

COPY

STATE OF NEW YORK: COUNTY OF ULMSTER
TOWN OF MARLBOROUGH ZONING BOARD

In the Matter of
CHESTNUT PETROLEUM DISTRIBUTOR,
#1417 Route 9W
Marlboro, New York 12542

TAX PARCEL: SECTION 109.1; BLOCK 4; LOT 14 (HD ZONE)

DATED: February 11, 2016
7:00 p.m. - 8:24 p.m.

Town of Marlborough Town Hall
#21 Milton Turnpike
Milton, New York 12547

Jennifer Cea, Reporter

MINUTES

OF

PUBLIC HEARING

1 APPEARANCES:

2

3

4 BOARD MEMBERS:

5

6 BILL GIAMETTA, Chairman
7 JEFF MEKEEL
8 DAVE ZAMBITO
9 LENNY CONN
10 GEORGE SALINOVICH

11

12

13 RONALD C. BLASS JR., ESQ.

14

15

16 THOMAS CORCORAN JR.,
17 Building Inspector/Code Enforcement

18

19

20 PENNY E. CASHMAN, Zoning Board Secretary

21

22

23 LEO NAPIOR, ESQ.
24 Applicant's Representative

25

1 CHESTNUT PETROLEUM DISTRIBUTOR

2 BY CHAIRMAN GIAMETTA: Good
3 evening, everyone. It is about 7:00,
4 a few minutes past, February 11.
5 Welcome to the Town Hall. I'd ask you
6 to join us for the pledge to the flag.

7

8 (PLEDGE OF ALLEGIANCE)

9

10 BY CHAIRMAN GIAMETTA: Thank you
11 very much. On our agenda this evening
12 the first matter is a review of the
13 minutes from the last meeting, January
14 28, and approval, if they're in order,
15 proceeded by a motion for an approval.
16 Does anybody have any concerns about
17 those minutes?

18 BY MR. ZAMBITO: I have one
19 change.

20 BY CHAIRMAN GIAMETTA: One
21 change.

22 BY MR. ZAMBITO: Page seven,
23 line 22, it says, it is 109 feet. I
24 actually said it was 190. I don't
25 think that makes a difference.

1 CHESTNUT PETROLEUM DISTRIBUTOR

2 BY CHAIRMAN GIAMETTA: Let the
3 record reflect the correction of 109
4 foot to correct the amount being 190
5 feet as per Mr. Zambito. Was there
6 anything else regarding those minutes,
7 corrections, deletions, modifications?
8 I'll ask for a motion to approve those
9 minutes of January 28.

10 BY MR. MEKEEL: I'll make a
11 motion we approve the minutes from the
12 January 28, 2016 meeting.

13 BY MR. ZAMBITO: Second.

14 BY CHAIRMAN GIAMETTA: A vote?

15 BY MR. CONN: Yes.

16 BY MR. SALINOVICH: Yes.

17 BY MR. MEKEEL: Yes.

18 BY MR. ZAMBITO: Yes.

19 BY CHAIRMAN GIAMETTA: And yes.

20 The minutes are approved. Thank you
21 very much. Let it be known that this
22 meeting is a continuation of a public
23 hearing from July 9, 2015. It
24 continues on this evening, and having
25 said that, I'll ask the Applicant to

1 CHESTNUT PETROLEUM DISTRIBUTOR
2 present the case once again, summarize
3 it.

4 BY MR. BLASS: Will you read the
5 public hearing notice, Chairman?

6 BY CHAIRMAN GIAMETTA: Yes, sir.

10 BY MR. ZAMBITO: (Reading)

11 Please take notice that a continuation

12 of the public hearing from January 14,

13 2016 will be held by the Town of

14 Marlborough Zoning Board of Appeals at

15 the Town Hall, 21 Milton Turnpike,

16 Milton, New York on February 11, 2016

17 at 7:00 p.m. or soon thereafter as may

18 be heard on the following issues as

19 they may pertain to the two pending

20 area variance applications for a .07

21 acre area variance from minimum lot

22 size of two acres and an area variance

23 to allow placement of accessory

24 structures to the front of a principal

25 building.

1 CHESTNUT PETROLEUM DISTRIBUTOR

2 One, review of any intervening
3 SEQRA matters at the Marlborough
4 Planning Board, and two, matters
5 pertaining to Section 155-27(D) (1) of
6 the Marlborough Town Code which
7 establishes 500 feet of separation of
8 automobile service and filling
9 stations from the intersection of
10 street lot lines.

11 Owner/Applicant Chestnut
12 Petroleum Distributor has made area
13 variance requests concerning property
14 located at 1417 Route 9W, Marlborough,
15 New York 12542 as follows: A, A.07
16 acre area variance from minimum lot
17 size of two acres, and B, an area
18 variance to allow placement of
19 accessory structures to the front of a
20 principal building.

21 Tax Parcel, Section 109.1, Block
22 4, Lot 14 (HD Zone), please take
23 further notice that the public hearing
24 shall also constitute an initial
25 public hearing on the following

1 CHESTNUT PETROLEUM DISTRIBUTOR

2 pertaining to the same applicant, and
3 the same address stated hereinabove:

4 A, an appeal and request for
5 interpretation by Chestnut Petroleum
6 Distributor concerning whether Section
7 155-14 (C) of the Marlborough Town Code
8 applies to the subject parcel, and B,
9 an area variance application by
10 Chestnut Petroleum Distributor to vary
11 the provisions of Section 155-27 (D) (1)
12 of the Marlborough Town Code regarding
13 placement of an automobile service and
14 filling station closer than 500 feet
15 to the intersection of two street lot
16 lines.

17 Any interested parties, either
18 for or against this application, will
19 have the opportunity to be heard at
20 this time. William Giometta,
21 Chairman, Town of Marlborough Zoning
22 Board of Appeals.

23 BY CHAIRMAN GIAMETTA: Thank you
24 very much. Counsel, correct me if I
25 am wrong, but we do have a C item

1 CHESTNUT PETROLEUM DISTRIBUTOR

2 before us also, as far as
3 consideration, the 500-foot
4 requirement?

5 BY MR. BLASS: Yes, that is B.

6 BY CHAIRMAN GIAMETTA: B or C?

7 BY MR. BLASS: Well, there is no
8 item --- on the second page of the
9 public hearing notice item B, that is
10 a request for variance of the ---

11 BY CHAIRMAN GIAMETTA: Okay. On
12 my other document it is shown as A, B
13 and C. On the legal notice it is A
14 and B. Thank you very much. I
15 believe we're ready for Mr. Napior.
16 Is that how you pronounce your name?

17 BY MR. NAPIOR: Correct. For
18 the record, Leo Napior on behalf of
19 the law firm Harfeinist, Kraut &
20 Perlstein. I guess one matter of
21 housekeeping. I have the certificate
22 of mailing, I don't know if I hand
23 those to you, to the clerk.

24 BY CHAIRMAN GIAMETTA: You hand
25 them to us. We're going to have to

1 CHESTNUT PETROLEUM DISTRIBUTOR

2 take a few moments to count those.

3 BY MR. NAPIOR: Mr. Corcoran
4 just told me that's how they do it,
5 but on my count there was 50 mailed
6 out and 35 received back.

7 BY CHAIRMAN GIAMETTA: All
8 right. We're going to have to take a
9 few moments to count ourselves. You
10 have 51 certified mailed letters
11 filled out. We count 51.

12 BY MR. NAPIOR: I was off by
13 one.

14 BY CHAIRMAN GIAMETTA: How many
15 responses?

16 BY MR. ZAMBITO: 35 plus one
17 returned.

18 BY CHAIRMAN GIAMETTA: 35 signed
19 for responses, one document returned.
20 So let that information be on the
21 record --- it was one document not
22 claimed. Mr. Napier, if you will.

23 BY MR. NAPIOR: One other matter
24 of housekeeping, I have a written
25 submission that is in the letter from

1 CHESTNUT PETROLEUM DISTRIBUTOR

2 John Rusk dated January 21, and in the
3 interest of saving trees, I did not
4 copy all the exhibits. I have one
5 original, as well as just copies of
6 the cover letter, and I'll give the
7 clerk a loose copy, to the extent that
8 meets --- the documents that are
9 included as exhibits ---

10 BY CHAIRMAN GIAMETTA: Make sure
11 the reporter gets this clearly on the
12 record. If you would, again, please.

13 BY MR. NAPIOR: Sure. The
14 documents that are attached as
15 exhibits to this submission are all
16 documents that have been produced
17 before the Planning Board and the
18 companion site plan application so all
19 the documents that have been of record
20 and on file with the town already.
21 That being the case, they had not been
22 formally submitted to the Board, so I
23 include them in this submission.

24 I will briefly roll through the
25 letters, a lot of the points that were

1 CHESTNUT PETROLEUM DISTRIBUTOR
2 raised that have been previously
3 addressed at prior meetings, so that
4 is not to bore this Board to death.
5 The Rusk letter of January 21, as well
6 as the presentation at the last public
7 hearing on this matter, attached a
8 number of documents and information
9 concerning alleged crimes that had
10 taken place at my client's --- at
11 properties owned in other
12 municipalities by my client. I set
13 forth that is really irrelevant to the
14 application before you. That really
15 is just an attempt to cast my client
16 in a bad light and oppose use in a bad
17 light, and really it is at odds with
18 the principals set forth by the Court
19 of Appeals in Dexter versus the Town
20 Board of the Town of Gates, wherein it
21 was held it is a fundamental principal
22 of zoning that the Zoning Board is
23 charged with the regulation of land
24 use, not with the person who uses it,
25 owns or occupies it. It is the

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2 maximum of zoning for use versus user.

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2 from a neighboring property owner that
3 they would be interested in selling my
4 client a chunk of land. Putting aside
5 the fact that I don't believe a
6 variance is necessary, even if you
7 were to determine one was, my client
8 is 0.7 acres shy of meeting minimum
9 lot size requirements. That return
10 from a Miss Tapia indicated she owns
11 2.2 acres of land and would be
12 interested in selling the entire 2.2
13 acres for \$550,000 or perhaps one acre
14 for assumingly a lesser amount. The
15 shortfall being .07 acres would not
16 --- there is no fiscal rationale for
17 my client to approach and pursue
18 purchasing additional acre of land or
19 2.2 acres of land when their shortfall
20 is .07 acres. The two-one balance
21 doesn't make much sense.

22 In addition, Rusk raises various
23 arguments with respect to we have
24 failed to explore alternatives other
25 than seeking area variance.

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2 Particularly, with respect to citing
3 to Miss Tapia's letter, even if we
4 were to acquire neighboring property
5 and take care of the minimum lot size
6 variance that was required, the
7 application would still require an
8 area variance for the location of the
9 pump and canopies, as well as setbacks
10 for the intersection of James, slash,
11 Mount Rose Road and 9W. Therefore, we
12 would still be before your Board
13 seeking relief and really it would be
14 a hollow victory.

15 There were various issues raised
16 concerning traffic, which I know
17 traffic and stormwater are not
18 typically things that are privy to
19 this Board, rather they're issues
20 before the Planning Board during the
21 site plan approval process. That
22 being said, I did include in our
23 submission a copy of the traffic study
24 that was performed and submitted to
25 the Planning Board as well as the

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2 addendum to the traffic study, all of
3 which conclude there will be no
4 negative significant impacts to the
5 traffic conditions along 9W. In
6 addition, in the review by the
7 Planning Board, the Planning Board
8 retained Creighton and Manning to
9 perform independent review of the
10 traffic study performed by the
11 Applicant, and Creighton and Manning
12 found the methodology and conclusions
13 contained in the Applicant's traffic
14 study to be acceptable within industry
15 standards.

16 There are also alleged issues
17 with respect to the site being used as
18 a gas station due to stormwater
19 management concerns and oil discharge
20 off the site. I won't bore you with
21 the details. There was an extensive
22 stormwater pollution prevention plan
23 that had been modified several times
24 during the pendency of the application
25 before the Planning Board. Ultimately

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2 that went through, I would say, three
3 or four different provisions before it
4 was finally accepted by the Planning
5 Board's consultants, McGoey, Hauser &
6 Edsall and also being acceptable by
7 the Planning Board enough to adapt a
8 SEQRA negative declaration.

9 The Rusk letter also questions
10 the proposed septic system, and I
11 would just simply note that the Ulster
12 County Board of Health has already
13 approved the proposed septic system
14 and I won't comment on that any
15 further.

16 The Rusk letter also notes the
17 potential historic nature of the
18 Colonel Lewis DuBois house across the
19 street from the subject property. At
20 the time this process started, that
21 property had no official recognition
22 as being historic property. While the
23 applications have been pending before
24 your Board and Zoning Board of
25 Appeals, somebody on the Rusk family's

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2 behalf had submitted that property to
3 SHPO for consideration of the building
4 be placed on the National Register of
5 Historic Places. In return, they got
6 a notice of eligibility, which I
7 believe was submitted, if not to your
8 Board, it was certainly submitted to
9 the Planning Board. A notice of
10 eligibility is not the same as being
11 nominated or being placed on the
12 National Register, and so for now the
13 current status is that is all, that it
14 has been potentially eligible to be
15 placed on the register. There is a
16 lot of additional work that is
17 involved to actually have it be marked
18 as a historic site.

19 In addition, the town obtained
20 Strata LLC to perform, again, an
21 independent evaluation of that
22 potential historic cultural resource,
23 and that Strata report is also
24 included in the submission I handed up
25 to you, and that report basically

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2 found that due to the separation, the
3 house is approximately 340 feet from
4 the edge of 9W on their side, so an
5 additional --- with the 9W from the
6 subject site, and there is a fair
7 amount of screening such that the
8 proposed project is not visible from
9 the house itself, even when the
10 foliage is down, and there are
11 photographic studies that are included
12 in that report. We continue to
13 maintain this will have no impact. If
14 that property were ever to be deemed a
15 historic property, it will have no
16 impact on that property, especially in
17 light of the other property along 9W,
18 including DJ Heating & Air
19 Conditioning facilities property right
20 next door which is a large
21 warehouse-looking structure.

22 There has been an ongoing claim
23 concerning whether the Applicant,
24 meaning me, requested a pre SEQRA
25 public hearing before the Planning

1 CHESTNUT PETROLEUM DISTRIBUTOR

2 Board. There has been a lot of letter
3 writing back and forth. It has been
4 raised at various meetings. I believe
5 I may have addressed this at the last
6 meeting. I'll address it briefly
7 again tonight because it came up again
8 in the Rusk letter. At the December
9 21 Planning Board meeting, the
10 Planning Board had scheduled the next
11 --- set forth an indication to make a
12 SEQRA determination at the following
13 meeting, and at that point in time,
14 not having handed any applications in
15 your town before, and different
16 municipalities and different boards
17 having different procedures, I simply
18 asked whether a public hearing needed
19 to be set based either under SEQRA or
20 under the Board's rules and regs. Mr.
21 Blass, at that point in time, said he
22 did not believe so. There was a
23 discussion between Mr. Blass and the
24 Planning Board, and at that point in
25 time, I was on my handheld device

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2 sitting at the table there. I quickly
3 got onto the SEQRA regulations, I
4 looked up myself, I was satisfied no
5 public hearing was required and that
6 was the end of the discussion. That
7 simple exchange has resulted in no
8 less than five or six different
9 letters back and forth, as well as
10 multiple conversations before both of
11 your Boards. I certainly did not
12 request a public hearing and deny the
13 right to have a public hearing, that
14 was not the exchange.

15 BY CHAIRMAN GIAMETTA: You were
16 not requesting a public hearing at
17 that time?

18 BY MR. NAPIOR: I simply asked
19 whether one was necessary, and I then
20 appeased myself one was not necessary,
21 I let the issue go.

22 BY CHAIRMAN GIAMETTA: You asked
23 if one was necessary?

24 BY MR. NAPIOR: Correct. As you
25 were all aware, and as you read off on

1 CHESTNUT PETROLEUM DISTRIBUTOR
2 the public notice, we have modified
3 our application to request a setback,
4 an area variances minimum setback
5 required from a two street lot line
6 intersection. The subject property is
7 approximately 200 feet from the
8 intersection of James Street, slash,
9 Mount Rose Road and 9W. I believe I
10 had mentioned this at your last
11 meeting, given that was a hearing,
12 I'll just repeat it now. My
13 understanding is that section of the
14 code that requires that minimum
15 separation was adopted at a time when
16 there was a fuel crisis going on
17 during the '70s and you had long queue
18 lines of teeing up at various gas
19 stations. So the thought process was
20 to prohibit gas stations being in
21 close proximity to intersections so as
22 not to have traffic back-up past an
23 intersection and cause traffic issues.
24 Certainly times are different now, and
25 I put before you that the provision of

1 CHESTNUT PETROLEUM DISTRIBUTOR

2 the code is a little antiquated and
3 isn't really relevant in this day and
4 age. In addition, the subject
5 property is fairly large, whereas, in
6 past days, fuel stations might have
7 been limited to a pump, two pumps on
8 much smaller sites. There will be
9 extensive land area here for cars to
10 fuel up, there are multiple fuel pumps
11 as well, so they'll be able to handle
12 a fair bit of traffic.

13 In addition, I understand that
14 Stewart's was granted the identical
15 variance which sits on the
16 intersection of 9W and Milton Turnpike
17 and is literally on the intersection
18 and has a zero setback from that
19 intersection. So to the extent it is
20 relevant for your rationale, there is
21 a precedence in this town to grant
22 such a variance.

23 Lastly, the Rusk letter raises
24 the self-created hardship, nature and
25 your consideration of that factor in

1 CHESTNUT PETROLEUM DISTRIBUTOR
2 determining whether to grant a
3 variance or not. I covered this
4 previously, but virtually any area
5 variance request is a self-created
6 hardship. The exception to that rule
7 is when a property has been upzoned
8 and may not conform or development
9 potential has been stripped away.
10 With that in mind, the courts have
11 routinely held that that is just one
12 factor to be considered and is not
13 determinative in and of itself
14 whether to grant or deny a variance.
15 With that, I'm happy to address any
16 questions from the Board.

17 BY CHAIRMAN GIAMETTA: Do you
18 have any questions, concerns?

19 BY MR. NAPIOR: I do have, I
20 apologize. I did receive on my way
21 out the door here tonight a further
22 letter from John Rusk dated February
23 10, 2016, wherein there are two new
24 issues raised that are not part of my
25 submission that I just handed up. Mr.

1 CHESTNUT PETROLEUM DISTRIBUTOR

2 Rusk states that a variance is
3 required for the open space and states
4 that existing diner is in a non-
5 conforming location. The proposed
6 canopy and fuel pumps are being put
7 back in essence where the diner sits.
8 One of the pumps will encroach a
9 little closer --- not pump, one of the
10 canopy overhangs will encroach a
11 little closer to 9W and the edge of
12 the diner, and in so doing, Mr. Rusk
13 asserts that that is a violation of,
14 that I am reducing the amount of open
15 space on the property. The open space
16 issue, and I don't want --- I'll defer
17 to the building inspector here --- I
18 did take a look through the code, open
19 space as it applies, basically does
20 not apply to this project. The open
21 space requirement comes into play when
22 you have cluster subdivisions and
23 there's dedicated open space as part
24 of that plat processing before the
25 Planning Board. There is no, outside

1 CHESTNUT PETROLEUM DISTRIBUTOR
2 of your typical front, rear and side
3 yard setbacks, there is no open space
4 requirement. I didn't see anything in
5 the code with respect to a minimum of
6 open space in the zoning chart. I
7 don't know if I have that right or
8 wrong.

9 BY MR. CORCORAN: Usually open
10 space is defined by clustering. You
11 have ten acres, you would cluster
12 on five and leave the remaining five
13 on open space, it is not to be
14 touched.

15 BY MR. NAPIOR: So I would
16 assert that that interpretation that
17 Mr. Rusk is trying to set forth is not
18 completely accurate.

19 BY CHAIRMAN GIAMETTA: What code
20 section reference would that be, do
21 you have it?

22 BY MR. CORCORAN: It is under
23 cluster.

24 BY MR. NAPIOR: There's a
25 definition in the code --- I actually

1 CHESTNUT PETROLEUM DISTRIBUTOR
2 have a copy here --- there's a
3 definition in Section 155-1 of the
4 code for usable open space which
5 speaks to unenclosed portion of the
6 ground area of a lot or attractive
7 land containing residential cluster
8 subdivision which is not assigned and
9 it continues on for driveways and
10 other things.

11 BY CHAIRMAN GIAMETTA:

12 Residential?

13 BY MR. NAPIOR: Residential
14 cluster subdivision. There are, in
15 the code, maximum building coverage
16 requirements, things of that nature,
17 all of which the project complies with
18 and we're not seeking variances for.
19 In addition, the Rusk letter says that
20 we are seeking a variance from the
21 500-foot setback of the intersection
22 of two street lot lines and
23 essentially asserts that the Zoning
24 Board's authority is limited to grant
25 area variances ---

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2 BY CHAIRMAN GIAMETTA: Start
3 that over again, that part.

4 BY MR. NAPIOR: Sure, I'll quote
5 from the whole section. The letter
6 quotes to Section 155-40C1 of the
7 code, and provides Zoning Board of
8 Appeals shall have the power upon the
9 appeal from a decision or
10 determination of an administrative
11 official charged with the enforcement
12 of such ordinance or local law to
13 grant area variances from the area or
14 dimensional requirements of such
15 ordinance or local law. And in
16 essence, I'll quote again from John's
17 letter, he is saying that authority
18 applies to the dimensions of a lot or
19 an area of a lot and does not grant
20 authority to the Zoning Board to grant
21 the relief we are seeking from the
22 500-foot setback of the two street
23 intersection.

24 I would simply say, in response
25 to that statement, that that 500 foot

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2 setback is a dimensional requirement
3 of Zoning, no different than a front
4 yard setback is or a side yard
5 setback. To hold that you can only
6 grant area variances with respect to
7 the lot area, i.e. size or the
8 dimensions of the lot, i.e. width
9 would, in essence, mean you could not
10 grant variances for the setbacks of
11 structures within the property since
12 those don't pertain to lot size or
13 area. This is no different from that,
14 or granting a variance for a fence, or
15 granting a variance for parking, all
16 of which are well within your
17 authority under the town law as well
18 as your local ordinance.

19 I think I addressed everything.

20 BY CHAIRMAN GIAMETTA: Thank you
21 very much.

22 BY MR. RUSK: Can we ask
23 questions of the Applicant?

24 BY CHAIRMAN GIAMETTA: Yes,
25 absolutely.

1 CHESTNUT PETROLEUM DISTRIBUTOR

2 BY MR. RUSK: His letter that
3 was submitted today --- my name is
4 John Rusk --- he makes reference to a
5 list of items that have been submitted
6 to you for your consideration. One of
7 those is a letter from the police
8 chief, it is at the bottom of the
9 first page of his, Mr. Napior's letter
10 of February 11. It is a letter from
11 Chief Gerald Cocozza, Jr. dated
12 January 27, 2016. Can I ask how that
13 came into the possession of Mr. Napior
14 or the Zoning Board of Appeals?

15 BY MR. NAPIOR: Certainly. That
16 was submitted --- (interrupted)

17 BY CHAIRMAN GIAMETTA: Mr.
18 Napior, couldn't --- (interrupted)

19 BY MR. BLASS: Let's take a
20 break. So we have a public hearing
21 tonight. The purpose of the public
22 hearing is for the Applicant to make a
23 presentation. The other purpose of
24 the public hearing is to allow anyone
25 from the public to stand up and make

1 CHESTNUT PETROLEUM DISTRIBUTOR

2 whatever statements and take whatever
3 positions, arguments they wish to
4 make. There is absolutely no
5 obligation for a ZBA to convert the
6 process or to pursue a process which
7 entails questioning and answering of
8 participants. So it is fully within
9 your discretion to limit the nature of
10 the public hearing participation to
11 the presentation of statements that
12 the public find to be relevant and
13 appropriate.

14 I'll take the Board back to the
15 spring and summer of 2015, when you
16 will recall, I think prior to or just
17 upon my advent to the process, a
18 process which entailed numerous
19 questions being asked from the public
20 as opposed to statements being made by
21 the public relative to the
22 application. So that is a long way of
23 saying there's absolutely no need for
24 you as a Board to allow the
25 questioning of participants as opposed

1 CHESTNUT PETROLEUM DISTRIBUTOR
2 to the making of statements of
3 advocacy by those interested.
4 BY CHAIRMAN GIAMETTA: Thank
5 you, Counsel. Perhaps there is an
6 answer to that question that would end
7 this point, perhaps there is not.
8 BY MR. BLASS: Well, who knows.
9 The letter of the police chief was
10 written by the police chief to the
11 town supervisor as I recall, and it
12 was also provided to the Planning
13 Board and used by the Planning Board
14 relative to its SEQRA process. The
15 letter of the police chief may be
16 deemed relevant to your proceedings
17 because, if you will recall, at the
18 public hearing of January 14, there
19 was a video deposition presented to
20 this Board showing testimony of a
21 retired undersheriff of Ulster County
22 relative to issues of public safety
23 concerning a 24 hour gas-mart
24 operation, so the letter of the police
25 chief is relevant to that issue. It

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2 was submitted to the Planning Board.
3 Mr. Napior is a participant in
4 proceedings before the Planning Board.
5 He is sharing with you numerous
6 documents which constitute a record of
7 Planning Board proceedings as digested
8 in his letter of February 11, 2016,
9 which he just went through with you,
10 so I hope that answers your question.

11 BY CHAIRMAN GIAMETTA: Yes, it
12 does. Do you concur with Mr. Blass?

13 BY MR. NAPIOR: Yes, my response
14 was going to be it was submitted to
15 the town supervisor, my client
16 forwarded it along to me, and I
17 included it in the package that had
18 been previously presented to the
19 Planning Board.

20 BY CHAIRMAN GIAMETTA: Does that
21 answer your question, Mr. Rusk?

22 BY MR. RUSK: To some extent...

23 BY CHAIRMAN GIAMETTA: Thank
24 you. Yes, sir? Your name, sir?

25 BY MR. GAROFALO: James

1 CHESTNUT PETROLEUM DISTRIBUTOR
2 Garofalo, 3 Young Avenue, Marlborough,
3 New York.

4 BY CHAIRMAN GIAMETTA: Now, Mr.
5 Garofalo, you have spoken before this
6 venue before. Is this new information
7 or something different?

8 BY MR. GAROFALO: Something ---
9 this is new information.

10 BY MR. ZAMBITO: We're not going
11 to hear repetitive information, to be
12 honest. We already heard it six times
13 already. It is starting to beat a
14 dead horse. We know what the concerns
15 are, we're digesting the concerns, we
16 would like to get on with this. I
17 don't want to sit here for another
18 hour and talk about traffic. With
19 that said, I hope the things you have
20 can bring us some new information,
21 not old information. We have heard
22 it. I heard it at the Planning Board
23 meeting, I heard it at these meetings.

24 BY MR. CONN: It is a matter of
25 public record.

1 CHESTNUT PETROLEUM DISTRIBUTOR

2 BY MR. ZAMBITO: We reviewed it,
3 let's get new information. If it is
4 not new information, I'm going to ask
5 you to limit it to three minutes.

6 BY CHAIRMAN GIAMETTA: Well, I
7 would like to hear the new
8 information, please, if you have some.

9 BY MR. GAROFALO: For the
10 general public, I would like to say
11 that I am here as a concerned citizen.
12 I live approximately 1200 feet to the
13 south. I have 35 years experience in
14 transportation planning. I worked for
15 Tim Miller Associates since 1989. I
16 have a Bachelor's degree in civil, a
17 Bachelor's degree in transportation.
18 I will give you the rest of this so
19 you don't have to hear it again
20 (handing).

21 BY CHAIRMAN GIAMETTA: Oh, thank
22 you. I appreciate it. You're well
23 credentialed and it certainly appears.

24 BY MR. GAROFALO: The Planning
25 Board on January 29, I believe,

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2 received a traffic review of the
3 traffic document, that was a Friday.
4 On February 1, there was an
5 engineering letter that was provided
6 to the Planning Board, and on February
7 1 also the environmental assessment
8 form was approved. None of these
9 documents have been, are available to
10 the public. They should be put up on
11 the web site and be available to the
12 public, as well as the Applicant's
13 traffic report, the plans, the
14 Planning Board's finding, the SHPO
15 letters and other appropriate
16 documents.

17 Now, the Applicant mentioned
18 that the review letter determined that
19 the methodology used in their traffic
20 study was fine. A lot of the
21 questions that I have had nothing to
22 do with the methodology. What it had
23 to do with was the sourcing of
24 information and with some of the
25 improvements that were being proposed.

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2 To go back to the other part, I would
3 hope that the Planning Board will
4 consider holding this open until these
5 documents are put up on the web site
6 and available to the public to review.

7 BY MR. ZAMBITO: Can I stop you
8 one second? We're not the Planning
9 Board, we're the Zoning Board.

10 BY MR. GAROFALO: Yes, you have
11 a bunch of documents.

12 BY MR. ZAMBITO: You just made a
13 statement and said you hope the
14 Planning Board will hold it open until
15 ---

16 BY MR. GAROFALO: I apologize.

17 BY MR. ZAMBITO: I didn't know
18 if that was an error or if you thought
19 we were the Planning Board.

20 BY MR. GAROFALO: My error. The
21 Zoning Board will keep it open until
22 the public has a chance to review
23 that. Thank you for correcting me on
24 that. I had also asked that the
25 building inspector and the Zoning

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2 Board review the sign in which has the
3 logos and names on the property
4 besides their main sign as to whether
5 these are in violation of the sign
6 ordinance. I think at this time it
7 would also be appropriate to refer
8 those plans to the town board because
9 the town is now looking at zoning, new
10 sign zoning ordinances, and get their
11 feeling on this particular matter,
12 because this is something that is
13 going to come up again, and I think it
14 would be important that the Applicant
15 not get halfway through the process
16 and have new zoning law come up and
17 have to change all his signing.

18 BY MR. CONN: Mr. Garofalo, is
19 there anything that you have that
20 pertains to the Zoning Board, because
21 everything you said involves a
22 different board other than Zoning.
23 The first part of your statement
24 involves the Planning Board, which we
25 can't comment on. The next part is

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2 you want the signage to be changed,
3 and you're referring all those changes
4 to go to the Town Board. So we're
5 trying to get through the new
6 information anybody has, but the first
7 several minutes of your presentation
8 has nothing to do with what we're here
9 for tonight.

10 BY MR. ZAMBITO: No disrespect,
11 correct me if I am wrong, I think this
12 public hearing is open for two items,
13 not traffic right now. Isn't this
14 open for area variances? I thought we
15 made that clear at the last meeting,
16 this public hearing is going to remain
17 open, and I know myself, I had asked
18 if it was okay to do that for these
19 items and nothing else. I thought the
20 response was yes, we can do that.

21 BY MR. BLASS: So the public
22 hearing, in part, concerns the new
23 variance application to approve --- to
24 grant variance from the 500-foot
25 separation between the access to the

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2 site and Mount Rose. The speaker may
3 want to address that issue if he feels
4 that that is warranted. The other
5 issue concerns --- let's go right to
6 the public hearing notice. The first
7 item, the limitations on the scope of
8 the public hearing with respect to the
9 law pending variance applications are
10 two-fold, you're correct. They are as
11 follows. One, dealing with any
12 intervening SEQRA matters at the
13 Marlborough Planning Board, and
14 secondly, any matters pertaining to
15 15A-27D1, dealing with the 500-foot
16 separation standard which I just
17 mentioned.

18 Then there were two new matters
19 added to the proceeding by amended
20 application of Chestnut Petroleum
21 dealing with a request for
22 interpretation of whether Section
23 155-14C results in a grandfathered lot
24 size and thereby renders academic any
25 need for a .07 area variance at all,

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2 and also there is a new variance
3 application with respect to the 500-
4 foot separation rule. So those pretty
5 much encapsulate the scope of the
6 public hearing. The standards that
7 apply to area variances generally will
8 apply to the request for relief from
9 the 500-foot separation rule. So the
10 most efficient and, not that I want to
11 cut off the speaker in any way, shape
12 or form, but the most efficient way to
13 proceed may be to address the area
14 variance standards in relation to
15 those topics. The Board already does
16 have your January 14 public hearing
17 comments and your submission, so to
18 the extent that you are repeating
19 those remarks, which have already been
20 transcribed, which are already part of
21 the record, you may be facing some
22 friction from the Board members.

23 BY MR. ZAMBITO: Again, no
24 disrespect to you or any speakers,
25 that is what I am trying to avoid. We

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2 heard these things more than once.

3 BY CHAIRMAN GIAMETTA: Mr. Rusk?

4 BY MR. RUSK: Mr. Chairman, if
5 at the conclusion of the last meeting
6 the record was being closed with
7 regard to the issues previously
8 addressed, which is I think what Mr.
9 Zambito's motion had been made at that
10 last meeting, then this letter from
11 Mr. Napier that has been submitted
12 dated February 11 and all the items
13 attached thereto should not be
14 accepted by this Board, as the record
15 had been closed, and his response to
16 my presentation should have been made
17 that night before the record was
18 closed. And now, after my
19 presentation was made and the
20 undersheriff's testimony was presented
21 to you, a letter is prepared by the
22 police chief and submitted in response
23 to it, I submit to you that none of
24 that should be considered by this
25 Board, because the record was closed

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2 at that time with regard to those
3 issues, and by accepting it late, it
4 is contrary to exactly what has been
5 said this evening by Mr. Blass, your
6 own Counsel. So I would ask this
7 Board to completely disregard Mr.
8 Napior's letter and the items that he
9 submitted as part of that letter.

10 BY MR. ZAMBITO: So anything ---

11 BY MR. BLASS: As I just said

12 ---

13 BY CHAIRMAN GIAMETTA: One at a
14 time, Mr. Blass.

15 BY MR. BLASS: As I just said,
16 there is an amended variance
17 application for relief from the 200
18 foot --- 500-foot separation rule for
19 Mount Rose Road. All of the area
20 variance standards applicable to
21 variances are relevant to that
22 request. The public hearing is de
23 novo, meaning new, relative to the
24 variance application. Anything the
25 Applicant wishes to submit in relation

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2 to that variance application is quite
3 permissible, and I think that is what
4 he's doing.

5 BY CHAIRMAN GIAMETTA: What
6 about the matters Mr. Rusk has brought
7 up in regard to Mr. Napior's letter?

8 BY MR. BLASS: I would say this
9 is a public hearing, until the public
10 hearing is closed, it is up to this
11 Board to take whatever information it
12 wishes to.

13 BY CHAIRMAN GIAMETTA: Okay.
14 Thank you.

15 BY MR. GAROFALO: May I
16 continue?

17 BY CHAIRMAN GIAMETTA: Yes,
18 please continue within that scope.

19 BY MR. GAROFALO: I think
20 within, with regard to the variances,
21 I think that the issue of sidewalk,
22 which is also being reviewed by the
23 town under the safe routes, the
24 bicycle lanes, which is also
25 identified by Ulster County's

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2 non-motorized transportation plan, the
3 issue of changing the acceleration
4 lane to a two-way turn lane and
5 creating a mountable, at least
6 100-square foot channelized island,
7 all can possibly effect where the
8 building goes, how the layouts are,
9 and I think they need to be taken a
10 look at with concern to the variances,
11 and I don't know how you can do that
12 without them actually providing a plan
13 which shows corrections made and what
14 the outcome would be with regard to
15 the building and the variances.

16 I will provide you with the name
17 and page number where you can find the
18 map showing that that is a proposed
19 right of way along Route 9W, and you
20 can find from the state that is URL to
21 a map showing existing and proposed
22 bikeways which include Route 9W.

23 With regard to sidewalks, I have
24 not mentioned this before, but I want
25 to read some things out of the town

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2 master plan.

3 BY MR. CONN: Mr. Garofalo, you
4 realize sidewalks is not under our
5 review right now? Again, 99 percent
6 of what you brought up are all
7 Planning Board issues, so we're
8 looking for anything that you might
9 have under A, B or C to discuss here
10 tonight.

11 BY MR. GAROFALO: Putting a
12 sidewalk in would affect, potentially
13 affect the variances.

14 BY MR. CONN: But that is up for
15 the Planning Board, if and when a
16 variance is granted, to then position
17 the buildings or the sidewalks
18 appropriately. That is not for us.
19 They can't do step two when and if we
20 have done step one.

21 BY CHAIRMAN GIAMETTA: Do you
22 agree with that, Mr. Garofalo?

23 BY MR. GAROFALO: Let me ---

24 BY MR. RUSK: I don't.

25 BY MR. GAROFALO: I am not a

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2 lawyer, so I am not going to comment
3 on that part of it, but certainly if
4 you granted a variance for X and the
5 Board, the Planning Board comes back
6 and says they have to move things
7 around and now it is C, they may have
8 to come back to you.

9 BY MR. CONN: Why would the
10 Planning Board put in proposed
11 bikeways if they don't even know if
12 the Zoning Board is going to grant a
13 variance for the particular project
14 that is in place? That is doing a lot
15 of work before you even have to.

16 BY CHAIRMAN GIAMETTA: You're
17 saying hypothetically?

18 BY MR. GAROFALO:

19 Hypothetically. If you grant it,
20 okay, they may have to come back
21 because things have changed.

22 BY CHAIRMAN GIAMETTA: That is
23 true, correct, Counsel? At times
24 there could be a comeback for
25 different variance concerns?

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2 BY MR. BLASS: Well, I think
3 that the position asked this evening
4 by one of the members is that the
5 batting order setup with respect to
6 this application, which is in front of
7 two boards, has been to complete the
8 SEQRA process through the efforts of
9 the Planning Board because this Board
10 could not make any decisions on the
11 variances until the SEQRA process was
12 included. Then to proceed to the
13 variance requests, because it would be
14 potentially inefficient and
15 uneconomical for the Applicant to go
16 through site planning exercise at the
17 Planning Board without first obtaining
18 the variances that would be needed to
19 make any, to obtain any value or
20 special permit approval from the
21 Planning Board. Sidewalks, if you
22 want to talk about sidewalks, you can
23 talk about sidewalks. If you want to
24 talk about bike lanes, you can talk
25 about bike lanes. It is a public

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2 hearing. The feedback you're getting
3 from the Board is those appear to be
4 matters of special permit and site
5 plan approval in nature.

6 BY MR. GAROFALO: Okay. I am
7 trying to make a point to the Board
8 that it is a possibility that in site
9 plan things may change and they come
10 back to the Board.

11 BY CHAIRMAN GIAMETTA: Thank
12 you.

13 BY MR. BLASS: So noted.

14 BY MR. GAROFALO: Thank you. So
15 once again, I hope that the Board will
16 hold this open until the public has a
17 chance to review these documents on
18 line. So I hope you will make that
19 request to the supervisor that these
20 documents be put on the web site so
21 that the public will have a chance to
22 review them and comment on them.

23 Thank you.

24 BY CHAIRMAN GIAMETTA: Thank
25 you.

1 CHESTNUT PETROLEUM DISTRIBUTOR

2 BY MR. ADAMSHICK: My name is
3 Steve Adamshick, 10 Riverknoll Drive
4 Milton, New York. Good evening. This
5 Board has a most important and serious
6 decision ahead of it. I am not a
7 lawyer. I am not a politician. I
8 don't have a license to lie. I'm here
9 to tell the truth, utilize common
10 sense and sound judgment.

11 I think the variance should be
12 absolutely denied with respect to the
13 500 feet, reason being, argument, at
14 best, Mr. Napier's argument, at best,
15 it is weak. At worse, it is insulting
16 to previous town boards that sat for
17 this town and did a lot of great,
18 great work for this town. The
19 argument with respect to the fuel
20 shortages of the '70s, if it was in
21 place. However, when Stewart's came
22 to fruition in 1990, that is when they
23 gave it a variance. However on
24 Article 155-72, on the bottom of the
25 page, this was updated in 2002, so

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2 from the year of 1990 to the year
3 2002, 12 years later, the language
4 still remains as part of the code.
5 The Town Board has the authority to
6 change it. They didn't change it.
7 There had to be reasons they didn't
8 change it, and it makes perfect sense
9 in this particular area why it should
10 not be granted. And this Board, I
11 believe, has within its authority to
12 hire its own independent consultant
13 because, obviously, the transportation
14 consultant working for the Applicant,
15 of course, is getting paid by him, we
16 all know what is going on there, and
17 it would behoove this Board to hire
18 its own independent consultant,
19 especially with respect to this 500
20 feet. The Stewart's intersection,
21 let's just think of common sense. It
22 is a well defined, well organized with
23 a stoplight intersection. Yes, I can
24 understand a variance for that, but
25 that language remained in this code

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2 for 12 years for when this situation
3 specifically arose, so in that
4 respect, I think it should be denied.
5 Hire a consultant to look into it a
6 little better.

7 Second point I would like to
8 make is with respect to, with respect
9 to the Town of Marlborough
10 Comprehensive Plan that was adopted in
11 2002 and had various aspects to it.
12 Areas of steep slopes. Specifically
13 in the plan it says slopes in excess
14 of 15 percent make the construction of
15 dwelling, septic systems, sewer, water
16 lines, roads extremely difficult.
17 Also, moderate to high water tables,
18 fluctuation of water tables, freezing,
19 thawing associated with them will
20 damage roads, parking lots and
21 foundations. High water tables also
22 hinder performance of septic systems.
23 This is all included in the
24 Comprehensive Master Plan that was
25 adopted, and I think it is a

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2 responsibility of this Board to make a
3 conducive decision relative to the
4 Master Plan, bring it all together and
5 make it compatible. The death of the
6 bedrock is an important factor in the
7 location of the structure and we know
8 how that rock is behind there.

9 Parking lots, again, flexible.

10 Lighting is also an issue. That is my
11 second point.

12 The third point I would like to
13 make, Mr. Chairman, is relative to the
14 Zoning Board of Appeals, relative to
15 training and attendance requirements.

16 155-38.1, within one year after
17 initial appointment, a Zoning Board of
18 appeals member shall attend a training
19 program at an appropriate level
20 relating to the duties of the Zoning
21 Board of Appeals members. Appeals
22 Board members shall be required to
23 attend an annual minimum of three
24 hours of training per year. Zoning
25 Board of Appeals chairperson shall

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2 cause notice of Zoning Board of
3 Appeals members complying with these
4 requirements. Non-compliance of
5 minimum requirements relating to
6 training and/or attendance shall be
7 deemed proper cause for removal of the
8 Board. Mr. Chairman, I'm asking, I
9 tried to look to see if the Board
10 members received proper training,
11 responsibilities, et cetera. It is
12 very important, crucial training in
13 order to perform the duties in a
14 manner such that you can benefit our
15 town, our families, our neighborhoods,
16 et cetera, et cetera. I am trying to
17 locate that in the town. I can't find
18 that in any minutes or documentation,
19 so I am kind of asking if these Board
20 members, simply I'm saying, if you
21 don't get the training, you don't have
22 it, you are going to be in this
23 capacity to make such a decision
24 related to this 500 feet setback.
25 And lastly, you do have within

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2 your authority under this statute
3 imposition of condition, Zoning Board
4 of Appeals shall grant of both use and
5 area variances have the authority to
6 impose such reasonable conditions and
7 restrictions as are directly related
8 to the incidental to the proposed use
9 of property for a period of time such
10 variance shall take effect. Such
11 condition shall be consistent with the
12 spirit of Town Zoning ordinance and
13 local law shall be imposed for the
14 purpose of minimizing any adverse
15 impact. If a filling station is
16 within 500 feet --- two totally
17 separate situations, scenarios.

18 Stewart's is completely different from
19 this scenario. A traffic consultant,
20 independent of the Applicant, would be
21 justified here to ensure that your due
22 diligence is carried out.

23 Thank you very much.

24 BY CHAIRMAN GIAMETTA: Thank
25 you.

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2 BY MR. RUSK: Good evening. My
3 name is John Rusk, and I'm opposed to
4 the Applicant's request for a
5 variance, and I just want to address
6 the issues that are here before your
7 Board. I brought this up last time,
8 and I know you don't want to hear
9 things that have been said before, but
10 there is a serious issue that this
11 Board needs to consider, and that is,
12 are you getting independent advice
13 from your lawyer? Your lawyer who is
14 serving you in your positions as quasi
15 judicial officers in evaluating this
16 matter is also the attorney for the
17 Planning Board and is also the
18 attorney for the Town Board, and you
19 have the right to have independent
20 Counsel presenting the law to you and
21 the facts to you to help you make fair
22 and accurate decisions, and the reason
23 I say this is because of the most
24 recent letter that has been submitted
25 to you in support of this application

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2 from the police chief of this town
3 that was submitted apparently at the
4 request of the town supervisor. It
5 is, to my knowledge, no member of this
6 Board has gone to the police chief and
7 asked him for his input into this
8 matter, but the town supervisor
9 apparently did, and he did it in order
10 to submit something to oppose the
11 presentation that I made to this
12 Board, unsolicited. And if the town
13 supervisor is soliciting information
14 in support of the application and the
15 town supervisor and his lawyer are
16 then presenting it to you and you have
17 the same lawyer, are you getting
18 independent advice, independent legal
19 advice? I submit to you that you are
20 not. If you were getting independent
21 legal advice, this 500-foot issue with
22 an intersecting road would have been
23 presented to you at the time this
24 application was first made almost,
25 what, nine months ago. Why is it that

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2 the neighbors to this site have to
3 defend themselves and look up town
4 code to protect themselves? That is
5 not the neighbor's job. It is also
6 not the neighbor's job to tell an
7 Applicant what has or has not been
8 decided by some other state agency
9 regarding historical eligibility. The
10 Applicant has the burden of proof of
11 coming here and establishing to your
12 satisfaction proving, proving that
13 they are entitled to a variance, that
14 they meet the requirements of the law.
15 They haven't done it. I submit to you
16 that you should demand independent
17 legal advice to help you fairly and
18 accurately analyze the facts of this
19 case and what the law is in this case.

20 Now, getting to the two issues.
21 The first new item is Section 155-14C,
22 required area or open space cannot be
23 reduced. There is open space on this
24 lot which is being reduced because of
25 the expansion of the buildings on this

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2 lot. The area or dimension of any
3 lot, yard, parking area or other space
4 shall not be reduced to less than the
5 minimum. You have to look at your
6 schedule I, which sets forth in
7 highway development, and it is
8 contained in the letter that I
9 submitted to you what those setbacks
10 are. The open space is not this
11 cluster development, I submit to you,
12 which is being presented to you as
13 applicable with that phrase here.
14 That is not what it is. It is the
15 side yards, it is the back yards.
16 Those cannot be reduced under this
17 provision. Required area and open
18 space cannot be reduced, and this
19 project is an attempt to reduce those
20 side yards and back yards because the
21 building that is there now on this
22 undersized lot has to stay in that
23 condition. When you read 155-14C
24 in conjunction with 155.34B1, it talks
25 about non-conforming buildings or

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2 other structures, the following
3 provisions and limitations shall apply
4 to non-conforming buildings, other
5 structures --- and this is the most
6 important part --- or site
7 development. And under that it says
8 enlargement, any non-conforming
9 building, other structure or site
10 development shall not be enlarged or
11 extended unless it makes the site more
12 conforming. Now that law requires
13 that if you have a structure there
14 now, which it is there, the only
15 modifications you can make to that
16 building is to make it more conforming
17 to all the dimensions. Adding
18 canopies, moving the building back so
19 that the back lot line --- excuse me,
20 the back yard line is smaller, can't
21 do it. The zoning code specifically
22 prohibits it. And when you look at
23 those sections read together, this
24 project can't go through. You're
25 stuck with what you got. Now, if you

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2 have independent legal advice and not
3 a proponent of the project coming down
4 from the town supervisor, I submit to
5 you that you will look to that
6 neutrally, you will look at that
7 language and you will say, you know
8 what, Applicant, your project doesn't
9 fly, but it takes courage and
10 integrity to have independent legal
11 advice and have that offered to you.
12 You could turn a blind eye to this,
13 absolutely.

14 Now I want to talk for just a
15 minute about this 500-foot rule. When
16 this project was done at Stewart's on
17 the corner, the factors were
18 completely different. Whether there
19 was anybody here barking like I have
20 been barking on this project, I don't
21 know, and whether everybody in town
22 wanted it and so it went in, I don't
23 know, but I know what the law says and
24 the zoning code says, and that says
25 that you can't do this project. This

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2 specific rule, vehicular access to the
3 above automotive uses shall not be
4 closer to the intersection of any two
5 street lot lines than 500 feet. This
6 Board has the authority, when you are
7 addressing a particular lot, to say
8 about this particular lot, we're going
9 to let you build closer to your line
10 on your lot. You can build your ---
11 somebody said fence higher on your
12 lot. We can give you a variance with
13 regard to your lot, but this Board has
14 no authority to change a law regarding
15 the distance set by the town board on
16 distances that must be complied with
17 on where an entrance or exit on
18 someone's lot can be to an
19 intersection.

20 Now I know, I know that you're
21 going to say, Well, Mr. Rusk, that is
22 interesting that you would say that,
23 we know you don't like the project, we
24 know you don't think we're getting
25 independent legal advice --- I just

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2 want to find it, because it is not me
3 saying it, it is the Appellate Court
4 in the State of New York that are
5 saying it --- that in order to put in
6 this gas station within that 500 feet,
7 this Board, I am sorry, but you don't
8 have the authority to do it. You want
9 to change the law and change that from
10 500 feet to 190 feet or 150 feet so
11 they can stick this thing in there.
12 It has got to go back to the Town
13 Board and they have to make the change
14 in the law. This Board doesn't have
15 the authority. And I am going to cite
16 this case, because I want it in the
17 record. It is the case of matter of
18 AA&L Associates versus Sam Casella and
19 the Cannadaigua Zoning Board of
20 Appeals. It is a case from the Fourth
21 Department from 1994, the citation is
22 207AD2d 1012, and what that case says
23 is absent an express grant of
24 authority --- just so you know what
25 they had in Cannadaigua is they had

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2 1,000-foot rule. You could not have a
3 gas station within 1,000 feet of
4 another, because they didn't like the
5 way it looked, okay. They didn't like
6 it. They had a 1,000-foot rule.
7 1,000 feet between gas stations. And
8 so a person bought a piece of
9 property, said, you know what, we want
10 to put in a gas station here, but they
11 had a problem, it was within 1,000
12 feet of another gas station. So they
13 went to the Zoning Board of Appeals
14 and they said look, 1,000 feet gas
15 station, give us a variance, the code,
16 don't worry about the code, we can put
17 it in. They granted it, the Zoning
18 Board of Appeals in Cannadaigua
19 granted the variance. And then the
20 unhappy neighbors who didn't want the
21 station appealed and it got to the
22 Appellate Division and the Appellate
23 Division said, sorry, Zoning Board of
24 a Appeals, you don't have the right to
25 grant a variance on that 1,000-foot

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2 rule, that goes back to the Town
3 Board. If the Town Board wants to
4 change the distance, change the
5 distance, but you can't do it. I am
6 giving you the case so you can all
7 read it, and I submit to you that if
8 you had independent legal advice
9 instead of somebody who is unhappy
10 with the project presenting this
11 information to you, your independent
12 legal Counselors would have given you
13 this information and we wouldn't be in
14 the position we're in now. I would
15 ask that, based upon this case, that
16 variance be denied because you do not
17 have the authority and you
18 respectfully tell the Applicant
19 good-bye, go work with the Town Board
20 who is willing to go to the police
21 department and get letters for you and
22 submit them to other boards and see if
23 they'll change the law for you, but
24 that is where you got to go. Thank
25 you.

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2 BY CHAIRMAN GIAMETTA: You're
3 welcome. Anyone else from the public
4 with comments?

5 BY MR. NAPIOR: May I respond
6 briefly?

7 BY CHAIRMAN GIAMETTA: Loud and
8 clear, please.

9 BY MR. NAPIOR: Certainly. With
10 respect to Mr. Garofalo's request for
11 zoning request to hold the hearing
12 open while the Planning Board
13 contemplates bicycle path and sidewalk
14 improvement and the like, I would
15 simply say the variances that are
16 before you would not be impacted in
17 any way, i.e. resulting in a greater
18 request by the additional widening of
19 the roadway or the inclusion of
20 sidewalk. The principal structure in
21 the zoning compliant location, the
22 variances pertaining to the minimum
23 lot size, the accessory structures
24 being placed in between the principal
25 structure and the street and the

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2 distance to the intersection of James
3 Street and 9W, whether I include a
4 sidewalk or widen the road to include
5 bike path, it wouldn't result in any
6 greater or lesser request for that
7 matter before your Board. Unless the
8 Planning Commission were to do
9 something drastic and take, direct me
10 to take my building to and locate it
11 in another section of the property
12 altogether, which wouldn't make much
13 sense, in that case, yes, it would be
14 back before you, but that is an
15 extremely unlikely scenario.

16 With respect to comments of Mr.
17 Adamshick's testimony concerning the
18 500-foot setback, I would say that
19 the, I have yet to hear from any of
20 the objecting neighbors what the
21 detriment is to the community. As
22 this Board is well aware, you're
23 supposed to form a balancing test in
24 weighing the benefit to the Applicant
25 in granting variances against the

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2 detriment to the community in granting
3 those variances. I haven't heard any
4 direct complaints as to what the harm
5 is in this site being located 200 or
6 500 or 1,000 feet from the
7 intersection of two street lot lines
8 other than it just being an objection
9 and an objection to the use. Mr.
10 Rusk's testimony with respect to the
11 differing zoning requirements with
12 respect to open space and front yard
13 and non-conforming uses and, with all
14 due respect, I don't know if Mr. Rusk
15 is landings practitioner, all of that
16 would apply if I were looking for as-
17 of-right project, and if I could
18 comply with those conditions, I
19 wouldn't be before you. I would be
20 filing simply a site plan with the
21 Planning Board and filing for a
22 building permit. There wouldn't be
23 any relief required. As you are
24 aware, you're the relief valve from
25 the zoning code. Because we cannot

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2 meet the minimum lot size requirement,
3 because we are within 200 feet of the
4 intersection, that is what we are
5 doing here. To say that you can't
6 grant relief from sections of the
7 zoning code that require minimum
8 setbacks or minimum lot sizes or the
9 like would basically render this Board
10 pointless. There would never be a
11 point, you could never grant approval.
12 With that, those are my responses.

13 One last point, with respect to
14 the balancing test, without the
15 requested variances, this project
16 dies, or it goes on to the Town Board
17 to seek modification of the zoning
18 code. I still have yet to hear any
19 detriment to the community, aside from
20 concerns over traffic and stormwater,
21 et cetera that have been addressed and
22 will continue to be addressed by the
23 Planning Board with respect to the
24 location of the structures, the
25 location of the subject site and

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2 proximity to the intersection of James
3 Street and 9W. Therefore, I put
4 before you the benefit clearly
5 outweighs the detriment.

6 BY CHAIRMAN GIAMETTA: Thank
7 you. We have someone else in the
8 audience.

9 BY MR. MAGLIATO: Jeff Magliato,
10 resident of Marlborough. Just a
11 point, why do we have zoning laws if
12 you can just come here and say hey, my
13 project doesn't fit that, change all
14 the rules for me? It seems to me,
15 either the Board should dissolve
16 itself and get rid of zoning laws or
17 maybe think that some of these rules
18 should have a reason for being
19 enforced.

20 BY CHAIRMAN GIAMETTA: Thank
21 you. Sir, do you have a question in
22 the back? No. Mr. Blass, would you
23 like to respond to Mr. Rusk's input to
24 any extent at this point?

25 BY MR. BLASS: Well, John has

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2 raised several questions of law that
3 the Board will have to take into
4 consideration in rendering their
5 decision. There is a full
6 stenographic transcript made of the
7 argument. You have a case from the
8 Fourth Department which deals with the
9 rule pertaining to separation between
10 gas stations, and you will need to
11 factor in the relevance of that case
12 to a rule on the books in Marlborough
13 that deals with separation between
14 vehicular access to a gas station and
15 intersection of two street lot lines.
16 So that is something that has to be
17 dealt with in your determination.

18 The other legal arguments he
19 made must also be considered and
20 resolved by you as well. You have in
21 front of you the fundamental option
22 tonight of whether or not to close the
23 public hearing and to reserve
24 decision, if you wish, or if you wish
25 to discuss the area variance

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2 standards, setting aside the
3 principals of law that are not
4 necessarily at all for us with the
5 area variance standards raised with
6 Mr. Rusk tonight, or you can simply
7 close the public hearing and reserve
8 decision for a future time.

9 BY CHAIRMAN GIAMETTA: Thank
10 you. All the Board members, do we
11 need to extend the public hearing any
12 further or do we have enough input?

13 BY MR. MEKEEL: I think we do.

14 BY CHAIRMAN GIAMETTA: We have
15 enough input, gentlemen, do you feel
16 the same way?

17 BY MR. CONN: Yes.

18 BY MR. NAPIOR: If I may, there
19 was just one item I forgot to address
20 with respect to Mr. Rusk's statements
21 on my submission. I did address Mr.
22 Rusk's arguments raised at the prior
23 public hearing on this matter. There
24 was a letter submitted to your Board
25 following that, approximately a week

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2 after that hearing dated January 21.
3 Our letter was again written in
4 response. To the extent you decide to
5 consider or ignore my letter, I would
6 simply ask the same be done with
7 respect to that letter that was
8 submitted to your Board on January 21.
9 And in addition, I know Mr. Adamshick
10 advised the Board, they may want to
11 consider obtaining a traffic
12 consultant. I would put before you
13 the Planning Board already has done so
14 and reviewed our highway improvement
15 plan, the traffic study performed and
16 you now have that information in your
17 packets. Nothing further.

18 BY CHAIRMAN GIAMETTA: Thank
19 you. Anything further from the
20 public? Mr. Adamshick?

21 BY MR. ADAMSHICK: With respect
22 to Mr. Napier, yes, the traffic
23 consultant is part of the Planning
24 Board's documentation, however, Mr.
25 Clark, Planning Board member, did

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2 raise that very issue, Hey, why don't
3 we hire our own independent guy being
4 this particular gentleman's traffic
5 consultant is, he's paying the bill,
6 so let's get our own guy. I think
7 that is a valid statement and I am
8 submitting to you that hey, if they're
9 not going to do it, you still have the
10 authority, responsibility and duty to
11 do it yourself, just to maintain the
12 integrity of the Board.

13 BY MR. NAPIOR: Just to clarify,
14 the Planning Board did obtain its own
15 independent consultant.

16 BY MR. ADAMSHICK: I tried to
17 look at that information. I couldn't
18 find it.

19 BY MR. NAPIOR: I'm happy to
20 provide you with a copy.

21 BY MR. ADAMSHICK: Independent?

22 BY MR. NAPIOR: Yes.

23 BY MR. ADAMSHICK: Okay.

24 BY CHAIRMAN GIAMETTA: Anymore
25 public comments? Having heard none, I

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2 ask for a motion regarding closure of
3 the public part of this matter.

4 BY MR. CONN: I make a motion to
5 close the public hearing.

6 BY MR. SALINOVICH: Second.

7 BY CHAIRMAN GIAMETTA: Motion on
8 the floor?

9 BY MR. SALINOVICH: Second.

10 BY CHAIRMAN GIAMETTA: And a
11 vote?

12 BY MR. MEKEEL: Yes.

13 BY MR. SALINOVICH: Yes.

14 BY MR. ZAMBITO: Yes.

15 BY MR. CONN: Yes.

16 BY CHAIRMAN GIAMETTA: Yes.

17 Public hearing closed on this matter.

18 We do have a lot to consider still
19 prior to any decision, and Board
20 members, I don't know if you are ready
21 to vote this evening or not, but we
22 can get, and I recommend we get, input
23 from our Counsel to summarize all of
24 these findings so we can review it and
25 defer our decision to a later date.

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2 Did you want to proceed in that manner
3 or try to vote on this matter this
4 evening?

5 BY MR. SALINOVICH: I think we
6 should, we should do a finding of fact
7 with our lawyer to explain any
8 decision for or against, while making
9 decision to the public.

10 BY CHAIRMAN GIAMETTA: Mr
11 Zambito?

12 BY MR. ZAMBITO: I think we
13 should get a written conclusion before
14 we do anything.

15 BY CHAIRMAN GIAMETTA: Mr.
16 Mekeel?

17 BY MR. MEKEEL: I agree. I say
18 we reserve the right to make our
19 decision on the March 16, 2016
20 meeting.

21 BY CHAIRMAN GIAMETTA: Mr. Conn,
22 any input on that?

23 BY MR. CONN: No, I agree.

24 BY CHAIRMAN GIAMETTA: And I
25 also agree that we're going to reserve

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2 our decision and defer it to a later
3 date, and we ask our Counsel, Mr.
4 Blass, to summarize the findings and
5 get it to us in a timely manner so we
6 can review it for further progress on
7 this matter. Do you have anything
8 further?

9 BY MR. SALINOVICH: No.

10 BY MR. MEKEEL: No.

11 BY CHAIRMAN GIAMETTA: Do I hear
12 a motion to close the meeting?

13 BY MR. SALINOVICH: Motion to
14 close the meeting.

15 BY MR. MEKEEL: I'll second.

16 BY CHAIRMAN GIAMETTA: Vote?

17

18 (ALL MEMBERS SAY AYE)

19

20 BY CHAIRMAN GIAMETTA: Thank you
21 everyone for coming this evening.

22

23

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2 REPORTER'S CERTIFICATION

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5 I hereby certify that the foregoing is a
6 true and accurate copy of the Minutes of
7 Public Hearing recorded by me and reduced to
8 transcript form.

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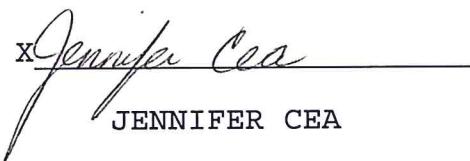
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X Jennifer Cea
JENNIFER CEA