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TOWN OF NORTH HEMPSTEAD

TOWN BOARD

PUBLIC HEARING

June 6, 2023 7:00 p.m.

COUNCIL MEMBERS PRESENT

JENNIFER DESENA	- Town Supervisor
PETER J. ZUCKERMAN	- District 2 Councilman
DENNIS J. WALSH	- District 3 Councilman
VERONICA A. LURVEY	- District 4 Councilwoman
DAVID A. ADHAMI	- District 5 Councilman
MARIANN DALIMONTE	- District 6 Councilwoman

ALSO PRESENT

RAGINI SRIVASTAVA	- Town Clerk
MARGARET MALITO	- Deputy Town Clerk
JOHN CHIARA, ESQ.,	- Town Attorney
MICHAEL LEVINE	-Commissioner Of Planning

Northern Boulevard, Manhasset, and designated on the Nassau County Land and Tax Map as Section 3, Block 53, Lots 38, 53-54 and 942.

COUNCILWOMAN LURVEY: Mr. Levine, should she call them both at one time?

MR. LEVINE: Yes.

COUNCILWOMAN LURVEY: Yes.

CLERK SRIVASTAVA: Item 6. A public hearing to consider the application of 1285 Northern Boulevard, LLC, for site plan review for the premises located at 1285 Northern Boulevard, Manhasset, and designated on the Nassau County Land and Tax Map as Section 3, Block 53, Lots 38, 53-54 and 942.

COUNCILWOMAN LURVEY: Hello, again.

MS. DEEGAN-DICKSON: Hello, again. Good evening, my name is Kathleen -

SUPERVISOR DESENA: She has to.

COUNCILWOMAN DALIMONTE: Thank you for waiting.

MS. DEEGAN-DICKSON: Oh, I wasn't going anywhere.

COUNCILWOMAN LURVEY: Mr. and Mrs. Burns, thank you for waiting and the Norgate Civic.

MS. DEEGAN-DICKSON: Yes, they're troopers.

COUNCILWOMAN LURVEY: Yes.

MS. DEEGAN-DICKSON: Kathleen Deegan-Dickson, law firm of Forchelli, Deegan, Terrana, LLC, LLP, 333 Earle Ovington Boulevard, Uniondale, New York, here on behalf of 1285 Northern Boulevard, LLC, and Manhasset BMW. The property is known as 1285 -- 1275, 1285 Northern Boulevard and 22 Norgate Road in Manhasset. It's the former Sunset Chapel site, and a vacant residential site next door which is Tax Lot 53. The proposal before you this evening is to demolish the existing vacant funeral home building and to redevelop the site with a brand new BMW dealership. The site is 77,327 square feet, and the proposal is to build a 26,741 square foot, two-story building with a lower level. Once the building is constructed, it will be the new home of Manhasset BMW which will be a relocation of the sales portion of BMW of Bayside and will be known as Manhasset BMW. All of the service, repairs and parts sales will remain at their Great Neck service location on East Shore Road, and this location will have only a sales floor and offices for administrative support. This is a much lower impact than a full-service dealership, less traffic, a lot less activity. Most activity in car dealerships comes from their service and repair functions, there's a lot more in and out during the week and on the weekends. The majority of the site is located within the Business A District within the town but one Tax Lot, Lot 53, that I mentioned before, is located in the Resident C District. According to this plan, what's proposed is that Lot 53 will remain undeveloped and will remain as a buffer between the new dealership and the Norgate neighborhood to the west. We appeared before the BZA, Town of North Hempstead Board of Zoning and Appeals, on February 15th, 2023, a couple of months ago, and received a conditional use permit for an automobile dealership along with variances for parking and loading. Ninety-four spaces were required, 72 were approved, as provided. Also, for the display of cars in the front yard setback of the property and providing a portion of the required residential buffer on the residential portion of the property instead of completely on the

commercial parcel. So we're here this evening for site plan review, and also, for modification of a 70 year old declaration of restrictive covenants that is not consistent with the current conditions or the proposed development. Just really quickly, to walk through the site. The building was two stories with a lower level, it works with the topography as you're heading east on Northern Boulevard.

COUNCILWOMAN LURVEY: Can you turn it just a little bit --

MS. DEEGAN-DICKSON: Yeah.

COUNCILWOMAN LURVEY: --So the Board can see it? I don't think --

MS. DEEGAN-DICKSON: Yeah, sorry.

COUNCILWOMAN LURVEY: -- that they can all see it. Thank you.

MS. DEEGAN-DICKSON: Is that better?

COUNCILWOMAN LURVEY: Yes.

MS. DEEGAN-DICKSON: Okay, good.

COUNCILWOMAN LURVEY: You took the time make them so we might as well see them.

MS. DEEGAN-DICKSON: Yes, and they are quite pretty, I think. So the building works with the topography. You can see, as one heads west on Northern Boulevard, it'll present as a two-story building and then as you get down into the site, the lower level becomes apparent. There are two existing curb cuts on the site. We're not proposing to relocate them. There's the westerly curb cut, which will be both two-ways, in and out. The incoming traffic will come from either the east or the west but the outgoing traffic will be a right-hand turn only. The second curb cut is on the easterly portion of the site that's going to be exit only, and that shares a traffic light with Plandome Avenue which comes out from across Northern Boulevard. So that'll be a signalized intersection which will enable exiting cars to make a left-hand turn and head east on Northern Boulevard without having to traverse west and then either cut through the Norgate neighborhood or other neighborhoods farther down to the west.

COUNCILWOMAN LURVEY: Correct me if I'm wrong, but that was a change that was made during the process of discussions with the Norgate community.

MS. DEEGAN-DICKSON: With the Norgate community and with the Greater Council of Manhasset Civic.

COUNCILWOMAN LURVEY: Yes.

MS. DEEGAN-DICKSON: I think it came up at that meeting, I forget who suggested it, but originally, that was an ingress site, and somebody said, hey, why don't you use the traffic light? And our engineers took a look at it and said, yeah, that's a great idea, so that's what we did. Really quickly, there'll be a new car display here in the front, in the front of the building, it will be stylistically arranged, it's not going to be, you know, stacked cars. There's parking throughout the site and then some new car storage that'll be back in, sort of tucked in behind the parking. The new car storage is in the rear of the building but the majority of new car storage is going to be off-site at a storage location in Fresh Meadows, Queens. All of the new cars will be driven to the site, individually. There's not going to be car carriers coming and dropping off. So that's -- I know it's a concern in other parts of Northern Boulevard where, you know, car

carriers can't get into the site, and they end up double parking on Northern Boulevard. It creates a real traffic headache. So the current location in Great Neck, cars are delivered one-by-one, driven by individuals to the site before they're sold. We've also, I want to mention, have committed to the Norgate Civic Association, we'll state it for the record here, that there will be no test drives of vehicles through the Norgate neighborhood. The plan is to do test drives up Northern Boulevard, down Shelter Rock around to Searingtown and then back up to the site. So it's staying completely out of the residential neighborhoods. We have a very robust landscaping plan around the perimeter of the property. The vast majority of it complies with the Town of North Hempstead Code requiring a 15-foot buffer for all commercial properties that abut residential. The only portion where that -- where we needed relief from the code was here, abutting this residential portion which is going to remain unimproved. So there'll be a fence and then plantings on the residential side of the fence. This buffer is here on the commercial portion as is the buffer around the rest which abuts the rear yards of the properties in the Norgate neighborhood. We're also going to be seeking permission from the Town's Highway Department to improve the plantings on the Town's right-of-way outside of the property line. Some of them have fallen into a less than attractive state. So in coordination with the Civic Association, we've chosen some plantings that will beautify that section of the entrance into the Norgate neighborhood and also provide additional screening of the commercial activity on the site. The project complies the Town's stormwater retention requirements and the Town's requirements for site lighting. We've received the approval, preliminary approval, of New York State DOT. It's basically subject to paying the fees, posting a bond and making some minor adjustments to the detection system for the cars exiting the site at the traffic light. As the Town Clerk called the second resolution, a second related application's been made to request the authorization for relief from the 1954 covenants and restrictions. They were originally from 1954 when a diner was proposed on the site, and it related, primarily, to fencing and landscaping to protect this Lot 53 from the commercial activity that was going on at the site. Now with Lot 53 in common ownership with the commercial site and with the change in the landscaping, there are changes that need to be made. We're committed to recording a new restrictive covenant that's updated to reflect the current conditions that are proposed. The covenant and restriction modification has to be approved not only by the Town Board but also with the consent of the Norgate Civic Association. So we've been working closely with their leadership and a lot of their members for the last several months, many months, and then we've actually redrafted a new covenant in concert with their leadership, with Mr. Pelzer and with Connie Bruno, who I don't think tonight - - who's the president. They've been great to work with, we've been working very closely with them. As part of our application, we submitted a traffic impact study, it was prepared by R&M Engineering. It was submitted as part of the application. I do have Wayne Muller from R&M here, he's available for questions or we could have him give a nice long presentation.

COUNCILWOMAN LURVEY: I think we'll reserve questions.

MS. DEEGAN-DICKSON: We also have Gino Tedesco, who's a site and civil engineer from R&M who can also answer any questions, if you have any, about the site and the site plan, and John Burns and his daughter, Dina Burns, who are the owners of Manhasset BMW are here, if you have any questions for them, as well, so --

COUNCILWOMAN LURVEY: Thank you. So are there any cards on this item?

CLERK SRIVASTAVA: Yes, we have cards on this. The first one is James Pelzer.

MR. PELZER: Yeah, that's me. Good evening. If it please the Board, my name is James Pelzer, I'm the treasurer of the Norgate Civic Association. Our president, Connie Bruno, can't be here tonight, she had another engagement, so I'm going to speak on behalf of the association. I think this an exemplary example of cooperation between an applicant and the local civic association. Mr. Burns came to our civic association meeting a year ago, shared copies of the plans, then Connie Bruno and I met with Councilwoman Lurvey and Commissioner Levine. We talked over the plans, we had concerns. I read the traffic survey, I was the one that said that it seemed pretty crazy to try to make exit and eastbound turns from an unrestricted driveway, and they responded very favorably to changing the traffic pattern in the lot which I think is much better. Our concern is, Norgate is to the north and west of this property, which lies, of course, to our south and east, and it has trees and shrubs which have screened Norgate from the noise and lights on Northern Boulevard for many years. One of the problems with the application is that because the property needs to be regraded, that's going to disturb this foliage, and a lot of it, originally, was planned to be removed, and we met with Mr. Burns and his team and his counsel, and we explained our concerns about that. He hired an arborist, at our suggestion, that there was plans to preserve trees. We had a totally new landscape plan which we think is acceptable. It's going to cause some momentary agita on the part of the people who live nearby, but I think the replacement trees are going to take care of that quickly, they're Green Giant Arborvitae. So basically, we are --we believe that the revised plans, the landscape plan and the fencing will adequately protect us, and Ms. Deegan-Dickson misspoke, there is a third curb cut, and that curb cut is the 22 Norgate Road curb cut which is over her. But if you look at the --if you will look at the proposed covenants and restrictions, they bar traffic and put traffic and vehicular traffic from the commercial lots across the residential lot, so that curb cut is not going to be a source of traffic from the commercial area into Norgate. So we're happy with these plans. We think they'll benefit the community by removing this ancient eyesore of the old funeral home and produce a --producing business where it belongs. So we are for the granting the site plan approval, and we are very much for the restrictive covenant, and I'll just mention it, in distinction to the prior application we spent so much time on, here we've negotiated carefully the promises between one another, and we've committed them to writing, and I think it's a good model, even though it's an old fashioned way of doing things, now this is in writing. I have a hunch that in 50 years from now, neither Mr. Burns nor I will be here, but this -- the covenants and restrictions will be there to encourage both sides to discuss in the future if there are changes that need to be made. So we recommend that you grant both of these applications. Thank you, so much.

SUPERVISOR DESENA: Thank you.

COUNCILWOMAN LURVEY: Thank you, SO much, and I also do want to acknowledge how much work you put into this, your e-mails were detailed and very long.

MR. PELZER: But I wasn't talking as long as the people behind me, so --

CLERK SRIVASTAVA: Frank Coughlin, Frank?

MR. COUGHLIN: Hi, my name is Frank Coughlin, I'm a Manhasset resident. I'm here as a trustee of St. Mary's Parish, and really a diligence mission to understand where this proposal is. St. Mary's Parish is south of where the dealership will be, and conducts three schools, and obviously, religious observances, so parking is a concern, and the the proposal without there being any traffic bays, excuse me, repair bays and servicing really changes our concern about parking, and I'm assuming that, this is an assumption, as it relates to spaces, that is, that has a full

operation of the showroom for sales and servicing as to how the traffic space , car space was arrived at. Also, as it relates to traffic, at the site of the old Skyliner Diner, I've been here long enough to remember, and spent a lot of time at the Skyliner Diner, so it's good to see that the curb cuts there are going to remain, and I agree with the notion that it should be a western, a right turn only. The other point is, as to the traffic study, is whether there needs to be any change to the light for St. Mary's, other than Brinkerhoff to the east, the ingress and egress is through Clapham Avenue, and there is a lot of traffic at certain times, a lot of activity and volume, and you mentioned in passing what the DOT had approved, and what's going to be done with the light. Is there any more information that you can give on that?

MS. DEEGAN-DICKSON: Yes, I'll have Mr. Muller --

MR. COUGHLIN: I don't want to extend the meeting any longer, I agree with the representatives from Norgate that this has been well done example of municipal cooperation, and so I don't want keep people here that much longer. My point is, that if you know -- if you know the way St. Mary's works, particularly for certain hours of the day, probably before your showrooms are going to be busy, it would be important that whatever your study reveals, that that be the way in which the light is coordinated. Okay, thank you.

SUPERVISOR DESENA: Thank you.

COUNCILWOMAN LURVEY: Thank you.

SUPERVISOR DESENA: Thank you, Frank.

CLERK SRIVASTAVA: We're done with our cards on this Item.

MS. DEEGAN-DICKSON: I would like to introduce Wayne Muller from R&M Engineering. He can answer Mr. Coughlin's question about the light timing. I'm sure he'll do it concisely.

MR. MULLER: Good evening, for the record, Wayne Muller, Robinson, Muller Engineering, offices at 50 Elm Street, Huntington, New York. I think Ms. Deegan-Dickson gave a very great overview of the work that was put into this application as far as the traffic and parking analysis that was prepared. But yes, based on the recommendations or the comments generated by the civic association, there were proposed modifications to the access of the facility, as Ms. Deegan-Dickson has indicated. Currently, at the traffic signal, opposite Clapham, it is an entrance only primarily from eastbound left turns and westbound right turns. However, upon further reflection, it did make sense to have that operation flipped so that way the vehicles would be exiting only the driveway, and primarily, that would be the left turns going in the eastbound direction on Northern Boulevard. The revised plans were resubmitted to the DOT, they approved the concept. In fact, they issued an e-mail indicating that we're pretty close to a permit. Some minor modifications have to be performed to the traffic light which are not going to impact the timing of the light, at all. It's primarily to just install the proper equipment on the traffic signal to allow the vehicles on the BMW side of Northern Boulevard to be detected by the the traffic signal, so it's really more design elements. The timing will not change in any way, shape or form, and again, I believe the gentleman who spoke before me, whose name I did not catch, indicated that the nature of the dealership, because it doesn't have service or parts, the activity would be, in my opinion, more tantamount to a furniture store, where in a furniture store you have, you know, very large pieces of furniture that take up larger areas within a building. You don't go to a furniture store that regularly to buy furniture. Similar to an automobile dealership, the level activity generated by the site is going to be significantly lesser than what other

permitted uses could be on the property that the applicant's not proposing.

SUPERVISOR DESENA: Okay.

MR. MULLER: So that is my testimony.

COUNCILWOMAN LURVEY: I think one additional question. You have to come to the microphone.

SUPERVISOR DESENA: Come to the microphone.

MR. COUGHLIN: I'm sorry, can I just understand -- for purposes of the traffic study then, when you're leaving Sunset, when you're leaving BMW, you can only make a left-hand turn heading eastbound. If you want to go westbound you have go through the curb cut or does the light serve both purposes?

MR. MULLER: Well, in theory, again, Wayne Muller, in theory, the exit opposite Clapham, you could make a left or a right. However, as you can see from the site plan, the bulk of the customer activity will be on the western portion of the site where the existing curb cut remains. So in my opinion, you wouldn't drive around the building to make a right. You'd simply make a right on Northern Boulevard, and go away from the property. So yes, while it's going to serve both, the activity will occur on the western portion of the facility.

MR. COUGHLIN: Is that like going to have a left turn only opportunity? When you say it won't change the timing, you said before.

MR. MULLER: Correct.

MR. COUGHLIN: So you're leaving -- you're coming south out of BMW, and you want to go east, is there going to be a left-hand signal that will stop traffic coming out of Clapham.

MR. MULLER: No.

MR. COUGHLIN: Okay.

MR. MULLER: It would operate at the same time.

MR. COUGHLIN: Okay.

MR. MULLER: There will be no dedicated arrow for that. The volume of traffic that we anticipate to be generated by the BMW sales-only dealership would not warrant the installation of an arrow.

MR. COUGHLIN: Thank you.

COUNCILWOMAN LURVEY: Thank you.

COUNCILMAN WALSH: Thank you, I appreciate everything you said, but I do believe that a couch will last a lot longer than a car nowadays.

MR. MULLER: I guess it depends on the furniture store.

COUNCILMAN WALSH: Thank you.

MR. MULLER: Thank you.

COUNCILWOMAN LURVEY: Are there any other cards?

CLERK SRIVASTAVA: No, we're done with our cards.

COUNCILWOMAN LURVEY: All right, anybody else wishes to speak?

(WHEREUPON, no response was heard.)

COUNCILWOMAN LURVEY: So I think I need -- Mr. Levine, is there anything that needs to be done with respect to restrictive covenant or anything?

MR. LEVINE: Yes. Right now, the Board can't vote to approve the site plan because it is in violation of the covenant that is now in effect. So the sequence has to be, you call the motion to modify the covenant, and once that's done, you can then proceed to vote on the site plan.

COUNCILWOMAN LURVEY: All right, SO with respect to Item 54, I offer the resolution, and I move for its adoption.

CLERK SRIVASTAVA: Councilman Troiano?

COUNCILMAN TROIANO: Aye.

CLERK SRIVASTAVA: Councilman Zuckerman?

COUNCILMAN ZUCKERMAN: Aye.

CLERK SRIVASTAVA: Councilman Walsh?

COUNCILMAN WALSH: Aye.

CLERK SRIVASTAVA: Councilwoman Lurvey?

COUNCILWOMAN LURVEY: Aye.

CLERK SRIVASTAVA: Councilman Adhami?

COUNCILMAN ADHAMI: Aye.

CLERK SRIVASTAVA: Councilwoman Dalimonte?

COUNCILWOMAN DALIMONTE: Aye.

CLERK SRIVASTAVA: Supervisor DeSena?

SUPERVISOR DESENA: Aye.

Councilperson Lurvey offered the following resolution and moved its adoption, which resolution was declared adopted after a poll of the members of this Board:

RESOLUTION NO. 331 - 2023

A RESOLUTION AUTHORIZING THE MODIFICATION OF RESTRICTIVE COVENANTS RELATING TO PROPERTY OWNED BY 1285 NORTHERN BOULEVARD LLC AND LOCATED AT 1285 NORTHERN BOULEVARD, MANHASSET AND DESIGNATED ON THE NASSAU COUNTY LAND AND TAX MAP AS SECTION 3, BLOCK 53, LOTS 38, 53-54 AND 942.

WHEREAS, 1285 Northern Boulevard LLC (the "Petitioner" or "Declarant") is the owner of real property which includes a vacant commercial building on a 77,327 s.f. (1.78 acre) lot located at 1285 Northern Boulevard, Manhasset, New York, identified on the Nassau County Land and Tax Map as Section 3, Block 53, Lots 38, 53-54 and 942 (the "Premises"); and

WHEREAS, the Premises (with the exception of Lot 53) is encumbered by a Declaration of Restrictive Covenant dated February 27, 1951, recorded in the office of the Nassau County Clerk on March 5, 1951 at Liber 4458, Page 96 as amended by a Declaration of Modification of Covenants and Restrictions, dated August 13, 1958, recorded in the office of the Nassau County Clerk on October 1, 1958 at Liber 6436, Page 567 ("Declaration #1"), and a second Declaration of Restrictive Covenant dated February 5, 1954, recorded in the office of the Nassau County Clerk on February 15, 1954 at Liber 5477, Page 315, as reflected in a decision of the Board of Zoning Appeals (Appeal No. 9778) dated February 23, 1972, ("Declaration #2", collectively with Declaration #1, the "Original Declarations"), which Original Declarations impose restrictions on certain portions of the Premises related to access, landscaping, fencing, planted buffers and other improvements; and

WHEREAS, Petitioner is seeking to demolish the existing vacant building located on this Premises in order to redevelop the Premises with a new single-story, 26,741 square foot BMW automobile dealership with a lower level that is partially below grade and a mezzanine with administrative offices, and to reconfigure the parking lot and make improvements to drainage, lighting and landscaping (the "Proposal"); and

WHEREAS, the Proposal requires that the Original Declarations be rescinded and replaced by a new Declaration of Covenants and Restrictions to reflect the development plan contained in the Proposal; and

WHEREAS, any modification or elimination of the Original Declarations requires the consent of the Norgate Civic Association and Town Board of the Town of North Hempstead; and

WHEREAS, on March 22, 2023, pursuant to Appeal No. 21348, the Board of Zoning Appeals (the "BZA") granted the Petitioner a Conditional Use Permit and certain variances in connection with the redevelopment of the Premises, subject to the modification of the restrictions as contained in Declaration #2, and certain conditions; and

WHEREAS, the Petitioner has applied to the Town for site plan review pursuant to § 70-219(A)(1) of the Code of the Town of North Hempstead (the "Site Plan Review Application"), which is scheduled to be considered by the Board at a public hearing on June 6, 2023 (the "Site Plan Review Resolution"); and

WHEREAS, to consider the Site Plan Review Application it is necessary to amend the Original Declarations; and

WHEREAS, the Petitioner proposes to rescind, replace and supplement the Original Declarations (the "Amended Declaration") as follows: (1) the Original Declarations are rescinded and replaced by the Amended Declaration, and, except as restated herein, are of no further force or effect, insofar as they affect the Premises; (2) the westerly boundary line of that portion of the Premises known as Lot 54, commencing at a point eighteen (18) feet north of the corner formed by the intersection of the easterly side of Norgate Road and the northerly side of Northern Boulevard and continuing northerly along said westerly boundary line for one hundred and four and thirty-four one-hundredths (104.34) feet shall be enclosed by a privacy fence, five (5) feet in height, which fence is to be erected on the westerly boundary line of Lot 54, the finished side to be exposed on the west side of the fence; (3) a privacy fence, six (6) feet in height, connected to and running continuously with the fence described in the preceding paragraph, shall be erected and maintained as follows:

- a. Commencing at a point approximately one hundred and twenty-two and thirty-four hundredths (122.34) feet from the corner formed by the intersection of the easterly side of Norgate Road and the northerly side of Northern Boulevard and continuing northerly along the westerly boundary line of Lot 54 for thirty-five (35) feet to the northwest corner of Lot 54,
- b. Running thence easterly along the northern boundary of Lot 54 a distance of approximately sixty (60) feet, the finished side to be exposed on the north side of the fence,
- c. Running thence northerly across the lands of Lot 53, parallel to and fifteen (15) feet from the easterly boundary of Lot 53 to a point marked by the intersection of the line of the said fence and the northerly boundary of Lot 53, approximately thirty-five and twenty-nine one-hundredths (35.29) feet easterly from the northwest corner of Lot 53, the finished side to be exposed on the west side of the fence,
- d. Running thence easterly along the northern boundaries of Lots 53 and 38 a distance of approximately one hundred and fifteen and three hundredths (115.03) feet to the corner formed by the intersection of the northern boundary of Lot 38 with the western boundary of Lot 942, the finished side to be exposed on the north side of the fence,
- e. Running thence northerly along the western boundary of Lot 942 a distance of approximately two hundred and thirty-eight and eighty-nine hundredths (238.89) feet to

the northwest corner of Lot 942, the finished side to be exposed on the west side of the fence, and

f. Running thence easterly along the northern boundary of Lot 942 a distance of approximately one hundred eighty-three and seventy-four hundredths (183.74) feet to an end at the northeast corner of Lot 942, the finished side to be exposed on the north side of the fence;

(4) the portions of Lots 38, 54, and 942 running along the northerly boundaries of those lots to a width of fifteen (15) feet, and the portion of Lot 942 running northerly along the western boundary of that lot from its intersection with the northern boundary of Lot 38 to a width of fifteen (15) feet shall be maintained as landscaped buffers as required by §70-203(G) of the Code and shall be landscaped in accordance with the landscape plan (Sheet SP-7, Rev. 10, dated March 20, 2023) approved by the Town Board of the Town of North Hempstead on June 6, 2023, as part of the site plan review of the Automobile Dealership; (5) that portion of the Town right of way known as Norgate Road between the western boundary of Lot 54 and the easterly curb of the paved portion of Norgate Road shall be landscaped and screened in accordance with the said landscape plan approved by the Town Board of the Town of North Hempstead as part of the site plan review of the Automobile Dealership and by the Town of North Hempstead Highway Department; (6) the 15-foot landscape buffer and fence provided on Lot 53 as depicted on the said landscape plan approved by the Town Board of the Town of North Hempstead as part of the site plan review of the Automobile Dealership and the alignment plan (Sheet SP-2, Rev. 10, dated March 20, 2023) approved by the Town Board of the Town of North Hempstead on June 6, 2023, as part of the site plan review of the Automobile Dealership, a copy of which is attached hereto as Schedule "C" and made a part hereof, shall remain and apply until and unless the Declarant or its successors or assigns make an application that is granted by the Town of North Hempstead to redevelop the portion of the business-zoned Lot 38 in a manner which complies with the buffer requirements of §70-203(G) of the Code, as from time to time amended, but in no event less than fifteen (15) feet; (7) the portion of Lot 53 lying west of the fence described in paragraph b of section 3 hereof shall also be deemed a landscaped buffer area and shall be landscaped and screened in accordance with the said landscape plan approved by the Town Board of the Town of North Hempstead as part of the site plan review of the Automobile Dealership. These restrictions on Lot 53 shall apply until and unless the Declarant or its successors or assigns make an application that is granted by the Town of North Hempstead to redevelop the portion of the business-zoned Lot 38 in a manner which complies with the buffer requirements of §70-203(G) of the Code, as from time to time amended, but in no event less than fifteen (15) feet; (8) the fences specified herein shall be privacy fences of uniform make, design, and color, and shall be constructed of sturdy vinyl, wood, composite or other like material. Damaged or missing fencing shall be repaired or replaced promptly, in kind; (9) for as long as Lot 53 is utilized as part of the Premises, it shall remain zoned residential and no buildings or structures, other than fencing, shall be erected thereon. These restrictions on Lot 53 shall apply until and unless the Declarant or its successors or assigns make an application that is granted by the Town of North Hempstead to redevelop the portion of the business-zoned Lot 38 in a manner which complies with the buffer requirements of §70-203(G) of the Code, as from time

to time amended, but in no event less than fifteen (15) feet; (10) no driveway entrance or exit, or pedestrian path or way, shall now or any time hereafter be constructed, opened, maintained, suffered, or permitted so as to provide for access to or from Norgate Road, Lot 53, or other adjoining residential lots to or from the Automobile Dealership; (11) Lot 54 shall be used for parking and display of motor vehicles only, and no structures other than curbing, lighting, retaining walls, fencing, or signage, as required or permitted by the Town of North Hempstead Code shall be erected thereon; (12) the landscaping specified herein shall be maintained in good order, and diseased, dying, or dead plants shall be replaced promptly, in kind; (13) the Declaration shall be enforceable by the Town of North Hempstead, or its successors, and the Norgate Civic Association or its successors; (14) the Declaration or any portion hereof may be modified, altered, or rescinded with the written consent of the Town of North Hempstead, or its successors, and the Norgate Civic Association or its successors; (15) and the Declaration shall run with the land, the Premises to be held and conveyed subject to the same, and its provisions shall be binding upon the Declarant, its successors and assigns; and

WHEREAS, the Town Department of Planning and Environmental Protection (the "Planning Department") has reviewed the Amended Declaration and tentatively recommends approval of same and of the associated Site Plan Review Application; and

WHEREAS, in the Site Plan Review Resolution, the BZA declared itself "lead agency" under the New York State Environmental Quality Review Act as set forth in Title 6, Part 617.6 of the Official Compilation of Codes, Rules, and Regulations of the State of New York ("SEQRA Regulations"), and issued a Negative Declaration concluding that the action constitutes an "unlisted" action pursuant to Section 617.2 (a) of the SEQRA Regulations; and

WHEREAS, this Board has carefully considered the Amended Declaration and Proposal, and now wishes to render a decision on the rescission of the Original Declarations and the adoption of the Amended Declaration.

NOW, THEREFORE, BE IT

RESOLVED that this Board hereby consents to rescinding the Original Declarations and executing the Amending Declaration; and be it further

RESOLVED that the Supervisor or her designee is authorized to execute the Amended Declaration and to take such other action as may be necessary to effectuate the foregoing; and be it further

RESOLVED that the Office of the Town Attorney is authorized and directed to oversee the execution of the Amended Declaration, a copy of which shall be filed with the Town Clerk, and take such further action as may be necessary to effectuate the foregoing.

Dated: Manhasset, New York

June 6, 2023

The vote on the foregoing resolution was recorded as follows:

Ayes: Councilperson Adhami, Councilperson Dalimonte, Councilperson Lurvey, Councilperson Troiano, Councilperson Walsh, Councilperson Zuckerman, Supervisor DeSena.

Nays: None.

cc: Town Attorney Planning Building

COUNCILWOMAN LURVEY: And with respect to the Item 6, I'd like to close the public hearing, offer the resolution and move for its adoption.

CLERK SRIVASTAVA: Councilman Troiano?

COUNCILMAN TROIANO: Aye.

CLERK SRIVASTAVA: Councilman Zuckerman?

COUNCILMAN ZUCKERMAN: Aye.

CLERK SRIVASTAVA: Councilman Walsh?

COUNCILMAN WALSH: Aye.

CLERK SRIVASTAVA: Councilwoman Lurvey?

COUNCILWOMAN LURVEY: Aye.

CLERK SRIVASTAVA: Councilman Adhami?

COUNCILMAN ADHAMI: Aye.

CLERK SRIVASTAVA: Councilwoman Dalimonte?

COUNCILWOMAN DALIMONTE: Aye.

CLERK SRIVASTAVA: Supervisor DeSena?

SUPERVISOR DESENA: Aye.

MS. DEEGAN-DICKSON: Thank you, very much.

COUNCILWOMAN LURVEY: Congratulations

SUPERVISOR DESENA: Thank you, all. Thank you for working this out and for your long-term attention to the situation and coming up with solutions. Thank you.

COUNCILWOMAN DALIMONTE: I just want to let you know that I was at the Greater Council meeting. I applaud you guys --

AUDIENCE MEMBER: Thank you, so much.

COUNCILWOMAN DALIMONTE: -- for the way you handled this.

AUDIENCE MEMBER: Thank you.

COUNCILWOMAN DALIMONTE: And for all your work. Thank you.

MR. PELZER: I think it's a great cooperative thing.

COUNCILWOMAN DALIMONTE: It was.

MR. PELZER: That's what we need more of, to talk and work together. It's good for the community and good for Norgate and for the business.

COUNCILWOMAN LURVEY: Yeah, that's why I called attention to the fact when Kathleen was presenting, that there were changes made by the applicant during the process to accommodate the community and that made all the difference, really. So thank you, very much, to the applicant.

AUDIENCE MEMBER: Thank you.

MS. DEEGAN-DICKSON: It was a good process for us, as well.

Councilperson Lurvey offered the following resolution and moved its adoption, which resolution was declared adopted after a poll of the members of this Board:

RESOLUTION NO. 332 - 2023

A PUBLIC HEARING TO CONSIDER THE APPLICATION OF 1285 NORTHERN BOULEVARD LLC FOR SITE PLAN REVIEW FOR THE PREMISES LOCATED AT 1285 NORTHERN BOULEVARD, MANHASSET AND DESIGNATED ON THE NASSAU COUNTY LAND AND TAX MAP AS SECTION 3, BLOCK 53, LOTS 38, 53-54 AND 942.

WHEREAS, 1285 Northern Boulevard LLC (the "Applicants") (the "Application") has applied to the Town Board of the Town of North Hempstead (the "Town") to construct a single-story, 26,741 s.f. automobile dealership with a lower level that is partially below grade and a mezzanine with administrative offices, on a 77,327 s.f. (1.78-acre) lot located at 1285 Northern Boulevard, Manhasset and identified on the Nassau County Land and Tax Map as Section 3, Block 53, Lots 38, 53-54 and 942 (the "Premises"); and

WHEREAS, it has been determined that the Application is subject to site plan review pursuant to § 70-219(A)(1) of the Code of the Town of North Hempstead (the "Town Code") for the construction of a new building greater than 750 square feet; and

WHEREAS, all necessary reports, recommendations, and comments on the Project have been filed with this Board by the Commissioner of Planning and Environmental Protection (the "Planning Commissioner") of the Town of North Hempstead (the "Town") pursuant to Town Code § 70-219(A)(2); and

WHEREAS, the Town Clerk, pursuant to and in accordance with Town Code §§ 70-219(F)(1), has published notice of a public hearing scheduled for June 6, 2023 for the site plan review (the "Public Hearing"), as authorized and directed by the Town Board pursuant to Resolution No. 274-2023, adopted on May 2, 2023; and

WHEREAS, the Applicant has furnished proof of service of notice of the Public Hearing to the affected property owners within a 300-foot radius of the Premises as required by § 70-219(F)(2) of the Town Code and has complied with the sign notice requirements of § 70-219(F)(3), and filed an affidavit as to the mailing of such notices and posting of a sign as required thereunder; and

WHEREAS, the Town's Department of Building Safety, Inspection and Enforcement (the "Building Department") issued a Notice of Disapproval on January 26, 2023 citing the following items: (1) the application requires a parking variance for the deficiency of 22 parking spots pursuant to Town Code §70-103(A)(1); (2) the proposed application has no provision for off-street loading or unloading pursuant to §70-103(F); (3) the proposed application did not have a sufficient front yard set back pursuant to Town Code §70-132(A); (4) the proposed use of a new auto dealership with exterior storage of automobiles being offered for sale requires a conditional use permit pursuant to §70-126(D); (5) the proposed application does not propose a required landscape buffer along the West and North property lines pursuant to Town Code

§70-203(G); (6) the proposed application does not provide for screening for the storage located less than 120 feet from the property line pursuant to Town Code §70-212(B); and (7) the proposed plans do not comply with the restrictive covenant per the prior Board of Zoning Appeals decision #9978 pursuant to Town Code §70-229(A); and

WHEREAS, on March 22, 2023, pursuant to Appeal No. 21348, the Board of Zoning Appeals (the "BZA") granted the necessary Conditional Use Permit pursuant to Town Code §70-126(D) and variances to Town Code §§ 70-103(A)(1), 70-103(F), 70-132(A), 70-203(G), 70-212(B) and 70-229(A) to construct a new one-story building for use as an automobile dealership which is a conditional use (parking, storage and sale of automobiles) with not enough parking, no loading or unloading area, with no landscaped buffer against an adjoining residential district, with storage of vehicles too close to the front property line (with no screening provided) and within the required front yard, and not in compliance with a prior BZA decision (not in compliance with restrictive covenant) subject to the modification of the restrictive covenant by the Town Board and further subject to the following conditions: (1) the parking area designated on the plans prepared by Christopher W. Robinson, P.E. dated April 29, 2022 and revised through October 26, 2022 and on drawings prepared by Gregory Basmajian, R.A. dated January 6, 2023, shall remain available at all times for employees and patrons of the business. At no time shall this parking area be utilized for the storage of automobiles for sale or for the display of the automobiles; (2) the 15' landscape buffer provided on the adjacent residential property (Section 3, Block 53, lot 53) shall remain, and shall be required, so long as a variance is required under 70-203(G) of the Code for the use of the subject premises. The existence of the landscape buffer on the residential property (Section 3, Block 53, lot 53) shall preclude the ability of this property to be developed with a residential home so long as the buffer remains. These restrictions shall apply until and unless the property owner or his/her representatives makes an application to redevelop the portion of the business zoned lot in a manner which complies with the buffer requirements of Town Code §70-203(G); (3) there shall be no test driving of automobiles within the adjacent residential neighborhoods; and (4) no car carriers/tractor trailer trucks shall be allowed in the northern portion of the parking lot (northeast of the property line identified by a metes and bounds description of (S88°46'30"E, 150.32') (the "BZA Conditions"); and

WHEREAS, pursuant to General Municipal Law § 239-m, the Nassau County Planning Commission (the "Commission") was furnished with copies of the site plan and the Full Environmental Assessment Form (the "FEAF"); and

WHEREAS, pursuant to Resolution No. 10528-23, adopted April 27, 2023, the Nassau County Planning Commission recommended local determination at; and

WHEREAS, the Town Department of Planning and Environmental Protection (the "Planning Department") has reviewed the Application and tentatively recommends approval of same and of the associated modification of the restrictive covenant; and

WHEREAS, it is required that a "lead agency" be established to review the Action pursuant to the rules and regulations for implementation of the New York State Environmental Quality Review Act as set forth in Title 6, Part 617.6 of the Official Compilation of Codes, Rules, and Regulations of the State of New York ("SEQRA Regulations"); and

WHEREAS, the BZA has established itself as “lead agency” and issued a Negative Declaration concluding that the Application constitutes an “unlisted” action pursuant to Section 617.2 (a) of the SEQRA Regulations; and

WHEREAS, the BZA has further determined that the Action will not result in any significant adverse impacts on the environment based upon the analysis set forth in the FEAF Parts 2 and 3, for the reasons that: (1) the proposed action will not in substantial conflict with the zoning district in which it sits or conflict with adopted land use plans; (2) the proposed action will not result in change to the existing air quality; (3) the proposed action will not result in the impairment of a Critical Environmental Area or historic, archaeological, architectural or aesthetic resources; (4) this project would not include the removal or destruction of large quantities of flora or fauna, nor impact a habitat area; and (5) it is not anticipated that this project will generate a significant amount of traffic or represent a hazard to human health; and

WHEREAS, this Board concurs in the conclusion that the action constitutes an “unlisted action” pursuant to Section 617.2 (a) of the SEQRA Regulations which will not result in any significant adverse impacts on the environment; and

WHEREAS, this Board has carefully considered the Application, testimony and other relevant evidence at the Public Hearing held on June 6, 2023 and afforded all interested persons the opportunity to be heard; and

WHEREAS, this Board now wishes to render a decision on this Application.

NOW, THEREFORE, BE IT

RESOLVED that the Town Board recognizes that the BZA has established itself “lead agency” under the SEQRA Regulations for the Action and has rendered determinations pursuant to SEQRA with regard to the Action; and be it further

RESOLVED that this Board hereby adopts the BZA’s Determinations and Negative Declaration, finding that the Action is an “Unlisted Action” which will not result in any significant adverse impact on the environment, based upon the analysis set forth in the SEAF; and be it further

RESOLVED that this Board finds that the Application and site plan are in compliance with Chapter 70 of the Town Code, and this Board further finds that the site plan is consistent with the spirit and intent of Town Code § 70-219; and be it further

RESOLVED that, pursuant to Town Code § 70-219(B), the site plan is hereby approved; and be it further

RESOLVED that a copy of this approval shall be filed with the Commissioner of Building Safety, Inspection and Enforcement (the “Building Commissioner”), and the Building Commissioner is hereby authorized and directed to issue a building permit, upon compliance with the building permit application requirements as set forth in the Town Code, the BZA Conditions, and any other conditions or requirements imposed by this Board or any other governmental entity having jurisdiction over the property, and to take such other action as may be necessary to effectuate the foregoing.

Dated: Manhasset, New York

June 6, 2023

The vote on the foregoing resolution was recorded as follows:

Ayes: Councilperson Adhami, Councilperson Dalimonte, Councilperson Lurvey, Councilperson Troiano, Councilperson Walsh, Councilperson Zuckerman, Supervisor DeSena.

Nays: None.

STATE OF NEW YORK)
) SS. :
COUNTY OF NASSAU)

Henry Krukowski, being duly sworn, deposes and says that on the 23rd day of May, 2023, he posted the attached Notice of Hearing to consider the application for site plan review submitted by 1285 Northern Boulevard LLC to construct a single-story 26,741 s.f. BMW automobile dealership with a lower level that is partially below grade and a mezzanine with administrative offices, on a 77,327 s.f. (1.78-acre) lot, at the following locations:

Town Clerk Bulletin Board

Manhasset Post Office

In front of 1285 Northern Blvd

Plandome Rd & Northern Blvd

Northern Blvd & Clapham Ave


Henry Krukowski

Sworn to me this

24th day of May, 2023


Notary Public

Adriana Demirchyan
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 02DE6370858
Qualified in Nassau County
Commission Expires February 12, 2024
Adriana