

TOWN OF AMHERST
ZONING BOARD OF APPEALS

RE: SITE PLAN REVIEW
PROPOSED "UNIVERSITY TOWN CENTER"
MIXED-USE DEVELOPMENT,
330 MAPLE ROAD
(SP-7-09)

PETITION OF [REDACTED],

The Petitioners, [REDACTED], by their attorney, Richard G. Berger, hereby appeal the decision of the Planning Board of the Town of Amherst dated June 25, 2009 to the Town of Amherst Zoning Board of Appeals pursuant to Town Law §267-a. Petitioners contend that the Decision of the Planning Board was illegal, arbitrary, capricious, and must be reversed for the following reasons:

1. The Planning Board illegally segmented the University Town Center Project which was approved by the Town Board as mixed-use commercial and residential project. Site plan approval by the Town Planning Board specifically omitted the residential component of the development project, which was an essential and integral part of the entire project. The approval must be returned to the Planning Board for consideration of the whole project as a unity. Regulations of the New York State Department of Environmental Conservation, 6 NYCRR §617, prohibit project segmentation.

2. Site plan approval requires a Supplemental Environmental Impact Statement prior to approval. The site plan documents submitted to the Town contained significant, even drastic changes to the original project proposal which was the subject of the Environmental Impact Statement. The New Project, contained in the site plan documents submitted to the Planning Board, include a movie theater and restaurant which exceed 50,000 square feet, one of the restrictions contained in the Town Board's approval of the rezoning. The site plan adds a three-story parking facility identified as Building H, which was never considered by the Town Board at the time of rezoning. The parking facility will add additional space for over 400 automobiles on the project site, increasing congestion and reducing open space. It will preclude the project from being a walkable environment that will be neighborhood friendly, and will require that anyone entering the

project enter by motor vehicle, merely for one's own safety. Additional apartments have been added over commercial space which will also increase motor vehicle traffic within the plaza development. For these and other reasons, the New York State Department of Environmental Conservation has “strongly urged” the Town of Amherst to prepare a Supplemental Environmental Impact Statement prior to site plan approval. The Town Planning Board ignored the significant changes to the project design which are likely to have consequential adverse effects upon the human and natural environment. The Planning Board approval of the Site Plan must be reversed and remanded to the Planning Board for further consideration and a Supplemental EIS.

3. Site plan approval permits the project developer to renege on its commitment to remediate lead contamination and other environmental contamination at the project site. The sponsor publicly committed itself to clean up of the site to residential standards under the DEC Brownfield Remediation Program. The Planning Board permitted the sponsor to meet said standards only where “technically and economically feasible,” thereby permitting the sponsor to perform a lesser level of site remediation either because it is too difficult or because it would cost too much money. This is a deviation from the standards required by the Town Board in rezoning the project site, which would have a significant adverse effect upon the natural and human environment.

4. The findings of the Planning Board were arbitrary, capricious and were not based upon the substantive or objective standard. Section 12 of site plan approval approves the residential portion of the project as to height limitation, when absolutely no documentation was submitted regarding the residential portion of the project. The Decision of the Planning Board must be reversed and remanded for further consideration.

5. Site approval of the pedestrian/bicycle trails was arbitrary and capricious and the review must be remanded to the Town Planning Board for a further consideration. All review and consideration of this important feature of the project in the dedicated “buffer” zone consisting of a 101-foot strip along Maple Road has been deferred until a later time. There can be no walkable trail system or bicycle path when there are four uncrossable driveways handling traffic well over 1,000 cars per hour. Deferment of consideration until a later date provides no assurance that the public amenity portion of this project will ever be fulfilled. No connection is provided to the existing

pedestrian/bicycle path running along the north edge of the Town of Amherst golf course. All planning for this is merely ignored in the site plan approval and left to future consideration, subject to town approval. This is the antithesis of careful planning, and makes a mockery of the Town's assurances to its citizens.

6. The finding of the Planning Board that the site plan includes "usable space for active and passive recreation, including pedestrian connections" is arbitrary, capricious and unfounded. Site plan approval must be reversed and remanded to the Planning Board for further consideration. As previously stated the 100 foot wide conservation was not reviewed by the Planning Board and all specific planning for walkways, safety of non-vehicular traffic, planting and connection to other walkways and bicycle paths has been deferred to future, possible, consideration. Moreover, the site plan does not include any greenspace on 28.44 acres of land in the commercial shopping development, the entire is now devoted to blacktop parking spaces and parking garages, sidewalks and buildings. The site plan breaks faith with the Town of Amherst and its citizens by offering no public amenities or landscaping. There is no reason why the Planning Board should not demand additional landscape and planted green areas within the commercial project.

7. Initial plans for the development project included retention ponds between the residential complex and the homes on North Maplemere Road, in order to reduce flooding. The retention ponds are not present in the site plan and no effective planning is done for storm water run off to prevent flooding of surrounding areas. It is not acceptable to segment the project and leave essential health and safety matters unresolved. This site plan approval must be reversed and remanded for further consideration.

Dated: August 20, 2009

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