

NEWS RELEASE

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INTERPRETATION RENDERING DESIGN STANDARDS UNENFORCABLE COUNTERED BY RNPC IN LEGAL MEMO Applicant Attempts to Avoid Compliance with Parking and Design Standards Using Untenable Guidelines Argument

July 17, 2012: The Riverhead Neighborhood Preservation Coalition is now on record disputing assertions made by the applicant's attorney during a June 21 Planning Board work session discussion of a site plan for the North Shore Country Plaza that design standards referred to as "supplementary guidelines" are voluntary and at the applicant's discretion. In response to what it calls a "creative" interpretation by developer attorney Peter Danowski, and its concern over what appears to be a growing acceptance of this new and seemingly unsubstantiated theory, the RNPC has submitted a legal memo (attached) prepared by the Northern Environmental Law Center of Sag Harbor.

Section 108.296 of Riverhead Town Code reads that the design and parking standards contained in the supplementary guidelines are "intended to obtain compliance with the provisions to the extent practicable as determined by the board responsible for review."* According to the legal memo, the interpretation of these code provisions as voluntary "is flatly inconsistent with the plain language of the Code" as well as the "clear intent of the Town Board." That intent was expressed by then Deputy Town Attorney Dawn Thomas during a May 2009 discussion to adopt the resolution revising a heading in thirteen commercial zones from Supplementary "Requirements" to Supplementary "Guidelines". Ms. Thomas cited the reason for the change as to "give the approving board some flexibility* in adjusting design and parking standards dependent upon the site." [*emphasis added]

In the June 21, 2012, work session, a number of guidelines appeared to be summarily disregarded by the applicant in relation to the North Shore Country Plaza site plan. These included requirements for: a minimum of four buildings, which would have downsized a proposed 23,000 square foot building¹ that would stretch from one side of the property to another as in a typical strip mall; trees and landscaping to break up the oversized parking lot²; a central square or courtyard; and per Section 108.296 of Riverhead Town Code, "walkways for safe and convenient pedestrian access to storefront entries from all parking areas."

“It took all the self control I had to remain seated and quiet when I first heard Mr. Danowski claim that his client had the right to pick and choose the design standards they wanted to adhere to simply because the word guideline is used in the code,” noted RNPC President Dominique Mendez. “It doesn’t matter what they’re called, these standards exist in the Business CR zone so that commercial development is less intrusive and more country like. Considering all the overdevelopment Wading River is currently facing, insisting these guidelines are met is the very least this Planning Board can do.”

North Shore Country Plaza is a 45,000-sq. ft. retail center proposed for a parcel in Wading River that has been slated for rezoning to Multi-family Residential Professional Office (MRP) since the first draft of the Wading River 25A Corridor Study, several months before the “Plaza” site plan was submitted. The MRP zoning use category does not allow retail.

If every parking, building and site design standard that falls under a heading containing the word “guideline” in 13 commercial and multiple residential zones is now treated by the Planning Board as voluntary then the Planning Board would effectually render hundreds of sections of code unenforceable. According to Ms. Mendez, “That’s why the RNPC felt compelled to address the issue. Already, in the last few weeks, this guidelines rationale was cited by the same lawyer in an argument for another client in front of the Zoning Board of Appeals and was cited by a Town Councilperson. I wish I could say I’m surprised that the Planning Board didn’t immediately see fit to exert its rightful authority and nip this in the bud quickly so we didn’t have to do it, but the boards of this administration seem to consistently bend over to be “business friendly”. I simply don’t believe it should be at the expense of the public, by depriving those who live and work here with the aesthetic improvements and community benefits these design standards offer.”

1. The Town is currently proposing to clarify the original intent of the Town Code by specifying that no “building,” as opposed to store, shall be over 10,000 square feet in Business CR. Only one of the three other retail proposals for Wading River have any buildings over 10,000 square feet — yet all are under 11,000 (less than half the size of the proposed 23,000 square foot building in the North Shore Country Plaza project).

2. The North Shore Country Plaza site plan calculates the maximum allowable impervious surface based on over 10 acres, which includes 4 acres of residentially zoned land. Riverhead Planner Karen Gluth took exception to anything other than the 6 or so acres zoned Business CR being used to calculate the dimensional requirements (including impervious surface). The Planning Board, instead of immediately supporting her position, decided to ask their attorney, Deputy Town Attorney William Duffy, to research this issue and give his opinion. (More communications from the RNPC on this issue will be forthcoming, soon.)

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