

Town Board Minutes  
Town of North Castle  
15 Bedford Road  
Armonk, New York  
on  
July 25, 2012

The meeting was called to order at 5:30 p.m. at on the duly adopted motion of Councilman D'Angelo and immediately adjourned into executive session. All Town Board members and the Town Attorney were present for the executive session which closed at 7:30 p.m. The Town Clerk joined the regular meeting which reconvened at 7:35 p.m.

Supervisor	Howard B. Arden
Councilmen:	Michael J. Schiliro
	Diane DiDonato Roth
	John J. Cronin
	Stephen D'Angelo

Town Clerk	Anne Curran
Town Attorney	Roland A. Baroni

Councilman DiDonato Roth moved, seconded by Councilman D'Angelo, approval of the minutes of the July 11, 2012 meeting.

The roll call was as follows:

Ayes: Councilmen Schiliro, DiDonato Roth, Cronin, D'Angelo, Supervisor Arden.

Noes: None.

The minutes of the public hearings that commenced at 7:40 p.m. follow at the end of these minutes.

In connection with Water District No. 2 (Windmill) water system improvements, Councilman Schiliro moved, seconded by Councilman DiDonato Roth, receipt and approval of the GHD map, plan and report.

The roll call vote was as follows:

Ayes: Councilmen Schiliro, DiDonato Roth, Cronin, D'Angelo, Supervisor Arden

Noes: None

In connection with Water District No. 2 (Windmill) water system improvements, Councilman DiDonato Roth moved, seconded by Councilman Schiliro the adoption of the Order Calling Public Hearing scheduled for August 15, 2012.

The roll call vote was as follows:

Ayes: Councilmen Schiliro, DiDonato Roth, Cronin, D'Angelo, Supervisor Arden

Noes: None

Pursuant to a recommendation by the Spain Agency, Councilman DiDonato Roth moved, seconded by Councilman Schiliro, to consolidate minimum insurance requirements to one Town policy.

The roll call vote was as follows:

Ayes: Councilmen Schiliro, DiDonato Roth, Cronin, D'Angelo, Supervisor Arden

Noes: None

Councilman Schiliro moved, seconded by Councilman DiDonato Roth, ratification of film permit approval to Rare Bird Pictures, Inc. for a one-day film shoot (July 24, 2012) at Hickory & Tweed, 410 Main Street, Armonk, at a \$2,500 fee.

The roll call vote was as follows;

Ayes: Councilmen Schiliro, DiDonato Roth, Cronin, D'Angelo, Supervisor Arden

Noes: None

Councilman Schiliro moved, seconded by Councilman DiDonato Roth, approval of request from Rare Bird Pictures, Inc. for a one-day film shoot (July 30, 2012) on Route 22, pending NYS DOT approval, at a reduced fee of \$1,000.

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The roll call vote was as follows:

Ayes: Councilmen Schiliro, DiDonato Roth, Cronin, D'Angelo, Supervisor Arden

Noes: None

Councilman Schiliro moved, seconded by Councilman D'Angelo, receipt of letter and cash bond from Marc Mancini regarding the Haunted Dead End special event scheduled for October, 2012.

The roll call vote was as follows:

Ayes: Councilmen Schiliro, DiDonato Roth, Cronin, D'Angelo, Supervisor Arden

Noes: None

Councilman D'Angelo moved, seconded by Councilman DiDonato Roth, approval of payment No. 2 to AMSTAR in the amount of \$88,687.10 in connection with Water District No. 1 water tank rehabilitation project and approval for the Supervisor to sign Change Order No. 3 included in the payment.

The roll call vote was as follows:

Ayes: Councilman Schiliro, DiDonato Roth, Cronin, D'Angelo, Supervisor Arden

Noes: None

Councilman D'Angelo moved, seconded by Councilman Schiliro, authorization for the Town Attorneys to execute the Consent Judgment in the matter of Ezriel Kornel vs. Town of North Castle -- Index No. 548961/12.

The roll call vote was as follows:

Ayes: Councilmen Schiliro, DiDonato Roth, Cronin, D'Angelo, Supervisor Arden

Noes: None

Councilman DiDonato Roth moved, seconded by Councilman D'Angelo, approval for the Supervisor to sign the Use and Dissemination agreement with NYS Division of Criminal Justice Services.

The roll call vote was as follows:

Ayes: Councilmen Schiliro, DiDonato Roth, Cronin, D'Angelo, Supervisor Arden

Noes: None

Councilman DiDonato Roth moved, seconded by Councilman Cronin, authorization for the Supervisor to sign revised agreement with GHD in the amount of \$18,300 for preliminary engineering services in connection with Water District No. 2.

The roll call vote was as follows:

Ayes: Councilmen Schiliro, DiDonato Roth, Cronin, D'Angelo, Supervisor Arden

Noes: None

Councilman DiDonato Roth moved, seconded by Councilman D'Angelo, approval for Police Officer Wesley Mojica to attend a Crime Prevention Workshop in Lake Placid, NY, August 26 – August 31, 2012.

The roll call vote was as follows:

Ayes: Councilmen Schiliro, DiDonato Roth, Cronin, D'Angelo, Supervisor Arden

Noes: None

Councilman Schiliro moved, seconded by Councilman D'Angelo, appointment of David Charney to the Library Board of Trustees for a term to expire December 31, 2017.

The roll call vote was as follows:

Ayes: Councilmen Schiliro, DiDonato Roth, Cronin, D'Angelo, Supervisor Arden

Noes: None

Councilman DiDonato Roth moved, seconded by Councilman D'Angelo, acceptance of letter of resignation from David Simonds from the Communications Committee, effective July 31, 2012.

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The roll call vote was as follows:

Ayes: Councilmen Schiliro, DiDonato Roth, Cronin, D'Angelo, Supervisor Arden

Noes: None

Councilman Schiliro moved, seconded by Councilman DiDonato Roth, the reappointment of Susan Geffen to the Architectural Review Board for a term to expire September 13, 2015.

The roll call vote was as follows:

Ayes: Councilmen Schiliro, DiDonato Roth, Cronin, D'Angelo, Supervisor Arden

Noes: None

Councilman DiDonato Roth moved, seconded by Councilman Schiliro, the reappointment of Angelo Monaco to the Architectural Review Board for a term to expire September 13, 2015.

The roll call vote was as follows:

Ayes: Councilmen Schiliro, DiDonato Roth, Cronin, D'Angelo, Supervisor Arden

Noes: None

Councilman Schiliro moved, seconded by Councilman DiDonato Roth, the reappointment of Robert Tully to the Assessment Board of Review for a term to expire September 30, 2017.

The roll call vote was as follows:

Ayes: Councilmen Schiliro, DiDonato Roth, Cronin, D'Angelo, Supervisor Arden

Noes: None

Councilman DiDonato Roth moved, seconded by Councilman Cronin, acceptance of resignation from Bernadette Valcich from Parks and Recreation Board, effective May 7, 2012.

The roll call vote was as follows:

Ayes: Councilmen Schiliro, DiDonato Roth, Cronin, D'Angelo, Supervisor Arden

Noes: None

Councilman DiDonato Roth moved, seconded by Councilman Cronin, the appointment of Dan Zenkel to the Parks and Recreation Board for a term to expire December 31, 2013.

The roll call vote was as follows:

Ayes: Councilmen Schiliro, DiDonato Roth, Cronin, D'Angelo, Supervisor Arden

Noes: None

Councilman DiDonato Roth moved, seconded by Councilman D'Angelo, the consensus agenda:

- Receipt of donation from North Castle Historical Society to the North Castle Public Library in the amount of \$2,000.
- Approval of request from General Foreman Norris for release of bond to Arrow Blacktop – Permit 0769 in the amount of \$500 for driveway alteration at 69 Round Hill Road, Section 1, Block 09, Lot 4.-2.

The roll call vote was as follows:

Ayes: Councilmen Schiliro, DiDonato Roth, Cronin, D'Angelo, Supervisor Arden

Noes: None

The Town Board audited and approved payments totaling \$191,451.55 as indicated on Warrant #14.

After all persons were heard who desired to be heard, the Supervisor closed the meeting at 11:40 p.m. in memory of resident Christina Williams Koegel, and former residents Margaret Knudsen and Anne Twitty.

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Anne Curran, Town Clerk

Dated: August 10, 2012

PUBLIC HEARING  
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At 7:40 p.m. Supervisor Arden stated that a Public Hearing would be held in accordance with the Public Notice that follows:

NOTICE IS HEREBY GIVEN THAT the North Castle Town Board will hold a Public Hearing on July 25, 2012, at 7:30 PM, or as soon thereafter, at Town Hall, 15 Bedford Road, Armonk, NY, 10504, for the purpose of considering the special event permit request for a Halloween special event to be open to the public and to hold not more than 200 people on Fridays, Saturdays and Sundays during the month of October. The property is located at Rocky Ledge Swim Club - 1402 Old Orchard Street and known on the North Castle Tax Maps as Section 3, Block 14, Lot 1.H and located within the R-1A Zoning District.

Copies of the special event permit application are available in the Town Clerk's office during regular business hours. ALL PERSONS HAVING AN INTEREST IN THE MATTER ARE INVITED TO ATTEND AND BE HEARD.

By Order of the Town Board  
Anne Curran, Town Clerk

Dated: July 13, 2012  
Armonk, NY

The Public Notice was marked Exhibit "A" for the record.

The Affidavit of Posting calling the Public Hearing was marked Exhibit "B" for the record.

The Affidavit of Publication from The Journal News calling the Public Hearing was marked Exhibit "C" for the record.

The following were marked Exhibit "D" for the record:

- The application documents, including Short Environmental Assessment Form, Part 1, dated July 9, 2012.
- A memo from Fire Marshal/Assistant Building Inspector William Richardson dated July 18, 2012 regarding review of plans.
- Email from Lieutenant Peter Simonsen dated July 20, 2012 regarding review of application documents.
- A letter from Westchester County Planning Board to Town Clerk Curran dated July 24, 2012 stating that the action is a matter for local determination.
- The green cards denoting receipt of certified mail by adjoining property owners.
- The proposed resolution of approval.

The applicants, Marc and Amy Mancini, appeared before the Board and said the Haunted Dead End special event is scheduled for Fridays, Saturdays and Sundays on the last three weekends of October and will not take place on Halloween which does not fall on the weekend. A children's event is scheduled for Sunday afternoons and the evening events are scheduled from 7 p.m. to 11 p.m.

Lisa Dorfman, Memorial Lane, said she lives within close proximity to the Halloween event location and objected when the event was first proposed a few years ago. Ms. Dorfman said the previous events were well run and that the applicants complied with the Town's requests and did not intrude on the neighborhood. She requested that for future events all residents in the neighborhood be informed, not only the adjacent properties. She expressed concern about the speed of travel on Old Orchard Street.

No other correspondence or comments were entered for the record.

After all persons were heard who desired to be heard, Councilman DiDonato Roth moved, seconded by Councilman D'Angelo, that the Public Hearing be closed at 7:42 p.m.

The roll call vote was as follows:

Ayes: Councilmen Schiliro, DiDonato Roth, Cronin, D'Angelo, Supervisor Arden.

Noes: None.

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Councilman DiDonato Roth moved, seconded by Councilman D'Angelo, the approval of the Special Event Permit application of Haunted Dead End for a Halloween Special Event at the Rocky Ledge Swim Club, 1402 Old Orchard Street (Section 3, Block 74, Lot 1.H), for a term beginning October 12, 2012 and ending October 28, 2012, for a total of nine days, subject to the conditions in the resolution.

The roll call vote was as follows:

Ayes: Councilmen Kittredge, Schiliro, Roth, Cronin, Supervisor Weaver.

Noes: None.

The resolution follows at the end of these minutes.

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Anne Curran, Town Clerk

Dated: August 10, 2012

## RESOLUTION

<b>Action:</b>	Special Event Permit
<b>Application Name:</b>	Haunted Dead End
<b>Owner:</b>	Rocky Ledge Swim Club
<b>Applicant:</b>	Haunted Dead End – Marc Mancini
<b>Designation:</b>	Section 3, Block 14, Lot 1.H
<b>Zone:</b>	R-1A
<b>Acreage:</b>	Approx. 14-acres
<b>Location:</b>	1402 Old Orchard Street
<b>Date of Approval:</b>	July 25, 2012
<b>Term of Special Event Permit:</b>	October 12, 2012 – October 28, 2012

WHEREAS, an application dated July 9, 2012 was submitted by Haunted Dead End to operate a special event at the Rocky Ledge Swim Club pursuant to Chapter 83 of the Town Code; and

WHEREAS, Haunted Dead End is requesting permission to conduct a Halloween special event that is open to the public and will hold not more than 200 people, at any one time, on Fridays, Saturdays and Sundays during the month of October; and

WHEREAS, activities will include a late afternoon/early evening family event that includes crafts, face painting, storytelling as well as an adult supervised walk through maze and an evening adult/teen event that includes a graveyard, vortex tunnel, corn maze and haunted house maze; and

WHEREAS, in 2010 and 2011 the Town Board issued a Halloween special event permit; and

WHEREAS, the 2010 and 2011 Halloween Special Events were held without any known incidents; and

WHEREAS, the operation of the special event would not require any permanent construction; and

WHEREAS, the site plan was forwarded to the Chief of Police and Fire Inspector so that they may make any pertinent recommendations to the Town Board including, but not limited to, the designation of no-parking zones, emergency vehicle access or any other issues deemed important to providing emergency services; and

WHEREAS, the application was referred to the Westchester County Planning Board pursuant to § 239-m of New York State General Municipal Law (GML) on July 13, 2012; and

WHEREAS, the 14-acre property is located in the R-1A Zoning District and is designated on the Tax Maps of the Town of North Castle as Section 3, Block 14, Lot 1.H; and

WHEREAS, a duly advertised public hearing was held on said application before the Town Board on July 25, 2012 and closed on that date at which time all those wishing to be heard were given the opportunity to be heard; and

WHEREAS, the notice of public hearing was sent to the City of White Plains City Clerk and the Town Clerk of the Town/Village of Harrison pursuant to § 239-nn of New York State General Municipal Law (GML) since the subject site is located within 500 feet of the City of White Plains and the Town/Village of Harrison; and

WHEREAS, the Town Board is familiar with the nature of the site and surrounding area;

WHEREAS, the Town Board has requested, received and considered comments from the Town Attorney, the Town Engineer and Town Planner regarding the proposed special event; and

WHEREAS, the proposed action is an Unlisted Action pursuant to the State Environmental Quality Review Act (SEQRA); and

WHEREAS, the Town Board determined to conduct an uncoordinated SEQRA Review; and

NOW, THEREFORE, BE IT RESOLVED, that in accordance with Article 8 of the New York State Environmental Quality Review Law and 6 NYCRR Part 617 and the North Castle Environmental

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Quality Review Law, the Town Board hereby makes a determination that the proposed action will not have a significant adverse impact on the environment and that a draft environmental impact statement will not be prepared; and

BE IT FURTHER RESOLVED, that the special event permit is approved for a term beginning October 12, 2012 and ending October 28, 2012, for a total of nine days, subject to the conditions identified below; and

BE IT FURTHER RESOLVED, that this permit shall be deemed to authorize only the particular use or uses specified, and shall expire if the site is not maintained and if all conditions and standards are not complied with throughout the duration of the use; and

**Prior to the Issuance of the Special Event Permit:**

*(The Town Clerk's initials and date shall be placed in the space below to indicate that the condition has been satisfied.)*

- \_\_\_\_\_1. Pursuant to Section 83-4.D of the Town Code, the Applicant is required to submit plans showing the layout of the event area, including the location of all existing structures and improvements, the location and description of all event-related temporary structures, tents, stands, ingress and egress, parking, signs, lighting, electrical equipment, sound equipment, mechanical equipment, portable toilets to the satisfaction of the Building Department.
- \_\_\_\_\_2. Pursuant to Section 83-4.F of the Town Code, a certificate of insurance from an insurance company licensed to do business in New York State with the following minimum coverages to the satisfaction of the Town Clerk:
  - (1) Bodily injury: \$300,000, one person.
  - (2) Bodily injury: \$1,000,000, one accident.
  - (3) Property damage: \$100,000, one accident.

In addition, the Town shall be identified as additionally insured to the satisfaction of the Town Attorney.
- \_\_\_\_\_3. Pursuant to Section 83-4.G of the Town Code, the Applicant shall submit all documentation demonstrating approval from the Westchester County Department of Health to the satisfaction of the Building Department.
- \_\_\_\_\_4. Pursuant to Section 83-4.I of the Town Code, the Applicant shall post a cash bond of \$500 to guarantee cleanup by the exhibitor after the special event, except where the special event is conducted on premises owned by the person making the application.
- \_\_\_\_\_5. A pre-permit site meeting shall be held with the Applicant and with the Building Inspector, Fire Marshal, Fire Department, and Police Department to discuss the operation of the special event. Once all issues have been adequately addressed to the satisfaction of the Building Inspector, Fire Marshal, Fire Department and Police Department, the Building Department shall transmit a letter stating such to the Town Clerk.

**Other Conditions:**

1. Pursuant to Section 83-3.A of the Town Code, all special events shall require the provision of a "fire watch" by the local Fire Department and/or North Castle Fire Marshal, the cost of which shall be paid for by the applicant. The Fire Marshal may also approve other fire-protection measures to the satisfaction of the North Castle Fire Marshal, the cost of which shall be paid for by the applicant.
2. Pursuant to Section 83-3.B of the Town Code, all special events shall require the provision of security and/or traffic control by the Town of North Castle Police Department, the cost of

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which shall be paid for by the applicant. The Chief of Police may also approve other security and/or traffic control measures to the satisfaction of the Chief of Police, the cost of which shall be paid for by the applicant.

3. This special event permit is not assignable.
4. This special event permit is revocable for a violation of the Town Code or any other ordinance or law, pursuant to Chapter 83-6 of the Town Code.
5. The Applicant shall observe all state, county and Town laws, rules and regulations as to health, safety and general welfare and shall be subject to reasonable regulations of the Building Department, Fire Marshal, Police Department and Highway Department of the Town of North Castle.
6. The special event shall not be conducted prior to 10:00 a.m. or after 12:00 midnight.
4. All rubbish from the premises and from any parking area must be gathered and deposited in closed containers by no later than 6:00 p.m. of the day following and removed from the premises by 6:00 p.m. of the next day following.
6. The Applicant shall not permit any unnecessary or unreasonable noise by means of loudspeakers, power amplifier devices or any other means which would create or tend to create a public nuisance.



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At 7:42 p.m. Supervisor Arden stated that a Public Hearing would be held in accordance with the Public Notice that follows:

NOTICE IS HEREBY GIVEN THAT the North Castle Town Board will hold a Public Hearing on July 25, 2012, at 7:30 PM, or as soon thereafter, at Town Hall, 15 Bedford Road, Armonk, NY 10504, for the purpose of considering the Special Use Permit Application of G.B. Northeast 2, LLC for the establishment of a 17,389 square foot CVS Pharmacy of the approximately 19,886 square feet previously occupied by the A& P Supermarket, and 2,947 square feet of new separate retail space, on the 2.95 acre property located at 450 Main Street, Armonk (Section 2, Block 13, Lot 7A & 10A).

The special use permit application is available in the Town Clerk's office during regular business hours. ALL PERSONS HAVING AN INTEREST IN THE MATTER ARE INVITED TO ATTEND AND BE HEARD.

By Order of the Town Board  
Anne Curran, Town Clerk

Dated: July 13, 2012  
Armonk, NY

The Public Notice was marked Exhibit "A" for the record.

The Affidavit of Posting calling the Public Hearing was marked Exhibit "B" for the record.

The Affidavit of Publication from The Journal News calling the Public Hearing was marked Exhibit "C" for the record.

Letter from DelBello, Donnellan Weingarten Wise & Wiederkehr, LLP, with Special Use Permit Application and exhibits, dated March 20, 2012, was marked Exhibit "D" for the record.

Letter from DelBello Donnellan Weingarten Wise & Wiederkehr, LLP, with Traffic and Parking Assessment, dated March 26, 2012, was marked Exhibit "E" for the record.

Following letters from Director of Planning Adam Kaufman were marked Exhibit "F" for the record:

- Notification of Intent of Planning Board to act as Lead Agency dated April 10, 2012.
- Review of documents re Planning Board Site Plan and Town Board Special Use Permit dated June 29, 2012.
- Adoption of positive recommendation by the Planning Board dated July 3, 2012.

Report from VHB Engineering, Surveying and Landscape Architecture, PC., dated June 16, 2012, revised June 26, 2012 was marked Exhibit "G" for the record.

Letter from Jeffrey Baker, Young/Sommer, LLC, on behalf of Concerned Citizens of Armonk, dated July 11, 2012 was marked Exhibit "H" for the record.

Letter from Mark Miller, Veneziano & Associates, dated July 23, 2012, was marked Exhibit "I" for the record.

The following were marked Exhibit "J" for the record:

- Letter of support from Elvira Aguzzi, Main Street business owner.
- Letters of opposition from Norma Weisbrich, Soraya Zavieh, Susan Madris, Neal & Mari-Anne Baumann, and Barbara DiGiacinto.

The green cards denoting receipt of certified mail by adjoining property owners.

The proposed resolution of approval.

Alfred DelBello, DelBello Donnellan Weingarten, et al., appeared before the Board on behalf of his client, G.B. Northeast 2, LLC. Mr. DelBello said the Special Use Permit application was filed on

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March 20, 2012 and was referred to the Planning Board which made a positive recommendation to the Town Board. The Planning Board which is Lead Agency for the project has issued a negative declaration.

Shannon Rutherford, VHB Engineering, Surveying and Landscape Architecture (VHB), presented a site plan overview of the 25,000 square foot Armonk Shopping Center site which includes the former A&P space of approximately 19,886 square feet, two existing restaurants, a dry cleaner, and approximately 2,500 feet of new retail space. Ms. Rutherford said the CVS store would occupy approximately 17,400 square feet and have a new single lane pharmacy drive-through window at the back of the building which was added to the site plan at the request of the Planning Board. She said there would be no change to the building area, other than the drive-through window. Ms. Rutherford listed proposed improvements including new sidewalks on Main Street, new guiderails along the driveway, new light poles in the parking lot and lights along the perimeter of the building, and a dumpster and compactor at the rear of the building. There are 160 parking spaces provided in the site plan, with a full access driveway onto Main Street and a full access driveway on to Maple Avenue. Ms. Rutherford said the Planning Board requested that land banking of parking spaces be considered; and it has been agreed to land bank 25 parking spaces. This will increase landscaping along the front of the building, and eliminate parking in the rear of building.

With regard to traffic report for the project, Ms. Rutherford said the Institute of Transportation Engineers (ITE) trip generation standard was used. She said the results showed there would be a slight increase in traffic which would not be recognizable by the traveling public. In response to a query from Councilman D'Angelo about the traffic flow, Ms. Rutherford reviewed the traffic patterns in and out of the site, including the drive-through window area. She said an access drive to the Recreation Center was added as a convenience and significant traffic is not expected through this extension. Mr. DelBello added that the applicant was asked to ease the traffic pattern by including this access road. Mr. D'Angelo said there may be more traffic through the access road than expected.

Kevin Patton, BKA Architects, said his firm worked with the Architectural Review Board (ARB) over the past several months on the site's architecture including improvements to differentiate the store fronts through the use of gables and canopies. Mr. DelBello said the ARB has approved the design. In response to a query from Supervisor Arden, Mr. Patton said the Town's Hamlet Design Guidelines were referenced as a model for the frontage of the buildings.

*References throughout these minutes to the VHB report refer to the June of 2012 VHB Engineering, Surveying and Landscape Architecture, P.C. analysis of the proposed CVS store's relationship to the existing Armonk land use pattern, and its potential impact on the hamlet's economic vitality, particularly those uses along Main Street*

*References to the BFJ report refer to the 2010 BFJ Planning report entitled Potential Effect of Armonk's Supermarket: Its Relocation and Financial Impact on Armonk's Main Street Businesses.*

Councilman D'Angelo directed statements/questions to Owen Wells of VHB concerning the 2012 VHB report, including:

- The report compared the community impact of a CVS store to that of the previous A&P which had a pharmacy, which the A&P did not have. In response, Mr. Wells said this statement was obtained from the previous study conducted by BFJ Planning which was contracted by the Town in 2010. Mr. Wells said this information was not fundamental to the conclusion of the impact on the overall community character, as the economic impact on a specific business is not within the purview of the SEQRA determination. Instead the findings address whether there would be a significant impact so detrimental as to cause gross vacancy and distress, such as a Wal-Mart like effect.
- Mr. D'Angelo asked for clarification regarding the data shown in Table 9 within the VHB report, concerning Pharmacy and Drugstore retail spending. Mr. Wells said the data was reproduced from the analysis conducted by BFJ Planning and compared 2010 Consumer Demand to Retail Supply and the resulting difference is the amount Town residents spend when they travel outside of the market area to meet needs. Mr. D'Angelo confirmed with Mr. Wells that according to the report, \$4.4 million of the total \$8.5 million in retail sales is generated by non-local shoppers.
- With regard to the reference of \$7.6 million dollars in annual retail sales generated by the proposed CVS, Mr. D'Angelo asked what amount would be coming from businesses outside or inside the Town, and asked if a percentage breakdown was available. Mr. Wells said a breakdown was not available, but the amount would probably represent a combination of

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both inside and outside sales. In response to queries from Councilman D'Angelo regarding whether there could be double counting of the sales tax revenues included in the report, Mr. Wells said the data could include double counting.

Mark Miller, Veneziano & Associates, appeared before the Board on behalf of his client, the owners of the property located at 12 Maple Avenue. Mr. Miller said his client's property abuts on the west the driveway leading from Maple Avenue to the site of the former A&P. The proposal for the redevelopment of A&P site includes a curb cut from Maple Avenue driveway on his client's property and the installation of a sidewalk on his client's land running from the CVS parking lot to Maple Avenue. Mr. Miller said that, subject to the details of the required easement agreement with the owners of the CVS property, his clients consent in principal to the installation of the curb cut and sidewalk on their property.

Main Street business owners and property owners and Town residents expressed their views regarding the special use permit application for the establishment of a CVS Pharmacy.

Judy Willsey, owner of Framings, implored the Board to vote against the application, support and protect the businesses that are struggling in the hamlet and asked what the benefit would be of having a CVS in Armonk.

Jeffrey Baker, Young/Summer LLC, appeared before the Board on behalf of Concerned Citizens of Armonk (CCA). Mr. Baker expressed the view that there was a conflict of interest, or at a minimum an appearance of a conflict of interest, which should disqualify Councilman DiDonato Roth from voting on the special use permit application. In response, Town Attorney Baroni said he reviewed the matter and concluded that no conflict of interest exists as Ms. DiDonato Roth's commercial real estate association with the property owner was several years ago. Mr. Baker stated that there are errors in the VHB report which included a statement that there was a pharmacy at the A&P and which used different baselines in the economic impact analysis and the traffic analysis.

Sam Morell, Birdsell Farm Drive, expressed concern about degrading property values if the application is approved and asked what benefit the community would gain by having a CVS.

Amy Yallof, Annadale Street, said she moved to Armonk because of its small town values and absence of big box stores and expressed concerns for neighborhood children due to increased traffic.

Jay Rubloff, Smith Farm Road, said it seemed as the amount of revenue to be generated by the CVS would be a wash and asked if a CVS was needed. He questioned if future businesses will want to come to Armonk if a CVS puts the existing local businesses out of business.

Supervisor Arden said the Town is not in position to deny an applicant from occupying a property if they meet criteria for a special use permit and it would be illegal to do so. Director of Planning Adam Kaufman said the Code establishes certain general standards for special permit uses. The Town Board must evaluate whether those standards are met in order to issue the special permit. He also noted that there are no specific additional standards associated with the issuance of a special permit for uses over 5,000 square feet.

Michael Fareri, property owner, said he was in favor of the application which would fill a vacant property in Town and he was not sure CVS would hurt other businesses. He said that price competition is a good thing as provides good value for the public.

Dale Hisiger, Tallwoods Road, said she was the person behind the formation of the Concerned Citizens of Armonk and urged the Board to take a pause before considering the approval of the application.

Charlene Jacobi, owner of Town Center Pharmacy, cited newspapers articles about thefts at CVS stores in Westchester, and allegations of both improper hazardous waste disposal and failure to take significant action to monitor fraudulent oxycodone dispensing. She emphasized the personal service and attention to detail and safety her pharmacy provides.

Barbara DiGiacinto, commercial property owner, referenced Section 213-30 of the Code which states that all six conditions for a special use permit must be met including the condition the Town Board must find that the proposed use will not have a significant adverse effect on the environment.

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Ms. DiGiacinto said that in her opinion the application does not meet this condition as it will have an adverse impact on the economic vitality and stability of Armonk.

Herb Jernow, Evergreen Row, said he thought the Town should have another meeting on the application and obtain additional legal opinion on the matter.

Tony Futia, Custis Avenue, said that times are changing and people have to live with these changes including having a CVS in Armonk just as residents do in North White Plains.

Jeff Garson, commercial property owner, said a decision should not be made based on a flawed study and report from the Planning Board that issued a positive recommendation to the application. He referred to the findings from the VHB report (referenced in the Planning Board analyses) that incorrectly stated that the former A&P had a pharmacy. He also stated that CVS is a general store and the effect, along with the DiCicco market, will certainly change the character of the Town. Mr. Garson called on Councilman DiDonato Roth to recuse herself from the vote since she is widely known a commercial relator or he suggested that Ms. DiDonato Roth sign a no conflict letter.

In response to an inquiry from Lydia Rippstein, School Street, Mr. Kaufman said there has been no change to the off street parking requirements. Town Attorney Baroni added that in 2010 A&P was seeking to expand its square footage and therefore additional parking was required.

Mr. DelBello said that a lawsuit has never been contemplated and the applicant has done everything the Town and the Planning Board have requested. He said the applicant has met the criteria and there is no material change in use as it remains a retail use. A.J. Barbato, Gershman Brown Crowley, the developer for CVS, said there are several Westchester towns which currently have a CVS or other national pharmacy chain as well as local pharmacies; and some local pharmacies do more pharmacy business than CVS. He said that IBM has an existing prescription contract with Caremark.

Councilman Schiliro said it is necessary to determine if the special permit use is in harmony within the district and this involves checks and balances. Mr. Schiliro said he did not think the spirit of the Town Comprehensive Plan was to include all types of stores in one store, but rather the goal was to have small scale pedestrian friendly stores. He said the use has to be in the best interest of the Town and with attention and respect to property owners and businesses who have invested in the Town. He said he would not be voting in favor of the application.

Councilman DiDonato Roth recalled the lengthy process of former plans to renovate the A&P property and said that now CVS has signed a lease with the property owner who can lease the building to whoever he chooses. Ms. DiDonato Roth said the special use permit is not a change of use as it remains a retail use. Stating that CVS did not have to do anything to the building but they have responded to requests from the Town to improve the façade and the exterior property and that is what is before the Town Board tonight.

Councilman D'Angelo said that the VHB report has errors and conclusions were based on those errors, and the Town Board does not have the information needed to make a decision. He expressed concern about the drive-through window behind the building which cannot be seen from the street and is totally shielded from view. In response Mr. D'Angelo's query, Mr. Kaufman said the Board could regulate the hours of operation.

Councilman Cronin said he was also concerned with the hours of operation and the location of the drive-through. Mr. Cronin said his preference would be not to have a CVS in Town and he would have preferred a redeveloped A&P supermarket, but that did not happen. Stating that one of the roles of the Town Board is to protect the Town from legal jeopardy, he said he disagreed with colleagues that don't believe that the applicant has met the conditions required for the Special Use Permit, adding that the Town Attorney had expressed caution in this regard.

Supervisor Arden said the Town needs to expand so everyone will prosper and said he did not believe that CVS will be the death of everybody, and death is not looking at the bigger picture of growing the Town. Mr. Arden said the applicant has met all necessary criteria and since it is not a new space with a significantly different use, there are no legal grounds to deny the application.

No other correspondence or comments were entered for the record.

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After all persons were heard who desired to be heard, Councilman DiDonato Roth moved, seconded by Councilman Cronin, that the Public Hearing be closed at 10:55 p.m.

The roll call vote was as follows:

Ayes: Councilmen Schiliro, DiDonato Roth, Cronin, D'Angelo, Supervisor Arden.

Noes: None.

With respect to the hours of operation, Mr. Barbato said that they would be happy to agree to daily hours of 7 a.m. to 10 p.m. He said the pharmacy is sometimes open shorter hours than the store, but no later than store hours, and the drive-through window would only be open when the pharmacy is open. Mr. D'Angelo said he understood that the drive-through had to be located at the back of the building, but would have preferred another location.

Councilman DiDonato Roth moved, seconded by Councilman Cronin, approval of the Application of G.B. Northeast 2, LLC for the establishment of a 17,389 square foot CVS Pharmacy of the approximately 19,886 square feet previously occupied by the A& P Supermarket, and 2,947 square feet of new separate retail space, on the 2.95 acre property located at 450 Main Street, Armonk (Section 2, Block 13, Lot 7A & 10A).

The roll call vote was as follows:

Ayes: Councilmen DiDonato Roth, Cronin Supervisor Arden

Noes: Councilmen Schiliro, D'Angelo

The resolution follows at the end of these minutes.

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Anne Curran, Town Clerk

Dated: August 14, 2012

## RESOLUTION

<b>Action:</b>	Special Use Permit Approval for Use Over 5,000 square feet
<b>Application Name:</b>	CVS Town Board Special Use Permit Approval
<b>Owner:</b>	Eden Enterprises LLC/Armonk Shopping Center Inc.
<b>Applicant:</b>	G.B. Northeast 2, LLC
<b>Designation:</b>	Section 2, Block 13, Lot 7.A (108.01-6-22)
<b>Zone:</b>	CB Zoning District
<b>Location:</b>	Main Street and Maple Avenue
<b>Date of Approval:</b>	July 25, 2012
<b>Expiration Date:</b>	July 25, 2013 (1 year)

WHEREAS, the Town of North Castle Town Board has received an application for special permit approval from CVS for the establishment of a CVS/pharmacy and associated site improvements at the Armonk Shopping Center property; and

WHEREAS, the new CVS Pharmacy is proposed to occupy 17,389 square feet of the approximately 19,886 square feet previously occupied by the A&P Supermarket; and

WHEREAS, the remaining 2,497 square feet is proposed as a new separate retail space; and

WHEREAS, the Applicant is also proposing the installation of a new pharmacy drive through window, various exterior improvements, new signage as well as additional landscaping and pavement upgrades; and

WHEREAS, any retail use over 5,000 square feet requires the issuance of a special use permit by the Town Board; and

WHEREAS, physical changes to the site are limited in nature and are not expected to create any significant impacts; and

WHEREAS, specifically, the existing pavement on the site will be rehabilitated, new parking lot striping will be provided, landscaping will be planted, new lighting will be installed and regrading at the rear of the site will occur to accommodate a new pharmacy drive-through window; and

WHEREAS, in addition, a new curb cut will be constructed between the subject site and the adjacent Hergenhan Recreation Building thereby alleviating a significant safety concern at the Recreation Center; and

WHEREAS, furthermore, an expanded Maple Avenue driveway will be provided to safely accommodate shopping center traffic and a new curb cut will be provided between the subject site and 12 Maple Avenue along the improved and widened Maple Avenue driveway provided that the applicant and the owner of 12 Maple Avenue reach a reasonably satisfactory agreement regarding same; and

WHEREAS, on July 2, 2012, the Planning Board has reviewed and discussed the project and positively recommended that the Town Board consider the special use permit (4-0 vote); and

WHEREAS, the application was referred to the Westchester County Planning Board pursuant to Section 239 L, M and N of the New York State General Municipal Law and Section 277.61 of the County Administrative Code on April 10, 2012; and

WHEREAS, throughout the Town's review of the Proposed Action, a considerable amount of attention has been focused on traffic issues; and

WHEREAS, the subject property has frontage on Main Street and Maple Avenue. Vehicular access to the site will be provided via Main Street and Maple Avenue with both the Main Street and Maple Avenue frontage providing pedestrian access to the site; and

WHEREAS, as part of the review of the project the Applicant commissioned a traffic report. The number of additional primary (new) vehicle trips expected to be generated by the new CVS Pharmacy were determined to be -6, + 19, and -1 vehicle trip ends during the weekday morning, weekday afternoon and Saturday midday peak hours, respectively; and

WHEREAS, the Town Traffic Consultant has reviewed the submitted March 19, 2012 traffic analysis prepared by the Applicant; and

WHEREAS, the Town Traffic Consultant has concluded that the additional traffic generated by the proposed development program will not significantly impact traffic operations in the Study Area roadway network; and

WHEREAS, the 160 parking spaces provided on the site plan are more than adequate to accommodate the parking demand generated by the proposed redevelopment; and

WHEREAS, the Planning Board has asked the Applicant to consider land-banking up to 25 of the parking spaces shown on the site plan which the Applicant has agreed to do; and

WHEREAS, in accordance with Section 213-44(C) of the Town Code, the land-banked parking spaces will remain until such time as there is a demonstrated demand for additional parking on the site; and

WHEREAS, the plans will include adequate stormwater management and erosion control; and

WHEREAS, the Planning Board will require the installation of a treatment practice to mitigate pollution from the parking lots at the rear of the property where all stormwater piping presently merge, prior to discharging from the site; and

WHEREAS, the water for the proposed development will be supplied by Water District #4; and

WHEREAS, the wastewater from the proposed development will be sent to the municipal sewer system; and

WHEREAS, the location of all buildings on the site are proposed to remain the same; and

WHEREAS, the existing building is proposed to be updated with significant improvements to the site's architecture and signage resulting in greater compatibility with the remainder of the hamlet as compared to the existing shopping center; and

WHEREAS, the site will continue to operate as a shopping center; and

WHEREAS, the extent of landscaping is proposed to be increased as compared to existing conditions; and

WHEREAS, the Proposed Action is consistent with the goals and policies contained in the 1996 Comprehensive Plan Update; and

WHEREAS, the plan sets forth certain goals and policies for retail and service businesses within the Town; and

WHEREAS, the plan encourages the establishment of retail and service businesses which serve the immediate needs of the population; and

WHEREAS, according to the plan, grocery stores, drugstores, service stations, hardware stores, convenience stores and restaurants fall into this category (page IV-9); and

WHEREAS, additionally, Section IV.B.2.b.ii provides that "the policies for Armonk focus on providing a well-designed, safe and efficient center which will attract more local shoppers and are also aimed at providing a better mix of uses in the hamlet center;" and

WHEREAS, a duly advertised public hearing was held on said application before the Town Board on July 25, 2012, at which time all those wishing to be heard were given the opportunity to be heard; and

WHEREAS, § 213-30 of the North Castle Code establishes certain general standards for all special permit uses; and

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WHEREAS, the North Castle Code has no specific standards relating to the issuance of a special permit for uses over 5,000 square feet in size; and

WHEREAS, in order for the Town Board to approve a special use permit, the Town Board must find that all of the conditions and standards have been met; and

WHEREAS, pursuant to § 213-30(A), in order to grant a special permit, the Town Board must find that “The location and size of the use, the nature and intensity of the operations involved in it or conducted in connection with it, the size of the site in relation to it and the location of the site with respect to streets giving access to it are such that it will be in harmony with the appropriate and orderly development of the district in which it is located and that it complies with all special requirements for such use established in” the Town Code; and

WHEREAS, the property is located within the CB Zoning District. Within close proximity are many other similar retail uses including a recently approved special permit for the operation of a supermarket. The proposed CVS Pharmacy is compatible with surrounding commercial uses located within the Armonk Hamlet. The number of additional primary (new) vehicle trips expected to be generated by the new CVS Pharmacy were determined to be -6, + 19, and -1 vehicle trip ends during the weekday morning, weekday afternoon and Saturday midday peak hours, respectively. The additional traffic generated by the proposed development program will not significantly impact traffic operations in the Study Area roadway network; and

WHEREAS, the Town Board, based upon its review of the entire record, finds that the location and size of the use, the nature and intensity of the operations involved in it or conducted in connection with it, the size of the site in relation to it and the location of the site with respect to streets giving access to it are such that it will be in harmony with the appropriate and orderly development of the district in which it is located and that it complies with all requirements for such use established in the Town Code; and

WHEREAS, pursuant to § 213-30(B), the second criteria for the issuance of a special permit is that “the location, nature and height of buildings, walls, fences and the nature and extent of existing or proposed plantings on the site are such that the use will not hinder or discourage the appropriate development and use of the adjacent land and buildings;” and

WHEREAS, the location of all buildings on the site are proposed to remain the same. The existing site is proposed to be updated with significant improvements to the existing building’s architecture and signage resulting in greater compatibility with the remainder of the hamlet as compared to the existing shopping center. The site will continue to operate as a shopping center. The extent of landscaping is proposed to be increased as compared to existing conditions. The proposed CVS Pharmacy would not hinder or discourage the appropriate development and use of adjacent land and buildings; and

WHEREAS, the Town Board, based upon its review of the entire record finds that the location, nature and height of buildings, walls, fences and the nature and extent of existing or proposed plantings on the site are such that the use will not hinder or discourage the appropriate development and use of the adjacent land and buildings; and

WHEREAS, pursuant to § 213-30(C), the third requirement for the issuance of a special permit is that “operations in connection with any special permit use will not be more objectionable to nearby properties by reason of noise, fumes, vibration or other characteristics than would be the operations of any permitted uses not requiring a special permit;” and

WHEREAS, the CVS Pharmacy with drive through will not create any more objectionable noise, fumes, vibration or other characteristics than would the operations of any permitted uses not requiring a special permit. The retail and drive through operations are similar to other retail uses and drive through operations located in the Armonk Hamlet; and

WHEREAS, the Town Board, based upon its review of the entire record finds that the operations in connection with any special permit use will not be more objectionable to nearby properties by reason of noise, fumes, vibration or other characteristics than would be the operations of any permitted uses not requiring a special permit; and

WHEREAS, pursuant to § 213-30(D), the Town Board, in order to grant a special permit, must find that “parking areas will be of adequate size for the particular use, properly located and suitably



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screened from adjoining residential uses, and the entrance and exit drives shall be laid out so as to achieve maximum convenience and safety;” and

WHEREAS, the applicant has demonstrated that the site contains the minimum required number of parking spaces, all driveways are suitably improved and the parking area is centrally located on the site and will be appropriately screened and landscaped to provide an attractive and safe shopping center; and

WHEREAS, the Town Board, based upon its review of the entire record finds that the proposed parking areas are of adequate size for the proposed use, properly located and suitably screened from adjoining residential uses, and the entrance and exit driveways are laid out so as to achieve maximum convenience and safety; and

WHEREAS, pursuant to § 213-30(E), the fourth criteria for the issuance of a special permit is compliance “where required, [with] the provisions of the Town Flood Hazard Ordinance;” and

WHEREAS, the site is not located in a floodplain; and

WHEREAS, the Town Board, based upon its review of the entire record finds that the site is not located within a floodplain; and

WHEREAS, pursuant to § 213-30(F), it is required that “the Town Board finds that the proposed special permit use will not have a significant adverse effect on the environment;” and

WHEREAS, on April 10, 2012, the Planning Board declared its intent to act as Lead Agency with respect to the environmental review of the proposed action pursuant to the State Environmental Quality Review Act (SEQRA) and adopted a resolution authorizing circulation of a Lead Agency Determination Notice and a copy of the application materials, including a copy of the Environmental Assessment Form, to all involved agencies for the project; and

WHEREAS, the Planning Board has found that the proposed action is an Unlisted Action pursuant to SEQRA; and

WHEREAS, on July 23, 2012, the Planning Board issued a Negative Declaration; and

WHEREAS, the basis for the Planning Board’s environmental determination is set forth in detail in said Negative Declaration; and

WHEREAS, the Town Board, based upon its review of the entire record, finds that the proposed special permit use will not have a significant adverse effect on the environment; and

NOW, THEREFORE, BE IT RESOLVED, that the foregoing “WHEREAS” clauses and the findings contained in the Planning Board’s Negative Declaration are incorporated herein by reference and fully adopted as part of this approval; and

BE IT FURTHER RESOLVED, that this special permit shall be deemed to authorize only the particular use of uses specified in the permit and shall expire if work is not initiated within one year from the date of issue, or if said use or uses shall cease for more than one year for any reason or if all required improvements are not completed within two years from the date of issue or if all such required improvements are not maintained and all conditions and standards complied with throughout the duration of the use; and

BE IT FURTHER RESOLVED, that the special permit be, and it hereby is, approved, subject to the conditions set forth below

**Conditions:**

1. The CVS/pharmacy store shall operate within the hours of 7 AM – 10 PM.
2. The Applicant shall be required to receive Planning Board site plan approval.
3. The Applicant shall permit the Police Department to enforce all parking and traffic rules and regulations on the property.

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4. Any proposed freestanding sign shall not exceed a height of 4 – 4½ feet. In addition, any freestanding sign shall be externally illuminated.
5. Screening and landscaping shall be provided to the satisfaction of the Planning Board.
6. Compliance with all applicable local laws and ordinances of the Town of North Castle.