

AGENDA
SPECIAL BOARD MEETING - TOWN OF BOSTON
August 23, 2023 - 6:00 P.M.

ITEM NO. I PRELIMINARY MATTERS

1. Call Meeting to Order
2. Roll Call
3. Pledge of Allegiance
4. Other Preliminary Matters

ITEM NO. II REGULAR BUSINESS

1. Consideration of all Fund Bills

ITEM NO. III CORRESPONDENCE

1. Notice of Violation from NYS Department of Environmental Conservation, failure to Submit MS4 Annual Report and Municipal Compliance Certification Form
2. Notice from NYS Department of Environmental Conservation to disregard Notice of Violation from August 2, 2023
3. Notice from Erie County Department of Public Works - Boston State Road Closure

ITEM NO. IV NEW BUSINESS

1. Requests from the Floor (3-minute time limit per person)
2. Resolution 2023-74 PROPOSED MIXED-USE DEVELOPMENT AT 7072 BOSTON STATE ROAD: (1) RESCISSION OF RESOLUTIONS RELATED TO PRIOR PROJECT APPROVAL; (2) NOTICE OF INTENT TO DECLARE SEQR LEAD AGENCY STATUS AND DETERMINE THE SIGNIFICANCE OF THE ENVIRONMENTAL IMPACT FOR NEWLY SUBMITTED APPLICATIONS FOR SITE PLAN APPROVAL FOR MIXED USE DEVELOPMENT AND SPECIAL USE PERMIT FOR FILLING STATION; (3) SCHEDULING PUBLIC HEARING ON SPECIAL USE PERMIT FOR FILLING STATION; AND (4) REFERRAL TO PLANNING BOARD FOR REVIEW AND RECOMMENDATION REGARDING SITE PLAN AND SPECIAL USE PERMIT APPLICATION

ITEM NO. V OLD BUSINESS

ITEM NO. VI REPORTS AND PRESENTATIONS

ITEM NO. VII ADJOURNMENT OF MEETING

1. Adjournment of Meeting

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Water, Bureau of Water Compliance
625 Broadway, Albany, New York 12233-3506
P: (518) 402-8177 | F: (518) 402-8082
www.dec.ny.gov

August 2, 2023

BOSTON (T)
8500 BOSTON STATE RD
BOSTON, NY 14025

Re: **NOTICE OF VIOLATION**: Failure to Submit MS4 Annual Report and
Municipal Compliance Certification (MCC) Form
MS4 SPDES No.: **NYR20A301** for the BOSTON MS4 STORM SEWERS

Dear BOSTON (T):

You submitted a Notice of Intent (NOI) form to this Department to gain authorization to discharge stormwater from your Municipal Separate Storm Sewer System (MS4) to the waters of the State. Having submitted your NOI, you are operating under New York's *State Pollutant Discharge Elimination System (SPDES) General Permit (GP-0-15-003) for Storm Water Discharges from Municipal Separate Storm Sewer Systems (MS4s)* and are therefore bound to comply with the terms and conditions of the permit.

Part V.C and Part V.D of the general permit (GP-0-15-003) require you to submit an Annual Report and Municipal Compliance Certification (MCC) form to the Department by June 1 of each reporting year. As of the date of this letter, the Annual Report and MCC form have not been received for the March 10, 2022 to March 9, 2023 reporting period, or are considered incomplete.

Failure to submit a complete Annual Report and MCC form is a violation of your SPDES permit and Article 17 of the New York State Environmental Conservation Law (ECL). ECL §71-1929 provides for civil penalties of up to thirty-seven thousand five-hundred dollars (\$37,500) per day per violation.

In order to resolve and settle this matter without a financial penalty, you must submit the required Annual Report and MCC form within 30 days of the date of this letter.

Please be advised, if you do not submit the required Annual Report and MCC form within 30 days of the date of this letter, an Order on Consent with penalty will be sent to you for violating the requirement of GP-0-15-003 to submit the Annual Report and MCC form by June 1 of the reporting year. Once this order has been sent, there will be no



opportunity to settle this matter without payment of a penalty. This is a statewide initiative; no exceptions to the time frame or penalty will be accommodated due to the critical importance of SPDES compliance.

If you would like to discuss this matter, please contact Audra Rossignol via email at audra.rossignol@dec.ny.gov.

Sincerely,



Ryan Waldron, P.E.
Chief, Metropolitan Compliance Section

cc: Regional Water Engineer



Sandra Quinlan

From: Town of Boston Supervisor
Sent: Tuesday, August 8, 2023 9:35 AM
To: Sandra Quinlan
Cc: Town of Boston Bookkeeper
Subject: FW: Town of Boston MS4 Annual Report

Follow Up Flag: Follow up
Flag Status: Flagged

Hi Sandy –

Please include this in correspondence with the letter from the DEC (in whichever meeting it ends up being on!).

Thanks!

Thank you,



Allison Koczur

Town of Boston, Executive Assistant to Supervisor Keding
P: (716) 941-6518 | F: (716) 941-6116
8500 Boston State Road | Boston, New York 14025
www.townofboston.com



Thank you for not printing this e-mail!

From: Rossignol, Audra E (DEC) <Audra.Rossignol@dec.ny.gov>
Sent: Monday, August 7, 2023 3:20 PM
To: Squier-Babcock, Mallory <msquier-babcock@LaBellaPC.com>; dec.sm.MS4compliance <MS4compliance@dec.ny.gov>
Cc: Winkler, Kristopher <kwinkler@LaBellaPC.com>; Simon, Michael <MSimon@LaBellaPC.com>; Smith, Rebecca <RLSmith@LaBellaPC.com>; Town of Boston Supervisor <supervisor@townofboston.com>; Thomas Murphy <codeenforcement@townofboston.com>
Subject: RE: Town of Boston MS4 Annual Report

Hi Mallory,

The report has been reviewed and saved to the Department's records. The NOV sent to the Town on August 2, 2023 may now be disregarded.

Thank you,
Audra

Audra Rossignol, E.I.T.

Assistant Engineer, Division of Water

New York State Department of Environmental Conservation
625 Broadway, Albany, NY 12233-3506

P: (518) 402-8083 | audra.rossignol@dec.ny.gov

www.dec.ny.gov |  |  | 



From: Squier-Babcock, Mallory <msquier-babcock@LaBellaPC.com>

Sent: Monday, August 7, 2023 2:45 PM

To: dec.sm.MS4compliance <MS4compliance@dec.ny.gov>

Cc: Winkler, Kristopher <kwinkler@LaBellaPC.com>; Simon, Michael <MSimon@LaBellaPC.com>; Smith, Rebecca <RLSmith@LaBellaPC.com>; Rossignol, Audra E (DEC) <Audra.Rossignol@dec.ny.gov>; Town of Boston Supervisor <supervisor@townofboston.com>; Thomas (Murf) Murphy (codeenforcement@townofboston.com) <codeenforcement@townofboston.com>

Subject: Town of Boston MS4 Annual Report

Some people who received this message don't often get email from msquier-babcock@labellapc.com. [Learn why this is important](#)

ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.

Attached please find completed MS4 Municipal Compliance Certification (MCC) Form for period ending March 9, 2023 for Town of Boston. SPDES ID NYR20A301.

Best,

Mallory Squier-Babcock, PhD, EIT

LaBella Associates | Civil Engineer

she/her/hers



Official Architecture & Engineering Partner of the Buffalo Bills

412-576-7171 direct
716-422-2812 office
300 Pearl Street, #130
Buffalo, NY 14202
labellapc.com



COUNTY OF ERIE

WILLIAM E. GEARY, JR.

COMMISSIONER

DEPARTMENT OF PUBLIC WORKS

August 3, 2023

CERTIFICATE AND NOTICE OF CLOSURE

STATE OF NEW YORK:

COUNTY OF ERIE: }SS

This is to certify that the Commissioner – Highways has jurisdiction of the highways of the County of Erie and does hereby change traffic patterns for that portion of the highway in the Town of Boston, said County, known as Erie, and described as follows:

Closure:

The portion of Boston State Road (CR 227) over Tributary to Eighteen Mile Creek (CIN 227-07A) from Thornwood Drive to South Abbott Road will complete shoulder work and lane shifts. Traffic may experience minor delays. This work will begin August 14, and has an anticipated completion date of November 13. This work is for the purpose of a culvert replacement with shoulder construction and lane shifts. The road will remain open to traffic. Hunting Valley Construction will be performing the work.

A closure is executed under Article V, Section 104A of the Highway Law in order to permit a proper completion of work of improvement thereon.

IN WITNESS WHEREOF: The undersigned has, on this 3rd day of August, 2023, set his hand in Buffalo, New York.

Very truly yours,



WILLIAM E. GEARY, JR.
COMMISSIONER OF PUBLIC WORKS

WEG/JMS

cc: See Attached List

August 3, 2023
Boston State Road Closure
Page 2

cc: William E Geary Jr., Commissioner of Public Works
Karen Hoak, Deputy Commissioner of Highways
Catherine C. Walsh, Special Assistant to the Commissioner
Garrett Hacker, P.E.
Darlene Svilokos, P.E.
Jonathan DePlanche, P.E.
Gina Wilkolaski, P.E.
Karl Rohde, P.E.
Rick Nendza
Kaitlin Costello
Kara Nicotra
Lisa Chimera, Deputy County Executive
Benjamin Swanekamp, Chief of Staff – Erie County Executive’s Office
Jordan Zyglis, Legislative Liaison
Jonathan McNulty, Legislature Senior Admin Clerk
Daniel Meyer, Deputy Press Secretary for Erie County
Daniel Neaverth, Dept. of Emergency Services
Gregory Butcher, Dept. of Emergency Services
Hon. John J Mills, Legislator, District 11
Jason A Keding, Supervisor Town of Boston–supervisor@townofboston.com
Robert Telaak, Town of Boston Highway superintendent–hwysuper@townofboston.com
Michael Cornell, Hamburg Central School District Superintendent-
mccornell@hcsdk12.org
Fisher Bus Service, Hamburg Central School Transportation- service@fisherbus.com
Joseph Donlon, Hamburg Maintenance District Engineer- Hamburg@erie.gov
Operators@NITTEC.org

(Sent via e-mail)

TOWN OF BOSTON – RESOLUTION NO. 2023-74

**PROPOSED MIXED-USE DEVELOPMENT AT 7072 BOSTON STATE ROAD:
(1) RESCISSION OF RESOLUTIONS RELATED TO PRIOR PROJECT APPROVAL;
(2) NOTICE OF INTENT TO DECLARE SEQR LEAD AGENCY STATUS AND
DETERMINE THE SIGNIFICANCE OF THE ENVIRONMENTAL IMPACT FOR
NEWLY SUBMITTED APPLICATIONS FOR SITE PLAN APPROVAL FOR MIXED
USE DEVELOPMENT AND SPECIAL USE PERMIT FOR FILLING STATION;
(3) SCHEDULING PUBLIC HEARING ON SPECIAL USE PERMIT FOR FILLING
STATION; AND (4) REFERRAL TO PLANNING BOARD FOR REVIEW AND
RECOMMENDATION REGARDING SITE PLAN AND SPECIAL USE PERMIT
APPLICATION**

WHEREAS, the Town of Boston previously received, reviewed, and approved applications for site plan approval and for a special use permit for a filling station from 7072 Boston State Road LLC (the “Applicant”), for the proposed mixed-use development of a 5,183 square foot convenience store with fuel and a Tim Horton’s with drive-thru, a 5,000 square foot office building, and associated improvements at 7072 Boston State Road, Boston, New York (collectively the “Project”); and

WHEREAS, the owner of an adjoining property has filed litigation in State Supreme Court challenging certain aspects of the prior approvals for the Project including but not limited to the environmental review pursuant to the State Environmental Quality Review Act (“SEQR”); and

WHEREAS, rather than incur the delay, expense, and uncertainty associated with litigation, the Applicant has determined to re-submit its project for approval, and the Applicant’s August 9, 2023, letter of intent states that the re-submission will provide the opportunity to address the concerns raised in the litigation commenced by the adjoining property owner; and

WHEREAS, this course of action will save the Town litigation costs; and

WHEREAS, with its August 9, 2023, letter of intent, the Applicant supplied a conceptual plot plan, elevation plans for the proposed buildings, a completed Part 1 of the Full Environmental Assessment Form with attachments prepared pursuant to SEQR, an updated Traffic Impact Study dated August 2023, a Phase I Cultural Resource Investigation report dated February 8, 2023, and a Geotechnical Report dated May 2, 2023; and

WHEREAS, it is appropriate to commence a coordinated environmental review of the Project (proposed action) pursuant to SEQR at this time; and

WHEREAS, as an involved agency with authority to grant or deny site plan approval and the requested special use permit for a filling station, the Town Board of the Town of Boston has the authority to coordinate the SEQR process, serve as a lead agency, and make a determination of significance; and

WHEREAS, Town Code § 123-164 provides that the Town Board, upon receipt of an application, site plan, and supporting data, shall refer said application, site plan, and supporting data to the Town Planning Board for review and recommendation; and

WHEREAS, Town Code § 123-124 requires the Town Board to conduct a public hearing on the requested special use permit, and to refer the application for a special use permit to the Planning Board for review and recommendation prior to that hearing;

NOW, THEREFORE, BE IT

RESOLVED, that with respect to the Applicant’s proposed development of a 5,183 square foot convenience store with a fuel facility and a Tim Horton’s with drive-thru, a 5,000 square foot office building, and associated improvements at 7072 Boston State Road, the Town Board of the Town of Boston hereby:

- (1) Rescinds the following Resolutions it passed on June 21, 2023:
 - a. Resolution 2023-47, SEQR Negative Declaration for Mixed Use Development at 7072 Boston State Road (Revised);
 - b. Resolution 2023-48, Special Use Permit for Filling Station at 7072 Boston State Road; and
 - c. Resolution 2023-49, Site Plan Approval for Mixed Use Development at 7072 Boston State Road; and
- (2) Based on a review of the Part 1 of the Full Environmental Assessment Form submitted by the Applicant, classifies the Project as an Unlisted Action in accordance with SEQR regulations (6 NYCRR Part 617) and declares its intent to act as the designated lead agency for the Project. A lead agency coordination request along with project documentation will be circulated to involved agencies. If no objections or responses are received from involved agencies within thirty (30) days from when the completed Part I of the EAF and project documentation was transmitted to them, the Town Board of the Town of Boston will declare lead agency status in advance of making a determination of environmental significance for the Project pursuant to SEQRA.
- (3) Refers the Applicant’s conceptual plot plan and any site plan which is developed from that conceptual plot plan to the Planning Board for its review and recommendation;
- (4) Refers the application for a special use permit for a filling station to the Planning Board for its review and recommendation; and
- (5) Schedules a public hearing on the application for a special use permit for a filling station for the Town Board’s September 20, 2023, meeting.

On August 23, 2023, the question of the adoption of the foregoing Resolution was duly put to a vote on roll call, which resulted as follows:

	Yes	No	Abstain	Absent
Councilmember Cartechine	[]	[]	[]	[]
Councilmember Lucachik	[]	[]	[]	[]
Councilmember Martin	[]	[]	[]	[]
Councilmember Selby	[]	[]	[]	[]
Supervisor Keding	[]	[]	[]	[]

Sandra L. Quinlan, Town Clerk



RECEIVED
BOSTON TOWN CLERK

August 9, 2023

2023 AUG 10 AM 9:19

Sandra L. Quinlan, Town Clerk
Town of Boston Town Hall
8500 Boston State Road
Boston, NY 14025

Re: Letter of Intent - Conceptual Plot Plan Submission
Proposed Commercial Mixed-Use Project
Applicant: Miranda Development LLC
7072 Boston State Road – Town of Boston

Dear Ms. Quinlan:

This Letter of Intent and the enclosed supporting documentation is being submitted on behalf of Miranda Development LLC (the “Applicant”) in connection with the proposed project to be located at 7072 Boston State Road (“Project Site”).

On July 21, 2023, Boston Valley Capital, the owner of a commercial project located at 7074 Boston State Road, commenced an Article 78 proceeding for the purpose of challenging decisions issued by the Town Board for the proposed project to be located at 7072 Boston State Road.¹ Rather than both the Town and the Applicant defending the approvals issued by the Town Board after a lengthy review process, the Applicant has decided to seek the required approvals once again for the project in a manner that will provide the opportunity to address concerns raised in the Verified Petition of Boston Valley Capital.

I. Conceptual Plot Plan Documentation:

Enclosed are copies of the following project documentation being submitted for the Planning Board’s consideration in connection with the Conceptual Plot Plan review process as set forth in Section 97-4 of the Town of Boston Town Code:

1. Ten (10) sets of the engineered plans prepared by Carmina Wood Design;
2. Ten (10) sets of the Elevation Plans for the two proposed buildings;
3. Ten (10) copies of the Part 1 of the Full Environmental Assessment Form dated August 8th with Attachments “1” and “2” consisting of the following:

¹ The proposed project consists of the construction of a proposed 5,000 sq. ft. office building and a 5,183 sq. ft. convenience store building that will include a 1,000 sq. ft. restaurant with an accessory drive-thru facility. A more detailed description of the project is provided below in Part III of this Letter of Intent.

- **Attachment 1**: Wetland Investigation Letter prepared by Thomas Somerville of Earth Dimensions dated September 21, 2022² and;
 - **Attachment 2**: No Impact Determination Letter issued by Sydney Snyder of the New York State Office of Parks, Recreation and Historic Preservation dated February 9, 2023³
4. Ten (10) copies of the updated Traffic Impact Study prepared by Amy Dake, P.E., of Passero Associates dated August of 2023;
 5. Ten (10) copies of the Phase I (IA and IB) Cultural Resource Investigation Report dated February 8, 2023 prepared by Powers Archaeology LLC; and
 6. Ten (10) copies of the Geotechnical Report prepared by Barron & Associates dated May 2, 2023

II. Conceptual Plot Plan Review Process:

The Conceptual Plot Plan review process for a proposed project requiring site plan approval is set forth in Section 97 of the Town of Boston Town Code (“Town Code”). Section 97-3 of the Town Code is titled “*Initiation*” and states as follows:

“Site plan review shall be initiated by the filing of a conceptual plot plan, as hereinafter provided, with the Town Clerk. The Town Clerk shall then transmit the

² Earth Dimensions, Inc. completed a preliminary wetland investigation at the Project Site on September 21, 2022. As indicated on the preliminary wetland investigation map attached to the letter, Earth Dimensions, Inc. did not identify any wetlands as defined by the U.S. Army Corps of Engineers (“USACE”) wetland delineation manual.

³ The No Impact Determination Letter issued by the New York State Office of Parks, Recreation and Historic Preservation dated February 9, 2023 stated as follows: “We have reviewed the submitted materials in accordance with the New York State Historic Preservation Act of 1980 (section 14.09 of the New York Parks, Recreation and Historic Preservation Law). These comments are those of the Division for Historic Preservation and relate only to Historic/Cultural resources. The OPRHP has reviewed the Phase IA/IB archaeological survey report prepared for this project (February 2023; 23SR00093). No archaeological sites were identified by the survey. Therefore, it is the opinion of the OPRHP that no properties, including archaeological and/or historic resources, listed in or eligible for the New York State and National Registers of Historic Places will be impacted by this project.”

*conceptual plot plan to the Planning Board for action in conformance with this chapter.*⁴

Section 97-4 of the Town Code is titled “*Form and contents*” and states as follows:

The conceptual plot plan shall include the following:

- A. *A letter of intent, which shall include a brief description of the project and any unique features or characteristics involved in the development of the project.*⁵
- B. *A conceptual plot plan drawn to a scale appropriate to the size of the project, which shall include the following:*
 - (1) *Site dimensions, including the dimensions and locations of all existing and proposed buildings, and setbacks of said buildings from all property lines indicating the shortest distance between all existing and proposed buildings.*
 - (2) *Front building elevations for all proposed buildings.*
 - (3) *All existing and proposed parking spaces and driveways.*
 - (4) *All elevations of existing grades and proposed grades.*
 - (5) *Existing trees and all proposed landscaping.*
 - (6) *All existing and proposed light standard locations.*
 - (7) *All adjacent properties, streets, buildings and driveways within 50 feet of the property.*
- C. *The application shall also provide information concerning the construction material which will be used on the site.*⁶
- D. *All existing and proposed sewer and water connections servicing the property, including the location of all existing and proposed hydrants.*

⁴ Section 97-6 of the Town Code is titled “Submission to Planning Board” and states as follows: Seven copies of the conceptual plan shall be submitted to the Planning Board at least two weeks prior to the Planning Board meeting at which the application shall be considered. At such meeting, the Planning Board shall make such recommendations regarding development of the site, zoning of the property and such other recommendations as may be appropriate. The Project Sponsor has elected to submit ten copies of the Conceptual Plot Plan submission so that copies can be provided to each of the members of the Planning Board.

⁵ There are not any unique features or characteristics involved in connection with the proposed project.

⁶ The proposed materials for the two proposed commercial buildings are labeled on the enclosed Elevation Plans.

- E. *An indication of present zoning of land on which the project is to be located and provide any recommendations for rezoning of the property.*⁷

Section 97.5 of the Town Code is titled “Compliance with SEQRA” and states as follows:

The applicant shall submit a short environmental assessment form with the conceptual plan. Submission of this form will not relieve the applicant of the obligation to submit additional environmental assessment data as may be required in accordance with the SEQRA regulations of the State of New York.

A completed Part 1 of the Full Environmental Assessment dated August 9th with Attachments “1” and “2” is enclosed. The Project Sponsor is requesting that a coordinated environmental review of the project be completed pursuant to the State Environmental Quality Review Act (“SEQRA”).

III. Project Information:

The Project Site consists of approximately 2.65 acres located on the west side of Boston State Road (NY-391) and south of the Route 219 exit/entrance ramps. The Project Site is zoned C-1 Local Retail Business District pursuant to the Town of Boston Zoning Map.

The proposed project consists of the construction of a proposed 5,000 sq. ft. office building and a 5,183 sq. ft. convenience store building that will include a 1,000 sq. ft. restaurant with an accessory drive-thru facility. The proposed project also includes a proposed fueling station with four pump islands and canopy. The proposed project also includes all required utility improvements, a stormwater management system, 57 parking spaces, landscaping and lighting and all other related improvements depicted on the enclosed engineered plans prepared by Christopher Wood, P.E. of Carmina Wood Design.

The entire Project Site is anticipated to be disturbed during construction activities. All existing structures will be demolished. The Project Site will be accessed via one proposed driveway connection to Boston State Road. Existing residential and commercial properties are located adjacent to the Project Site.

Grading/Stormwater Drainage:

The existing site slopes to the southwest and drains offsite to an existing drainage swale the runs along the east side of Route 219. Runoff is then conveyed via the swale to the south and discharged into Eighteen Mile Creek. Eighteen Mile Creek continues west and is ultimately tributary to Lake Erie. Proposed stormwater runoff will be collected and conveyed to two (2) separate proposed onsite stormwater management areas. All runoff generated throughout the development area will be routed through the proposed basins and discharged via an outlet control structure to the existing drainage swale offsite along the side of Route 219. NYSDEC SPDES requirements will apply to this site for stormwater discharges.

⁷ The Project Sponsor is not seeking to amend the zoning classification of the Project Site.

Correspondence to Sandra L. Quinlan, Town Clerk

August 9, 2023

Page 5 of 6

Lighting:

Proposed site lighting will consist of canopy lights (12 at 15 ft. measured height), site lighting poles (10 at 20 ft. measured height) and building wall packs (12 at 12 ft. measured height). All site lighting fixtures will be LED and shall be dark sky compliant.

Utilities:

An existing 12" cast iron ECWA water main is located along the east side of Boston State Road. An existing 3/4" water service is currently tapped off the 12" water main and continues onsite to serve the existing building onsite. The existing 3/4" tap will be abandoned and a new 6" combination service will tap the existing 12" water main.

An existing public 6" sanitary sewer is located within a 15' wide easement along the south property line of the site. The 6" sewer flows west/south and connects into an existing 21" public sewer that continues to flow west. An existing sanitary lateral from the existing building onsite that connects into the 6" public sewer will be removed/abandoned in accordance with ECDSM requirements. The sanitary sewer for each proposed building will consist of a 6" SDR-35 PVC lateral @ 2.0% minimum. Each 6" sanitary sewer lateral will connect into the existing 6" public sewer along the south property line. Existing electrical and gas are also present in the vicinity to service the proposed project.

IV. Conclusion:

The Project Sponsor is requesting that this Conceptual Plot Plan submission be referred to the Erie County Department of Environment and Planning ("ECDEP") pursuant to NYS Gen. Municipal Law Section 239-m and that the Town Board adopt a resolution for the purpose of commencing a coordinated environmental review of the proposed project pursuant to SEQRA. The Project Sponsor is also requesting that the Planning Board review of the Conceptual Plot Plan during its next meeting.

Please feel free to contact me at 716.510-4338 or via e-mail at shopkins@hsmlegal.com if you have any questions regarding the enclosed project documentation.

Sincerely,

HOPKINS SORGI & MCCARTHY PLLC



Sean W. Hopkins, Esq.

Enc.

cc: Town of Boston Planning Board
Sarah desJardins, Planning Consultant
Sean W. Costello, Esq., Town Attorney

Correspondence to Sandra L. Quinlan, Town Clerk
August 9, 2023
Page 6 of 6

Ray Miranda, Miranda Development LLC
Christopher Wood, P.E., Carmina Wood Design
Jonathan Barniak, Carmina Wood Design



August 18, 2023

Sandra L. Quinlan, Town Clerk
Town of Boston Town Hall
8500 Boston State Road
Boston, NY 14025

Re: Special Use Permit Application & Supporting Documentation
Proposed Commercial Mixed-Use Project
Applicant: Miranda Development LLC
7072 Boston State Road – Town of Boston

Dear Ms. Quinlan:

This letter and the enclosed supporting documentation is being submitted on behalf of Miranda Development LLC (the “Applicant”) in connection with a request for a Special Use Permit for the proposed filling station that a component of the proposed commercial project to be located at 7072 Boston State Road (“Project Site”). The Project Site consists of approximately 2.65 acres located on the west side of Boston State Road (NY-391) and south of the Route 219 exit/entrance ramps.

The proposed commercial project consists of the construction of a proposed 5,000 sq. ft. office building, a 5,183 sq. ft. convenience store building with an accessory drive-through facility as well as a proposed filling station (fueling facility) requiring the issuance of a Special Use Permit by the Town Board.¹ The Project Site is properly zoned C-1 Local Retail Business District (“C-1”) pursuant to the Town of Boston Zoning Map.

On July 21, 2023, Boston Valley Capital, the owner of a commercial project located at 7074 Boston State Road, commenced an Article 78 proceeding for the purpose of challenging decisions issued by the Town Board for the proposed project to be located at 7072 Boston State Road. Rather than both the Town and the Applicant defending the approvals issued by the Town Board after a lengthy review process, the Applicant has decided to seek the required approvals once again for the project in a manner that will provide the opportunity to address concerns raised in the Verified Petition of Boston Valley Capital.

Article XIV of the Zoning Code is titled “C-1 Local Retail Business District” and Section 123-71B of the Zoning Code sets forth the categories of land uses requiring a special use permit in the C-1 zoning district.² Section 123-71B(1) of the Zoning Code states as follows:

¹ The proposed project also includes all required utility improvements, a stormwater management system, 57 parking spaces, landscaping and lighting and all other related improvements depicted on the enclosed engineered plans prepared by Christopher Wood, P.E. of Carmina Wood Design.

² A copy of Article XIV of the Zoning Code is attached as Exhibit “1”.

“Filling stations and/or gasoline stations, subject to Article XXIII, and provided that all servicing of vehicles and storage of parts and materials at gasoline stations except fueling and minor emergency repairs, will be conducted in an enclosed building.”³

I. Requested Special Use Permit for the Proposed Filling Stations (“Fueling Facility”):

Enclosed are copies of the following project documentation being submitted for the Town Board’s consideration in connection with the requested Special Use Permit for the proposed filling station:

1. Ten (10) sets of the engineered plans prepared by Carmina Wood Design;
2. Ten (10) sets of the Elevation Plans for the two proposed buildings;
3. Ten (10) copies of the Part 1 of the Full Environmental Assessment Form prepared pursuant to the State Environmental Quality Review Act (“SEQRA”) dated August 8, 2023 with Attachments “1” and “2” consisting of the following:
 - **Attachment 1**: Wetland Investigation Letter prepared by Thomas Somerville of Earth Dimensions dated September 21, 2022⁴ and;
 - **Attachment 2**: No Impact Determination Letter issued by Sydney Snyder of the New York State Office of Parks, Recreation and Historic Preservation dated February 9, 2023⁵
4. Ten (10) copies of the updated Traffic Impact Study prepared by Amy Dake, P.E., of Passero Associates dated August of 2023;

³ A copy of Article XXIII of the Zoning Code (titled “Supplemental Use Regulations”) is attached as Exhibit “2”.

⁴ Earth Dimensions, Inc. completed a preliminary wetland investigation at the Project Site on September 21, 2022. As indicated on the preliminary wetland investigation map attached to the letter, Earth Dimensions, Inc. did not identify any wetlands as defined by the U.S. Army Corps of Engineers (“USACE”) wetland delineation manual.

⁵ The No Impact Determination Letter issued by the New York State Office of Parks, Recreation and Historic Preservation dated February 9, 2023 stated as follows: “We have reviewed the submitted materials in accordance with the New York State Historic Preservation Act of 1980 (section 14.09 of the New York Parks, Recreation and Historic Preservation Law). These comments are those of the Division for Historic Preservation and relate only to Historic/Cultural resources. The OPRHP has reviewed the Phase IA/IB archaeological survey report prepared for this project (February 2023; 23SR00093). No archaeological sites were identified by the survey. Therefore, it is the opinion of the OPRHP that no properties, including archaeological and/or historic resources, listed in or eligible for the New York State and National Registers of Historic Places will be impacted by this project.”

5. Ten (10) copies of the Phase I (IA and IB) Cultural Resource Investigation Report dated February 8, 2023 prepared by Powers Archaeology LLC; and
6. Ten (10) copies of the Geotechnical Report prepared by Barron & Associates dated May 2, 2023

A. Special Use Permit Review Process:

The Special Use Permit review process is set forth in Article XXXII of the Zoning Code (titled “Special Use Permit Procedure”). A copy of Article XXXII of the Zoning Code is attached as Exhibit “3”. Section 123-174 of the Zoning Code is titled “Application procedure” and states as follows:

A. Applications for special use permits shall be acted on by the Town Board after a public hearing. Notice of such public hearing shall be published in the official newspaper of the Town of Boston at least five days prior to the date thereof. Prior to such public hearing, applications shall be referred to the Town Planning Board for review and recommendation. In the event that the Planning Board shall fail to submit a report within 60 days after said referral, the Town Board may hold a public hearing at the earliest possible date.

B. A plan for the proposed development of a site for a permitted special use shall be submitted with an application for a special permit, and such plan shall comply with the requirements for site plan review under Article XXX of this chapter.⁶

B. Special Use Permit Standards for the Proposed Filling Station:

Section 123-119 of the Zoning Code is titled “Limitations on filling stations, gasoline service stations and public garages” and states as follows:

A. No part of any building used as a filling station, gasoline service station or public garage and no filling pump, lift or other service appliance shall be erected within 25 feet of any R District boundary or within 300 feet of any school, church, playground or park located in an R District.

B. No gasoline or oil pump, no oiling or greasing mechanism and no other service appliance shall be installed in connection with any filling station, gasoline station or public garage within 20 feet of any street line.

⁶ The engineered plans for the proposed commercial project included with this Special Use Permit Application submission as prepared by Carmina Wood Design comply with the requirements for site plan review as set forth in Article XXX of the Zoning Code. The proposed commercial project will also require site plan approval by the Town Board. A Site Plan Application will be submitted once the Planning Board completes the pending Conceptual Plot Plan review.

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C. Two reservoir spaces for each gasoline pump shall be provided on the lot for waiting vehicles. Such reservoir space shall not include space at the pump or required parking space.

D. Storage of gasoline shall be in underground tanks in accordance with the rules and regulations of the New York State Department of Environmental Conservation and the Environmental Protection Agency.

E. There shall be no use of the lot, except for landscaping or screening, within 20 feet of any R District boundary or lot used for residential purposes.

F. All portions of the lot not enclosed in a building and used for reservoir space or for storage, parking or servicing of a motor vehicle shall be subject to the provisions of § 123-120 of this chapter.⁷

The proposed filling station satisfies the standards set forth in Section 123-119 of the Zoning Code for the following reasons:

1. The proposed filling station will not be located within 25 feet of any R District boundary or within 300 feet of any school, church, playground or park located in an R District.
2. The filling station will not be located within 20 ft. of the Boston State Road Right-of-Way.
3. The required number of reservoir spaces will be provided as depicted on the Site Plan [Drawing C-100] prepared by Carmina Wood Design included in the engineered plans accompanying this Special Use Permit Application submission.
4. The storage of gasoline will consist of underground tanks complying with the applicable stringent standards of both the New York State Department of Environmental Conservation and the United States Environmental Protection Agency.
5. The Project Site is not contiguous to property zoned R District.
6. The portion of the Project Site to be utilized as filling station will comply with the requirements set forth in Section 123-20 of the Zoning Code.⁸ Section 123-120 of the Zoning Code is titled "Limitations on automotive use areas" and states as follows:

"Except for farms, any portion of a lot used for open off-street parking or reservoir space, or for open sales, service or storage areas for motor vehicles, contractors'

⁷ A copy of Section 123-119 of the Zoning Code is contained in the Supplemental Use Regulations attached as Exhibit "2".

⁸ A copy of Section 123-119 of the Zoning Code is contained in the Supplemental Use Regulations attached as Exhibit "2".

equipment or boats shall be deemed to be an automotive use area and shall be subject to the following requirements:

A. Surfacing. Every automotive use area and access driveway thereto shall be surfaced with a durable and dustless material and shall be so graded and drained so as to disperse of surface water accumulation.

B. Lighting. Any fixture used to illuminate any automotive area shall be so arranged as to direct the light away from the street and away from adjoining premises.

C. Screening. Every automotive use area, except off-street parking areas for less than five vehicles, shall be screened from any adjoining lot in any R District or lot used for residential purposes, including lots situated across the street, as follows:

(1) Along a street line, by a planting strip five feet wide; provided, however, that no shrub planting or tree foliage shall be placed or maintained which obstructs vision at an elevation between three feet and seven feet above the street level. Such screening may be interrupted by normal entrances and exits.

(2) Along a rear lot line or an interior side lot line which abuts an existing or future rear yard or side yard on such adjoining lots, by a compact evergreen hedge which will reach a height of five feet within three years or by a solid uniformly painted fence or an unpierced masonry wall five feet in height. Such screening shall be maintained in good condition at all times.

D. Access.

(1) No entrance or exit to any automotive use area shall be permitted within 30 feet of any intersecting street lines; and, except for off-street parking areas for uses permitted in any R District requiring less than 10 parking spaces, no entrance or exit shall be permitted within 20 feet of a lot in any R District or lot used for residential purposes.

(2) Access to automotive use areas, except for off-street parking areas in an R District for fewer than five vehicles, shall be approved by the Town Engineer and shall be so arranged that vehicles shall not be required to back into a street.

E. Restriction of use. No automotive use area shall be used for auto wrecking or for the storage of wrecked, partially dismantled or junked vehicles or equipment, or motor vehicles which do not qualify for New York State motor vehicle registration.

II. Conclusion:

The Project Sponsor is requesting that the Town Board adopt a resolution during its meeting to be held on August 23rd for the purpose of seeking lead agency status for a coordinated environmental

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review of the proposed project pursuant to SEQRA and referring the request for a Special Use Permit for the proposed filling station to the Planning Board for its review and recommendation.

Please feel free to contact me at 716.510-4338 or via e-mail at shopkins@hsmlegal.com if you have any questions regarding this letter or the enclosed project documentation being submitted in support of the requested Special Use Permit.

Sincerely,

HOPKINS SORGI & MCCARTHY PLLC



Sean W. Hopkins, Esq.

Enc.

cc: Town of Boston Town Board
Town of Boston Planning Board
Sarah desJardins, Planning Consultant
Sean W. Costello, Esq., Town Attorney
Colin M. Knoer, Esq., The Knoer Group, PLLC [Via e-mail]
Ray Miranda, Miranda Development LLC
Christopher Wood, P.E., Carmina Wood Design [Via e-mail]
Jonathan Barniak, Carmina Wood Design [Via e-mail]

**Exhibit 1 - Article XIV of the
Zoning Code [Titled “C-1 Local
Retail Business District”]**

ARTICLE XIV
C-1 Local Retail Business District

§ 123-71. Permitted uses and structures.

Uses and structures permitted in the C-1 District are as follows:

A. Principal uses and structures:

- (1) Permitted uses and structures permitted in an R-C District, except that no residential single-family, two-family or three-or-more-family dwellings, cluster housing, private horse stable or accessory apartments shall be permitted. **[Amended 7-16-1997 by L.L. No. 5-1997]**
- (2) The following uses, when conducted entirely within an enclosed building.
 - (a) Retail sales, but not including any use first permitted in the C-2, M-1 or M-2 District.
 - (b) Personal service establishments, including but not limited to barbershops, beauty parlors and shoe or hat cleaning or repair and martial arts or related physical fitness facilities.
 - (c) Hand laundries, laundromats and dry cleaning or laundry pickup stations.
 - (d) Dry-cleaning and pressing establishments limited to 2,000 square feet of floor area per establishment, provided that only solvents with a flash point of not less than 138.2° F. shall be used and the total aggregate dry load of machines shall not exceed 60 pounds.
 - (e) Theaters.
 - (f) Eating or drinking establishments, provided that any entertainment shall be limited to television, radio or music, and further provided that no sale of alcoholic beverages for consumption on the premises shall be permitted on any lot where the principal building is less than 100 feet from a side or rear lot line that abuts any R District boundary.
- (3) Hotels or motels, subject to the above restrictions on eating and drinking establishments.
- (4) Drive-in banks, provided that at least five reservoir spaces are provided on the lot for each drive-in teller's window. Such reservoir space shall be exclusive of required parking spaces.

B. Uses subject to special permit:

- (1) Filling stations and/or gasoline stations, subject to Article XXIII, and provided that all servicing of vehicles and storage of parts and materials at gasoline stations except fueling and minor emergency repairs, will be conducted in an enclosed building.
- (2) Radio or television transmission facilities and/or receive-only antennas and mountings having a combined weight exceeding or equal to 50 pounds, subject to the conditions and limitations of § 123-48B(1).¹ **[Added 4-17-1991 by L.L. No. 1-1991]**
- (3) Buildings constructed for the storage of tools and materials for use in a business not situated on the same lot, subject to the following conditions and limitations: **[Added 10-7-1992 by L.L. No. 2-1992]**

1. Editor's Note: Former Subsection B(2), which provided for certain two-family dwellings to be uses subject to special permit, was repealed 7-16-1997 by L.L. No. 5-1997. Said local law also redesignated former Subsections B(3) and (4) as Subsections B(2) and (3), respectively.

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- (a) The total area of any building or buildings, including all accessory buildings, shall not exceed the lesser of 3,000 square feet or 15% of the lot area.
 - (b) No more than one principal building shall be permitted on any lot pursuant to this section.
 - (c) The construction of accessory buildings shall be subject to special permit procedure of this section.
 - (d) No vehicles shall be parked on the premises except inside a permitted principal or accessory building.
 - (e) All buildings or structures permitted by this section shall be used in the operation of a single business except where two businesses have identical owners; then and in that event, no more than two businesses shall use the buildings or structures permitted by this section.
 - (f) Property principally improved by buildings or structures, permitted by this section, shall not be considered as making goods or services available for sale, hire or use on the premises for the purposes of § 95-5F of the Boston Town Code.
- (4) Retail sales as permitted by § 123-128 of this Code. **[Added 5-10-1998 by L.L. No. 2-1998]**
- (5) Topsoil. **[Added 4-5-2000 by L.L. No. 1-2000]**
- (a) Screening of topsoil, provided that:
 - [1] All machinery, or other devices, shall remain mobile and shall not be permanently affixed to the property.
 - [2] Screening activity shall be limited to the hours of 9:00 a.m. to 7:00 p.m., weekdays only.
 - [3] No screening activity shall exceed three hours in any one day.
 - [4] No more than 200 cubic yards shall be processed on the site in any one calendar month.
 - [5] Importation of any soil or fill into the Town of Boston for the purpose of processing same (without regard to the location of its intended use) shall be subject to the provisions of the Boston Town Code.
 - [6] No more than 60 cubic yards of processed soil and 60 cubic yards of unprocessed soil shall be stored on the premises.
 - [7] All screening operations shall be conducted in such a fashion as to minimize noise, dust, odor, or any other condition interfering with the use and enjoyment of adjacent property.
 - [8] All soil stored on the property shall be so arranged or enclosed as to prevent erosion thereof and to further prevent same from otherwise unreasonably interfering with the use of adjacent property.
 - [9] Any application for a permit shall be subject to site plan approval.
 - [10] No application for a special permit pursuant to this section shall be approved unless the applicant shall demonstrate that 10,000 square feet can be dedicated to the said

use without violating all area and bulk requirements for the remaining uses on the property.

[11] Any permit granted by the Town Board shall expire on December 31 in the calendar year in which said permit was granted, and may be renewed, from time to time, without a public hearing, upon application therefor, accompanied by a statement from the Code Enforcement Officer that the applicant substantially complied with the conditions of the current permit as set forth herein or as added by the Town Board.

[12] No permit shall be granted or renewed unless the premises for which the permit is sought shall be contiguous to at least one property in a C or M Zone.

[13] The original application for a special permit shall be accompanied by the fee set forth herein. Renewal applications shall be accompanied by a fee of \$25.

- (b) The Town Board shall have the power to impose additional and/or more stringent conditions than those contained herein, based upon the topography and/or configuration of the premises, reports or recommendations of the Code Enforcement Officer, the Planning Board or the Town Engineer, personal observations, and comments received in the course of processing the application for a permit or any renewal thereof.
- (6) Live performances of musical entertainment, stage shows, reviews or other live performances using sound amplification devices, at eating or drinking establishments authorized as a permitted use in this section, subject to the following conditions: **[Added 9-18-2002 by L.L. No. 4-2002]**
 - (a) Term. No such permit shall be issued for a period to exceed two years. Unless otherwise provided, the first such permit issued to any applicant shall expire on the 30th day of June of the first full calendar year following the issuance of the permit; additional permits shall expire on the 30th day of June of the second calendar year following the date of issuance.
 - (b) Renewal. Applications for renewal may, within the discretion of the Town Board, be subject to a public hearing.
 - (c) Revocability. The Town Board of the Town of Boston may revoke any such permit, after a public hearing held thereon. The grounds for such revocation shall be limited to the provisions of this subsection or the failure of the permit holder to comply with such additional conditions imposed at the time of issuance of the permit.
 - (d) Criteria for determination. In determining whether or not any such application shall be granted or existing permit revoked, the Town Board shall consider the following criteria:
 - [1] Proximity of adjacent residential structures.
 - [2] Compliance with other provisions of the Town Code, including but not limited to those provisions relating to the generation of noise, vehicular and pedestrian traffic, odors, vapors or other noxious fumes.
 - [3] Availability of parking.
 - [4] Any other factors that the Town Board determines are relevant to a decision on the application.
 - [5] Modification of the premises or alteration of the site on which is the subject of the

permit.

- (e) Hours of operation. Any such permit may limit, within the discretion of the Town Board, the hours of such performances.
- (f) Continuation of existing performances. The Town Board of the Town of Boston hereby finds that certain business establishments may have entered into contracts for live performances in the future. As a result of such finding, no permit shall be required for any business establishment that currently provides for live entertainment until July 1, 2003, based on any contract entered into on or before the effective date of this provision. No exemption from the requirement of obtaining a permit shall be obtained unless copies of qualifying contracts are filed in the office of the Town Clerk on or before the first day of October 2002.
- (g) Conditions. The Town Board of the Town of Boston may impose appropriate conditions on the issuance of any permit pursuant to this section, based upon the proximity of residential development or any other relevant factors, including but not limited to:
 - [1] Limitations on performances or the placing of any speakers broadcasting any performance outside of any structure.
 - [2] Requirement that all windows and doors remain closed except for normal ingress and egress.
 - [3] Limitation of the volume of any amplified sound generated during a live performance, measured at any or all speakers broadcasting such sound.
 - [4] Limitation on the volume of all nonamplified sound at the point of origin.
 - [5] Appropriate control of patrons at all times, including, but not limited to, activities outside of the establishment where live entertainment is occurring.
- (h) Inspection. As a condition of the issuance of this permit, the permit holder shall permit any duly appointed enforcement officer of the Town of Boston or any police office to enter onto the premises for the purpose of verifying compliance with the conditions of this permit.
- (i) Exceptions. The provisions of this subsection shall not be applicable to any live performance on property owned by the Town of Boston or the Hamburg Central School District.
- (j) Fees. The fee for such special permit and the renewal thereof shall be set forth in the Schedule of Fees, as adopted by the Town Board of the Town of Boston.²

C. Accessory uses and structures:

- (1) Accessory uses permitted in the R-C District, except accessory uses.
- (2) Unless otherwise provided, accessory uses and structures customarily incidental to permitted principal uses.
- (3) Shops for the manufacture or processing of articles incidental to the conduct of a retail business

2. Editor's Note: See Ch. 55, Fees.

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lawfully conducted on the premises, provided that:

- (a) All such articles manufactured or processed are sold at retail on the premises.
- (b) Not more than four persons are engaged in such manufacturing or processing at any one time and in any one establishment.
- (c) Such activity shall not produce offensive odors, noise, vibration, heat, glare or dust.

§ 123-72. Minimum lot size.

Unless otherwise provided, the minimum lot size for dwellings in the C-1 District shall be as specified in this section.

A. Lot area:

- (1) Minimum of 15,000 square feet.
- (2) Two-family dwellings: 20,000 square feet.
- (3) Three-or-more family dwellings: minimum lot: 20,000 square feet per structure, plus 3,000 square feet per dwelling unit.

B. Lot width at the building line:

- (1) Where a lot is served by a public sanitary sewer: 75 feet for one dwelling unit or other principal building or use; 100 feet for a two-family dwelling and an additional 25 feet for each dwelling unit over two, but need not exceed 200 feet.
- (2) Where a lot is not served by a public sanitary sewer: and 25 feet to the minimum lot width.

C. The lot width at the front lot line shall be equal to minimum required lot width at the building line.

NOTE: All area and bulk requirements pertaining to one- and two-family dwellings in this section are for historical purposes only. [Added 7-16-1997 by L.L. No. 5-1997]

§ 123-73. Maximum height of buildings.

Unless otherwise provided, the maximum height of buildings in the C-1 District shall be as specified in this section.

- A. Single-family, two-family or three-or-more family dwellings: 2 1/2 stories, not to exceed 30 feet.
- B. Other principal buildings: as regulated by yard requirements, not to exceed 35 feet.
- C. Accessory buildings: one story, not to exceed 18 feet, measured from the top of the floor to the top of the ridge.

NOTE: All area and bulk requirements pertaining to one- and two-family dwellings in this section are for historical purposes only. [Added 7-16-1997 by L.L. No. 5-1997]

§ 123-74. Required yards.

Unless otherwise provided, the minimum required yards and other open spaces in the C-1 District shall be as specified in this section.

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A. Front yard: 50 feet.

B. Side yards:

(1) Dwellings: two required.

(a) Single-family or two-family dwellings: The minimum width of any side yard shall be 10 feet.

(b) Three-or-more family dwellings: minimum of 30 feet from any property line.

(2) Other principal buildings: none required, except that:

(a) Where a side yard is provided, it shall be no less than five feet.

(b) Where a side yard abuts any R District boundary, it shall be not less than 20 feet or the height of the principal building, whichever is greater.

(c) Where a side yard is used for either vehicular ingress or egress, it shall not be less than 25 feet.

C. Rear yard: No rear yard shall have a depth less than 30 feet or a distance equal to the height of the principal building, whichever is greater.

D. Maximum lot coverage: 40%.

NOTE: All area and bulk requirements pertaining to one- and two-family dwellings in this section are for historical purposes only. [Added 7-16-1997 by L.L. No. 5-1997]

§ 123-75. Off-street parking reference.

For applicable off-street parking regulations, see Article XVIII.

§ 123-76. Sign regulations reference.

For applicable sign regulations, see the Town of Boston chapter regulating signs.³

§ 123-77. Supplemental regulations reference.

For applicable supplemental regulations pertaining to use, height, area or open space, see Articles XXIII through XXV.

3. Editor's Note: See Ch. 95, Signs.

**Exhibit 2 - Article XXIII of the
Zoning Code [Titled
“Supplemental Use Regulations”]**

ARTICLE XXIII
Supplemental Use Regulations

§ 123-118. Temporary structures or uses.

- A. The following temporary structures shall be deemed to be permitted uses in all zoning districts:
- (1) Temporary structures or uses incidental to construction work shall be permitted for a period of time not to exceed one year, provided that any such structure shall be removed forthwith upon the completion or abandonment of the construction work. Any extension of said time limit shall require the approval of the Zoning Board of Appeals.
 - (2) The temporary use of a dwelling as a model home shall be permitted for a period of time not to exceed nine months. Any extension of said time limit shall require the approval of the Zoning Board of Appeals.
 - (3) Any temporary structures or uses permitted by the Zoning Board of Appeals as authorized in Article XXXI.
- B. Special permits.
- (1) The Town Board may authorize a temporary and revocable permit for not more than two years for uses or structures that do not conform to the regulations of this chapter for the district in which they are located, provided that the following findings are made:
 - (a) Such uses are of a temporary nature and do not involve the erection or enlargement of any permanent structure.
 - (b) In the case of renewal of such permit, that all conditions and safeguards previously required have been complied with.
 - (2) Permitted temporary structures or uses, extension of time limit: The Town Board may authorize the continuation of temporary structures or uses incidental to construction work, provided that the following findings are made:
 - (a) That the structure and scale of the construction are such as to require a longer period of time for completion.
 - (b) That such construction has been diligently prosecuted or that any delays have been unavoidable.

§ 123-119. Limitations on filling stations, gasoline service stations and public garages.

- A. No part of any building used as a filling station, gasoline service station or public garage and no filling pump, lift or other service appliance shall be erected within 25 feet of any R District boundary or within 300 feet of any school, church, playground or park located in an R District.
- B. No gasoline or oil pump, no oiling or greasing mechanism and no other service appliance shall be installed in connection with any filling station, gasoline station or public garage within 20 feet of any street line.
- C. Two reservoir spaces for each gasoline pump shall be provided on the lot for waiting vehicles. Such reservoir space shall not include space at the pump or required parking space.

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- D. Storage of gasoline shall be in underground tanks in accordance with the rules and regulations of the New York State Department of Environmental Conservation and the Environmental Protection Agency.
- E. There shall be no use of the lot, except for landscaping or screening, within 20 feet of any R District boundary or lot used for residential purposes.
- F. All portions of the lot not enclosed in a building and used for reservoir space or for storage, parking or servicing of a motor vehicle shall be subject to the provisions of § 123-120 of this chapter.

§ 123-120. Limitations on automotive use areas.

Except for farms, any portion of a lot used for open off-street parking or reservoir space, or for open sales, service or storage areas for motor vehicles, contractors' equipment or boats shall be deemed to be an automotive use area and shall be subject to the following requirements:

- A. Surfacing. Every automotive use area and access driveway thereto shall be surfaced with a durable and dustless material and shall be so graded and drained so as to disperse of surface water accumulation.
- B. Lighting. Any fixture used to illuminate any automotive area shall be so arranged as to direct the light away from the street and away from adjoining premises.
- C. Screening. Every automotive use area, except off-street parking areas for less than five vehicles, shall be screened from any adjoining lot in any R District or lot used for residential purposes, including lots situated across the street, as follows:
 - (1) Along a street line, by a planting strip five feet wide; provided, however, that no shrub planting or tree foliage shall be placed or maintained which obstructs vision at an elevation between three feet and seven feet above the street level. Such screening may be interrupted by normal entrances and exits.
 - (2) Along a rear lot line or an interior side lot line which abuts an existing or future rear yard or side yard on such adjoining lots, by a compact evergreen hedge which will reach a height of five feet within three years or by a solid uniformly painted fence or an unpierced masonry wall five feet in height. Such screening shall be maintained in good condition at all times.
- D. Access.
 - (1) No entrance or exit to any automotive use area shall be permitted within 30 feet of any intersecting street lines; and, except for off-street parking areas for uses permitted in any R District requiring less than 10 parking spaces, no entrance or exit shall be permitted within 20 feet of a lot in any R District or lot used for residential purposes.
 - (2) Access to automotive use areas, except for off-street parking areas in an R District for fewer than five vehicles, shall be approved by the Town Engineer and shall be so arranged that vehicles shall not be required to back into a street.
- E. Restriction of use. No automotive use area shall be used for auto wrecking or for the storage of wrecked, partially dismantled or junked vehicles or equipment, or motor vehicles which do not qualify for New York State motor vehicle registration.

§ 123-121. Lots divided by district boundaries.

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- A. Where a lot is divided by any zoning district boundary so as to be in more than one zoning district and where such lot was an existing lot when such district boundary was established, a conforming use, occupying 50% or more of the area of said lot and having street frontage in the district where permitted, may be extended on such lot not more than 25 feet, measured perpendicular to the district boundary, into any district where such use is not permitted.
- B. Such use shall be subject to all regulations applicable to the district where permitted.

§ 123-122. Lot frontage on street required for dwellings.

No dwelling shall be erected on any lot which does not have immediate frontage on a street held by the owner thereof in fee simple, subject to easements of record, as defined in this chapter.

§ 123-123. Screening of service entrance in C and M Districts.

Where a loading or unloading platform or any service entrance in a C or M District faces any lot line which coincides with any R District boundary, such platform or service entrance shall be effectively screened from such R District or lot used for residential purposes in a manner approved by the Town Planning Board.

§ 123-124. Adult uses.

Adult uses shall be allowable in an M Industrial District only as a special exception by the Board of Appeals after public hearing.

A. Purposes and considerations.

- (1) In the execution of this chapter, it is recognized that there are some uses, which due to their very nature, have serious objectionable characteristics. The objectionable characteristics of these uses are further heightened by their concentration in any one area, thereby having deleterious effects on adjacent areas. Special regulation of these uses is necessary to ensure that these adverse effects will not contribute to the blighting or downgrading of the surrounding neighborhoods or land uses.
- (2) It is further declared that the location of these uses in regard to areas where our youth may regularly assemble and the general atmosphere encompassing their operation is of great concern to the Town of Boston.
- (3) These special regulations are itemized in this section to accomplish the primary purposes of preventing a concentration of these uses in any one area and restricting their accessibility to minors.

B. Definitions. As used in this chapter, the following terms shall have the meanings indicated:

ADULT BOOKSTORE — An establishment having as a substantial or significant portion of its stock-in-trade books, magazines, other periodicals, films, slides and video tapes and which establishment is customarily not open to the public generally but excludes any minor by reason of age.

ADULT DRIVE-IN THEATER — A drive-in theater that customarily presents motion pictures that are not open to the public generally but excludes any minor by reason of age.

ADULT ENTERTAINMENT CABARET — A public or private establishment which presents topless dancers, strippers, male or female impersonators or exotic dancers or other similar

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entertainments and which establishment is customarily not open to the public generally but excludes any minor by reason of age. § 123-124

ADULT MOTEL — A motel which is not open to the public generally but excludes minors by reason of age or which makes available to its patrons in their rooms films, slide shows or videotapes, which if presented in a public movie theater would not be open to the public generally but would exclude any minor by reason of age.

ADULT THEATER — A theater that customarily presents motion pictures, films, videotapes or slide shows, that are not open to the public generally but exclude any minor by reason of age.

MASSAGE ESTABLISHMENT — Any establishment having a fixed place of business where massages are administered for pay, including but not limited to massage parlors, sauna baths and steam baths. This definition shall not be construed to include a hospital, nursing home or medical clinic or the office of a physician, surgeon, chiropractor, osteopath or duly licensed physical therapist or barbershops or beauty salons in which massages are administered only to the scalp, face, neck or shoulders. This definition also shall exclude health clubs which have facilities for physical exercise, such as tennis courts, racquetball courts or exercise rooms, and which do not receive their primary source of revenue through the administration of massages.

PEEP SHOWS — A theater which presents material in the form of live shows, films or videotapes, viewed from an individual enclosure, for which a fee is charged and which is not open to the public generally but excludes any minor by reason of age.

- C. The adult uses, as defined in Subsection B above, are to be restricted as to location in the following manner in addition to any other requirements of this Code.
- (1) Any of the above uses shall not be located within a five-hundred-foot radius of any area zoned for residential use.
 - (2) Any of the above uses shall not be located within a one-half-mile radius of another such use.
 - (3) Any of the above uses shall not be located within a five-hundred-foot radius of any school, church or other place of religious worship, park, playground or playing field.
- D. The restrictions enumerated in Subsection C above may be waived by the Town Zoning Board of Appeals if the applicant shows and the Board finds that the following conditions have been met, in addition to the general conditions contained in Article XXXI of this chapter:
- (1) That the proposed use will not be contrary to the public interest or injurious to nearby properties and that the spirit and intent of this chapter will be observed.
 - (2) That the establishment of an additional use of this type in the area will not be contrary to any program of neighborhood conservation or improvement, either residential or nonresidential.
 - (3) That 51% or more of the property owners within the restricted area as defined in Subsection C(1) of this section have signed a petition stating that they have no objection to the establishment of one of the uses defined above.
- E. Registration. No person, firm, corporation or other entity shall lease, rent, maintain, operate, use or allow to be operated or used any business or establishment, any part of which contains an adult use, without first complying with the provisions of this subsection, as follows:
- (1) In addition to any and all other necessary licenses and permits, no form of adult use shall be allowed to operate or be allowed to continue to operate, until a certificate of registration is filed

with the Clerk of the Town of Boston, containing:

- (a) The address of the premises.
 - (b) The name and address of the owner(s) of the premises and the name and address of the beneficial owner(s) if the property is in a land trust.
 - (c) The name of the business or the establishment subject to the provisions of this section.
 - (d) The name, business and home address, business or home phone number of all owners of the business or establishment, subject to the provisions of this section.
 - (e) The names, business and home addresses, business or home phone numbers of all those persons having a substantial connection with the business or establishment subject to the provisions of this section.
 - (f) The date of the initiation of the adult use.
 - (g) The exact nature of the adult use.
 - (h) If the premises or the building in which the business containing the adult use is located is leased, a copy of the lease.
- (2) If there occurs any change in the information required for the certificate of registration, the Clerk of the Town of Boston shall be notified of such change, and a new or amended certificate shall be filed within 30 days of such change.
 - (3) The processing fee for each such certificate of registration or amendment thereto shall be \$50.
 - (4) No certificate of registration issued under the provisions of this section shall be transferable to any person other than the registrant, nor shall a certificate of registration be transferable for use at any premises, building or location other than stated in the certificate of registration.
 - (5) The owner, manager or agent of any adult use shall cause a copy of the certificate of registration issued under the provisions of this section to be prominently displayed on the premises, building or location for which it is issued.
 - (6) Any knowingly false statement or any statement which the registrant or applicant should reasonably have known to be false, which is provided in the certificate of registration or any document or information supplied therewith shall be grounds for rejection, suspension or revocation of the certificate of registration.
 - (7) It is a violation of this chapter for the owner or person in control of any property to establish or operate an adult use without having in force a certificate of registration complying with this section.
- F. Prohibition regarding public observation. No adult use shall be conducted in any manner that permits the observation of any material depicting, describing or relating to specified sexual activities or specified anatomical areas from any public way or from any property not registered as an adult use. This provision shall apply to any display, decoration, sign, show window, screen or other opening.
- G. No more than one of the adult uses as defined above shall be located on any lot.

§ 123-125. Limitation on accessory buildings.

No more than one accessory building shall be constructed on a lot, except when authorized by the Town Board.

§ 123-126. Uses subject to a special permit in all districts.

- A. Operation of radio-controlled airplanes. No person, firm or corporation shall use, permit or allow the flying of any fuel-driven or radio-controlled model airplane or airplanes of whatever size or dimension from, on or over any lands situate in the Town of Boston, New York, except where a permit for said use shall have been granted by the Town Board after a public hearing and a determination that said use would not unreasonably conflict with the rights of adjoining owners and the general public; provided, however, that the provisions of this section shall not apply to said use of property by a resident owner or the members of his immediate family.
- B. Dumping of material. It shall be unlawful for any person, firm or corporation to throw, dump or deposit or to permit the throwing, dumping, emptying or depositing on any real property in the Town of Boston of any garbage, building debris, tree stumps, paper, cardboard, wood, plastic material, metal, glass, rags, ashes, lumber, brick, stone, concrete or of any type of garbage or discarded or salvaged material which originates from any source outside of the Town of Boston without first having obtained a written permit from the Town Board of the Town of Boston. Such permit shall continue for a period of one year after the date of issuance thereof, if not sooner revoked by the Town Board. Any original permit which may be issued by the Town Board shall be after public hearing thereon, and upon such conditions and stipulations as the Town Board may require at the time of the issuance of said permit. The requirements specified herein shall not be construed to apply to agricultural or gardening uses of land within the Town.¹

§ 123-127. Limitation on unlicensed automobiles.

No unregistered or unlicensed automobile or automobile incapable of being registered and inspected shall be stored in any R District, except in a completely enclosed structure; provided, however, that no more than one unlicensed or unregistered automobile may be stored in an R District except in a totally enclosed structure.

§ 123-127.1. Limitation on harboring of dogs. [Added 7-16-1997 by L.L. No. 5-1997]

Except on property within an R-A District containing three or more acres, no person or organization or other occupant of land shall harbor more than three dogs that are more than six months old for a period exceeding 30 days.

§ 123-128. Prohibition on mixed use. [Amended 4-17-1991 by L.L. No. 1-1991; 5-20-1998 by L.L. No. 2-1998]

- A. Except as otherwise provided herein only one use shall be permitted on a lot. No residential use shall be permitted on the same lot with a nonresidential use. No residential use shall be permitted on the same lot with a hotel, motel, tourist home, guesthouse, bed-and-breakfast or nursing or convalescent home except for one residence provided for the manager or custodian thereof. This section shall not apply to home occupations or permitted accessory uses as defined in this chapter.

1. Editor's Note: Former Subsection B, Satellite dish antennas, was repealed 4-17-1991 by L.L. No. 1-1991. This local law also provided for the relettering of former Subsection C as Subsection B.

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- B. In any R-C or C-1 District, the Town Board, by special use permit, may allow a portion of a single-family, owner occupied dwelling to be connected to a retail sales area for the sale of handicrafts, collectibles and works of art, subject to the following conditions:
- (1) Said sales area shall be operated, in part, by the owner of the single-family dwelling or by a member of the owner's immediate family, residing in the household.
 - (2) The special use permit application shall be subject to simultaneous site plan approval by the Town Board in accordance with the applicable provisions of the Town Code.
 - (3) The special use permit shall expire on December 31 of the second full calendar year after the date of issuance thereof; and may be renewed by the Town Board for additional three-year periods upon presentation of evidence to the Town Board that all of the conditions required for issuance of the permit continue to be met by the original holder thereof.
 - (4) This special use permit shall not run with the land, but shall be specific to the holder thereof and, notwithstanding any provision to the contrary, shall expire immediately upon the sale of the premises; or upon the termination of the use for a period of one year, at any time during the permit period.
 - (5) The maximum floor area used for retail sales activities shall not exceed 20% of the floor area of the first floor of the dwelling.

§ 123-128.1. Approval and construction of telecommunications facilities. [Added 6-16-1997 by L.L. No. 6-1997]

- A. Legislative intent. The Town of Boston recognizes the increased demand for wireless communication transmitting facilities and the need for the services they provide. Often, these facilities require the construction of a communications tower and/or similar facilities in a manner consistent with sound land use planning by: minimizing adverse visual effects of towers and/or similar facilities through careful design, siting, and vegetative screening; avoiding potential damage to adjacent properties from tower failure or falling debris through engineering and careful siting of tower structures; maximizing use of any new and existing tower, or existing building and/or structures to reduce the number of towers and/or similar facilities needed; while also allowing wireless service providers to meet their technological and service objectives.

- B. Definitions. As used in this section, the following terms shall have the meanings indicated:

ACCESSORY STRUCTURE — An accessory facility or structure serving or being used in conjunction with a communications tower and/or similar facility, and located on the same lot as the communications tower. Examples of such structures include utility or transmission equipment storage sheds or cabinets.

ANTENNA — A system of electrical conductors that transmits or receives radio frequency signals. Such signals shall include, but not be limited to, radio, television, cellular, paging, personal communication services (PCS) and microwave communications.

COLLOCATED ANTENNAS — Telecommunications facilities which utilize existing towers, buildings or other structures for placement of antenna(s) and do not require construction of a new tower.

FALL DOWN ZONE — The radius around a tower within which all portions of the tower and antenna(s) would fall in the event of a structural failure of the tower.

§ 123-128.1 TELECOMMUNICATIONS FACILITIES — Towers and/or antennas and accessory structures § 123-128.1 together used in connection with the provision of cellular telephone service, personal communications services, paging services, radio and television broadcast services, and similar broadcast services, except ham radio antennas as defined in this chapter. **[Amended 10-1-1997 by L.L. No. 8-1997]**

TOWER — A structure designed to support antennas. It includes, without limitation, freestanding towers, guyed towers, monopoles, and similar structures which do or which do not employ camouflage technology.

- C. Telecommunications facility permit required.
 - (1) A telecommunications facility is permitted only if specifically permitted by a permit granted by the Town Board pursuant to § 123-48B of the Town Code.
 - (2) The Town Board shall have the right to waive any provision of this section for facilities whose total height above ground does not exceed 35 feet.
- D. General standards for issuance of permit. No permit or renewal thereof or modification of the conditions of a current permit relating to a telecommunications facility shall be authorized unless such telecommunications facility:
 - (1) Is necessary to meet current or expected demands for the services supported by the telecommunications facility;
 - (2) Conforms with all applicable regulations promulgated by the Federal Communications Commission;
 - (3) Is designed and constructed in a manner which minimizes its visual impact;
 - (4) Complies with all other requirements of this chapter;
 - (5) Is the most appropriate site within the immediate area for the location of the telecommunications facility. It is preferred that telecommunications facilities be located more than 1,500 feet from the nearest residence property, provided that there is a technologically feasible location available at a commercially reasonable rate.
- E. Collocated antenna preferred. The shared use of existing telecommunications facilities or other structures shall be preferred to the construction of new such facilities. Any application for a telecommunications facility permit or renewal thereof or modification of the conditions of a current telecommunications facility permit shall include proof that reasonable efforts have been made to collocate with an existing telecommunications facility or upon an existing structure. The application shall include an adequate inventory report specifying existing telecommunications facility sites and structures of height exceeding 75% of the height of the proposed tower within a two-mile radius from the proposed site if the application is for cellular telephone or personal communications use, or a five-mile radius for other services, and for cellular telephone or personal communications use, or a five-mile radius for other services, and outlining opportunities for shared use as an alternative to the proposed location. The application must demonstrate that the proposed telecommunications facility cannot be accommodated on all sites in the inventory due to one or more of the following reasons:
 - (1) The planned equipment would exceed the structural capacity of existing and approved telecommunications facilities or other structures, considering existing and planned uses for those facilities;

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- (2) The planned equipment would cause radio frequency interference with other existing or planned equipment, which cannot be reasonably prevented;
 - (3) Existing or approved telecommunications facilities or other structures do not have space on which proposed equipment can be placed so it can function effectively and reasonably;
 - (4) Other technical reasons make it impracticable to place the equipment proposed by the applicant on existing facilities or structures;

F. Tower permit application procedure.

- (1) Application materials. All applicants for a telecommunications facility permit shall make written application to the Town Board, which application shall include the following information:
 - (a) Town supplied permit application form to be used as tower permit application form;
 - (b) Town supplied environmental assessment form;
 - (c) Site plan, in form and content in conformance with the site plan.
 - [1] The exact location of the proposed tower, together with guy wires and guy anchors, if applicable showing in addition to all other information: Regulations of the Town of Boston (Chapter 97 and Article XXX of Chapter 123 of the Town Code).
 - [2] The maximum height of the proposed tower.
 - [3] A detail of tower type (monopole, guyed, freestanding, or other).
 - [4] The color or colors of the tower.
 - [5] The location, type and intensity of any lighting on the tower.
 - [6] The property's boundaries. (A copy of a property survey must also be provided.)
 - [7] Proof of the landowner's consent if the applicant will not own the property. (A copy of a lease agreement must also be provided if the applicant will not own the property.)
 - [8] The location of all structures on the property and all structures on any adjacent property within 50 feet of the property lines, together with the distance of these structures to the tower.
 - [9] The names of adjacent landowners.
 - [10] The location, nature and extent of any proposed fencing and landscaping or screening.
 - [11] The location and nature of proposed utility easements and access road, if applicable.
 - [12] Building elevations of accessory structures or immediately adjacent buildings.
 - [13] "Before" and "after" propagation studies prepared by a qualified radio frequency engineer (signed and sealed by a professional engineer registered in the State of New York) demonstrating existing signal coverage, contrasted with the proposed signal coverage resulting from the proposed telecommunications facility.
 - [14] A search ring prepared by a qualified radio frequency engineer (signed and sealed

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documents by a professional engineer registered in the State of New York) and overlaid on an appropriate background map demonstrating the area within which the telecommunications facility needs to be located in order to provide proper signal strength and coverage to the target cell. The applicant must be prepared to explain to the Town Board why it selected the proposed site, discuss the availability (or lack of availability) of a suitable structure within the search ring which would have allowed for a collocated antenna(s), and to what extent the applicant explored locating the proposed tower in a more intensive use district. Correspondence with other telecommunications companies concerning collocation is part of this requirement.

[15] The Town Board, Planning Board or any advisor or consultant, upon reviewing the application, may request reasonable additional visual and aesthetic information as it deems appropriate on a case-by-case basis. Such additional information may include, among other things, enhanced landscaping plans, line-of-sight drawings, and/or visual simulations from viewpoints selected by the Town. Line-of-sight drawings and visual simulations are mandatory for applications within 1,500 feet of R-1, R-2, R-3 or R-C Zoning Districts.

- (d) The applicant must submit a copy of its policy regarding collocation on the proposed tower with other potential applications. Such policy should allow collocation under the following conditions: the new antenna(s) and equipment do not exceed structural loading requirements, interfere with tower space used or to be used by the applicant nor pose any technical or radio frequency interference with existing equipment; the party desiring to collocate pays the applicant an appropriate and reasonable sum to collocate; and the party desiring to collocate has a similar policy of collocation for the applicant.
- (e) A report, prepared by a New York State licensed professional engineer, which, in the case of a tower, describes its height and design, including a cross section of the structure; demonstrates the tower's compliance and applicable structural standards; and describes the tower's capacity, including the number and type of antennas it can accommodate. In the case of an antenna(s) mounted on an existing structure, the report shall indicate the existing structure's suitability to accept the antenna, and proposed method of affixing the antenna(s) to the structure. Complete details of all fixtures and couplings and the precise point of attachment shall be indicated.
- (f) An agreement by the applicant, in writing, to remove the telecommunications facility if such facility becomes technically obsolete or ceases to be used for its originally intended purpose for 12 consecutive months.
- (g) The applicant, at the time of obtaining a building permit, must provide a financial security bond with the Town as assignee, in an amount fixed by the Town Board but not less than \$100,000.

(2) Referral to the Planning Board. Upon receipt of the application material set forth in Subsection F(1) above, the Town Board shall refer the application to the Town Planning Board. The Town Planning Board shall review the site plan and recommend changes, if any, to the Town Board. The Town Board shall consider the application and approve or deny the same in accordance with the procedures and standards set forth therein in § 123-48B and this section.

G. Each proposed telecommunications facility shall meet the following design requirements:

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- (1) Shall be separated from residential dwellings, schools, houses of worship, places of public assembly and designated historical districts by the greater of 1,500 feet to five times the height of the facility. The Town Board may modify this condition if the facility is attached to an existing structure or for other satisfactory reasons supported by expert testimony.
- (2) Shall have the least possible practical visual effect on the environment as determined by the Town Board and shall be less than 150 feet above ground level. Towers, antenna(s) and masts shall not be artificially lighted unless otherwise required by the Federal Aviation Administration or other federal, state or local authority. Towers shall have a galvanized finish, or shall be painted gray above the surrounding treeline and gray or green below the treeline or as decided by the Town Board. Antennas shall have the least obtrusive finish that is technically feasible.
- (3) Shall provide vegetative screening, as determined by the Zoning Board, if the proposed site abuts residential or public property or community facilities.
- (4) Shall include a fall zone surrounding any support towers, which fall zone must have a radius at least equal to the height of such support tower and any antenna(s) attached thereto. The entire fall zone may not include public roads and must be on property either owned or leased by the applicant or for which the applicant has obtained an easement, may not contain any structure other than those associated with the telecommunications facilities, and may not be located within any set back area established by this chapter. If the facility is attached to any existing structure, fall zone requirements may be relaxed by specific permission of the Town Board.
- (5) Towers and auxiliary structures shall be surrounded by a fence or wall at least eight feet in height of a design approved by the Town Engineer so as to make intrusion extremely difficult, but with limited visual impact. Barbed wire is not to be used in residential areas or on public property unless specifically permitted by the Town Board.
- (6) Shall be equipped with an alarm system providing that any intrusion or attempt to climb the fence or wall is signaled to both the New York State Police and to the owner of the facility. There shall be no permanent climbing pegs within 15 feet of the ground on any tower.
- (7) No tower shall contain any signs or advertising devices.

H. Telecommunications facilities continuing standard. All telecommunications facilities, both predating and antedating this section, shall fulfill the requirements of this section. The Code Enforcement Officer is empowered to enforce these regulations.

- (1) The sufficiency of the facility removal bond shall be confirmed at least every five years by an analysis of the cost of removal and property restoration performed by a New York State licensed professional engineer. The results of such analysis shall be communicated to the Town Board. If the bond amount in force is insufficient to cover the costs of removal, it shall be immediately increased to cover such amount.
- (2) The facility shall be inspected at least every second year for structural integrity by a New York State licensed professional engineer, and a copy of the inspection report submitted to the Town Code Enforcement Officer and the Town Board.
- (3) Any work to augment or repair the facility shall comply with all applicable code requirements, and a building permit shall be obtained to conduct such work.
- (4) Any additional antennas, reception or transmission dishes, or other similar receiving or

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transmitting devices proposed for attachment to an existing facility shall require review in accordance with this section. The intent of this requirement is to ensure the structural integrity, visual aesthetics, and land use compatibility of communication towers upon which additional antennas, communication dishes, etc. are to be installed. The application for approval to install additional antennas, dishes or other similar receiving devices shall include certification from a New York State licensed professional engineer indicating that the additional device or devices installed will not adversely affect the structural integrity of the facility. A visual impact analysis shall be included as part of the application for approval to install one or more additional communications devices to an existing facility.

- (5) No outside storage of vehicles, materials or waste shall be allowed, except for limited periods when the facility is undergoing additions, repairs or renovations.
 - (6) The facility shall be maintained in good order and repair at all times. Paint and other finishes on towers, auxiliary buildings, fences and walls shall be renewed as required to maintain the appearance of the facility. Accumulations of rubbish, papers, etc. on the grounds shall be promptly removed. Trees and shrubs shall be trimmed as necessary and weeds and grass removed from any fenced yards. Access roads are to be maintained in good order; care shall be taken to see that weeds and grass do not grow through its surface. If the road is temporary, its presence shall be obliterated according to a plan provided to and approved by the Building Inspector.
- I. Exclusivity. Article XII is meant to control towers and similar facilities in the Town of Boston, other sections of the Zoning Law are intended to be inapplicable when same are determined to be inconsistent with this section.

§ 123-128.2. Limitation on special permits for construction of ham radio antennas. [Added 10-1-1997 by L.L. No. 8-1997]

Any special permit for the construction of a ham radio antenna shall expire on December 31 of the second calendar year following the year in which the permit was issued. Thereafter said special permit may be renewed for a period not exceeding three years, after review and comment by the Planning Board, upon the applicant demonstrating that he or she possesses a valid license, issued by the Federal Communications Commission pursuant to Part 97 of the Regulations of the Federal Communications Commission, and that the antenna is a ham radio antenna as defined by the Zoning Law of the Town of Boston. In the event that the antenna no longer qualifies as a ham radio antenna, said renewal application shall be treated as an application for the construction of a new telecommunications facility as defined in this chapter.

**Exhibit 3 - Article XXXII of the
Zoning Code [Titled "Special Use
Permit Procedure"]**

ARTICLE XXXII
Special Use Permit Procedure

§ 123-173. General provisions.

Unless otherwise provided, the special uses for which conformance to additional standards is required shall be deemed to be permitted uses in their respective districts, subject to the satisfaction of the requirements and standards set forth herein, in addition to all other requirements of this chapter. All such uses are hereby declared to possess characteristics of such unique and special forms that each specific use shall be considered as an individual case.

§ 123-174. Application procedure.

- A. Applications for special use permits shall be acted on by the Town Board after a public hearing. Notice of such public hearing shall be published in the official newspaper of the Town of Boston at least five days prior to the date thereof. Prior to such public hearing, applications shall be referred to the Town Planning Board for review and recommendation. In the event that the Planning Board shall fail to submit a report within 60 days after said referral, the Town Board may hold a public hearing at the earliest possible date.
- B. A plan for the proposed development of a site for a permitted special use shall be submitted with an application for a special permit, and such plan shall comply with the requirements for site plan review under Article XXX of this chapter.

§ 123-175. Expiration.

A special use permit shall be deemed to authorize only one particular special use and shall expire if the special use shall cease for more than one year.

**Full Environmental Assessment Form
Part 1 - Project and Setting**

Instructions for Completing Part 1

Part 1 is to be completed by the applicant or project sponsor. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification.

Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information; indicate whether missing information does not exist, or is not reasonably available to the sponsor; and, when possible, generally describe work or studies which would be necessary to update or fully develop that information.

Applicants/sponsors must complete all items in Sections A & B. In Sections C, D & E, most items contain an initial question that must be answered either "Yes" or "No". If the answer to the initial question is "Yes", complete the sub-questions that follow. If the answer to the initial question is "No", proceed to the next question. Section F allows the project sponsor to identify and attach any additional information. Section G requires the name and signature of the applicant or project sponsor to verify that the information contained in Part 1 is accurate and complete.

A. Project and Applicant/Sponsor Information.

Name of Action or Project: Proposed Commercial Mixed Use Project		
Project Location (describe, and attach a general location map): 7072 Boston State Road - Town of Boston - Erie County		
Brief Description of Proposed Action (include purpose or need): Construction of a proposed commercial mixed use project which includes a 5,183 sq. ft. convenience store with fuel and a Tim Horton's with an accessory drive-through facility, a 5,000 sf office building and all other proposed site improvements as depicted on the engineered plans prepared by Carmina Wood Design. The existing structure on Project Site will be demolished. The Project Site is properly zoned C-1 Local Retail Business District. The proposed action has been defined broadly to include all required discretionary approvals and permits from governmental agencies as well as all proposed site improvements. The project is an Unlisted Action pursuant to SEQRA and will not result in any potentially significant adverse environmental impacts.		
Name of Applicant/Sponsor: 7072 Boston State Road LLC c/o Christopher Wood, PE Carmina Wood Design		Telephone: 716-550-3342 E-Mail: cwood@carminawoddesign.com
Address: 487 Main St		
City/PO: Buffalo	State: NY	Zip Code: 14203
Project Contact (if not same as sponsor; give name and title/role):		Telephone: E-Mail:
Address:		
City/PO:	State:	Zip Code:
Property Owner (if not same as sponsor):		Telephone: E-Mail:
Address:		
City/PO:	State:	Zip Code:

B. Government Approvals

B. Government Approvals, Funding, or Sponsorship. (“Funding” includes grants, loans, tax relief, and any other forms of financial assistance.)		
Government Entity	If Yes: Identify Agency and Approval(s) Required	Application Date (Actual or projected)
a. City Counsel, Town Board, <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No or Village Board of Trustees	Town Board - Site Plan Approval & Special Use Permit	August 9, 2023 [Conceptual Plot Plan Application]
b. City, Town or Village Planning Board or Commission <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
c. City, Town or Village Zoning Board of Appeals <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
d. Other local agencies <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Building Department - Demolition Permit and Building Permit	To be determined
e. County agencies <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	ECWA - backflow approval & ECDSM - sanitary sewer	To be determined
f. Regional agencies <input type="checkbox"/> Yes <input type="checkbox"/> No		
g. State agencies <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	NYSDOT - Highway Work Permit and NYSDEC - SPDES	To be determined
h. Federal agencies <input type="checkbox"/> Yes <input type="checkbox"/> No		
i. Coastal Resources.		
i. Is the project site within a Coastal Area, or the waterfront area of a Designated Inland Waterway?		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
ii. Is the project site located in a community with an approved Local Waterfront Revitalization Program?		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
iii. Is the project site within a Coastal Erosion Hazard Area?		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

C. Planning and Zoning

C.1. Planning and zoning actions.	
Will administrative or legislative adoption, or amendment of a plan, local law, ordinance, rule or regulation be the only approval(s) which must be granted to enable the proposed action to proceed?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<ul style="list-style-type: none"> • If Yes, complete sections C, F and G. • If No, proceed to question C.2 and complete all remaining sections and questions in Part 1 	
C.2. Adopted land use plans.	
a. Do any municipally- adopted (city, town, village or county) comprehensive land use plan(s) include the site where the proposed action would be located?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
If Yes, does the comprehensive plan include specific recommendations for the site where the proposed action would be located?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
b. Is the site of the proposed action within any local or regional special planning district (for example: Greenway; Brownfield Opportunity Area (BOA); designated State or Federal heritage area; watershed management plan; or other?)	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
If Yes, identify the plan(s): NYS Heritage Areas: West Erie Canal Corridor	

c. Is the proposed action located wholly or partially within an area listed in an adopted municipal open space plan, or an adopted municipal farmland protection plan?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
If Yes, identify the plan(s):	

C.3. Zoning

a. Is the site of the proposed action located in a municipality with an adopted zoning law or ordinance. Yes No

If Yes, what is the zoning classification(s) including any applicable overlay district?

C-1 Local Retail Business District

b. Is the use permitted or allowed by a special or conditional use permit? Yes No

c. Is a zoning change requested as part of the proposed action? Yes No

If Yes,

i. What is the proposed new zoning for the site? _____

C.4. Existing community services.

a. In what school district is the project site located? Hamburg Central School District

b. What police or other public protection forces serve the project site?

New York State Police, Erie County Sheriff

c. Which fire protection and emergency medical services serve the project site?

North Boston Company Fire Department

d. What parks serve the project site?

Chestnut Ridge Park

D. Project Details

D.1. Proposed and Potential Development

a. What is the general nature of the proposed action (e.g., residential, industrial, commercial, recreational; if mixed, include all components)? Commercial project.

b. a. Total acreage of the site of the proposed action? 2.5 acres

b. Total acreage to be physically disturbed? 2.5 acres

c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor? 2.5 acres

c. Is the proposed action an expansion of an existing project or use? Yes No

i. If Yes, what is the approximate percentage of the proposed expansion and identify the units (e.g., acres, miles, housing units, square feet)? % _____ Units: _____

d. Is the proposed action a subdivision, or does it include a subdivision? Yes No

If Yes,

i. Purpose or type of subdivision? (e.g., residential, industrial, commercial; if mixed, specify types) _____

ii. Is a cluster/conservation layout proposed? Yes No

iii. Number of lots proposed? _____

iv. Minimum and maximum proposed lot sizes? Minimum _____ Maximum _____

e. Will the proposed action be constructed in multiple phases? Yes No

i. If No, anticipated period of construction: _____ months

ii. If Yes:

• Total number of phases anticipated _____

• Anticipated commencement date of phase 1 (including demolition) _____ month _____ year

• Anticipated completion date of final phase _____ month _____ year

• Generally describe connections or relationships among phases, including any contingencies where progress of one phase may determine timing or duration of future phases: _____

f. Does the project include new residential uses? Yes No
 If Yes, show numbers of units proposed.

	One Family	Two Family	Three Family	Multiple Family (four or more)
Initial Phase	_____	_____	_____	_____
At completion	_____	_____	_____	_____
of all phases	_____	_____	_____	_____

g. Does the proposed action include new non-residential construction (including expansions)? Yes No
 If Yes,

i. Total number of structures 2

ii. Dimensions (in feet) of largest proposed structure: 20 height; 60 width; and 100 length

iii. Approximate extent of building space to be heated or cooled: 11,183 square feet

h. Does the proposed action include construction or other activities that will result in the impoundment of any liquids, such as creation of a water supply, reservoir, pond, lake, waste lagoon or other storage? Yes No
 If Yes,

i. Purpose of the impoundment: Storm water management

ii. If a water impoundment, the principal source of the water: Ground water Surface water streams Other specify: Storm water runoff

iii. If other than water, identify the type of impounded/contained liquids and their source.
N/A

iv. Approximate size of the proposed impoundment. Volume: TBD, <1 million gallons; surface area: 0.3 +/- acres

v. Dimensions of the proposed dam or impounding structure: N/A height; N/A length

vi. Construction method/materials for the proposed dam or impounding structure (e.g., earth fill, rock, wood, concrete):
Impoundment is an excavation, a dam is not proposed

D.2. Project Operations

a. Does the proposed action include any excavation, mining, or dredging, during construction, operations, or both? Yes No
 (Not including general site preparation, grading or installation of utilities or foundations where all excavated materials will remain onsite)
 If Yes:

i. What is the purpose of the excavation or dredging? _____

ii. How much material (including rock, earth, sediments, etc.) is proposed to be removed from the site?

- Volume (specify tons or cubic yards): _____
- Over what duration of time? _____

iii. Describe nature and characteristics of materials to be excavated or dredged, and plans to use, manage or dispose of them.

iv. Will there be onsite dewatering or processing of excavated materials? Yes No
 If yes, describe. _____

v. What is the total area to be dredged or excavated? _____ acres

vi. What is the maximum area to be worked at any one time? _____ acres

vii. What would be the maximum depth of excavation or dredging? _____ feet

viii. Will the excavation require blasting? Yes No

ix. Summarize site reclamation goals and plan: _____

b. Would the proposed action cause or result in alteration of, increase or decrease in size of, or encroachment into any existing wetland, waterbody, shoreline, beach or adjacent area? Yes No
 If Yes:

i. Identify the wetland or waterbody which would be affected (by name, water index number, wetland map number or geographic description): _____

[There are not wetlands on the Project Site subject to the jurisdiction of the United States Army Corps of Engineers per the wetland investigation letter prepared by Earth Dimensions Inc. dated September 21, 2022 provided at Attachment "1".]

ii. Describe how the proposed action would affect that waterbody or wetland, e.g. excavation, fill, placement of structures, or alteration of channels, banks and shorelines. Indicate extent of activities, alterations and additions in square feet or acres:

iii. Will the proposed action cause or result in disturbance to bottom sediments? Yes No
 If Yes, describe: _____

iv. Will the proposed action cause or result in the destruction or removal of aquatic vegetation? Yes No
 If Yes:

- acres of aquatic vegetation proposed to be removed: _____
- expected acreage of aquatic vegetation remaining after project completion: _____
- purpose of proposed removal (e.g. beach clearing, invasive species control, boat access): _____
- _____
- proposed method of plant removal: _____
- if chemical/herbicide treatment will be used, specify product(s): _____

v. Describe any proposed reclamation/mitigation following disturbance: _____

c. Will the proposed action use, or create a new demand for water? Yes No
 If Yes:

i. Total anticipated water usage/demand per day: _____ 2,100 gallons/day

ii. Will the proposed action obtain water from an existing public water supply? Yes No
 If Yes:

- Name of district or service area: ECWA
- Does the existing public water supply have capacity to serve the proposal? Yes No
- Is the project site in the existing district? Yes No
- Is expansion of the district needed? Yes No
- Do existing lines serve the project site? Yes No

iii. Will line extension within an existing district be necessary to supply the project? Yes No
 If Yes:

- Describe extensions or capacity expansions proposed to serve this project: _____
- Source(s) of supply for the district: _____

iv. Is a new water supply district or service area proposed to be formed to serve the project site? Yes No
 If Yes:

- Applicant/sponsor for new district: _____
- Date application submitted or anticipated: _____
- Proposed source(s) of supply for new district: _____

v. If a public water supply will not be used, describe plans to provide water supply for the project: _____

N/A

vi. If water supply will be from wells (public or private), what is the maximum pumping capacity: _____ N/A gallons/minute.

d. Will the proposed action generate liquid wastes? Yes No
 If Yes:

i. Total anticipated liquid waste generation per day: _____ 2,100 gallons/day

ii. Nature of liquid wastes to be generated (e.g., sanitary wastewater, industrial; if combination, describe all components and approximate volumes or proportions of each): sanitary sewage

iii. Will the proposed action use any existing public wastewater treatment facilities? Yes No
 If Yes:

- Name of wastewater treatment plant to be used: Southtowns Advanced WWTP
- Name of district: ECSD 3
- Does the existing wastewater treatment plant have capacity to serve the project? Yes No
- Is the project site in the existing district? Yes No
- Is expansion of the district needed? Yes No

- Do existing sewer lines serve the project site? Yes No
- Will a line extension within an existing district be necessary to serve the project? Yes No

 If Yes:

- Describe extensions or capacity expansions proposed to serve this project: _____

iv. Will a new wastewater (sewage) treatment district be formed to serve the project site? Yes No
 If Yes:

- Applicant/sponsor for new district: _____
- Date application submitted or anticipated: _____
- What is the receiving water for the wastewater discharge? _____

v. If public facilities will not be used, describe plans to provide wastewater treatment for the project, including specifying proposed receiving water (name and classification if surface discharge or describe subsurface disposal plans):
 N/A _____

vi. Describe any plans or designs to capture, recycle or reuse liquid waste: _____
 None _____

e. Will the proposed action disturb more than one acre and create stormwater runoff, either from new point sources (i.e. ditches, pipes, swales, curbs, gutters or other concentrated flows of stormwater) or non-point source (i.e. sheet flow) during construction or post construction? Yes No
 If Yes:

- How much impervious surface will the project create in relation to total size of project parcel?
 _____ Square feet or _____ 1.5 acres (impervious surface)
 _____ Square feet or _____ 2.5 acres (parcel size)
- Describe types of new point sources. runoff from parking lots and building roofs

- Where will the stormwater runoff be directed (i.e. on-site stormwater management facility/structures, adjacent properties, groundwater, on-site surface water or off-site surface waters)?
 private on-site storm water management area designed in accordance with NYSDEC criteria

 - If to surface waters, identify receiving water bodies or wetlands: _____

 - Will stormwater runoff flow to adjacent properties? Yes No

iv. Does the proposed plan minimize impervious surfaces, use pervious materials or collect and re-use stormwater? Yes No

f. Does the proposed action include, or will it use on-site, one or more sources of air emissions, including fuel combustion, waste incineration, or other processes or operations? Yes No
 If Yes, identify:

- Mobile sources during project operations (e.g., heavy equipment, fleet or delivery vehicles)

- Stationary sources during construction (e.g., power generation, structural heating, batch plant, crushers)

- Stationary sources during operations (e.g., process emissions, large boilers, electric generation)

g. Will any air emission sources named in D.2.f (above), require a NY State Air Registration, Air Facility Permit, or Federal Clean Air Act Title IV or Title V Permit? Yes No
 If Yes:

- Is the project site located in an Air quality non-attainment area? (Area routinely or periodically fails to meet ambient air quality standards for all or some parts of the year) Yes No
- In addition to emissions as calculated in the application, the project will generate:
 - _____ Tons/year (short tons) of Carbon Dioxide (CO₂)
 - _____ Tons/year (short tons) of Nitrous Oxide (N₂O)
 - _____ Tons/year (short tons) of Perfluorocarbons (PFCs)
 - _____ Tons/year (short tons) of Sulfur Hexafluoride (SF₆)
 - _____ Tons/year (short tons) of Carbon Dioxide equivalent of Hydrofluorocarbons (HFCs)
 - _____ Tons/year (short tons) of Hazardous Air Pollutants (HAPs)

h. Will the proposed action generate or emit methane (including, but not limited to, sewage treatment plants, landfills, composting facilities)? Yes No

If Yes:

i. Estimate methane generation in tons/year (metric): _____

ii. Describe any methane capture, control or elimination measures included in project design (e.g., combustion to generate heat or electricity, flaring): _____

i. Will the proposed action result in the release of air pollutants from open-air operations or processes, such as quarry or landfill operations? Yes No

If Yes: Describe operations and nature of emissions (e.g., diesel exhaust, rock particulates/dust): _____

j. Will the proposed action result in a substantial increase in traffic above present levels or generate substantial new demand for transportation facilities or services? Yes No

If Yes:

i. When is the peak traffic expected (Check all that apply): Morning Evening Weekend
 Randomly between hours of _____ to _____.

ii. For commercial activities only, projected number of truck trips/day and type (e.g., semi trailers and dump trucks): _____

iii. Parking spaces: Existing _____ Proposed _____ Net increase/decrease _____

iv. Does the proposed action include any shared use parking? Yes No

v. If the proposed action includes any modification of existing roads, creation of new roads or change in existing access, describe: _____

vi. Are public/private transportation service(s) or facilities available within ½ mile of the proposed site? Yes No

vii. Will the proposed action include access to public transportation or accommodations for use of hybrid, electric or other alternative fueled vehicles? Yes No

viii. Will the proposed action include plans for pedestrian or bicycle accommodations for connections to existing pedestrian or bicycle routes? Yes No

k. Will the proposed action (for commercial or industrial projects only) generate new or additional demand for energy? Yes No

If Yes:

i. Estimate annual electricity demand during operation of the proposed action: _____

Typical electric usage for this type of facility _____

ii. Anticipated sources/suppliers of electricity for the project (e.g., on-site combustion, on-site renewable, via grid/local utility, or other): _____

NYSEG _____

iii. Will the proposed action require a new, or an upgrade, to an existing substation? Yes No

l. Hours of operation. Answer all items which apply.

i. During Construction:

- Monday - Friday: _____ 7am - 7pm
- Saturday: _____ 7am - 7pm
- Sunday: _____ none
- Holidays: _____ none

ii. During Operations:

- Monday - Friday: _____ 5am - 10 pm
- Saturday: _____ 5am - 10 pm
- Sunday: _____ 5am - 10 pm
- Holidays: _____ varies

m. Will the proposed action produce noise that will exceed existing ambient noise levels during construction, operation, or both? Yes No
 If yes:
 i. Provide details including sources, time of day and duration:
 typical construction noise from equipment during hours in previous item _____

ii. Will the proposed action remove existing natural barriers that could act as a noise barrier or screen? Yes No
 Describe: _____

n. Will the proposed action have outdoor lighting? Yes No
 If yes:
 i. Describe source(s), location(s), height of fixture(s), direction/aim, and proximity to nearest occupied structures:
 parking lot and fuel canopy lighting, 15' mounting height directed downward and dark sky compliant, 300' +/- to nearest residence _____

ii. Will proposed action remove existing natural barriers that could act as a light barrier or screen? Yes No
 Describe: _____

o. Does the proposed action have the potential to produce odors for more than one hour per day? Yes No
 If Yes, describe possible sources, potential frequency and duration of odor emissions, and proximity to nearest occupied structures: _____

p. Will the proposed action include any bulk storage of petroleum (combined capacity of over 1,100 gallons) or chemical products 185 gallons in above ground storage or any amount in underground storage? Yes No
 If Yes:
 i. Product(s) to be stored gasoline and diesel for retail sale
 ii. Volume(s) 75,000 gal per unit time _____ month (e.g., month, year)
 iii. Generally, describe the proposed storage facilities:
 underground storage tanks designed and installed per NYSDEC & other applicable standards _____

q. Will the proposed action (commercial, industrial and recreational projects only) use pesticides (i.e., herbicides, insecticides) during construction or operation? Yes No
 If Yes:
 i. Describe proposed treatment(s):
 Routine pesticide application in accordance with local and state regulations _____

ii. Will the proposed action use Integrated Pest Management Practices? Yes No

r. Will the proposed action (commercial or industrial projects only) involve or require the management or disposal of solid waste (excluding hazardous materials)? Yes No
 If Yes:
 i. Describe any solid waste(s) to be generated during construction or operation of the facility:
 • Construction: 1000 tons per _____ month (unit of time)
 • Operation : 1000 tons per _____ month (unit of time)
 ii. Describe any proposals for on-site minimization, recycling or reuse of materials to avoid disposal as solid waste:
 • Construction: recycling at discretion of the contractor _____
 • Operation: recycling per local ordiances _____

iii. Proposed disposal methods/facilities for solid waste generated on-site:
 • Construction: NYSDEC approved C&D landfill by contractor _____
 • Operation: NYSDEC approved landfill by commercial refuse collection company _____

s. Does the proposed action include construction or modification of a solid waste management facility? Yes No

If Yes:

i. Type of management or handling of waste proposed for the site (e.g., recycling or transfer station, composting, landfill, or other disposal activities): _____

ii. Anticipated rate of disposal/processing:

- _____ Tons/month, if transfer or other non-combustion/thermal treatment, or
- _____ Tons/hour, if combustion or thermal treatment

iii. If landfill, anticipated site life: _____ years

t. Will the proposed action at the site involve the commercial generation, treatment, storage, or disposal of hazardous waste? Yes No

If Yes:

i. Name(s) of all hazardous wastes or constituents to be generated, handled or managed at facility: _____

ii. Generally describe processes or activities involving hazardous wastes or constituents: _____

iii. Specify amount to be handled or generated _____ tons/month

iv. Describe any proposals for on-site minimization, recycling or reuse of hazardous constituents: _____

v. Will any hazardous wastes be disposed at an existing offsite hazardous waste facility? Yes No

If Yes: provide name and location of facility: _____

If No: describe proposed management of any hazardous wastes which will not be sent to a hazardous waste facility: _____

E. Site and Setting of Proposed Action

E.1. Land uses on and surrounding the project site

a. Existing land uses.

i. Check all uses that occur on, adjoining and near the project site.

Urban Industrial Commercial Residential (suburban) Rural (non-farm)

Forest Agriculture Aquatic Other (specify): _____

ii. If mix of uses, generally describe: _____

b. Land uses and covertypes on the project site.

Land use or Covertypes	Current Acreage	Acreage After Project Completion	Change (Acres +/-)
• Roads, buildings, and other paved or impervious surfaces	0.10	1.5	+1.4
• Forested	0	0	0
• Meadows, grasslands or brushlands (non-agricultural, including abandoned agricultural)	2.2	0	-2.2
• Agricultural (includes active orchards, field, greenhouse etc.)	0	0	0
• Surface water features (lakes, ponds, streams, rivers, etc.)	0	0	0
• Wetlands (freshwater or tidal)	0	0	0
• Non-vegetated (bare rock, earth or fill)	0	0	0
• Other Describe: _____	0.2	1.0	+0.8

c. Is the project site presently used by members of the community for public recreation? Yes No
 i. If Yes: explain: _____

d. Are there any facilities serving children, the elderly, people with disabilities (e.g., schools, hospitals, licensed day care centers, or group homes) within 1500 feet of the project site? Yes No
 If Yes,
 i. Identify Facilities: _____

e. Does the project site contain an existing dam? Yes No
 If Yes:
 i. Dimensions of the dam and impoundment:
 • Dam height: _____ feet
 • Dam length: _____ feet
 • Surface area: _____ acres
 • Volume impounded: _____ gallons OR acre-feet
 ii. Dam's existing hazard classification: _____
 iii. Provide date and summarize results of last inspection: _____

f. Has the project site ever been used as a municipal, commercial or industrial solid waste management facility, or does the project site adjoin property which is now, or was at one time, used as a solid waste management facility? Yes No
 If Yes:
 i. Has the facility been formally closed? Yes No
 • If yes, cite sources/documentation: _____
 ii. Describe the location of the project site relative to the boundaries of the solid waste management facility: _____

 iii. Describe any development constraints due to the prior solid waste activities: _____

g. Have hazardous wastes been generated, treated and/or disposed of at the site, or does the project site adjoin property which is now or was at one time used to commercially treat, store and/or dispose of hazardous waste? Yes No
 If Yes:
 i. Describe waste(s) handled and waste management activities, including approximate time when activities occurred: _____

h. Potential contamination history. Has there been a reported spill at the proposed project site, or have any remedial actions been conducted at or adjacent to the proposed site? Yes No
 If Yes:
 i. Is any portion of the site listed on the NYSDEC Spills Incidents database or Environmental Site Remediation database? Check all that apply: Yes No
 Yes – Spills Incidents database Provide DEC ID number(s): _____
 Yes – Environmental Site Remediation database Provide DEC ID number(s): _____
 Neither database
 ii. If site has been subject of RCRA corrective activities, describe control measures: _____

 iii. Is the project within 2000 feet of any site in the NYSDEC Environmental Site Remediation database? Yes No
 If yes, provide DEC ID number(s): _____
 iv. If yes to (i), (ii) or (iii) above, describe current status of site(s): _____

v. Is the project site subject to an institutional control limiting property uses? Yes No

- If yes, DEC site ID number: _____
- Describe the type of institutional control (e.g., deed restriction or easement): _____
- Describe any use limitations: _____
- Describe any engineering controls: _____
- Will the project affect the institutional or engineering controls in place? Yes No
- Explain: _____

E.2. Natural Resources On or Near Project Site

a. What is the average depth to bedrock on the project site? _____ > 5 feet

b. Are there bedrock outcroppings on the project site? Yes No
If Yes, what proportion of the site is comprised of bedrock outcroppings? _____ %

c. Predominant soil type(s) present on project site:

Varysburg gravely loam	_____	57 %
Allard silt loam	_____	33 %
Rhinebeck silt loam	_____	10 %

d. What is the average depth to the water table on the project site? Average: _____ > 3 feet

e. Drainage status of project site soils: Well Drained: _____ 90 % of site
 Moderately Well Drained: _____ % of site
 Poorly Drained _____ 10 % of site

f. Approximate proportion of proposed action site with slopes: 0-10%: _____ 100 % of site
 10-15%: _____ % of site
 15% or greater: _____ % of site

g. Are there any unique geologic features on the project site? Yes No
If Yes, describe: _____

h. Surface water features.

i. Does any portion of the project site contain wetlands or other waterbodies (including streams, rivers, ponds or lakes)? Yes No

ii. Do any wetlands or other waterbodies adjoin the project site? Yes No
If Yes to either i or ii, continue. If No, skip to E.2.i.

iii. Are any of the wetlands or waterbodies within or adjoining the project site regulated by any federal, state or local agency? Yes No

iv. For each identified regulated wetland and waterbody on the project site, provide the following information:

- Streams: Name _____ Classification _____
- Lakes or Ponds: Name _____ Classification _____
- Wetlands: Name _____ Approximate Size _____
- Wetland No. (if regulated by DEC) _____

v. Are any of the above water bodies listed in the most recent compilation of NYS water quality-impaired waterbodies? Yes No
If yes, name of impaired water body/bodies and basis for listing as impaired: _____

i. Is the project site in a designated Floodway? Yes No

j. Is the project site in the 100-year Floodplain? Yes No

k. Is the project site in the 500-year Floodplain? Yes No

l. Is the project site located over, or immediately adjoining, a primary, principal or sole source aquifer? Yes No
If Yes:

i. Name of aquifer: Principal Aquifer

m. Identify the predominant wildlife species that occupy or use the project site: _____
 typical suburban wildlife such as _____
 deer, squirrels and rabbits _____

n. Does the project site contain a designated significant natural community? Yes No
 If Yes:
 i. Describe the habitat/community (composition, function, and basis for designation): _____
 ii. Source(s) of description or evaluation: _____
 iii. Extent of community/habitat:
 • Currently: _____ acres
 • Following completion of project as proposed: _____ acres
 • Gain or loss (indicate + or -): _____ acres

o. Does project site contain any species of plant or animal that is listed by the federal government or NYS as endangered or threatened, or does it contain any areas identified as habitat for an endangered or threatened species? Yes No
 If Yes:
 i. Species and listing (endangered or threatened): _____

p. Does the project site contain any species of plant or animal that is listed by NYS as rare, or as a species of special concern? Yes No
 If Yes:
 i. Species and listing: _____

q. Is the project site or adjoining area currently used for hunting, trapping, fishing or shell fishing? Yes No
 If yes, give a brief description of how the proposed action may affect that use: _____

E.3. Designated Public Resources On or Near Project Site

a. Is the project site, or any portion of it, located in a designated agricultural district certified pursuant to Agriculture and Markets Law, Article 25-AA, Section 303 and 304? Yes No
 If Yes, provide county plus district name/number: _____

b. Are agricultural lands consisting of highly productive soils present? Yes No
 i. If Yes: acreage(s) on project site? _____
 ii. Source(s) of soil rating(s): _____

c. Does the project site contain all or part of, or is it substantially contiguous to, a registered National Natural Landmark? Yes No
 If Yes:
 i. Nature of the natural landmark: Biological Community Geological Feature
 ii. Provide brief description of landmark, including values behind designation and approximate size/extent: _____

d. Is the project site located in or does it adjoin a state listed Critical Environmental Area? Yes No
 If Yes:
 i. CEA name: _____
 ii. Basis for designation: _____
 iii. Designating agency and date: _____

e. Does the project site contain, or is it substantially contiguous to, a building, archaeological site, or district which is listed on the National or State Register of Historic Places, or that has been determined by the Commissioner of the NYS Office of Parks, Recreation and Historic Preservation to be eligible for listing on the State Register of Historic Places? Yes No

If Yes:

i. Nature of historic/archaeological resource: Archaeological Site Historic Building or District

ii. Name: _____

iii. Brief description of attributes on which listing is based: _____

f. Is the project site, or any portion of it, located in or adjacent to an area designated as sensitive for archaeological sites on the NY State Historic Preservation Office (SHPO) archaeological site inventory? Yes No
 [Copy of No Impact Determination Letter issued by SHPO dated February 9, 2023 is provided at Attachment "2".]

g. Have additional archaeological or historic site(s) or resources been identified on the project site? Yes No

If Yes:

i. Describe possible resource(s): _____

ii. Basis for identification: _____

h. Is the project site within five miles of any officially designated and publicly accessible federal, state, or local scenic or aesthetic resource? Yes No

If Yes:

i. Identify resource: Chestnut Ridge Park

ii. Nature of, or basis for, designation (e.g., established highway overlook, state or local park, state historic trail or scenic byway, etc.): Erie County Park

iii. Distance between project and resource: _____ 2.5 miles.

i. Is the project site located within a designated river corridor under the Wild, Scenic and Recreational Rivers Program 6 NYCRR 666? Yes No

If Yes:

i. Identify the name of the river and its designation: _____

ii. Is the activity consistent with development restrictions contained in 6NYCRR Part 666? Yes No

F. Additional Information

Attach any additional information which may be needed to clarify your project.

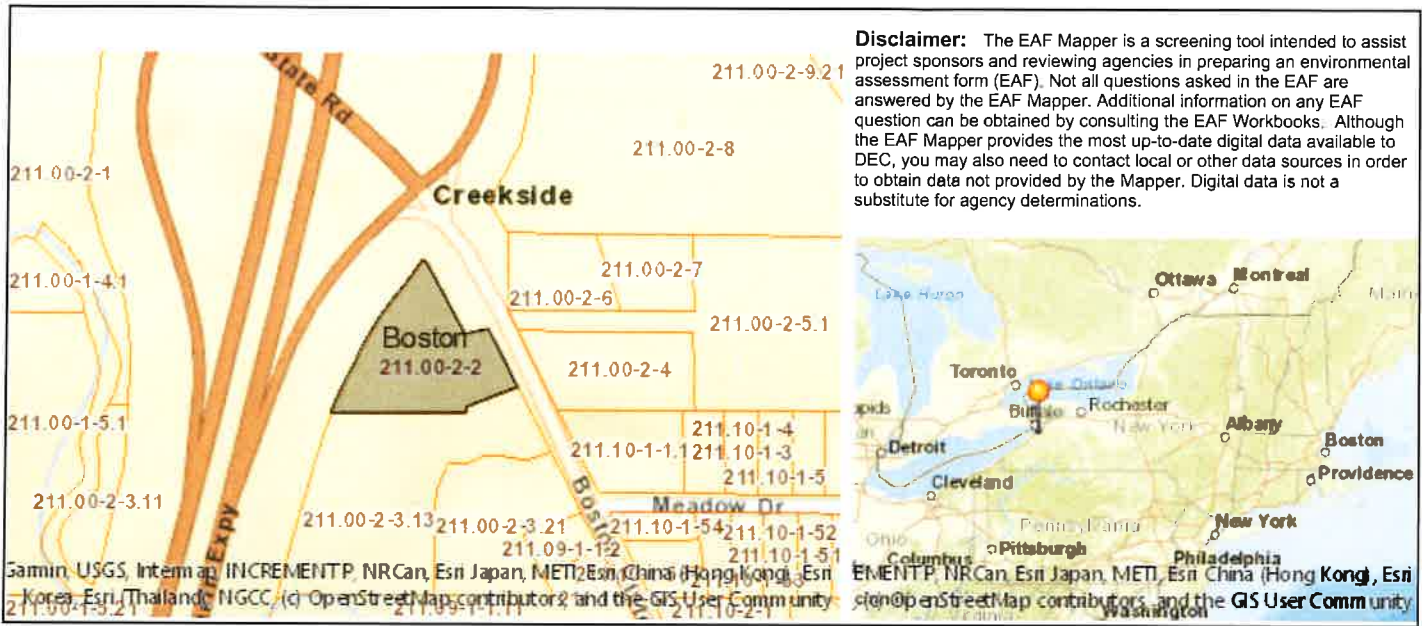
If you have identified any adverse impacts which could be associated with your proposal, please describe those impacts plus any measures which you propose to avoid or minimize them.

G. Verification

I certify that the information provided is true to the best of my knowledge.

Applicant/Sponsor Name Christopher Wood, P.E. Date August 9, 2023

Signature  Title Project Engineer



B.i.i [Coastal or Waterfront Area]	No
B.i.ii [Local Waterfront Revitalization Area]	No
C.2.b. [Special Planning District]	Yes - Digital mapping data are not available for all Special Planning Districts. Refer to EAF Workbook.
C.2.b. [Special Planning District - Name]	NYS Heritage Areas:West Erie Canal Corridor
E.1.h [DEC Spills or Remediation Site - Potential Contamination History]	Digital mapping data are not available or are incomplete. Refer to EAF Workbook.
E.1.h.i [DEC Spills or Remediation Site - Listed]	Digital mapping data are not available or are incomplete. Refer to EAF Workbook.
E.1.h.i [DEC Spills or Remediation Site - Environmental Site Remediation Database]	Digital mapping data are not available or are incomplete. Refer to EAF Workbook.
E.1.h.iii [Within 2,000' of DEC Remediation Site]	No
E.2.g [Unique Geologic Features]	No
E.2.h.i [Surface Water Features]	No
E.2.h.ii [Surface Water Features]	Yes
E.2.h.iii [Surface Water Features]	Yes - Digital mapping information on local and federal wetlands and waterbodies is known to be incomplete. Refer to EAF Workbook.
E.2.h.v [Impaired Water Bodies]	No
E.2.i. [Floodway]	No
E.2.j. [100 Year Floodplain]	No
E.2.k. [500 Year Floodplain]	No
E.2.l. [Aquifers]	Yes
E.2.l. [Aquifer Names]	Principal Aquifer
E.2.n. [Natural Communities]	No

E.2.o. [Endangered or Threatened Species]	No
E.2.p. [Rare Plants or Animals]	No
E.3.a. [Agricultural District]	No
E.3.c. [National Natural Landmark]	No
E.3.d [Critical Environmental Area]	No
E.3.e. [National or State Register of Historic Places or State Eligible Sites]	Digital mapping data are not available or are incomplete. Refer to EAF Workbook.
E.3.f. [Archeological Sites]	Yes
E.3.i. [Designated River Corridor]	No
