

COPY

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

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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)

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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

APPEARANCES:

BOARD MEMBERS:

BILL GIAMETTA, Chairman  
JEFF MEKEEL  
DAVE ZAMBITO  
LENNY CONN  
GEORGE SALINOVICH

RONALD C. BLASS JR., ESQ.

THOMAS CORCORAN JR.,  
Building Inspector/Code Enforcement

PENNY E. CASHMAN, Zoning Board Secretary

LEO NAPIOR, ESQ.  
Applicant's Representative

## 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.

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

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

BY MR. ZAMBITO: Second.

BY CHAIRMAN GIAMETTA: A vote?

BY MR. CONN: Yes.

BY MR. SALINOVICH: Yes.

BY MR. MEKEEL: Yes.

BY MR. ZAMBITO: Yes.

BY CHAIRMAN GIAMETTA: And yes. The minutes are approved. Thank you very much. Let it be known that this meeting is a continuation of a public hearing from July 9, 2015. It continues on this evening, and having said that, I'll ask the Applicant to



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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.  
7 Thank you, Counsel. We are going to  
8 read the public notice first. Can  
9 someone do that, please?

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.

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

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

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

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

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

Any interested parties, either  
for or against this application, will  
have the opportunity to be heard at  
this time. William Giametta,  
Chairman, Town of Marlborough Zoning  
Board of Appeals.

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

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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

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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. Napior, 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



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

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

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

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

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raised that have been previously addressed at prior meetings, so that is not to bore this Board to death. The Rusk letter of January 21, as well as the presentation at the last public hearing on this matter, attached a number of documents and information concerning alleged crimes that had taken place at my client's --- at properties owned in other municipalities by my client. I set forth that is really irrelevant to the application before you. That really is just an attempt to cast my client in a bad light and oppose use in a bad light, and really it is at odds with the principals set forth by the Court of Appeals in Dexter versus the Town Board of the Town of Gates, wherein it was held it is a fundamental principal of zoning that the Zoning Board is charged with the regulation of land use, not with the person who uses it, owns or occupies it. It is the



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maximum of zoning for use versus user.

The Applicant is not seeking a use variance. The proposed use as a gas station is a permitted use of the property. A lot of the complaints and issues raised by the Rusk family during this whole process have been over the use in general, as opposed to focusing on the issues before your Board and under the area variances that are requested. The area variance that is requested have nothing to do with the use of the property. They have to do with the location of the structures on the property.

We have before you tonight asked for an appeal of the building inspector's determination that a variance for the minimum lot size is necessary as opposed to applying the terms of 155-14C of the Marlborough code that, in effect, grandfathered in the property. Submitted in the Rusk letter to your Board was documentation

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

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

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1  
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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addendum to the traffic study, all of which conclude there will be no negative significant impacts to the traffic conditions along 9W. In addition, in the review by the Planning Board, the Planning Board retained Creighton and Manning to perform independent review of the traffic study performed by the Applicant, and Creighton and Manning found the methodology and conclusions contained in the Applicant's traffic study to be acceptable within industry standards.

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

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

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

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



behalf had submitted that property to SHPO for consideration of the building be placed on the National Register of Historic Places. In return, they got a notice of eligibility, which I believe was submitted, if not to your Board, it was certainly submitted to the Planning Board. A notice of eligibility is not the same as being nominated or being placed on the National Register, and so for now the current status is that is all, that it has been potentially eligible to be placed on the register. There is a lot of additional work that is involved to actually have it be marked as a historic site.

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

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

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



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

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

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

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

BY CHAIRMAN GIAMETTA: You asked if one was necessary?

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

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

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

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

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

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determining whether to grant a variance or not. I covered this previously, but virtually any area variance request is a self-created hardship. The exception to that rule is when a property has been upzoned and may not conform or development potential has been stripped away. With that in mind, the courts have routinely held that that is just one factor to be considered and is not determinative in and of itself whether to grant or deny a variance. With that, I'm happy to address any questions from the Board.

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

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



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

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

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



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have a copy here --- there's a definition in Section 155-1 of the code for usable open space which speaks to unenclosed portion of the ground area of a lot or attractive land containing residential cluster subdivision which is not assigned and it continues on for driveways and other things.

BY CHAIRMAN GIAMETTA:

Residential?

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

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

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

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

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

I think I addressed everything.

BY CHAIRMAN GIAMETTA: Thank you very much.

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

BY CHAIRMAN GIAMETTA: Yes, absolutely.

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1  
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

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

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



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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



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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.

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

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

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

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

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

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received a traffic review of the traffic document, that was a Friday. On February 1, there was an engineering letter that was provided to the Planning Board, and on February 1 also the environmental assessment form was approved. None of these documents have been, are available to the public. They should be put up on the web site and be available to the public, as well as the Applicant's traffic report, the plans, the Planning Board's finding, the SHPO letters and other appropriate documents.

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

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

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

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

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

BY MR. GAROFALO: I apologize.

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

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

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

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



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

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

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

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

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

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

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heard these things more than once.

BY CHAIRMAN GIAMETTA: Mr. Rusk?

BY MR. RUSK: Mr. Chairman, if at the conclusion of the last meeting the record was being closed with regard to the issues previously addressed, which is I think what Mr. Zambito's motion had been made at that last meeting, then this letter from Mr. Napior that has been submitted dated February 11 and all the items attached thereto should not be accepted by this Board, as the record had been closed, and his response to my presentation should have been made that night before the record was closed. And now, after my presentation was made and the undersheriff's testimony was presented to you, a letter is prepared by the police chief and submitted in response to it, I submit to you that none of that should be considered by this Board, because the record was closed

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

BY MR. ZAMBITO: So anything ---

BY MR. BLASS: As I just said

---

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

BY MR. BLASS: As I just said, there is an amended variance application for relief from the 200 foot --- 500-foot separation rule for Mount Rose Road. All of the area variance standards applicable to variances are relevant to that request. The public hearing is de novo, meaning new, relative to the variance application. Anything the 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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non-motorized transportation plan, the issue of changing the acceleration lane to a two-way turn lane and creating a mountable, at least 100-square foot channelized island, all can possibly effect where the building goes, how the layouts are, and I think they need to be taken a look at with concern to the variances, and I don't know how you can do that without them actually providing a plan which shows corrections made and what the outcome would be with regard to the building and the variances.

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

With regard to sidewalks, I have not mentioned this before, but I want 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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BY MR. BLASS: Well, I think that the position asked this evening by one of the members is that the batting order setup with respect to this application, which is in front of two boards, has been to complete the SEQRA process through the efforts of the Planning Board because this Board could not make any decisions on the variances until the SEQRA process was included. Then to proceed to the variance requests, because it would be potentially inefficient and uneconomical for the Applicant to go through site planning exercise at the Planning Board without first obtaining the variances that would be needed to make any, to obtain any value or special permit approval from the Planning Board. Sidewalks, if you want to talk about sidewalks, you can talk about sidewalks. If you want to talk about bike lanes, you can talk about bike lanes. It is a public



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

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

BY CHAIRMAN GIAMETTA: Thank you.

BY MR. BLASS: So noted.

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

Thank you.

BY CHAIRMAN GIAMETTA: Thank you.

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1  
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. Napior'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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from the year of 1990 to the year 2002, 12 years later, the language still remains as part of the code. The Town Board has the authority to change it. They didn't change it. There had to be reasons they didn't change it, and it makes perfect sense in this particular area why it should not be granted. And this Board, I believe, has within its authority to hire its own independent consultant because, obviously, the transportation consultant working for the Applicant, of course, is getting paid by him, we all know what is going on there, and it would behoove this Board to hire its own independent consultant, especially with respect to this 500 feet. The Stewart's intersection, let's just think of common sense. It is a well defined, well organized with a stoplight intersection. Yes, I can understand a variance for that, but that language remained in this code

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

Second point I would like to make is with respect to, with respect to the Town of Marlborough Comprehensive Plan that was adopted in 2002 and had various aspects to it. Areas of steep slopes. Specifically in the plan it says slopes in excess of 15 percent make the construction of dwelling, septic systems, sewer, water lines, roads extremely difficult. Also, moderate to high water tables, fluctuation of water tables, freezing, thawing associated with them will damage roads, parking lots and foundations. High water tables also hinder performance of septic systems. This is all included in the Comprehensive Master Plan that was adopted, and I think it is a

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

Parking lots, again, flexible.

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

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

155-38.1, within one year after initial appointment, a Zoning Board of appeals member shall attend a training program at an appropriate level relating to the duties of the Zoning Board of Appeals members. Appeals Board members shall be required to attend an annual minimum of three hours of training per year. Zoning Board of Appeals chairperson shall



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cause notice of Zoning Board of Appeals members complying with these requirements. Non-compliance of minimum requirements relating to training and/or attendance shall be deemed proper cause for removal of the Board. Mr. Chairman, I'm asking, I tried to look to see if the Board members received proper training, responsibilities, et cetera. It is very important, crucial training in order to perform the duties in a manner such that you can benefit our town, our families, our neighborhoods, et cetera, et cetera. I am trying to locate that in the town. I can't find that in any minutes or documentation, so I am kind of asking if these Board members, simply I'm saying, if you don't get the training, you don't have it, you are going to be in this capacity to make such a decision related to this 500 feet setback.

And lastly, you do have within

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your authority under this statute  
imposition of condition, Zoning Board  
of Appeals shall grant of both use and  
area variances have the authority to  
impose such reasonable conditions and  
restrictions as are directly related  
to the incidental to the proposed use  
of property for a period of time such  
variance shall take effect. Such  
condition shall be consistent with the  
spirit of Town Zoning ordinance and  
local law shall be imposed for the  
purpose of minimizing any adverse  
impact. If a filling station is  
within 500 feet --- two totally  
separate situations, scenarios.  
Stewart's is completely different from  
this scenario. A traffic consultant,  
independent of the Applicant, would be  
justified here to ensure that your due  
diligence is carried out.

Thank you very much.

BY CHAIRMAN GIAMETTA: Thank  
you.

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

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from the police chief of this town that was submitted apparently at the request of the town supervisor. It is, to my knowledge, no member of this Board has gone to the police chief and asked him for his input into this matter, but the town supervisor apparently did, and he did it in order to submit something to oppose the presentation that I made to this Board, unsolicited. And if the town supervisor is soliciting information in support of the application and the town supervisor and his lawyer are then presenting it to you and you have the same lawyer, are you getting independent advice, independent legal advice? I submit to you that you are not. If you were getting independent legal advice, this 500-foot issue with an intersecting road would have been presented to you at the time this application was first made almost, what, nine months ago. Why is it that

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

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



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

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other structures, the following provisions and limitations shall apply to non-conforming buildings, other structures --- and this is the most important part --- or site development. And under that it says enlargement, any non-conforming building, other structure or site development shall not be enlarged or extended unless it makes the site more conforming. Now that law requires that if you have a structure there now, which it is there, the only modifications you can make to that building is to make it more conforming to all the dimensions. Adding canopies, moving the building back so that the back lot line --- excuse me, the back yard line is smaller, can't do it. The zoning code specifically prohibits it. And when you look at those sections read together, this project can't go through. You're stuck with what you got. Now, if you

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

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

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

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



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1,000-foot rule. You could not have a gas station within 1,000 feet of another, because they didn't like the way it looked, okay. They didn't like it. They had a 1,000-foot rule. 1,000 feet between gas stations. And so a person bought a piece of property, said, you know what, we want to put in a gas station here, but they had a problem, it was within 1,000 feet of another gas station. So they went to the Zoning Board of Appeals and they said look, 1,000 feet gas station, give us a variance, the code, don't worry about the code, we can put it in. They granted it, the Zoning Board of Appeals in Cannadaigua granted the variance. And then the unhappy neighbors who didn't want the station appealed and it got to the Appellate Division and the Appellate Division said, sorry, Zoning Board of a Appeals, you don't have the right to grant a variance on that 1,000-foot

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rule, that goes back to the Town Board. If the Town Board wants to change the distance, change the distance, but you can't do it. I am giving you the case so you can all read it, and I submit to you that if you had independent legal advice instead of somebody who is unhappy with the project presenting this information to you, your independent legal Counselors would have given you this information and we wouldn't be in the position we're in now. I would ask that, based upon this case, that variance be denied because you do not have the authority and you respectfully tell the Applicant good-bye, go work with the Town Board who is willing to go to the police department and get letters for you and submit them to other boards and see if they'll change the law for you, but that is where you got to go. Thank you.

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

BY MR. NAPIOR: May I respond briefly?

BY CHAIRMAN GIAMETTA: Loud and clear, please.

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

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

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

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



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

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

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

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

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

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

BY MR. BLASS: Well, John has

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

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

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

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

BY MR. MEKEEL: I think we do.

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

BY MR. CONN: Yes.

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

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

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

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



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

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

BY MR. SALINOVICH: No.

BY MR. MEKEEL: No.

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

BY MR. SALINOVICH: Motion to close the meeting.

BY MR. MEKEEL: I'll second.


BY CHAIRMAN GIAMETTA: Vote?

(ALL MEMBERS SAY AYE)

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

REPORTER'S CERTIFICATION

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

X  \_\_\_\_\_  
JENNIFER CEA