you did say that.

Mr. Halaris: But that is why I asked that question. Do they even look at spot zoning changes? No, they usually do not entertain that. With the Conditional Use Permits, what is permissible is very limited.

Mr. Nichols: We understand that.

Mr. Halaris: Ok.

Mr. Nichols: In my experience over that last few years, I can think of a few uses that would find that...once this is developed, they would find that to be a very desirable site.

Mr. Robinson: Such as?

Mr. Nichols: A church. We do not have a guarantee that...

Mr. Robinson: I understand. It is just a pie in the sky.

Mr. Nichols: We are building more churches than ever. Congregations are growing and there is a lot of growing congregations that are looking for locations to build small churches.

Mrs. DelRegno: How about even a cemetery too.

Mrs. Hetzke: Just out of curiosity...do you have a client for the funeral home?

Mr. Nichols: Yes.

Mr. Coburn: It is not a crematory though right?

Mr. Nichols: No. The biology of this is really...when I first talked about this project with the owner, I had all these imagine its. The biology is really not complicated, it is all sub contained. It is not a threatening thing. There is bio-waste that is contracted with a professional contractor, just like in doctors' offices.

Mr. Parker: I can understand I guess, not wanting a buffering along here because of the visibility of the facility from 531. I understand that. What happens then, if and when these are developed, whether they be residential or a Special Use? And they are going to build a structure and they want to reduce visibility or noise along those lines, then you will have to deal with that and that is an issue.

Mr. Nichols: Well that would be their right.

Mr. Parker: Yes, so that defeats one of your desires if you will.

Mrs. Hetzke: It would be very noisy for a church when you stop and think about it.

Mr. Nichols: I would hate to use the word defeat, because we are not...

Mr. Parker: Well, I used the wrong adjective. It is not one of the things that you are hoping to have here.

Mr. Nichols: Just not now. Just not as a requirement to develop this project I guess is the position. Now, we will do what the Town desires. This is your town. I was just submitting the thinking about why we would say it may not be a good idea right now to automatically assume that buffering is a good thing right there.

Mr. Halaris: Only because, primarily just for the funeral home but just more that there is available space there and you can potentially sell and build with exposure is the way I think they are looking at it potentially. Not just for people seeing that there is a funeral home there.

Mr. Parker: But if I understand you correctly, you do not have an issue with buffering around the property per say.

Mr. Nichols: One of the reasons that this site is even looked at is because of its visibility. Buffering...this is the only house right now. Buffering from this residential development to that residential development, that is a very natural tree line buffer over there. We will do whatever the Town feels is required to meet the intent of the buffering that you want. It is just that we do not think that buffering things here is the best thing for this commercial enterprise. They want the visibility.

Mr. O'Toole: The issue is not just buffering the spot by 31; it is buffering this development against whatever may happen here, and despite discussion about churches or other things, we have no idea what is going to happen. The most likely development in a residential zone is houses. One can always come back and rip out landscaping if it is that big of an issue for a commercial user for those back lots, should they get a commercial user. Or, if the Board is willing, they can give us a landscape plan here and here and we can get a letter of credit for that, and there has to be some sort of trigger, which we draw on the letter. But it would have to be an irrevocable letter of credit that the Town can hold until such time that the landscaping is installed or until the trigger is pulled.

Mr. Robinson: So, would the client be opposed to putting landscaping here to shield it, rather than putting it on 531?

Mr. Nichols: I will have to ask them. But again, whether the landscaping is here or here, they do not want to put a buffer in front of 531. I am going to assume that they are going to say they are not trying to hide their business.

Mr. Robinson: What I heard you say earlier was that one of the reasons that you wanted to leave it open was so that the site seemed more desirable for commercial use.

Mr. Nichols: And it will be.

Mr. Robinson: So I guess what I am saying is, if that is really the intent and it is not necessarily that big of a deal to buffer this, than what would be an issue with buffering...

Mr. Nichols: It is not an issue. If I was the owner of the property I would say while we are getting this built and establishing our business and we are looking to sell this to permitted uses, why not take advantage of the visibility that we have. Because it is going to help our business and it is also going to help our marketing at this point. Now that is the why I think.

Mr. O'Toole: If you drop a church there, you are not going to see much of anything or anything else.

Mr. Nichols: It would be taking advantage of the visibility while it is there.

Mr. Halaris: What is the elevation difference between?

Mrs. Hezke: Eleven feet.

Mr. Halaris: For those trees to mature to 11'...

Mrs. DelRegno: That was what I was thinking. That is going to take a long time.

Mr. O'Toole: And the other thing is, you are talking about what a 2.5 story structure. Unless you are planting sequoias in there, you are going to be able to see that building.

Mr. Halaris: Absolutely.

Mr. O'Toole: I think it is more an issue of buffering potential residential here, here, and here from this.

Mrs. DelRegno: Is there a height requirement for the buffering?

Mr. O'Toole: I do not know. Conservation Board, do we have a minimum tree height or caliber?

Mr. Freel: I cannot think of...but we do not have one for specs.

Mr. Robinson: So you can use flower and crab apples up there.

Mrs. DelRegno: Even if you use a dwarf tree or something, you are still going to be able to see if from 531. I just think that is not really an issue.

Mr. Halaris: Not if they have an elevation difference.

Mrs. DelRegno: You are going to be able to see it regardless and if you have some pretty trees there, they are going to look pretty. It will look nice.

Mr. Robinson: At this point, that is one issue, but I suppose we can talk about the use in general. Are we good with that?

Mrs. DelRegno: Yes, definitely.

Mr. Parker: I think that is the decision to be made. I guess the question that I would have is based upon design and so on and the comments we had here from various

departments...not to potentially put something off, but if the concept in general is acceptable, that is what we are looking for. At subsequent meetings where by you make a presentation for preliminary and or final approval, I guess the problem is that it may become an issue again.

Mr. Robinson: That is something that you need to discuss with the Zoning Board too.

Mr. Nichols: It is good to know that now. In the big scheme of things, planting trees is not expensive. So, we are not sitting here arguing about something that is going to have a \$30,000.00 impact. I am fairly certain we can work all of this out. It is the matter now that if it is the expectation that these trees are big, then it does become...

Mr. Robinson: I do not think that the Code requires that. I do not think that...

Mr. Parker: In actuality I did a little bit of research before the meeting on buffering and road noise and so on. I guess, what are we buffering for? If we are doing it for noise so on and so forth, my understanding is...especially with this road height being 11' higher than this and basically to have effective buffering, you have to take an eye line to the surface to that road. That is already 11 feet. So now you have to add another 6 feet to that. So, now you have to be 17 feet from the ground level here to do anything.

Mr. O'Toole: I think that is true. U.S D.O.T...(portion of tape inaudible). If you were going to get any noise mitigation, you would have to have a deaf swap of woods. Something with 90 or 100' with minimum. And if you are going to do any noise mitigation with any alternative, earth and berms or whatever, it is going to have to get that height. And you are not going to get it unless you build some massive earth work, with itself would not be all that attractive.

Mr. Parker: So I guess playing devil's advocate and knowing that the buffering, unless it is that high, it has no positive purpose.

Mr. O'Toole: Well for noise. The landscaping also mitigated the light impact from car headlights. One of the things that folks have found out is that people tend to focus less on the noise if they cannot see the source. So it is more of a physiological benefit too. So you try to do both, shield the view and shield the ear if you can. The State did what they did. You are kind of stuck with the roads.

Mr. Robinson: For residential, they would have to do a raised bed system in there anyway. So I do not know if the leach fields would make it so that they could do anything other than combine it together for a 5-acre lot, right?

Mr. Sorochty: Yes that is true for that particular lot.

Mr. Robinson: That is going to have to be one lot.

Mrs. Hetzke: I thought the buffering was to keep residents from looking over a parking lot etc. I was not thinking of the buffering of 531.

Mr. O'Toole: Well that is it. The commercial landscaping is helping these folks from being impacted by this. Typically when you build residential along a roadway you try to do some buffering along that.

*Portion of tape was inaudible.*

Mr. Robinson: You do not really care about the buffering or is that a zoning issue?

Mr. Crooks: I think very specifically what it refers to and I think the intent is to buffer the site itself from the other residential building. The parking lot as Mary Lou or someone said. In fact it says; buffering strips, walls, or fences shall be provided along the boundaries of parking and loading areas to protect adjacent properties from physical damages or nuisances. So I think that is clearly the intent of the buffering section and whether it comes from this Board, or the Zoning Board in their review, it is pretty hard to escape that it's a requirement.

Mrs. DelRegno: You know, there is a thought too. Maybe just this has to be buffered right here where the parking lot is.

Mrs. Hetzke: That is what I was thinking, not buffering 531, just buffering that area. But they did not want to buffer that area either.

Mr. Parker: That does not accomplish...

Mr. Robinson: That does not give them what they are looking for. They are looking for the visibility.

Mrs. Hetzke: They do not want to buffer that. They only...

Mrs. DelRegno: Yes, but I still say if you put...(tape flipped sides-inaudible.)

Mr. Robinson: Let's move this forward. You know that it could be an issue at this point. It is something that needs to be worked through. Let's talk about the rest of the project. Is it something that we are looking at as favorable or not? That is all they need to know at this point.

Mrs. DelRegno: I say yes.

Mrs. Hetzke: Yes. When you stop and think about our Town and we are encouraging everyone over 55 to live here...

Mr. Robinson: One stop shop, come live here.

Mr. Parker: Do you have any issues with any of the things that were brought up by Conservation Board, Engineering Department, or Highway?

Mr. Sorochty: No.

Mr. Parker: So, those are all fine with you?

Mr. Robinson: So, that is all they really need to know so that they can...

Mr. Marshall: I have one question. Have you contacted the State at all regarding the traffic study along 31 at all?

Mr. Sorochty: No. Typically a use like this would not usually require a traffic study.

Mr. Marshall: I understand that. The only reason that I am asking you is that down the road they have done a traffic study as far as the traffic going here because of the extension of 531 being built. A lot of the traffic has been re-routed by their own personnel taking 31 rather than taking 531 because of the traffic jam on the end, which has increased the traffic along 31 and along this quarter. This is one and if you develop these, that would impact the amount of traffic going in and out of this private drive. I know that the State has done a study on this. I only suggest that maybe contact them about getting a copy.

Mr. Sorochty: Yes. Absolutely. I will request that study.

Mr. Marshall: I would just look at that study and the amount of traffic going up and down there.

Mr. Sorochty: Ok. I will do that. Thank you.

Mr. O'Toole: I guess the reason I ask is I would like to see it on the plan even though that may be something that you get permission from the Zoning Board later. From the site plan point of view, that would be nice. I am sure the neighbors do not want lights in their windows. That is what I meant.

Mr. Robinson: Actually I would like to see you talk to the Zoning Board about that as well as signage. Talk to them and make sure your client would be amendable to whatever signage the Zoning Board would like to see for that. I would not want to see us go through all of this and then have the Zoning Board say you can only have a 1'x2' sign out there and your client is not going to be prepared for that.

Mrs. Hetzke: But it is still R-1 and it probably is restricted.

Mr. Robinson: It is and that is why I am bringing it up now. Are we all in agreement that...

Mr. Coburn: Are there any issues with fire truck access?

Mr. Sorochty: No. It is a 24' wide access drive and we showed a turnaround at the end of it, which is based on your Code.

Mr. Robinson: What size water main is in there now?

Mr. Sorochty: Eight inch.

Mr. Nichols: The road is not constructed...at some point they did replace and boxed it out. We are going to go out there and dig the holes and see if there is stone down there.

Mr. Coburn: But the utilities are all in.

Mr. Nichols: Yes the utilities are in.

Mr. Sorochty: I have seen some stone out there. I just do not know how deep it goes.

Mrs. Hetzke: Will it be constructed like a regular road or like a private drive as far as...? Do you know what I mean?

Mr. Nichols: We will construct it any way this gentleman tells us to construct it.

Mrs. DelRegno: Good answer.

Mr. Widger: It will be done according to the design regulations.

Mrs. Hetzke: Because if you put more commercial stuff in there, traffic will be heavier.

Mr. Widger: They constructed that in 1988 actually for a private drive, probably with 6" of stone at that time.

Mr. Nichols: The heaviest thing that is ever going to go down this road is the concrete truck.

Mr. Widger: They will put it in. It is all 12" now.

Mrs. Hetzke: Oh, ok.

Mr. Robinson: So, is everyone in agreement that this looks like something?

Mrs. Hetzke: Yes, it is fine.

Mr. Parker: Any comments or objections?

Mr. Robinson: There you go gentleman.

Mr. Nichols: So is there a formal recommendation to the Zoning Board then?

Mr. Robinson: Is there a letter saying that it's...

Mr. Crooks: We will draft a letter tomorrow with review from the Planning Board Chairman; we will send it on to the Zoning Board.

Mr. Parker: Thank you gentlemen.

Mr. Crooks: Is that all right Mr. Chairman?

Mr. Sorochty: Thank you.

Mr. Nichols: This is actually a one-story building. It is not a two or two in a half. It looks high at this point because the architect gave it some high pitches from the database that he uses. I am going to recommend that he soften that up because it is misleading.

Mrs. Hetzke: And I cannot remember whether it was John or Dave that suggested that you have a drive thru.

Mr. Coburn: Like a carport.

Mrs. Hetzke: Well, I think that would be a good idea because in this weather you want to be able to drop people off and not have them get wet.

Mr. Widger: Not for nothing, but most of the people who go there are older ladies.

Mr. Nichols: I understand that that is a point that we raised.

Mr. Parker: Oh sure and I think it would also depend upon where you are going to exit. I was just at a funeral today, where you are going to exit with the casket and so on.

Mr. Robinson: The proposed operator, have they been around a while?

Mr. Nichols: They are experienced.

Mr. Robinson: They do go out of business occasionally.

Mr. Nichols: They are extremely experienced.

Mr. Robinson: Ok.

Mr. Nichols: Thank you very much.

**V. EXPIRATIONS -**

**Sunoco/Dunkin Donuts -application was denied without prejudice**

**RESOLUTION #1**

Introduced by Mr. Robinson  
Seconded by Mrs. DelRegno

**Vote of the Board**

Ayes: Robinson, Hetzke, Halaris, DelRegno, Coburn, Marshall, Parker  
Nays: None

**VI. MAPS FOR SIGNING- \*\*Please see map table in Building Department.**

**VII. APPROVAL OF MINUTES**

**RESOLUTION #2**

Approval of the Planning Board Meeting minutes of **December 10, 2009** as presented.

Introduced by Mr. Coburn  
Seconded by Mr. Halaris

**MAY IT BE RESOLVED** that the minutes of the Planning Board meeting of **December 10, 2009**, stand approved as submitted.

**Vote of the Board**

Ayes: Robinson, Hetzke, Halaris, DelRegno, Coburn, Marshall, Parker  
Nays: None

**VIII. WORK SESSION- None**

**IX. ADJOURNMENT**

Introduced by Mr. Robinson  
Seconded by Mr. Coburn

**MAY IT BE RESOLVED** that the Planning Board meeting of January 14, 2010 was adjourned at 7:59pm.

**Vote of the Board**

Ayes: Robinson, Hetzke, Halaris, DelRegno, Coburn, Marshall, Parker  
Nays: None

Respectfully submitted,

Jack Crooks, Secretary