

COPY

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 PUBLIC HEARING

11 Date: January 14, 2016

12 Time: 7:00 p.m.

13 Place: Town of Marlborough

Town Hall

#21 Milton Turnpike

Milton, New York 12547

14 BOARD MEMBERS: BILL GIAMETTA, CHAIRMAN

15 JEFF MEKEEL

16 DAVE ZAMBITO

17 LENNY CONN

GEORGE SALINOVICH

18 RONALD C. BLASS, JR., ESQ.

19 THOMAS CORCORAN, JR. BUILDING INSPECTOR/CODE
ENFORCEMENT, (Absent)

20 KRISTI CAPRA, ZONING BOARD SECRETARY

21 PENNY E. CASHMAN, ZONING BOARD SECRETARY

22 APPLICANT'S REPRESENTATIVE: LEO NAPIOR, ESQ.

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

25

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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2 is that correct?

3 MR. CONN: Yes.

4 CHAIRMAN GIAMETTA: A vote?

5 MR. ZAMBITO: Aye.

6 MR. CONN: Aye.

7 MR. MEKEEL: Aye.

8 MR. SALINOVICH: Aye.

9 CHAIRMAN GIAMETTA: And aye.

10 The minutes from last month approved. Okay,
11 we are continuing a matter from previous
12 meetings, and at this point, we have to read
13 the legal notice that was in the paper --
14 continues to be in the newspaper. Can
15 someone read that in, please?16 MR. CONN: You want me to
17 read it?

18 CHAIRMAN GIAMETTA: Yes.

19 MR. CONN: Please take notice
20 that a continuation of the public hearing
21 from July 9th, 2015 will be held by the Town
22 of Marlborough Zoning Board of Appeals (ZBA)
23 at the Town Hall, 21 Milton Turnpike,
24 Milton, New York on January 14, 2016 at 7:00
25 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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2 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.

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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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2 two acres in two alternative ways.

3 Alternative one is to address whether or not
4 provisions at 155-14C, as just discussed,
5 provide for a conclusion that no variance is
6 necessary because of the preexisting size of
7 the lot relative to the two-acre requirement
8 in the code.9 And if you disagree with that
10 conclusion, or in addition to that issue, you
11 will then also turn to the area variance
12 standards, the five area variance standards
13 that would be required for what is about a
14 3.5 percent variance from the minimum two-
15 acre lot size.16 So the question is actually
17 that you consider both and structure your
18 decision around that request. I would
19 probably advise you that it's wise to address
20 both issues in your ultimate decision.21 CHAIRMAN GIAMETTA: Thank you
22 very much. Anything further from the board;
23 questions to the applicant or for the
24 applicant, clarifications, concerns or
25 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.

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

20 To me, there was an issue
21 with the right turn in/right turn out island,
22 which to me was not really properly designed.
23 Redesign that change, that may affect the
24 entire site, and that should have been done.
25 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.

25 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.

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

4 This particular piece of
5 property, over the last two or three years, I
6 think you will all agree has deteriorated to
7 the point of embarrassment for everybody who
8 goes by. There is graffiti, there are empty
9 oil tanks, the property has become overgrown,
10 and there is a provision in the town code,
11 Section 114-1 that deals with property
12 maintenance, and despite the deterioration of
13 this property, and the condition that it's
14 in, absolutely nothing has been done by the
15 town to address these problems; to write a
16 single citation, to make a request that
17 something be done. Section 14 -- excuse me,
18 114-1 legislative intent, part of that reads:
19 Further it is found and declared that by
20 reason of lack of maintenance and progressive
21 deterioration, certain properties instruction
22 and structures have the further affect of
23 creating blighting conditions, leading to the
24 creation of slum-type areas, and that if same
25 are not curtailed and removed, the conditions

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

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

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

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

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

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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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2 which is owned by Colonel Lewis DuBois.

3 It's on the historic -- it's just been
4 approved by the New York State Historic -- I
5 don't know the full name of it -- but it's
6 just qualified as being both a national
7 historic site and a state historic site
8 based upon information that we put together.

9 It was the home of Colonel Lewis DuBois.

10 It's been written up in historical books.

11 My father maintained the property. That is
12 a view from east, that is from the east side
13 of the house looking at the house.14 You can just go to the next
15 one, John. When he is getting that together,
16 the other houses that surround this piece of
17 property are also residential houses. There
18 is the Jane Quimby house. It's right along
19 9W, and the houses that are up and surround
20 the back of this property, and you go up --
21 now it's called James Street -- Mt. Rose Road
22 is what I recall -- but those are all
23 residential houses. There was a diner that
24 was there that, you know, did not impose any
25 significant issues at night because the place

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

13 They want to put in a gas
14 station. There is a risk to it. I have the
15 details of all of this, but there are known
16 dangers of exposure to gasoline. People like
17 Mr. Adamshick are putting themselves at risk
18 every day when you operate around these
19 places. You can go to the next one. The
20 studies show gas stations are toxic
21 neighbors, and even small spills, every time
22 there is an overfill with just a few, you
23 know, you overfill your car, whatever, or a
24 tank, that accumulates over a period of time,
25 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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2 substances physician who analyzes people who
3 are exposed to things such as asbestos or
4 workplace exposures to other toxic
5 substances, I asked him for a report. He
6 wrote a report, it's in the paper, July 9.
7 He pretty much reiterates the things that all
8 of the studies show, that there is problems
9 being near gas stations from a health
10 perspective, and we aren't the closest ones.
11 It's the people who are right behind there,
12 just the fumes are dangerous. You can go
13 through, John, next.

14 Now, this report -- this a
15 24-hour proposed operation, 24 hours, I am
16 the Assistant DA in one of the courts in New
17 Paltz where Chestnut Petroleum has a gas
18 station right at the intersection of Main
19 Street and Route 32, that portion of 32 that
20 runs from Main Street, New York to Kingston,
21 right at that intersection next to the post
22 office. This is a typical kind of case that
23 you see out of New Paltz involving Chestnut
24 Mobil. This is where it occurred, which is
25 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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2 proposal currently to change that diner, which is
3 now closed, it's been closed for a period of time,
4 to convert that property into a 24-hour gas station
5 convenient mart. Can you provide us with your
6 opinion, based upon your training and experience, as
7 what effects that would have upon the neighborhood?

8 A. I think, as I recall it's a residential
9 area -- across the street from that is a residential
10 area. I think that type of change of business
11 structure invites more problems. As the diner, as I
12 remember, they weren't open late at night. They
13 opened in the morning, breakfast, lunch, early
14 dinner and then they closed. It was multiple
15 employees at that location, you know. It wasn't a
16 quick in and out type business, it was family-type
17 oriented. Changing that type of structure of
18 business to one that's providing petroleum product,
19 which causes not only an environment concern, but it
20 also causes the different type of customers being
21 drawn in and a different type of use of that
22 location. So I think that's got to be strongly -- I
23 think that is a very small piece of property to
24 begin with, as I recall, and I think that that type
25 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?

25 MR. RUSK: Thank you. I have

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2 no further questions.

3 (End of videotape)

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

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

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

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2 given.

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

23 Based upon all of that, we
24 would ask that you deny the application. I'd
25 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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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.

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

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

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

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

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

18 The two lane -- two-way turn
19 lane that Mr. Garofalo mentioned, instead of
20 having an acceleration lane and an ingress
21 lane, the DOT has commented, the two traffic
22 engineers, that there is not enough activity
23 to warrant a two-way turn lane on the eastern
24 side of 9W. Ideally, you have those two-way
25 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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2 sure why Mr. Garofalo thought they were not.
3 There was tables in the back room that had
4 that, as well as trip down diagrams that
5 showed the trip counts that were taken, I
6 believe back in July of 2015.

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

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

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2 site does provide that the drive-thru window
3 is all the way at the southwestern end of the
4 building after you wrap around. So you
5 basically have one side, the entire back, and
6 the other side for queuing for the
7 drive-thru. And what we did, set forth by
8 the -- to the planning board that there is
9 enough space there for 12 automobiles to
10 queue up. According to our traffic
11 consultant, that would be sufficient for
12 anticipated volume of business. If it
13 wasn't, it almost becomes self-regulating,
14 and then if people, if you see an enormous
15 line of cars at the drive-thru window, in all
16 likelihood, you're going to park and just go
17 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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2 historic property across the street when you
3 have other commercial development, including
4 that which would be immediately adjacent to
5 us that is set just as close to our proposed
6 improvements on the roadway. And, again, I
7 believe it's simply been eligible, not
8 nominated, not listed.

9 The exposure and hazards with
10 respect to gasoline, the application has set
11 forth a stormwater pollution prevention plan
12 that includes providing filters at the
13 roadway to pick up and filter out any
14 petroleum products that would enter the
15 stormwater system prior to being discharged
16 offsite and eventually working their way down
17 to the pond mentioned earlier. The
18 stormwater pollution prevention plan went
19 through mini revisions based on the comments
20 of the town's consultant, Pat Hines.
21 Ultimately, their decision was made to
22 increase pipe sizes, there were additional
23 filtering procedures required, and it went
24 through a hot spot analysis. Ultimately that
25 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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2 that discussion. It really has no impact,
3 whether this is -- operates 5 hours a day, 12
4 hours or 24 hours a day with respect to the
5 area variances that are before you.

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

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

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2 code and has been determined by the courts of
3 the State of the New York, the fact that a
4 variance request is a self-created hardship
5 does not preclude the granting of a variance.
6 It's simply one fact for you all to consider.
7 Virtually every application for an area
8 variance is a result of a self-created
9 hardship. That is why they did not preclude
10 granting an area variance, otherwise, it
11 would be a virtual impossibility to ever
12 receive an area variance. The acceptance to
13 that rule is when a property has been up
14 zoned. With respect to this property, where
15 you have a nonconforming lot size, arguably
16 it's been up zoned, and that provision is not
17 a self-created hardship. Mr. Rusk seemed to
18 mix apples and oranges saying that we are
19 increasing the nonconforming use of the
20 property. The use is a permitted use. We're
21 not seeking a use variance, we're not
22 increasing a nonconforming use of the
23 property. The only way that I can increase
24 any nonconformity would be to reduce my
25 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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2 MR. BLASS: A couple of
3 comments. One of the speakers this evening,
4 Mr. Garofalo, suggested that this board
5 incorporate and make a part of its record
6 the SEQRA review record generated by the
7 planning board, which would include, just
8 for your information, a geotechnical study
9 with respect to excavation on site, a
10 stormwater management report with respect to
11 the management of on-site and off-site
12 stormwater and a traffic study, or studies
13 of the sort referred to by Mr. Napior. I
14 think that it would be fine and intelligent
15 for this board to incorporate the SEQRA
16 review record of the planning board and his
17 record and be in a position to review same
18 and rely upon same in the rendering of its
19 decisions. So I make that recommendation.

20 CHAIRMAN GIAMETTA: I see.

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

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

6 There has been a
7 representation, and this is housekeeping,
8 there has been a representation that I
9 obstructed and prevented the conducting of a
10 public hearing by the planning board with
11 respect to the SEQRA determination that's
12 been made. Even though, and in response to a
13 request by Mr. Napier, to have such a public
14 hearing, I must tell you that these events
15 occurred on December 21st, 2015. The court
16 reporter, Michelle Conero, who takes the
17 stenographic minutes of all of the planning
18 board meetings, attempted to avoid a deer on
19 the way to the planning board meeting and she
20 wound up in a ditch, and for the first time
21 in my memory, she was unable to attend the
22 planning board meeting of December 21st,
23 2015, and if she was there, and if we had a
24 stenographic transcript, there would be no
25 need for me to attend to this housekeeping

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2 manner.

3 So the events of December
4 21st folded as follows: The planning board
5 was discussing a part two environmental
6 assessment form, full environmental
7 assessment form. The planning board made
8 known its intentions to potentially entertain
9 a determination of significance under SEQRA
10 on January for its next meeting. Mr. Napior
11 asked the board and myself in these
12 proceedings whether or not a public hearing
13 was necessary in advance of that SEQRA
14 determination. I said initially that I was
15 99 percent sure that one was not, and then I
16 went on to say then I was 100 percent sure
17 that one was not required by the regulations.
18 I then turned to Mr. Napior and I said, Are
19 you requesting that a public hearing be held
20 in advance of a SEQRA determination? And he
21 said, No. Now, if there was a stenographic
22 transcript, I wouldn't have to burden you and
23 burden this stenographer with that
24 restitution. But having heard the assertion
25 that there was an obstruction of the

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

9 MR. RUSK: I agree that it
10 should be attended to, quite frankly, Mr.
11 Blass, because there were numerous other
12 people who were at that meeting who I have
13 spoken with and who have confirmed the
14 exchange between you and the applicant's
15 attorney and his specific request for the
16 public hearing, and your exchange and the
17 determination that no public hearing would
18 be held. So unfortunately, we did not have
19 the stenographer present. You had a
20 recording device that was present that
21 apparently didn't record the exchange, and
22 so we are left with two different accounts
23 as to what occurred. But I will certainly
24 not concede to your characterization of
25 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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2 November, it was made known to the
3 participants and the public in attendance
4 that the board intended to entertain a
5 proposed part two full environmental
6 assessment form at its meeting on December
7 21st, and it did so. And at the meeting on
8 December 21st, 2015, it was made known to
9 the public and participants that the board
10 intended to issue a SEQRA determination of
11 significance to be prepared by the
12 consultants at its meeting of January 4th.

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

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

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2 the January 4, same day submission of Mr.
3 Rusk, and Mr. Garofalo's December 29th
4 submission, which you have today. So that
5 will be the SEQRA record from the perspective
6 project proponents, the SEQRA record --
7 excuse me, opponents. The SEQRA records from
8 project proponents is significantly greater
9 in terms of work product, and I would be
10 happy to have that submitted to you.
11 Although, the documents that's been handed up
12 with respect to historic eligibility of 1406
13 Route 9W was in existence as of November
14 17th, 2015, it was not provided to the
15 planning board prior to its determination of
16 January 4th. And the January 4th letter that
17 Mr. Rusk -- that I mentioned, did not make
18 mention of it. It was first brought to the
19 planning board's attention by a post negative
20 declaration communication letter submitted by
21 John Rusk on January 11th, of 2015. The
22 planning board, I learned today, will be
23 considering what to do with that post
24 negative declaration submission of historic
25 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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2 able to comment on it tonight, or could you
3 enlighten us at all?

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

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

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

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

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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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2 degree who reads lot lines.

3 CHAIRMAN GIAMETTA: I want to
4 thank each and every one of you for your
5 input. I am going to ask that the board
6 consider what our counsel has advised and
7 that being to rule on two matters
8 mentioned -- Mr. Blass again.9 MR. BLASS: To keep the -- to
10 adjourn the public hearing and to keep it
11 open for those two limited purposes.12 CHAIRMAN GIAMETTA: Yes. And
13 those two limited purposes --14 MR. BLASS: Would be number
15 one, what happens if anything differs at the
16 planning board between now and February
17 11th. And secondly, the issue of this code
18 provision that we just discussed about
19 separation from street lines or street
20 intersections. I don't have it in front of
21 me.

22 CHAIRMAN GIAMETTA: Exactly.

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

25 CHAIRMAN GIAMETTA: Thank

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2 you. Any discussion, board members on that?

3 Are we prepared to make a motion to keep
4 that meeting open -- this meeting open for
5 those two matters?6 MR. MEKEEL: No, absolutely
7 not.8 CHAIRMAN GIAMETTA: You're
9 not willing to make a motion on that?10 MR. MEKEEL: I will not. My
11 motion is to close the public hearing.

12 CHAIRMAN GIAMETTA: Okay.

13 MR. MEKEEL: As to the
14 advice --15 CHAIRMAN GIAMETTA: No, he
16 did not say that.

17 MR. BLASS: Well, I think --

18 MR. MEKEEL: We're not making
19 our decision on the two variances tonight.20 MR. BLASS: I would not -- I
21 would recommend that you take some time to
22 review the record and get a draft decision
23 to consider in writing. It is certainly
24 your prerogative to close the public hearing
25 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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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