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2 STATE OF NEW YORK : COUNTY OF ULSTER

3 TOWN OF MARLBOROUGH ZONING BOARD

4 -----x

5 In the Matter of

6 CHESTNUT PETROLEUM DISTRIBUTOR,
7 #1417 Route 9W
Marlboro, New York 12542

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

9 -----x

10 SPECIAL MEETING

11 Date: January 28, 2016
12 Time: 7:00 p.m.
13 Place: Town of Marlborough
Town Hall
#21 Milton Turnpike
14 Milton, New York 12547

15 BOARD MEMBERS: BILL GIAMETTA, CHAIRMAN
16 JEFF MEKEEL
DAVE ZAMBITO
LENNY CONN
GEORGE SALINOVICH

17 RONALD C. BLASS, JR., ESQ.

18 THOMAS CORCORAN, JR. BUILDING INSPECTOR/CODE
19 ENFORCEMENT

20 PENNY E. CASHMAN, ZONING BOARD SECRETARY
21 APPLICANT'S REPRESENTATIVE: LEO NAPIOR, ESQ.

22 -----x
23 LISA MARIE ROSSO
24 Certified Shorthand Reporter
25

1 CHESTNUT PETROLEUM DISTRIBUTOR

2 CHAIRMAN GIAMETTA: Good
3 evening. Please join us for the pledge of
4 the flag.

5 (Pledge of Allegiance)

6 CHAIRMAN GIAMETTA: Thank you
7 and welcome to the special meeting we hold
8 tonight, January 14th, regarding the Zoning
9 Board of Appeals. And first on our agenda
10 is the approval -- I'm sorry, correction on
11 the date, January 28th it is. Thank you
12 very much. Approval of the meeting minutes,
13 I don't believe we can do. We just received
14 the minutes tonight for the last meeting, so
15 I'm going to defer approval of the minutes.
16 I do see one item on the minutes cover page
17 indicating a Building Inspector/Code
18 Enforcement absent. I believe Mr. Corcoran
19 was here last time, so I'd like to see that
20 cover page corrected.

21 We have a legal notice before
22 us, and I'd ask one of the board members to
23 read that, please.

24 MR. MEKEEL: Town of
25 Marlborough Zoning Board of Appeals Legal

1 CHESTNUT PETROLEUM DISTRIBUTOR

Notice: Please take notice that the Town of Marlborough Zoning Board of Appeals will hold a special meeting on January 28th, 2016 at 7:00 p.m. at the Marlborough Town Hall, 21 Milton Turnpike, Milton, New York 12547 to address procedural issues and to consider the scheduling of a public hearing concerning an amended application of Chestnut Petroleum Distributor for appeal interpretation and/or additional variance relief related to Real Property Tax Parcel, Section 109.1, Block 4, Lot 14 (HD Zone) having an address of 1417 Route 9W, Marlborough, New York 12542, dated January 21st, 2016. William Giometta, Chairman, Town of Marlborough Zoning Board of Appeals.

18 CHAIRMAN GIAMETTA: Thank
19 you. In the context of this legal notice is
20 a notation of procedural issues. I'd like
21 to ask Counsel Blass if he could comment on
22 that.

23 MR. BLASS: Well, Mr.
24 Chairman, you received an amended
25 application from the applicant with respect

1 CHESTNUT PETROLEUM DISTRIBUTOR

2 to one, I think an appeal from an earlier
3 rule of the building inspector, and two, a
4 modification of the pending variance
5 application to add one additional area
6 variance dealing with separation from the
7 intersection of two street lines.

8 So as you know, the board has
9 had these matters before in front of them for
10 quite some time, the earlier matters. And
11 the issue before the board now is whether
12 to -- I think you should hear from the
13 applicant as to the nature of the application
14 preliminarily, and then whether or not it's
15 appropriate, in your view, to schedule a
16 public hearing for this amended application.
17 And in the fashion, either it does or does
18 not duct tape with the adjourned date of the
19 public hearing in the earlier filed
20 application.

21 CHAIRMAN GIAMETTA: Thank you
22 very much. We'd now like to hear from the
23 applicant or the applicant's representative,
24 please, loud and clear for the court
25 reporter.

1 CHESTNUT PETROLEUM DISTRIBUTOR

2 MR. NAPIOR: Certainly. For
3 the record, Leo Napior with the law firm of
4 Harfenist, Kraut & Perlstein. As Mr. Blass
5 had indicated, we did submit a modification
6 to our pending application before your
7 board. The modification request was
8 twofold.

9 The first portion of that was
10 as addressed at your last meeting. We
11 requested an appeal slash interpretation from
12 the building inspector's prior determination
13 that an area variance was required for the
14 non-conforming minimum lot size as noted in
15 our cover letter to the board and covered at
16 your last meeting. Section 155-14 subsection
17 C of your code allows the continuation of a
18 non-conforming lot, provided that the lot
19 size is not being further reduced.
20 Certainly, as part of our application, there
21 is no proposed reduction in the minimum lot
22 size.

23 The second part of our lot
24 application request was to include an area
25 variance request from Section 155-27 D1 of

1 CHESTNUT PETROLEUM DISTRIBUTOR

2 your code, which requires that automobile
3 filling stations maintain a 500-foot
4 separation from the intersection of two
5 street lot lines. The subject site is
6 approximately 200 feet from James Street and
7 9W. Again, it was covered at the last
8 meeting. The applicant is proposing
9 significant improvements to 9W in order to
10 handle the anticipated additional traffic
11 load, as well as the turning movements into
12 and out of the property. I understand that a
13 similar variance was granted to Stewart's
14 when that was installed at Milton Turnpike
15 and 9W, and that is literally at the
16 intersection of those two streets. Here we
17 have 200 feet from the intersection. In
18 addition, I understand from a review of the
19 legislative history of that statute that that
20 provision of code was put into place as a
21 result of the fuel shortages in the past, and
22 from fuel stations being on smaller sites,
23 having less capacity to handle traffic and
24 from automobiles queuing up and basically
25 backing up down the road and blocking

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2 intersections, and this is somewhat an
3 antiquated provision of a zoning board as to
4 this day and time.

5 In addition, the subject
6 property certainly has a fair amount of size
7 in order to handle the additional traffic
8 laws that will be generated by the proposed
9 business.

10 With that, I request of the
11 board to schedule a public hearing and
12 incorporate all of the prior proceedings
13 before this board on the original application
14 as part of this modification, and I would be
15 happy to address any questions that the board
16 has at this time.

17 MR. ZAMBITO: It's not James
18 Street, it's Mount Rose Road. James Street
19 is located above Mount Rose. Mount Rose is
20 the one that intersects 9W.

21 MR. NAPIOR: Understood.

22 MR. ZAMBITO: And it's 109
23 feet, just for the record. I don't know if
24 it makes a difference.

25 MR. NAPIOR: I was scaling it

1 CHESTNUT PETROLEUM DISTRIBUTOR

2 off of Google.

3 MR. CORCORAN: It's
4 confusing. I don't know why it was put up
5 there. James Street is approximately 400
6 feet up Mount Zion Road.

7 MR. ZAMBITO: Mount Rose.

8 MR. CORCORAN: Mount Rose.

9 CHAIRMAN GIAMETTA: Is that
10 clear, folks, the naming of the nearest
11 street is Mount Rose rather than James
12 Street. James Street is above Mount Rose.
13 Does the panel have any questions for
14 Chestnut Petroleum's representative at this
15 point regarding the new matter?

16 MR. CONN: No.

17 MR. MEKEEL: No.

18 MR. ZAMBITO: No.

19 MR. SALINOVICH: No.

20 CHAIRMAN GIAMETTA: Is there
21 anyone else from Chestnut who wishes to add
22 to that or delete? I see someone in the
23 audience from a former meeting.

24 AUDIENCE: No.

25 MR. BLASS: The board might

1 CHESTNUT PETROLEUM DISTRIBUTOR

2 want to deem the application of January 19th
3 amended to change the reference from James
4 Street to Mount Rose Street, if that makes
5 sense, or to make --

6 MR. ZAMBITO: I think we all
7 understand where it is.

8 CHAIRMAN GIAMETTA: Let's get
9 it straight. Say that again, please.

10 MR. BLASS: Right. Now the
11 application SEQRA variance from the --
12 affected the intersection of Route 9W and
13 James Street. That is page one of the
14 Zoning Board application in front of you.
15 And if, in fact, that is not accurate --

16 MR. ZAMBITO: Mount Rose
17 Road.

18 MR. BLASS: -- then perhaps
19 we should just deem it to be Mount Rose
20 Street.

21 MR. ZAMBITO: Mount Rose
22 Road.

23 MR. BLASS: Mount Rose and/or
24 James Street to cover all of the
25 contingencies.

1 CHESTNUT PETROLEUM DISTRIBUTOR

2 MR. ZAMBITO: James Street is
3 just a continuation to the top.

4 MR. BLASS: It's probably a
5 housekeeping matter that you may want to
6 take care of now.

7 CHAIRMAN GIAMETTA: We need a
8 motion on that?

9 MR. BLASS: Yes.

10 CHAIRMAN GIAMETTA: Can
11 someone offer a motion?

12 MR. SALINOVICH: Make a
13 motion to correct the street to Mount Rose.

14 MR. ZAMBITO: St. James
15 Street to Mount Rose Road.

16 MR. MEKEEL: I will second
17 that motion.

18 CHAIRMAN GIAMETTA: A vote.

19 MR. CONN: Aye.

20 MR. ZAMBITO: Aye.

21 MR. MEKEEL: Aye.

22 MR. SALINOVICH: Aye.

23 CHAIRMAN GIAMETTA: And aye.

24 Okay, so that is clear. Mr. Blass, is this
25 a continuation of the public hearing for

1 CHESTNUT PETROLEUM DISTRIBUTOR

2 input?

3 MR. BLASS: This evening?

4 CHAIRMAN GIAMETTA: Yes.

5 MR. BLASS: No, January 14th

6 public hearing was adjourned to February

7 11th, I believe, for two limited purposes.

8 And so in the meantime, we have this amended

9 application that's come in. It, in part,

10 deals with matters discussed on January 14.

11 It's the state of practice of the board to

12 have a preliminary meeting to discuss the

13 contents of an application before the public

14 hearing date. So the real issue for you, I

15 think, is whether or not to establish a

16 public hearing date for this application as

17 February 11th or some other date. If it's

18 February 11th, it will bring the matters

19 together.

20 CHAIRMAN GIAMETTA: Yes.

21 MR. BLASS: Which obviously

22 will be the same subject matter.

23 CHAIRMAN GIAMETTA: There has

24 been discussion about the area variance

25 appeal request. Can you lend us some input

1 CHESTNUT PETROLEUM DISTRIBUTOR

2 on that?

3 MR. BLASS: How so?

4 CHAIRMAN GIAMETTA: The code
5 states -- Mr. Mekeel was going over it a
6 little earlier. Mr. Mekeel, can you
7 contribute to that, please?8 MR. MEKEEL: 155-14, letter
9 C, I think we touched on this a little bit
10 back at the last meeting, but I think we're
11 going to proceed with the variance request.12 MR. BLASS: Oh, all right.
13 Well, I think that the application is, in
14 part, an appeal up until this point in time.
15 There has been an interpretation of the code
16 overall. The area variances needed to
17 address the fact that the lot size is 1.93
18 acres as opposed to the minimum of 2.00
19 acres in HD district. It was pointed out at
20 the January 14th public hearing that this
21 provision of 155-14 C, may have the effect
22 of grandfathering the preexisting lots from
23 the lot size requirements that were
24 established when the code was adopted. It
25 has been reported to me that this particular

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2 parcel of 1.93 acres existed in its current
3 configuration and size before zoning was
4 adopted. And so the issue is whether or not
5 it needs a 3.5 percent area variance at all,
6 and that is the component of the appeal
7 aspect in the application in front of you.

8 So you have power both to
9 hear appeals from the zoning administrative
10 determination, and to grant area variances.
11 So you would now, with this current
12 application, have an appeal aspect added to
13 the mix.

14 CHAIRMAN GIAMETTA: Okay.

15 MR. BLASS: And if, in fact,
16 you determine that the lot is grandfathered
17 with respect to its under performance size,
18 then that would render academically the need
19 for that particular area variance.

20 CHAIRMAN GIAMETTA: Okay. I
21 think that should be clarified the best that
22 we can. Perhaps Building Inspector
23 Corcoran, do you have anything to lend
24 toward that?

25 MR. CORCORAN: After the last

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2 meeting, I did review both 155-14 C and also
3 the 155-27 D1 about the intersection. Then
4 I made an original determination on since
5 change after a couple of hours of review in
6 the code book. I did write the letter of
7 155-27 D1, the intersection of two street
8 lot lines to meet variance. But in review
9 of 155-14 C, I would agree that the lot
10 existed. I did do the history search on
11 that. The lot existed prior to zoning, and
12 this section of the code would exempt them
13 from the area variance.

14 MR. ZAMBITO: So I have a
15 question. So with that being said, the fact
16 that the current or the older business was
17 shut down for a two-year period, that
18 doesn't come into effect that they have to
19 come back now and become compliant?

20 MR. BLASS: Not with respect
21 to that provision. I might make a
22 suggestion. The status of this matter, as
23 of the filing of the appeal on January 19th,
24 and the amended variance application along
25 with it, I think that we're talking about

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tonight, as of that point in time, the
applied meeting of the town code was that a
.07 acre area variance was necessary with
respect to this undersized lot.

6 As of the filing of the
7 amended application, I think you would have
8 two issues with respect to the size of the
9 lot of 1.93 acres. The first is whether or
10 not to determine and interpret the code,
11 which is your function, that the lot size is
12 grandfathered by virtue of the provisions
13 we're talking about. And alternatively, you
14 would also have the authority to go ahead and
15 determine the area variance -- apply the area
16 variance standards to that undersized lot as
17 well. You could do both. You could do both
18 in the alternative. You could craft a ruling
19 where you interpret the code with respect to
20 whether or not the lot size is grandfathered,
21 and you could, in your decision, determine
22 that even if hypothetically it wasn't a
23 grandfathered lot size, the decision on the
24 area variance is as follows, and that way you
25 would be covering all basis and wrapping all

1 CHESTNUT PETROLEUM DISTRIBUTOR

2 issues into one package. Probably an
3 efficient way to go.

4 CHAIRMAN GIAMETTA: Thank
5 you. Having heard that, I don't have any
6 questions myself or the board doesn't seem
7 to have any questions. I believe, correct
8 me if I'm wrong, we can ask for a motion to
9 adjourn to the next meeting.

10 MR. BLASS: I think your
11 order of business this evening is to decide
12 whether to establish this application --
13 this amended application dated January 19th
14 for a public hearing on February 11th, your
15 next meeting.

16 CHAIRMAN GIAMETTA: Okay. So
17 we are then accepting this; panel? Can I
18 hear a motion?

19 MR. CONN: I will make a
20 motion to accept it.

21 MR. ZAMBITO: I will second.

22 CHAIRMAN GIAMETTA: Can you
23 elaborate on that motion just a little bit?

24 MR. CONN: Make a motion to
25 accept the amendment to variance Section

1 CHESTNUT PETROLEUM DISTRIBUTOR

2 155-27 D in regard to intersections of two
3 street lot lines.

4 CHAIRMAN GIAMETTA: Thank
5 you. And a second?

6 MR. ZAMBITO: I'll second.

7 CHAIRMAN GIAMETTA: A vote on
8 that?

9 MR. SALINOVICH: Aye.

10 MR. MEKEEL: Aye.

11 MR. ZAMBITO: Aye.

12 MR. CONN: Aye.

13 CHAIRMAN GIAMETTA: And aye.

14 MR. BLASS: So I think I
15 heard that you accepted the application; is
16 that what you're saying?

17 CHAIRMAN GIAMETTA: Yes.

18 MR. BLASS: Okay. So the
19 next order of business is whether or not to
20 schedule for public hearing on February
21 11th.

22 CHAIRMAN GIAMETTA: We need a
23 motion also?

24 MR. BLASS: Second motion, I
25 guess.

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2 CHAIRMAN GIAMETTA: Yes.

3 Someone want to make a motion to schedule it
4 to the next meeting?5 MR. SALINOVICH: I make a
6 motion for the public hearing on February
7 11th for that appeal.8 CHAIRMAN GIAMETTA: All three
9 matters; correct?10 MR. SALINOVICH: All three
11 matters.12 MR. MEKEEL: I will second
13 that motion.

14 MR. CONN: Aye.

15 MR. ZAMBITO: Aye.

16 MR. MEKEEL: Aye.

17 MR. SALINOVICH: Aye.

18 CHAIRMAN GIAMETTA: And aye.

19 MR. NAPIOR: Thank you.

20 CHAIRMAN GIAMETTA: You're
21 welcome. Thank you everyone who
22 contributed. A motion to close the meeting.23 MR. MEKEEL: I make a motion
24 that we close the meeting of January 28th,
25 2016.

1 CHESTNUT PETROLEUM DISTRIBUTOR

2 MR. ZAMBITO: I'll second it.

3 CHAIRMAN GIAMETTA: A vote?

4 MR. CONN: Aye.

5 MR. ZAMBITO: Aye.

6 MR. MEKEEL: Aye.

7 MR. SALINOVICH: Aye.

8 CHAIRMAN GIAMETTA: And aye.

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11 (Time noted: 7:22 p.m.)

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2 STATE OF NEW YORK)

3) SS

4 COUNTY OF ULMSTER)

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6 I, Lisa M. Rosso, Notary Public within and
7 for the State of New York, do hereby certify:

8

9 That I reported the proceedings in the within
10 entitled matter, and that the within transcript is a
11 true record of said proceedings.

12

13 I further certify that I am not related to
14 any of the parties to the action by blood or
15 marriage, and that I am in no way interested in the
16 outcome of this matter.

17

18 IN WITNESS WHEREOF, I have hereunto set my
19 hand this 5th day of February, 2016.

20

21 

22 LISA M. ROSSO,
23 NOTARY PUBLIC

24

25