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December 20, 2017

Mr. Peter Stuto, Chairman
Town of Colonie Planning Board
347 Old Niskayuna Road
Latham, New York 12110

Re: 19 Fuller Road, Town of Colonie, County of Albany, New York (the "Property")

Dear Chairman Stuto:

I have been retained by Stewart's Shops Corp. to review the legal matters involved with their Site Plan application for the redevelopment of 19 Fuller Road in the Town of Colonie. I respectfully submit this for consideration by the Town of Colonie Planning Board.

1. **State Environmental Quality Review Act.** The proposed Stewart's at 19 Fuller Road is 3,726 square feet and in accordance with 6 NYCRR §617.5(c)(7) of the regulation promulgated under the State Environmental Quality Review ("SEQR"), "the construction or expansion of a primary or accessory/appurtenant, non-residential structure or facility involving less than 4,000 square feet of gross floor area and not involving a change in zoning or a use variance and consistent with local land use controls, but not radio communication or microwave transmission facilities" is a Type II SEQRA action. As you aware Type II actions under the SEQR Act do not require further SEQRA review because their scale has been statutorily deemed to "not have an adverse impact on the environment". This opinion was also affirmed by the Town Attorney's office in connection with the Zoning Board of Appeal ("ZBA") determination. Therefore, in light of the above, I do not believe my client proposal is subject to coordinated review under SEQR.

2. **History of Appearances and Meetings**

October 14, 2015	Development Coordination Committee ("DCC") Meeting
January 26, 2016	Sketch Plan Appearance before Town of Colonie Planning Board
February 18, 2016	Issuance of ZBA determination ZB 16-004 for area relief
June 7, 2016	Concept Acceptance Appearance before Town of Colonie Planning Board
July 13, 2016	On-site meeting with neighbors for access control discussion
February 7, 2017	Appearance before Town of Colonie Planning Board
November 21, 2017	Appearance before Town of Colonie Planning Board

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3. **History of Submissions.** Attached hereto as **Exhibit "A"** are the current survey and the series of submissions Stewart's has made seeking Concept Acceptance and ultimately Site Plan approval. The survey shows the former use has a total of five (5) driveways totaling 156 linear feet of driveways, two (2) on Katherine Road and three (3) on Fuller Road. The proposed Stewart's has only two driveways for a total of 65 feet of driveways, a reduction of 58% of the current access to the site. As the applicant, Stewarts is significantly reducing the driveways and the current access points for the Property.

The initial submission for DCC in October 2015 (for appearance at the December meeting) included a 3,957 square foot Stewart's, four multi-product dispensers (eight fueling positions) and a 1,500 square foot proposed rental building. Because the building was placed in the SFR zone where the use was prohibited, the building was rotated and placed in the COR zone and the rental building was abandoned to achieve closer zoning compliance and to scale down the intensity of the development. This was the plan introduced at the January 26, 2016 Sketch Plan meeting with the Planning Board and subsequently with the ZBA in connection with the approved variances.

This general concept remained unchanged until the November 21, 2017 when Stewart's reduced the number of multi-product dispensers to three (six fueling positions) and the building to 3,726 square feet. In this submission, Stewart's also showed the Planning Board an option where an "Exit Only" driveway to the north of the store to accommodate truck movements exiting onto Fuller Road. The plan with the "Exit Only" was rejected by Albany County DPW who has reiterated their support for only one full-access driveway on Fuller Road and while not explicit, the Albany County DPW did appear to not oppose the driveway on Katherine Road as supported by the Creighton Manning Engineering ("CME") report.

The current application requires no waivers and it appears to be an "as of right" application.

4. **Federal Housing Authority.** Because of the concern voiced regarding Federal Housing Authority's ("FHA") issuance of mortgage insurance, Stewart's reached out to directly Housing and Urban Development ("HUD"), the federal agency that oversees FHA. The Town of Colonie code does not require properties comply with FHA guidelines for distances. I have been advised that correspondence has been submitted asserting that as a result of the proposed project, the neighboring homes are ineligible for "FHA Insurance". First, FHA insurance is simply credit support for some types of mortgage loans. It is not a requirement for all mortgage loans and it is not requirement for a traditional mortgage loan from a bank and/or credit union.

This is the correspondence received from FHA:

Are properties located next to gas stations eligible for insurance?

Stationary storage tanks containing flammable or explosive material pose potential hazards to housing, including hazards from fire and explosions.

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If the subject property line is within 300 feet of an above ground or subsurface stationary storage tank with the capacity of 1,000 gallons or more of flammable or explosive material, then the property is ineligible for FHA insurance. The Appraiser must notify the Mortgagee of the deficiency of Minimum Property Requirements (MPR) or Minimum Property Standards (MPS), so the Mortgagee can determine the eligibility.

This includes domestic and commercial uses as well as automotive service station tanks.

For additional information see Handbook 4000.1 II.D.3.c.iii.(C)(7) at https://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/handbooks/hsgh

From the above language it is not an outright prohibition for the receipt of FHA insurance rather it is part of an appraisal notification requirement.

5. **December 2017 Submission.** To work toward a compromise, the revised site plan submitted by Stewart's created a restricted access on Katherine Road prohibiting "right turns" out into the neighborhood. Access is still provided for the residents in the neighborhood to turn into the site because requiring them to access the site via a turn from Katherine Road on to Fuller Road and then back into the site seems to exaggerate the vocalized problem. To further accommodate this, Stewart's is willing to widen Katherine Road to the town standard of 30 feet; currently the town's inventory has the road at 20 feet and survey shows it at 24. The widening will occur on Stewart's side of the street for the length of the project and will not involving any takings.

With this submission we anticipate an appearance for Concept Acceptance at the second February meeting of the Planning Board in 2018.

Should you have any questions or comments, do not hesitate to contact me. I am,

Very truly yours,


GOLDMAN ATTORNEYS PLLC

Paul J. Goldman, Esq.

PJG/am
Enc.

cc. Mr. Chuck Marshall (w/enc.)