

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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PUBLIC HEARING

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

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, (Absent)

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

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LISA MARIE ROSSO  
Certified Shorthand Reporter

## 1 CHESTNUT PETROLEUM DISTRIBUTOR - PUBLIC HEARING

2 CHAIRMAN GIAMETTA: Good  
3 evening. Welcome to the January 14th, 2016  
4 meeting of the Town of Marlborough Zoning  
5 Board of Appeals. I'd ask you to join me  
6 for the pledge to flag.

7 (Pledge of Allegiance)

8 CHAIRMAN GIAMETTA: Thank  
9 you. We had a meeting in December, and I'd  
10 ask the town board members if there is any  
11 changes needed to those minutes or  
12 amendments, deletions, additions, anything  
13 at all.

14 MR. ZAMBITO: No.

15 MR. CONN: No.

16 MR. MEKEEL: No.

17 MR. SALINOVICH: No.

18 CHAIRMAN GIAMETTA: I'd ask  
19 for a motion to approve those minutes.

20 MR. CONN: I'll make a motion  
21 to approve those minutes.

22 MR. MEKEEL: I will second  
23 it.

24 CHAIRMAN GIAMETTA: Okay.  
25 The minutes were December 10th, I believe;

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is that correct?

MR. CONN: Yes.

CHAIRMAN GIAMETTA: A vote?

MR. ZAMBITO: Aye.

MR. CONN: Aye.

MR. MEKEEL: Aye.

MR. SALINOVICH: Aye.

CHAIRMAN GIAMETTA: And aye.

The minutes from last month approved. Okay, we are continuing a matter from previous meetings, and at this point, we have to read the legal notice that was in the paper -- continues to be in the newspaper. Can someone read that in, please?

MR. CONN: You want me to read it?

CHAIRMAN GIAMETTA: Yes.

MR. CONN: Please take notice that a continuation of the public hearing from July 9th, 2015 will be held by the Town of Marlborough Zoning Board of Appeals (ZBA) at the Town Hall, 21 Milton Turnpike, Milton, New York on January 14, 2016 at 7:00 p.m. or soon thereafter as may be heard.

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2 Owner/applicant, Chestnut Petroleum  
3 Distributor, has made area variance requests  
4 concerning property located at 1417 Route  
5 9W, Marlboro, New York 12542 as follows: A,  
6 a .07 acre area variance from minimum lot  
7 size 2 acres. And B, an area variance to  
8 allow placement of accessory structures to  
9 the front of a principal building. Tax  
10 parcel: Section 109.1, Block 4, Lot 14 (HD  
11 Zone.) Any interested parties either for or  
12 against this application will have the  
13 opportunity to be heard at this time.  
14 William Giametta, Chairman, Town of  
15 Marlborough Zoning Board of Appeals.

16 CHAIRMAN GIAMETTA: Thank you  
17 very much. At this point, we'd like to have  
18 a summary, if we could, from the applicant  
19 as to why you're here.

20 MR. NAPIOR: Certainly, good  
21 evening.

22 CHAIRMAN GIAMETTA: Please  
23 identify yourself.

24 MR. NAPIOR: For the record,  
25 Leo Napior with the from law firm of



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2 Harfenist, Kraut & Perlstein. I know this  
3 application has been pending before you for  
4 some time, but it hasn't been on your  
5 agendas recently. We have been before the  
6 planning board dealing with the SEQRA review  
7 process. The application before you is for  
8 two area variances to allow the property  
9 commonly known as 1417 Route 9W, the former  
10 Dickies Diner site, to be redeveloped with a  
11 new gasoline station, a convenience part and  
12 a coffee shop, Dunkin' Donuts with a  
13 drive-thru window.

14 There are two variances  
15 requests before the board this evening. The  
16 first is for the building and lot size. The  
17 subject property is 1.93 acres. It's a  
18 minimum of a 2-acre zone. That is an  
19 existing nonconformity. I did submit some  
20 written materials, I don't know if your board  
21 saw that in the package, but arguably under  
22 Section 155-14C of the code, the property is  
23 grandfathered in and no variance will be  
24 required. Either way, I can highlight to the  
25 extent you disagree with me, we can certainly

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proceed through the balance and test.

The other variance that's required is to locate accessory structures in the front yard between the structure and the street line. The accessory structure we're talking about is gasoline pumps, canopies and the fuel pumps. There is no feasible way to design the site with the pumps not located between the building and street and the site configuration. To locate pumps behind the structure and move the building forward would push the building into the front yard setback. It would also preclude any ability to install the drive-thru window as part of the project, and due to the L-shape configuration of the property, to locate the pumps to the side of the structure, again, there would be no way to do so, and they still have the building meet front yard setback requirements.

The planning board, since we've last been before you the last meeting adopted the neg dec, that was included as part of our submission to your board. In

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2 that negative declaration, the planning board  
3 went through all the variance factors with  
4 respect to -- potential environmental effects  
5 and found there would be no detrimental  
6 effects from any proposed aspects of the  
7 project.

8 With that, if the board has  
9 any questions, or would like me to go through  
10 any elements of the project, I would be happy  
11 to do so.

12 CHAIRMAN GIAMETTA: Thank you  
13 very much. Board members, are there any  
14 questions?

15 MR. MEKEEL: I do have a  
16 question, you mentioned a section of the  
17 code 155- --

18 MR. NAPIOR: 14, subsection D  
19 and C, and I can summarize from that section  
20 if you'd like?

21 MR. MEKEEL: Yes.

22 MR. NAPIOR: It states the  
23 impertinent part, the area or the dimension  
24 of any lot should not be reduced to less  
25 than the minimum required, and if it's

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2 already less than a minimum required by this  
3 chapter, said area or dimension may continue  
4 and shall not be further reduced.

5 My point being, that the  
6 subject property is already a sub standing  
7 lot. We're not proposing to produce the lot  
8 area any further. Any use of this property,  
9 which can be for a gas station, a diner,  
10 anything that you can think of, would require  
11 arguably if that section is not applied to  
12 provide an area variance for the minimum lot  
13 size. That is an existing condition that  
14 we're not offering anyway.

15 MR. ZAMBITO: So what you're  
16 stating is they don't need the variance?

17 MR. NAPIOR: It's my position  
18 that it's grandfathered in.

19 CHAIRMAN GIAMETTA: I'd like  
20 to ask input from Mr. Blass, our attorney,  
21 on that matter if you're prepared to answer  
22 that?

23 MR. BLASS: Well, I think the  
24 applicant is requesting that this board  
25 address the minimum lot size requirement,

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two acres in two alternative ways.

Alternative one is to address whether or not provisions at 155-14C, as just discussed, provide for a conclusion that no variance is necessary because of the preexisting size of the lot relative to the two-acre requirement in the code.

And if you disagree with that conclusion, or in addition to that issue, you will then also turn to the area variance standards, the five area variance standards that would be required for what is about a 3.5 percent variance from the minimum two-acre lot size.

So the question is actually that you consider both and structure your decision around that request. I would probably advise you that it's wise to address both issues in your ultimate decision.

CHAIRMAN GIAMETTA: Thank you very much. Anything further from the board; questions to the applicant or for the applicant, clarifications, concerns or issues.



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2 MR. NAPIOR: If you want to  
3 open the floor up to the public, I would be  
4 happy to respond to comments to them.

5 CHAIRMAN GIAMETTA: Okay.  
6 The meeting is open so we can hear from  
7 someone else on this matter, if either for  
8 or against the project, so please stand and  
9 identify yourself.

10 MR. GAROFALO: James  
11 Garofalo, 3 Young Avenue. I'm here not for  
12 or against the project. I am concerned  
13 about the process, and I believe that there  
14 is additional work that needs to be done. I  
15 have been a resident here for 20 years.  
16 Just to give you a little background. I  
17 have a Bachelor's degree in civil  
18 engineering, I have a Master's degree in  
19 transportation, planning and engineering. I  
20 worked for the New York City Transit  
21 Authority in their construction division. I  
22 worked for the Capital District  
23 Transportation Committee, which is the  
24 Metropolitan planning organization, Albany,  
25 Schenectady, Rensselaer and Saratoga

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2 Counties, basically the long and short term  
3 planning and watch your federal dollars to  
4 make sure they're properly spent. I worked  
5 for the Long Island Department of  
6 Transportation heading up their traffic and  
7 speed monitoring unit, essentially in charge  
8 of their traffic county for the entire  
9 state. Since 1989, I've worked for Tim  
10 Miller Associates. I am their Director of  
11 Transportation Division. Basically, most of  
12 my -- 90 percent of my work is working on  
13 developments and handling traffic end. I  
14 also worked -- done work for the town as a  
15 citizen on their master plan. I am  
16 currently on a transfer committee, transfer  
17 station committee.

18 The first thing I'd like to  
19 do is to request that when the board is done  
20 listening to everybody they consider to hold  
21 the public hearing open until they receive  
22 documents from the planning board, and that  
23 those documents are put up on the website and  
24 are accepted, such as their minutes, and the  
25 SEQRA documentation that they approve. I

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2 believe that they were in error in not hiring  
3 professionals to review some of this  
4 material. They were instructed to accept the  
5 professional opinion of the applicant's  
6 engineers, without having an opportunity for  
7 other professionals in a public hearing or  
8 otherwise to present conflicts with their  
9 professionals. I believe that that should  
10 have been done, and I believe you're going to  
11 hear some of the things that they probably  
12 should have been hearing. And any board  
13 should, if you don't understand something,  
14 ask questions, and make sure that you  
15 understand it. And one of the -- some of the  
16 things that I heard from the planning board  
17 members were, I don't understand how the  
18 circulation is going to work interior to the  
19 site. Another board member was stating the  
20 fact that they didn't hire a traffic  
21 professional to review, from the town's point  
22 of view, the circulation. These are the  
23 things that do matter in terms of these  
24 variances because if the building has to be  
25 moved one way or the other, made smaller

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2 barrier, that may affect the variances. And  
3 one of the things that I heard, one of the  
4 words that I heard from the lawyer who just  
5 spoke was the word "may" and I don't know --  
6 I don't have the code in front of me -- but  
7 when I hear the word "may," that means that  
8 it's discretionary on your part. Shall means  
9 it's a requirement. Should is an indication  
10 that you should agree with it. May, it's  
11 much more discretionary on your part.

12 I'd like to go over a few  
13 things that I think are problems and, again,  
14 some of the these are going to potentially  
15 affect the variances.

16 CHAIRMAN GIAMETTA: May I ask  
17 you something, have you brought this up to  
18 the planning board, these matters?

19 MR. GAROFALO: Some of these  
20 matters have been brought up to the planning  
21 board. I will give you a copy of the letter  
22 that I gave to the planning board. Whether  
23 they read it or not, I can't tell you, but I  
24 will provide you with a copy of the letter  
25 when I'm done for you to look at. I'm not

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2 going to cover all of those subjects that  
3 are in the letter, but I hope you will read  
4 it. They were provided to the applicant  
5 traffic professionals also, so they have a  
6 copy of my letter that went to the planning  
7 board.

8 CHAIRMAN GIAMETTA: Please  
9 don't repeat the items that you've given to  
10 them already. If you have some new items,  
11 we would like to hear about those.

12 MR. GAROFALO: Even though  
13 I've given it to them, you haven't heard  
14 them. I think that you --

15 MR. ZAMBITO: This is a  
16 planning board issue.

17 MR. BLASS: Mr. Chairman, if  
18 I may interject? My apologies.

19 MR. GAROFALO: It's okay.

20 MR. BLASS: It is true that  
21 Mr. Garofalo did file with the planning  
22 board a statement under the date of  
23 September 29th, 2015, and that document  
24 consisting of four pages with an appendix is  
25 a part of the planning board records with



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2 respect to the SEQRA review in which the  
3 planning board conducted in which the  
4 planning board ended on January 4 with the  
5 issuance of a negative declaration.

6 I think that for purposes of  
7 these proceedings, we should extend to this  
8 speaker a full and complete opportunity to  
9 make whatever points he wishes to make on the  
10 record, regardless of whether or not they are  
11 in any way redundant of what occurred in  
12 front of the planning board by virtue of his  
13 submission of that document I just mentioned.  
14 So that's my advice.

15 CHAIRMAN GIAMETTA: Thank  
16 you, counselor. Proceed.

17 MR. GAROFALO: Thank you.  
18 New York State has a plan to put bike lanes  
19 along Route 9W. The plans that I saw that  
20 were provided did not provide enough width  
21 along the entire length for those -- for  
22 that bike lane, and I think that that's  
23 something that should be done. The issue  
24 of -- there is an issue of should there or  
25 should there not be sidewalks. This is one

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of the issues that basically all municipalities have to wrestle with providing sidewalks along their roads. And we see those now being done in Newburgh, we should be doing those. And when you say, Well, why should you do just one little segment of sidewalk just in front of there? If you think about planning, you think about, say, what Eisenhower did with the interstate system, which is to set a goal, and decades later we have 46,000 miles of interstate highway. Well, it didn't start out that way. It started out with a piece here and a piece here, and that's the way that you have to look at the sidewalk system, is that slowly this will be built. If you start excluding pieces, then you start basically killing that entire concept.

To me, there was an issue with the right turn in/right turn out island, which to me was not really properly designed. Redesign that change, that may affect the entire site, and that should have been done. There was no signing and striping plan, nor

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were there any turning movements requested to see exactly how trucks would move through the interior of the property and this, again, if a truck can't make a turn, cars can't make the turns, the building may have to be shifted one way or the other, or made smaller. So this is a very important thing to be taking a look at. I don't agree with the acceleration lane. I have not seen any place where that's been introduced, maybe it has. I certainly would like to have the applicant to provide a location where I could have gone out and looked at that acceleration lane. I think the two-way turn lane would have been a better solution, maybe wider in the road. Again, having impact on the site. But that would also deal with the issue of having a site across the street, and what is that acceleration lane going to do to the future prospects and the current prospects for turning in and out of the Rusk site and any other site that might be along that acceleration lane.

I did not see sight distances

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2 on the plan, nor did I see any indication  
3 that any sight study was done at the 85th  
4 percentile speed, which is used to take a  
5 look at what sight distance you really should  
6 have. Now, it very may well be they have  
7 very good sight distances, but to me this  
8 stuff should be on record so that if there is  
9 an accident, this stuff is there and say we  
10 looked at that, if it was okay.

11 The state -- on the state  
12 system that is something that they call High  
13 Accident Locations, HAL. They have  
14 lightings, they have accidents, they look at  
15 the intersection -- the sections of roads  
16 that have high accidents. This is normally  
17 required when you get a permit for an access.  
18 This information I don't believe was provided  
19 to the town, simply is it or isn't it HAL  
20 location. If it is, then there is an entire  
21 additional level of analysis that has to be  
22 gone through.

23 In order to properly evaluate  
24 a traffic study, one of things that a  
25 professional would like to have is the



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2 traffic counts themselves, because the  
3 traffic counts become an interval part of  
4 what those numbers are, and some of the  
5 numbers are generated out of the traffic  
6 counts that peak our factor. These things  
7 professionally we need to have. Traffic  
8 counts were not provided as part of the  
9 traffic study. They have been done. The  
10 hard work has been done. So having those on  
11 record with the town is good. Also is good,  
12 when those are on record, when the next  
13 person comes in, say Mr. Rusk wanted to  
14 develop his property across the street, well,  
15 he's got some recent counts that he could  
16 use.

17 The traffic study talked  
18 about the level of service E at James Street.  
19 Now to explain level service E, the highway  
20 capacity manual, which is the main document  
21 that is used for over 50 years for  
22 determining how heavily utilized  
23 intersections are, is broken down into a  
24 letter grade to make it easier to understand.  
25 A, which is the best, to F, which is the



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2 worst, and James Street had a level service  
3 E. Nothing was stated in terms of could  
4 anything be done or not be done to improve  
5 this within the concept of transportation  
6 improvements that were already being  
7 provided.

8 One of things that I would  
9 ask you also to wrestle with is a sign  
10 variance. Basically, they're putting their  
11 logo on the entrances/exits all over the  
12 place, and my question to the zoning board  
13 is, does -- do these require separate  
14 variances? Now, Mr. Rusk will testify (sic)  
15 some time, and I came and bugged him about  
16 his signs, and I was before the zoning board  
17 about his signs. So, you know, I can't see a  
18 worst case -- much worse than his that I  
19 shouldn't be up here complaining about the  
20 signage that is being provided as part of  
21 this proposal and request, whether or not  
22 there should be a separate variance for each  
23 and every one of those signs.

24 So with that, I would like to  
25 provide you with a copy of this. Hopefully,

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2 you will find the time to read it, and it  
3 includes a procedure for analyzing for the  
4 queuing for the drive-thru window. This  
5 wasn't done. It may very well be that they  
6 have plenty of queued space, but this is an  
7 analysis procedure that can be done to say  
8 yes, it is, no, it isn't, how do you have to  
9 change, what's that going to do to the  
10 various variances? So with that --

11 CHAIRMAN GIAMETTA: Would you  
12 give them to Secretary Cashman? Please hold  
13 them for the record, please.

14 MR. GAROFALO: I want to  
15 thank you for listening to my extended  
16 talking, and I apologize to the audience for  
17 not staying longer. I don't have too many  
18 more days that I can be active. Now is the  
19 time that I have to go. So I apologize for  
20 that and not being able to listen to them  
21 speak and them having to sit down and listen  
22 to me.

23 CHAIRMAN GIAMETTA: Thank  
24 you.

25 MR. GAROFALO: Thank you very

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2 much Board for giving me the time and  
3 opportunity to say something.

4 CHAIRMAN GIAMETTA: Thank you  
5 for your input. Someone else wishes to  
6 input?

7 MR. RUSK: Yes, thank you.  
8 My name is John Rusk. I live across the  
9 street from the proposed project, and I'd  
10 like to make a short presentation tonight to  
11 address some of the issues concerning the  
12 variances that have been requested. I will  
13 try to keep my voice up for you and for  
14 everybody out here who is listening to this.

15 Chairman, members of the  
16 board, from the beginning of this application  
17 process for those of us who have been  
18 concerned about it from a safety point of  
19 view and from a neighbor's point of view,  
20 there is a perceived bias that we have, not  
21 necessarily with this board, but with members  
22 of the town, and we are concerned that there  
23 are other factors, other than what the Zoning  
24 Board of Appeals is required to consider in  
25 granting a variance or not. And so you may

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2 say to me, Well, what do you mean? And what  
3 I mean is, almost every conversation that I  
4 have engaged in with people concerning this  
5 project, it boils down to the town needs to  
6 develop its tax base, and that that is the  
7 critical concern in either approving or  
8 denying this project. And when you look at  
9 Section 155-40C2 A through E, which are the  
10 factors that this board is to consider --

11 MR. ZAMBITO: John, say that  
12 again, what section?

13 MR. RUSK: 155-40C2, and then  
14 it's A through E. And it's the five factors  
15 that this board is to consider in either  
16 granting or denying a variance, and I will  
17 point out to you that there is absolutely  
18 nothing in those sections that have anything  
19 to do with building the town's tax base.  
20 That that is not a consideration of this  
21 board, and should not be a consideration of  
22 this board in making its determination, and  
23 to consider it would be an error. And the  
24 charge that you five board members have are  
25 to review those five factors to make a



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2 determination of whether or not the criteria  
3 established are proven by the application to  
4 grant this variance.

5 I will also point out that at  
6 the planning board meetings that have been  
7 held for this particular project, many  
8 members of the community were here, including  
9 Mr. Garofalo, who is a traffic expert, have  
10 requested that we have ability to participate  
11 and to speak at a public hearing to address  
12 issues and concerns like those expressed by  
13 Mr. Garofalo tonight. In fact, board members  
14 from the planning board, specifically, Mr.  
15 Clarke at the last meeting expressed deep  
16 concern about the traffic, and I think we all  
17 realized that one of the major concerns with  
18 putting in this project at this particular  
19 location creates great concern on traffic.  
20 And yet, Mr. Garofalo was prevented from  
21 participating in that discussion because a  
22 negative declaration was made after the  
23 applicant's attorney asked for a public  
24 hearing, and the planning board attorney, Mr.  
25 Blass said, No. Now that creates a perceived



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bias for those of us who have these concerns  
and want to express them.

This particular piece of  
property, over the last two or three years, I  
think you will all agree has deteriorated to  
the point of embarrassment for everybody who  
goes by. There is graffiti, there are empty  
oil tanks, the property has become overgrown,  
and there is a provision in the town code,  
Section 114-1 that deals with property  
maintenance, and despite the deterioration of  
this property, and the condition that it's  
in, absolutely nothing has been done by the  
town to address these problems; to write a  
single citation, to make a request that  
something be done. Section 14 -- excuse me,  
114-1 legislative intent, part of that reads:  
Further it is found and declared that by  
reason of lack of maintenance and progressive  
deterioration, certain properties instruction  
and structures have the further affect of  
creating blighting conditions, leading to the  
creation of slum-type areas, and that if same  
are not curtailed and removed, the conditions

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will grow and impact the entire community. What has been done by the town to address this problem that has been lingering and festering for the last two, if not three years? This property was a viable, critical part of the community when it was operated as a diner owned by this applicant. It is -- there is an appearance of a bias in favor of this application because the town has turned a blind eye and allowed such a property to deteriorate. Whether it's intentional, accidental, coincidental, I don't know, but there is certainly an appearance of bias.

There is a provision in the code, Section 155-27 D1, which deals specifically with automobile service and filling stations, and there is a sentence in there, under D1, the last sentence, vehicular access to the above automotive uses shall not be closer to the intersection of any two street lines within 500 feet. That provision requires that no entrance or exit to a gasoline filling station can be more than 500 feet from any intersection of any two

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streets. Street is defined in the code as being a highway, Route 9W, and James Street. The distance from that intersection will run well beyond the southern end of this particular property. Now, why hasn't this been addressed by anybody? I'd submit to you that the applicant has a requirement to seek a variance from this particular provision if they want to put in a gas station at this location and yet no one has raised it. The concerned citizen, people like Mr. Adamshick, people like myself, Mr. Garofalo, we have to go digging through all of this stuff to protect ourselves because we have this feeling that there is a bias that the town is willing to overlook these requirements because they are so desperate to put in some type of a business there to broaden their tax base.

I submit that the applicant must comply with that provision, and this particular site precludes them from putting a gas station in at that location. Now, I submit to you that there are things that you

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1  
2 must educate yourselves on in order to  
3 properly evaluate this application. One of  
4 those things is to review the SEQRA handbook,  
5 and its front page looks like this  
6 (indicating). You can download it off the  
7 internet, and it's put out by the New York  
8 State DEC, and it assists you in trying to  
9 understand the complicated world of SEQRA.  
10 What's more important is there is questions  
11 and answers that are part of the handbook,  
12 and there is a section at page 93 of that  
13 handbook, the question, Can a project be  
14 denied after a negative declaration? And  
15 that is exactly what this board is facing.  
16 And the answer is, Yes.

17 This board has the right and  
18 should deny the request to put in this  
19 project when you consider the five factors  
20 that are involved, and there is an example on  
21 this as part of this answer, and I submit it  
22 is hauntingly similar to what you are facing  
23 now with this project. It is almost exactly  
24 the same with the factual scenario that you  
25 are being handed, and I would ask you to



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1  
2 please review that. If you don't have it,  
3 and you would like it, I'm happy to provide  
4 it to you. But the best thing that this  
5 board can do to make an informed decision on  
6 this project is to, as Mr. Garofalo said, ask  
7 a lot of questions. If you don't understand  
8 it -- understand something that is presented  
9 to you, ask questions. Ask it of the  
10 applicant's experts, hire your own experts,  
11 listen to what people like Mr. Garofalo, who  
12 have been doing this for over 20 years have  
13 to say, because those things are critical.

14 With that being said, I'm  
15 going to try to calm down. I want to  
16 apologize to all of you. I should apologize  
17 from the first night I came to one of these  
18 meetings because this involves right where I  
19 live, it involves the safety of my family, it  
20 involves the safety of my extended family.  
21 It involves my kids getting in and out of the  
22 driveway safely. It involves the keeping of  
23 my house safe, the drinking water safe, a  
24 farm that my family has run for years, and I  
25 apologize to you for every time I was yelling



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2 at you. I don't mean to yell at you, my  
3 anger is not at you, my anger is at this --  
4 at where I find myself right now and having  
5 to deal with this issue, and I apologize  
6 publicly to all of you for having to deal  
7 with my temper.

8 With that being said, I have  
9 John Cary who is going to assist me to go  
10 through these five factors, and if you will  
11 bear with me a little bit, I will try to go  
12 through this quickly, and John, we can go  
13 ahead and start.

14 (Slideshow presented at this time)

15 MR. RUSK: The property used  
16 to be a diner. You all know that, you have  
17 been here for a very long time. It was a  
18 big part of the community. People who now  
19 go to Franks and people who now go to  
20 Kirky's, Dickies Diner or Lyons Diner was  
21 the place where people met, the community  
22 gathered, and that is what it was. It was  
23 open early in the morning and it closed at  
24 night, and they were a great neighbor. But  
25 there neighbor is my parents' property,

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which is owned by Colonel Lewis DuBois.

It's on the historic -- it's just been approved by the New York State Historic -- I don't know the full name of it -- but it's just qualified as being both a national historic site and a state historic site based upon information that we put together. It was the home of Colonel Lewis DuBois.

It's been written up in historical books. My father maintained the property. That is a view from east, that is from the east side of the house looking at the house.

You can just go to the next one, John. When he is getting that together, the other houses that surround this piece of property are also residential houses. There is the Jane Quimby house. It's right along 9W, and the houses that are up and surround the back of this property, and you go up -- now it's called James Street -- Mt. Rose Road is what I recall -- but those are all residential houses. There was a diner that was there that, you know, did not impose any significant issues at night because the place

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was closed by 9:00 or 10:00. So here is the barns -- you can go to the next one, John, we can go through these. My parents have tried to preserve the farm and to keep the base of the history of the farming community of Marlborough. There is everything on the property. There is grapes, there is apples, there is tomatoes, there is strawberries. The property one time was farmed by Lou Surinsky, now by Caradonna, and they run the farm. You can go to the next one, John.

They want to put in a gas station. There is a risk to it. I have the details of all of this, but there are known dangers of exposure to gasoline. People like Mr. Adamshick are putting themselves at risk every day when you operate around these places. You can go to the next one. The studies show gas stations are toxic neighbors, and even small spills, every time there is an overfill with just a few, you know, you overfill your car, whatever, or a tank, that accumulates over a period of time, and the studies are showing that those small

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2 amounts accumulate over a period of time, it  
3 becomes a problem. And when there was a  
4 SEQRA determination by the planning board, we  
5 were not able to present any of this  
6 information because there was no public  
7 hearing, and we weren't able to explain the  
8 downstream from this proposed gas station.  
9 This water is going to run north, through a  
10 culvert under 9W, along my driveway to a  
11 pond. That pond irrigates to the entire  
12 Caradonna Farm. So when that farm is dry,  
13 all the gasoline is now going to be sprayed  
14 on that farm. If there is a spill, that farm  
15 is out of business. But we weren't able to  
16 present that information to the planning  
17 board who took -- agreed to take on the SEQRA  
18 evaluation. Why weren't we able to present  
19 that? I don't know. The applicant said we  
20 should have it, but it was denied us. Next  
21 one, John. I'll give you these papers. We  
22 can skip through this. I think they get the  
23 point I'm trying to make about these.

24 I had asked Dr. Johaning, he  
25 is an environmental exposure to toxic



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substances physician who analyzes people who are exposed to things such as asbestos or workplace exposures to other toxic substances, I asked him for a report. He wrote a report, it's in the paper, July 9. He pretty much reiterates the things that all of the studies show, that there is problems being near gas stations from a health perspective, and we aren't the closest ones. It's the people who are right behind there, just the fumes are dangerous. You can go through, John, next.

Now, this report -- this a 24-hour proposed operation, 24 hours, I am the Assistant DA in one of the courts in New Paltz where Chestnut Petroleum has a gas station right at the intersection of Main Street and Route 32, that portion of 32 that runs from Main Street, New York to Kingston, right at that intersection next to the post office. This is a typical kind of case that you see out of New Paltz involving Chestnut Mobil. This is where it occurred, which is 3 North Chestnut Street. This one occurred



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2 on June 28th, 2015 at 4:22 in the morning.  
3 We've all been told by our parents that  
4 nothing good happens after 11:00, and most  
5 of the crime that I see in downtown New  
6 Paltz is about 3:00, 4:00 in the morning and  
7 this is the charge, a felony case for an  
8 incident that occurred. John, would you go  
9 to the next photo.

10 This is the guy, the victim  
11 of the assault, concussion, I think he  
12 fractured his skull, but that's the type of  
13 case. Welcome to Marlborough. This is what  
14 we're going to see in Marlborough. This  
15 stuff we get to have now, great. There is a  
16 lot of things that come along with a 24-hour  
17 operation, and this is one of them. Now, you  
18 don't have to take it from me. This is Frank  
19 Faluotico. He was undersheriff, Ulster  
20 County, just retired about a year ago.

21 (Playing videotape of Mr. Frank Faluotico)

22 MR. RUSK: Good morning, my  
23 name is John Rusk. It is Tuesday morning,  
24 July 2015. I'm at my office in Kingston New  
25 York at 255 Fair Street, and we are

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2 videotaping Frank Faluotico.

3 EXAMINATION BY MR. RUSK (dictated by video):

4 Q. Good morning.

5 A. Good morning.

6 Q. Will you please state your full name,  
7 please?

8 A. Frank Faluotico, Jr.

9 Q. And are you employed currently?

10 A. Currently, I am an instructor for New  
11 York State Department of On-line Security.

12 Q. For how long have you been doing that  
13 work?

14 A. Since March of this year.

15 Q. Okay. Prior to doing that work, what  
16 type of work did you do?

17 A. I was in law enforcement for 28 years.  
18 I worked for Ulster County Sheriff's Office, retired  
19 as undersheriff serving eight years in that  
20 position.

21 Q. Can you describe for us generally what  
22 your duties and responsibilities were as  
23 undersheriff?

24 A. Overseeing the day-to-day operations of  
25 the sheriff's office, the civil division, the

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2 criminal division and the corrections division,  
3 currently 300 employees.

4 Q. Okay. Can you describe for us the  
5 types of different positions that you held for  
6 Ulster County Sheriff's Department during the course  
7 of your work there?

8 A. I started as a deputy sheriff, went to  
9 narcotics investigator. From narcotics investigator  
10 to detective -- major crime scene detective, and  
11 then I was assigned to the Mid-Hudson Drug Task  
12 Force where I worked under the state police and FBI,  
13 and we had a multi-jurisdiction all gang and drug  
14 task force. We worked numerous cases within the  
15 Orange County, Ulster County, Sullivan County,  
16 Dutchess County area, and I then was assigned as a  
17 confidential investigator to the district attorney.  
18 And after that, I was appointed undersheriff by  
19 Sheriff Van Blarcum, where I served for eight years.

20 Q. Now, can you describe for us in the  
21 course of your work for the sheriff's department and  
22 for the Mid-Hudson Drug Task Force, what involvement  
23 you had with regard to different locations of  
24 crimes, any particular 24-hour gas stations or  
25 24-hour convenient marts?

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2 A. Any 24-hour location business --  
3 smaller business locations become targets of  
4 transaction locations because they are open 24  
5 hours. People are in and out. It doesn't raise any  
6 suspicion for people going in and out commonly all  
7 hours of the day and night. We found a lot of our  
8 narcotic transactions, when they were setting up  
9 undercover narcotic deals, the dealers would ask to  
10 meet at this type of location, I'll meet you at this  
11 gas station, I will meet you at this store, it's  
12 lit, you meet them real quick, it's not on a back  
13 road where it would draw suspicion, so they think  
14 they're going to get away with it. But they have  
15 actually become areas of transaction locations to  
16 meet and for things to happen. Also, we would have  
17 prostitution investigations. We would have the  
18 would be prostitute ask to meet at the same type of  
19 location. They would leave their car there, or they  
20 would get into the John's car, and they would come  
21 back and retrieve their car.

22 Q. Okay. Now, in addition to the  
23 Mid-Hudson Task Force that you talked about and the  
24 multi-jurisdictional jurisdiction, did your work  
25 include covering the areas of Marlborough and the



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2 Town of Lloyd?

3 A. Yes. Not only with the Mid-Hudson Drug  
4 Task Force, but as undersheriff, I also oversaw the  
5 URGENT task force, which Town of Marlborough and  
6 Town of Lloyd both are involved in. We would find  
7 in excess between the City of Kingston, the City of  
8 Newburgh and the City of Poughkeepsie, they come and  
9 factor narcotics transactions.

10 Q. Can you explain that or describe why  
11 that area, in particular, that is, being the  
12 Marlborough area or Highland area between the Cities  
13 of Kingston, Newburgh and Poughkeepsie, why that  
14 area posed a problem?

15 A. Because if you take a map and you  
16 pinpoint where the center point of these three  
17 places would be to meet for different narcotic  
18 dealers, you would see that it falls right into the  
19 Town of Lloyd, Town of Marlborough area.

20 Q. Now, Mr. Faluotico, are you familiar  
21 with a property located in Marlborough, New York, it  
22 was formerly called Dickies Diner?

23 A. Yes, during my patrol days, I  
24 frequented the location commonly.

25 Q. I'd like you to assume there is a



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proposal currently to change that diner, which is now closed, it's been closed for a period of time, to convert that property into a 24-hour gas station convenient mart. Can you provide us with your opinion, based upon your training and experience, as what effects that would have upon the neighborhood?

A. I think, as I recall it's a residential area -- across the street from that is a residential area. I think that type of change of business structure invites more problems. As the diner, as I remember, they weren't open late at night. They opened in the morning, breakfast, lunch, early dinner and then they closed. It was multiple employees at that location, you know. It wasn't a quick in and out type business, it was family-type oriented. Changing that type of structure of business to one that's providing petroleum product, which causes not only an environment concern, but it also causes the different type of customers being drawn in and a different type of use of that location. So I think that's got to be strongly -- I think that is a very small piece of property to begin with, as I recall, and I think that that type of change could invite a lot of problems to that

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2 neighborhood.

3 Q. How about with regard to it being  
4 converted from, as you said, an operation that  
5 opened early in the morning and closed late in the  
6 evening compared to a 24-hour operation, did the  
7 concerns that you raised before about drug use and  
8 prostitution, is that something that you could or  
9 would anticipate occurring at this location should  
10 it become a 24-hour operation?

11 A. Once you build anything, people will  
12 come. And I think this type of business being put  
13 in that location will become a target for not only  
14 your late night strong arm and armed robberies, but  
15 it also becomes an issue of narcotic transactions,  
16 hook-up spots, prostitution transaction hook up  
17 spots may come, and gang problems where they will  
18 take a location to have a beef with a rival gang,  
19 and when gangs are looking for each other, they will  
20 find a spot to hang out because they have to  
21 establish their territory. So if one gang tries to  
22 move in and that is their territory, you have rival  
23 gangs that will try to push them out of there for  
24 narcotic transactions.

25 MR. RUSK: Thank you. I have

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no further questions.

(End of videotape)

MR. RUSK: So those are concerns that a professional law enforcement person has. They aren't just the concerns that we who live in the immediate vicinity have. With that being said, you know, and looking at these different factors, I think we addressed whether there would be an undesirable change in the neighborhood, I think that we talked about that, are a detriment to the nearby properties, I think we talked about that. Whether the benefit sought by the applicant can be achieved by some other method, you know, there is still that -- the letters that the applicant sent out to the adjoining property owners about whether they would be interested in selling the property, and on one of the slides, which I don't have here today, one of the adjoining property people told the applicant, I'd like to meet with you. I'm not just going to give you a number on a piece of paper, she said, let's have a

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meeting. I think you have it. If you don't have it, I have it, and I will submit that letter to you. But there is other available ways for these people to get the property they need if this is the spot where they want it.

We talked about the physical and environmental conditions. Item E, Item E is a big one. This is the fifth of 5. Whether the alleged difficulty was self-created. Was this self-created, this property before it was -- before it layed dormant for over two years, was a preexisting nonconforming property, and it operated as a diner. The applicant left the property dormant for more than two years so that that preexisting nonconforming use was no longer applicable. This hardship that they're now facing is self-creative. They made this. They made this, and now they're asking everybody else around it to suck it up so that they could put in what they want. Based upon all of those factors, we respectfully submit that no area variances should be



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given.

We also believe, and I previously sent a letter to Mr. Blass telling him that we do not believe that the town code permits the expansion of a nonconforming use. This property was operated as a diner, on an undersized lot, agreed, but you can't then make it more nonconforming. The only changes that you can make to the property under the town code is to make it more conforming, and yes, the applicant coming in here asking not only for the size of the lot variance, they're asking for the variances for canopies. And I submit to you that they also need to now obtain, if they want to put in a gas station, a variance so that they can operate within the 500 feet of that provision that prevents it, that says you can't have an entrance or exit within 500 feet of two intersecting streets. So I submit to you that they aren't entitled to the variance.

Based upon all of that, we would ask that you deny the application. I'd also ask that all of the photographs and the



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2 slides and the printed materials will be  
3 given to you. I want it to be made part of  
4 the record. Thank you.

5 CHAIRMAN GIAMETTA: You're  
6 welcome. Anyone else have a contribution?

7 MR. ADAMSHICK: Yes, good  
8 morning. My name is Steve Adamshick. I  
9 work at Amodeo Sunoco in Marlborough. I  
10 just want to point out a nice fact, that  
11 this board needs to protect its integrity,  
12 needs to act informed, needs to act  
13 responsible. The planning board had  
14 declared a negative dec on this  
15 environmental review, and I just don't know  
16 how, without a public hearing, which would  
17 seem to be a proper due diligence in this  
18 respect to the public. There are many  
19 great, great questions raised here tonight  
20 to demand, and I think it's a right and  
21 great opportunity for the community to  
22 present their views to the planning board  
23 before it goes to zoning board because, as I  
24 understand it, one of the key lynch pins in  
25 this whole process is for the board to

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1  
2 receive the environmental review form. If  
3 it's a neg dec, then you can move forward in  
4 your process to grant a waiver on variance.  
5 But I'm just looking so that you could be  
6 informed and responsible and protect your  
7 integrity as a board, because this  
8 application is inaccurate, and if it's  
9 inaccurate, that means it's incomplete,  
10 which means how could you even make an  
11 informed and responsible decision?

12 I think you just really need  
13 to think and go back. Let's have a public  
14 hearing, as I feel it is appropriate and  
15 responsible and the public's right to have.  
16 Listen to what people have to say. Gentleman  
17 like Mr. Garofalo has a lot of experience,  
18 Mr. Rusk, who has tremendous experience with  
19 deciphering these codes, and making an  
20 informed decision once this process plays  
21 out. But you can't do it until you have a  
22 complete and accurate environmental form.  
23 The fact that it's now a historic site brings  
24 a whole gamut of issues into this whole  
25 process. So that is what I would like to say

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2 is that please protect your integrity, send  
3 this environmental process back to the  
4 planning board, have a public hearing,  
5 correct and make more accurate the  
6 environmental assessment form, and then let's  
7 move forward with the other issues. Thank  
8 you.

9 CHAIRMAN GIAMETTA: You're  
10 welcome. Anyone else wish to bring  
11 something forth?

12 MR. NAPIOR: Can I have an  
13 opportunity to respond to the comments?

14 CHAIRMAN GIAMETTA: Yes, Mr.  
15 Napior, here once again.

16 MR. NAPIOR: Addressing Mr.  
17 Garofalo's comments first. I believe his  
18 first comment was that the planning board  
19 did not hire a professional consultant to  
20 review the applicant's materials. That is  
21 not true. Pat Hines was the village town's  
22 engineer, sat through all of the planning  
23 board meetings. There were various  
24 submissions back and forth between the  
25 applicant's consultants and the town's

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2 consultants, plans were revised, comments  
3 were received. The stormwater plan was  
4 redesigned, the traffic plan had been  
5 submitted to the DOT and was also being  
6 viewed by Mr. Hines. The DOT process  
7 continues to play itself out, so that was  
8 not an accurate statement by Mr. Garofalo.

9 Mr. Garofalo then noted that  
10 the word "may" in the statute that I raised  
11 earlier seemed to lead discretion up to the  
12 board. I am positive it does not, as the  
13 context of the statute that it's used in is  
14 that it's permissive that a property owner  
15 may continue to exist as a nonconforming lot.  
16 To deem it otherwise would effectively strip  
17 all useable value and place effectively  
18 whether to do a regulatory taking in the  
19 hands of the board.

20 The bike lanes that were  
21 raised by Mr. Garofalo, that is a DOT matter.  
22 Our traffic and highway improvement plan is  
23 before the DOT. If the DOT comes back to us  
24 and says we need to provide for the area of  
25 bike lanes, that is within their prerogative.



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To date, we have not received any comments from them to that extent.

The comment with respect to including sidewalks on our site plan really has nothing to do with variances that are before your board, and would properly be set forth and discussed with the planning board as a site planning comment. It has no impact to the variances that are before you tonight.

Mr. Garofalo mentioned an issue with the right turn in, right turn out area. I'm not exactly -- he didn't highlight what the issues he saw there were. So I don't know how to respond to that comment. There had been some discussion before the planning board whether that area should have a curb of some kind to prevent people from making left turns out of that egress point. That is an issue that we continue to discuss with the planning board. The reason that it has not been curbed on our proposal yet is because in order for tankers and truck traffic to enter the site, they would effectively have to hop that curb every time

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they're coming into the site. So from our point of view, it doesn't make sense from a site plan design. However, that's something that's certainly still up for discussion with the planning board.

Just as a matter of process, I would like to clarify that the planning board adopting a neg dec does not mean we're done with the planning board. We still have site plan approval pending before the planning board. Ultimately, if we get through this process with your board, there will be a public hearing and further procedures before the planning board where a lot of these additional site plan details will be hammered out.

The two lane -- two-way turn lane that Mr. Garofalo mentioned, instead of having an acceleration lane and an ingress lane, the DOT has commented, the two traffic engineers, that there is not enough activity to warrant a two-way turn lane on the eastern side of 9W. Ideally, you have those two-way turn lanes where you have a busy commercial

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2 district and business on both sides of the  
3 road so that it makes sense to have that  
4 medium lane. Here, where it really is, the  
5 majority of the activity would be on the  
6 western side of 9W, the DOT set forth the  
7 concept to our traffic consultants that we  
8 should look at the design that we have  
9 currently proposed and pending before them.

10 With respect to the sight  
11 distances, we certainly can provide that.  
12 The area is rather flat and straight and  
13 sight distances are not an issue. That's why  
14 our traffic engineers did not show sight  
15 distances. They would virtually go off  
16 hundreds and hundreds of feet. The highest  
17 location is typically something that's bedded  
18 out by DOT when you file for a highway work  
19 permit. That typically comes when you're  
20 further along in the process here. DOT is  
21 not usually interested in being bothered with  
22 any plans that don't have viability to them.

23 The traffic counts were  
24 provided in our traffic study that was  
25 submitted to the planning board, so I'm not

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sure why Mr. Garofalo thought they were not. There was tables in the back room that had that, as well as trip down diagrams that showed the trip counts that were taken, I believe back in July of 2015.

With respect to improvements on James Street and the intersection of James Street and 9W, that is not on our property. It's not something that we have been asked to analyze in, and it really has nothing to do with, again, the variances that are brought to your board. If that is something that the planning board wanted to bring to the discussion, we would have to respond to it accordingly. Whether there is any sign variances that are required, I would defer to the building inspector. Certainly my client would abide by the town, and if they are unable to do so, we would be back before you for a sign variance. I would assume that is the least of all evils.

With respect to the comments on the queuing analysis, the -- this time it was addressed at the planning board. The



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1 site does provide that the drive-thru window  
2 is all the way at the southwestern end of the  
3 building after you wrap around. So you  
4 basically have one side, the entire back, and  
5 the other side for queuing for the  
6 drive-thru. And what we did, set forth by  
7 the -- to the planning board that there is  
8 enough space there for 12 automobiles to  
9 queue up. According to our traffic  
10 consultant, that would be sufficient for  
11 anticipated volume of business. If it  
12 wasn't, it almost becomes self-regulating,  
13 and then if people, if you see an enormous  
14 line of cars at the drive-thru window, in all  
15 likelihood, you're going to park and just go  
16 in and cut the line.

18 Shifting to Mr. Rusk's  
19 comments, I need to correct something that  
20 Mr. Rusk put words into my mouth. I never  
21 requested that there be a public hearing. I  
22 simply raised the question at the planning  
23 board level, whether there should be a public  
24 hearing held. There was a conversation  
25 between me, myself, and the village attorney

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2 as to whether one was required under SEQRA.  
3 Ultimately, we agreed there was -- one was  
4 not required, and the planning board  
5 proceeded under that. I certainly did not  
6 ask for one to be held and was not provided a  
7 public hearing. The issue with respect to a  
8 gas station not being located closer than 500  
9 feet to another street is something that I  
10 will have to take up with the building  
11 inspector. Certainly, if there is a code  
12 provision that our plan is not compliant, we  
13 will need to amend our application, and we'll  
14 do so properly.

15 The historic status of the  
16 Rusk home, unless something further has  
17 happened that I'm not aware of, I believe the  
18 home is actually listed as being eligible for  
19 historic status, it has not been nominated,  
20 nor has it been listed.

21 With that being said,  
22 immediately adjacent to our property, is a  
23 commercial warehouse that sits virtually 30  
24 feet off the road. I think it would be hard-  
25 pressed to say there is some impact to this

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historic property across the street when you have other commercial development, including that which would be immediately adjacent to us that is set just as close to our proposed improvements on the roadway. And, again, I believe it's simply been eligible, not nominated, not listed.

The exposure and hazards with respect to gasoline, the application has set forth a stormwater pollution prevention plan that includes providing filters at the roadway to pick up and filter out any petroleum products that would enter the stormwater system prior to being discharged offsite and eventually working their way down to the pond mentioned earlier. The stormwater pollution prevention plan went through mini revisions based on the comments of the town's consultant, Pat Hines. Ultimately, their decision was made to increase pipe sizes, there were additional filtering procedures required, and it went through a hot spot analysis. Ultimately that stormwater prevention plan was deemed

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2 acceptable by the village's consultant.

3 The shock and awe tactics of  
4 showing what may happen at the 24-hour  
5 operation, really have nothing to do with the  
6 variances that are requested here. I'm  
7 not -- the applicant is not seeking a  
8 variance to allow a gas station to be here.  
9 The applicant is seeking area variances. The  
10 impacts that could be caused by area  
11 variances are visual impacts and things of  
12 that nature. The use of this property as a  
13 gasoline station is a special permit use  
14 under the zoning code. Being deemed a  
15 special permit use is basically a statement  
16 by the legislature that the proposed or  
17 contemplated use is in conformity and  
18 desirable within the neighborhood and would  
19 not be a detriment to the neighborhood. The  
20 town board has already made that decision by  
21 zoning this property to allow such uses.

22 With respect to the hours of  
23 operation, again, respectfully, if that is  
24 something that the planning board wants to  
25 take up with us, by all means, we will have



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that discussion. It really has no impact, whether this is -- operates 5 hours a day, 12 hours or 24 hours a day with respect to the area variances that are before you.

In addition, the permitted uses in the zone would allow a similar use as the gasoline station, so would a 7-eleven or a Wawa, would be a special permit retail use of this property. If that was the case, while I may still arguably need a minimum lot size variance, the variance for the accessory structure be located in the front, and then the pumps and the canopy would no longer be before you, and I would set forth that I don't need a minimum lot size variance. I'm grandfathered in from the provisional code that we mentioned before, so that would become a site plan approval process only and wouldn't be before your board.

So again, the fact that I'm here for area variances just for a canopy and pumps has nothing to do with the type of business that will be there. The self-created hardship, as it's written into your

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code and has been determined by the courts of the State of the New York, the fact that a variance request is a self-created hardship does not preclude the granting of a variance. It's simply one fact for you all to consider. Virtually every application for an area variance is a result of a self-created hardship. That is why they did not preclude granting an area variance, otherwise, it would be a virtual impossibility to ever receive an area variance. The acceptance to that rule is when a property has been up zoned. With respect to this property, where you have a nonconforming lot size, arguably it's been up zoned, and that provision is not a self- created hardship. Mr. Rusk seemed to mix apples and oranges saying that we are increasing the nonconforming use of the property. The use is a permitted use. We're not seeking a use variance, we're not increasing a nonconforming use of the property. The only way that I can increase any nonconformity would be to reduce my property size. The other area variance

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2 before you are what they are. I have not  
3 increased the nonconformity by seeking  
4 variances -- by seeking area variances.

5 And with respect to Mr.  
6 Adamshick's comments, I'm not sure why he  
7 feels the long form EAF and materials that  
8 were provided to the planning board were  
9 incomplete and/or inaccurate. If he is  
10 referencing Mr. Rusk's property being  
11 eligible for historical status, that  
12 eligibility came down after this application  
13 had already started, after the applicant had  
14 submitted a long form EAF, and that  
15 information was not provided to the  
16 applicant, nor, to my knowledge, to the  
17 planning board. Although, I didn't know  
18 until after the planning board had adopted  
19 their neg dec.

20 With that, I think the five  
21 factors in the balancing test on the benefit  
22 to the applicant and detriment to the  
23 neighborhood clearly tilt in favor of  
24 granting the variances for this project. The  
25 benefits of the applicant is, without the

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2 variances here, the entire project dies.

3 This isn't a case where it's a single-family  
4 homeowner, and I need an addition to build  
5 another bedroom. If I don't get it, I still  
6 have my house. Without that, the project  
7 dies. There is no business here. The  
8 detriment to the neighborhood, a lot of what  
9 the complaints seem to be are with respect to  
10 the use of the property. Again, I put forth  
11 we're not here for variances for the use of  
12 the property. The use of the property has  
13 been a use within the zone that's been deemed  
14 desirable by the legislature. If there is an  
15 issue with the use of the property, the  
16 property is forced to go the town board and  
17 have them change the zoning code. Any  
18 questions? Otherwise, that's all I have.

19 CHAIRMAN GIAMETTA: Any  
20 questions now? Thank you very much.

21 MR. NAPIOR: Thank you for  
22 your time.

23 CHAIRMAN GIAMETTA: Anyone  
24 else have anything further? I would like to  
25 ask Counselor Blass for his comments.



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MR. BLASS: A couple of comments. One of the speakers this evening, Mr. Garofalo, suggested that this board incorporate and make a part of its record the SEQRA review record generated by the planning board, which would include, just for your information, a geotechnical study with respect to excavation on site, a stormwater management report with respect to the management of on-site and off-site stormwater and a traffic study, or studies of the sort referred to by Mr. Napior. I think that it would be fine and intelligent for this board to incorporate the SEQRA review record of the planning board and his record and be in a position to review same and rely upon same in the rendering of its decisions. So I make that recommendation.

CHAIRMAN GIAMETTA: I see.

MR. BLASS: One other thing -- two other things, this is a bit of housekeeping, and a bit offtrack, but I think it needs to be said. As an attorney licensed to practice in the state, I'm an

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officer of the court. I have an obligation in obtaining and maintaining my license to practice law to be truthful to judicial and quasi judicial agencies such as yourself.

There has been a representation, and this is housekeeping, there has been a representation that I obstructed and prevented the conducting of a public hearing by the planning board with respect to the SEQRA determination that's been made. Even though, and in response to a request by Mr. Napior, to have such a public hearing, I must tell you that these events occurred on December 21st, 2015. The court reporter, Michelle Conero, who takes the stenographic minutes of all of the planning board meetings, attempted to avoid a deer on the way to the planning board meeting and she wound up in a ditch, and for the first time in my memory, she was unable to attend the planning board meeting of December 21st, 2015, and if she was there, and if we had a stenographic transcript, there would be no need for me to attend to this housekeeping

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manner.

So the events of December 21st folded as follows: The planning board was discussing a part two environmental assessment form, full environmental assessment form. The planning board made known its intentions to potentially entertain a determination of significance under SEQRA on January for its next meeting. Mr. Napior asked the board and myself in these proceedings whether or not a public hearing was necessary in advance of that SEQRA determination. I said initially that I was 99 percent sure that one was not, and then I went on to say then I was 100 percent sure that one was not required by the regulations. I then turned to Mr. Napior and I said, Are you requesting that a public hearing be held in advance of a SEQRA determination? And he said, No. Now, if there was a stenographic transcript, I wouldn't have to burden you and burden this stenographer with that restitution. But having heard the assertion that there was an obstruction of the

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applicant's request for a public hearing on this issue, I feel that it's necessary to correct the record each and every time that it occurs. And this is not the first time that I corrected the record, and it's probably something that needs to be attended to.

MR. RUSK: I agree that it should be attended to, quite frankly, Mr. Blass, because there were numerous other people who were at that meeting who I have spoken with and who have confirmed the exchange between you and the applicant's attorney and his specific request for the public hearing, and your exchange and the determination that no public hearing would be held. So unfortunately, we did not have the stenographer present. You had a recording device that was present that apparently didn't record the exchange, and so we are left with two different accounts as to what occurred. But I will certainly not concede to your characterization of exchange, because from the people that I



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2 have spoken to, and in my own memory, it's  
3 different than what you are putting forth to  
4 this board. So every time that you try to  
5 correct the record, I'm going to correct the  
6 record as well, and it was your  
7 responsibility, and the planning board's  
8 responsibility to have an accurate  
9 transcript and you did not, at a most  
10 critical point in time, when the applicant's  
11 attorney said, "Now that everything had been  
12 submitted, we need a public hearing" and you  
13 advised him that SEQRA didn't require it,  
14 and he simply -- and you asked him, what was  
15 the source of his request and he said, SEQRA  
16 itself. So we can go back and forth and  
17 play this, but it was requested and you  
18 suggested that it not be provided.

19 MR. BLASS: So what we have  
20 is an assertion, a denial with specificity,  
21 both by myself and Mr. Rusk and a rebuttal.  
22 So I think that's all you need to hear.

23 MR. NAPIOR: If I may address  
24 one point just for the record on that.  
25 Actually, at the planning board hearing on

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2 the evening while this discussion was taking  
3 place, I was on my handheld device. I  
4 pulled up the SEQRA status rules myself. I  
5 checked and affirmed to Mr. Blass that I am  
6 not requesting a hearing, nor is one  
7 required, I was okay with the planning board  
8 proceeding without a hearing, to further  
9 elaborate.

10 MR. BLASS: So enough of  
11 that, I would say.

12 CHAIRMAN GIAMETTA: Okay.

13 MR. BLASS: With respect to  
14 there was a presentation this evening in  
15 which there was a reference to the historic  
16 nature of the Rusk property across from 9W  
17 from the subject site. And as far as I  
18 could see it this evening, no documentation  
19 was presented to you documenting, if you  
20 will, any historicity of the site. So the  
21 record should reflect that it's a  
22 representation by an opposing party with no  
23 documentary support, unless there is  
24 documentary support to be forthcoming before  
25 we adjourn this evening.

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2 CHAIRMAN GIAMETTA: Is there  
3 any support?

4 MR. RUSK: Yes, as a matter  
5 of fact, I think Mr. Blass just indicated  
6 that everything that occurred in front of  
7 the planning board and all of the planning  
8 board information was going to be made part  
9 of this. Subsequent to the last planning  
10 board meeting, I sent a letter to Mr. Blass  
11 and to the planning board advising them of  
12 this fact and telling them that if they had  
13 afforded a public hearing on this issue,  
14 this information would have been brought to  
15 light, but since we were denied that, they  
16 did not have the information, and we have  
17 it. I would ask that you keep the public  
18 hearing open for a period of two days or  
19 three, but I have the document showing its  
20 eligibility, and I'm happy to make that part  
21 of the record, and I would ask that you  
22 accept it as part of the record.

23 MR. BLASS: Okay.

24 MR. RUSK: And I have it  
25 here, I will offer it now.

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2 MR. BLASS: That would be  
3 better. So my belief is that -- having  
4 that -- this is a November 17th, 2015 work  
5 product of a historic specialist at a New  
6 York State Office of Parks Recreation and  
7 Historic Preservation, for purpose of which  
8 is to determine eligibility of 1406 Route 9W  
9 in Marlborough with respect to historic  
10 register criteria, which are no doubt  
11 regulatory. It is my understanding that  
12 this work product as to historic eligibility  
13 is not the same thing and falls short of a  
14 nomination to put the property on either the  
15 state or the federal historic registers.  
16 It's also something less than a listing  
17 after nomination of property on either the  
18 state or the federal historic register. I  
19 should tell you that the planning board  
20 received in this matter detailed extensive  
21 discussion of SEQRA criteria at a meeting in  
22 November, date of which I don't have in  
23 front of me, when a part two environmental  
24 assessment form was discussed with the  
25 planning board members. At that meeting in



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November, it was made known to the participants and the public in attendance that the board intended to entertain a proposed part two full environmental assessment form at its meeting on December 21st, and it did so. And at the meeting on December 21st, 2015, it was made known to the public and participants that the board intended to issue a SEQRA determination of significance to be prepared by the consultants at its meeting of January 4th.

On January 4th, the day of the SEQRA determination made by the planning board, Mr. Rusk submitted a one-or two-page letter with respect to the subject matter of SEQRA and what that determination should be or might be. As you know, from earlier this evening, on December 29th, Mr. Garofalo submitted -- or by letter of December 29th, Mr. Garofalo submitted his comments that you received this evening, and they were received by the planning board. They are part of the SEQRA record of the planning board. Given that background, and the reason that I go

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through it with you is that submissions were made to the planning board with respect to a SEQRA review process. So one submission was made by Mr. Rusk, one submission was made by Mr. Garofalo, he was imminent to anyone following the process, that the SEQRA process was proceeding along a certain track. That written submissions raising issues on potential significant adverse environmental impacts could be received, and none were received except the two documents which I mentioned to you. It was also made clear, no matter whose version eventually you believe, if you believe you have to believe one or the other, at the meeting on December 21st, it was made known that a potential determination of the significance under SEQRA would be made on January 4. Again, there was a significant window of time in which to submit written work product, written opinions, professional work product, if you will, with respect to the planning board's ultimate SEQRA determination. But the only two documents that were received by the planning board were

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the January 4, same day submission of Mr. Rusk, and Mr. Garofalo's December 29th submission, which you have today. So that will be the SEQRA record from the perspective project proponents, the SEQRA record -- excuse me, opponents. The SEQRA records from project proponents is significantly greater in terms of work product, and I would be happy to have that submitted to you. Although, the documents that's been handed up with respect to historic eligibility of 1406 Route 9W was in existence as of November 17th, 2015, it was not provided to the planning board prior to its determination of January 4th. And the January 4th letter that Mr. Rusk -- that I mentioned, did not make mention of it. It was first brought to the planning board's attention by a post negative declaration communication letter submitted by John Rusk on January 11th, of 2015. The planning board, I learned today, will be considering what to do with that post negative declaration submission of historic eligibility, which has existed since November

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2 17th, 2015, at its meeting of February 1st.

3 CHAIRMAN GIAMETTA: May I  
4 interrupt you? Mr. Rusk, is there a reason  
5 why that wasn't submitted back in November?

6 MR. RUSK: It was our  
7 intention to present that at a public  
8 comment period, which we were anticipating.

9 CHAIRMAN GIAMETTA: I see.

10 MR. RUSK: When that wasn't  
11 afforded us, it was presented to them.  
12 Unfortunately, it was after the fact.

13 CHAIRMAN GIAMETTA: After the  
14 neg dec?

15 MR. RUSK: Yes.

16 CHAIRMAN GIAMETTA: I see,  
17 thank you.

18 MR. BLASS: So now the heart  
19 of the matter is what to do with respect to  
20 the public hearing. It seems to me  
21 arguably, at least, that both the project  
22 proponent represented by Mr. Napior, and in  
23 opposition to the project or opposition to  
24 these area variances have said their piece  
25 this evening and given you a full and



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2 complete advocacy of their respective  
3 positions, and so it's up to the board as to  
4 whether or not now is the proper time to  
5 close the public hearing and reserve  
6 decision on the area variances themselves.

7 CHAIRMAN GIAMETTA: Can you  
8 give us a recommendation on that, counselor?

9 MR. BLASS: Well, if, in  
10 fact, the participants this evening believe  
11 they have had a full and complete  
12 opportunity, and I think they said as much  
13 implicitly, if not explicitly, then I think  
14 there would be no impediment to closing the  
15 public hearing and reserving decision on  
16 this matter to be issued at a future time.

17 CHAIRMAN GIAMETTA: What  
18 future time are you referring to?

19 MR. BLASS: Well, you're  
20 going to have to do it at a meeting.

21 CHAIRMAN GIAMETTA: Of  
22 course.

23 MR. BLASS: And I think you  
24 may be in a position to do that if you're so  
25 inclined at your meeting on the second

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2 Thursday of February.

3 CHAIRMAN GIAMETTA: February  
4 11th. Having received more information from  
5 the planning board; is that what you're  
6 getting at?

7 MR. BLASS: Well, I think  
8 that the only thing that you can expect to  
9 be receiving from the planning board is an  
10 indication that they're standing by their  
11 January 4th neg declaration, or that they  
12 are rescinding their January 4th  
13 recommendation, which is a request being  
14 made by the project opponents, or that they  
15 have amended their January 4th SEQRA  
16 determination to take into account materials  
17 submitted after the fact.

18 So this board is not the lead  
19 agency under SEQRA. The planning board is  
20 the lead agency under SEQRA. A negative  
21 declaration by a lead agency closes the SEQRA  
22 process, and that the only thing that I can  
23 see intervening between now and February 11th  
24 would be an affirmation, a rescission, or a  
25 modification by amendment of a negative

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2 declaration, which we shared with you by the  
3 planning board after February 1st, depending  
4 on which occurs, and I don't see that  
5 particularly as a reason for a need to keep  
6 open the public hearing.

7 CHAIRMAN GIAMETTA: Thank you  
8 very much. Mr. Napior?

9 MR. NAPIOR: Ron, the only  
10 issue that we may have is whether that  
11 additional provision applies, and if I'm  
12 going to -- if the project is going to  
13 require additional variance, in which case I  
14 will have to modify the application, and the  
15 hearing argumentatively should stay open.

16 MR. BLASS: So I said my  
17 piece on the --

18 MR. NAPIOR: I don't know if  
19 it applies. I will refer to Tom as to  
20 whether or not there is an additional  
21 variance needed, in which case we will have  
22 to modify our application.

23 MR. RUSK: I would ask that  
24 we keep this public hearing open for  
25 purposes of allowing the applicant to make a

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2 determination if they think that this other  
3 provision applies so that they need to  
4 request an additional variance. If so, I  
5 think there may be additional comments that  
6 the public may want to make.

7 MR. BLASS: We can keep the  
8 public hearing open in connection -- it  
9 probably would be good to limit the scope of  
10 the continuation of the public hearing to  
11 two issues. One, what the planning board  
12 does between now and February 11th. And  
13 two, what the applicant wishes to do between  
14 now and February 11th relative to the  
15 regulatory point made by Mr. Rusk earlier  
16 about distance from the intersecting  
17 streets. So you could leave open the public  
18 hearing for those two limited purposes.

19 CHAIRMAN GIAMETTA: I  
20 understand, and I thank you for that input.  
21 I'd like to ask Building Inspector Corcoran,  
22 are you familiar with the requirement or not  
23 regarding the 500-foot of the intersection?

24 MR. CORCORAN: Yes.

25 CHAIRMAN GIAMETTA: Are you



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able to comment on it tonight, or could you enlighten us at all?

MR. CORCORAN: Well, there is no two street lot alliance. There is one street lot alliance, which would be Mt. Rose.

MR. RUSK: And what's Route 9W?

MR. CORCORAN: There is one street -- it's a street, but it's a street lot line. There is one lot line that intersects Mt. Rose to 9W, that's the street lot line. You would need two intersecting lots to get two street lot lines. The same variance was given to Stewart's back when they asked for their variances. It was the only variance that they received was that variance because of the two street lot lines of four corners that were intersecting there. But it's street lot line, not streets.

MR. RUSK: Well, there is a street lot line for 9W headed on the west side, that is the first street lot line.

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1  
2 And then there is Mt. Rose Road or what's  
3 it, James Street, that's a lot line. That  
4 is two lot lines that's intersecting street  
5 lot lines.

6 MR. CORCORAN: Intersecting  
7 street lot line is one, where Mt. Rose hits  
8 Route 9W. That's my interpretation of it.

9 CHAIRMAN GIAMETTA: Okay,  
10 thank you.

11 MR. MEKEEL: They don't need  
12 a variance?

13 MR. CORCORAN: They don't  
14 need a variance for that.

15 MR. MAGLIATO: I would  
16 disagree with Mr. Corcoran's interpretation  
17 of that.

18 CHAIRMAN GIAMETTA: Please  
19 identify yourself.

20 MR. MAGLIATO: I'm sorry, I'm  
21 Jeff Magliato, a resident of the town. I'm  
22 an attorney, and I was asked to look at that  
23 street lot line provision, and my  
24 interpretation would not be the same as Mr.  
25 Corcoran's, but I'm just a guy with a law

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degree who reads lot lines.

CHAIRMAN GIAMETTA: I want to thank each and every one of you for your input. I am going to ask that the board consider what our counsel has advised and that being to rule on two matters mentioned -- Mr. Blass again.

MR. BLASS: To keep the -- to adjourn the public hearing and to keep it open for those two limited purposes.

CHAIRMAN GIAMETTA: Yes. And those two limited purposes --

MR. BLASS: Would be number one, what happens if anything differs at the planning board between now and February 11th. And secondly, the issue of this code provision that we just discussed about separation from street lines or street intersections. I don't have it in front of me.

CHAIRMAN GIAMETTA: Exactly.

MR. BLASS: And for those purposes and for those purposes alone.

CHAIRMAN GIAMETTA: Thank

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you. Any discussion, board members on that?  
Are we prepared to make a motion to keep  
that meeting open -- this meeting open for  
those two matters?

MR. MEKEEL: No, absolutely  
not.

CHAIRMAN GIAMETTA: You're  
not willing to make a motion on that?

MR. MEKEEL: I will not. My  
motion is to close the public hearing.

CHAIRMAN GIAMETTA: Okay.

MR. MEKEEL: As to the  
advice --

CHAIRMAN GIAMETTA: No, he  
did not say that.

MR. BLASS: Well, I think --

MR. MEKEEL: We're not making  
our decision on the two variances tonight.

MR. BLASS: I would not -- I  
would recommend that you take some time to  
review the record and get a draft decision  
to consider in writing. It is certainly  
your prerogative to close the public hearing  
this evening if you wish. If you wish to



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2 keep the public hearing open, I think my  
3 advice was, okay, but let's limit it to  
4 those two issues and those two issues alone.  
5 I don't think that either of those two  
6 issues are necessarily -- necessarily  
7 require the public hearing to be kept open,  
8 but you heard from the applicant who made  
9 his suggestion that it might not be a bad  
10 idea, and there is the matter of the  
11 planning board's consideration, but, again,  
12 it's up to you. It's either close the  
13 public hearing or keep the public hearing  
14 open for those two limited purposes until  
15 February 11th. You could still under either  
16 scenario entertain decisions on February  
17 11th, as well.

18 CHAIRMAN GIAMETTA: Board, is  
19 that crystal clear what's been represented  
20 by counsel as far as the options tonight,  
21 keeping the public hearing open or closing  
22 it.

23 MR. CONN: I would entertain  
24 keeping the public hearing open for one more  
25 meeting, provided we limit the scope of what

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2 would be discussed at the public hearing so  
3 we're not hearing the same things that we  
4 already have on record. And that is the  
5 only way that I will agree to keep the  
6 public hearing open.

7 CHAIRMAN GIAMETTA: Anyone  
8 else on the panel?

9 MR. ZAMBITO: It's legal to  
10 do that? We can keep the public hearing  
11 open for those two items and those two items  
12 only?

13 MR. BLASS: Yes.

14 MR. ZAMBITO: I just want to  
15 make sure.

16 CHAIRMAN GIAMETTA: Of  
17 course. Are we ready to make a motion? And  
18 if so, please make a motion.

19 MR. ZAMBITO: I will make a  
20 motion to adjourn the public hearing until  
21 the meeting of February 11, 2016, with the  
22 attachment that it's only for those two  
23 items, street line and the review of the  
24 SEQRA.

25 CHAIRMAN GIAMETTA: Do I have

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1  
2 a second?

3 MR. CONN: I will second.

4 CHAIRMAN GIAMETTA: And a  
5 vote?

6 MR. SALINOVICH: To keep it  
7 open; right?

8 CHAIRMAN GIAMETTA: To keep  
9 it open. A vote, please? Mr. Salinovich.

10 MR. SALINOVICH: Aye.

11 CHAIRMAN GIAMETTA: Mr.  
12 Mekeel?

13 MR. MEKEEL: No.

14 CHAIRMAN GIAMETTA: Mr.  
15 Zambito?

16 MR. ZAMBITO: Aye.

17 CHAIRMAN GIAMETTA: Mr. Conn?

18 MR. CONN: Aye.

19 CHAIRMAN GIAMETTA: And I  
20 vote aye to keep the meeting open as per Mr.  
21 Zambito's guidelines. If there is anything  
22 further, might be too late for that tonight,  
23 but there is another meeting upcoming, and  
24 thank you for all coming tonight.

25 (Time noted: 8:43 p.m.)

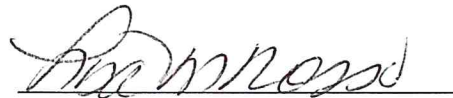
2 STATE OF NEW YORK )  
3 ) SS  
4 COUNTY OF ULSTER )  
5

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 22nd day of January, 2015.  
20

21 

22 LISA M. ROSSO,  
23 NOTARY PUBLIC  
24  
25