

**RESOLUTION OF DETERMINATION
FISHKILL SELF-STORAGE
SUBSTANTIAL SIMILARITY, SITE DEVELOPMENT PLAN AND SPECIAL USE PERMIT**

WHEREAS, an application for a Site Development Plan Approval and Special Use Permit approval was submitted to the Planning Board of the Town of Fishkill for the project more fully detailed as follows:

- The application number is 22-005;
- The application was submitted by 1292 Realty, LLC (the “Applicant or “Project Sponsor”);
- “Project Sponsor,” wherever used herein shall mean, and is intended to mean, the Applicant as identified in the above-referenced Application, its successors in interest or assignees as may be appropriate;
- The proposed project is located at 1292 Route 9D in the Town of Fishkill, County of Dutchess. The involved parcel is identified as Tax Map No.: 5955-04-882288, consisting of 4.70 acres in the Restricted Business (RB) Zoning District (the “Project Site”);
- The Applicant has sought certain approvals from the Town of Fishkill Planning Board to develop the Project Site with a two-story (30-foot-tall) approximately 51,500 gross square foot self-storage facility with approximately 333 self-storage units and associated improvements, including signage, parking (26 spaces), loading areas, lighting/landscaping, and stormwater management features (the “Proposed Project”);
- The Proposed Project requires a determination of substantial similarity from the Planning Board pursuant to Town of Fishkill Zoning Code § 150-19(B)(1), and, if found to be substantially similar to other uses in the RB District, then the Proposed Project would also require Special Use Permit approval, Site Development Plan approval, and a Certificate of Appropriateness regarding the Proposed Project’s impact on historic structures;
- The Applicant paid a Site Development Plan and Special Use Permit application fee in the amount of \$15,820.00 and made an initial deposit of \$15,000.00 into an escrow account to cover the consultant charges for the review of the project in accordance with the current Fee Schedule, which the Applicant has kept current thereafter during the pendency of this application;
- The Applicant, in support of the application, submitted drawings, as more fully listed at the end of this Resolution;
- The application was formally accepted by the Planning Board on May 12, 2022;
- The application was referred by the Planning Board to the Town Engineer; the Town Building Inspector/Zoning Administrator, Planning Board Attorney, New York State Department of Environmental Conservation (NYSDEC), the New York State Department of Transportation

(NYSDOT), the New York State Office of Parks, Recreation, and Historic Preservation (OPRHP), and the Dutchess County Department of Behavioral and Community Health;

WHEREAS, the application was referred to Dutchess County Department of Planning & Development pursuant to the provisions of the General Municipal Law § 239-m, which provided preliminary comments to the Planning Board on October 11, 2022 expressing concerns regarding the traffic impacts of the Project, among other matters; and

WHEREAS, the proposed use, a two-story self-storage facility, is not a permitted use in the RB District; and

WHEREAS, the Applicant has applied for a Special Use Permit for the proposed self-storage use in accordance with Town of Fishkill Zoning Code § 150-19(B), which provides that if an application meets all of the criteria of § 150-19(B)(1)(a) through (d), an otherwise unallowed use may qualify for a Special Use Permit to be issued by the Planning Board; and

WHEREAS, Zoning Code § 150-19(B) provides as follows:

- B. When a use is not specifically permitted in this Zoning Ordinance as either a use permitted by right or by special use permit, it shall be understood that the use may be allowed by special use permit of the Planning Board if it is determined by the Planning Board with input from the Building Inspector that the use is substantially similar to other uses listed in the district and is consistent with the stated purposes of the district.
 - (1) This section establishes the Planning Board's special use permit authority pursuant to Article XI of this chapter to compare a proposed use and measure it against those listed in the applicable zoning district for determining substantial similarity. In determining substantial similarity, the Planning Board shall make all of the following findings prior to approval:
 - (a) The proposed uses shall meet the intent of, and be consistent with, the goals, objectives and policies of the Comprehensive Plan.
 - (b) The proposed use shall meet the stated purpose and legislative intent of the district in which the use is proposed to be located per the legislative intent of given district regulations, or those given in § 150-13.
 - (c) The proposed use shall not adversely impact the public health, safety and general welfare of the residents.
 - (d) The proposed use shall share characteristics in common with, and not be of greater intensity, density, or generate more environmental impact, including but not limited to having no greater adverse effects upon traffic, noise, air quality, parking, or any other reasonably relevant attribute than those uses listed in the zoning district in which it is to be located.

The Proposed Project thus requires the Planning Board to make findings that all of the criteria set forth above and a determination that the proposed self-storage use is “substantially similar to other uses” allowed in the district (the “Substantially Similar Determination”), and the Project would also require Special Use Permit and Site Development Plan approvals from the Town of Fishkill Planning Board, as well as the issuance of a “Certificate of Appropriateness” from the Planning Board pursuant to Section 150-137(C) of the Zoning Code regarding the Project’s impact on historic structures; and

WHEREAS, as part of the required Site Development Plan approval required for the Project, the Applicant seeks a fifty (50%) percent waiver from the Planning Board for the required number of parking spaces; and

WHEREAS, the Project Site, at 4.7 acres, does not meet the minimum lot size required for any use within the RB zoning district, and as a result, the Project would require an interpretation, or in the alternative, a discretionary area variance from the Town of Fishkill Zoning Board of Appeals for minimum lot size as a condition of any approval; and

WHEREAS, the Planning Board referred the Applicant to the Town of Fishkill Zoning Board of Appeals on November 10, 2022, and, as of the date of this Resolution, the Town of Fishkill Zoning Board of Appeals has not rendered a decision on the interpretation or issued the required area variance for the Project; and

WHEREAS, the Applicant initially requested that the Planning Board segment its review of the Project by making the Substantially Similar Determination at the outset of the Planning Board’s review, without the benefit of any environmental review required by the State Environmental Quality Review Act (“SEQRA”); and

WHEREAS, on July 14, 2022, the Planning Board declined to segment the review of the Proposed Project by making the Substantially Similar Determination prior to conducting any SEQRA review given that § 150-19(B)(1)(c) requires the Planning Board to conclude that the proposed use shall “not be of greater intensity, density, or generate more environmental impact, including but not limited to having no greater adverse effects upon traffic, noise, air quality, parking, or any other reasonably relevant attribute than those uses listed in the zoning district in which it is to be located”; and

WHEREAS, the Applicant submitted a Full Environmental Assessment Form (“FEAF”) on September 2, 2022; and

WHEREAS, the Planning Board classified the action as an unlisted action, and commenced a coordinated review by declaring its intent to serve as SEQRA Lead Agency on September 8, 2022, and circulated notice of its intent on September 15, 2022; and

WHEREAS, the Planning Board confirmed its status as SEQRA Lead Agency on November 10, 2022; and

WHEREAS, the Applicant supplemented the FEAF with additional submissions to the Planning Board on February 22, 2023 and May 24, 2023 and July 26, 2023; and

WHEREAS, the Planning Board reviewed and adopted Parts II and III of the FEAF on August 17, 2023, and based on the potential for several adverse environmental impacts as identified in the adopted FEAF Part II and III, the Planning Board adopted a Positive Declaration on August 17, 2023; and

WHEREAS, the Applicant submitted an initial Draft Scope on August 30, 2023; and

WHEREAS, the Planning Board considered the initial Draft Scope at its September 14, 2023 meeting, and authorized a public scoping session for the October 12, 2023 meeting; and

WHEREAS, the Planning Board held the public scoping session on the Draft Scope on October 12, 2023; and

WHEREAS, the Planning Board adopted the Final Scope on November 9, 2023; and

WHEREAS, the Applicant submitted a proposed Draft Environmental Impact Statement (“DEIS”) on March 27, 2024, which the Planning Board reviewed and determined to be inadequate with respect to its scope and content for the purpose of commencing public and agency review at its May 9, 2024 meeting; and

WHEREAS, the Applicant submitted a revised proposed DEIS on June 26, 2024, and the Planning Board determined on July 11, 2024 that the DEIS was adequate for the purpose of commencing public and agency review, and filed a Notice of Completion of the DEIS as required by the SEQRA regulations; and

WHEREAS, the Planning Board held a combined public hearing on the DEIS and on the proposed Site Development Plan and Special Use Permit applications on September 12, 2024, which combined public hearing was closed on that same date, with written comments accepted by the Planning Board until October 3, 2024; and

WHEREAS, the Applicant submitted a draft Final Environmental Impact Statement (“FEIS”) on March 26, 2025; and

WHEREAS, the Planning Board considered and commented on the draft FEIS at its April 10, 2025 meeting; and

WHEREAS, the Applicant submitted a revised draft Final Environmental Impact Statement (“FEIS”) on May 28, 2025; and

WHEREAS, due to the substantial disagreement between the viewpoints expressed in the draft FEIS prepared by the Applicant and those of the Planning Board, on June 12, 2025 the Planning Board authorized Elizabeth Axelson, AICP, with CPL, as the Town Planner, to take over the preparation of the FEIS; and

WHEREAS, the Planning Board considered the draft FEIS revised by the Town Planner at its July 10, 2025 meeting, and the Planning Board adopted the FEIS at its August 14, 2025 meeting; and

WHEREAS, the Notice of Adoption of the FEIS was circulated to all interested and involved agencies on August 20, 2025; and

WHEREAS, the Notice of Adoption of the FEIS was posted in the Environmental Notice Bulletin on September 4, 2025, which posting commenced the minimum ten (10) day FEIS consideration period required by 6 NYCRR 617.11(a); and

WHEREAS, in accordance with both the minimum ten (10) day FEIS consideration period and the requirement to file written findings within thirty (30) days of the filing of the FEIS as required by 6 NYCRR 617.11(b), the Planning Board adopted a SEQRA Findings Statement on October 2, 2025; and

WHEREAS, the adopted FEIS and SEQRA Findings Statement set forth the Planning Board's response to comments on the Proposed Project, in addition to the Planning Board's previously expressed environmental concerns about the Proposed Project, and the Planning Board's concerns that the Proposed Project does not meet the criteria set forth in Town of Fishkill Zoning Code § 150-19(B); and

WHEREAS, the adopted SEQRA Findings Statement set forth the Planning Board's conclusions that the Proposed Project does not avoid or minimize adverse environmental impacts to the maximum extent practicable and that adverse environmental impacts will not be avoided or minimized to the maximum extent practicable; and

WHEREAS, the Planning Board received the input from the Town's Building Inspector on the "substantially similar" determination on September 6, 2024; and

WHEREAS, the Planning Board was assisted in its review of the application by its professional consultants, including Jon Bodendorf, P.E. and Dennis Lynch, P.E., Town Engineers, Elizabeth Axelson, AICP, Town Planner, and Dominic Cordisco, Esq., Planning Board Attorney;

WHEREAS, the Planning Board has reviewed the application materials, the project plans, all supporting documentation and other materials submitted by the Applicant, all of the comments submitted by the public and interested and involved agencies, and its own observations and have compared these materials with the conditions and standards that must be met for Substantially Similar Determination and also the issuance of the Special Use Permit and Site Development Plan approvals;

WHEREAS, a duly noticed public hearing on the Site Development Plan and Special Use Permit was opened on September 12, 2024 and public comments were accepted through October 3, 2024, during which time all those interested were given the opportunity to be heard, and a full duplicate copy of the application materials were placed on file with the Planning Office for inspection prior to the public hearing and during the comment period; and

NOW, THEREFORE, BE IT RESOLVED, that the Planning Board hereby incorporates by reference herein the SEQRA Findings Statement heretofore adopted by the Planning Board which sets forth the Planning Board's determinations as SEQRA Lead Agency that the Proposed Project does not avoid or minimize adverse environmental impacts to the maximum extent practicable and that adverse environmental impacts will not be avoided or minimized to the maximum extent practicable, and that a true and complete copy of the SEQRA Findings Statement is hereby annexed hereto; and

BE IT FURTHER RESOLVED that the Planning Board hereby determines that the Proposed Use is not substantially similar to other uses allowed in the RB District in accordance with Town of Fishkill Zoning Code § 150-19(B)(1)(a) through (d) for the foregoing reasons:

- (a) The Planning Board finds that the Proposed Project does not meet the intent of, and be consistent with, the goals, objectives and policies of the Comprehensive Plan:

The proposed use is not consistent with the 2009 Comprehensive Plan that "The street is our most important public space...", Reference is made to the 2009 Comprehensive Plan throughout the Comprehensive Plan Update adopted in 2023 (the "2023 CPU").

2023 CPU Goal A, "Connect People and Places", expresses the importance of road networks, sidewalks, pedestrian paths and bicycle trails and lanes for connecting neighborhoods, businesses and other public spaces. CPU objectives express the need for extended and connected sidewalks and pedestrian crossings to "provide continuous, safe pedestrian access from and to residential and nonresidential (business, service, community, etc.) uses in these settled areas". Other CPU objectives speak to connecting neighborhoods, shopping areas and regional trails; intermunicipal coordination for sidewalks and pedestrian crossings; public spaces that are safe for pedestrians and cyclists; and expanded bike lanes including commuter needs.

2023 CPU Goal B, "Promote Good Design of the Built Environment", emphasizes the community's desire to foster an attractive community, stimulate private investment while emphasizing smart growth including walkable neighborhoods, and communities with a strong sense of place. The first two CPU goals clearly state the importance of the street as a public space and the importance of walkable and bicycle-friendly places.

A community that includes places for people to go that is in or near their neighborhood is an important factor of the role of a street as a public space. The stated purpose of the RB District is "Intended to include residential uses in a nonresidential zone with limited business, institutional and recreational uses, which are appropriate adjacent to residential areas." Other existing RB zoned sites are developed with a professional/medical office, a rehabilitation/long-term care facility, and a catering/event venue. There are many uses that are permitted in the RB District that would be more suitable in the site's context and more consistent with the street as public space than the proposed self-storage facility.

The 2023 CPU emphasized the importance of the Route 9D Northern Gateway Corridor, which would not be enhanced by a self-storage facility at the intersection of Interstate 84 and NYS Route 9D. As noted by the Dutchess County Department of Planning and Development

in a June 4, 2021 letter to the Planning Board: "...self-storage is a particularly inactive use, typically associated with large sites, gates, and little activity. This use can deaden an area or corridor."

The proposed self-storage use is not consistent with the 2023 CPU goals discussed above and the 2009 Comprehensive Plan. The proposed self-storage use does not meet the intent of, and is not consistent with the goals, objectives and policies of the 2023 CPU, so this aspect of the test for substantial similarity at 150-19. B. (1)(a) is not met.

- (b) The Planning Board finds that the Proposed Project does not meet the stated purpose and legislative intent of the RB District in which the use is proposed to be located per the legislative intent of given district regulations, or those given in § 150-13:

The RB District stated purpose, as set forth in Zoning Code §150-13, is "intended to include residential uses in a nonresidential zone with limited business, institutional and recreational uses which are appropriate adjacent to residential areas." Self-storage uses are allowed in other districts in the Town of Fishkill that allow more intense commercial development compared to the RB District. The RB District's first permitted as-of-right use is residential, with limited business, institutional and recreational uses that are appropriate adjacent to residential uses. The reasons set forth above regarding the Proposed Project's inconsistency with the 2023 CPU and 2009 Comprehensive Plan apply here to demonstrate that the Proposed Project is not consistent with the other uses allowed in the RB District.

The existing uses surrounding the site include:

- Interstate 84 (I-84) right-of-way (ROW) and business, congregate care and residential uses to the north;
- I-84 ROW to the east and north;
- An extensive single-family residential neighborhood to the south with extensive residential neighborhoods to the south and southwest in the City of Beacon; and
- Route 9D, sidewalks, a golf course, and a recreational trail, the Trail of Two Cities along the site's frontage, a Hudson River Valley Greenway trail, connecting Fishkill and Beacon with views of the Hudson River to the west.

The existing zoning districts surrounding the site include:

- R-15 (One-Family Residence District) and RB (Restricted Business) zoning districts to the north;
- R-15 (One-Family Residence District) to the east;
- R-15 (One-Family Residence District) to the south with R1-7.5 zoning in the residential neighborhood to the south in the City of Beacon; and
- R-15 (One-Family Residence District) to the west.

In the RB District, the principal permitted uses include any use permitted in the R-15 Residence District:

- residential, community, or religious uses;
- private schools, day nurseries, public libraries, museums, and art galleries;
- hospitals, nursing homes, convalescent homes, medical and dental clinics;
- tourist homes or boarding houses;
- Designed multiple-use developments (subject to § 150-71);
- Conversion of buildings constructed prior to 1960 to a two-family or multifamily use under certain conditions; and
- offices or studios of physicians, artists, architects, engineers, surveyors, lawyers, public accountants, real estate, insurance or other brokers under certain conditions.

The RB zone also permits the following uses, subject to a special use permit:

- “Motels, hotels, resorts, recreation and cultural activities, and restaurants or other places serving food or beverage, but not to include fast-food establishments.”
- “Professional offices, including medical and dental clinics in accordance with § 150-123”; and
- “Congregate Care Facilities in accordance with § 150-127.”

A common aspect of all of these uses is that they invite public engagement, unlike self-storage uses that, albeit could be less frequently frequented by the general public, have little to no relationship to the nearby residences. The very nature of the RB District is to allow residential use and limited commercial uses that are compatible with and do not adversely affect those residential uses. The limited commercial uses that are allowed provide the surrounding community with needed accommodations, food, services and jobs – none of which would be provided by the Proposed Project.

Accordingly, the Proposed Project is not consistent with the intent of the RB zoning district.

- (c) The Planning Board finds that, as set forth in detail in the SEQRA Findings Statement heretofore adopted by the Planning Board, the Proposed Project does not avoid or minimize adverse environmental impacts to the maximum extent practicable and that adverse environmental impacts will not be avoided or minimized to the maximum extent practicable.
- (d) The Planning Board finds that the Proposed Project does not share characteristics in common with, and would be of greater intensity, density, and generate more environmental impact, including but not limited to having greater adverse effects upon traffic, noise, air quality, parking, or any other reasonably relevant attribute than those uses listed in the RB District:

The proposed self-storage use would be of greater intensity than the uses listed in the RB zoning district. Specifically, in the Town’s zoning, the RB District is placed in the progression of the nonresidential zoning districts with the less intense and more limited or restricted zones, which are the LHC (Local Historic Center), RB (Restricted Business), and

PB (Planned Business). In contrast, self-storage is permitted only in the more intense and less limited or restricted zoning districts, PSC (Planned Shopping Center), GB (General Business), and PI (Planned Industry).

BE IT FURTHER RESOLVED that, as noted above, in order to qualify for a determination that the Proposed Project is substantially similar to other uses allowed in the RB District, and thus qualify for consideration of a Special Use Permit, the Proposed Project must meet all of the criteria set forth in Town of Fishkill Zoning Code § 150-19(B)(1)(a) through (d). For the reasons set forth herein and in the SEQRA Findings Statement, the Planning Board hereby determines that the Proposed Project does not meet any of the criteria set forth in Town of Fishkill Zoning Code § 150-19(B)(1)(a) through (d) and is thus not substantially similar to the uses allowed in the RB District; and

BE IT FURTHER RESOLVED as a result thereto, that the Planning Board cannot consider nor grant a Special Use Permit for the Proposed Project pursuant to Town of Fishkill Zoning Code § 150-105 *et seq.* due to the Proposed Project not meeting the criteria set forth in Town of Fishkill Zoning Code § 150-19(B)(1)(a) through (d); and

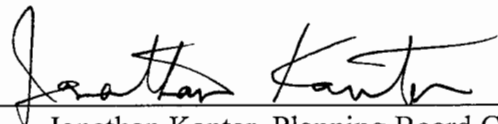
BE IT FURTHER RESOLVED that the Planning Board cannot consider nor grant a Site Development Plan approval for the Proposed Project pursuant to Town of Fishkill Zoning Code § 150-95 *et seq.* due to the Proposed Project not meeting the criteria set forth in Town of Fishkill Zoning Code § 150-19(B)(1)(a) through (d); and

BE IT FURTHER RESOLVED that the Planning Board cannot consider nor grant a Certificate of Appropriateness for the Proposed Project pursuant to Town of Fishkill Zoning Code § 150-137(C) due to the Proposed Project not meeting the criteria set forth in Town of Fishkill Zoning Code § 150-19(B)(1)(a) through (d); and

BE IT FURTHER RESOLVED that the Planning Board of the Town of Fishkill hereby adopts this Resolution of Determination for the Proposed Project.

Resolution adopted on: October 2, 2025

October 6, 2025
Date



Jonathan Kanter, Planning Board Chair

cc: Supervisor Albra & Town Board Members
Elizabeth Axelson, AICP, Town Planner
Amanda C. Caputo, City Clerk - City of Beacon
Lee Kyriacou, Mayor and City Council Members - City of Beacon
Tanya Clark, P.E., DC Department of Behavioral & Community Health
Dominic Cordisco, Esq., Town Planning Board Attorney
Jennifer F. Coccozza, Vice Commissioner - DC Department of Planning and Development

David Groucher, Highway Work Permits - NYS Department of Transportation
Christian Harkins, Assessor
Dennis Lynch, P.E., Town Engineer
Tracy O'Malley, Regional Permit Administrator- NYS Dept. of Environmental Conservation
Joel J. Petrus, Town Building Inspector/Zoning Administrator
Rebecca Tompkins, Town Clerk
Timothy Tyrrell, Town Zoning Board of Appeals Chair & Members
Alec Gladd, Esq. for the Applicant
Aaron Werner, AICP for the Applicant

Drawings and renderings submitted for this proposal prepared by architect Aryeh Siegel are as follows:

1. Drawing 1, entitled "Cover Sheet," dated November 16, 2021, last revision date of June 26, 2024, at scales as noted;
2. Drawing 2, entitled "Site Plan," dated November 16, 2021, last revision date of June 26, 2024, at scales as noted;
3. Drawing 3, entitled "Building Elevations, Rendering & Details," dated November 16, 2021, last revision date of June 26, 2024, at scales as noted;
4. Drawing 4, entitled "Site Sections," dated November 16, 2021, last revision date of June 26, 2024, at scales as noted;
5. Drawing 5, entitled "1st Floor Plan," dated June 13, 2024, last revision date of June 26, 2024, at scales as noted;
6. Drawing 6, entitled "2nd Floor Plan," dated June 13, 2024, last revision date of June 26, 2024, at scales as noted.

Drawings submitted for this proposal prepared by Lawrence J. Paggi, P.E., PC are as follows:

1. Drawing No. C1, entitled "Existing Conditions, Demolition Plan," dated December 14, 2022, last revision date of May 24, 2023, at scales as noted;
2. Drawing No. C2, entitled "Grading, Erosion & Sediment Control Plan," dated December 14, 2022, last revision date of January 30, 2024, at scales as noted;
3. Drawing No. C3, entitled "Utility Plan," dated December 14, 2022, last revision date of January 30, 2024, at scales as noted;
4. Drawing No. C4, entitled "Lighting Plan," dated December 14, 2022, last revision date of January 30, 2024, at scales as noted;
5. Drawing No. C5, entitled "Erosion Control Details," dated December 14, 2022, last revision date of May 24, 2023, at scales as noted;
6. Drawing No. C6, entitled "Construction Details," dated December 14, 2022, last revision date of May 24, 2023, at scales as noted;
7. Drawing No. C7, entitled "Construction Details," dated December 14, 2022, last revision date of May 24, 2023, at scales as noted;
8. Drawing No. C8, entitled "SDS Construction Details," dated December 14, 2022, last revision date of May 24, 2023, at scales as noted;
9. Drawing No. C9, entitled "Water Service Construction Details," dated December 14, 2022, last revision date of May 24, 2023, at scales as noted;

Drawings for this proposal prepared by The Michael Boice Collaboration are as follows:

10. Drawing No. L1, entitled "Planting Plan," dated May 10, 2023, last revision date of June 6, 2024, at scales as noted;
11. Drawing No. L2, entitled "Planting Notes & Specifications," dated May 22, 2023, last revision date of June 6, 2024, at scales as noted.