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April 3, 2023

Town of Wappinger Planning Board  
20 Middlebush Road  
Wappingers Falls, New York 12590

Re: CarMax Superstore; Tax Parcel #6156-02-664986  
File Nos. 21-3439 and 22-4100

Dear Chairman Flower and Planning Board Members:

This office owns and rents property at 1099 Route 9, adjacent to the south of the proposed Carmax which is the subject of site plan and special use permit applications presently before the Board. This application can directly impact our, and our abutting, longstanding, and local family owned community businesses. Our tenant operates a restaurant and the site has been used as such for decades.

First, we applaud the Town for having adopted a good lighting ordinance and we urge the Planning Board to strictly apply the required conditions for granting waivers in keeping with the intent of the Town and why they adopted the law in the first place as well as other issues.

Kindly accept this letter as our opposition to aspects of the Carmax Application plan, its zoning compliance, its potential for...(as yet, not investigated)...consequential environmental impacts, its SEQR process, compliance with Special Use Permit provisions; and, its lack of existing community sensitive design. Our consultants Stenger, Diamond & Glass, LLP and Planning Consultant, Matthew D. Rudikoff Associates, Inc. are submitting more technical commentary on lighting, on and offsite water wells, landscaping, security and others. We make reference to those submissions and incorporate them by reference herein.

The Planning Board has the authority and responsibility to make sure that an approvable Carmax will address reasonable and practical measures to make the project be as impact free a neighbor as possible.

Specific areas of concern include:

## Lighting

The Lighting Plan submitted thus far is not Code Complaint as follows:

- a. The current Code mandates that the maximum parking lot pole light is 15'. The applicant is submitting a plan for poles with heights of 19', with 17' poles atop 2' pedestals.
- b. The Applicant has been requested to submit a lighting plan that would be Code compliant but has failed to do so. The Applicant has made the argument that less light poles would be needed by making the poles higher. This seems to us that the Applicant is merely trying to save money on poles rather than complying with Code requirements.

We call the Board's attention to the location of the parking light poles. It is clear that there are a multitude of poles concentrated along Route 9 and Smithtown Road. The Applicant, among other things, asserts that security is a concern for the number of poles thus resulting in footcandle readings in very high footcandle readings. Conversely, lighting in the parking areas in the southernly portion of the site is sparsely lit. The areas along the public highways, it would seem, would be less likely to be an area where vandals or thieves would strike but those are the areas excessively lit. The areas where vandals and thieves would likely strike are behind the buildings, yet those areas are sparsely lit. Therefore, it seems as though the intent of the lighting plan is not to provide security but rather to advertise car inventory along the public highways in a blinding way. Again, even though requested by the Town's consultants, the Applicant has failed to provide a Code Compliant plan for comparative purposes.

We submit that the lighting plan is flawed in that the footcandle computations are determined without regard to parked cars under the lights. We submit that the light upon blacktop will deaden the footcandles and this standard was used to show footcandles on the Applicant's lighting plan; but, when the light is reflected off cars, chrome, windshields, etc, the footcandles would be greater and quite possibly result in light trespass to our properties.

The Applicant is requesting that the Planning Board issue and grant a waiver for the pole height. Granting a waiver is tantamount to granting a variance. While the Planning Board has the discretion under the Town Code §240-88 to grant this waiver, the Code does not establish any criteria for the Planning Board to consider in granting or denying a waiver. Therefore, we respectfully submit that the Board should weigh the same- or similar statutory criteria set forth in Town Law §267-B(3) as it pertains to granting area variances. In other words, it is submitted that the Planning Board should review some type of standard or criteria in making a determination as to whether a waiver is appropriate. Therefore, an analysis of whether a waiver should be granted is appropriate using the variance criteria.

In making a determination for a waiver, the applicant should show:

1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of a variance.
2. Whether the benefit sought by the applicant can be achieved by some other method, feasible for the applicant to pursue, other than a variance. Clearly, the applicant can comply with Code requirements instead of requesting waivers. As for lighting, it appears that the only reason behind the waiver request is financial, the cost of more poles.
3. Whether the requested variance is substantial. Clearly, the variance is substantial. The increase in pole height is approximately 26.6%.

4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood. Again, light pollution may result in the granting of a waiver of pole height. Upon information and belief, the Town Board went through an analysis of its lighting code specifications and codified the Code in recent years to cut down on light pollution along Route 9. The codifications should not be an exercise in futility but something that the Planning Board should adhere to. Moreover, it is our understanding that the Planning Board held to a strict adherence to the lighting standards on another auto dealership on Route 9.
5. Whether the alleged difficulty was self-created. Absolutely. The applicant could very well revise its plan to become code compliant without jeopardizing its lighting intent for the site.

The application is silent as the hours of operation of the outside lighting. Will the lights be kept on all night? Can the Applicant use motion detectors to control when the outside lighting comes on?

All in all, it is our opinion that the lighting plan, as submitted, is not Code Compliant and would essentially light up the area like a football stadium. We respectfully submit that there will be excessive light trespass/pollution upon our property to our detriment and we oppose the issuance of a waiver of any lighting plan which is not Code Compliant.

### **Water**

The site under review is not serviced with municipal water or sewer. Rather, the site has a well as do neighboring properties including our site. We think that it is a fair assumption that there will be a great deal of water used for washing and detailing automobiles at CarMax. The substantial use of water will also have a direct impact on stormwater drainage. Moreover, it is quite possible that contaminants such as gasoline and oil will become part of the car wash water which would be contrary to Performance Standard Code §240-103(E) and (J). We do not see any discussion that appropriate steps will be taken to ensure that there will not be any contaminants placed into the surface or groundwater runoff.

The substantial use of water at CarMax may have a detrimental impact on our water supply and well. The FEAF (D.2.c.) states that it is *estimated* that CarMax will use 700 gallons of water per day. The application is silent as to the method used to determine this estimated water usage. It is interesting to note that the Applicant has not provided any expert data or opinion that the water usage will not have a detrimental impact on neighboring properties. We respectfully submit that the PB should require specificity for this calculation, how water from the car wash will be handled and how this water usage will impact surrounding wells.

We submit that before any approvals are granted the Applicant should conduct a study assessing the impact of the water uses for CarMax and how such use would impact neighboring wells.

### **Special Use Permit**

Code §240-44 provide general standards for the application of any Special Use Permit (SUP). We respectfully request that the Board strictly construe each and every standard in determining whether a SUP should be granted to the Applicant.

### **Conclusion**

We respectfully submit that the Planning Board should keep the public hearing open until such time as further studies and information can be supplied to the Planning Board and for the public to make comment.

We also request that the applicant respond to all comments made during the public hearing process.

Very truly yours,



Frank Redl  
Project Manager