

**TOWN OF BETHLEHEM  
BOARD OF APPEALS  
March 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  
Leonard Micelli

Michael Moore Attorney to the Board

Mark Platel Building Inspector

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. Our first order of business this evening is a continuation of a public hearing for a Use Variance under Article VI, Permitted Uses, Section 128-23, Rural Districts UnZoned requested by Betty Nolan for property at 1250 Route 9W, Selkirk, New York. The Applicant wishes to construct a canopy with 3-fuel pumps for retail sale of gasoline including 2-10,000 gallon underground storage tanks at the premises 1250 Route 9W, Selkirk, New York 12158.

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

MR. PLATEL: Yes, Mr. Chairman. The applicant is proposing to install a 32-foot by 48-foot canopy with 3-fuel pumping stations in order to operate a motor fuel filling station. This is not a permitted use listed in the Town Code in a Rural Not Zoned District. The existing structure is operated as a convenience market. For the Boards information at one time the zoning stated that all operations such as this would require a Special Exception in any part of Town. That requirement was repealed and deleted sometime in the 1980's. After that time this would have been a permitted use as the code was being interpreted in a Rural Not Zoned District of the Town. Since August 7, 2003 due to a zoning change this use was not one of the listed permitted uses or a permitted use by Special Exception.

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 3, 2004 at 7:30 p.m. at the Town Offices 445 Delaware Avenue, Delmar, New York to take action on application of Betty Nolan for Use Variance under Article VI, permitted Uses, Section 128-23, Rural Districts Unzoned of the Code of the Town of Bethlehem for construction of a canopy with 3-fuel pumps for retail sale including 2-10,000 underground storage tanks at the premises 1250 Route 9W, Selkirk, New York. Michael C. Hodom, Chairman, Board of Appeals. Attached to this Notice is notarized proof of its publication in the October 27, 2004 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 will be similar to what we've used in the past. 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. 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. Any questions or comments should be directed to the Board. Mr. Caponera?

MR. CAPONERA: Thank you Mr. Chairman. This brings me back to my singing days when I was in high school.

CHAIRMAN HODOM: Several years ago.

MR. CAPONERA: You're very kind; believe me because my wife didn't say that earlier as I was leaving. As the Board is aware or at least hopefully the Board is aware it seemed like many months ago we were here or I was here standing in front of this Board and it was on the 3<sup>rd</sup> of November that we made a presentation; I made a presentation and my client Betty Nolan who owns the property was here, she gave testimony. The tenant to the property is here; he gave testimony and of course certainly last but not least the eminent Mr. Hennessy who is our engineer and expert who has been designing this project was here and gave quite a bit of testimony to this Board.

After the meeting the Board had a plethora of questions and asked us to go to work to go back to the drawing board and look and answering questions that the Board wanted and the reason it took us as long as it did to get back here is because some of the questions that the Board asked us to do and some of the homework that we were asked to do involved more than just putting pencil to paper. It involved a lot of research and so through the months and letters back and forth from your Chairman to me saying what in the heck is going on.

We were able to assemble what we believe to be is a full package to this Board, but just to go back in time back in November when we were here the Board had asked for a traffic study. They wanted to make sure that - I should say you wanted to make sure and confirm that the 3-proposed MPD's would not significantly affect traffic. That took a while to do but that traffic study was submitted in a recent letter I submitted to the chairman and also the Board wanted to see something from the industry, that is to say the gasoline, the convenient market industry which gives comment to why convenient marts need more than one point of sale or what I call a POS so I submitted that also.

Also the Board wanted us to look a little more closely at the proposed that Mr. Hennessy had put on this proposal and we certainly looked at and we listened very carefully, intently to the Boards comments and concerns and a revelation occurred when we left. And the revelation was that we looked at this after certainly hearing from the enlighten Board and we took away the proposed kerosene - what was it kerosene pump?

MR. HENNESSY: Kerosene diesel pump.

MR. CAPONERA: And diesel pump that was on the rear of the building or on the rear part in the rear of the building. The Board was concerned about the location of the previous parking proposal that was further away from the building and thought that it would be better served if the parking was closer. And the Board had concerns; I believe the board had concerns about the egress/ingress.

So basically what happened is that Mr. Hennessy sat down with the owner of the property; with the tenant; with DOT and of course that took a little bit time to because DOT doesn't always respond to immediate questions and I would suspect that that took more time than anything in getting DOT's responses to what we were proposing, but if you look at the new proposal, the one I submitted is non-colored and the one that's on the peg board is colored.

You can clearly see that there's been a dramatic change in what was here on November 3<sup>rd</sup> and most importantly I think you'll see that the corner has been changed dramatically from what is and what is proposed and if Bill you can stand up there and point out to the Board what is currently there in terms of curb cuts and what is being proposed. I think that's important because that's a major change that's occurred between November 3<sup>rd</sup> and March 16<sup>th</sup>. Go ahead. I just want you to point out what - - show the Board what the existing curb cuts are.

MR. HENNESSY: Existing curb has a 1-way right turn at this location very close to the corner.

CHAIRMAN HODOM: Excuse me just a minute, will you just put that microphone closer to Mr. Hennessy? Thank you.

MR. HENNESSY: The existing curb cut - - the curb cuts for the site include a right turn

out, which is located here very close to the corner. We are proposing to move that further south on 9W for a little bit of a safer egress. Previously we proposed a 2-way curb cut here, one way in; one way out, but we've eliminated the wide proposed egress and entrance and gone with a 1-way out right here.

There's an existing curb cut on Maple Avenue at this part of the site and we are – we are making this a smaller entrance aligning it with the proposed canopy and by doing so we are allowing ourselves to increase the green space in this area of the site. Currently we have a curb cut at this location on the property and we are eliminating this curb cut and we are keeping an existing curb cut further to the rear of the property. So all in all we're eliminating one 2-way curb cut at this location on the property so that makes it a much more controlled access to the property.

CHAIRMAN HODOM: If you're increasing the green space are you deleting some green space some where else because your latest drawing, S-1 which is January 11, 2005 shows a decrease of 1-percent in the green space.

MR. HENNESSY: Right, there's some minor areas that are actually existing green space that have to be paved in order to have what we deem as appropriate vehicle maneuvering areas around here so there's a sliver here and then we're adding green space here. We're actually eliminating some green space right here. Most of this if not all - - well all of this green space is in the right of way, currently it's paved.

MR. CAPONERA: Therefore it can't be added to the green space because it's not part of our property.

MR. HENNESSY: So that was not included in the calculation. So the only changes really in the calculation was a little sliver here, sliver here, sliver here. There's a little sliver here on the side also just to - - just to fit this alignment of parking at the front of the building. In the rear we really didn't modify any green space area; this is all gravel. Right now this is an existing gravel area and right now this line here denotes – it delineates the line between the pavement and existing gravel. Right now this is all gravel, right now it's all gravel so we are paving this. So gravels not green space so we're not losing green space yet. It is still something that we have to deal with in the drainage situation.

CHAIRMAN HODOM: Excuse me for interrupting but are you eliminating paved area in other locations because I again refer to your newest site plan, which shows a 2-percent decrease in the paved area from the original plan.

MR. HENNESSY: Right here in this area right here is existing pavement. Now it's going to be green this piece here. Right now this piece here this triangular piece is pavement we're going to eliminate the pavement rip it up and put green there.

CHAIRMAN HODOM: Which you were going to do before on your previous plan.

MR. HENNESSY: Previously - - in my previous application yes we were, yes we were.

CHAIRMAN HODOM: You also had some plantings in that area which you've eliminated on your latest...

MR. HENNESSY: No we're not going to eliminate - I didn't do any landscaping and we had chose not to do that because we're going - - we'll have a lot more to go in the right of way and I didn't want to go to DOT with landscaping plan and come back and I knew we'd be doing that in the Planning Board if we went that way so we didn't do a landscaping plan but this would all be landscape with vegetation, bushes, you know what ever would be appropriate.

MR. CAPONERA: And Bill just to reiterate to the Board you did this after you met with DOT, is that correct?

MR. HENNESSY: I did not meet with DOT; I spoke with them and the delay was in modifying the layout. We did a significant modification. Mrs. O'Brien mentioned - you thought it might be appropriate if we could have this parking towards the front of the site. We actually proposed to the department, to DOT if we could utilize this right of way here. We would end up eliminating this egress but we would end up occupying some of the right of way, which is done and essentially was being done here anyway in the first place.

This is all paved anyway so there's always vehicles parked there but they said no they did not want that there. Therefore we could not fit any more parking in the front of the site and our proposal is to put the parking along the rear. What we originally proposed was to have parking in the back section here. We're proposing 14-parking spots I miss calculated and then we only require twelve. They don't need twelve but that's what we're required so that's what we're showing. The turning radius for a truck would have interfered with these if we turned from Route 9 southbound. My previous application had the vehicle - the fuel-loading vehicle coming south bound on Route 9 turning this way. With the parking located such as this the vehicle has to come from the south so we just have to require that the vehicles to come from the south.

CHAIRMAN HODOM: So they can make a u-turn down at Stewarts and come back?

MR. HENNESSY: Yeah they can come from 22 over there but the - - in actuality the truck could utilize the gravel here to, to maneuver so we have plenty of room for their vehicle maneuvering.

CHAIRMAN HODOM: On that southerly portion initially on your original plan you had a storm water detention basin, which has been deleted on the new plan, why was that?

MR. HENNESSY: Because we eliminated a significant amount of pavement in this area. We're retaining it as gravel so the existing drainage scheme could very well just still be sheet draining to the rear of the site because this is existing gravel now, we're paving it. We can still sheet drain this way. We have not done a detailed drainage analysis, but

because we eliminated significant amount of paved area here it's not likely that we would need any kind of drainage detention in this location.

CHAIRMAN HODOM: Okay but that study hasn't been completed yet?

MR. HENNESSY: Has not been completed yet, no, pending review by the Zoning Board for the use.

CHAIRMAN HODOM: As long as we're on the site plan I'd just as soon do it as we're going along. Originally you had the parking spaces 9-feet wide by 20-feet deep and now you've changed them to 10-feet wide, 18-feet deep. Was there a specific reason for that?

MR. HENNESSY: I believe – I thought these were always that way but I....

CHAIRMAN HODOM: Because the original plan showed 9 by 20.

MR. HENNESSY: Okay. To allow more vehicle maneuvering since I have plenty of room here I wanted to shorten up this back path of travel and shorten the path of travel here by going with 18-feet, a 18-feet deep parking space I'll have more vehicle maneuvering area here to have an aisle width – wider aisle width for vehicles going through here.

CHAIRMAN HODOM: With today's vehicles is 18-feet the depth of the parking space adequate for today's size vehicles?

MR. HENNESSY: Generally what some of the industry standards are if you go with the 10 by 18 your wider space gives them more maneuvering on egress - - to back out and pulling in. I personally was thrilled that you had the 10 by 18 allowance because I always thought the wider space was needed now a days more than the longer space, but in my research by having the wider space it allows that vehicle more turning radius on the entrance and the egress from that space. So the 9 by 20 or the 10 by 18 is essentially equivalent is what they're saying.

CHAIRMAN HODOM: And I'll bring it to you Mark, I know our code calls for a 180-square feet per parking space with a minimum dimension of 9-feet so – I mean if they went 10 by 18, that is not in violation of the code.

MR. PLATEL: The way I'm reading it now, no.

CHAIRMAN HODOM: Okay. And the reason I bring it up because most of the time we have a 9 by 20-parking space.

MR. HENNESSY: Right.

CHAIRMAN HODOM: As long as you're positive that an 18-foot depth parking space is adequate for today's vehicles and I'm sure when you do a site plan for the Planning

Board if in fact the Board does approve this, that may be raised again.

MR. HENNESSY: Certainly, thank you.

CHAIRMAN HODOM: Did DOT give you any kind of written recommendations or was everything just over the phone?

MR. HENNESSY: No, a Mr. Kennedy actually said he could give me a written letter but since we were making the change the submittal to him actually included the right of way. He had previously mentioned that my entrances and my egress's were acceptable but then when I had to change for the right of way he said no that's not going to work but he said that the other entrances and the radius were acceptable. No, I did not get a letter in writing but I will, we will do that.

CHAIRMAN HODOM: Other than the one egress, which is for cars only, the other two curb cuts are both ingress and egress?

MR. HENNESSY: Yes they are.

CHAIRMAN HODOM: Okay. Originally on your site plan you should the arrows indicating that, in this site plan you didn't so I wasn't quite sure where you were going with that.

MR. HENNESSY: Well one of the reasons is this can be a 2-way now by making this a 1-way out I did not have any - - we didn't have any vehicles wanting to come this way so originally I had a 1-way in this direction here, but since we had enough room we can make this 2-way in case there was a vehicle needed to go either way in this location. So the arrows - the 1-way arrows were not necessary. And 1-ways - it'd be nice to avoid them if you can and since we're doing it this way we can avoid it by just going with the one egress at this location.

CHAIRMAN HODOM: Okay. And I'm assuming that you're going to leave us this plan which shows the green areas, the paved areas and the gravel areas?

MR. HENNESSY: If you'd like to, sure.

CHAIRMAN HODOM: Well from the site plan that we have it doesn't really indicate which is which.

MR. HENNESSY: Certainly.

MRS. O'BRIEN: Will you be posting no parking signs along the low part of the top green?

MR. HENNESSY: Along this?

MRS. O'BRIEN: Yes.

MR. HENNESSY: We can, yes I don't see why not. That would be fine.

MRS. O'BRIEN: Because, you know people will just pull in and park wherever there's space and that would – you know if a large truck has to come in it's going to make it very difficult.

MR. HENNESSY: I'd have to make sure that would fit because we're very close to the property line here and we can't put the sign on DOT's property. Maybe we can paint them on the pavement we can paint some no-parking zones in the pavement; stripe them. Depending on how and making sure I can do that with the concrete pad, but I don't think it's a problem.

MRS. O'BRIEN: You've got people coming around from the back to the front of the store and you've got a big truck coming through there and if their impeded by cars parked along side there it's going to make it more difficult.

MR. HENNESSY: Sure. And one of the things here with the tank location in here sometimes cars just don't want to gravitate to that location to park anyway. And then once we have this all delineated - right now there's virtually no delineation on the property. Once this is all delineated with striping it would be very obvious and you know the customer would be drawn to that location and they're drawn to those...

MRS. O'BRIEN: They're drawn to the closest spot to the door.

CHAIRMAN HODOM: Mr. Hennessy you're also – are you through?

MRS. O'BRIEN: Yes.

CHAIRMAN HODOM: Initially you did show a diesel and kerosene dispenser in this area to the south and that's been completely eliminated?

MR. HENNESSY: Yes it has.

CHAIRMAN HODOM: Will there be diesel fuel available at the dispensing units in the canopy?

MR. HENNESSY: Yes there'd be for cars at this dispenser here, yes.

MR. MICELLI: Mr. Hennessy back to the pad where the pumps are – that one you just pointed to is that where the diesel and kerosene are going to be?

MR. HENNESSY: Preliminary yes, but that's - - I'm not entirely sure yet.

MR. MICELLI: And the other 2-pumps are going to be just regular unleaded gasoline?

MR. HENNESSY: Well the MPD can actually have more than one type of fuel. So this unit would probably have all of the fuels, but these would not. I can not be, you know we can define that now if we had to but the distributors not here tonight because she was sick so she was not able to come tonight to answer some of those questions.

MR. MICELLI: My other question is when people start heading north on 9W, who is going to be responsible putting a no left sign when they leave that area? Is that going to be up to tenant, DOT or because you're going to have to have that sign there that says no left turn. So who would be responsible to put that up?

MR. HENNESSY: We would, the applicant.

MR. MICELLI: Okay, and also on the side of the building today when I was there I noticed you have those 3-little round circles on the other pad, the pink if you go over there – is that hemlocks that are going to be landscaped along side of the building? Was I reading that correctly on the pad?

MR. HENNESSY: Oh these two – these three?

MR. MICELLI: Yes.

MR. HENNESSY: I was going to propose like a concrete planter like a hemlock bush along that...

MR. MICELLI: So would that go out - - is that going to extend off the building like to get dirt in there or is that going to be like - - how are you going to do that, in pots basically?

MR. HENNESSY: Yeah they would be like a 3-foot diameter, 2-foot diameter concrete planter so they can't be moved and that's the proposal at this point.

MR. MICELLI: Yeah I was trying to figure that out today when Bob and I were there, we didn't know if you were going to build that out with, you know timber wood or – because then it would effect, you know the ingress going in there, but the pots I think would be fine. Thank you.

CHAIRMAN HODOM: Any other questions regarding the site plan?

MR. MICELLI: I don't have any.

CHAIRMAN HODOM: Were you going to cover the signage and the canopy as well?

MR. CAPONERA: I just want to make sure everyone was...

CHAIRMAN HODOM: We would like to see that confirmation from DOT and any

other recommendations.

MR. HENNESSY: Definitely, I'll get that.

MR. CAPONERA: Mr. Chairman and members of the Board in addition to the changes that were made to the site plan that Mr. Hennessy just discussed with you, the Board also wanted to see what the proposed canopy was going to look like in scheme, size, color and signage and so what we sent you, what I sent you were some color photos of other canopy's but not this canopy because the color photos I sent you are far larger than what this is proposed to be, and Bill I need you to explain that to the Board. The purpose of those photos that you gave me were simply to show what the canopy looked like and what the sign on the canopy, the message i.e. Exxon was going to look like.

MR. HENNESSY: Here's some additional photos that I was able to bring.

MR. CAPONERA: Bill is handing out some additional photos that he took in the rain just to show that there's a difference between sunny shots and rainy shots.

MR. HENNESSY: At another site I was working at it had a canopy similar in size to this one, it's the same width as our proposed canopy of 32-feet. Our canopy is actually not as long as that one, but I wanted - - that's a good scope, a good scale as a comparison. Our - I did put a little color to the drawing that you have just showing it's white with a red Exxon and it has a red stripe across the canopy. The canopy is not lit; the canopy will not be lit, back lit for the fascia. Underneath the canopy we will have 1, 2, 3, 4, 5, 6, 7, 8-lights. There will cut off fixtures; shoebox fixtures. A typical canopy light is a Scottsdale, which is 360-watts and it has about a 6-inch reveal....

MR. CAPONERA: And that's shown on the photos that we sent you. If you look at the canopy and you look at the lighting because I think Ms. O'Brien wanted to see that. That shows the typical lighting fixture which is the reveal - I feel like I'm on Extreme Makeover, anyway the reveal on those lights - what is it about 5 or 6...

MR. HENNESSY: It's about 6-inches.

MR. CAPONERA: And we're not asking for that. We're asking for a shoebox design. Shoebox meaning that the light that does not reveal and it just shines straight down and it doesn't spill over onto the properties or the roadways. Is that correct?

MR. HENNESSY: That's correct. The fixture that I chose at this point actually has a 1 1/2 to 2-inch reveal. That is the one fixture that our manufacturer had that would accommodate this and virtually eliminate any spill over from the lights.

MR. CAPONERA: This is far less than what you typically see. If anyone has driven along I-90 recently in the vicinity of Washington Avenue as you're driving west before you get to Fuller Road you can't help but notice the lighting coming from the canopy on your left, it's up along Washington Avenue and the reason I bring that up is to tell the

Board that that's not anywhere close to where we're at and this is substantially different with substantially fewer lights with the shoebox lighting.

CHAIRMAN HODOM: Would the use of recess lighting even more deflect any overflow lighting to the outside or does the shoebox in effect perform similarly to a recessed lighting?

MR. HENNESSY: The shoebox would perform similarly. It doesn't have the same optics. The recessed light may provide more cutoff just because of the reveal. They're not as prevalent a light yet in the canopy design and construction. There are some I have seen them out there. This canopy and the Exxon and our manufactures typically use these. We selected – they're high-end fixture that might have the 2-inch reveal, but at this point we thought that would have been sufficient in this location.

The topography of the site is a little lower. The road way is slightly higher than the site so that helps to dampen that affect a little bit to. Mr. Caponera mentioned the Sunoco station on - - that sits up about 10-feet higher than you so when you're driving by you're looking under the canopy. This canopy is going to be set-down; the whole site is slightly lower. If you are close at the intersection, yes you will be able to see under the canopy. As you get further away you probably will not be.

MR. MICELLI: How is that design – I don't know what your relationship to your neighbor on the side there. Is that going to have a big effect – are the lights going to beam right down or will there be any glare over to your neighbors - - that house there.

MR. HENNESSY: No, there's not supposed to be with that fixture that we chose. This house here – the light there would be two basically in the travel aisles is where the lights are. So there would be two here and two here. There's a picket fence on this and they are – they're actually set up a little bit, topographically there's about a 5-foot rise from the edge of the pavement to - - I shouldn't say 5-feet that's exaggerating, it might be more like 3 or 4-feet. So they're set up a little and plus there's a picket fence so that helps mitigate that issue.

MR. MICELLI: Thank you.

CHAIRMAN HODOM: The Exxon letters on the canopy are they illuminated?

MR. HENNESSY: No they are not.

CHAIRMAN HODOM: They are not illuminated?

MR. HENNESSY: They are not.

CHAIRMAN HODOM: Because the last hearing we had I think it was Ms. Iglar?

MR. HENNESSY: Yes.

CHAIRMAN HODOM: Said that the letters were illuminated.

MR. HENNESSY: I think she was referring to the sign.

CHAIRMAN HODOM: But you're saying tonight that the Exxon letters on the canopy are not illuminated?

MR. HENNESSY: Yes.

CHAIRMAN HODOM: And the canopy itself is not backlighted?

MR. HENNESSY: Yes, correct.

CHAIRMAN HODOM: Are there any other changes in the lighting on the site or the building that you're proposing this evening?

MR. HENNESSY: No there's not.

CHAIRMAN HODOM: Okay. Do you want to get into the sign?

MR. HENNESSY: Sure.

MR. CAPONERA: That's another thing the Board wanted to see a proposed sign and of course we sent that and Bill's got that up there now and Bill you ought to go ahead and explain what it's going to look like – the height, the square footage...

MR. HENNESSY: I added a little color on this rendering of the sign just to give you an idea of what that is. It's similar to some of the photographs that's circulated. These letters on the sign would also have a blue background similar to the blue with the top sign. This sign has approximately – is approximately 83-square feet in area. That includes the lettering, sometimes the lettering does not need to be included in that calculation, but as I understand it I spoke with Mr. Platel and the allowance would be 100-square feet which is 2-square feet for every foot of frontage and we have 50-feet of frontage. So we would have the ability for 100-square feet and....

CHAIRMAN HODOM: That would be for the entire site.

MR. HENNESSY: For the entire site.

CHAIRMAN HODOM: Not just for the Exxon sign.

MR. HENNESSY: Right, and the only other sign we have is Subway on the side of the building, which I don't have the numbers on but I don't think they're more than that. So we would be under the 100-foot square footage.

CHAIRMAN HODOM: What do you refer to the Corner Market indication and the Subway indication and the gas pricing indication, you don't consider that signage?

MR. HENNESSY: The Exxon, the Corner, the Subway and the gas pricing and the ATM all added up is 82-square feet, 83-square feet or so in square footage numbers. However in some municipalities the pricing is not required to be part of the calculation because by law we have to post our pricing.

CHAIRMAN HODOM: Is the sign double sided?

MR. HENNESSY: Yes.

CHAIRMAN HODOM: So it would twice the 82-square feet that you come up with.

MR. HENNESSY: Okay.

CHAIRMAN HODOM: I came up with 166-square feet...

MR. HENNESSY: There you go then because it's double, okay.

MR. CAPONERA: Is that the way the Town does it here?

MR. PLATEL: Yes.

MR. CAPONERA: Really?

MR. PLATEL: Two sided signs count twice.

MR. CAPONERA: I've never heard of that, wow, most of the time it's recognized that most signs or free standing signs are both sides so they typically measured from one side and don't include the other.

CHAIRMAN HODOM: The Town has since I've been involved in this Board is always considered – if it's a double-sided sign it's twice the signage.

MR. CAPONERA: Well that means that we can't guarantee the prices listed on this sign then so anyway...

CHAIRMAN HODOM: Well at today's price we'll take it right now. Bill as long as you're up there and maybe you can answer this question or maybe not but I understand the Corner Market is going to incorporate a Subway or has already incorporated a Subway. Are they also incorporating a profit center such as they've stated here, an ATM?

MR. HENNESSY: Do you plan on having an ATM in there?

MR. DAWOODANI: There's ATM in there already.

CHAIRMAN HODOM: There is one there. You're Ali?

MR. DAWOODANI: Yes.

CHAIRMAN HODOM: Okay.

MR. HENNESSY: Yes there is an ATM there already. We could eliminate – if we had to eliminate that, we could eliminate that and...

MR. CAPONERA: Well what's the maximum square footage then?

MR. PLATEL: Actually it would be 120-square feet. You've got 60-feet of frontage actually is what I would go with.

MR. CAPONERA: So we're allowed 120, does that include the wall sign?

MR. PLATEL: All signage.

MR. CAPONERA: So that would mean that we either come up with a perfect calculation to meet the standards or – does this Board do the signs or does that go to the sign review Board?

ATTORNEY MOORE: You'd need a Variance.

CHAIRMAN HODOM: You need a Variance for it, which would go through this Board.

MR. CAPONERA: I understand.

MR. HENNESSY: Is it something that we would submit a request for an interpretation on the signage for the pricing that maybe the pricing need not be included in the calculation?

CHAIRMAN HODOM: Well I would say you could do that or you could take another look at the signage that you've proposed and perhaps would be able to change it somewhat or if you felt that what you proposed is the minimum that you would accept but we don't have the sizes of the Exxon letters because they also come into signage calculation.

MR. CAPONERA: On the canopy?

CHAIRMAN HODOM: On the canopy and I don't know what signage you have on the existing building, which would also come under the square footage requirement.

MR. CAPONERA: The entire square footage, yeah it's all come within the 120-square foot allowable square footage.

CHAIRMAN HODOM: Correct. Is this something that you received from Exxon or how do you come about determining the sizes that you've proposed here?

MR. HENNESSY: That's the manufacturer's drawing. That's a shop drawing submitted by the manufacturer. That's the actual construction drawing for that sign.

CHAIRMAN HODOM: From Exxon?

MR. HENNESSY: Yes, from the sign manufacturer, the company's called Milwaukee Sign. They are the sign manufacturer.

CHAIRMAN HODOM: And do they have alternative sizes that they might be able to propose to you?

MR. HENNESSY: I'll have to check but typically it's an Exxon standard; it's an Exxon requirement so I'll have to see if Exxon will take some kind of a lesser sign.

MR. CAPONERA: We can examine that.

CHAIRMAN HODOM: Okay and we can look further into whether or not we consider the pricing part of the signage. What's been the past practice of the Building Department on signage? Do they consider all this that's here part of the signage calculation?

MR. PLATEL: Yes.

CHAIRMAN HODOM: They do, okay.

MR. PLATEL: Because who's to say that when the sign goes up if something else changes they don't wind up putting something else in there.

CHAIRMAN HODOM: Exactly.

MR. PLATEL: A sign is a sign. I realize it has to be listed.

CHAIRMAN HODOM: Do you know what size letters they are for Exxon and what the length of that extension is?

MR. HENNESSY: Looking at the scale of the drawing, it's 12-inches by 4-feet so it's 4-square feet, but you know I could actually do a calculation on the actual letter sizes because they're, you know there's - based on the zero. In the middle of the...

CHAIRMAN HODOM: No we would look at the total packet, the height times the whole length of the words.

MR. HENNESSY: Yeah, I'm looking at about 4-square feet I would say.

CHAIRMAN HODOM: Okay. Does that occur twice on the canopy or just once?

MR. HENNESSY: Yes, one on this corner and then one on the long side of the canopy, yes.

CHAIRMAN HODOM: Okay. So it's roughly 1 by 4?

MR. HENNESSY: Sure.

CHAIRMAN HODOM: Okay. And neither the sign – the Exxon letters nor the canopy is backlighted?

MR. HENNESSY: Correct.

CHAIRMAN HODOM: Okay.

MR. WIGGAND: You're on the record Bill.

MR. HENNESSY: I know and that's what Lisa said.

MR. CAPONERA: Mr. Chairman, members of the Board I think those are the major items that was covered in the November 3<sup>rd</sup> meeting and that coupled with the information that was supplied by our engineer, traffic engineer relative to how this was not going to affect the traffic in this corner. The letter from my client relative to the financial issues that she's had and I did put before the Board a fax pertaining to the previous tenants that were there that were not able to stay in tenancy and the financial hardship that she went through that she gave testimony on back on November 3<sup>rd</sup> and basically she's indicated to me and indicated to the Board this is her only means of income but not for the continued success of her tenant she'll have to move in with me, which I'm not opposed to.

CHAIRMAN HODOM: You have my sympathies dear. Can we discuss Vollmer's reports?

MR. CAPONERA: Fine with me.

CHAIRMAN HODOM: Okay. Do you know if in fact the Vollmer report takes into affect or takes into account the other profit centers such as the Subway part of the convenient store and the ATM part of the convenient store as far as traffic to and from the facility?

MR. HENNESSY: There's no guideline for that in the ITE generation manual. It was strictly convenience market with pumps, convenience market without pumps and that's what the trip generation manual provides for us for guidance numbers for generation of the trips. It doesn't specify if there's a subway in there it's a certain square footage of a

convenient store and it's - - conveniently for us the trip generation manual is based on a 1000-square foot store, well gosh we have a 1,000-square foot store so it was nice in that respect.

CHAIRMAN HODOM: You have a 3,000-square foot store.

MR. HENNESSY: Three thousand. I'm sorry, 3,000, all right but it was a 3,000-square foot store is how they - how they prepared their numbers so it was the same as what we had is what I meant. So the - when they looked at the potential locations for egress and ingress and they looked at the numbers and they compared them for the existing convenient store, which does not have pumps and the trip generation manual does have charts for that and it has charts for a convenient store without pumps.

And the numbers did fluctuate certainly when there was gasoline proposed for the store but the difference ended up being that the trip generation manuals and the traffic studies account for what they call pass-by trips that note that there are an increased number of trips coming into the store but 63-percent of those are from cars that are just driving by and see that gasoline is offered therefore they pull in. They did not generate a new traffic trip on the roadway for that use.

MR. CAPONERA: That is a very special item when it deals with this type of operation because it's not in the industry that is to say the traffic study analysis that I've worked on over the years. This is not a trip generator type establishment as opposed to pulling traffic off the road where the traffics already existing. Is that correct Bill?

MR. HENNESSY: Yes. The vehicles driving by on 9W or Maple Ave. would see that this gas is offered and they'd pull in. If it wasn't offered it's just their normal trip, it's their normal destination. They would drive by and if they see that it is offered there they would stop and they would get gas and that's how the trip generation manual was prepared for these two guidelines.

MR. CAPONERA: Rather than using the Stewarts store down the road a 150-feet with no light, which could be very dangerous. They'd probably want to use this store where there is a traffic signal I would presume, right?

MR. HENNESSY: And that would probably be an option.

MR. CAPONERA: I'm just wondering whether or not that would be an option?

MRS. O'BRIEN: Especially if you use these prices.

MR. DAWOODANI: Yes, especially if we use these prices.

CHAIRMAN HODOM: I didn't know if you were going to have someone from Vollmer here this evening or not and I'm not overly familiar with Vollmer but do they have expertise in traffic planning and studies?

MR. HENNESSY: Yes they are one of the larger consultants in the Albany area. I've been in business myself for about 15-years and I've used them on probably 10 different traffic study projects. They do quite a bit of work for DOT; they do quite a bit of work for municipalities in the area and they do traffic studies, they do traffic counts and they've prepared many of them for environmental impact statements, so they're very well versed in that. That was not an expertise of mine and I wasn't even going to try so I hired an expert for that and they are.

CHAIRMAN HODOM: In the ITE land use code that they used, number 852 and number 853 is it possible to get copies of those?

MR. HENNESSY: Certainly, yes.

CHAIRMAN HODOM: The other thing is that in the report and I don't know if this makes a considerable amount of difference or not, but the 852 and the 853 is based on convenient store operation of open 15 to 16-hours. This facility for 6-days a week is open 17-hours. Is there another table that goes beyond the 15 and 16-hours a day that incorporates 17 to 20? Do you know that?

MR. HENNESSY: No, there wasn't. No there was no table for that in the trip generation manual, but the interesting point is the key component of it is that we are looking at the peak hour for the traffic. The peak hour for traffic generation is a 1-hour period between 7 and 9:00 a.m. or a 1-hour period from 4 to 6:00 p.m. for traffic so it's not like it would be the 17<sup>th</sup>-hour at midnight or at 6:00 a.m. You're still looking at the peak hour, the peak a.m. hour or the peak p.m. hour.

CHAIRMAN HODOM: The hours of operation that are being proposed for the gasoline operation will they be the same as for the convenience store?

MR. HENNESSY: My understanding is they are.

CHAIRMAN HODOM: It's not a 24-hour operation?

MR. HENNESSY: No.

MR. DAWOODANI: We're going to keep as – fine what we have.

CHAIRMAN HODOM: Strictly as – when the convenient store is open, the gas islands would be open?

MR. DAWOODANI: Yes.

CHAIRMAN HODOM: Okay.

MR. DAWOODANI: New York State Law – you can't leave the pumps without –

unattended so I can leave the pump on and leave the people there when the pumps are running.

CHAIRMAN HODOM: In looking at table one in the potential increases for the a.m. peak period and the p.m. peak period and this excluding the passer by percentage that was also brought up, but the a.m. peak period increases by over 47-percent and the p.m. peak period increases over 75-percent. To me that would seem to be a considerable increase and you're saying that in your calculations it's not?

MR. HENNESSY: So you're saying from the a.m. you're saying going from 93 to 137, is that what you're saying?

CHAIRMAN HODOM: That's correct.

MR. HENNESSY: That would be the number of vehicles turning into the store during that 1-hour period, 44 in a one-hour period. Of those 44 only 16 were new trips generated by someone at their house saying I think I'm going to go get gas here instead of someone driving by that - - 28 of those 44 would be people just driving by and seeing it and then would pull in. So those 44 that pull into the store in that 1-hour peak period based on what we have for our traffic and for onsite maneuvering and the ability to go in and out of the site, no we did not feel that was significant.

CHAIRMAN HODOM: Are there any other questions from the Board on the Vollomer traffic study?

MR. MICELLI: I don't have any.

CHAIRMAN HODOM: Bill if you could just provide us with the LUC 852 and 853 and just a confirmation that there's no other table that would show an increase if the facility was opened for 17-hours or more.

MR. HENNESSY: Okay, yes we will.

MR. CAPONERA: Mr. Chairman, members of the Board I think that concludes everything that the Board was looking for in the - - I'm sorry?

MR. MICELLI: Just one more thing - I'm sorry to interrupt, Mike back to the lighting what kind of light are you providing in the back of the building? I don't think you went over that with us, in the very, very back where the initial pumps for diesel and...

MR. HENNESSY: Yeah, currently we have a wall pack light for this entrance here, we do have a wall pack light for this entrance because this is currently used by the staff. They could only park here anyway; they currently park right here. What we ended up doing is we have to get rid of the dumpsters and we're going to move this - he has a new shed actually that's a new one isn't it, you just got that recently. Sorry you're going to have to move it. We have to rotate around the septic area and so that we can provide for

the parking.

MR. MICELLI: Thank you.

CHAIRMAN HODOM: Quickly let's go over just some of the letter you received from Mr. Sweetman. And I take the letter basically referencing the gas station facility expanding into a convenient store not to say that it can't be just the opposite but in my reading of the letter that's basically what he's saying is that because of the problems in the gas industry they tend to go to other profit centers.

MR. CAPONERA: More appeal.

CHAIRMAN HODOM: Yes. Is there anything in the convenient store industry that would show a similar correlation of convenience stores requiring additional profit centers to maintain....

MR. CAPONERA: Viability?

CHAIRMAN HODOM: Viability or fair market share or reasonable expectations of profit?

MR. CAPONERA: Well I can't answer that question because I'm not in the business per say and that's why I relied on the expertise of Mr. Sweetman so I don't know. I don't have an answer for you other than the fact that this is what I thought you were looking for and I understand what you're saying that you went at it from one angle and you're wondering what is it, is there any information in looking at it from the other angle. It's an excellent question and I never really thought of it that way. But you're right I think my sense of what's happened in my 30-years of doing this is it seems to me that what I've seen is I've seen the transformation of the gas station with the 2 or 3-bay service going out and then having to bring it some other POS, some other point of sale coming to help it profit. It's unusual to see just the reverse like we have here that's my experience.

CHAIRMAN HODOM: Would you or Ms. Nolan see if the industry has any kind of study's that they've done and perhaps if they do provide it to the Board showing a similar correlation.

MR. CAPONERA: Yeah I can certainly check that out.

CHAIRMAN HODOM: Mr. Sweetman also referenced various studies that have shown that the consumers are attracted to the bigger facilities that are well lighted and stocked with favor foods, beverages, snacks, etc. Can we obtain copies of those studies that he's referring to, when they were taken and what locations they were taken at?

MR. BROOKINS: Mr. Chairman?

CHAIRMAN HODOM: Yes.

MR. BROOKINS: Was that letter in the original packet or is that something new?

CHAIRMAN HODOM: That was and I'm assuming that you all received it; it was attached to a January 28, 2005 letter from Mr. Caponera. The Town received it February 1, 2005; did the rest of the Board members get that?

MS. GUASTELLA: I believe so.

CHAIRMAN HODOM: It's addressed to Lisa Iglar, 41 Riverside Avenue.

MR. BROOKINS: Thank you, anyone else?

MR. MICELLI: If you have an extra one and Bob and I could share it.

CHAIRMAN HODOM: Other than and I'll use the term profit center because Mr. Sweetman used the term profit center. Other than the ATM and the Subway are you proposing to have any additional profit centers at the facility such as a car wash or anything else that you're intending to do other than the gas and the ATM and the Subway?

MR. CAPONERA: The answer is no.

CHAIRMAN HODOM: Not at this point in time. Mr. Sweetman also made a reference to – and again it really references back to the smaller gasoline facilities or garages being impacted by hypermarkets such as Walmart and K-Mart and some of the bigger box stores today. Is it your feeling that those kinds of impacts are being felt at this facility as well?

MR. CAPONERA: Yes, it's my experience and again this Board doesn't really know of me or who I am and probably doesn't care but I do happened to travel around and go to Boards and as I said to the Board before I sit on the other side of the table for other municipalities as your imminent council does and that's been my experience over the last 30-years that I've done this. Certainly the big box stores has had a dramatic effect on people like my client that's trying to, you know turn a profit and earn a fair return on her property.

CHAIRMAN HODOM: Would you mind if I ask the same question to the lessee of the property? You don't mind me calling you Amin do you?

MR. DAWOODANI: Please.

CHAIRMAN HODOM: I have trouble with the last name. I'll ask you the same question, do you feel an impact from these larger facilities that and I don't think the Walmart on 9W has gas.

MR. DAWOODANI: Correct.

CHAIRMAN HODOM: How much impact with a facility like that have on your business?

MR. DAWOODANI: I can't tell you that - like Mr. Caponera say it can be the same...

CHAIRMAN HODOM: So right now there's really no impact that you're feeling from it as far as you know? Okay.

MR. MICELLI: How is the Subway business going by the way?

MR. DAWOODANI: (inaudible)

MR. CAPONERA: It's tough. He sold 6-sandwiches so far and 3 ATM customers and 2 of the sandwiches were bought by me and I was one of the ATM customers so I don't know if that counts.

CHAIRMAN HODOM: He cut the sandwich in half and didn't share it. Just a few questions on Miss Nolan's financial information if I may, you show annual expenses ranging from we'll say 4,500-dollars to 5,600-dollars except for 1-year where you had some attorney's fees. Can you tell the Board what are included in those expenses?

MS. NOLAN: Yes, there were taxes and the attorney's fees that was for writing up a new lease and so on and also getting out of the old lease with the former tenant. My hardship would come if Ali couldn't make a go of this and he went belly up like the former tenant and this is my only source of income so if he went out I'm going to be hurting.

CHAIRMAN HODOM: I ask you this Ms. Nolan because - - and I'll ask you the question first, is this a typical lease agreement that you've had with past tenants?

MS. NOLAN: To an extent, it has changed.

CHAIRMAN HODOM: It's basically a net, net, net lease. The tenant pays the taxes.

MS. NOLAN: On this yes. Now the former lease was written back in 1979 and it was a bad lease, believe me. We had a lot of troubles with it, it was an attorney from Schenectady where we lived at the time and we thought it was a good deal at the time and the lawyer did a number on us with it. It made no allowance for cost of living and so on and different things should have been in there that we didn't realize were not in there and we got hurt by it so we said if we ever could have any adjustments in it would be fine. See the only thing that helped us with the back property, which things didn't change with that until very recently. It's a separate piece of property, the back lot and the front lot were 2-separate parcels but now since Ali took it over it's all under one, but before that it wasn't.

CHAIRMAN HODOM: If you would because it appears that even in the year 2003, which was a year after the new tenant you still had expenses of 5,600-dollars and I'd just like you to maybe provide a list of how you arrived at those expenses and what was actually included because it looked – well it just look like in the lease that you had with your current tenant it's a trip on that lease. The only expenses that I see that you have are some – you're responsible for the resurfacing of the blacktop areas. I mean the tenant pays for the insurance, he pays for the utilities, he pays for the real property taxes and all bills relating to repair maintenance and maintaining the structure.

MS. NOLAN: Okay.

CHAIRMAN HODOM: Okay? So you can provide us with a breakdown of what you've shown here for years for the 5-years that are proposed.

MS. NOLAN: For the 5-years?

CHAIRMAN HODOM: Yes.

MS. NOLAN: Okay.

CHAIRMAN HODOM: I'm assuming that the income that you're showing...

MS. NOLAN: Right.

CHAIRMAN HODOM: Is strictly the rental income for each year.

MS. NOLAN: That's right.

CHAIRMAN HODOM: Okay. Do you own other rental property?

MS. NOLAN: Just the home that I live in has an apartment.

CHAIRMAN HODOM: Okay, but no other commercial facilities?

MS. NOLAN: No, nothing.

CHAIRMAN HODOM: Are you currently under any agreement for the sale of this existing commercial building?

MS. NOLAN: At the end of 10-years if Ali is interested in purchasing it then I've agreed that you know...

CHAIRMAN HODOM: If you could come together on price?

MS. NOLAN: If we can come together that I would sell it but not before the 10-years.

CHAIRMAN HODOM: As of right now there's no intent to...

MS. NOLAN: No, and even then I don't know – I'm really not interested in selling it but he didn't want to lease it unless I came up with that agreement.

CHAIRMAN HODOM: It appears that, I mean for the years that you've shown 1999 through 2003 – record through 2002 and 2003 they're all profitable years. You didn't have a loss in any of those years on the property.

MS. NOLAN: No.

CHAIRMAN HODOM: I'm assuming 2004 was also a profitable year?

MS. NOLAN: Right.

MR. CAPONERA: It depends on how you define profit to, I mean there's profit and then there's reasonable return and I think what she is saying is she didn't lose anything in those years, but if you look at these numbers, you know it's...

MS. NOLAN: No I haven't lost any I mean the only way I'm going as I said I would lose is if they went belly up. If they couldn't make a go of it and they went out and I...

CHAIRMAN HODOM: Did that also – that happened to you previously, people went bankrupt and you were able to re-lease it.

MS. NOLAN: Another - - CFM, Convenient Food Mart was the original tenant and then a member of their staff took it over so it was kind of, you know from one to the other within the corporation and the last tenant was actually one of them but he was just an individual who I've said I would never re-lease it to another individual because he had no recourse. I mean he was working by himself and what happened to him - he didn't have any family there, no one and he just had employees, kids and they were sneaking stuff out the back door, you know a person can't be there 24-hours a day or - - well he wasn't there 24-hours a day. It was whatever hours he was opened; you know he wasn't there continuously.

So things were disappearing there were lottery tickets whatever, it was just disappearing on him and you know he just ended up losing money. I mean I was happy with Ali because he does have other business's and hopefully he's going to be there but I mean there is no way of telling I mean I have other people who are interested in it but they were individuals and you know I just wasn't satisfied with leasing to a single person or an individual because they can't make a go of it, you know you have no recourse I mean they're going to lose and I'm going to lose.

CHAIRMAN HODOM: Your counsel brought up a relative term and I'll ask you the same question do you consider what you're doing at this property a reasonable return

based on the market that's available out there?

MR. CAPONERA: I think that as a qualified that that question should be qualified because the owner of the property is given testimony about the history on this property and the history that was submitted to this Board by way of my testimony and her testimony and the previous application showed a rather rocky road that she went through. That rocky road included tendencies that didn't pan out that well and during those years I'm sure you heard her say and I'll say again that she, you know didn't receive any return on her property. In fact there probably were losses during those years where the tenant – you couldn't collect the rent from the tenant during those lean years.

MS. NOLAN: Yeah there were a few months where, yeah there were a few...

MR. CAPONERA: Where things got a little tight?

MS. NOLAN: Yeah.

MR. CAPONERA: And now the Chairman is getting into a point of law that I don't think you understand, I barely understand it and I wonder whether or not our courts understand it and I'm not, you know he's asking questions about a reasonable return and it's a legal issue and I don't even understand - - I'm not sure if you understand what that means.

CHAIRMAN HODOM: I'll leave it this way; don't answer it this evening. Confer with your client and I don't think we'll close the hearing this evening anyway because there's so much additional data, but I would like an answer to the question because you're absolutely right. It's a paramount issue for a Use Variance.

MR. CAPONERA: Absolutely.

CHAIRMAN HODOM: And I'll ask you this and think it's a fair question is that the current tenant if you would have them provide us with financial information as to how they're doing at the facility since they started leasing it I believe it was 2002 which may add some credence to the reasonable return issue and they may not be making a reasonable return or maybe they are making a reasonable return. I would ask you to consider providing that information as well.

ATTORNEY MOORE: I think the only thing the Board can ask for Mr. Chairman is owner's information.

CHAIRMAN HODOM: Is the owner's information, okay. If you would like to provide that information to us it may be beneficial in helping us make a final determination in this matter. The final question I have is there are 46 uses either permitted, allowed by site plan review or by Special Exception in this Rural Not Zoned district and I would like you to consider if in fact each and every one of those uses has been considered prior to making the application as to whether or not it makes any sense for this property to be able

to be used for those listed uses.

MR. CAPONERA: Well with all due respect Mr. Chairman I gave a fairly articulate rendition of how long my clients owned the property and how long has that been? When did you buy this property?

MS. NOLAN: 1979.

MR. CAPONERA: 79', 89', 99' my calculation is that's about 26-years and your building was built on there shortly after you bought the property. So when I gave – I thought I did maybe I'm all wet on this. I truly believe that when I discussed these issues that - - I understand where you're going with this but at the same time the Board has to consider the uniqueness of the property and the fact that it is a C-store and the likelihood of using it for 56 or 70...

CHAIRMAN HODOM: 46.

MR. CAPONERA: Or 46 uses that are allowed in this particular zone would in my humble opinion be kind of mute given the fact that the property is not vacant, given the fact that it's been owned by my client for nearly well over a quarter of a century and it's had a C-store on it ever since and so therefore the idea of putting it to a use of the other 45 uses in this zone or 46 uses in this zone would again in my humble opinion be rendered rather useless in the sense that it's already an existing store with an existing tenant, so for us to sit here and say that it can be used for any other allowable use and that it can't be used for any other allowable use in that zone. I'm humbly saying to the Board that it wouldn't be practical to do that unless of course you wanted to rip the building down and start all over again and I see that my client's now turning white over that comment so...

CHAIRMAN HODOM: My suggestion is made Mr. Caponera only to benefit you and your client. You are requesting a change in use currently.

MR. CAPONERA: I'm requesting a modification to an existing use, yes.

CHAIRMAN HODOM: And if you want to look at statue perhaps may behoove you to look at the 46 other permissible uses and explain to the Board why they are not able to be used in this instance. It's only a suggestion from the Board.

MR. CAPONERA: Okay.

MR. BROOKINS: Can we go back to the request that you made for the tenants financial information, where did we leave that?

CHAIRMAN HODOM: We left it with the applicant if in fact they would like to provide that to the Board, they will. If they don't they don't have to. I just think it's helpful for the Board because it does help.

MR. BROOKINS: I understand where you're coming from, but I'm also concerned that it then becomes public information and I think that may in fact while the property owner in making the request I think it's reasonable that she make a case for the financial hardship. I'm very concerned about proprietary information that the tenant's have that may put them at a competitive disadvantage if that information became public and I defer to counsel on that.

CHAIRMAN HODOM: It's only a request. It doesn't have to be complied with based on counsel's advice. It could be as simple as a profit law statement with backup. It's only a request that I've made, again based on counsel's advice it's not a requirement to help you prove financial difficulty.

ATTORNEY MOORE: Respectly Mr. Chairman, even if it were provided I don't know that it would be relevant to the decision that the Board has to make. You have to make a decision relative to the owner's situation.

CHAIRMAN HODOM: The owner of the property?

ATTORNEY MOORE: Yes. She has disclosed I guess the lease terms and the lease payments here. I guess we could ask for the 2004 lease payment.

CHAIRMAN HODOM: But we have that.

ATTORNEY MOORE: Oh we do, never mind.

CHAIRMAN HODOM: The lease is right up to 2007.

ATTORNEY MOORE: All right. I was just looking at this cover letter from November, okay.

CHAIRMAN HODOM: I was just trying to be helpful, use your own judgment in that. Any other questions from the Board? Any objections to adjourning this to a future date? Any idea when you can have that documentation available for us?

MR. CAPONERA: Well you once again have given us a rather healthy list here so....

CHAIRMAN HODOM: Well we could leave it to a date uncertain and when you, you know put the documents together notify Karen and we can reschedule it. Is that satisfactory?

MR. HENNESSY: The physical elements don't seem to be time consuming from the mapping standpoint, signage. I'll talk to Mark and we spoke a little bit before about signage but I'll re-visit that. So from that end I don't anticipate it being difficult to get a letter from DOT so as far as looking at the other issues we'll have to talk about that.

CHAIRMAN HODOM: Are there any other questions from the Board members?

MR. MICELLI: No.

CHAIRMAN HODOM: Is it acceptable to you that we adjourn the hearing to a date uncertain Mr. Caponera?

MR. CAPONERA: Yes. Is there anyone - - would we consider asking if there's anyone in the audience wanting to speak on this at this point?

CHAIRMAN HODOM: We certainly can. Is there anyone that has any questions or comments? Is there anyone who would like to speak in favor of the applicant? Anyone wishing to speak in opposition?

MR. CAPONERA: Here's your chance to speak in favor.

CHAIRMAN HODOM: Well you'll have an opportunity again.

MR. HENNESSY: Do you want these still or do you want me to bring them – just save them for the next time?

CHAIRMAN HODOM: No we'd like to keep them here just for clarification.

MR. HENNESSY: Okay.

On a motion made by Chairman Hodom, seconded by Mrs. O'Brien and unanimously carried by the Board the hearing was adjourned to a date uncertain.

Hearing adjourned 8:50 p.m.

- - -

The next order of business this evening is a public hearing for an area Variance under Article XII, Percent of Lot Occupancy, Section 128-50, Single Family Dwellings for property at 12 Venture Terrace, Glenmont, New York 12077 requested by John and Joanne Whipple. The Applicant wishes to construct a 3-season room, which will exceed the allowable percentage of lot occupancy at the premises 12 Venture Terrace, Glenmont, New York.

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

MR. PLATEL: Yes, Mr. Chairman. The Applicant is proposing to construct a 13-foot by 14-foot, 182-square foot addition that will add 162.5-square feet of additional building area to the existing 1,729.25-square foot main dwelling. The total main dwelling will be

1,891.75-square feet, which is 162.37-square feet over the 1,729.38-square feet allowed. The lot occupancy will be 16.41-percent which is 1.41 over the 15-percent allowed. The existing structure is occupied as a single-family dwelling and is located in an "A" Residence 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 March 16, 2005 at 7:45 p.m. at the Town Offices, 445 Delaware Avenue, Delmar, New York to take action on application of John and Joanne Whipple for variance under Article XII, percentage of Lot Occupancy, Section 128-50, Single Family Dwellings of the Code of the Town of Bethlehem for construction of a 3-season room, which will exceed the allowable percentage of lot occupancy at the premises 12 Venture Terrace, Glenmont, New York Michael C. Hodom, Chairman, Board of Appeals. Attached to this Notice is notarized proof of its publication in the March 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 and anyone desiring to speak will be allowed to do so. Mr. Whipple or your representative just introduce yourself to the Board and tell us what you want to do and why you want to do it and how you want to do it.

MR. WHIPPLE: I'll introduce my representative he's actually a friend and I had him along because well I'll explain in a minute. One reason I'm doing this but he's the eye's behind the drawings. He's done the drawings so if there is any questions pertinent to the drawings he will answer those not me and he will also be helping me this summer amongst other teachers that work for me as did he. I've developed macular degeneration and that was one of the reasons I had to retire a year ago of loss a portion of central vision not peripheral vision and one of the pit-falls of macular degeneration is a high sensitivity toward light. So the deck, which we had out there I no longer can use during the day because it's just too bright and also in the evenings you don't use it too much because of the bugs.

My neighbors are actually the ones that kind of convinced me this was the way to go. Dan Walsh who is behind me was probably in front of you a year and a half ago, he has a 3-season room and loves it and we've been in that. And the person next to him, which is also kiddy corner in my back yard J. Farrel put it up years ago and Narod lives there now and he has a 3-season room and loves it. The 2-people on either side of me or actually a side and kiddy corner had a closed in porch is not 3-season rooms but again with the roof and the shade they get much more use out of it than I had, which I'm not getting any use at all so I said why not. They kind of convinced me to do this and they know that I'm retired and have the time to do it, which is something that I've always

wanted to do anyway in terms of getting involved with a project like this. This was a good time for me to apply. Basically it gives me much more use during the season as well as – it gives me use at all really because I can put shades or – well shades basically to filter the light for myself. It’s going to be mostly glass, mostly windows.

CHAIRMAN HODOM: And who did prepare the drawings?

MR. WHIPPLE: Pardon me?

CHAIRMAN HODOM: Who did prepare the drawings?

MR. WHIPPLE: Craig Jensen, I’m sorry. Craig Jensen resides here in the Town of Bethlehem. He is an employee – was an employee of mine. He’s still an employee; I’m not but very talented.

MR. JENSEN: He’s still my though.

MR. WHIPPLE: Once a boss always a boss. And so basically I gave him the plans of what I wanted to do and he put them on paper.

CHAIRMAN HODOM: J-E-N-S-E-N?

MR. JENSEN: Yes.

CHAIRMAN HODOM: And what utilities are you expecting to provide into this 3-season room?

MR. WHIPPLE: Could I get your definition of utilities?

CHAIRMAN HODOM: Mechanical, electrical.

MR. WHIPPLE: Just basically electric. We will be putting outlets on 3-walls and mechanical the only thing mechanical will be a ceiling fan.

CHAIRMAN HODOM: So there’s no plumbing?

MR. WHIPPLE: No plumbing, no.

CHAIRMAN HODOM: This is strictly a 3-season room?

MR. WHIPPLE: Yeah with all glass. The heating costs were enough in my regular house I just don’t want to heat a glass house.

CHAIRMAN HODOM: Okay. Your intention is to maintain this dwelling as a single-family home.

MR. WHIPPLE: That is correct.

CHAIRMAN HODOM: Now and in the future?

MR. WHIPPLE: That's correct.

CHAIRMAN HODOM: My understanding looking at the drawings that you intend to match the existing architectural features as closely as possible, siding, roofing, windows, doors.

MR. WHIPPLE: Exactly, particularly on the roof. That's one thing that kind of determined the dimensions that we had chosen. Trying to maintain that roofline particularly on that side of the house to make it look as though it was original and not an add on. We reset it by 6-inches or 8-inches from the side just in case I can't quite match the vinyl siding color if the shade of yellow is slightly different, if it's recessed we hope it wouldn't show that much, but other than that the window's design will be similar however they will be larger. We're going to do as much as we can, 6-foot by 30-inch windows in the backside. One side we are preserving as a solid vinyl wall with the exception of transom in the top and that's for privacy for our neighbors beside us. They - - they're the only ones that don't have a sun porch or a 3-season room, but they do have a hot tub out there and so we have a transom about 5-feet up and so that won't infringe in their privacy.

CHAIRMAN HODOM: Can you describe to us basically what the existing home is and how it's laid out, number of rooms?

MR. WHIPPLE: Sure. The first floor, it has a cellar. The first floor is basically it's considered a centered entrance colonial although it has a L-shaped garage that comes off it so by the front entrance you can have a garage and that was - - but the first floor has a living room, dining room, kitchen that basically is an open kitchen with a - kind of a family room area. There's a first floor laundry and one bathroom in the first floor, second floor has 3-bedrooms and 2-baths plus like I said it has a cellar.

CHAIRMAN HODOM: Have you spoken with your neighbors?

MR. WHIPPLE: As a matter of fact I have spoken to all but one, Dan Walsh the one who has been in front of you not to long ago but a year and half ago - - 2-months down in Florida so I couldn't get him, but I have explained what I've done, on the topic I've explained exactly what I'm doing. Five of the neighbors that actually touch and boarder the property, four of them do have sunrooms or 3-season rooms. The other two are not in sight of the addition, but they are within the 200-foot that was required as far as the Appeals Board was concerned. They're all in favor.

MRS. O'BRIEN: Jack how long have you been at this residence?

MR. WHIPPLE: 20-years, well 19-years 1986. We bought it - it was 2 ½-years old when

we got it, the area was just being developed so actually I think now we are the senior neighbors in the neighborhood. The last two have kind of moved on out.

CHAIRMAN HODOM: Jack if the Board were to approve your application do you have a set time frame as to when you will commence and complete the construction?

MR. WHIPPLE: My plan would be to this spring when it dries out a little bit. I have where the solid wall would go – I have 2-flowering cherry trees there, which we have the privacy before. I would take those down probably in mid-April or so and prepare for digging the foundation and hopefully I would have the foundation in no later than the first of July, hopefully before that and it would be our intent to – except for maybe selecting indoor/outdoor carpet or something like that to have it completed by the end of the summer if possible. I mean I'm using – calling in chips from a bunch of teachers that do these things in the summer time and they've committed their time to me this summer and so that's our intent to have it fully completed by the time school resumes in the fall except for maybe some cosmetics.

CHAIRMAN HODOM: Is the – maybe this is a question for Craig, the crawl space that you're showing below the 3-season room is that a conditioned space, are you going to add any insulation to the walls or to the floor?

MR. JENSEN: Underneath?

CHAIRMAN HODOM: Yes.

MR. JENSEN: The only insulation would be under the floor.

CHAIRMAN HODOM: Under the floor you are going to have insulation?

MR. JENSEN: Yeah the 2 by 10-floor joist and then fully insulate it and...

MR. WHIPPLE: We were putting down a vapor barrier with crushed stone and then there will be about a 2-foot space. We are putting in vents; it probably shows you that 2-vents on side of the foundation and 1-vent on each side, which will be open and closed. We'll keep them open in the summer and close them in the winter; you know those little shifts ones.

CHAIRMAN HODOM: The drawings are probably adequate for this Boards needs, I think you probably may need some more information for a building permit.

MR. WHIPPLE: Okay.

CHAIRMAN HODOM: But you can go over that with the Building Department.

MR. WHIPPLE: Would we set that up with Mark?

CHAIRMAN HODOM: Yes.

MR. WIGGAND: He's the main man.

MR. WHIPPLE: He used to be a student to.

CHAIRMAN HODOM: Are the interior finishes, sheetrock painted?

MR. JENSEN: Sheetrock, yeah because the greatest majority of the sheetrock will be in the ceiling, most of it will be windows.

MR. WHIPPLE: Except for that 1-wall, yeah.

CHAIRMAN HODOM: Any other questions from the Board?

MR. WIGGAND: The only question I have is that you're going to completely remove that existing deck and build a completely new foundation under it, am I saying that right?

MR. WHIPPLE: That's correct.

MR. WIGGAND: I didn't get that from you today.

MR. WHIPPLE: If you noticed when you were over there today I kind of pointed out where the edge of the building would come and then there's like a 2-foot portion of the existing deck.

MR. WIGGAND: Yes.

MR. WHIPPLE: That will come down because it's supported by the deck, but that piece will go back up again as a step down onto that other existing.

MR. WIGGAND: So you're going to have to take down a portion of it in order to get your other construction?

MR. WHIPPLE: My plan right now is to take down and that's one of the things I'll do this spring if I get the approval I'll just - - I'll tear out the whole deck, that existing deck that you saw.

MR. WIGGAND: For the way that the flooring on that deck is laid there it'll be easy to take off each section of it.

MR. WHIPPLE: Yes.

MR. WIGGAND: Without getting yourself to involved.

MR. WHIPPLE: Right, hopefully.

MR. WIGGAND: I had an idea that's what he was going to do. So you're going to keep that existing deck, you're just going to open it up so you can do your foundation?

MR. WHIPPLE: Right, yes.

MR. WIGGAND: I understand now.

CHAIRMAN HODOM: Are you also building a new deck off of that 3-season room?

MR. WHIPPLE: At a later date we would apply for a permit for - - right now it does not show in the survey here, that's a survey back from 1980 - well we bought it in 86'. There is a 11 by 13 deck right beside that now, it's down about 6-inches and at a later date at some point I'm not sure when we're hoping to put maybe - extend that by 11 by 13 so I have the same kind of deck space so I could put a table. Right now I have a deck that's out there that I would use for my grill, basically grill purposes.

MR. JENSEN: The existing deck ends about 12-feet from the outer edge of the back of the home so I think you're saying you want to carry it to the edge of the...

MR. WHIPPLE: Yeah.

MR. JENSEN: The deck would go to the edge of the home to make up for the space loss by the...

MR. WHIPPLE: There are shrubs and stuff in there now.

MR. WIGGAND: Well you're putting a very substantial foundation under it, very good. I like to see that; we don't always see that.

MR. WHIPPLE: I thought it was interesting, we've had a number of renovation projects going on at school over the years and I've become friends with some of the architects that have done that and some of the engineers and when I had talked to them about that using pillar's and what have you and I've never found one that told me - - if you've got to do it do it right. Get it done right the first time.

CHAIRMAN HODOM: Any other questions from the Board? Any questions or comments from the audience? Any one wishing to speak in favor of the Applicant? You may do that now if you wish.

MR. WHIPPLE: Speak in favor of it.

MR. JENSEN: Part of it actually of having us do the work with Jack quite honestly is I don't want to, you know put too much on him but part of it actually we really do a lot together and it the camaraderie that we have together that really is one of the things that you know particularly in Jacks situation I find it very advantageous for our relationship to

do this kind of work together to so it's also one of the reasons.

CHAIRMAN HODOM: Thank you. Any one desiring to speak in opposition? Hearing no further questions or comments we'll declare the hearing closed and we'll notify you in a timely manner. Thank you Jack.

MR. WHIPPLE: Thank you Mike.

Hearing closed 9:10 p.m.

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The next order of business was to consider the application of Gregg & Mary Ellen Sagendorph, Jr., 62 Harrison Avenue, Delmar, New York. The application was found to be in order and Mrs. O'Brien made the following motion:

An appeal having been filed with the Board of Appeals of the Town of Bethlehem, Albany County, New York by Gregg & Mary Ellen Sagendorph for Variance under Article XVI, Front Yards, Section 128-66, Required Depths for the construction of a front porch addition which will encroach into the front yard setback requirement at the premises 62 Harrison Avenue, Delmar, New York, it is hereby ordered that a public hearing on this matter be held April 6, 2005 at 7:30 p.m., at the Town Offices, 445 Delaware Avenue, Delmar for the purpose of hearing all those interested in this matter.

Mr. Brookins seconded the motion and it was unanimously carried by the Board.

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The next order of business was a discussion of the previous public hearing held in the matter of John and Joanne Whipple for Variance under Article XII, Percent of Lot Occupancy, Section 128-50, Single-Family Dwelling. The following points were brought up by the Board members: The proposed 3-season room is a reasonable request due to health issues. The addition will match the existing architectural feature of the home. The addition would not affect the essential character of the neighborhood. On a motion made by Mrs. O'Brien, seconded by Mr. Wiggand, 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 April 6, 2005.

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The next order of business was a discussion of the previous public hearing held in the matter of Cingular Wireless for a Special Exception under Article VI, Permitted Uses, Section 128-20 C (1), Public Utility & Chapter 113-4 A (1), Alternative Tower Sites to collocate 9 Panel antennas and related call processing equipment to an existing tower at premise 39 Hannay Lane, Glenmont, New York. The following points were brought up by the Board members: All additional documentation and corrections submitted to the Board was acceptable. The tower is existing and can accommodate the 9-panel antennas requested. The proposed collocation will not affect the neighborhood. On a motion made by Chairman Hodom, seconded by Mr. Brookins, and unanimously carried by the Board, the Board directed Attorney Moore to prepare a proposed resolution granting the Special Exception, for presentation at the next Board meeting on April 6, 2005.

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The next order of business was a discussion of the previous public hearing held in the matter of James Dertinger (Applicant), Dunbrook Mobil (Owner), for a modification of a Special Exception under Article XII, Percent of Lot Occupancy, Section 128-17 C (3), "CC" Retail Commercial District to sell Christmas trees at the premises 415 Route 9W, Glenmont, New York 12077. The following points were brought up by the Board members: The first hearing that was scheduled the applicant did not show up. The second hearing was adjourned due to additional documentation the Board had requested. The third hearing was cancelled because the Applicant had not been able to come up with the materials requested. After a substantial amount of time passed the Board decided to withdraw the application. On a motion made by Mrs. O'Brien, seconded by Mr. Wiggand, and unanimously carried by the Board, the application was withdrawn.

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The next order of business was to consider the proposed resolution of Mr. Cohen and Ms. Myra Nathan.

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

#### RESOLUTION

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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 XII, Percent of Lot Occupancy, Section 128-50, Single Family Dwellings, requested by William Cohen and Myra Nathan (“Applicants”) for property at 94 Longmeadow Drive, Delmar, New York; and,

WHEREAS, the Board of Appeals, 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 February 16, 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 Board of Appeals makes the following Findings of Fact and Conclusions of Law in this matter:

#### FINDINGS OF FACT

Applicants are seeking an area Variance in order to construct a 1-story 330.36-square foot addition to the existing 1,521.91-square foot main structure. The total square footage for the main structure will be 1,852.27-square feet, which is 266.02-square feet over the 1,586.25-square foot allowable. The lot occupancy will be 17.52-percent which

is 2.52-percent over the 15-percent allowed. The existing structure is occupied as a single-family dwelling and is located in an “AA” Residence District.

The Applicants’ proposed addition will be on the first floor of the existing structure and will consist of a bedroom and bathroom.

The Applicants seek to add the addition to accommodate their combined families, when family members return for visits. The Applicants are also anticipating that they would like to remain in the existing home as they grow older, and first floor living space will be more manageable for them.

At the public hearing, Applicants testified that they had spoken to their adjoining neighbors, who have no opposition to the proposed addition.

Following the public hearing, the Applicants provided a written statement that they had spoken to their neighbor at the rear of the property, who also expressed no opposition to the proposed addition.

Other than the Applicants and their contractor, no one spoke at the public hearing.

The Applicants’ lot is nearly 1/3 smaller than the present minimum lot size in the AA Residence District.

#### 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 Applicants, the Board determines that the proposed variance will be granted.

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

The benefit sought by the Applicants 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, while somewhat larger than is generally granted pursuant to the Board’s policy, is the minimum variance that is necessary and adequate to the Applicants’ needs, while still preserving the character of the neighborhood.

The alleged difficulty necessitating the requested variance has not been created by the Applicants. If the Applicants' lot were of the minimum size now required in the AA Residence District, no variance would be necessary.

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 Applicants at the February 16, 2005 hearing;
2. In the construction of the addition, the Applicants shall match, as nearly as possible, the existing roofing and siding on the home;
3. The project shall be completed within two (2) years of the date of this Resolution

March 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 March 17, 2005.)

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On a motion made by Mrs. O'Brien, seconded by Mr. Micelli, and unanimously carried by the Board, the minutes of the March 2, 2005, meeting were approved.

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

Meeting Adjourned: 9:30 p.m.

Respectfully submitted,

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Secretary