



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

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PGCPB No. 10-107(A)(C)

File No. DDS-597

C O R R E C T E D   A M E N D E D   R E S O L U T I O N

WHEREAS, the Prince George's County Planning Board has reviewed DDS-597 requesting a waiver of three feet from the height requirement for a doorway entrance to an interior loading space per section 27-578(a)(b) of the Zoning Ordinance in accordance with Subtitle 27 of the Prince George's County Code; and

~~\*[WHEREAS, after consideration of the evidence presented at the public hearing on September 23, 2010, the Prince George's County Planning Board finds:]~~

\*WHEREAS, DDS-597 for The Tire Depot, LLC was approved by the Planning Board on September 23, 2010, and PGCPB Resolution No. 10-107 was adopted on October 21, 2010; and

\*WHEREAS, on March 14, 2011, the District Council elected to review this case; and

\*WHEREAS, on March 15, 2011, the District Council voted to remand the case to the Planning Board to have the applicant revise the site plan, take further evidence on the plan, and to allow additional staff and public comment; and

\*WHEREAS, in consideration of evidence presented at a second public hearing on \*\*[September] †[October] 6, 2011 regarding DDS-597 for The Tire Depot, LLC, the Planning Board made the following amended findings:

- A. **Location and Field Inspection:** The subject property is located at the intersection of Scott Key Drive and Foster Street, with a small amount of property frontage on Marlboro Pike, in District Heights. The site is comprised of approximately 10,641 square feet (0.30 acre) of land and is zoned C-S-C (Commercial Shopping Center) and R-55 (One-Family Detached Residential). It is currently improved with a two-story brick building used as a vehicle parts and tire store with four installation service bays, a storage shed, and a parking lot to serve its customers. The main entrance of the building is on Scott Key Drive. The main building on the subject property is located within the C-S-C Zone. The parking associated with this use is located across a 20-foot alley, in the R-55 Zone. The entire site is paved with nine existing parking spaces.

\*\*Denotes Correction

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[Brackets] and † Indicates new language

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During the field inspection, it was noted that the property had an unauthorized freestanding sign along Marlboro Pike and few tire sale banner signs hanging from the service bay along the property frontage on Scott Key Drive. The applicant is currently providing full installation services to its customers without an approved special exception. Also, it was noted that a few cars were queued on the driveway on Scott Key Drive waiting to be serviced. This may cause traffic congestion on Marlboro Pike and Scott Key Drive. This is also a significant safety issue for bicyclists and pedestrians crossing the road. The second floor of the existing building and the shed on the north side of the property are currently used for vehicle parts and tire storage. The property has frontage along Scott Key Drive, Foster Street, and Marlboro Pike. Access to the site is via driveway entrances on Scott Key Drive and Marlboro Pike and a 20-foot alley from Foster Street. The driveway apron is also used for vehicle parking and vehicle repair. Parking for patrons arriving by vehicle is also provided on a separate lot behind the main structure.

**B. Development Data Summary**

	<b>EXISTING</b>	<b>APPROVED</b>
Zone(s)	C-S-C & R-55	Unchanged
Use(s)	Vehicle Parts and Tire Store	Vehicle Parts and Tire Store with installation
Acreage	0.30	Unchanged
Lots	15 & parts of lots 2 & 3	Unchanged
Parcels	N/A	N/A
Square Footage/GFA	10,771	Unchanged
Dwelling Units	N/A	N/A

- C. History:** The subject property (Lot 15 in the C-S-C Zone) was acquired by the District Heights Volunteer Fire Department (DHVFD) in August 1944. The fire house building was first constructed in 1946. Two subsequent additions to the main building were done, one in 1954 and another in 1962. In 1961, the adjacent parking lot property (part of Lots 2 and 3 in the R-55 Zone) was conveyed to DHVFD by deed, less and except 625 square feet of land from Lots 2 and 3, which were conveyed to the Perpetual American Savings and Loan Association (PASALA), but also together with those 325 square feet of land conveyed to DHVFD by PASALA. Upon ownership, the existing parking lot, across the 20-foot alleyway adjacent to the subject property, was established prior to 1970 to serve the former District Heights Volunteer Fire Department uses. In 1981, a new deed, including a plat of survey in Liber 5455 and Folio 739 and 747, was recorded to reflect the exchange of land between DHVFD and PASALA.

The proposed use is an adaptive re-use of the of the former District Heights Volunteer Fire Department building and its adjoining parking lot. No new construction is being proposed as part of this special exception application. The existing building on the subject property was originally constructed and used as a fire house and social hall from 1949 until September 2008. In December 2008, the applicant purchased the building and the parking lot from the District Heights Fire Department. Upon acquisition of the property, in February 2009, a Certificate of Occupancy

Permit, 39603-2008-U, was obtained to operate the site as a vehicle parts or tire store without installation facilities. At the time of permit approval, it was specifically noted in the permit comments derived on January 13, 2009 by the Maryland-National Capital Park and Planning Commission, Permit Review Section, that the subject property is not to have any installation facilities. If the applicant decides to expand his business to include installation, an approval of a special exception (SE) has to be obtained. However, Tire Deport, LLC has been performing tire installation without an appropriate permit. Moreover, the applicant has been performing tire installation outside of the building. On June 3, 2009, Prince George's County Code Enforcement authorities issued a citation for providing installation services on the property without the approval of a special exception and a legal use and occupancy permit. The applicants' failure to comply with existing requirements and various other regulations resulted in the issuance of a court order on December 15, 2009, from the District Court of Maryland for Prince George's County, enjoining the applicant to comply with Zoning Ordinance issues. On December 23, 2009, the Prince George's County Fire/EMS Department, Fire Prevention Unit, issued a correction order for various fire safety deficiencies. The correction order directed that a fire protection engineer be consulted to ensure safety compliance. The applicant is now seeking this special exception approval to legalize the tire installation facilities as part of his overall service to its customers and a departure to address deficiencies regarding the setback of a loading area and the height requirement for a doorway entrance to the interior loading space.

**D. Master Plan and General Plan Recommendation**

**General Plan:** The property is located in an area identified in the 2002 *Prince George's County Approved General Plan* as the Developed Tier. The vision for the Developed Tier is a network of sustainable, transit-supporting, mixed-use, pedestrian-oriented, medium- to high-density neighborhoods. This application is consistent with the 2002 Approved General Plan Development Pattern policies for the Developed Tier.

**Sector Plan:** The 2009 Approved Marlboro Pike Master Plan and Sectional Map Amendment Planning Area 75A retained the property in the C-S-C and R-55 Zones. The sector plan recommends residential medium land use for Lot 3 and commercial land use for Lot 15 of this property. The proposed use does not substantially impair the recommendation of the sector plan. While the existing parking lot is in a residential zone, it predates the recommendation of the sector plan and had served as a use in a commercial zone for many years.

**E. Request**

**DDS-597:** The applicant is requesting a waiver of three feet from the height requirement for a doorway entrance to an interior loading space per section 27-578(b) of the Zoning Ordinance. The applicant is also requesting a departure from design standards to locate an interior loading space and vehicular entrances (including driveways and doorways) within 50 feet of a residentially-zoned property per Section 27-579(b) of the Zoning Ordinance. The applicant is requesting a departure of 40 feet for the location of the loading space. The adjoining property to the east of the loading space is zoned R-55 and is used as a parking lot for the subject property.

- F. **Neighborhood and Surrounding Uses:** The property is surrounded by strip commercial uses oriented to Marlboro Pike in the C-S-C Zone. The north and east sides of the property are developed with single-family detached dwellings in the R-55 Zone.

The neighborhood is defined by the following boundaries:

North—	Cabot Street
South—	Marlboro Pike
East—	County Road
Northwest—	Delano Lane

The uses surrounding the subject property are:

North—Across Foster Street, opposite the subject property, is single-family residential development in the R-55 Zone. West of the single-family residential development, immediately across from Scott Key Drive, is commercial development (i.e. Meineke Mufflers operations) in the C-S-C Zone.

South—Along Marlboro Pike, immediately connecting to the subject property, are commercial developments (i.e. pizza shop, barber shop, video store, etc.) in the C-S-C Zone.

East and southeast—Contiguous to the subject property's parking lot is a property with a vacant Crestar Bank building and its parking lot. Across County Road, opposite the parking lot, are single-family detached developments in the R-55 Zone.

West—Across Marlboro Pike, opposite the subject property, is strip commercial development (i.e. beauty supply store, vacant tune-lube facility, church etc.) in the C-S-C Zone.

- G. **Loading Requirements:**

Section 27-582 of the Zoning Ordinance requires one loading space for retail sales and service (per store) comprised of 2,000 sq. ft. to 10,000 sq. ft. of gross floor area (GFA).

One loading space is required for the subject 4,849-square-foot tire sales and services with installation facilities. The site plan as originally proposed showed one loading space as required, but the loading space did not meet the height and setback requirements per Sections 27-578 and 27-579(b) of the Zoning Ordinance. Therefore, a departure from design standards was requested as part of this application.

Section 27-578(b) of the Zoning Ordinance states that the doorway entrance to an interior loading space shall be 12 feet wide and 15 feet high if the use served has more than 3,000 square feet of GFA.

The applicant is proposing to operate three of the four existing service bays located in the front of the building facing Scott Key Drive and Marlboro Pike for tire installation and services. The fourth bay in the rear of the building, across the 20-foot alley, within the existing building is being converted to be used as a loading space. Since the loading bay was constructed prior to the Zoning Ordinance, a 15-foot height requirement could not be provided without a major reconstruction; henceforth, a waiver of three feet is needed in order to comply with current height requirements.

Section 27-579(b) of the Zoning Ordinance states that no portion of an exterior loading space and no vehicular entrances to any loading space (including driveways and doorways), shall be located within 50 feet of any residential zone (or land proposed to be used for residential purposes on an approved basic plan for a Comprehensive Design Zone, approved official plan for an R-P-C Zone, or any approved conceptual or detailed site plan).

The doorway entrance to the loading space at the rear of the building is set back only 10 feet from the adjacent residentially-zoned property; therefore, a departure of 40 feet is requested. The adjoining residential property across the 20-foot alley is a parking lot in the R-55 Zone. It is owned and used by the subject property.

H. **Departure from Design Standards:** Section 27-239.01(b)(7)(A) of the Zoning Ordinance provides that in order for the Planning Board to grant the departure, it shall make the following findings:

(i) **The purposes of this Subtitle will be equally well or better served by the applicant's proposal;**

The loading space is located within the existing building at the rear of the property, which provides off-street loading and does not obstruct vehicle traffic in the parking lot or on the street. The internal loading space enhances the overall appearance of the property.

(ii) **The departure is the minimum necessary, given the specific circumstances of the request;**

The departure is necessary to alleviate circumstances that are unique to the site. The applicant is proposing to re-use the former District Heights Fire Department building and its adjoining parking lot for its vehicle parts or tire store with installation. The existing building was constructed 50 years ago. In order to comply with the requirements of the loading spaces for the proposed use, the applicant converted one of its existing service bays in the rear of the property into a loading space. Given the site constraints and that the building was constructed prior to 1949, the applicant is unable to comply with both height and setback requirements for the loading space. In order to meet the requirement, the applicant has to renovate and reconstruct the entire building. Thus, the approved departure is the minimum necessary in order to provide convenient access to the loading space.

- (iii) **The departure is necessary in order to alleviate circumstances which are unique to the site or prevalent in areas of the County developed prior to November 29, 1949;**

The departure is necessary given the pre-existing development of the applicant's property. Since the existing building and parking lot was constructed prior to 1970, it pre-dates today's parking and loading space regulations. As a result, the current layout of the existing building on the property cannot accommodate the location of a new loading space elsewhere in the site without the loss of parking spaces from the existing parking lot. To that end, no other viable locations on the property can be found for the location of the loading space or driveway access to the loading space on this site other than within the existing building.

- (iv) **The departure will not impair the visual, functional, or environmental quality or integrity of the site or of the surrounding neighborhood.**

The departure will not impair the visual, functional or environmental quality, or integrity of the site or of the surrounding neighborhood. It will rather improve the traffic in the parking lot and enhance the overall appearance of the property by concealing the loading area into the existing building.

1. **Zone Standards:** The proposed use is in the C-S-C and R-55 Zones. The site plan, with the approved requests for departures, along with recommended conditions, will be in conformance with all zoning requirements and regulations.

**\*J. BACKGROUND**

\*On September 23, 2010, the subject application, Departure from Design Standards DDS-597 with the companion application Special Exception SE-4673, was presented before the Prince George's County Planning Board for a public hearing. At that time, the Planning Board recommended approval of both applications and recommended these cases to be forwarded to the Prince George's County District Council for final decision. After review of the administrative record and hearing oral argument, on March 15, 2011, the District Council remanded the DDS application back to the Planning Board and Special Exception SE-4673 to the Zoning Hearing Examiner to have the applicant revise the site plan, take further evidence on the plan, and to allow additional staff and public comment. The Order of Remand states:

**\*Applicant and staff shall respond to these questions:**

- \*(1) Is the auditorium (social hall) use permitted on a special exception site used for a vehicle parts or tire store with installation?**

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[Brackets] and ~~striketrough~~ indicate deleted language

- \*(2) Is auditorium (social hall) use permitted on a special exception site used for a vehicle parts or tire store with installation that has an interior loading space?
- \*(3) Will these uses adversely affect the health, safety or welfare of residents or workers in the area?
- \*(4) Is parking adequate for vehicle parts or tire store with installation or in conjunction with auditorium?
  - \*(a) Are 55 parking spaces grandfathered for the fire station and auditorium public use also grandfathered for their proposed private use vehicle parts or tire store with installation?

\*On September 7, 2011 Technical staff prepared an Addendum to Technical Staff Report in response to District Council's Remand Order for the above-mentioned case. These comments were based on a revised site plan submitted by the applicant on September 2, 2011. In the revised plan, the applicant proposed to remove its original use of the second floor as an auditorium (social hall) to an accessory office/storage that relates to the tire sales and installation operation. Subsequent to releasing the September 7, 2011 Addendum to Technical Staff Report, the Technical Staff realized that the proposed change to the use of second floor resulted in an increase to the gross floor area (GFA) from 4,849 to 10,641 square feet. Consequently, two loading spaces were required for the entire use and only one loading space was provided on-site. On September 13, 2011, an additional backup memorandum with three conditions which relates to compliance with parking and loading requirements per Section 27-582 (a), Schedule of Loading Spaces of the Zoning Ordinance was prepared.

\*Departure from Design Standard DDS-597 (Remanded) was scheduled for the Prince Georges County Planning Board hearing date of September 15, 2011. At the hearing, the applicant requested a continuance to October 6, 2011, which was granted by the Planning Board. Subsequently, on September 19, 2011, the applicant provided a second set of revised plans amending the use of the second floor to an office. The new use not only changes parking calculations reflected on the Addendum To Technical Staff report but also fulfilled all conditions of the parking and loading requirements set forth in the Additional Backup Memorandum and in the initial Addendum to Technical Staff Report.

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**\*ANALYSIS**

\*Subsequent to the District Council hearing, the Planning Board has reviewed the site plan for the subject property. Based upon analysis of the subject application and the Order of Remand dated March 15, 2011, the Planning Board stands by its original recommendation for approval of Departure from Design Standards DDS-597, which meets all of the required findings of Section 27-239.01(b)(7) of the Zoning Ordinance as follows:

**\*(A) In order for the Planning Board to grant the departure, it shall make the following findings:**

- \*(i) The purposes of this Subtitle will be equally well or better served by the applicant's proposal;**
- \*(ii) The departure is the minimum necessary, given the specific circumstances of the request;**
- \*(iii) The departure is necessary in order to alleviate circumstances which are unique to the site or prevalent in areas of the County developed prior to November 29, 1949;**
- \*(iv) The departure will not impair the visual, functional, or environmental quality or integrity of the site or of the surrounding neighborhood.**

**\*ANSWER TO THE DISTRICT COUNCIL'S ORDER OF REMAND**

**\*(1) Is the auditorium (social hall) use permitted on a special exception site used for a vehicle parts or tire store with installation?**

\*A vehicle parts or tire store including installation facilities is permitted by special exception approval and an auditorium (social hall) is permitted by right in the Commercial Shopping Center (C-S-C) Zone. The Zoning Ordinance does not specify any restriction for combining the two uses within the same building. However, the applicant has amended its special exception site plan to remove its proposed use of the second floor as an auditorium (social hall). The second floor is proposed to be used as an office which is unrelated to Tire Depot.

**\*(2) Is auditorium (social hall) use permitted on a special exception site used for a vehicle parts or tire store with installation that has an interior loading space?**

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\*The applicant proposes an interior loading space which does not meet the height and setback requirements; therefore, the applicant requested a departure from design standards. An auditorium is a use that is permitted by right in the C-S-C Zone. This use is therefore permitted on a special exception site used for a vehicle parts or tire store with installation that has an interior loading space. However, the site plan has been revised to change the use of the second floor of the existing building to an office which is unrelated to the Tire Depot, but the use is also permitted by right in the zone. Furthermore, the Zoning Ordinance does not designate the specific location of a loading space on a site. However, it does require that each loading space shall meet certain height, width, and setback requirements in accordance with Sections 27-578(b) and 27-579(b) of the Zoning Ordinance.

\*In this case, having an interior loading space located in the same building with a tire installation facility is necessary in order to alleviate circumstances that are unique to the site. First, the change in use from a fire department building to a tire store with installation facility required a loading space that was not required before. The applicant is unable to provide an exterior loading space elsewhere on the site due to site constraints. Second, the existing 50-year-old building site and its parking lot have very limited space to provide any outdoor loading space without the loss of parking spaces from the existing parking lot. To that end, no other viable locations on the property can be found for the loading space or driveway access to the loading space on this site other than to utilize an existing bay within the existing building. Given the site's constraints and that the building was constructed prior to 1949, the applicant is unable to comply with the height and setback requirements for the loading space. In order to meet the setback and height requirements, the applicant would have to renovate the entire building. For this reason, an interior loading space is found to be most suitable for the proposed site.

**\*(3) Will these uses adversely affect the health, safety or welfare of residents or workers in the area?**

\*The amended site plan in response to the order of remand indicate change in use for the second floor to an office, which is not related to tire sales and installation operation. With the proposed change in use for the second floor of the building as mentioned above, the Planning Board's recommendation remains unchanged as this question was addressed at the time of its initial review. Nonetheless, this question is addressed as a finding in the companion application, Special Exception SE-4673. The Planning Board found that the proposed use will not adversely affect the health, safety, or welfare of residents or workers in the area. In fact, the applicant's proposal will improve the existing pedestrian and vehicle access at the intersection of Scott Key Drive and Marlboro Pike (MD 725). Currently, the Scott Key Drive intersection is offset from Marlboro Pike with no curb or sidewalk on Scott Key Drive. Specifically, the applicant's proposal would extend curb and gutter from Foster Street down to Marlboro Pike. This new site design will channelize traffic flow to a single, defined access point onto Marlboro Pike. The applicant is also proposing to

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extend the sidewalk down the new curb to provide a safe pedestrian connection from Foster Street down to Marlboro Pike. The applicant will cut back the existing guardrail on Marlboro Pike to allow for a wider and non-obstructed sidewalk area. In addition to the above improvements, the applicant is proposing additional landscaping along the 111 feet of frontage of the rear parking lot to buffer the residential uses across Foster Street. Additional plant units are proposed to be incorporated along the west side of the building to further breakup and soften the views of the existing concrete building. With the incorporation of the proposed landscaping, curb/gutter, and sidewalk improvements, the overall appearance and safety of the property is significantly improved for the benefit of residents or workers in the area.

\*The Planning Board believes that the proposed loading space will not have an adverse effect on the health, safety, or welfare of residents or workers in the area because the loading truck will not continuously run in the loading dock and contaminate the entire building.

**\*(4) Is parking adequate for vehicle parts or tire store with installation or in conjunction with auditorium?**

**\*(a) Are 55 parking spaces grandfathered for the fire station and auditorium public use also grandfathered for their proposed private use vehicle parts or tire store with installation?**

\*Pursuant to Section 27-568 of the Zoning Ordinance, the proposed vehicle parts and tire store requires three parking spaces for every service bay in addition to one parking space for every 500 square feet of additional gross floor area (GFA) of the building (sales office and storage). An office requires one parking space for every 250 square feet for the first 2,000 square feet of GFA and one space for each additional 400 square feet above the first 2,000 square feet of GFA for office space. According to the applicant's parking schedule, the site has a total 5,792 square feet of office space for the second floor which generates a total of 33 parking spaces.

\*The parking calculations are as follows:

\* The proposed use requires a total of 33 parking spaces. Only 11 existing parking spaces are shown on the plan in accordance with pre-1970 standards and 45 parking spaces (55-10 = 45) can be grandfathered, pursuant to Section 27-584 of the Zoning Ordinance which states:

**\*(a) The following shall not be required to comply with the provisions of this Part:**

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- \*(1) Any legally existing use that complies with the previous requirements for parking and loading areas (in effect at the time the use began). If the use is a certified nonconforming use, the parking lot or loading area used with it shall not be reduced, except in accordance with this Part;
- \*(2) Any legally existing use for which any of the parking or loading requirements had previously been waived or reduced by the District Council or the Board of Zoning Appeals, not including departures granted under Section 27-588; and
- \*(3) Any future use occupying the same premises as either of the above, provided there is no expansion or change of use that would require a greater number of parking or loading spaces (per Sections 27-568 and 27-582) than the number of spaces legally existing under the prior regulations. If the use began prior to the establishment of parking or loading regulations for that use, the phrase "number of spaces legally existing under the prior regulations" shall mean the current regulations of this Part (for the prior legally existing use). In both cases, where additional spaces are created, only the area occupied by the additional spaces shall be required to conform to the Design Standards.

\*The former fire department was put into operation prior to the establishment of parking regulations; therefore, staff calculated the parking space requirements based on current regulations and grandfathering 45 parking spaces, for exclusive use of the fire department and its social hall. With the proposed new use in the second story of the building, the applicant has adequate parking for a vehicle parts or tire store with installation. However, the revised site plan did not indicate the sizes and types of parking spaces provided in the parking schedule. The site plan should also note that the handicap parking space is calculated within the 45 grandfathered spaces as it has existed prior to 1949 zoning regulations.

NOW, THEREFORE, BE IT RESOLVED, that pursuant to Subtitle 27 of the Prince George's County Code, the Prince George's County Planning Board of The Maryland-National Capital Park and Planning Commission adopted the findings contained herein and recommends to the District Council for Prince George's County, Maryland that the above-noted application be APPROVED \*, subject to the following conditions:

- \*1. Prior to the certification of the site plan, applicant shall revise the parking schedule to show the sizes and types of parking on the parking schedule.

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- \*2. The site plan shall note that the van-accessible handicap space is included in the 45 grandfathered parking space calculation.

\* \* \* \* \*


~~\*[This is to certify that the foregoing is a true and correct copy of the action taken by the Prince George's County Planning Board of The Maryland National Capital Park and Planning Commission on the motion of Commissioner Clark, seconded by Commissioner Vaughns, with Commissioners Clark, Vaughns, Cavitt, Squire and Parker voting in favor of the motion at its regular meeting held on Thursday, September 23, 2010, in Upper Marlboro, Maryland.]~~

~~\*[Adopted by the Prince George's County Planning Board this 21<sup>st</sup> day of October 2010.]~~

\*This is to certify that the foregoing is a true and correct copy of the action taken by the Prince George's County Planning Board of The Maryland-National Capital Park and Planning Commission on the motion of Commissioner Washington, seconded by Commissioner Cavitt, with Commissioners Washington, Cavitt, Squire and Hewlett voting in favor of the motion, and with Commissioner Bailey absent at its regular meeting held on Thursday, October 6, 2011, in Upper Marlboro, Maryland.

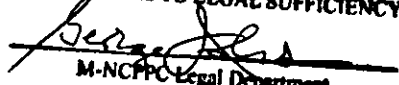
\*Adopted by the Prince George's County Planning Board this 27<sup>th</sup> day of October 2011 † [and corrected on the 10th day of January 2012].

Patricia Colihan Barney  
Executive Director

By   
Jessica Jones  
Planning Board Administrator

PCB:JJ:TA:arj

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APPROVED AS TO LEGAL SUFFICIENCY  
  
M-NCPPC Legal Department  
Date 1/23/12