

**TOWN OF BETHLEHEM
BOARD OF APPEALS
November 16, 2005**

A regular meeting of the Board of Appeals, of the Town of Bethlehem, Albany County, New York was held on the above date at the Town Offices, 445 Delaware Avenue, Delmar, New York. Michael Hodom, Chairman, presiding.

PRESENT: Michael Hodom
Robert Wiggand
Marjory O'Brien
Gilbert Brookins

Michael Moore Attorney to the Board

Mark Platel Building Inspector

ABSENT: Leonard Micelli

Chairman Hodom called the meeting to order at 7:30 p.m.

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Good evening Ladies and Gentlemen. This is a regular meeting of the Board of Appeals for the Town of Bethlehem. The first order of business this evening is a Public Hearing for a Variance under Article XIII, Use & Area Schedules, Section 128-100 A, Minimum Lot Width requested by RDA Associates, Antonio Califano, CEO for a building lot The Applicant wishes to build a single-family residence that does not meet the minimum lot width requirement at premises Russell Road, Albany, New York.

CHAIRMAN HODOM: Mr. Platel, would you give us the reason for the hearing, please?

MR. PLATEL: Yes, Mr. Chairman. The Applicant is proposing a lot that will meet all the minimum requirements of the zoning ordinance. The Applicant, however will have to locate the main structure in a location on the lot, which will create a dimension of 84.38 feet for the width of lot. This is 15.62 feet shy of the 100-foot required. The width of lot is measured at the building line.

The proposed subdivision previously had an application with the Planning Board and was held up in the moratorium. Prior to the new zoning coming into effect the minimum width of lot would have been 85 feet. The property is currently zoned Residence "A".

For an official copy of the minutes, please visit the Town Hall, 445 Delaware Avenue, Delmar, NY or call 439-4955.

CHAIRMAN HODOM: Thank you, Mark. Ms. Guastella, would you please read the official call of the meeting?

Notice of Public Hearing. Notice is hereby given that the Board of Appeals of the Town on Bethlehem, Albany County, New York will hold a public hearing on, Wednesday November 16, 2005 at 7:30 p.m. at the Town Offices 445 Delaware Avenue, Delmar, New York to take action on application of RDA Associates, inc. (Antonio Califano, CEO) for Variance under Article XIII, Use & Area Schedules, Section 128-100 A, Minimum Lot Width of the Code of the Town of Bethlehem for a vacant lot that does not meet the minimum lot width at premises Russell Road, Albany, New York. Michael C. Hodom, Chairman, Board of Appeals. Attached to this Notice is notarized proof of its publication in the November 9, 2005 edition of the Spotlight, official paper of the Town of Bethlehem. All persons listed in the petition as owning property within 200 feet of the premises in question were notified by mail at least five days prior to this hearing.

CHAIRMAN HODOM: Thank you, Karen. The procedure that we use this evening; we'll hear the Applicants presentation; we'll entertain any questions or comments from the audience; we'll hear anyone wishing to speak in favor of the Applicant and anyone desiring to speak in opposition of the Applicant. All questions should be directed to the Board. Anyone desiring to speak will be allowed to do so, we just ask that you come up, stand or sit close to the black microphone, it's for recording purposes only. Mr. Califano please introduce yourself to us and your residence address and tell us what you want to do.

MR. CALIFANO: Yeah my name is Antonio Califano, there's actually a typo in the notices, you know that's okay, 11 Eduardo Court, Albany, New York 12203, which is in the Town of Bethlehem. I'm here representing RDA Associates, which a small company held by my wife and her cousin who are the granddaughters of Erma Furlani to this property, which was the old Furlani lumber mill from the 1930's through 1970. We're hoping to use the 50 acres of property for a small residential development. Our surveyor saying the best layout that he could considering the wetlands on the property and came up with about 29 lots. We then came into the Town of Bethlehem for a conceptual approval back in early 2003. From what we could tell, they liked the project, in fact, I since built my home right here on this particular lot which was an existing building lot and not part of the new subdivision, but 4 building lots that grandma had given to the four grandchildren at the time when grandma donated the land for the Town park.

I then built my house and the layout was designed whereby the street would go past my house and I approached the Town for the purpose of rather than doing a sewer system just for my house whether I could do one for the entire – for the development. The Town was nice enough to grant me 330 feet for an existing private sewer but built to Town specifications for a public sewer. So the sewer and utilities are already in 300-foot of the Roadway.

We then made changes that the Town required and submitted drawings in

December 2003 and got caught up into the moratorium. At that point in time these 4 lots on this side – this is a 4 ½ acre lot with these other 3 lots of which one will have a detention basin to the back. When we came in with the original proposal they were all about 95 feet. We were then informed at a Town meeting that we had a couple months ago that there was a change to the zoning from 85 to 100. We then were able to go back and make these 3 a 100, but fell short with this lot being 85. This is a 4½-acre lot. Due to the wetlands we're not able to do a keyhole lot, which would have been a 28 foot width and then you would have to go back 200 feet to construct a house, which in that case we could have done and rearranged these lots so that it would just be a 28 foot but due to the wetland situation we're not able to do that and so as a result talking with Mark and others they said well you can try for a Variance and so that's why we're here tonight to ask for a Variance.

One of the main reasons is these 4 lots plus these 2 over here would be 6 lots whereby were given subdivision approval – give us a little upfront money so that we can continue with the other part of the project so that's pretty much the economic hardship. And we were already giving up 2 lots in the back as a result of the changes that were required by the Town.

CHAIRMAN HODOM: What were the changes that were required by the Town?

MR. CALIFANO: They had to do, I believe with setbacks and changing. We have, you'll notice on the drawing the little dotted cross in the cross hatches is fill and the Fed's allow you to fill up the ½-acre so over on this lot – I believe it was this lot here they required us – do you have more setbacks so we had to give a cul-de-sac lot here in order to take the fill to use it where the Town required it and the Town was also requiring some additional fill on this lot. In addition due to some flagging we lost another cul-de-sac lot that was in this area so we've given up that lot and those 2 lots already.

CHAIRMAN HODOM: Have you made an attempt to purchase additional land adjacent to that lot 510?

MR. CALIFANO: No. No, I'm not even sure that there's sufficient – when you say so that would have to be from Mr. Mosall. I'm not sure but I think for the additional 15 feet I'm not sure what the side setbacks are and I don't know whether that would even be doable at this point. I guess the biggest that I see is December 2003, you know we felt that we would have been on the calendar – would have had preliminary approval and we would have been through the moratorium and we wouldn't be here tonight but as I said we did get stuck in the moratorium and then those changes were made. On this left side it's one of our lots that we've sold to Mr. Carmine so you know I think that's 30-foot there. The only thing – and I don't even know if that's doable whereby you would have a dual access kind of thing so that you could then shift things down but I don't even know if that would be doable.

CHAIRMAN HODOM: Mr. Califano when did you purchase the property?

MR. CALIFANO: I think RDA took ownership 2003, 2002 or 2003. It was an estate that hung around for like 14 years and finally the 2 cousins bought out the RDA and bought out the estate. I could get the exact date but it was a few years back.

CHAIRMAN HODOM: That's probably close enough. There's no other possible mitigation with DEC to create a keyhole at that lot 510?

MR. CALIFANO: It's really the Fed's. This is a Federal jurisdiction, yeah. They've been - - we have an area over that we feel is isolated and if it's isolated then it's not under they're jurisdiction which would mean we could fill. So all this fill that you see here on these lots could be used lets say here whereby you could - I don't know, I think it's a 200-foot setback, right Mark, before that lot starts so I don't even know if you had that whether or not you'd be further - could go further back in terms of here. I mean you can walk this, it's not wet I mean it's wetlands because of - - if I had known, if we knew what we knew today we would have made sure over the last 15 years we didn't have vegetation growing, but anyways it's a little late for that. We thought this was isolated and the Army Corp walked it and said no we think the water is going to go uphill to the transmission right of way and drain to the culvert that the Town recently put in. So unfortunately that's been denied so we're really hoping to get through with what we have here, which is the 26 lots and you know they're like reviewing all our permits and actually they haven't officially seen this until we know what we're doing. So it's even conceivable they may not like what we have and they could do other things to us, I'm not sure.

ATTORNEY MOORE: Do you have copies of those determinations from the Corp, Mr. Califano or any letters or correspondence?

MR. CALIFANO: In terms of?

ATTORNEY MOORE: The Jurisdictional determinations on these pieces?

MR. CALIFANO: You know I don't know, I'd have to check Bagdon Environmental, you know Norbert Quenzer is our environmental person and right now all that stuff has been verbal, I mean DEC has also told me that we met with DEC because there could have been State jurisdiction here and they met with us and said - I also brought this map because this shows the - this is the 150-scale and this is the 1, 100-scale shows that this is the land that I propose to donate to the Town for additional parkland. I met Theresa Egan and the parks person to donate this and as a result of being able to say we're donating this to the Town with biologists from DEC said we'll work with you on the project so it's not going to be any State DEC jurisdiction. But I don't have anything in writing so for the purpose of the Planning Board I'm probably going to have to have our environmental person put something together for that and probably his communication with the Federal people but they went out and walked this and in fact I had Norbert go out again and walk this and he's telling me that somewhere in this vicinity here it's a low spot in that transmission right of way where apparently...

CHAIRMAN HODOM: You got some cattails or something.

MR. CALIFANO: Where the water supposedly goes but it's unfortunate I mean when I built my home earlier in the spring there was you know some standing water in this area. By the time the house was being finished – well no we started construction actually in the fall; this was dry as a bone. The water went somewhere. Yeah so we're kind of stuck with you know, trying to get the Variance here and I guess you know from our prospective it's no smaller than what the zoning was. The zoning was 85 and we're pretty much at 85 and as a result of – I even thought coming over could we some how make a keyhole lot somewhere else, you know and then redistribute this but because of this wetland here we really can't – as you can see we have 2 keyhole lots here which meet the 200-foot so you're going back quite a ways before you even would start the house based on your zoning.

CHAIRMAN HODOM: Had you had and opportunity to discuss this proposal with Mr. Mosall or any other neighbors?

MR. CALIFANO: No we have not, no not at this point. I mean personally I don't know, you know I'm not sure, again I'm not even sure the distance, I don't have a scale here. I'm not even sure if there's the 15 feet there.

MR. BECKER: Between the line and his garage.

MR. CALIFANO: Yeah the side or side yard.

MR. BECKER: It's pretty close.

MR. CALIFANO: That's what I mean it wouldn't – what's the side yard setback Mark for the...

MR. PLATEL: Is there a separate garage on the lot or is that – because I only see the one house located.

MR. CALIFANO: Yeah I think it's all attached.

MR. PLATEL: What's the scale 1 to 50?

MR. CALIFANO: Yeah 1 to 50.

MR. PLATEL: It's showing 45 feet from the property line to the house, 44 feet.

MR. CALIFANO: Yeah.

MR. BECKER: I'd say probably 30 for that.

MR. PLATEL: I know you probably didn't walk onto his property and locate it I'm sure

but just the way it scales out is this way. The setback would be 8 feet.

MR. CALIFANO: The other problem is his current driveway – he just had Niagara Mohawk has been out to Russell Road, they're moving telephone poles and he has a circular driveway right now and encroaching any feet at all would totally disrupt his current driveway layout and I know he had a concern with Niagara Mohawk and he got them to move a pole or two away. So he's got this circular drive and my suspicion is he's - - I don't know but I would assume that if you have that circular drive you really wouldn't want to give it up.

MR. PLATEL: The side yard setback in that zone is 10 feet to the main structure.

CHAIRMAN HODOM: Is there any other means of access to that lot 510 from anywhere else on the property?

MR. CALIFANO: No it's all wetlands; this is all wetlands here.

CHAIRMAN HODOM: When was that declared wetlands, when were you first aware of that area being declared a wetland by the Federal – by the Corp of Engineers?

MR. CALIFANO: When we hired our environmental group, we hired the outfit out of – it wasn't Bagdon Associates, it was – our first company we hired, their name is escaping me now but when they did the full review of the property they made a determination that there was wetlands. So that was 2002 probably.

CHAIRMAN HODOM: And they sent you a map delineating where the wetlands were?

MR. CALIFANO: Yes, yeah I have that with me.

CHAIRMAN HODOM: Just to follow up to our counsels' request...

MR. CALIFANO: It's pretty much already marked – this is the same as the wetlands, in other words all these cross hatches that better match the wetlands map but I do have that. I have a map of that.

CHAIRMAN HODOM: I would appreciate it if you would provide a copy of that determination from the Corp of Engineers with the wetlands map just so we have it on record.

MR. CALIFANO: Yeah, what I definitely can get is a statement from Bagdon Environmental, our environmental people stating the discussion they've had with the Army Corp of Engineers. A lot of times they don't even issue the jurisdictional letter so I mean – you know what I mean it's a verbal thing but I can provide you with a current wetlands map and I'll have Norbert put together a letter showing exactly what we're aware of now.

CHAIRMAN HODOM: Okay. Well at least relating to this lot 510.

MR. CALIFANO: Specifically for that.

CHAIRMAN HODOM: That would be helpful to us. Are there any other questions from the Board?

MRS. O'BRIEN: Yes, on lot 510 and well actually all of your proposed houses I'm assuming they're just shown there and in that size to accommodate the building lines and so forth because the one that you have sketched out on 510 obviously comes very close to the building lines on either side and just a word that we frequently get people in for Variance's because you know the builders build pretty close in some cases to the building line and if they've got a 1 car garage there's no where to go for a 2 car garage. On a lot like this where it's going to be tight anyway I would just sort of suggest maybe that you look at another place of locating the building or in a different – because the way, you know if it's the size that it looks like it's going to be and in that location there's nowhere to go.

MR. CALIFANO: Well most of these homes will be high-end homes so that's going to dictate...

MRS. O'BRIEN: Well you'd be surprised what people ask for.

MR. CALIFANO: Well it's going to dictate minimum 2-car garage if not three. One of the things that I've thought about myself and even if we end up not being the builders of the property we have like 7 pages of covenants that we want. I mean I have my own home here and one of the things we probably would be looking at is to design of the home that doesn't take up a lot of green space. So I understand what you're saying but like you said it's - - this is strictly a block for him to show so that they can get a bench mark of the back of that line to the...

MRS. O'BRIEN: I mean that one in particular is extremely – if you build a large size home and it takes up all that space it's going to be...

MR. CALIFANO: Yeah it's really a shame because this is dry right here and to be honest with you...

MRS. O'BRIEN: Can't you put a driveway all the way back there?

MR. CALIFANO: I don't know, now that I'm looking at this but you know you can't though because you've got to stay 50-foot – the Fed.'s require 50-foot off the wetlands so you couldn't do it. Even though it's dry it just wouldn't meet the 50-foot for...

MR. PLATEL: And you'd have to be at least 235 feet back from this road here too.

MR. CALIFANO: Right because of the, right it wouldn't work, wouldn't work.

MR. BECKER: But put a 2600 square foot home....

CHAIRMAN HODOM: Sir, just give us your name please.

MR. BECKER: Oh I'm sorry, Dave Becker with Tony and RDA Associates. I live on Russell Road. A 2600 square foot home that's a footprint of 50 by 30, give or take when you're still talking about an 85-foot lot so it allows you ample room on the side for landscaping and to make it...

MRS. O'BRIEN: I'm just saying the way it's sketched out here and I realize that's just for purposes of you know you took identical size houses and put them down within the building lines but just something that we can see this – it doesn't matter what size the house is originally but if it's that close to the building line it becomes difficult for people to do anything.

MR. CALIFANO: Well on this particular case I suppose if you wanted you could turn that lot totally sideways whereby, you know what I mean?

MRS. O'BRIEN: Right. I mean we can't tell you how to do it just...

MR. CALIFANO: No, we're – we to have concerns about the fitting to the lots but one of the things that all of the lots will have will be deed restrictions and the people will know right up front that, you know what, 50-foot off the back of your house you can't build a thing. You know what? Here's a side yard setback so it's going to be in their deeds and they'll be told right up front so that's not to say that they couldn't come before you and ask for something but if in fact they have to show you the deed and show you that there's deed restrictions I think they're kind of out of luck. So that's one of the things that all these lots will have more particular because of the issues with the wetlands. In fact it's required by the Fed.'s.

MRS. O'BRIEN: Thank you.

CHAIRMAN HODOM: Anyone else? Bob any questions?

MR. WIGGAND: The only question I did have is do you have public water and sewer there?

MR. CALIFANO: Yes we have public water and sewer, yup, yes sir.

MR. WIGGAND: You do have both.

MR. CALIFANO: This 330 foot private to be public has got a man hole here and a man hole here and the nice thing is we've already cut through to the road to get to the other side so after this is approved we don't even have to do that, it's done. The first 330 feet is here.

MR. WIGGAND: Well these are the only three additional homes you - - they're not existing now, they're just lots there now aren't they.

MR. CALIFANO: Over here, this is all proposed, yes. The only thing existing is my home, there's a home here now which doesn't show on the map, Carmen Petty's home, a duplex here and an existing farmhouse on a vacant lot owned by our cousin. That was part of a - - when we go back before the Planning Board it'll be a joint submission between RDA and myself because right now I own this and this will be turned over to the Town as the road.

CHAIRMAN HODOM: Anything Gil? Are there any questions or comments from the audience? Is there anyone wishing to speak in favor of the Applicant? Is there anyone desiring to speak in opposition to the Applicant? Mr. Califano I'm going to close the hearing this evening but I would like that information that we requested regarding the wetlands and a narrative from your engineer within 5 days. Can you do that for me?

MR. CALIFANO: Sure, I'll try. If it's a problem, I'll call Karen.

CHAIRMAN HODOM: Okay because we won't move on it until we have that information in front of us.

MR. CALIFANO: Yeah I will get that and, as I said, if it's an issue I'll call Karen, but hopefully Norberts in Town and we'll get that - I mean today's - tomorrow is Thursday, yup I will try to get it to you, maybe I can get there Friday.

CHAIRMAN HODOM: Are you complete with your presentation?

MR. CALIFANO: Yes.

CHAIRMAN HODOM: Any further questions from the Board? Hearing no further questions or comments we'll declare the hearing closed and we'll notify you in a timely manner as soon as we get that information. Thank you very much.

Hearing closed 7:55 p.m.

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The next order of business this evening is a public hearing for a Variance under Article XIII, Use & Area Schedules, Section 128-100 A, Minimum Side Yards requested by David & Melissa Prescott for property at 73 Henderson Road, Glenmont, New York. The Applicant wishes to construct an attached garage addition, which will encroach into the side yard setback requirement at premises 73 Henderson Road, Glenmont, New York.

CHAIRMAN HODOM: Mr. Platel, please give us the reason for the hearing.

MR. PLATEL: Yes, Mr. Chairman. The Applicant is proposing a 372.5 square foot addition to the main dwelling, which will create a side yard setback of 4.5 feet. This is 3.5 feet shy of the 8 feet that is required for the main dwelling.

The existing structure is occupied as a single-family dwelling and is located in a Residence "B" District.

CHAIRMAN HODOM: Thank you, Mark. Ms. Guastella, please read the official call of the hearing.

Notice of Public Hearing. Notice is hereby given that the Board of Appeals, Albany County, Town of Bethlehem will hold a public hearing on Wednesday November 16, 2005 at 7:30 p.m. at the Town Offices, 445 Delaware Avenue, Delmar, New York to take action on application of David & Melissa Prescott for Variance under Article XIII, Use & Area Schedules, Section 128-100 A, Minimum Side Yards of the Code of the Town of Bethlehem for construction of an attached garage addition, which will encroach into side yard setback requirement at premises 73 Henderson Road, Glenmont, New York. Michael C. Hodom, Chairman, Board of Appeals. Attached to this Notice is notarized proof of its publication in the November 9, 2005 edition of the Spotlight, official paper of the Town of Bethlehem. All persons listed in the petition as owning property within 200 feet of the premises in question were notified by mail at least five days prior to this hearing.

CHAIRMAN HODOM: Thank you, Karen. We'll use the same procedure that we used earlier. We'll hear the Applicants presentation; we'll entertain any questions or comments from the audience; we'll hear anyone wishing to speak in favor of the Applicant and anyone desiring to speak in opposition. Anyone desiring to speak will be allowed to do so; we just request that you come or stand or sit close to the black microphone it's for recording purposes only. All questions should be directed to the Board. Mr. Prescott if you would just introduce yourself to us and give us your address and tell us what you want to do, and how you want to do it and why you want to do it.

MR. PRESCOTT: I'm David Prescott, 73 Henderson Road, Glenmont, New York. When I started off the project I wanted to increase my storage space and you know for vehicles and what not. I wanted to build a 3-car garage. I wanted to start off with something looking like it belonged on the house, you know I'll kind of pass this around. It's

something I printed out today. It's something that it looked like it belonged on the house that was designed with the house and you know kind of doesn't look like an addition I guess. It just looked like it was designed there in the first place and flows with the lines of the house.

I met with a builder to start getting estimates of what it might cost. We sat down and we started doing designs based on the side load restrictions, he recommended setting the facing of the garage door back as much as practical in order to still have a reasonable roof line and minimize the encroachment into the side yard area. I have a pie shaped lot with - - starts getting tighter at the beginning. I guess I would like to make a note that we've had the 9 foot parking pad on the side of the house since we've got the house built and really the goal is, is basically enclosing that parking pad. This design has kind of changed to include a storage area / shop behind the existing garage and that's only because when we set the front back farther in order to minimize the encroachment in order to have something of sufficient length to actually park anything in we had to shift it back. You know as I said the original plan was just straight sideways. You know when we started looking at side load, you know we looked at our other options available to us like we shopped the market for other homes, new homes. We went to that new development that's right off of Wemple Road and the only lots available we had the exact same problem. They couldn't do a 3-car garage because of side load and because of pie shaped lots were the only lots they had left available. So I kind of ran into the same problem we're in.

CHAIRMAN HODOM: You also had an encroachment into the storm drainage easement for the Town?

MR. PRESCOTT: Yes.

CHAIRMAN HODOM: How was that eventually resolved?

MR. PRESCOTT: Basically they looked at where the storm drains actually at and where the foundation for this new construction would be. In order for them to still have, if I explain it correctly here, in order for them to still have a sufficient margin with which to still to work on that storm drain without disturbing the foundation they had asked us to revise the plans to make the foundation deeper such that if they ever need to do work they wouldn't disturb the foundation.

CHAIRMAN HODOM: Do you have something in writing from the Town authorizing you to proceed in that manner?

MR. PRESCOTT: It's in the packet right here from David Sax, Principle Engineering Technician.

CHAIRMAN HODOM: I have a – it's a memorandum to the Town requesting that they review this condition with his suggestions. Was there anything ever issued by the Town accepting...

MR. PRESCOTT: Well I remember the – I was there, the Town Superintendent, he came by with one of his associates and they looked at it and it's as he verbally told me exactly what's printed here which is he wanted the foundation, you know a full 6 foot foundation.

CHAIRMAN HODOM: I don't doubt what you're saying I just don't have anything from the Town other than this memorandum from Mr. Saxe to the Town Board explaining what the restrictions were.

MR. PRESCOTT: I understand, okay.

CHAIRMAN HODOM: But I don't know if they actually accepted your request or not.

MR. PRESCOTT: He's the one who made the - - they came back to us and told us what to do in order to meet what he would approve.

CHAIRMAN HODOM: Okay.

MR. PLATEL: It appears Mike there's a note on one of them here that at a 5:30 meeting at the Town Hall auditorium which is Wednesday's, which is the Town Board meetings, 10/27 probably 2004.

MR. PRESCOTT: Oh, you know what I think actually I think we did receive a letter – I'll have to see if I can supply that to you. I think we did receive a letter after that meeting about something.

CHAIRMAN HODOM: Normally that would be the standard procedure so if you could provide that letter to us I would appreciate that.

MR. PRESCOTT: Okay.

CHAIRMAN HODOM: There was also a letter that went out, Mark and maybe this is to you, October 24, 2005 regarding a storage shed that was installed without a permit. Was that ever resolved?

MR. PLATEL: I don't believe it was.

MR. PRESCOTT: When I filed the Application they had me fill out a building permit at that time.

CHAIRMAN HODOM: Application for this Variance?

MR. PRESCOTT: No for the shed is what you guys had me fill out when I was there the day that I turned this paperwork in.

MR. PLATEL: When did you fill that out?

MR. PRESCOTT: Probably that, you know the same day.

MR. PLATEL: Has it been moved yet?

MR. PRESCOTT: I don't think it needs to be moved, does it?

MS. GUASTELLA: It's on the easement.

MR. PLATEL: It would have to be moved if it is on the easement back there.

MR. PRESCOTT: Okay that's – I guess that goes back to a separate issue. The previous building inspector because it's a portable shed, it's not a permanent fixture; it can be moved at any time upon request. What I had to supply him at the time was proof from the place that I bought it from that if I pay a fee they'll move the shed and then you know, I never heard anything back after that.

CHAIRMAN HODOM: Well it may be as simple as doing exactly what you did in the easement area is go to the Town Board, ask them for relief in this matter and I would think they would give you the same relief that they gave you for the easement.

MR. PRESCOTT: Well it would be a different situation. I had to prove that it was movable because in the case of the shed it's directly over top of the pipe.

CHAIRMAN HODOM: Oh it is?

MR. PRESCOTT: So I had to prove that it could be moved.

CHAIRMAN HODOM: Do you remember who that was?

MR. PRESCOTT: Shea, that guy that passed away.

CHAIRMAN HODOM: Did you receive anything in writing?

MR. PRESCOTT: No, he came by the house to look at it and you know...

CHAIRMAN HODOM: Well it's an issue that should be resolved.

MR. PRESCOTT: Sure, okay.

CHAIRMAN HODOM: The drawings that you prepared and submitted to the Board from Bethlehem Home Repair, is there a representative of them here with you tonight?

MR. PRESCOTT: Yeah, he's right here.

CHAIRMAN HODOM: Sir can you tell me what scale that these drawings are prepared

at?

MR. PALMER: The scale would be probably not usable on this type but it was done in 1/2-inch scale, but it was reduced to fit this particular size paper.

CHAIRMAN HODOM: Okay, so there's no measurable scale on the plans, right?

MR. PALMER: No.

CHAIRMAN HODOM: I mean I couldn't – except for the one foundation elevation detail, which seems to be at 3/8 of an inch to a foot there's nothing else that I could scale to verify dimensions.

MR. PALMER: I believe that we were told that should this be approved we actually have to an actual engineer; have actual engineering drawings prepared.

CHAIRMAN HODOM: Well you probably will, but for the benefit of this Board it's nice for us to be able to verify dimensions and size of rooms and so forth especially when dimensions aren't provided. I think in most of these cases that you have provided dimensions; they just can't verify them with the scale to the drawing. Do you have a set of drawings that you could provide?

MR. PALMER: To scale yes, but David Dembling is the one that I was...

CHAIRMAN HODOM: Dave Dembling?

MR. PALMER: Was going to use. When we get into these...

CHAIRMAN HODOM: Would you just introduce yourself to us?

MR. PALMER: Oh yeah, Dave Palmer from Bethlehem Home Repair.

CHAIRMAN HODOM: Okay.

MR. PALMER: What we usually do is we propose most of this and if the cost of the project exceeds the 10,000 dollar mark, what we do is we seek the services of a local architect such as David Dembling, have him review the plans; go over with him and pay him a fee to review those and stamp the plans because of the project size.

CHAIRMAN HODOM: Well how do you prepare these documents, a cad effect?

MR. PALMER: It's through a CAD program, yeah. So if I printed this out on 11 by 17 it would be to scale. You could actually take your scale to it, but these were reduced for purpose of mailing and getting them here, you know for review. We didn't know that the measurements would become an issue because they were outlined for this particular meeting, which was what was the setback and what are those issues. So I didn't think that

a scale drawing indicating the exact spaces other than the ones that are on the plot plans or the survey are very accurate to the conditions of the lot. So I mean even if - - that's what I had to work with as far as the scale and I'm not sure that that's exactly to scale either.

MR. PRESOTT: I think this may give you some representational that you might be looking for. This is a 9-foot wide trailer parked on the 9-foot parking pad that's in existence there and this arborvitae is...

CHAIRMAN HODOM: Well it really isn't what I'm looking for. I'm looking for something...

MR. PRESCOTT: Oh, I thought you wanted a visual, okay.

CHAIRMAN HODOM: Would you provide us a copy of that 11 by 17?

MR. PRESCOTT: Yeah, sure.

MR. PALMER: Yeah, most of the measurements are on here but you just want to verify that they are to scale.

CHAIRMAN HODOM: Correct, and the balance of the house as well.

MR. PALMER: In the back you mean?

CHAIRMAN HODOM: Yes. Looking at drawing 3 of 7, and 6 of 7 for the new foundation for the proposed garage, workroom, storage, on drawing 6 of 7 you're showing a 6-foot deep foundation and on drawing 3 of 7 is showing a 7-foot deep foundation. Are you using a 7-foot deep foundation to keep it below that drainage pipe?

MR. PALMER: The condition that - when I talked to Mike Cirello, I believe who was in the engineering department at the time, we could put 7; we could put 6; we could put 5; we could put 8, but the bottom line is what's really going to tell us how far that foundation needs to go is how deep this is right here and I think that we never really got from the engineering department how deep this pipe is. So what we agreed to do is ensure that the Town - that the footing would be below this pipe so it would not be undermined in case a dig had to happen to access the storm sewer. That was the - - and that really would need to be told - we need to actually when it's dug for the foundation we need to dig a trench over to the storm sewer to find it's location and it's depth. It would be a foot below that.

CHAIRMAN HODOM: The Town doesn't have any engineered drawings showing the depth of that drainage pipe?

MR. PALMER: Well the way that I got it from those guys is that there's field conditions even though that you may say that you would like that pipe 4 foot, 4. That doesn't mean

that the field condition doesn't put it a 5 or 5 foot, 6 depending on what they ran through. I don't believe they have an accurate indication as to where that pipe was and to ensure exactly how deep it was that would be determined during the dig of the foundation.

MR. PRESCOTT: Well the builder, when the builder leveled the lots afterwards, the builder did change the grade of the lots from the when those were originally installed.

CHAIRMAN HODOM: I guess that's possible.

MR. PRESCOTT: I mean it shouldn't be off by much but...

CHAIRMAN HODOM: All I'm saying is when you submit a set of documents to the Zoning Board and if we should approve your Variance request, we would expect that the construction will conform to these documents.

MR. PRESCOTT: Right.

CHAIRMAN HODOM: So I would like a clarification as to whether you're going down 7 feet or 6 feet.

MR. PRESCOTT: So possibly the better view would not be a specific depth but one foot greater than the storm drain.

CHAIRMAN HODOM: Or find out how deep the drainage pipe is.

MR. PRESCOTT: Right but we'd have to perform excavation first to do that.

CHAIRMAN HODOM: No, you can just open up that culvert cover, measure down to the bottom of the pipe...

MR. PRESCOTT: It's a grade.

CHAIRMAN HODOM: Yeah?

MR. PRESCOTT: It's a grade going down a hill.

CHAIRMAN HODOM: But there's a standard and I'm not going to be argumentative.

MR. PRESCOTT: Oh, I thought it would go deeper the farther back you go wouldn't it? Isn't the pipe just going straight back?

CHAIRMAN HODOM: I would think the pipe would be higher coming towards the catch basin.

MR. PRESCOTT: Oh, I guess you've got a point.

CHAIRMAN HODOM: The lower would be at the catch basin.

MR. PRESCOTT: Yup.

CHAIRMAN HODOM: That would my thoughts on it anyway. It probably would be acceptable if you were to – how did you know about the 5-foot dimension to the top of the pipe on drawing 3 of 7?

MR. PALMER: That was again, that was their estimation of how far that would be in the ground when I talked to the Engineering Department and really I think that the note should be made on the plan that's missing is that not necessarily a fixed measurement, but the requirement to meet the Town Engineering Department's request is that footings sit 1-foot below whatever that pipe is located at.

CHAIRMAN HODOM: Okay.

MR. PALMER: I think because in order to put in an exact measurement and go out and measure it and say okay well we measured that pipe, somebody added a foot worth of grade or sod and making it unable to determine exactly how deep that pipe is without doing the trench to determine what it is, put a specific measurement on that now really can't be done, however if you say in the conditions to meet an inspection at the time that the footings are poured that it must be 1 foot lower than the storm drain that's 4, or 5 feet away.

CHAIRMAN HODOM: So if the Board were to make a condition to any approval that the foundation is to be 1 foot below the existing storm drainage, you don't have any objection to that?

MR. PALMER: No that would be easy to accommodate.

CHAIRMAN HODOM: Good. Mr. Prescott, when did you purchase the property?

MR. PRESCOTT: 1999 in September.

CHAIRMAN HODOM: Have you had an opportunity to discuss your proposed addition with your neighbors?

MR. PRESCOTT: Sure and two of the neighbors that have some concern are here. Of course the neighbors who don't have a concern let things go.

CHAIRMAN HODOM: Did you show them what you propose to do as far as the plans?

MR. PRESCOTT: Yes. I think they have some pretty good issues to.

CHAIRMAN HODOM: The only other question I had right off hand is you're also showing an overhead door...

MR. PRESCOTT: In the rear.

CHAIRMAN HODOM: At the rear of the addition. What was that for?

MR. PRESCOTT: I just kind of took a look at – like there was an approved garage in Haswell Farms and I just kind of took a look at that one as far as if there a question about access to the rear of the house. I have 14 ½ feet of side lot on the other side of my house but I just kind of show that as a convenience door for access to the back yard in case there was a question that now that I've encroached upon my own side load that I wouldn't be able to access the back yard conveniently.

CHAIRMAN HODOM: Good point. You only have about what, 4 ½ feet left to your side lot?

MR. PRESCOTT: (nods in agreement)

MR. WIGGAND: So you would have another entrance to that back yard?

MR. PRESCOTT: Yes.

MR. WIGGAND: Where, on the other side of the building here?

MR. PRESCOTT: Yes, the other side is 14.4.

MR. WIGGAND: Okay. I didn't look at it today when I was over there, but you do an area here that you can get in there.

MR. PRESCOTT: Yeah I towed the trailer back and forth.

MR. WIGGAND: Okay I'm sorry I did not look at that today.

MR. PRESCOTT: I think this photo just cuts it off. I think - - well the property map shows it. Actually on the property map those trees no longer exist there, they died.

CHAIRMAN HODOM: On the east side of the property?

MR. PRESCOTT: Yeah. The builder disturbed the ground underneath them and they just rotted away.

MR. WIGGAND: Well once that garage was added to this home you would have a way to get to it.

MR. PRESCOTT: To the back yard?

MR. WIGGAND: To the back yard on the other side.

MR. PRESCOTT: But I'm proposing to install a garage door on the back of the garage to, to have dual access to.

MR. WIGGAND: I see that here. I was just going to ask you about that, what was that to be used for, just what we're talking about?

MR. PRESCOTT: Yup just straight through.

MR. WIGGAND: I think it's a pretty good plan there where you're kind of limited on the other side. Thank you.

CHAIRMAN HODOM: And Mr. Prescott just if you would give us an overview of what you mean by the workroom. What are you propose to do in there?

MR. PRESCOTT: Just you know, workbench – stuff like that. Like I said the workroom was kind of a left over space thing when we set the facing back in order to minimize the impact on the side load. Basically if we were to come to you with my original plan, okay, the garage actually – straight across the front. The end of the garage would have ended at the existing end of the garage. It would have been flat all the way back, but we would have encroached even more on the side load. I think we would have had only 3 ½ feet left instead of the 4 ½ feet left we have now at that very front corner. So in order to, you know give a little bit more, you know distance we pushed it back but in order to have something that's at least 17, 18 feet deep that you can park a car in we had to go back further and then because that garage ends we just tied it on to the side of the house and that leaves and excess workroom there which is useful, it adds extra storage for workbenches and stuff like that which is one of the reasons why - - I don't have space in my garage to park cars now as it is.

CHAIRMAN HODOM: You weren't planning on running a business out of the workroom?

MR. PRESCOTT: No.

CHAIRMAN HODOM: Okay it's just for your own personal use?

MR. PRESCOTT: Yup.

CHAIRMAN HODOM: Can you give us the make up of your family?

MR. PRESCOTT: We have my wife, and we have 3 infant sons, newborn, 2 year old and a 4 year old. So there's a lot of tricycles, bicycles and other...

CHAIRMAN HODOM: I bet there is. And how many vehicles to you own?

MR. PRESCOTT: Well I have 2 personal vehicles, a truck and a car and then my

company provides a company vehicle so that's the third vehicle that's in the driveway all of the time. And then I have a recreational vehicle, a classic car that I'm restoring. That's what you see pictured in the trailer underneath the tarp. So that's really one of the primary uses of a third car garage is to store that to free up space and to get at least one more of our vehicles in the garage.

CHAIRMAN HODOM: Do you do any mechanical work on the vehicle?

MR. PRESCOTT: Yes – is my own personal stuff.

CHAIRMAN HODOM: Do you do that outside of the garage?

MR. PRESCOTT: No I usually do it inside. It's not fun working out in the rain.

CHAIRMAN HODOM: We were just going through a beautiful summer.

MR. PRESCOTT: Yeah with 3 kids, there's not a lot of time.

CHAIRMAN HODOM: So the third garage bay would be also used as storage to store a vintage vehicle?

MR. PRESCOTT: (nods in agreement)

MR. WIGGAND: So you're not running a business out of that garage?

MR. PRESCOTT: No. I guess if there's any concern of that I mean, I do have a private business but none of them have any use for that area. I run a wholesaling business and an electronic sales business, but...

MR. WIGGAND: But not out of here?

MR. PRESCOTT: No, I have no use from a business standpoint from that – for my business stuff I have space rented up at South Albany airport and then I have you know space rented at Mail Boxes Etc. for that stuff.

MR. WIGGAND: So no way this is going to be used for a commercial garage?

MR. PRESCOTT: No.

CHAIRMAN HODOM: We don't have any issues with percentage of lot occupancy?

MR. PLATEL: No.

CHAIRMAN HODOM: I know it's gone up to 20 percent. What about the shed, is that figured in it as well or no?

MR. PLATEL: Yes.

CHAIRMAN HODOM: Any other questions from the Board? Are there any questions or comments from the audience? Are you all set Mr. Prescott?

MR. PRESCOTT: Yes.

CHAIRMAN HODOM: Is there anyone wishing to speak in opposition to the Applicant?

MR. GRIECO: Yes.

CHAIRMAN HODOM: Come up here and sit for us if you would. Just give us your name and address.

MR. GRIECO: Sure I'm Christian Grieco, 71 Henderson Road.

CHAIRMAN HODOM: Go right ahead.

MR. GRIECO: I'm concern is basically there's some terms of the character of not necessarily the neighborhood but of my personal environment of being the neighbor in terms of his proposed addition. I feel the 8-foot setback is realistic expectation and a rule that makes sense to me and I feel that should be adhered to. From another perspective it's more self-serving, I can't say that my property value would be negatively impacted and I couldn't say that it would be positively impacted but I feel as a potential in terms of any future sale that the number of folks that would be, you know potentially turned off from the fact that there is – the side yard is smaller in comparison to the rest of the homes in the neighborhood. Just a gut feeling, you know it's pretty much an anecdotal point that I'm making.

CHAIRMAN HODOM: You live on the side of the proposed addition?

MR. GRIECO: Correct.

CHAIRMAN HODOM: Okay. Had Mr. Prescott discussed with you what his proposed plans were?

MR. GRIECO: Many times, sure.

CHAIRMAN HODOM: Anything else?

MR. GRIECO: No that's pretty much it.

MR. WIGGAND: But your problem is that it's to close to the property line.

MR. GRIECO: Exactly. It's a suburban environment and design for the homes are that.

MR. WIGGAND: Is your home 8-foot or more off the side property line?

MR. GRIECO: Yes, I think it's 16 feet.

MR. WIGGAND: So it will be 4 feet closer.

MR. GRIECO: It will be 4 ½ feet from – I'm not sure where the distance - - I think the proposed garage addition is 4 ½ feet from the property line.

MR. WIGGAND: And that's more or less what you're concerned about?

MR. GRIECO: Yes. I think what the current ordinance is and the rule is 8-foot, it makes sense for our community.

CHAIRMAN HODOM: Thank you Mr. Grieco. Is there anyone else, yes sir?

MR. WALLERS: My name is Spencer Wallers, I'm at 67 Henderson on the other side of Christian Grieco. I just support his view because the house that was built next to me is at 8 feet and I have run-off issues and it feels very confining so I empathize a great deal with having a house encroach more than the 8-foot setback even though the house next to me is at 8-foot from the property line and I find that confining and it looks odd in the neighborhood to have it so close to ours. I just - - a great deal of empathy because not a week goes by where I sit there and go – rain running off and into the yard or one thing or another that makes it feel odd.

CHAIRMAN HODOM: Okay. Thank you very much. Anyone else?

MR. PRESCOTT: Can I add one more point at all?

CHAIRMAN HODOM: Sure.

MR. PRESCOTT: One thing we did take a look at and one of the objectives that we met by setting the front facing back is – the house is now balanced with the house to the east and at the gap difference between the home matches because the neighbor to my left is also 8-feet off the property line so we matched the distances. As Mr. Grieco said he has his difference plus the 4 feet, actually the distance on the other side of my home is at the same distance now as well. So I guess if I step way back across the street – provided a photograph to show the, you know spacing of the homes. I think one of the things that, you know could be shown is that the spacing in this case is still greater than the distance between some of the homes in the neighborhood by 2 feet. Some of the homes were done 8 feet to 8 feet, which would leave 16 feet. We're like 18 ½ feet difference in this case.

CHAIRMAN HODOM: That's what happens when the developer builds the homes, he just builds them right up to side yard limit lines and you don't have anymore to expand. That's part of the problem.

MR. PRESCOTT: Right.

CHAIRMAN HODOM: Are you doing other work on the existing home other than the proposed addition?

MR. PRESCOTT: No.

CHAIRMAN HODOM: Okay. Is there anyone else who would like to speak in opposition? Is there anyone wishing to speak in favor of the Applicant who has not already done so? Any further questions from the Board?

MR. BROOKINS: Just one. Have you considered shrinking the width?

MR. PRESCOTT: If you shrunk the width of the garage it would be unusable. The 9-foot parking pad now as it is, is the width you need in order to park any 8-foot wide vehicle. The extra 2 feet to go to 11 feet is just – what would you call that?

MR. PALMER: Balance.

MR. PRESCOTT: Well no, the 2 feet is what you need in order to build the wall, framing and foundation in order to build a wall around it.

MR. BROOKINS: I just wanted to know if you addressed that issue. Thank you.

MR. PRESCOTT: And when meeting with the neighbors, you know we did take a look at in order to fall within the rules of the Town the front of the 3rd-car garage would actually be slightly behind the back of the existing garage. There's no way you could practically tie it in to make it look like it belonged to the neighborhood or belonged attached or built onto the house.

CHAIRMAN HODOM: Well the majority of the homes in the neighborhood have exactly what you currently have. I drove up most of the streets and they all have the double door garage and...

MR. PRESCOTT: Yeah there's only 1 house that has a 3-car garage.

CHAIRMAN HODOM: It's right on the corner there.

MR. PRESCOTT: That was – no, my next door neighbor with the side load garage what they did is they pushed - - see because they pushed his house all the way to the side in order for him to get a 3-car garage in the first place. Had I known, you know that in the first place I guess our builder could have pushed our house to the left to allow more room to do that.

CHAIRMAN HODOM: Anything else Mr. Prescott?

MR. PRESCOTT: No, I believe you're looking from me an engineering letter from the Highway Department to clarify the...

CHAIRMAN HODOM: We're looking for a letter from the Town authorizing you to go ahead proving the footing is below the pipe and then the scales wrong. Give us 3 copies if you would. Is there anyone else that would like to speak regarding this issue? Hearing no further questions or comments we'll declare the hearing closed and we'll notify you in a timely manner. Please get that information to us within 5-days. Thank you very much.

Hearing closed 8:30 p.m.

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The next order of business this evening is a public hearing for Variance under Article XIII, Use & Area Schedules, Section 128-100 A, Minimum Front, Side & Rear Yards, Article VI, Supplementary Regulations, Section 128-35 D (1), Specific Regulations for Districts, Article VI, Supplementary Regulations, Section 128-54 E (4) Signs requested by Cumberland Farms (Applicant), Big Main Truck Stop (Owner) for property at 68 Route 9W, Glenmont, New York. The Applicant wishes to demolish an existing building and reconstruct a convenience mart with an attached drive-thru restaurant and gasoline station at premises.

CHAIRMAN HODOM: Mr. Platel, please give us the reason for the hearing.

MR. PLATEL: Yes, Mr. Chairman. The applicant is proposing to demolish the existing Big M Truck Stop and construct a new Cumberland Farms Convenience Mart with gas sales and a drive thru Dunkin Donuts.

The proposed structure will have 2 front yards, which will require a setback of 100-feet from the property line to the main structure. The proposed canopy, which is considered a main structure, will have a setback of 35 feet at its closest point, encroaching into the setback by 65 feet.

The rear yard setback to the second smaller canopy will be located 30.8 feet from the rear yard property line and will encroach 19.2 feet into the 50-foot required setback.

There is also an additional 100-foot buffer to the building, parking and access aisles, which will create an encroachment of 22.1 feet for the building and 97.1 feet for the parking and parking access. One of the proposed sign will also be located in the buffer and will have an encroachment of 97 feet.

The proposed size and location of the signage will require Variance's also.

The minimum setback from the front property line is 15 feet. There are six signs that will encroach into the front yard setback. The setbacks for the signs will be, 13 feet, 13 feet, 9 feet, 2 feet, 1 foot, and 1 foot respectively from the property lines creating encroachments of 2 feet, 2 feet, 6 feet, 13 feet, 14 feet and 14 feet respectively. The amount of signage permitted for the site is also in excess of the allowable. The total allowable signage for the site is 100-square feet. The new signage requirements figure a 2-sided sign only once rather than adding both sides as in the past. The proposed signage is – I didn't get those 2 extra drawings, I'm sorry.

MR. SPIEK: I thought we had the high-rise is on there, it was originally – called for 100-square feet on that.

MR. PLATEL: Is that one sided or two?

MR. SPIEK: It's 192-square feet per side now.

MR. PLATEL: And what was the menu board?

MR. SPIEK: The menu board is basically 32.7 square feet.

CHAIRMAN HODOM: Could you just introduce yourself to us again?

MR. SPIEK: Sure, Rob Spiek with Bohler Engineering.

MR. PLATEL: Just let me finish that up. The proposed signage is 430 square feet, which will exceed the allowable by 330 square feet over the allowable. Also the head of the pylon sign on Route 9W will be 50 feet tall, which is 40 feet higher than the 10 feet allowed. The reader board will also require a Variance for flashing and or intermittent lighting.

CHAIRMAN HODOM: Which is not allowed?

MR. PLATEL: Which is not allowed, correct.

CHAIRMAN HODOM: Thank you, Mark. Ms. Guastella, please read the official call of the hearing.

Notice of Public Hearing. Notice is hereby given that the Board of Appeals, Albany county, Town of Bethlehem will hold a public hearing on Wednesday November 16, 2005 at 8:00 p.m. at the Town Offices, 445 Delaware Avenue, Delmar, New York to take action on application of Cumberland Farms (Applicant), Big M Truck Stop (Owner), for Variance under Article XIII, Use & Area Schedules, Section 128-100 A, Minimum Front, Side & Rear yards, Article VI, Supplementary Regulations, Section 128-35 D (1), Specific Regulations for Districts, Article VI, Supplementary Regulations, Section 128-54 E (4), Signs of the Code of the Town of Bethlehem for the demolition of an existing building and reconstruction of a convenience mart, drive-thru restaurant and gasoline

station at premises 68 Route 9W, Glenmont, New York. Michael C. Hodom, Chairman, Board of Appeals. Attached to this Notice is notarized proof of its publication in the November 9, 2005 edition of the Spotlight, official paper of the Town of Bethlehem. All persons listed in the petition as owning property within 200 feet of the premises in question were notified by mail at least five days prior to this hearing.

CHAIRMAN HODOM: Thank you, Karen. We'll use the same procedure that we used earlier this evening; we'll hear the applicants' presentation; we'll entertain any questions or comments from the audience; we'll hear anyone wishing to speak in favor of the Applicant and anyone desiring to speak in opposition. I'll request that any comments or statements should be to the issue this evening which are the stated Variance's. Anyone desiring to speak will be allowed to do so. If you would just introduce yourself for us again.

MS. BITTER: Good evening Chairman, members of the Board, my name is Stephanie DiLallo Bitter, I'm the local counsel for Cumberland Farms. I'm here tonight with Don Vanderfin, he's from Cumberland Farms retail department as well as Rob Spiek from Bohler Engineering and Dave Tarsa the actual property owner is here as well. As it's been indicated in the notice we're proposing the same concept that was presented at the August meeting. We're going to demolish all the existing buildings and construct a convenience store, drive-thru and gasoline station.

Unfortunately after our August meeting the new zoning code was implemented, which changed our plan from needing zero Variance's to needing the number of Variance's that were just reviewed by Mr. Platel. I apologize for any confusion that the application presented and unfortunately this has kind of been a work in progress and I had to be educated with your new zoning code and Mr. Platel has been completely helpful, but it's been an involved process.

As we've identified in August, we're discontinuing the diner use, the shower use and the overnight stay at the truck stop, which was utilized by The Big M as it was operating. We're proposing 12 pumping stations for gasoline and 8 diesel-pumping stations, which is located on the northwest corner as demonstrated on our plan. The store is 3,825 square feet and the drive-thru is 1,080 square feet, which was the same that was proposed in August. The customer service station is still part of the plan, however due to the public's comment at the last meeting we did move that over to the northwestern corner which again, is demonstrated on that plan. The landscaping plan is also been amended not only because of the public's comments but also because of the new zoning code regulations, which you all have. Rob will go into more detail about that in just a second. And also the new code has essentially resulted in this part of having the zero building envelope, which I'll have Rob demonstrate as well. I'm not going to review all of the Variance's. I completely agree with what Mark identified as to the numbers that are needed.

We just feel that although there are a list of Variance's we feel that we're going to be increasing the aesthetics of the site and help in the character of the

neighborhood so it shouldn't be deemed so substantial in just looking at the actual quantity that is being requested. I'm going to turn it over to Rob to go into more detail.

CHAIRMAN HODOM: Just before you go into it...

MS. BITTER: Sure.

CHAIRMAN HODOM: Do you have a letter of authorization?

MS. BITTER: Absolutely, I knew you were going to ask me that. We presented it at the last submission, but I just was afraid that you might need it for this as well. I made a number of copies.

CHAIRMAN HODOM: Thank you. Just before you get started Rob, I want to make sure that we're all on the same page because all your charts and tables reference your plan and I want to make sure that...

MS. BITTER: If you want me to show that to the Board – the confusion that – when we had originally presented it, we had this book that's front and front, all right?

CHAIRMAN HODOM: Correct.

MS. BITTER: But when we submitted it we utilized this as rear and this as side, however Mr. Platel has made a determination that this will be deemed side and this will be deemed rear, which amended a lot of the Variance's, which even then identified just now.

CHAIRMAN HODOM: But it will also change a lot of information that you show on your plan.

MS. BITTER: That's correct.

CHAIRMAN HODOM: The section regarding the zoning analysis table.

MS. BITTER: Exactly, with the Variance's.

CHAIRMAN HODOM: Are you proposing to re-do that zoning analysis table?

MS. BITTER: We can definitely do that.

CHAIRMAN HODOM: Okay. Otherwise it's just going to be...

MS. BITTER: Right and unfortunately...

CHAIRMAN HODOM: Total confusion.

MS. BITTER: It was something we just discussed today so it wasn't as if we had the time to submit it, I apologize.

CHAIRMAN HODOM: And I'm assuming Mark you've done these changes to benefit the applicant as far as...

MR. PLATEL: The number of Variance's have not changed. It's just depending on the way – I only looked at it as far as the front being on the Corning Hill side basically because that's where their access is from. So I basically just started by deeming that as the front yard and putting the real front yard with the rear being behind it and that's how I worked on it.

CHAIRMAN HODOM: Okay. The other question I had was that on your zoning analysis table you had shown a required setback from the Route 32 side of 200 feet.

MS. BITTER: I'm sorry, the reason I did that is when I met with Mark initially in October he had originally said he was looking at the buffer requirement as being any residences are permitted in that zone and then he indicated to me today that that was - - he had changed that interpretation to mean that that wasn't a problem so that's why we had originally gone to that original buffer on that area.

CHAIRMAN HODOM: So please re-do that zoning analysis.

MS. BITTER: Absolutely.

CHAIRMAN HODOM: And any other table that has to be changed based on these new criteria. So currently then on the south side we're calling that front/side yard, on Route 32?

MS. BITTER: That the front.

MR. PLATEL: 32 is the front.

CHAIRMAN HODOM: That's the front, okay. And then Route 9W's front side there?

MR. PLATEL: The front side, yes.

CHAIRMAN HODOM: And then north is?

MS. BITTER: Is the rear.

MR. PLATEL: Is the rear yard.

CHAIRMAN HODOM: And the east is?

MR. PLATEL: The side.

CHAIRMAN HODOM: Thank you. Please continue.

MS. BITTER: I'll let Rob go into more detail.

MR. SPIEK: I can run through the site plan in detail if you like. We went through it last time and it really hasn't changed much.

CHAIRMAN HODOM: Well we've thrown out everything from last time so why don't you do it again.

MR. SPIEK: Okay. And it sounds like we're going to throw out a lot of this tonight to because again with the information we got from Mark today, you were absolutely correct that there's a lot of changes that need to be made to these tables.

CHAIRMAN HODOM: Yes.

MR. SPIEK: But just as a general description here as Stephanie mentioned it is basically the same plan that you folks had seen when we came in for the special permit review. We did take into account some of the comments and concerns of the Board here regarding additional landscaping in these areas here to buffer the residences and relocate the customer service area further away to buffer that from noise and enhance a lot of the landscape plantings on the property here.

Just again, as we're going through the Variance application here I had also rendered up the existing conditions of the site where you'll see it's a largely paved site today. As part of our application, again we feel we're going to enhance the character of the neighborhood and make it a better place both aesthetically and environmentally here by proposing this plan here. We are adding over 13,000 square feet of green space to this development here and that's within the property lines to. There's also an enormous amount of asphalt that is within the State right of way that will be removed as part of this project which is not factored in to that 13,000 square foot number I mentioned. If we were to add that in you're adding almost another 10,000 square feet so we're adding 1/2 acre of green-space to this corner right here.

I know you folks had these exhibits included in your package here but we just feel it's something again, to point out that's important here. The shaded areas where the building envelope's here under the old code for both the existing conditions and the proposed. The shaded area on this plan here although this will be modified slightly now with the new determination by Mr. Platel here – very tiny building envelope on here so we just wanted again to bring that to the Board's attention even though it was included in your packets there.

The final presentation board I've got – it's just a building elevation, you've seen them in the past but I'll bring them out again. Again the building elevation and just going with a colonial style brick mansard style roof with the center peak in it, copula on

top – pretty consistent elevation all the way around the building there, with colonial features, brick on the back and this would be the side that would be facing the residences over here – drive thru window off to the side. That’s pretty much it that I have for you folks and I’d be happy to answer any questions for you.

CHAIRMAN HODOM: Let’s go over this freestanding sign that you just handed out tonight. This, I understand is not a static sign, it’s got some moving numbers or letters or...

MR. SPIEK: What it has on it is – that sign was proposed from the previous application. It’s actually located right over here. The intent of that sign is obviously it’s a high-rise ID sign and it’s meant to capture traffic from the thruway pretty much is sort of like the existing Big M signs on the roof and things like that. The top price sign of it is what we call a LED reader board. It’s basically so somebody inside the store can change the price everyday without having to climb up this pole and throw panels on it.

CHAIRMAN HODOM: So that’s the only thing that changes is the price?

MR. SPIEK: Correct.

CHAIRMAN HODOM: It’s not a scrolling...

MR. SPIEK: No it’s not a scrolling; it’s not an advertising device or anything like that. It would strictly display the price only. It doesn’t move or it’s not animated in any way, shape or form. Just again, so somebody doesn’t have to climb a pole and change panels.

CHAIRMAN HODOM: Why does it have to be 50 feet high?

MR. SPIEK: Again the purpose of this particular sign is to – you’ve got that line of vision here – thruway coming around the turn before you hit the Normanskill creek here. It’s to grab those potential travelers and show them that Cumberland Farms is here as a gas station.

CHAIRMAN HODOM: On your price reader board is there any animation to that board or is there any scrolling on that board?

MR. SPIEK: You’re referring to the menu board?

CHAIRMAN HODOM: Yes.

MR. SPIEK: The menu board is just the typical – the reason it wasn’t previously submitted because the code didn’t really indicate whether it was required – if it necessarily a sign or not a sign. Mark has determined that it is a sign so that’s why the details been submitted belated but that’s just your typical menu board that you would see at any of the existing Dunkin Donuts, McDonalds, Burger King’s, there’s nothing fancy to it or nothing like that.

CHAIRMAN HODOM: I know we won't get into it as a Zoning Board but at the last hearing you folks were going to provide a traffic study. Has that been done, I mean that's something the Planning Board is probably going to ask you for anyway?

MR. SPIEK: It's in process.

CHAIRMAN HODOM: Okay. And your proposed hours of operation, have they changed? I believe at the last hearing it was going to be 24/7.

MR. SPIEK: That's still the proposal.

CHAIRMAN HODOM: For each operation of retail – the Dunkin Donuts and also the gasoline and diesel?

MR. SPIEK: That's correct.

MR. WIGGAND: How many car parking do you have there?

MR. SPIEK: Just plain parking stalls?

MR. WIGGAND: Yes.

MR. SPIEK: Parking stalls – we have 39 spaces, the code requires 38.

MR. WIGGAND: Thank you.

CHAIRMAN HODOM: Mike this is a question for you, I think there were 4 previous resolutions for this site

ATTORNEY MOORE: Yes.

CHAIRMAN HODOM: Do we have to be concerned with those with the new code?

ATTORNEY MOORE: They were all special permits

CHAIRMAN HODOM: Special Exceptions.

ATTORNEY MOORE: Right.

CHAIRMAN HODOM: So that would be something for the Planning Board?

ATTORNEY MOORE: That would be my guess. I didn't think of that. Do you want to let me take a look at them and I can report back.

CHAIRMAN HODOM: Sure.

ATTORNEY MOORE: Just to see what else is on there.

CHAIRMAN HODOM: Okay, would you do that for us?

ATTORNEY MOORE: Yes.

CHAIRMAN HODOM: Mark I didn't see anything but is there a Town Code addressing the stacking requirements for the drive-thru?

MR. PLATEL: No.

CHAIRMAN HODOM: On top of both canopy's there are American flags and one canopy has a 2 meter antenna, are they considered advertising signs or do they also possibly affect the height canopy?

MR. PLATEL: They wouldn't affect the height of the canopy. Looking under exempt signs decorative banners not containing words, labels, figures, or descriptions, those are exempt.

CHAIRMAN HODOM: Well there is something about flags and so-forth, their exempt except when they're used for commercial purposes. I guess I need a determination as to what they're being used as advertisement or they're just...

MR. PLATEL: In the past we have – if it has stated a name on it as far as advertising, if it said Cumberland Farms, if it said gasoline, if it said Marlboro, if it said anything like that it would be considered advertising. American flags have not been considered advertising.

CHAIRMAN HODOM: So all of the flags are going to be strictly the American flag?

MR. SPIEK: Yes, and it's consistent – I believe we've got them on the 9W site in Glenmont. That canopy has the flags on top of it also.

CHAIRMAN HODOM: Where's Glenmont, around here?

MR. WIGGAND: I hope I didn't hear that.

CHAIRMAN HODOM: So in both cases height wise and advertising flags don't come into effect?

MR. PLATEL: No it says it right here they're actually exempt signs, flags and the insignia of any government except for when displayed in connection with commercial promotion. I'd have to look into that closer Mike.

CHAIRMAN HODOM: Just to clarify it.

MR. PLATEL: Okay.

CHAIRMAN HODOM: The spaces that are associated with the vacuuming and cleaning area are being used – there's 5 spaces there, are being used in the count of parking spaces. Is that correct?

MR. PLATEL: I'm sorry?

CHAIRMAN HODOM: The 5 spaces that are shown in the area where they have the vacuum cleaners and the...

MS. BITTER: Customer service area.

CHAIRMAN HODOM: Customer service area. They're including those five as parking spaces for the retail and the restaurant. Is that acceptable?

MR. PLATEL: I would say yes.

CHAIRMAN HODOM: Okay. The signage on the canopy's – you do have one Gulf sign shown for the large canopy.

MR. SPIEK: Yes.

CHAIRMAN HODOM: Is there also a Gulf sign on the smaller canopy?

MR. PLATEL: There's one.

CHAIRMAN HODOM: I think you show two...

MR. SPIEK: We show three actually.

CHAIRMAN HODOM: Okay.

MR. SPIEK: On the site plan here I believe we have one located right here, there's one located in this location here and that location.

CHAIRMAN HODOM: Okay so there are three.

MR. SPIEK: And for the rest of the Board we have one proposed here, here and here. I believe they're all 6.2 square feet.

CHAIRMAN HODOM: And Mark if you could clarify it for the Board as well, all the proposed signage excluding directional signage should be considered in the total quantity of signage?

MR. PLATEL: Correct.

CHAIRMAN HODOM: That's the thank-you sign and the welcome sign?

MR. PLATEL: Yes.

MR. SPIEK: The directionals aren't Mark?

MR. PLATEL: Directionals are exempt. Welcome and Thank you are considered signage.

MR. SPIEK: Okay because we did not include those in our numbers.

MR. PLATEL: Okay.

MR. SPIEK: I think I considered those directionals.

MR. PLATEL: Anything that says enter/exit or the drive-thru on the inside there I didn't that one part of it because it was directional for driving.

MR. SPIEK: Okay. We changed the ones out in front to enter/exit and they're exempt.

MR. PLATEL: They will be exempt, yes. Right now they say welcome and thank you.

MR. SPIEK: Correct.

MR. WIGGAND: Are they still exempt, the wording?

MR. PLATEL: They're exempt from the signage calculation; I would have to find out if exempt from the setback requirement. I would think they are.

MR. BROOKINS: What if the welcome and thank you had an arrow on them?

MS. BITTER: I think they do.

MR. BROOKINS: Are they now directional and exempt?

MR. PLATEL: I'll remove the arrow part from the calculations.

MRS. O'BRIEN: No allowance for civility?

MR. PLATEL: It's a new book; give me some time.

CHAIRMAN HODOM: The minimum front setback on your plan Rob, under the zoning analysis change for the New York State Route 9W, over in the proposed you're showing 10 feet but you actually indicated 10.5 foot dimension.

MR. SPIEK: Okay somebody measured it to the face of the curb, it would be 10 foot from the rear of curb actually.

CHAIRMAN HODOM: Okay just correct that if you would. I think that's all the questions that I have for right now, do the Board members have any other questions?

MRS. O'BRIEN: Yeah, I have one.

CHAIRMAN HODOM: Go ahead Marge.

MRS. O'BRIEN: The high-rise sign is 50 foot the minimum height that you need? Can it be anything less than that and do you have a combination of that – do you have or can you have pictures from various locations including the thruway to show where the 50-foot would be or whether it could be lowered.

MR. SPIEK: Yeah, I mean it's – we've got balloon tests that's basically we'll hang a balloon and figure out what provides the best – yeah we could provide the information.

MRS. O'BRIEN: Thank you.

MR. BROOKINS: If in the process of doing that you can get at least one or two angles to include the motel signs across the street because they have some fairly substantial signage – what is it, Comfort Inn?

MR. MICELLI: Quality Inn.

MR. BROOKINS: but if you could position your proposed sign and...

MR. SPIEK: Yeah we can superimpose this into a real live photograph of that.

CHAIRMAN HODOM: Any other questions from the Board?

MR. BROOKINS: Where do you stand with DOT in terms of some of the changes in the curb cuts?

MR. SPIEK: Quite honestly is that since our last presentation here we had some preliminary conversations with them, which we thought were favorable in our opinion but we haven't taken it much further due to the change in the process here and everything.

CHAIRMAN HODOM: Are there any questions or comments from the audience? This is before anyone wishing to speak in favor or in opposition to the applicant. Does anybody have any questions as to what we've discussed so far this evening? Okay then I'll entertain anybody who would like to speak in opposition to the Applicant? Are there none?

MR. O'LEARY: It may be more of...

CHAIRMAN HODOM: Will you just come up here for us? Thank you. Just give us your name and address.

MR. O'LEARY: My name is Dennis O'Leary and I'm with what's called the Bower reserve, which is on Old Route 9W right there on that dead end road right across from the Big M Truck Stop. Anyway my question is as far as the sign is that big – haven't seen this before but the large sign from the thruway – people are zipping by a lot on the thruway and maybe somebody would notice it perhaps and you might say well I've got to get gas so they would take exit 23, which is the one your hoping they'd take but location seems to be everything and I don't know if they'd go to there unless they're loyal Cumberland Farms because right there is the Mobile Station very close to exit 23. It doesn't seem like the sign itself would be much of a help because unless you're going to be constantly competing with their price – oh, they're a cent higher or we'll go a cent lower or something like that. I'm not sure if a sign that large in that location would make any significant difference because of the Mobile station being right there for one thing. So maybe that's something to be looked into because signs at least to me get pretty obtrusive after a while, you know the whole idea of billboards and so forth – along highways of course there's been great controversy in. So this would be something like a setback billboard probably lit up I suspect, right, at night.

MR. SPIEK: Correct.

MR. O'LEARY: Okay so I have nothing against the sign per say but I'm not sure that one would have the kind of use unless you've done some kind of research that people would more or less want to travel that extra far to make use of your product versus convenience. The second thing is I've not been acquainted with this except via the letter that I received. You're apparently putting a lot more green space in than what exist there now and of course what exists there now is a truck stop basically. I'm not quite sure why they – what happened? Was there some competition from the truck stop down below that's cause this one to kind of go down hill?

MR. SPIEK: I'm not sure.

MR. O'LEARY: Pardon? I'm not sure...

CHAIRMAN HODOM: If you don't have an answer, you don't have an answer.

MR. TARSE: Mike I can comment on that.

CHAIRMAN HODOM: If you could introduce yourself to us.

MR. TARSE: Sure, my name is David Tarse. I'm president of Main Care Energy and we also own the truck stop at the bottom of the hill so I'm not in competition with myself.

We were approached a couple years back in regards that particular location and over the years operating it first as a tenant and later as a owner there's been discussions in the neighborhood about having a truck stop there and people would not – really embellishing having a truck stop even though it's been there for 40 or 50 years.

MR. O'LEARY: Yeah it's been there for a long time.

MR. TARSE: And really when we discussed it with the Cumberland Farms people it seemed to make a lot of sense to us being 75 years in the community it sounded like a good idea, a good betterment and as I said we already own the truck stop at the bottom of the hill so we're in competition with ourselves, but it didn't make a lot of economic sense.

MR. O'LEARY: Is the plan then that it won't be so much a truck stop as it is kind of like a regular Cumberland Farms, that's the idea?

MR. TARSE: Yeah it will not be a truck stop there.

MR. O'LEARY: I see, so they won't be able to swing around, the semis and so forth?

MR. SPIEK: Well they will and if I can jump back to your original question about the high rise sign there to. One of the reasons probably more so, which I should have elaborated on a little more is to still attract the truck traffic to the property. This area over here is to provide a strictly for diesel fueling of large tractor-trailers here. There are no provisions for overnight parking or anything like that. With this entrance and everything this site has been laid out to accommodate those vehicles to come off the thruway. Like there's probably a lot of regular customers right now – fuel up and move on.

MR. O'LEARY: Right, at the Mobile station I guess you can't do that very well, Yeah I see. And the other area is the green area, what do you hope to do with the green area? Is it just going to be grassy lawns or what kind of ideas do you have for the green since your going to apparently expand it greatly over what there is now?

MR. SPIEK: I mean at this point we've addressed some of the previous concerns we've heard about – buffering the residences for this side over here. We've added some additional plantings within our interior area and around these back areas here. All of this green you see out here is within the State right of way. We're certainly open to suggestions for additional landscaping there as allowed by the State of New York but at this point we sort of left a little leeway with this Board and with the Planning Board to have further discussions on that.

MR. O'LEARY: That's one of the problems we have – you guy's probably have it to, but the sound situation and off the thruway and some of 9W where we are – it's enhanced. So any extra of course it's been kind of – I don't know if it's delightful or not but there hasn't been so much traffic in the Big M Truck Stop for a while and that noise is less so while I'm not against your proposal maybe I know that on one side of the

course there are residences right there but the part facing 32, which would be right across the south side of it – yeah instead of just grass maybe that could have something larger – buffer sound and maybe sight and so forth like that.

MR. SPIEK: We're certainly open to that.

MR. O'LEARY: Oh, good.

MR. SPIEK: I guess what I call our starting point I guess.

MR. O'LEARY: Sure.

CHAIRMAN HODOM: And as I said earlier, they're really here in front of us this evening for Variance's primarily for signage and for setbacks.

MR. O'LEARY: Okay.

CHAIRMAN HODOM: If they're approved by this Board they will have to go to the Planning Board and the Planning Board will determine what they need to do with the site, develop it, landscape it, traffic flow, traffic studies. That was changed with the new code.

MR. O'LEARY: Okay.

CHAIRMAN HODOM: So you'll have another opportunity to ask these same questions or get a more in depth overview of what they're going to do with the site when they go in front of the Planning Board if this Board does approve the Variance's.

MR. O'LEARY: Do we get letters prior to each of those meetings to?

CHAIRMAN HODOM: Does the Planning Board do that?

MR. PLATEL: Yes within 200 feet of the property line.

CHAIRMAN HODOM: But we use the Spotlight and I'm sure the Planning Board uses the Spotlight to, to post their legal notices of hearings and it's posted on the Board here in this building and it's also on the Town's website.

MR. O'LEARY: Okay, great.

CHAIRMAN HODOM: There's plenty of notice of when the hearings are going to be. We're going to ask them a little about the easterly side of what they propose to do because that's really the more severe side as far as setbacks go. I'd like to hear what they're going to do with that side to as far as plantings and so forth. That may help this Board make a determination as far as your Variance goes to. Is there anyone that wanted to speak for or against, now is your time to do it I mean you will have an opportunity...

MR. JENSON: I'm sorry my name is Craig Jenson, I live on the same road on Old Route 9W, my comments are more due to traffic and so forth so I'm assuming after what you just said that would be held for another time.

CHAIRMAN HODOM: Yes that's really for Planning Board's discussion.

MR. JENSON: Okay.

CHAIRMAN HODOM: Anyone else with comments or questions? Yes Ma'am?

MS. GRANT: I live at 109 Corning Hill Road, Chris Anne Grant and I was just wondering is there a sign off the Thruway, I mean instead of like the lit signs on top of the Cumberland Farms building, you know typically off the thruway there, there would be some kind of advertising for Cumberland's or whether it's Mobil. I don't think there's advertising off of exit 23.

CHAIRMAN HODOM: I don't know to be honest with you.

MS. GRANT: I was just wondering instead of having....

MR. SPIEK: The thruway authority as a general principle does not allow gasoline type entities to advertise under blue boards out there because it competes with their rest areas.

MS. GRANT: Maybe I'm thinking of the Mass. Pike or something like that.

MR. SPIEK: Well even on the Northway and stuff like that we see the blue boards, this gas, this gas here, there, but the thruway doesn't have that because it competes with their rest stops.

MS. GRANT: Oh okay, so that's why it wouldn't be on there.

MR. SPIEK: Correct.

MS. GRANT: And you said you're going to talk about the landscaping on the easterly side, right?

MR. SPIEK: Yes.

MS. GRANT: Okay. And you just moved the – like you talked about a vacuum thing before?

MR. SPIEK: Correct. They were previously located back in this area over here and we split them up around to the...

MS. GRANT: Are they going to operate 24 hours a day?

MR. SPIEK: We're still open to suggestion on that. I think we had offered before this Board last time restricting the hours of operation on them.

CHAIRMAN HODOM: They're proposing at this time to operate them 24/7, but it's not written in stone.

MS. GRANT: And that would be at the Planning Board?

CHAIRMAN HODOM: Yes.

MS. GRANT: Okay.

CHAIRMAN HODOM: Thank you. Rob while you're up there, why don't you just tell us what your proposed plans are for the easterly side.

MR. SPIEK: As we had spoke last time there, there were some concerns by the residences on this side about the views from this property as they currently exist today and as per your suggestion we went out there and took a look at that and basically came up with these 2 main areas here that there's view sheds - - substantial view sheds that exists today that would probably be better serve - - in there. So what we tried to do is scatter some various pine trees in here, plant them 8 feet high. They grow fairly quickly and stuff like that and they'll establish a pretty quick visual and noise buffer there. We did take a look at the fence that's out there also and probably some areas of this fence are in need of repair and probably although not shown on this plan - probably a good to continue this fence at least down to some point in this area beyond the garage also. In addition to that I think we - - yeah we added some new plantings around the trash enclosure here to, to give them a view shed from that side to screen some of that also.

CHAIRMAN HODOM: All the trees that you're proposing there are the evergreens?

MR. SPIEK: I believe so, yes.

CHAIRMAN HODOM: And the Colorado blue spruce?

MR. SPIEK: Correct.

CHAIRMAN HODOM: Your not proposing any deciduous trees at this point in time? I think the code address that.

MR. SPIEK: Yeah.

CHAIRMAN HODOM: And again it's really a Planning Board issue, but I think this Board would like to see what you propose to do there because this is the most critical side. It's really 150 feet of what should have been a 100-foot buffer and a 50-foot setback.

MR. SPIEK: We can further elaborate on that when we bring the plan back here with all the corrections that we discussed tonight.

CHAIRMAN HODOM: Okay.

MR. SPIEK: We have no issue with sprinkling in – better addressing the code as it's written today.

MR. WIGGAND: Have you made a study of the homes back in there along that line?

MR. SPIEK: What do you mean by study per say?

MR. WIGGAND: On the other side of your east line there. Have you made some kind of a study on what buildings are back there? There's some older homes back on the other side of that line.

MR. SPIEK: We studied it from the standpoint of going out there in the field today and looking at it and obviously with the leaves down now you can see those gaps and basically try to target our landscaping efforts to close those gaps as to what you can see standing here in the existing condition and looking back this way.

MR. WIGGAND: Over the years we have had complaints over some of the stuff that's happened on that particular site. It's been there a long time with different things located on it and I don't know myself, I used to know it very well, but I don't know myself how many homes are effected by that now.

MR. SPIEK: To the best of our knowledge there's a residence that sits back somewhere in this area I believe and then you've got the garage here and there's a residence here. I believe those are the only two that are effect.

MR. WIGGAND: I haven't been back there for a long time.

MR. SPIEK: We'd be happy to work with these neighbors in any way shape or form, if they have any particular preferences as to plantings, fence also.

CHAIRMAN HODOM: I think one of the biggest issues was the idling tractor trailers any time of day or night and you're not going to have any of that because really there's no place for the tractor trailers or truckers to park.

MR. SPIEK: That's correct.

CHAIRMAN HODOM: They come in there to get their diesel and then they'll leave.

MR. SPIEK: That's correct.

CHAIRMAN HODOM: And it's not your intention to have any vehicles parked up

there.

MR. SPIEK: No.

CHAIRMAN HODOM: Any other questions from the Board.

MR. PLATEL: The drive-thru issue is going to come up with the Planning Board because they issue special permits on that. Did you check into that as far as if you're going to be open 24 hours? The Dunkin Donut drive thru will be open 24 hours?

MR. SPIEK: That's what we're proposing, yes.

MR. PLATEL: Okay. Did you check into – I don't know how loud your speakers are but probably – just thinking two in the morning...

MR. SPIEK: I think what we presented before this Board last time to was a couple different options as far as what we could do and what has been done in the past with these things. The speaker can be turned off at a certain hour of the night. Again hours of operation are open to discussion still. We prefer 24/7, but understanding the concerns of the area that that may have to be compromised. We do have noise studies that we can provide for these or just to the extent you know how audible they are at this point of the property line, etc. and various little fancy charts and stuff like that so we do have some information regarding that and if the Board would like to see we'd be happy to provide it.

MR. PLATEL: The Planning Board is going to be looking at that for the special permits.

MR. SPIEK: Well we are prepared to address it.

CHAIRMAN HODOM: We prefer that you deal with the Planning Board on that. Yes Ma'am?

MRS. JENSON: I'm Doris Jenson I live on Old Route 9W and I just need to get a clearer understanding. I know we're here tonight to discuss the signage and the Variance's and with all these changes I was unable to see this very clearly. Show me the sign because I need to see optimally how it will effect me. I don't like that big one I think it's unnecessary, I think it's ridiculous.

MR. SPIEK: Currently right now we're proposing...

MRS. JENSON: I mean I don't need that shining in my bedroom, I've already got the Quality Inn looking at me so I'm not for another big sign. This is my house over here, where are these signs?

MR. SPIEK: We're proposing 3 signs on here. This would be where the high-rise sign is located, there is a monument type sign here and there's a monument sign here.

MRS. JENSON: (inaudible)

CHAIRMAN HODOM: You might want to take a look at – this is that 50-foot high sign that they're talking about.

MRS. JENSON: Okay so that's up towards there. When you come to Cumberland – where you come in coming down 9W.

MR. SPIEK: Correct.

MRS. JENSON: And when you say monument you're talking...

MR. SPIEK: Those signs that are located here and here...

MRS. JENSON: So it stands up and...

MR. SPIEK: Yeah it's basically – it's a 10-foot high sign in which the height requirements comply with the code.

MR. PLATEL: It can't be any higher than 10 feet, correct.

MR. SPIEK: A brick face on it, and then a smaller compact sign located at these two locations.

MR. PLATEL: No these are - - this is the Dunkin Donuts drive-thru sign.

MRS. JENSON: All 24/7?

MR. SPIEK: If – again the hours of operation are 24/ 7

MRS. JENSON: Lit?

MR. SPIEK: Yes these signs would be lit 24/7.

MRS. JENSON: Okay. The flags are also allowed there like they have on Route 9W now at the Cumberland Farms.

MR. PLATEL: We'll look into that further just to get a verification with the Town attorney and Michael also.

MRS. JENSON: Okay my questions are for this Board please let me know.

CHAIRMAN HODOM: If it's dealing with the signs and setbacks, yes there is a code requirement and correct me if I'm wrong Mark, the code requires that no sign be over 10-foot high.

MRS. JENSON: Okay.

CHAIRMAN HODOM: So that's a consideration that we have to make of whether or not they need a 50-foot high sign or not.

MRS. JENSON: Right but they are allowed those 10-foot signs at the both entrances?

CHAIRMAN HODOM: They're allowed by Code currently up to a 100 square feet of signage on the premises.

MRS. JENSON: Okay.

CHAIRMAN HODOM: Currently they're considerably over that and that's one thing we'll be looking at as to maybe they can reduce some of the signage to come more in compliance with the code requirements.

MRS. JENSON: Okay these monument signs just to go over this point are they one in the same?

MR. SPIEK: Yeah these two are exactly the same and we're only allowed one of them.

MRS. JENSON: What's the point to that?

MR. SPIEK: The point for that is just to capture different views. The 9W – the way it arcs and stuff like that is just an odd way to look at the sign. This one is orientated for drivers heading into Albany there so that they can see this one. This one is strictly for Corning Hill Road traffic.

MRS. JENSON: So you have either one of those was to go through the most it could be is 10 feet.

MR. PLATEL: Correct. They're allowed one freestanding sign that's 10 feet high – 40 square feet.

MRS. JENSON: 40 square feet?

MR. PLATEL: Well, which would be a 4 by 10.

MRS. JENSON: Okay where else would there be signage?

MR. SPIEK: There's also signage located at the end of this canopy and this one here and those are non-illuminated.

MRS. JENSON: Not illuminated – they would just be you know all the signage that has those metal signs that you see the prices...

CHAIRMAN HODOM: Gulf.

MR. SPIEK: Yeah you can see right on the end of that canopy right there, that south elevation.

MRS. JENSON: Okay. One thing you had said, which I don't know what it means, what are stacking requirements?

CHAIRMAN HODOM: As far as cars going into the drive-in. Sometimes the code requires so many spaces to allow enough cars to be in the stacking lane so they don't interfere with the roadway.

MRS. JENSON: Okay, what is that – so are they clear with that or are they in code with that?

CHAIRMAN HODOM: I couldn't find anything in our code.

MR. SPIEK: The Town doesn't have any requirements to the best of our knowledge.

MRS. JENSON: So basically he could have cars backed up down Corning Hill Road because there's nothing to say.

CHAIRMAN HODOM: Again the Planning Board could make conditions to that effect that would limit the stacking requirements.

MRS. JENSON: Okay, where else would there be signs.

MR. SPIEK: The only other ones would be these building signs that you see on these elevations here.

MRS. JENSON: Which are all on the building just to...

MR. SPIEK: That's correct.

MRS. JENSON: And they're illuminated?

MR. SPIEK: They are not – the Dunkin Donut signs are internally illuminated. The Cumberland Farm sign basically has some down lighting fixtures on it, it's not an internally illuminated.

MRS. JENSON: Any other signs?

CHAIRMAN HODOM: Mrs. Jenson these plans are also in the Building Department. If you would like to come up and take a look at them at your leisure, they show where the signs are. There shown in elevation on another drawing and if you don't get all the information you want tonight...

MRS. JENSON: I'd just like to get a clear picture, you know to come here and then oh, we can provide that, we can provide that and so at what point is the picture clear and this is what we're going to get. I'm not against it; I'd think it would be great to clean up the area within reason. I mean the traffic study – I'm sure this is not the place to discuss it, it would be a farce right now, there's no business right now so you're not getting a true picture of what it was. So that, you know is it really fair now to do a traffic study, lets bring the business back.

CHAIRMAN HODOM: They have criteria that they use for businesses like this.

MRS. JENSON: All right is it really, really necessary with a place a down the street that has more diesel tanks or is that a Planning Board issue?

CHAIRMAN HODOM: They have them now.

MRS. JENSON: They have them now, I understand that. Okay if you think we're going to get trucks in and out of there...

MS. BITTER: Actually it's more than just truck traffic. There are cars that use diesel.

MRS. JENSON: Oh, I'm well aware of that and there's plenty of other places that provide diesel.

MS. BITTER: Well not actually. I'm a diesel driver that's the reason I have this personal experience so obviously it's nice to have competition and better gas prices all around.

MRS. JENSON: Okay. And again the time of operation is something we go to the Planning Board for or is something...

CHAIRMAN HODOM: Yes, it's not here.

MRS. JENSON: Okay.

CHAIRMAN HODOM: It used to be here.

MS. BITTER: We wish it was still here.

MRS. JENSON: When you talked about the special provisions are we privy to what those special provisions are that would be either grandfathered in or how would we...

CHAIRMAN HODOM: The Special Exceptions?

MRS. JENSON: Yes.

CHAIRMAN HODOM: Again, that will be handled by the Planning Board now.

MRS. JENSON: Okay.

CHAIRMAN HODOM: And when they advertise for their hearing they should delineate what they will be discussing that evening.

MRS. JENSON: Okay.

MS. BITTER: Those were the resolutions that were discussed at that August meeting and when we went through them the Chairman had mentioned that there were a number of like outdated items because they went far back and we were suggesting amending certain things but obviously that will be discussed at more detail at the Planning Board.

MRS. JENSON: Then how do we find out what those resolutions are?

MS. BITTER: You can get them at the clerk's office or the Planning Board.

MR. SPIEK: And they're part of our application to if you foil the entire application you'll get all that information.

MRS. JENSON: Okay.

MR. SPIEK: Basically they were special permits granted over the years that allow for certain things to happen on this property some of which we are extinguishing or are proposing to extinguish and some that may continue.

CHAIRMAN HODOM: You can go to the Town Hall and fill out a freedom of information request and list the documents that you want and then within a reasonable period of time they'll provide those to you. Is there a fee for that?

MS. GUASTELLA: There's a fee for copying. Legally we have 5 days to provide the information and if we need an extension of time we'll send you a letter but it shouldn't be a problem.

MRS. JENSON: At what point will the Variances be agreed upon or not agreed upon. Do we have to meet again for this?

CHAIRMAN HODOM: Yes, there's more information that they have to provide and counsel is going to provide us more information.

MRS. JENSON: Okay.

CHAIRMAN HODOM: Hopefully we'll set a new date for a hearing tonight and that should be the last time we meet and that depends if they provide us a Christmas party or something.

MRS. JENSON: So assuming the next time that will be whether or not these Variances are granted?

CHAIRMAN HODOM: No, that will be the closing of the hearing that we're going to have and then we have 62 days to review the documentation in front of us and make a determination whether to grant 1 Variance or all 9 Variances or set conditions with the granting of any of the Variances. We probably will do it within a month's time once we close the final hearing.

MRS. JENSON: Okay. And then at that point it goes to the Planning Board.

CHAIRMAN HODOM: If we grant the Variances that they need then that would free them to make application to the Planning Board for further review.

MRS. JENSON: Thank you.

CHAIRMAN HODOM: You're welcome.

MR. PLATEL: And to answer one question for you under the special permits, the Planning Board will be looking at traffic access, parking and circulation so that would be the stacking that we were talking about with the drive thru. They will be looking into that and that will be addressed. There's also provisions for noise also which will be looked at.

MRS. JENSON: Okay and that's all done here?

MR. PLATEL: That's the Planning Board if they get the required Variances and goes to the Planning Board. Under the Special use permit for that drive-thru – all that circulation we were talking about the stacking. That will be looked into.

CHAIRMAN HODOM: And I would imagine in that case the Planning Board is going to looking for information from DOT, the Department of Transportation that these folks will put together for them as far as ingress and egress from the property, but the Planning Board is a lot longer process than ours is. It can go 2 to 3 years.

MR. TARSE: Unfortunately since our August meeting as many of you know we lost our tenant and really it became difficult to continue on doing business there. So right now we have had to shut down operations and I know that a lot of it was due to changes as to going from who was responsible for what part of the planning or zoning but the longer this goes on the economic hardship we now have no business there and unfortunately this is a lot longer process then I think we ever dreamed of or anticipated so I know you talk about 60 days and then another jokingly 2 or 3 years but at some point you know for a small company that grew up here, has a lot of roots here it just seems like it's getting stretched out and I know a lot of it has to do with the changes in the process but whatever could be done to maybe move it along a little quicker would be greatly appreciated.

CHAIRMAN HODOM: That's fine. I can't speak for the Planning Board but I think you'll find that this Board that we expedite our decisions on a pretty timely basis.

MR. TARSE: Thank you.

CHAIRMAN HODOM: How soon can you provide that additional documentation? We have December 7th is pretty open for us.

MRS. O'BRIEN: I won't be here on December 7th just to let you know.

MR. SPIEK: December 7th, I mean reasonably if we were able to get you the information by next Wednesday would that be a sufficient time.

CHAIRMAN HODOM: So can we establish December 7th at 7:30?

MR. SPIEK: Yeah that would be great. I think the biggest information we need to get is we'll probably have to get a couple more photo's to show that sign.

MS. BITTER: New maps and photos right?

MR. SPIEK: And the whole zoning table.

CHAIRMAN HODOM: Just so that we're all on the same page, anything that these changes and the front side or rear or side setback requirements and if you would so that we don't have to go looking for everything just tell us what you've done to each table if there are changes made in it. There shouldn't be any changes made I don't think in the site statistics.

MR. SPIEK: No, no change there.

CHAIRMAN HODOM: Signage table may change.

MR. SPIEK: It will change.

CHAIRMAN HODOM: And of course the zoning analysis table will change.

MR. SPIEK: Correct.

CHAIRMAN HODOM: Are there any other questions or comments? Yes Ma'am?

MS. GRANT: I was just asking that do they make signs saying no idling, like I know that you're not going to allow it but ...

MR. SPIEK: Actually the New York State DEC makes the signs that – I think may even be a Federal law that they're not allowed to idle for more than 5 minutes.

MS. GRANT: Oh, I know that.

MRS. JENSON: But enforces that's the problem and we can sit here....

CHAIRMAN HODOM: DEC is supposed to enforce it.

MRS. JENSON: Oh okay so do we get a name and a phone number and a beeper and a cell phone to call in the middle of the night. I don't mean to be hard.

CHAIRMAN HODOM: I don't have it.

MRS. JENSON: It's that it's always the problem.

MR. JENSON: When you sit at our house in the wintertime it's like the truck is in the front yard.

MRS. JENSON: And in the summertime and you know my mother-in-law is complaining of diesel fumes.

MR. JENSON: We're 180 to 200 feet away from that main entrance.

MRS. JENSON: And I can call and they'll say okay, okay and hang up and it gets to be a bad joke after a while and it's really not fair to the Town of Bethlehem cops to be having to deal with it. You can't find anybody else.

MS. GRANT: I'm just talking about all the signs – if you're going to put any signs put up one of those.

CHAIRMAN HODOM: There shouldn't be any idling on the site.

MR. SPIEK: Yeah the intent of this plan is to eliminate that completely because we're providing no provisions for parking of trucks basically, they fuel and they leave.

MS. GRANT: It seemed like before there was only 2 or 4 pumps.

MR. SPIEK: We have not expanded our proposal.

MS. GRANT: 8 originally?

MR. SPIEK: Yes, this is the same proposal that you saw last time.

MS. GRANT: Okay that's it.

CHAIRMAN HODOM: Anything else?

MR. PLATEL: I wouldn't count no idling signs.

MRS. JENSON: You wouldn't count them?

MR. PLATEL: No.

MRS. JENSON: Well how did the school get an idle free zone?

MRS. O'BRIEN: That's the school district enforces that.

MR. PLATEL: They all are, all the school districts are.

MRS. JENSON: The school district enforces that?

MR. PLATEL: Yes, even at the middle school and everything they're not letting the busses idle anymore.

MRS. O'BRIEN: But they are their busses, the busses belong to the school district.

MRS. JENSON: But the same I mean it's enforced with cars that drive in there so I'm just wondering how that's enforced.

MR. PLATEL: That's the school district.

CHAIRMAN HODOM: Anything else?

On a motion made by Chairman Hodom, seconded by Mrs. O'Brien, and unanimously carried by the Board the Hearing has been re-scheduled to December 7, 2005 at 7:30 p.m.

CHAIRMAN HODOM: Thank you very much, all of you.

Hearing adjourned 9:35 p.m.

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The next order of business was a discussion of the previous public hearing held in the matter of Stewarts Shops Corporation for Variance under Article XIII, Use & Area Schedules, Section 128-100 A, Minimum Rear Yards for the placement of a storage freezer, which will encroach into the rear yard setback requirement at premises 33 Frontage Road, Glenmont, New York. The following points were brought up by the Board members: The proposed freezer is a minimal request. The request will not affect any adjoining neighbors. The location of the store is pre-existing non-conforming. On a motion made by Mrs. O'Brien, seconded by Mr. Brookins, and unanimously carried by the Board, the Board directed Attorney Moore to prepare a proposed resolution granting the Variance, for presentation at the next Board meeting on December 7, 2005.

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The next order of business was to consider the proposed resolution of Kelly Higgins, 33 Harwick Drive, Glenmont, New York.

The following proposed resolution was presented by Attorney Moore for the Board's consideration.

RESOLUTION

*

WHEREAS, an application has been filed with the Zoning Board of Appeals of the Town of Bethlehem, Albany County, New York ("the Board") seeking a variance under Article XIII, Use and Area Schedules, Section 128-100 A, Minimum Rear Yards, requested by Kelly Higgins ("Applicant") for property at 33 Harwick Drive, Glenmont, New York; and

WHEREAS, the Board, acting on said application, duly advertised in the Spotlight and sent written notice to all persons listed in the petition as owning property

within 200 feet of the premises in question and held a public hearing on said application at the Town Hall, 445 Delaware Avenue, Delmar, New York on November 2, 2005; and,

WHEREAS, Members of the Board are familiar with the area in which the proposed construction is to be done and the specific site of same; and,

WHEREAS, all those who desired to be heard were heard and their testimony duly recorded at the above hearing; now therefore,

BE IT RESOLVED, that the Zoning Board of Appeals makes the following Findings of Fact and Conclusions of Law in this matter.

FINDINGS OF FACT

The Applicant is proposing to construct a 12 –foot by 16 – foot deck attached to the main dwelling that will create a rear yard setback of 18 feet, which will encroach 7 feet into the required rear yard setback of 25 feet.

The existing main structure is occupied as a Single Family Dwelling and is located in a Residence “A” District.

The proposed deck would be constructed over a 10-foot by 10-foot concrete slab, which was constructed prior to the Applicant’s purchase of the home.

The deck would be wooden, slightly above ground level, and slightly below the level of the first floor of the home.

Applicant plans a railing around the deck for child safety. The deck would not otherwise be enclosed, and will not have a roof.

Applicant has existing landscaping in the yard that will screen the proposed deck from neighbors to the rear.

Applicant has spoken with two of her neighbors who have no opposition to the proposed project.

Other than the Applicant, no one spoke at the public hearing.

CONCLUSIONS OF LAW

Based on the above Findings of Fact, and after reviewing the application, sketches and plans submitted, testimony at the hearing, and other documents submitted by the Applicant, the Board determines that the proposed variance will be granted.

The Board has determined that the requested variance will be a benefit to the Applicant and will have no detrimental impact on the health, safety or welfare of the community and the neighborhood.

The benefit sought by the Applicant cannot be achieved by some method other than a variance.

The requested variance will have no adverse affect on the physical or environmental conditions in the neighborhood.

The requested variance is the minimum variance that is necessary and adequate to the Applicant's needs, while still preserving the character of the neighborhood.

The alleged difficulty necessitating the requested variance has not been created by the Applicant.

The requested variance is granted, on the following conditions:

1. The proposed construction will be completed in accordance with the plans, specifications, testimony and exhibits given by the Applicant at the November 2, 2005 hearing;
2. The project shall be completed within two (2) years of the date of this Resolution.

November 16, 2005

Michael Hodom
Chairman
Board of Appeals

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Mrs. O'Brien made a motion that the Resolution be adopted, Mr. Brookins seconded the motion and it passed by the following vote:

YES	NO	ABSENT	ABSTAINING
Michael Hodom	None	None	None
Robert J. Wiggand			
Gilbert Brookins			
Marjory O'Brien			

Leonard Micelli

(Resolution filed with the Clerk of the Town of Bethlehem on November 17, 2005.)

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On a motion made by Chairman Hodom seconded by Mrs. O'Brien, and unanimously carried by the Board, the minutes of the November 2, 2005, meeting were approved as amended.

The meeting was adjourned on a motion made by Mr. Brookins, seconded by Mr. Wiggand and unanimously carried by the Board.

Meeting Adjourned: 10:10 p.m.

Respectfully submitted,

Secretary