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TRANSCRIPT OF
TOWN OF EASTCHESTER PLANNING BOARD MEETING
FEBRUARY 23, 2017

HELD AT: Eastchester Town Hall
40 Mill Road
Eastchester, New York 10709
7:00 p.m.

BOARD MEMBERS IN ATTENDANCE:
ACTING CHAIRMAN PHILIP NEMECEK
ROBERT PULASKI, MEMBER
MARK CUNNINGHAM, MEMBER
EASTCHESTER EMPLOYEES IN ATTENDANCE:
MARGARET UHLE, DIRECTOR OF PLANNING
ROBERT TUDISCO, DEPUTY TOWN ATTORNEY
JAY KING, BUILDING INSPECTOR
MICHAEL VERNON, ASSISTANT PLANNER

Dina M. Morgan, Reporter
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Bronxville, New York 10708
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DINA M. MORGAN, REPORTER

♀ 00002

EASTCHESTER PLANNING BOARD - 2/23/17
ACTING CHAIRMAN NEMECEK: I call to
order the town of Eastchester Planning Board
meeting of February 23rd, 2017. Pledge of
Allegiance.

(Whereupon the Pledge of Allegiance
was said.)

ACTING CHAIRMAN NEMECEK: Let's do our
roll call. Bob Pulaski.

MR. PULASKI: Present.

ACTING CHAIRMAN NEMECEK: Mark
Cunningham.

MR. CUNNINGHAM: Present.

ACTING CHAIRMAN NEMECEK: I'm Phil
Nemecek. I'm the Acting Chairman today in the
absence of James Bonanno, who will not be here
today, and Bill West, our other esteemed
member, will also not be here today. But you
have three of us and that's enough to go
forward.

This is a deviation from the normal
Bonanno plan, but I am going to approve the
minutes of the one meeting that we can approve
at this point in our meeting, the minutes of
the October 27th, 2016 meeting. I have

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♀ 00003

EASTCHESTER PLANNING BOARD - 2/23/17
submitted to you, Margaret, my proposed
revisions, and I circulated them to all of the
members of the Planning Board. I make a
motion, subject to those revisions, that we
approve the minutes of the October 27th, 2016
Planning Board meeting.

MR. PULASKI: Second.

ACTING CHAIRMAN NEMECEK: All in
favor.

(All aye.)

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ACTING CHAIRMAN NEMECEK: With that out of the way, we have two items of business -- three, actually, three applications today. One is an item of old business that first came before this board I believe at that October 27th, 2016 meeting and we also addressed it last month, and that's Application 16-60, 134 Garth Road, Cooked and Company. After that, we will hear from 42 Lakeview Avenue; there are two separate applications, which are Application 17-03 and Application 1704.

First let's hear from Application 16-60, 134 Garth Road, Cooked and Company.
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♀ 00004

EASTCHESTER PLANNING BOARD - 2/23/17

MR. IANNACITO: Good evening. My name is John Iannacito. I'm an Architect and I'm representing Mr. Herb Lindstrom this evening, the owner of Cooked and Company. With me tonight is also Bill Weinberg, the owner of the property. Herb could not be here this evening because he's out of town for the week.

At the last meeting, the board requested additional information and a response to the trash pickup complaint that was filed with the town. Based on conversations I've had with the owner of the restaurant, we are proposing the following:

The trash will continue to be picked up on the Grayrock side of the building simply because the existing trash room is located in the lowest portion of the building, which has direct access to Grayrock Road. We did speak at the last meeting about the possibility of putting the trash out on Garth Road, but it's just not feasible for the owner of the restaurant because he would have to carry garbage up two flights of stairs, through the restaurant, and then out to the street.

DINA M. MORGAN, REPORTER

♀ 00005

EASTCHESTER PLANNING BOARD - 2/23/17

We are proposing to store -- so here's our new proposal:

We are proposing to store all the trash and the trash cans within the building at all times, and the trash will no longer be put out to the curb for pickup. The private sanitation company will be given access to the building at all times. So they are authorized to go into the building for trash pickup, and then after they dispose of the trash, they'll put the empty garbage cans back in the building. So there won't be any empty garbage or empty garbage cans out at the street anymore.

Lastly, the trash pickup schedule has been increased to the maximum six days a week.

ACTING CHAIRMAN NEMECEK: Which days would those be? Which would be the day off?

MR. IANNACITO: Sunday. There is no

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pickup on Sunday. So that's our proposed solution to the trash issue.

MS. UHLE: Then, John, you did submit some additional photos?

MR. IANNACITO: I did. The owner of DINA M. MORGAN, REPORTER

♀ 00006

EASTCHESTER PLANNING BOARD - 2/23/17
the restaurant sent me some photos along Grayrock Road showing all the other apartments and businesses that have trash dumpsters along that road for their trash pickup.

ACTING CHAIRMAN NEMECEK: Okay.

MR. CUNNINGHAM: Is it the same company that picks these up?

MR. IANNACITO: That I don't know. I'm not sure if it's the same company.

ACTING CHAIRMAN NEMECEK: I think there was one -- your neighbor, who I believe is here today, at 132 Garth Road was the party who expressed an objection to the garbage the last time. We still have an open public hearing.

MR. IANNACITO: Right. I have spoken to him a couple of times over the past couple of weeks, and I did tell him about the proposal that we were putting in front of the board tonight. His objection is he would like to have the garbage picked up on Garth and not on Grayrock. The complaint was for trash and empty garbage cans out at the curb, and I believe the owner of the restaurant has taken

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♀ 00007

EASTCHESTER PLANNING BOARD - 2/23/17
care of that. He's going to have everything inside the building and it's not going to be out on the curb anymore.

ACTING CHAIRMAN NEMECEK: Have you spoken directly to the representatives of -- whether it be to the tenant or owners -- of 132 Garth since our last meeting?

MR. IANNACITO: Yes, today and one other time we spoke. Yes, we spoke two times.

ACTING CHAIRMAN NEMECEK: Rather than have you characterize what their position is, not that I doubt you, since, again, we do have an open hearing, open public hearing, let's hear if there remains an objection.

MR. SPIELBERG: Good evening. I'm Leonard Spielberg. I represent the owner of 132 Garth.

ACTING CHAIRMAN NEMECEK: You represent the owner?

MR. SPIELBERG: Yes.

ACTING CHAIRMAN NEMECEK: In what capacity?

MR. SPIELBERG: I'm attorney for the owner of 132 Garth.

DINA M. MORGAN, REPORTER

♀ 00008

EASTCHESTER PLANNING BOARD - 2/23/17
ACTING CHAIRMAN NEMECEK: Very good.

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MR. SPIELBERG: Present appearance to the contrary.

It would be unprecedented for you to approve the expansion of a presence that is operating illegally, and they don't -- I believe that what has been presented to you as a fix for this is a good attempt, but the fact is that all of this business's operation is on Garth Road. They have no presence on Grayrock Road. They have no identification on Grayrock Road. They're not on Grayrock Road except to put their garbage in front of my client's building. That's not right and that's illegal. That's tantamount to my taking my garbage and putting it in front of your house and that would not be condoned. With all the excuses in the world --

ACTING CHAIRMAN NEMECEK: With all due respect, the proposal, as I've heard it, was to keep the garbage inside of I believe it was their own building.

MR. SPIELBERG: Right.

ACTING CHAIRMAN NEMECEK: The only
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♀ 00009

EASTCHESTER PLANNING BOARD - 2/23/17
time the garbage would see the light of day is during the removal process, which I'm guessing, given the schedules of private contractors, is a fairly swift operation, granted it would be six days a week. This would no longer entail putting garbage on the curb in front of your client's building. That's what I heard.

MR. SPIELBERG: I'm not aware of any way you could get garbage pickup without putting it out. I have not yet met a garbage company that's willing to knock on the door and say, I'm here now.

ACTING CHAIRMAN NEMECEK: What I heard was they were going to be given access to the storage -- to the location within the building in which the garbage was stored. Was I hearing that correctly, Mr. Iannacito?

MR. SPIELBERG: Well --

ACTING CHAIRMAN NEMECEK: I have a question for Mr. Iannacito.

MR. IANNACITO: Yes, they were given a key and they could come and pick up the trash at any time.

MR. SPIELBERG: If the representation
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♀ 00010

EASTCHESTER PLANNING BOARD - 2/23/17
is being made that the garbage is not ever going to be put on the street and will never be creating the nuisance that has been created in the past and has been persistently present in the past after --

ACTING CHAIRMAN NEMECEK: We heard Mr. Contreras' complaints last month about what has happened in the past. I think what we have here is a proposal to move forward in a different direction that sounds eminently

reasonable to me.

MR. CONTRERAS: If you look up there -- I gave you pictures -- when they pick up the garbage and it goes in the back of the truck, as they're squishing it in all the water and grease comes right on the street and we have pictures right there showing that. So my proposal is, do that in front of your store not in front of mine.

MR. SPIELBERG: There is simply no reason why this needs to be done on Grayrock Road. They have a business which is good enough that they are requesting permission to expand, do it in front of your own business.

DINA M. MORGAN, REPORTER

♀ 00011

EASTCHESTER PLANNING BOARD - 2/23/17

This idea that the objection is that someone's got to carry the garbage up, well that's the logistics of operating in a vertical space is such that sometimes you have to bring things up and down. It is just simply not fair for them to operate in a fashion that creates a nuisance in front of my client's property. It's just -- there's just no reason for it, and of course, gentlemen, you expand the business, you increase your garbage. So what --

ACTING CHAIRMAN NEMECEK: I believe they also went from two times a week pickup to last month four times a week and now they're going to six times a week. So if you compare twice a week at half the size is a bigger pickup than six times a week and double the size.

MR. SPIELBERG: What public purpose is substantial enough that you would risk an expansion of this nuisance? Why would -- why would this town want to increase a use that has been persistent --

ACTING CHAIRMAN NEMECEK: It sounds to me -- it sounds to me, again, with all due

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♀ 00012

EASTCHESTER PLANNING BOARD - 2/23/17

respect, that they are by accommodating the concerns, albeit imperfectly in your eyes. They previously used to put the garbage out the night before twice a week in front of your client's property. Now they're proposing to put it outside zero days a week, to have pickup six days a week. To me this is not increasing a nuisance.

MR. SPIELBERG: It's not?

ACTING CHAIRMAN NEMECEK: Increasing a nuisance, which is the way you characterized it.

MR. SPIELBERG: You increase the garbage, you increase the nuisance. Garbage is inherently -- garbage is inherently a nuisance.

ACTING CHAIRMAN NEMECEK: Even when it's concealed? Even when it's concealed?

MR. SPIELBERG: Garbage is always a nuisance.

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ACTING CHAIRMAN NEMECEK: We got to get rid of it.

MR. SPIELBERG: Do you as a board believe that you can -- that you can be confident that this garbage is not going to
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♀ 00013

EASTCHESTER PLANNING BOARD - 2/23/17
wind up on the street when it was placed there over time anonymously?

ACTING CHAIRMAN NEMECEK: We're not garbage trackers. I don't know what's going to happen to the garbage. What we're getting, as we get from every applicant, is a representation as to how they're going to go forward with an application. I know Mr. Iannaci to very well. I think he's done work for your client. He's a very reputable individual in this town, and if he's telling us -- and there are ways of policing this too. We are not the garbage police, but you can call the town, and Mr. Tudisco may be able to tell you exactly who at the town you would call with a garbage complaint.

MS. UHLE: It would actually be my department. If it were --

MR. CUNNINGHAM: It would also be that if this was a problem -- I mean, right now he's giving us a very good option here; garbage is going to be kept inside, it's going to be picked up in a truck. If after a month of collection, there is debris left on the street
DINA M. MORGAN, REPORTER

♀ 00014

EASTCHESTER PLANNING BOARD - 2/23/17
every time and they're coming at really bad hours and there's a real nuisance and inconvenience, then we would say, you know what, you can't do this anymore. We could say right now that's a stipulation that what they're proposing this is the way it will happen and that's the way it needs to stay.

MS. UHLE: If they were to approve this, it would be a condition of approval that the garbage be kept within the building at all times except when it is being picked up and that containers not be left out on the street. That the Building Department would have the authority to issue violations and summonses if they were in violation of the Planning Board approval. The only thing that I would say to the board that we would not have as much control over is if there is some water or grease or something that spills on the street. That's sort of very unpleasant but occasionally affiliated, I guess, with trash collection. We certainly could enforce the fact that the containers would have to be kept inside at all times.

DINA M. MORGAN, REPORTER

♀ 00015

EASTCHESTER PLANNING BOARD - 2/23/17
MR. SPIELBERG: You could, but not to
Page 6

make too fine a point of it, the same people who would be enforcing that flatly refused to address this problem when it was brought to their attention.

MS. UHLE: I need some clarification on that, because I'm not sure who you're talking about. I could guarantee that was not my department. Now, it may have been the fact that, you know, when it was left out on the sidewalk, that would have been a Highway Department issue. But again, at this time it's not the same people. That would have been the Highway Department that would have been responsible for any trash left within the public right-of-way. The Building Department would be the authority with regard to any enforcement related to a Planning Board approval or a condition of approval, and I could guarantee you we would be very responsive.

MR. SPIELBERG: Mr. Cunningham, I can only say this: You've been presented with the best alternative under the circumstances.

DINA M. MORGAN, REPORTER

♀ 00016

EASTCHESTER PLANNING BOARD - 2/23/17
However, the circumstances can be fixed by refusing to grant this permit, and that is, I submit to you, the most appropriate solution. I thank you.

ACTING CHAIRMAN NEMECEK: Thank you.

MR. WEINBERG: Good evening, Board. I'm Bill Weinberg, one of the owners of the building since 1990.

When the building was first constructed in 1939 as a supermarket, there was an easement given from the rear of the building for trash. I have a copy of the easement, I have a copy of the survey if anyone would like to see it.

Cooked, the tenant in question, occupies one first floor space and one lower level space. All the food prep, all the trash is on the lower level. There's further a subbasement, and the subbasement, which has the easement for trash, which used to be used by the whole building, it no longer is, goes right to Grayrock Road. Cooked used to put their trash on Garth Road. The town requested that they put it on Grayrock Road. Grayrock Road,

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♀ 00017

EASTCHESTER PLANNING BOARD - 2/23/17
the rear of the building, which has an easement, which has frontage, which has three stories of frontage on Grayrock, it backs up to Yuki's Pit In, not to this neighbor. Yuki's got no problem.

The tenant has arranged for six day a week indoor trash in a room we've constructed for him just for that purpose, and he's got small cans, no dumpsters, a great expense to him. Trash is brought out, put in the trucks,

cans, if they're brought out because he bags it so you got a double containers, is then brought back in. A new door lock has been provided and has been given to the private carter. It's the best solution and it works for everyone else. If in the past something has bothered this neighbor, let us know, we can correct it, or let the town know and they can enforce it. But right now Garth Road has a lot more foot traffic than Grayrock Road. There's no one who goes into Yuki's Pit In, I don't know how he stays in business, but there is no traffic, there's no foot traffic, and it's just a better solution. If we put it in front on Garth Road,
DINA M. MORGAN, REPORTER

♀ 00018

EASTCHESTER PLANNING BOARD - 2/23/17
it's not a good solution. If we rent it to someone else, then their garbage is going to go somewhere. So a vacant store is not a good solution. That's what we have now and there's still garbage. It doesn't go away. We all have to deal with it, act like grownups. The neighbor said he put a camera up to monitor it. I said, go ahead, we'll monitor your space, you monitor our space, and hopefully everyone will live in harmony.

ACTING CHAIRMAN NEMECEK: I have two questions for you. First of all, you mentioned a frontage onto Grayrock; does your building have frontage on Grayrock or just the easement?

MR. WEINBERG: Just the easement. The whole building is visible because Yuki's Pit In is only about 12 feet high and our building is 34 feet high.

ACTING CHAIRMAN NEMECEK: Okay. Second question: You mentioned that the town had asked Cooked and Company to -- it expressed its preference that the garbage be moved onto Grayrock. When was that done and who, to your recollection, made that request of Cooked and
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♀ 00019

EASTCHESTER PLANNING BOARD - 2/23/17
Company.

MR. WEINBERG: I'm only guessing it was the Highway Department, but he called me, he asked --

ACTING CHAIRMAN NEMECEK: Approximately when; are we talking 10 years ago?

MR. WEINBERG: No.

ACTING CHAIRMAN NEMECEK: Two years ago?

MR. WEINBERG: Less. Within the past year.

ACTING CHAIRMAN NEMECEK: The garbage used to be removed prior to that on Garth?

MR. WEINBERG: Yes.

ACTING CHAIRMAN NEMECEK: I absolutely -- I know Garth Road very well, I also know Grayrock, I fully agree with you Garth Road and that particular area of Garth

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Road is heavily trafficked. I know we've approved a number of -- I think we approved a gym not so long ago, and, you know, even at those odd hours parking is a concern and, you know, I'm guessing that it is preferential to
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♀ 00020

EASTCHESTER PLANNING BOARD - 2/23/17
have garbage removal on Grayrock. There's more space back there, and, quite frankly, as a citizen of this town you don't want to have the traffic problems that are caused by having six day a week garbage pickup on Garth Road if there is a viable solution elsewhere. It sounds like to me, and I think I've made it fairly clear in the way that I've expressed myself here, that I think that the solution that Mr. Iannacito described, while imperfect, is a pretty good stab at something that just may work. It would be wonderful if all of our applicants were as responsive to complaints as this applicant has been on this particular complaint. I'm not guaranteeing it's going to work that you're never going to find a grease spot, but it does sound, for the reasons expressed by the owner here as well with, that there has been an easement that has been regularly used -- it may not have been used in the immediate past or before the town apparently expressed a preference that they use Grayrock, but it sounds like they're within their rights to be using this. They attempted
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♀ 00021

EASTCHESTER PLANNING BOARD - 2/23/17
to craft a solution that really does take into account the concerns that 132 Garth has expressed. That's my view of it.

MR. TUDISCO: Mr. Chairman, I just wanted to also indicate that in addition Mr. Iannacito stating on the record what his proposal was, that was submitted in writing. So there are conditions that were submitted in writing that are consistent with the proposal that was, I guess, put forth by the applicant.

MR. CUNNINGHAM: You said that the town had called to say that they recommend that you do the garbage out the back; did they give you a reason why that was the case?

MR. WEINBERG: They didn't recommend, they insisted.

MR. CUNNINGHAM: Excuse me.

MR. WEINBERG: They didn't recommend, they insisted.

MR. CUNNINGHAM: Why?

MR. WEINBERG: I think the amount of trash was greater than what the present tenant put out on Garth Road, two bags per tenant.

MR. CUNNINGHAM: When Cooked and
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♀ 00022

EASTCHESTER PLANNING BOARD - 2/23/17
Company took over, in other words?

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MR. WEINBERG: Cooked and Company has a private carter, the nature of the business, and it was too large, it was on the street.

MR. CUNNINGHAM: Okay.

MR. CONTRERAS: That would be --

ACTING CHAIRMAN NEMECEK: If you're going to speak.

MR. CUNNINGHAM: Come back up.

ACTING CHAIRMAN NEMECEK: And identify yourself for the record, please.

MR. CONTRERAS: Robert Contreras, the owner of 132 Garth, LLC.

When he changed it over in the summer, that's when I started noticing it, and I couldn't find out who it was. It was by chance that I just happened to catch the kid going down there and emptying it all out.

Now if he's got this new plan that it's going to go every day, it should go back on Garth Road because they won't put out 20 cans anymore, it will be 1 or 2 cans. By his own admission, he admitted that the town wanted him to do that because they were putting out a

DINA M. MORGAN, REPORTER

♀ 00023

EASTCHESTER PLANNING BOARD - 2/23/17

lot of cans. So now it's going to be every day pickup, let's go back on Garth Road.

MR. CUNNINGHAM: They're still with a private carter, though. The only access it to the locked -- well, John can speak first.

MR. IANNACITO: I don't think the private carting company will carry garbage up two flights of stairs.

MR. CONTRERAS: Why should they? Why can't Cooked and Company bring up their garbage and put it on the street?

MR. IANNACITO: Because the solution here is to have no garbage out on Grayrock or Garth at all times. It will never be out there.

MR. CONTRERAS: There's going to be a point where you're loading it into the truck and that's when the overflow is. Okay. That's the bottom line.

MR. IANNACITO: They have to carry it out to the truck.

MR. CONTRERAS: If it's in front of his store, he will make sure they'll clean it up.

DINA M. MORGAN, REPORTER

♀ 00024

EASTCHESTER PLANNING BOARD - 2/23/17

ACTING CHAIRMAN NEMECEK: We're still talking about a substantial amount of garbage. My math says that if you previously picked up twice a week, you're doubling the size of the restaurant potentially doubling the amount of food waste, but you're picking up six times a week, you're going to have two thirds of the amount of garbage with every pickup as he previously did.

MR. CONTRERAS: Why do I have to deal

with it?

MR. IANNACITO: I don't think you have to deal with it.

MR. PULASKI: There should be one speaker addressing this board and no talking between them, otherwise, we're going to lose control of it.

MR. CONTRERAS: So the architect submitted these pictures that you have a copy of, right, and that's down the block, in front of their own property, okay, but in that one picture with the mattress, this is not food, this is regular home garbage. It's not as when you come out of the restaurant you got fats and
DINA M. MORGAN, REPORTER

♀ 00025

EASTCHESTER PLANNING BOARD - 2/23/17
all that. Even though it's not, look at the staining on the street. That just furthers my point that what he shows is just showing what's going to happen. I don't need to be the garbage police for the guy next door. I don't need to deal with this. I'm telling you since it's been happening in the summer, I've been complaining. I thought it was the restaurant on the corner, but he puts it out in front of his place. The deli on Garth Road puts it out in front of his place. So if he wants to store it in the basement, then have the same guy that puts it in the basement bring it up, put it out on Garth Road every day, it won't be 20 canisters. That's all I ask.

I've owned the building since 1995, I get these notices in the mail, I never come in and complain, okay. I never say anything. Just this one time since this summer finding this garbage, and I don't think it's fair. I'm sorry.

ACTING CHAIRMAN NEMECEK: Do we have any other members of the public who want to speak on this particular application,
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♀ 00026

EASTCHESTER PLANNING BOARD - 2/23/17
Application 16-60?

(No comments.)

MR. IANNACITO: I think, you know, we've tried to resolve this the best we could. We do have a right to go onto Grayrock because we have an existing easement on the property and it has been used in the past for garbage disposal, for deliveries, for entrance into the building, and it's been being used that way since Cooked has been there. So we feel that that's the more practical way to go instead of trying to carry trash up and down two flights of stairs every day.

So we hope that the board accepts our solution and gives us a favorable vote. Thank you.

ACTING CHAIRMAN NEMECEK: Does anyone else have any questions from the board?

MR. PULASKI: No.

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MR. CUNNINGHAM: No.
ACTING CHAIRMAN NEMECEK: First I'm
going to move to close the public hearing for
Application 16-60, which is 134 Garth Road.
Second?

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♀ 00027

EASTCHESTER PLANNING BOARD - 2/23/17

MR. PULASKI: Second.

ACTING CHAIRMAN NEMECEK: All in
favor.

(All aye.)

MR. TUDISCO: I have a question.
Margaret, is the easement part of the record?

MS. UHLE: Yes.

MR. TUDISCO: So there's a copy of it
in the record?

MS. UHLE: Well, we have a survey that
shows the easement as part of the package. I
don't believe we have the actual text of the
easement.

MR. IANNACITO: We could get you a
copy of the deed if you need a copy of the
deed.

MS. UHLE: The survey shows the
easement.

MR. PULASKI: I very much understand
the objection, but an easement has been
established for the property and the owner of
that property has utilized that and how he's
advertised and how that other establishment,
the eating establishment can operate. That's

DINA M. MORGAN, REPORTER

♀ 00028

EASTCHESTER PLANNING BOARD - 2/23/17

what it is.

MR. TUDISCO: Also, Mr. Chairman, I
just wanted to say since there was an objection
from the public, when violations like this
occur, the proper -- if it's blocking the
sidewalk, the proper place to complain about it
would be in the Building Department or the
Highway Department depending on what, if
anything, it is blocking. Typically, when
there are complaints of trash that is put out,
put out too early, put out in excess, not
cleaned up, there is a code enforcement officer
with the Building Department, and I, as the
Deputy Town Attorney, prosecute those cases.
If this is something that is going to be made
as a condition, certainly you should advise
your client or your client should contact the
Building Department with whatever violation of
the proposal there is and we prosecute those
cases.

MS. UHLE: I just want to clarify
something. The Building Department does not
enforce anything to do with garbage out on the
sidewalks or on the street or in public

DINA M. MORGAN, REPORTER

♀ 00029

EASTCHESTER PLANNING BOARD - 2/23/17
right-of-ways. That is the Highway Department.

So what we would be enforcing is whether somebody is in violation of a condition of approval.

Just to quickly follow-up on that, I certainly understand Mr. Contreras' concerns and frustrations, et cetera. If the Highway Department did ask that the trash be on Garth Road, and I don't doubt Mr. Weinberg, I wouldn't use that as a reason in terms of making your determination because we haven't verified that. Unfortunately, I think that the Highway Department, and maybe the reason the Highway Department was not as responsive as Mr. Contreras would have liked, is because nobody likes to see garbage anywhere and calls are actually made often with regard to establishments within the town on garbage pickup days, if it's put out a little bit too early or people aren't quick to put the cans back. So I think it's a kind of complaint that the Highway Department receives on a regular basis. I would be certain that if they put containers on Garth Road, there would be

DINA M. MORGAN, REPORTER

♀ 00030

EASTCHESTER PLANNING BOARD - 2/23/17
complaints about that pretty immediately as well. So I'm not defending the Highway Department, but I think it's just wherever it's located nobody likes to see it. So they may not be as responsive.

However, again, what we would be responding to -- because I don't want to get calls about garbage -- what we would be responding to is if they were in violation of the condition of approval which said those containers may not be out on the sidewalk, if they're out on the sidewalk, then our code enforcement could issue a violation and a summons for that.

MR. SPIELBERG: I was not aware of this easement. I would be interested to know if you have or someone has checked that the easement is, one, still good, and, two, who gave it to who and who has the right to practice it. Where did this easement come from? As convenient as easements often are, but what is it? If Mr. Pulaski has considered it by saying, there is an easement, well, whose got this easement?

DINA M. MORGAN, REPORTER

♀ 00031

EASTCHESTER PLANNING BOARD - 2/23/17

MR. IANNACITO: We have a copy of the deed.

MR. SPIELBERG: What deed?

MR. IANNACITO: It's a deed for the property.

MR. SPIELBERG: Can I see it?

ACTING CHAIRMAN NEMECEK: In fairness, the public hearing has been closed in this case. We solicited comments, including comments regarding the easement.

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MR. SPIELBERG: This is an easement in favor of 130 Garth Road; who is that?

MR. IANNACITO: That's this property.

ACTING CHAIRMAN NEMECEK: This application is 134 Garth Road.

MR. IANNACITO: There's a number of different addresses on that building. That's the legal address.

MR. SPIELBERG: You said this is part of the record?

MS. UHLE: We have a survey that shows the location of the easement, and it has been entered into the record. Not that actual piece of paper, but the applicant has testified with

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♀ 00032

EASTCHESTER PLANNING BOARD - 2/23/17
regard to the easement and we have a survey that shows the easement.

ACTING CHAIRMAN NEMECEK: The issue of the easement was raised at a minimum at the last hearing as well, which is publicly available as I understand it. This is not a surprise, the issue of the easement and --

MR. SPIELBERG: Not surprising there should be an easement where?

ACTING CHAIRMAN NEMECEK: The issue of the existence of an easement is not a surprise that was brought up at the last minute here. It was discussed previously at public hearings.

MR. SPIELBERG: On this?

ACTING CHAIRMAN NEMECEK: On this, yes.

MS. UHLE: I think, as you said, the public hearing is closed.

ACTING CHAIRMAN NEMECEK: The public hearing is closed, yes. While we could arguably vote to reopen the public hearing, I'm not inclined to do so.

MR. SPIELBERG: I think you should give us an opportunity to investigate the

DINA M. MORGAN, REPORTER

♀ 00033

EASTCHESTER PLANNING BOARD - 2/23/17
easement.

ACTING CHAIRMAN NEMECEK: I'm not going to do so.

MS. UHLE: If you would like to reopen so that you could accept the easement agreement into the record and then it becomes a part of the record. I think it's more appropriate for it to be given to you as part of the record and not --

ACTING CHAIRMAN NEMECEK: Then it becomes part of the public record. That's fair enough. My concern is this is the third time this applicant has been here, and I believe the easement was mentioned at the first time in October. So, you know, I think Mr. Iannacito and the applicant were very accommodating the last time they were here to not push forward but to attempt to find a solution on this garbage issue, and I think the proposal that

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they've come forward with, to my mind, and I speak only for myself, is a reasonable one.

MR. SPIELBERG: Are you going to reopen the public hearing to allow this into the record without allowing an opportunity to
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♀ 00034

EASTCHESTER PLANNING BOARD - 2/23/17
address it?

ACTING CHAIRMAN NEMECEK: Yes. How about that? I move to reopen the public hearing for the limited purpose of introducing this document into the public record, at which point it could be perused by members of the public who, if they have a problem with it, can then take whatever steps they feel appropriate. Any second on that?

MR. PULASKI: Second.

ACTING CHAIRMAN NEMECEK: All in favor.

(All aye.)

MR. SPIELBERG: Is it reopened?

ACTING CHAIRMAN NEMECEK: It was reopened for the limited purpose of allowing the document into the record. Let me have the document. I'm the Chairman for the day.

MR. PULASKI: Another comment is that in the spirit of being good neighbors -- I don't know that that's going to carry the day -- I would have somebody from the applicant police the garbage. You probably will become aware of when the garbage pickup time is and
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♀ 00035

EASTCHESTER PLANNING BOARD - 2/23/17
somebody could go out there and check the area and see if there is anything that's spilled.

Also, just as a citizen walking around and seeing this, seeing stuff in my area in front of stores or whatever early in the morning, it's good when it's properly bagged, completely bagged so it's not spilling, and if there's any boxes or whatever, it's properly tied up so the wind doesn't get it.

MR. IANNACITO: We could make that another condition of approval.

ACTING CHAIRMAN NEMECEK: The problem with putting these conditions on it is that they're really not --

MR. PULASKI: I'm not really speaking of a condition. I'm not really speaking of a condition. I'm speaking of just being a good neighbor and being respectful of others, of what this objection has been, and I think just proper bagging and some policing will go a long way in --

MR. IANNACITO: And I think the owner of the restaurant, right -- we received this complaint, a copy of this complaint two days
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♀ 00036

EASTCHESTER PLANNING BOARD - 2/23/17
prior to the last meeting. So at the last

022317PB_1.TXT

meeting we said, let's take a step back and let's try to find a solution to this before we move any further. I think we've come up with a solution, and they've also already implemented the six day a week pickup. It's not like they're waiting for this approval, they've done it already.

ACTING CHAIRMAN NEMECEK: I heard that it went from two to four.

MR. IANNACITO: It was going to go to two to four and then they increased it to six, and they also implemented the storage of all the garbage and the trash cans indoors. They've created this --

MR. CUNNINGHAM: How long has that been going on now?

MR. IANNACITO: A couple of weeks now. Since the last meeting --

MR. CUNNINGHAM: Have you seen any difference?

MR. CONTRERAS: I just took that picture two days after the meeting.

MR. CUNNINGHAM: Of the last meeting.
DINA M. MORGAN, REPORTER

♀ 00037

EASTCHESTER PLANNING BOARD - 2/23/17

He just said he implemented this in the last few weeks.

MR. CONTRERAS: Like I said --

MR. CUNNINGHAM: We're trying to come to --

MR. CONTRERAS: I showed up and there was a grease stain in the street. That's my point exactly. Just like the other place, they had their employees take it out.

MR. IANNACITO: There's a lot of restaurants on Garth Road. They pick it up and the truck drives away, so if it's making a second stop at another location, who's to say the grease isn't dripping out --

MR. PULASKI: We're going around in circles again. We've taken the easement in. What's the next step, Mr. Chairman?

ACTING CHAIRMAN NEMECEK: I would just echo Mr. Pulaski's sentiments that the good neighbor policy is always the best policy and if you were to -- I know Cooked and Company has its entrance on Garth Road, you should treat -- your client should treat the road on Grayrock as if it were its own entrance. If it takes
DINA M. MORGAN, REPORTER

♀ 00038

EASTCHESTER PLANNING BOARD - 2/23/17

that policy and gets a bucket out with some soap and cleans up the grease stains if there are any, that's going to go a long way towards making things work right here.

With all of that said, I've expressed already my belief that the applicant has taken -- in light of all of the circumstances that have been described to us, has taken reasonable steps to accommodate this one issue and seriously address this issue, which is the

subject of a very legitimate complaint by the next door neighbor. Subject to the continuation of the garbage removal in the manner in which you described where the garbage is never going to be put out onto the street, where the private carting company -- the garbage removing company will have access to the interior of the building, will remove the garbage from the interior of the building directly into the garbage truck and return whatever bins to the interior of the building and will do its best not to leave a mess or any debris or grease or waste after it completes the removal, that subject to that condition I
DINA M. MORGAN, REPORTER

♀ 00039

EASTCHESTER PLANNING BOARD - 2/23/17
move to approve application --

MR. PULASKI: Did you close the public hearing?

MS. UHLE: Also, as part of this could you adopt a neg dec at the same time.

ACTING CHAIRMAN NEMECEK: I didn't re-close the hearing because I only opened it for the limited purpose of receiving the record. Once it was received, it was deemed closed. That's the way I read it.

MR. TUDISCO: You probably should formally do it.

ACTING CHAIRMAN NEMECEK: All right. Having accomplished the purpose of the limited reopening of the public hearing, I formally move to, once again, close the public hearing.

MR. PULASKI: Second.

ACTING CHAIRMAN NEMECEK: All in favor.

(All aye.)

ACTING CHAIRMAN NEMECEK: We have to adopt a negative declaration. I make a motion to adopt a negative declaration for Application 16-60, Cooked and Company, 134 Garth Road;

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♀ 00040

EASTCHESTER PLANNING BOARD - 2/23/17
seconds?

MR. PULASKI: Second.

ACTING CHAIRMAN NEMECEK: All in favor.

(All aye.)

ACTING CHAIRMAN NEMECEK: Subject to the condition that I just described at length that basically you're going to from this point forward be held to complying with the standard that you volunteered with all the garbage kept indoors and removed by your private garbage carting company and no garbage is ever to be out on the street -- I don't think we have any other --

MR. TUDISCO: That it was going to be picked up six days a week.

MS. UHLE: I was just going to clarify that whether you wanted to include that. I think the most important part is that it's

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enclosed. I think it's a little bit hard to enforce if all of a sudden four days a week becomes necessary. I think the enclosed is most important. I appreciate the six days a week.

DINA M. MORGAN, REPORTER

♀ 00041

EASTCHESTER PLANNING BOARD - 2/23/17

ACTING CHAIRMAN NEMECEK: I think we need a minimum of four days a week, that could be a condition. I think we discussed this last time and you had volunteered that and it makes sense.

MR. IANNACITO: We'll maintain it at six unless the business takes a nose dive.

MS. UHLE: That's, again, going back to being difficult to enforce.

ACTING CHAIRMAN NEMECEK: A minimum of four but strongly encourage you to keep it to six. I think that's probably the most workable solution.

Subject to those two conditions, I move to approve Application 16-60, 134 Garth Road.

MR. PULASKI: Second.

ACTING CHAIRMAN NEMECEK: All in favor.

(All aye.)

MR. IANNACITO: The neg dec was approved?

MS. UHLE: Yes.

ACTING CHAIRMAN NEMECEK: Yes.

DINA M. MORGAN, REPORTER

♀ 00042

EASTCHESTER PLANNING BOARD - 2/23/17

MR. IANNACITO: Thank you.

ACTING CHAIRMAN NEMECEK: Thank you.

MS. UHLE: I will e-mail it to you, because this is the one copy we have. I'll e-mail it to you tomorrow. You're welcome.

MR. TUDISCO: You should probably send it with a copy of the survey.

MS. UHLE: Okay, sure.

ACTING CHAIRMAN NEMECEK:

Application -- I guess we'll do them both at once. That seems to make sense; right? We're going to do two application at once; Application 17-03 and Application 17-04. The first, 17-03, is 42 Lakeview Avenue, Lot 1, which is the right lot; and the second application, 17-04, is 42 Lakeview Avenue, Lot 2, which is the left lot.

MR. MAIORANO: Good evening, Board Members, Chair. My name is Adamo Maiorano from Community Designs on behalf of the applicant, Carmelo Abate. We are proposing two single family dwellings, I guess, on 42 Lakeview Avenue.

As you know, the existing site is a

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♀ 00043

EASTCHESTER PLANNING BOARD - 2/23/17
two lot subdivision. The existing site is

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improved with a single family dwelling, driveway, walkways, patio, and a detached garage, all of which will be removed from the site. The only existing structure that will remain is a stone retaining wall -- a portion of the stone retaining wall on the right side of the Lot 1, which is the house that's up now.

So Lot 1 on the right side will be a garage located in the basement level, a stone veneer on the bottom half of the house, and it's clad with HardiePlank siding. It will have an asphalt shingle roof. The color is saddle wood ranch, part of the America Harvest collection. As far as the garage and front door are depicted is what you see in the elevation. The accent roof over the bay window will be a copper roof. As far as the soffits and all of the accents and trim work will be the white AZEK.

That's basically what this house would look like in the street-scape as far as the neighboring house on the right, our house we're proposing on the left-hand side which is Lot 2,

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♀ 00044

EASTCHESTER PLANNING BOARD - 2/23/17
and the house adjacent to that.

ACTING CHAIRMAN NEMECEK: What is the overall -- describe the grade for me; it looks like the property from left to right goes downhill quite a bit?

MR. MAIORANO: Exactly. So each lot basically drops about 3 feet in height from left to right, which is why we allocated the driveway on each house on the right-hand side so there is not a great pitch going down into the driveway. So in the entire 100 feet it changes about 6 feet, but each lot is about 3 feet plus or minus the grade change.

As far as the site features, the condensers on this unit will be located on the left-hand side in the rear yard which is adjacent to our proposed Lot 2. Planting, there's a planting plan. We are keeping most of the trees besides there is one existing tree that will be removed, a 26-inch beech tree on Lot 1.

ACTING CHAIRMAN NEMECEK: Did you require any variances?

MR. MAIORANO: Yes, there are no --
DINA M. MORGAN, REPORTER

♀ 00045

EASTCHESTER PLANNING BOARD - 2/23/17
sorry -- there are no variances. Everything is conforming to the R-5 zone.

ACTING CHAIRMAN NEMECEK: I know they don't quite bring in the sizable viewing audience that the Planning Board does but our Architectural Review Board performs a very valuable service to this town, and I want to get the feedback from you on what they had to say about these two applications.

MR. MAIORANO: Yes. The one comment,

if you want me to go to Lot 2 --

ACTING CHAIRMAN NEMECEK: Sure. Yes, we'll kind of do them both at once. I think it makes sense.

MR. MAIORANO: Lot 2 has very similar features to Lot 1. They did have a comment as far as this window, the top, was missing the molding piece.

MS. UHLE: It was a drafting error.

MR. MAIORANO: Yes, drafting error. Also, in the rear of the house, the staircases by code don't have to have a railing next it because it's below that 30 inches and less than four risers on the rear steps on Lot 1 and Lot

DINA M. MORGAN, REPORTER

♀ 00046

EASTCHESTER PLANNING BOARD - 2/23/17

2. That was their two comments.

MS. UHLE: For this particular house, there was those two comments; one, a drafting error; one, a question of the railing. The other house the ARB referred with a recommendation to approve with no additional comments.

MR. PULASKI: The stormwater calculations were checked?

MS. UHLE: Yes. Actually, Adamo has been working with Joe Cermele very closely. Joe Cermele couldn't make it tonight and I didn't think it was necessary. He said there's a few minor loose ends, but that he felt very comfortable with the engineering plans, and they have been working very closely together.

ACTING CHAIRMAN NEMECEK: You've been before us enough times and water is always an issue; right? I know you guys have been very responsive in terms of addressing water management issues on all of the properties that you've developed and reputation does count for something.

MS. UHLE: I had a meeting with Mr.

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♀ 00047

EASTCHESTER PLANNING BOARD - 2/23/17

Cermele yesterday and asked him specifically about this application, and he said he was fine with it other than some loose ends that can become a condition of approval.

ACTING CHAIRMAN NEMECEK: Are you aware of what those loose ends are?

MR. MAIORANO: Exactly, yes, and we've already consulted about a few of them.

ACTING CHAIRMAN NEMECEK: Okay. So that would be a condition.

MS. UHLE: You did prepare a landscape plan.

MR. CUNNINGHAM: Just the landscape plan.

MR. MAIORANO: This is the landscape plan for Lot 1 and Lot 2. It was done by Anthony Acocella, landscape architect. What's proposed there is what they intend on doing.

MS. UHLE: Could I make a quick

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comment about the landscape plan?

ACTING CHAIRMAN NEMECEK: If you think you're qualified.

MS. UHLE: Your client is here today; right?

DINA M. MORGAN, REPORTER

♀ 00048

EASTCHESTER PLANNING BOARD - 2/23/17

MR. MAIORANO: Yes.

MS. UHLE: It is increasingly becoming a problem even though we require the landscape architect to prepare a letter certifying that the landscaping has been implemented in accordance with the approved plan, it's still not happening. Unfortunately, what's happening we're not giving people their CO's until they redo the plans and make it sufficient. So in one case --

ACTING CHAIRMAN NEMECEK: Are we getting a letter but not compliance or are we not getting the letter or compliance?

MS. UHLE: On only one occasion did they get a letter saying it was in compliance where it clearly wasn't, so I disregarded that letter. Other times I've had landscape architects that feel very uncomfortable, so what they're giving me is as-built plans and then saying, what do you think about this. And then what we're saying is, this is nowhere near what was approved so now not only do you have to pay to get an as-built plan, you're going to have to pay the landscape architect to

DINA M. MORGAN, REPORTER

♀ 00049

EASTCHESTER PLANNING BOARD - 2/23/17

supplement this so that it's essentially the same. I think the problem is something is getting lost in translation to the actual builders or the applicants who don't realize that it is a part of the approval process, so I'm glad you're here. If you want to make changes to the landscape plan, just let us know through your landscape architect. We're not counting every single plant or every -- but not that it's something -- usually the difference is not that -- people don't tend to go overboard, it's just the opposite. You did relatively simple things here. If there are going to be changes, just let us know. Also understand that if it's significantly different, especially if it's different to the extent that it's really deficient, you're not going to get a CO.

ACTING CHAIRMAN NEMECEK: A warning to the general public, in case you haven't checked Margaret's resume, she is a certified landscaped architect.

MS. UHLE: Licensed.

ACTING CHAIRMAN NEMECEK: Licensed,

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♀ 00050

EASTCHESTER PLANNING BOARD - 2/23/17

yes. So it's going to be very difficult to

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pull the wool over her eyes.

MS. UHLE: But I think it's both important to the ARB and the Planning Board for new construction and if you're submitting it.

ACTING CHAIRMAN NEMECEK: It is.

MS. UHLE: I have had applicants say, oh, we only submitted that to get our approval and somehow didn't understand that they also had to implement it. It's more of a problem with the landscape plans. Everybody understands the construction documents. That's all.

ACTING CHAIRMAN NEMECEK: When the money runs out, sometimes --

MR. CUNNINGHAM: The landscaping is the first to go.

ACTING CHAIRMAN NEMECEK: I am very much an advocate of having greenery, and I think it's a very fortuitous policy that this town has to force that condition of approval of these types of applications.

MR. PULASKI: The plans are calling for an 18 foot and 21 foot curb cut

DINA M. MORGAN, REPORTER

♀ 00051

EASTCHESTER PLANNING BOARD - 2/23/17
respectively; is that in compliance?

MS. UHLE: 22 feet is the maximum curb cut that you could have. 22 feet.

MR. MAIORANO: 20 foot the driveway, 22 the curb cut.

MR. PULASKI: Okay.

ACTING CHAIRMAN NEMECEK: Do any members of the board have any questions on either of these applications?

MR. PULASKI: No.

MR. CUNNINGHAM: No.

MS. UHLE: Did you present the second one?

MR. MAIORANO: I --

ACTING CHAIRMAN NEMECEK: He did.

MS. UHLE: Okay.

ACTING CHAIRMAN NEMECEK: It was my decision that they be submitted at the same time because they really do play off of each other. The concerns, I believe, that any members of the public would have would probably relate to both of them. Since they are adjacent, we have the same developer here, it makes sense to put them both together.

DINA M. MORGAN, REPORTER

♀ 00052

EASTCHESTER PLANNING BOARD - 2/23/17

So let's move to open the public hearing on both Application 17-03 and Application 17-04, both of which are 42 Lakeview Avenue.

MR. PULASKI: Second.

ACTING CHAIRMAN NEMECEK: All in favor.

(All aye.)

(No comments.)

ACTING CHAIRMAN NEMECEK: There not

Page 22

being anyone here from the public to comment, I move to close the public hearing on Applications 17-03 and 17-04.

MR. PULASKI: Second.

ACTING CHAIRMAN NEMECEK: All in

favor.

(All aye.)

ACTING CHAIRMAN NEMECEK: If you passed muster with the ARB and with Mr. Cermelo and, most importantly, the watchdog who is Margaret Uhle, I feel comfortable. They look like very nice homes and certainly will be an asset to the town.

With that said, subject to the two
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♀ 00053

EASTCHESTER PLANNING BOARD - 2/23/17
conditions at least; one is that whatever recommendations made by the --

MS. UHLE: Civil engineer for storm water management, and the other is after the landscape plan is implemented, we need a letter from the landscape architect saying it's essentially the same as what was approved.

ACTING CHAIRMAN NEMECEK: So subject to those two conditions, I move to approve both Application 17-03 and 17-04.

MR. PULASKI: Second.

ACTING CHAIRMAN NEMECEK: All in

favor.

(All aye.)

MR. PULASKI: Aye. Two applications.

MR. MAIORANO: Thank you.

MR. CUNNINGHAM: I wanted to make sure the AC pads are there and protect the greenery around it.

ACTING CHAIRMAN NEMECEK: So I move to close the town of Eastchester Planning Board meeting of February 23rd, 2017.

MR. PULASKI: Second.

DINA M. MORGAN, REPORTER

♀ 00054

EASTCHESTER PLANNING BOARD - 2/23/17

ACTING CHAIRMAN NEMECEK: All in

favor.

(All aye.)

(MEETING ADJOURNED.)

DINA M. MORGAN, REPORTER

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

STATE OF NEW YORK)
) Ss.
COUNTY OF WESTCHESTER)

I, DINA M. MORGAN, Court Reporter and Notary Public within and for the County of Westchester, State of New York, do hereby certify:

That the above transcript was taken from a videotape of the actual hearing. I was not present for such hearing. The videotape was taken and transcribed by me to the best of my ability.

And, I further certify that I am not

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related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 14th day of March, 2017.

DI NA M. MORGAN
Court Reporter
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♀ 00056

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