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Service by Facsimile,
E-Mail or Electronic
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PLEASE REPLY TO
Albany Office

January 27, 2012

Mr. Donald Cropsey
Chief Building Inspector & Zoning Administrator
Town of Guilderland
Town Hall, McCormack's Corners
Guilderland, New York 12084

HAND DELIVERED

Re: Application of Stuyvesant Plaza, Inc.
Zoning Board of Appeals Hearing of February 1, 2012

Dear Don:

Enclosed with this correspondence is a copy of my letter to Chairman Barber dated January 27, 2012, with enclosures, together with twelve (12) copies of the revised rendering of the sign for Stuyvesant Plaza, Inc., which includes the electronic message device. The dimensions of the device was reduced from the previous dimensions of 5 feet, 5 inches by 13 feet, 3 inches to the proposed dimensions of 2 feet, 5 inches by 11 feet, 3 inches. The new sign will fit within the dimensions of the existing signs interior, so there will be no change the distance between the bottom of the sign and the ground level.

According to our calculations, the dimensions of the sign, which include the existing "SP" Logo, will be 197.5 sq. feet.

Please call if you have any questions.

Very truly yours,

MAYNARD, O'CONNOR, SMITH & CATALINOTTO, LLP

By: [Signature]
James R. Schultz
schultz@maynardoconnorlaw.com

Handwritten calculation: 22'-4" x 2 = 44'-8"

JRS/dtc
Enclosure



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Albany Office

January 27, 2012

**Stuyvesant Plaza, Inc. with Town of Guilderland**

Our File No.: 1454.28254

Peter Barber, Esq., Chairman  
Zoning Board of Appeals  
Town of Guilderland  
Guilderland Town Hall  
P.O. Box 339  
Guilderland, NY 12084

Dear Chairman Barber:

As you know, this office represents Stuyvesant Plaza, Inc. The following will provide further information concerning Stuyvesant's Plaza's pending application before the Zoning Board of Appeals, and to address the issues which were raised at the January 4, 2012 hearing.

As a preliminary matter, it is important to note some of principles that the Zoning Board of Appeals should consider when exercising its power to determine questions involving an interpretation of the Guilderland Zoning Laws. First, since the promulgation of zoning laws in general are in derogation of the common law, the Board must strictly construe the Zoning Laws **against** the Town; any ambiguity in the language of the Zoning Laws must be resolved in favor of Stuyvesant Plaza. (see *Allen v. Adami*, 30 NY2d 275, 277 [1976]; also, *Turiano v. Gilchrist*, 8 AD2d 953, 954 [2d Dept. 1959]). Additionally, the Board's interpretation of the Zoning Laws and must be reasonable and rational. (See, *Frishman v. Schmidt*, 61 NY2d 823, 825 [1984]).

**UNDER WHAT DEFINITION DOES THE PROPOSED SIGN FALL**

There are several definitions of "Signs" under §280-5 of the Guilderland Zoning Laws, of which the following are relevant to this application:

**"ADVERTISING SIGN"** – "Any sign which directs attention to a business, principal commodity, service or entertainment, conducted, sold or offered, elsewhere than upon the premises where the sign is located or to which it is affixed";

**"BILLBOARD OF COMMERCIAL ADVERTISING SIGN"** – "An advertising sign, structure or symbol, erected and maintained by an individual or corporation engaged in the sale or rental for profit of space thereon to a clientele of manufacturing, service, or commercial enterprises, upon which space there is displayed, by means of painting, posting or other method, advertising copy describing products or services which are not necessarily made, produced, assembled, stored or sold from the lot or premises upon which the advertisement is displayed"; and

**"BUSINESS SIGN"** – "Any sign which directs attention exclusively to a permitted business, profession or industry conducted upon the premises on which the sign is located, or to a primary product, commodity or service sold by such business or industry, and shall be deemed an integral part of such business or industry."

Each sign carries a specific, unique, meaning under the Zoning Laws.

Based on the principles which we believe should be followed, we submit that the Sign clearly is not a "Billboard of Commercial Advertising Sign". Applicant has repeatedly stated it is not engaged in the sale or rental for profit of the Sign itself, which distinguishes this type of sign. The Sign is simply utilized to direct attention exclusively to Stuyvesant Plaza's tenants.

Instead, the Sign fits within the definitions of an "Advertising Sign" or a "Business Sign", depending on how the Board chooses to treat the lands on which the sign now sits.. As addressed in our letter to you of December 29, 2011, the Sign is located on a strip of land (1/4 acre in size) over which applicant holds an easement, lands that can serve no other commercial purpose to its owner (the Town of Guilderland). We believe the Board could properly determine that the strip of land be deemed part of the Stuyvesant Plaza parcel for purposes of this application, and thus characterize the Sign as a "Business Sign". This type of sign is expressly permitted under the Zoning Laws.

However, if the Board interprets that the Sign is an "Advertising Sign" because it directs attention to a business, products or services sold or offered elsewhere than upon the lands on which the Sign is located, an Advertising Sign is nevertheless a use not expressly prohibited under the Zoning Laws in a commercial district.

Attention is directed to §280-26 (C)(6) of the Zoning Laws which states "no billboard **or** commercial advertising sign shall be permitted" (emphasis added). Applicant submits that this provision is intended to refer only to a "Billboard **of** Commercial Advertising sign, not to a "Billboard" or "Commercial Advertising Sign". The latter two kinds of signs are not specifically defined under the Zoning Laws. We believe it would be in error for the Zoning Board to resolve this ambiguity by interpreting that the Guilderland Town Board intended this provision to cover both "billboard of commercial advertising" and "advertising" signs as signs to be prohibited in a commercial district. Had the Town Board intended this result, it would have referred to both types of signs under this provision by their specific names.

It is apparent that the substitution of the word "or" for "of" under this provision was simply a scrivener's error. As such, the Guilderland Zoning Laws do not prohibit the use of an "Advertising

Sign" in a commercial district. The applicant's Sign, therefore, should be permitted even if the Board were to classify it under this definition.

### **AN ELECTRONIC MESSAGE DEVICE A PERMITTED USE**

The applicant previously expressed its belief that the Sign, as proposed, cannot be considered a "Flashing Sign", and submitted the *Webster's New World Dictionary* definition of "flash" for reference. The Guilderland Zoning Laws, however, specifically provide the meaning of a "Flashing Sign". A question was raised as to whether the electronic message device, as proposed, would fall under this definition irrespective of the common definition and thus be deemed a prohibited use.

The phrase "Flashing Sign" is defined under the Zoning Laws as "an illuminated sign on or in which the artificial lighting is not maintained stationary or constant in intensity and color at all times while in use". Applicant proposes to utilize the electronic message device only to identify its tenants in Stuyvesant Plaza. In each instance, the lighting of the electronic message will at all times be maintained stationary and constant in intensity and color. The only instance where a change would occur is where one tenant's name is substituted for another. This is similar to instances where message boards, gas station price signs or signs identifying multiple business names are changed on existing, approved signs. Reference again is made to those sample signs that were attached to our December 29, 2011 correspondence.

### **ACCEPTABLE CONDITIONS**

Because the electronic message device has the capability to perform in ways not permitted under the Zoning Laws, it is important for the Board to consider that the applicant agrees to the following conditions for the Sign:

1. The message content will be limited to the identification of a tenant and, where applicable, the tenant's approved logo;
2. The colors to be used will either be a single color on a contrasting background or with a color scheme identical to the colors that have been, or will in the future be, incorporated into the tenant's existing, approved, signage;
3. The light intensity will at all times stay within the factory settings (between 400 nits during nighttime to 10,000 nits during bright daylight);
4. For the entire duration of the message, the lights and colors will remain stationary and constant;
5. In addition to identifying the Stuyvesant Plaza's tenants, the only other permitted messages would be for Stuyvesant Plaza-wide events (for example: sidewalk sales, grand opening/re-opening announcements, etc.) that historically were announced through approved banners adjacent to the existing Sign;
6. The message will not contain flashing or moving lights, nor will it possess any other traits or characteristics expressly prohibited under the Guilderland Zoning Laws; and

7. If requested by the Town of Guilderland, the electronic message will display public service announcements (emergency notices, Amber alerts, etc.).

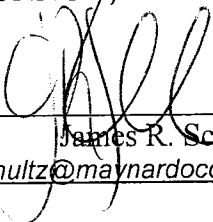
**SAFETY**

Since the January 4, 2012 hearing, we have received additional information regarding the use of electronic message devices, which we are submitting for your consideration and review (attached, collectively, as **Exhibit "A"** to this correspondence). These materials provide a better understanding regarding the operation of these devices and show that the devices do not change messages by means of a "flashing" operation; nor do they cause, or increase the likelihood of, traffic accidents where they are already used.

Based on the entire record. The applicant again respectfully requests that the Zoning Board of Appeals interpret the various provisions of the Guilderland Zoning Laws to allow the applicant to develop the Sign as proposed without a Use Variance; and that, based on the materials previously submitted, the application for Area Variance be approved in all respects.

Very truly yours,

**MAYNARD, O'CONNOR, SMITH & CATALINOTTO, LLP**

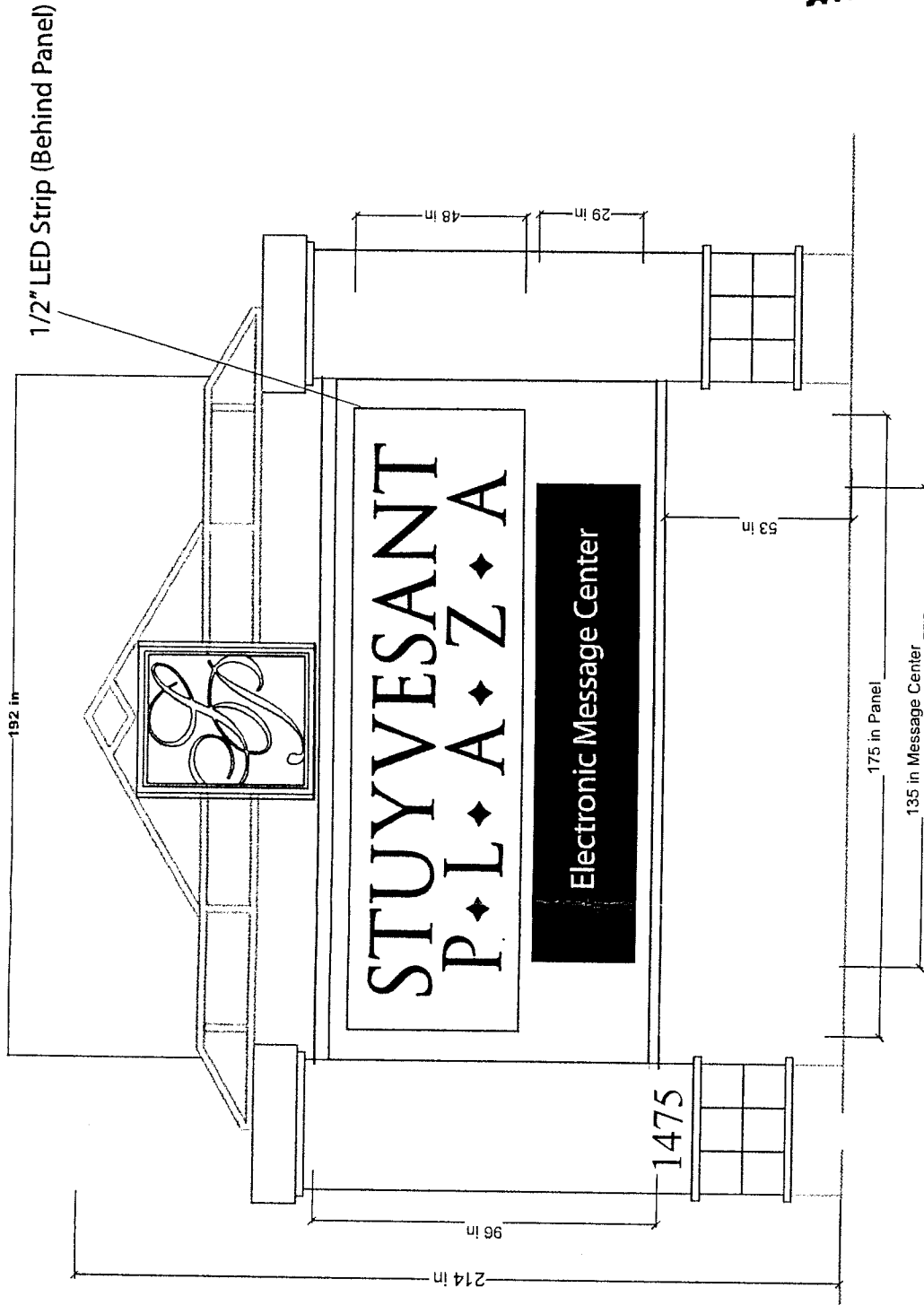
By  \_\_\_\_\_  
James R. Schultz  
[schultz@maynardoconnorlaw.com](mailto:schultz@maynardoconnorlaw.com)

JRS:dte

cc: Donald F. Cropsey, Jr. *via e-mail: dawnb@townofguilderland.org*  
Chief Building Inspector  
and Zoning Administrator  
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P.O. Box 339  
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Janet Thayer, Esq. *via e-mail: jtlawoffice@aol.com*  
Town Attorney  
Town of Guilderland  
P.O. Box 339  
Guilderland, NY 12084

Janet Kaplan, Esq. *via e-mail: Vice President Real Estate*  
Stuyvesant Plaza, Inc.  
Executive Park  
Albany, NY 12203



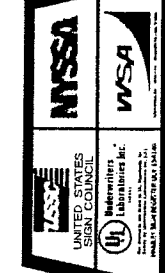
**Double Faced Sign**

19mm Full Color Message Center 2'5" x 11'3"

18" and 16.5" Push Through Letters, Address "1475" 8 in Letters

All installed onto Replacement Center Panel (Same Size as Existing)

**CONCEPTUAL  
LAYOUT  
NOT FOR  
PRODUCTION**



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DATE: 01/26/12  
 TIME: 10:00 AM  
 PROJECT: STUYVESANT PLAZA  
 SALES PERSON: LISA TYMCHYN  
 SIGNATURE: \_\_\_\_\_

CUSTOMER: STUYVESANT PLAZA  
 10 EXECUTIVE PARK DRIVE, ALBANY  
 DRAWING NO. 14801-6  
 DATE: 01/26/12  
 SCALE: 1/4" = 12"  
 DESIGNER: JAMES JURON

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