

**TOWN OF BETHLEHEM
BOARD OF APPEALS
August 17, 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. The first order of business this evening is a modification to a Special Exception under Article VI, Permitted Uses, Section 128-18 C (3), (6), (11), "C" Commercial District requested by Cumberland Farms, the Applicant, Big Main Truck Stop, the owner for property at 68 Route 9W, Glenmont, New York. The Applicant wishes to demolish the existing building and construct a convenience store with an attached drive through restaurant and gasoline station at the premises 68 Route 9W, Glenmont, 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 to demolish the existing truck stop and gas station and build a new eleven-island gas station, drive thru restaurant and convenience market, which will require a modification to an existing Special Exception. The market and restaurant will be located in a proposed 3,825 square foot building and the gas islands will be covered by two separate canopies totaling 7,536 square feet in building area. The total proposed building area will be 11, 361 square feet.

After further review of this application the proposed canopy in the front yard will need to be set back 35-feet. The proposed setback is 34.5-feet. This will need to be changed to meet the requirement or receive a Variance.

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

The existing use of the property is as a truck stop and is located in a “C” General Commercial District.

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 August 17, 2005 at 7:30 p.m. at the Town Offices 445 Delaware Avenue, Delmar, New York to take action on application of Cumberland Farms, Applicant, The Big Main Truck Stop, The owner for modification of a previously granted Special Exception under Article VI, Permitted Uses, Section 128-18 C (3), (6), (11), “C” Commercial District of the Code of the Town of Bethlehem for the demolition of an existing building and construction of a convenience store with an attached drive through 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 August 10, 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. 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 should be directed to the Board and any questions should be directed to the issue of the evening’s proceedings. Prior to us starting this evening our council has some comments regarding the application.

ATTORNEY MOORE: Thank you Mr. Chairman. Yesterday after speaking with Mr. Platel I spoke with I believe your partner Mr. Auffredou about the state of the Zoning Law in the Town of Bethlehem. I want to just state for the record that as of this moment the Town Board is scheduled 1-week from tonight August 24th to vote on a new Town Zoning Code, which if adopted in it’s present form would likely make this application moot in that jurisdiction over Special Exception’s would be transferred to the Planning Board and there would likely be additional setback – or different setback restrictions imposed that would require a different application. Mr. Auffredou indicated that he was aware of that and that the Applicant wished to proceed. I just wanted to get that on the record, that’s correct?

MS. BITTER: Yes.

ATTORNEY MOORE: Thank you.

CHAIRMAN HODOM: Thank you council. Please introduce yourself to us and give us your association with the applicant.

MS. BITTER: Good evening Chairman, members of the Board my name is Stefanie DiLallo Bitter and I'm from Bartlett, Pontiff, Stewart & Rhodes local counsel for Cumberland Farm's. I'm here tonight with Rob Spiek with Bohler as well as Jim Long who is from Cumberland Farm's. As you indicated in your introduction to this Application we're here tonight requesting a modification of the previously granted Special Exception for the currently existing Big Main truck stop. Cumberland Farm's currently has a contract to purchase this property and their intentions as you also identified it is to demolish the existing building and to construct a gasoline station, convenience store as well as a drive-in through restaurant, drive-through restaurant.

Their intentions are to discontinue the diner use as well as the shower use and overnight truck-stop use as well. They're going to removing and installing all existing gasoline islands and installing new underground storage tanks and two new access area's are also being proposed to have a separate diesel fueling station as well as customer service stations which I'll have Rob go into more detail because I think that that their neighbor's here that will want to know what's being proposed.

Because we're requesting this modification I know that the standard is to identify that this is going to be in harmony with the development of the area as it exists today. Due to the fact that this is an existing use we feel it would be in harmony and wouldn't be detrimental to the adjacent lands. We are making certain proposals in this plan to protect those lands such as the installation of a fence, certain buffers as well as to protect the traffic flow we're also proposing the access areas, which – I'll have Rob go into more details but there are certain aspects of the plan that we are taking in mind to protect the adjacent land as well as the development.

We feel that the design of the structure as well as the proposed landscaping will protect the surrounding property values as well as not discourage development in this area. And that we feel that this use should be deemed appropriate because not only that it's existing but also because of the aspects of the plan that we're willing to propose. I'll have Rob go into more detail now if that would be okay with the Board?

CHAIRMAN HODOM: Sure.

MR. SPIEK: I've got a couple handouts first. These are just some photo's sim's that we have done to give. There are existing photo's and proposed photo's there of what we think the site will look like at the end of the day there just to assist with this.

CHAIRMAN HODOM: Rob, just before you get started, just introduce yourself to us and who you're associated with.

MR. SPIEK: Rob Spiek with Bohler Engineering.

CHAIRMAN HODOM: Thank you.

MR. SPIEK: Engineer for the project here. The board I have up here before you now is basically the existing conditions of the site here. The entire site is almost entirely paved. The existing diner/shower area is here and the existing fielding positions are in here with a storage tank and some old improvements, septic improvements in the back there. The site as you see it today out there is a little deceiving because a majority of what goes along this frontage here is not even on the property. It's all within the State right of way. So it's a little deceiving what you see out there today as to what's really on the property and what's not on the property. This bold dashed line is actually the property line and with this edge of the building here. The building basically sits about 10 feet off the existing property line out there.

What we're proposing and what was included in your package is, is basically as Stephanie mentioned also an entire re-development of the property. The major improvement here is we are re-moving the overnight truck use here, removing the diner use and the shower use on this property. What we're proposing is building in the center of the property here, which will consist of approximately 4800 square feet of which 3800 of it approximately will be utilized for Cumberland Farms convenience store and about 1000 square feet will be left over for a donut shop use to be determined at this point here.

In the front here we have eight (8) islands with two dispensers each on it for the – what we call the retail fueling operation here. Off to the side over here we have maintained also five (5) islands for diesel fueling operation. And again we've removed the overnight parking there's just no way to accommodate on the site. All of our development is pulled back within this property line here. We've defined access to the site at two points where as today it's pretty much a wide open paved come as you go thing. So we've got the access points defined; we've got parking area on the side of the building here and along the front for the customers; we have a dedicated one-way lane here and an escape lane for the drive-thru customers there to keep them isolated from the main circulation pattern. Truck traffic would circulate around this area over here, they'd only be utilizing the site to the amount of time they need to fuel up their trucks and/or run in the store and then access it back out into the highway here pretty much as they do today.

Full sets of documents were submitted to the Board. They also went to the Planning Department, which include our proposals for storm water management, utilities, etc. here, which there no known issues with at this time here as far as capacity and/or availability. And again the photo sim's that I handed out there shows a colonial style building with a colonial style canopy here which we think is going to dress up that corner quite a bit from what exists today. I'd be happy to answer any questions you have.

MS. BITTER: What I failed to mention when I was making my presentation is that prior to making this submission, Rob and I actually sat down with some members in the Town

back in January and discussed this proposal that when we were working on the plan with the client we were able to come back with some of the comments that were made by the Town. We are aware of the Town's re-development in a sense that they're proposing a new comprehensive plan and were just here tonight because we're obviously eager to proceed and we've been working on this for the last 7 months.

CHAIRMAN HODOM: May I call you by your first name?

MS. BITTER: Yes, that's fine.

CHAIRMAN HODOM: Under section 128-24 B, there is a requirement for a sworn statement from the applicant to comply with section 128-24 C. I didn't find that in the record and would appreciate it if you could have that letter presented to the Board.

MS. BITTER: Is it part of the application?

CHAIRMAN HODOM: Well what it really says is that you're going to comply with all the requirements stated in 128-24 C for a Special Exception. And also I didn't find anything in the record in writing from Main Care or Big M Truck Stop authorizing you to be their representative because they are the owners of the property.

MS. BITTER: And I can provide that to you.

CHAIRMAN HODOM: Okay we would need that for the record. Your June 9, 2005 letter in the second paragraph refers to the canopy being located 54 feet from the property line and there are two dimensions because it being a corner lot. One dimension is 34.5 feet and the other dimension is 58 feet so I don't know where the 54 feet came into play.

MS. BITTER: I was actually utilizing the one that's located on the northern end of the map.

MR. SPIEK: It's basically a typo. This is the more restrictive that should have been used.

CHAIRMAN HODOM: That's the controlling dimension, okay.

MR. SPIEK: As Mark had mentioned there that we'll have to move that back to meet the 35 foot requirement.

CHAIRMAN HODOM: Okay. And then you also mentioned that there are 12 pumping stations, but I think that there actually 24 total pumping stations.

MR. SPIEK: There are 12 what we call the retail fuel dispensers. There are 24 fueling positions because they have two sides to them.

CHAIRMAN HODOM: Okay, plus the diesel?

MR. SPIEK: Plus the diesel, yeah the diesel is set up where you've got your primary fills and what they call a slave fill on that there because of the tanks on both sides of the truck so they've got two primary fueling positions on the diesel and then three slave positions.

CHAIRMAN HODOM: Okay. In your letter of June 9th you do cover the 3825 square foot convenience store and 1080 square foot drive thru restaurant, which is actually a drive-in restaurant I mean you do have seats in there and a table so it isn't a drive-in?

MR. SPIEK: No, there's no seating in this. It would be a counter. Is there seating in the plan?

CHAIRMAN HODOM: Yes there is.

MR. SPIEK: Okay.

CHAIRMAN HODOM: We can get into that but I think also on your plans and we'll get into it you only showed – when you went and delineated the square footage for the property you only showed the 3825 square feet for the convenience store. You didn't include the 1080 square for the donut shop, and I'll get into that. Also I didn't find anywhere in your narrative what your proposed hours of operation are. Do you have a statement to address that issue?

MR. SPIEK: It will be 24-hours, 7 days a week.

CHAIRMAN HODOM: Is that what it is currently?

MR. SPIEK: To the best of our knowledge, yes. Whether that was part of the original approvals, I'm not sure.

CHAIRMAN HODOM: Are you adding dispensers to your proposed construction to what's there currently?

MR. SPIEK: Versus the existing?

CHAIRMAN HODOM: Yes.

MR. SPIEK: Yes absolutely. I mean the basically the facility is set up today as a truck stop more or less where I believe they have 1,2,3,4 – basically 4 main islands for service and trucks. The facility as it's set up today is really not intended for you or I to go fill up our cars at.

CHAIRMAN HODOM: There are no regular gasoline stations there? It's all diesel currently?

MR. SPIEK: I'm not sure it's all diesel or not to be honest with you.

CHAIRMAN HODOM: Well it's either diesel or LP and then there is kerosene.

MR. TARSA: It will be diesel, 1-kerosene and 1-LP. Oh, I'm sorry I'm Dave Tarsa from Main Care.

CHAIRMAN HODOM: Just introduce yourself again.

MR. TARSA: David Tarsa from Main Care.

CHAIRMAN HODOM: Spell your last name please.

MR. TARSA: T-A-R-S-A

CHAIRMAN HODOM: But there are no gasoline...

MR. TARSA: Currently no gasoline.

CHAIRMAN HODOM: Just bare with me a minute if you would. In your submittals for the elevations we have sheets 2 of 4, and 3 of 4, we do not have sheets 1 of 4 and 4 of 4. Is there a reason for that?

MR. SPIEK: They're preliminary elevations at this point. I believe what was submitted – I believe you had all 4-sides of the building.

CHAIRMAN HODOM: We did.

MR. SPIEK: The way the architect put their plans together I believe the first two are just some – with the wall section details and some information that we didn't believe this Board was really interested in more so construction details versus the actual aesthetics of what this thing is going to look like. The plans that you received there is pretty much what we're proposing the building is going to look like.

CHAIRMAN HODOM: Can you provide the Board with sheets 1 of 4 and 4 of 4?

MR. SPIEK: I can if that's what you like to see those construction details.

CHAIRMAN HODOM: Yes, we always like to see the full package.

MR. SPIEK: Right well that wouldn't be the full package...

CHAIRMAN HODOM: As far as the elevations – as far as this submittal here which apparently it takes place of your drawing 11 of 21 on your main set of drawings. There is no - - I'm sorry 10 of 21 because in your main set of drawings there is no sheet 10 of 21.

MR. SPIEK: That's correct.

CHAIRMAN HODOM: If you could provide those for us I'd appreciate it.

MR. SPIEK: Okay.

CHAIRMAN HODOM: Do you know what the total height of the building is to the height of the copula?

MR. SPIEK: To the top of the raised parapets is 18.5, I believe the top of the copula to the roof area and not including the little cow we've got on top is about 25 feet.

CHAIRMAN HODOM: Is that dimension some where around?

MR. SPIEK: No it's not dimensioned on the plan.

CHAIRMAN HODOM: And your 25 feet is from grade level?

MR. SPIEK: They should be consistent. There are some elevations on that south side elevation there it goes up as far as the parapet.

CHAIRMAN HODOM: If the scale is correct it scales to approximately 33 feet.

MR. SPIEK: I'll have to verify it.

CHAIRMAN HODOM: Would you do that?

MR. SPIEK: Yes.

CHAIRMAN HODOM: Is that a concern at all Mark for the height of the building?

MR. PLATEL: I'm trying to find the section right now for you Mike. I don't believe it is.

MR. SPIEK: The max building height per the current code is 60 feet.

MR. PLATEL: And normally you wouldn't add an ornamental copula in there.

CHAIRMAN HODOM: Just go to the main roof. Have you prepared a traffic study for this proposal?

MR. SPIEK: No we have not.

CHAIRMAN HODOM: Is there one available?

MR. SPEIK: No, there hasn't been one prepared.

CHAIRMAN HODOM: Do you have a problem with providing a traffic study?

MR. SPIEK: We can provide a traffic study.

CHAIRMAN HODOM: As I look at your plan currently I'm making an assumption that you don't show any truck trailer parking areas where they can stay over night. It's strictly a drive thru...

MR. SPIEK: Fueling...

CHAIRMAN HODOM: Pick up their diesel and go out.

MR. SPIEK: That's correct.

CHAIRMAN HODOM: So you won't have any kind of plug-ins for peter-box or refrigeration systems?

MR. SPIEK: No, the intent is to remove completely remove that use from the property.

CHAIRMAN HODOM: I want to get into the signage, but we'll get into that a little bit later. Your drawing sheet 3, which is 3 of 21 you do show the curb cuts. Have they been presented to DOT for review and approval?

MR. SPIEK: They were presented informally to DOT on a conceptual basis. DOT didn't raise any red flags to those locations but it really hasn't gotten into any sort of detail either.

CHAIRMAN HODOM: Okay so you haven't made an application for it?

MR. SPIEK: No we haven't made a formal application.

CHAIRMAN HODOM: They're primarily in the same vicinity as the current entrances to the facility?

MR. SPIEK: Basically...

CHAIRMAN HODOM: I know they're much smaller but...

MR. SPIEK: Yeah basically what is today is you have an island located right across from this asphalt drive here.

CHAIRMAN HODOM: Yes.

MR. SPIEK: Pretty much the remainder of the frontage is wide open. So what we've done is we have substantially reduced the opportunity to get into this property where it's defined at a 30 foot curb cut here and a 30 foot curb cut here. The rest of this would be landscaped space and this area is all open over here now all that pavement would be

removed and grassed. It's certainly channelizing the site from its existing condition.

CHAIRMAN HODOM: And if we can just jump to drawing 15, the truck turning maybe you review that a little bit while we're talking about it. It appears that the only entrance to the site will be the easterly entrance exit.

MR. SPIEK: That's correct.

CHAIRMAN HODOM: And they would circumvent the property, go to the diesel fuels and then exit the westerly entrance to the site?

MR. SPIEK: That's correct. That will be - - we're going to directionally sign that appropriately and most of these truck drivers they're pretty smart enough guys there that you get onto a site like that you can see there's only one way to go to. There just physically wouldn't be able to make any other turn movements other than what's shown on here without jumping curbs and going across lawns.

CHAIRMAN HODOM: So you're proposing some additional signage, which was - especially on the westerly entrance exit that - like a no truck entrance sign?

MR. SPIEK: No truck entrance, arrows pointing for trucks in this direction, you know truck entrance here. We're looking to do those types of signs under what we believe to be exempt directional signage these days - 3 square feet Mark or something like that?

MR. PLATEL: Yeah it might be a little bit less than that.

MR. SPIEK: That would be purely directional it wouldn't have any logos or advertising or anything like that on them.

CHAIRMAN HODOM: Mark there is no Town stacking requirement now for a drive-thru restaurant?

MR. PLATEL: No, only for a...

CHAIRMAN HODOM: Just for car washes?

MR. PLATEL: For car washes.

MR. WIGGAND: You answered my question.

CHAIRMAN HODOM: Let's just touch on that point of the restaurant being a sit in as well as a drive thru unless I'm reading the plans wrong.

MR. SPIEK: No you're reading the plans right. The plan that was included in the submission set does have 10 seats on it.

CHAIRMAN HODOM: Sheet 11, so they're...

MR. SPIEK: Twelve seats.

CHAIRMAN HODOM: Twelve seats and that is your proposal that you would want 12 seats as a sit-in restaurant?

MR. SPIEK: That would be the maximum. This space I know – we even heard rumors of it being Duncan Donuts, etc. there's no confirmation of that at this point. What is going to be a fast food donut shop is all we can define at this point because we just don't know the user, which may cause this floor plan to change slightly but you know I can say 12 seats would be the maximum we would propose.

CHAIRMAN HODOM: But it wouldn't change the overall size of the structure.

MR. SPIEK: No sir.

CHAIRMAN HODOM: What's that donut shop in Latham? Krispy Crème – is it going to be a Krispy Crème?

MS. BITTER: Everybody loves them.

MR. SPIEK: We just don't know yet. I know I get asked all the time when Duncan Donuts is coming there and I don't know that it's going to be that.

CHAIRMAN HODOM: The existing 6 foot stockade fence that runs along the easterly property line is that owned by Big "M" and then subsequently you folks if the deal goes through? There's an existing 6-foot stockade fence.

MR. SPIEK: That stockade fence is located on the Big "M" property.

CHAIRMAN HODOM: Okay.

MR. SPIEK: So it's my guess that you folks installed that fence.

CHAIRMAN HODOM: Is that going to be replaced?

MR. SPIEK: It will be replaced and repaired as necessary.

CHAIRMAN HODOM: So it will be repaired.

MR. SPIEK: It will be maintained, yes. We show that staying on our site plan as a fence proposal along there.

CHAIRMAN HODOM: Back on the northeasterly corner of the site plan drawing 3 or sheet 3, you've got 2 stations which include a vacuum and air and a foam.

MR. SPIEK: Correct.

CHAIRMAN HODOM: Is there any other location that that could be situated on the site and I ask that question because of the – if you're operating 24-hours a day 7-days a week I'm assuming this area here is going to be operational 24/7.

MR. SPIEK: That would be the intent, yes.

CHAIRMAN HODOM: So I guess the vacuum portion of it could be disturbing to the adjoining residential area.

MR. SPIEK: Yeah, we could look to explore getting those relocated maybe somewhere down in this area here, just rounding this out and just picking this up and placing it over here.

CHAIRMAN HODOM: On the other side, okay.

MR. SPIEK: Screening it somewhere in that area, sure.

CHAIRMAN HODOM: We can look at – while I'm on this sheet 3, looking at your zoning analysis table you show the minimum side as being 0 feet.

MR. SPIEK: Correct.

CHAIRMAN HODOM: Is that correct Mark? I thought it was 20 feet.

MR. PLATEL: Pardon me?

CHAIRMAN HODOM: The minimum size setback requirement for "C" General Commercial.

MR. PLATEL: For the main structure?

CHAIRMAN HODOM: But their showing it 0 feet on their plan and I thought it was a minimum of 20 feet.

MR. SPEIK: Yeah, for both the side and the rear we're showing 0 feet.

CHAIRMAN HODOM: I don't think the rear is addressed in the code, but I think the side was addressed in the code.

MR. PLATEL: I know the front is addressed; I know there's a 5 foot buffer.

MR. SPIEK: Correct.

MR. PLATEL: As required.

CHAIRMAN HODOM: But I show it 20 feet, you don't come close to it in any way I mean you show it as 30 feet, but just to correct the analysis table.

MR. SPIEK: Okay, we'll take a look into that.

MR. PLATEL: I would only give you a 20 foot setback if it's a residential use, which is 2-family, 3 and 4-family's. It does not address commercial buildings so it would just be the 5-foot buffer.

CHAIRMAN HODOM: Is that what it is?

MR. PLATEL: Yes.

CHAIRMAN HODOM: I'll have to look into that to. Up in his site statistics chart, that area proposed square footage for the total building where you 3825, that should be 4905 so it's one of those areas will decrease as well.

MR. SPIEK: Yes.

MR. PLATEL: When you calculate out the main building though Mike it comes out to 3825, when you by the dimensions of the building, 45 by what?

CHAIRMAN HODOM: 109 by 45.

MR. PLATEL: I didn't have – I had one that said 85.

MR. SPIEK: 85 by 45?

CHAIRMAN HODOM: I had 109 here somewhere. I was wrong once before. Let's look at drawing 11, sheet 11, 109 by 45.

MR. SPIEK: It definitely says that.

CHAIRMAN HODOM: Is that correct or...

MR. SPEIK: No, that's not correct. The 85 by 45 is the correct dimension.

CHAIRMAN HODOM: But it scales out to 109.

MR. SPIEK: On this plan?

CHAIRMAN HODOM: On this plan.

MR. SPIEK: Oh, you know you're right that does. That plan is probably incorrect.

CHAIRMAN HODOM: Okay so the true dimension of the building is 85 by 45?

MR. SPIEK: That's correct, yes.

CHAIRMAN HODOM: So you'll provide us a revised floor plan of the building?

MR. SPIEK: Yes.

CHAIRMAN HODOM: Let's go to sheet 7, that's the landscape plan. Can you just describe to us what you're doing there? And Mark let me ask you a question to, is there only 1-residential property adjoining that or is there a house back in here as well?

MR. PLATEL: There is a couple of houses at least along that side there. I think there's one right in the front then there's a long driveway that goes back behind the first house and I believe there is a residence back there also.

CHAIRMAN HODOM: Back in here?

MR. PLATEL: Yes.

CHAIRMAN HODOM: Okay.

MR. SPIEK: Basically, I mean for landscaping at this time we're basically proposing some low level landscaping along the curb cut areas and along the front tank mat. There's also landscaping around the back of the back of the building with a few trees and the customer service area is up in this corner up here. There's some landscaping, taller arborvitaes proposed around that and a few trees here and there at this point.

CHAIRMAN HODOM: Well my main question there was because there is another residence back in the – along the easterly property line. Would you folks have any problem of running those arborvitaes all along that line to encompass the residential area?

MR. SPIEK: I guess we could take a look at running them along the area where there may be visibility towards that house.

CHAIRMAN HODOM: Well not only looking at visibility I'm looking at noise as well.

MR. SPIEK: It's something we can explore, certainly. I mean we'll have to look at that with a fence. That house I believe on that property sits quite a ways back and I'm not even sure it's visible from the property.

CHAIRMAN HODOM: It's visible believe me. It's probably about 60 feet from the property line or something of that nature, but you would consider that?

MR. SPIEK: Yeah we can do something there. I'm not sure that the arborvitaes is the

best answer for the buffer.

CHAIRMAN HODOM: I mean if it was a condition of the Board that you ran the arborvitaes along that property line you would not have any objection to that?

MR. SPIEK: No, I mean I would probably recommend something – there's probably some better suggestions including – we've done different types of...

CHAIRMAN HODOM: Colorado blue spruce or something like that?

MR. SPIEK: Yeah we've done different types of noise buffering with plants and/or different types of fencing, etc. that would go in there but the general principle of doing that, yes that's not an issue.

CHAIRMAN HODOM: Okay. The lighting plan on sheet 8.

MR. SPIEK: Yes.

CHAIRMAN HODOM: Could you just go over that for the Board as to what's happening especially along the easterly property line where it abuts the residential area?

MR. SPIEK: Basically we have light fixtures proposed along this particular line of concern. There's 1,2,3-fixtures in proximity towards the residential zone line – I'm sorry, 4. The lighting plan on there basically what we've done is all these lights are shielded on 3 sides away from the property, they throw all their light forward. There is a line on the plan sets that you have that indicates the 1-foot candle line which is usually a judge of minimal light levels there and that 1-foot candle line basically runs inside of the property line along that entire easterly line so there's generally – there's no light spilt over the property line and that's consistent with their rest of the site to as far as the DOT right of way, etc. Generally the average across the entire site is about 6-foot candles, generally there's about 4.8 uniformity ratio, which is pretty consistent with industries standards.

CHAIRMAN HODOM: Can you just give us an idea of what .2 and .3 and .4 and .7 foot candles – the density of that light. Can you describe that in some means? Is it a room with a candle in it or is it a room with a 60-watt bulb?

MR. SPIEK: The 1-foot candle measure is generally what the industry accepted standard as considered I guess a minimal safe parking field lighting level. So I don't - - I'm trying to think of a good comparison.

CHAIRMAN HODOM: Well again I'm not concerned about the parking level, I'm concerned about the extension of the light into residential properties.

MR. SPIEK: I'm trying to relate it that probably the minimum light that if you went to Town Squire at the end of the parking lot there and stood at the outer periphery of that parking curb line there you're generally looking at about 1 foot candle there which is –

you know it's starting to get pretty dark and as you move away from that 5 feet it drops rather dramatically. I don't know if it's a good example I know local around here is something people see every day. I can get some additional documentation to put that in better perspective if that's helpful.

CHAIRMAN HODOM: Would you do that?

MR. SPIEK: Sure.

CHAIRMAN HODOM: And also is there any other means of perhaps shielding it further from transferring it over to the residential property?

MR. SPIEK: We could on that back side of the property I believe lets see we are looking...

CHAIRMAN HODOM: There's actually 5 fixtures, 5 type B fixtures, 4 of them are right along the property line. The 5th one is over in that vacuum area.

MR. SPIEK: Correct. I mean those are B-fixtures, they're proposed right now as 400-watt fixtures. We can look at dropping them down to 250-watt fixtures, which would reduce the lighting levels also. It sounds like your goal is to keep those...

CHAIRMAN HODOM: Well I'd like to keep as much as the lighting on the premises as possible.

MR. SPIEK: I mean we could get it down where that 1-foot candle line that you see basically jumping along the property line and get that back along the curb line, which would give you basically .2's and .1's at the property line.

CHAIRMAN HODOM: At the property line, okay.

MRS. O'BRIEN: And if the vacuum area is moved it would take that light...

CHAIRMAN HODOM: It would take that light over to the other side.

MR. SPIEK: No, there would still be a need for some lighting in that area, again the same difference there.

CHAIRMAN HODOM: Sheet 9, a review of the signage requirements and Mark maybe you can give us some help here. I know you've shown the gasoline price sign and I had also – there's two welcome signs, there's a drive-thru sign, there's a menu board. Does that come into the Town's requirement for signage?

MR. PLATEL: It's not directional...

CHAIRMAN HODOM: Which wasn't listed in your schedule.

MR. SPIEK: It's our interpretation that that would be directional signage.

MR. PLATEL: If it's directional signage then I'm not going to include it in its advertising sign.

CHAIRMAN HODOM: The welcome sign is that directional, the drive-thru sign could be directional. The menu board and it appears that there's plenty of room for additional signage based on...

MR. SPIEK: Yeah the code doesn't really provide provision for a menu board.

CHAIRMAN HODOM: But it does allow you 2 square feet for every lineal foot of building.

MR. SPIEK: Correct.

CHAIRMAN HODOM: Now that's reduced because it's – let's see I would base it on 109 feet, now it's 85.

MR. SPIEK: You're right on that so it would be less. I think we're still well below that.

CHAIRMAN HODOM: Didn't you folks base it 109?

MR. SPIEK: Yes we did.

CHAIRMAN HODOM: Yes you did. You're looking at 218, which now would be 170.

MR. SPIEK: Yes and we're proposing 128.

MR. MICELLI: Where is that sign going to be located, is that on 9W or on Corning Hill?

MR. SPIEK: The freestanding sign?

MR. MICELLI: No the menu board for the prices of gas.

MR. SPIEK: Oh that's the freestanding ID sign.

MR. MICELLI: Okay.

MR. SPIEK: That we're looking to locate right at this location right here.

CHAIRMAN HODOM: There's also a menu board, which is in that stacking area before the drive-thru.

MR. SPIEK: Yes, right for the drive-thru, yes.

CHAIRMAN HODOM: For the donuts?

MR. SPIEK: Yes and we don't have a detail for that because we don't know what it's going to be yet at this point.

CHAIRMAN HODOM: I only raise the issue because it wasn't included in their schedule.

MR. PLATEL: The menu board for coffee, donuts, whatever I would not consider it signage for the structure.

CHAIRMAN HODOM: Okay.

MR. MICELLI: When we get back to that board for whatever that business is going to be, where exactly is that menu board going to be facing? Is that going to be facing – because the way you have the window on the side of the building would that be facing towards the residential area or is that going to be facing more towards the diesel pumps?

MR. SPIEK: The menu board would be facing out in sort of this direction. It would be towards the east, towards the residential area.

MR. MICELLI: Now that's going to be a 24-hour, 7-day week menu board operable obviously. Now if someone pulls in there 1, 2:00 in the morning ordering food I mean that's going to be a loud – maybe you can give some type of consideration for the residential area. The noise factor that maybe having that board turned, you know away from the residential area.

MR. SPIEK: The speaker board is – the speaker board sort of projects in the rear fashion there.

MR. MICELLI: So we might want to consider that maybe taking away facing towards the residential area.

MR. SPIEK: Yeah, I mean we've got some other options. We've done this in the past; we can provide a noise study for where that menu board projects to. We could also – maybe we shut that menu board off at 10 p.m. at night and they would have to go to the window to place their order also.

MR. MICELLI: You could consider different hours or something.

MR. SPIEK: I think we have some options there to take a look at.

MR. MICELLI: And also while we're on that subject a lot of these places where you go to get gas in the canopy's they have music playing would there be a time where they would shut their music off, once again giving consideration to the residential

neighborhood.

MR. SPIEK: Yeah I don't think that would be an issue at the end of the day. The Cumberland Farms in my experience has been they really don't do that.

MR. MICELLI: I know Mobile does, Mobile on the Run, okay just for the record.

CHAIRMAN HODOM: Back to sheet 11, which is the floor plan or proposed floor plan. Do you have a list of items that Cumberland Farms is proposing to sell at retail?

MR. SPIEK: It would typical convenience store fair just like anyone of their other convenience stores that they operate here. Basically I mean the majority of the products are convenience store items, soda, beer, freezer items, chips, snacks things like that.

CHAIRMAN HODOM: Is it possible to get a list of what they are?

MR. SPIEK: I guess we can try to track something down.

CHAIRMAN HODOM: Generalized list?

MR. SPIEK: Yeah.

CHAIRMAN HODOM: We've asked for that in the past for convenience stores.

MR. SPIEK: Honestly nobody's ever requested so we'll have to research this.

CHAIRMAN HODOM: Well we're just a tough board; you know what can I say. Your sheet 12, we're seeing the dumpster enclosure detail and you show like a white picket fence enclosure. Has there been any considerations to perhaps have that enclosure be masonry to match the building structure?

MR. SPIEK: We can certainly take a look at that.

CHAIRMAN HODOM: I think it would be certainly more pleasing than the 1 by 4 wood slats.

MR. SPIEK: Yeah because right now we've got it here. We've got landscaping that surrounds this out here but we can take a look and see if we can do that.

CHAIRMAN HODOM: And it probably will last a lot longer as well just knowing how these guys pick up their dumpsters and put them back in and...

MR. SPIEK: Yeah we've got a new design also that we may be able to throw at next time to is one that we just recently did up in the City of Glens Falls, which is a vinyl fence enclosure, white vinyl which sort of matches with the building also it may be some consideration, 6-inch steel posts – have the gates and everything like that it's a pretty

sturdy enclosure.

MR. MICELLI: Will you guys be cooking on the premises?

MR. SPIEK: No, there's no cooking operation on the...

MR. MICELLI: It'll be trucked in?

MR. SPIEK: That's correct.

CHAIRMAN HODOM: Even the donuts?

MR. SPIEK: Yes that's correct, no baking on the facilities.

CHAIRMAN HODOM: Geese I thought I was going to get a fresh donut.

MR. WIGGAND: There's not many who cook around here anymore.

CHAIRMAN HODOM: So there is no cooking or ovens or anything that will be on the premises?

MR. SPIEK: There may be, you know typical convenience type – microwaves, your hotdog racks and stuff like that and pretty much all customer self service, but no commercial baking ovens or anything of that nature that's going to require hoods or vents or anything like that.

CHAIRMAN HODOM: Okay. Have you folks had the opportunity to review all the previous past resolutions that were given to this site?

MS. BITTER: Not in detail. We were supplied a copy of them so I know that there was a modification request to be made because there's obviously existing.

CHAIRMAN HODOM: My question is do you agree to comply with all the applicable conditions stated in all the previous resolutions?

MS. BITTER: I can review that and make that representation but that's how it's been operating now I would assume that we could do that but I obviously have to review that and talk to the client about it.

CHAIRMAN HODOM: Because they would go with the land in any previous – if you want to make a change either eliminate some of the requirements then we can review that, but you're not able to do that this evening?

MS. BITTER: No.

CHAIRMAN HODOM: If I may just let me go through – this is a 1987 resolution. Again

I'm referring to page 4, item number 6, which refers to a low level sodium lighting, which you're using halide type of fixtures now so that's something that you probably want to look at.

MS. BITTER: I'm sorry what number?

CHAIRMAN HODOM: 6 on page 4 of the first resolution of the 1987 resolution and also paragraph 9 refers to trucks and trailers parked on the premises, apparently you're not going to have that anymore. They do also refer to a 10-foot by 20-foot car space parking area and believe that the current code is a 9 by 20-foot parking space.

The other item that we talked about earlier which is paragraph 11 refers to section 128-24 C, which is providing the Board a letter agreeing that you'll comply with all the requirements of that section. Paragraph 12 could probably remain but it should also include in the next to the last sentence and/or the Board of Appeals and the Planning Board because you're also going to have to in front of the Planning Board for site plan approval. On page 5, paragraph 13 and I don't know if we have that in our file now but I was going to look at that site plan that was previously approved because it appeared to me that there was a lot more planting that was required especially along that easterly property line. I thought you might want to take a look at that as well.

Paragraph number 17 refers to major servicing or repairs of motor vehicles, is there any of that work planned for this proposal so you might want to address that issue. Paragraph 18 deals with truck/trailer parking. Paragraph 19 refers to plug in heating devices and also for refrigeration uses and you're not going to have any of that. Paragraph 20 you should take a look at because that does deal with the adjoining residential area on the easterly property line. That is a requirement of the previous resolution. Paragraph 21, I've discussed this with counsel, the Special Exception will cease and terminate it's not a legal determination because it really goes with the land so these conditions go with the land so we can't just terminate the previous resolution. And that seemed to be the biggest issue as far as taking over the property. There were several resolutions all of them were granted except for one and that was the resolution of 1978 references that no alcoholic beverages will be sold on the premises so you have to address that issue. Paragraph 13 of that resolution, again it deals with truck parking and that they can't idle for more than a half of hour. Rather than belabor the issue please go through all those previous resolutions and if there are any conditions that you're looking to change or to modify it let the Board know. Any other questions from the Board?

MRS. O'BRIEN: I have a couple. One of them I'm assuming that the drive-thru area restaurant will not accommodate the trucks that it would be mostly car traffic that would be driving through?

MR. SPIEK: That's correct.

MRS. O'BRIEN: So if the trucks that come in through the diesel fuel and filling up, will there be a designated place for them to leave the truck or idle?

MR. SPIEK: Just at the fueling islands themselves.

MRS. O'BRIEN: I mean they'd be able to access the convenient store or the restaurant?

MR. SPIEK: Oh absolutely if they were fueling in this position here and got done with their fueling or if they need to go in and pay. They don't use the card reader, etc. they would just presumably leave their vehicle right here as there is no other provisions for parking for the trucks, enter the store and do their business, return to their vehicle and leave.

MRS. O'BRIEN: Would there be a limit on how long they could stay there idling?

MR. SPIEK: The New York State DEC limits that to basically 5 minutes, nobody enforces it most of the time, but it's our intent that the store employees would police that area to make sure that – there's no benefit to the store if the truck is sitting there for an hour because it just clogs up the fueling position at that point. As far as trucks getting into this line here, this island was placed in here to sort of take that out of the way that they cannot even get into that island area there.

MRS. O'BRIEN: On the ingress and egress the westerly entrance cars could come in and go out there?

MR. SPIEK: That's correct.

MRS. O'BRIEN: Cars could also come in the easterly?

MR. SPIEK: Sure.

MRS. O'BRIEN: Okay but trucks can only come in on the easterly and exit through the westerly?

MR. SPIEK: That's correct.

MRS. O'BRIEN: Okay. You're on both town water and sewer there?

MR. SPIEK: Yes.

MRS. O'BRIEN: Okay. I think that's pretty much it.

CHAIRMAN HODOM: Just while I'm thinking of it to, I don't know if this is exactly the way Cumberland Farms proposes and I have nothing against the flags, but there is a condition in one of the resolutions that you can not use flags, banners, so forth and so on so please address that issue as well if in fact that's what they intend to do. Do you object to providing us a copy of the proposed contract with Cumberland Farms and you can redact anything you think is...

MS. BITTER: We can get that, actually the client has it so it's not something that I have in my own file so I can try to obtain that for you.

CHAIRMAN HODOM: Gil anything? Lennie?

MR. MICELLI: I'm fine thank you.

MR. WIGGAND: I think everything has been covered pretty well here.

ATTORNEY MOORE: I just have one question Mr. Chairman.

CHAIRMAN HODOM: Sure.

ATTORNEY MOORE: For counsel. Stephanie on your SEQRA environmental assessment form item 25, there's an indication that there's a re-zoning request needed from the Town Board is that correct or is that a mistake?

MR. SPIEK: Yeah that's an error in there. As far as we know there's no approvals that are necessary from the Town Board.

ATTORNEY MOORE: And the application that's before the ZBA tonight is the only application that's been submitted to this point?

MS. BITTER: With the site plan.

ATTORNEY MOORE: Right, nothing pending before the Planning Board?

MS. BITTER: No.

MR. SPIEK: Well yes there is, we did file with the Planning Board.

MS. BITTER: Right but we haven't been before them.

MR. SPIEK: No we have not appeared before the Board.

ATTORNEY MOORE: So there's been no determination of a SEQRA lead agency then?

MS. BITTER: No.

ATTORNEY MOORE: Thank you.

CHAIRMAN HODOM: If you would just address these again only because I've written them down but in 1984 resolution there was a bait store proposed and it was granted so if that is not going to be a proposal in this request please take it out. There's also in the 1979 resolution that there's a truck cleaning system proposed and that was approved. If

that's not going to be part of this proposal then please advise the Board that that will not happen.

MS. BITTER: Does your Board – does your code state anything with regards to the discontinuance of uses, like I realize that all these exist in the history of this parcel and I know certain Town's have when uses are discontinued for a certain period of time that they are deemed expired.

ATTORNEY MOORE: You're not discontinuing the use...

MS. BITTER: Well I don't think the bait shop exists – I'm just saying for example.

CHAIRMAN HODOM: I'm not aware of it...

MS. BITTER: I can address it I just wanted to make sure.

ATTORNEY MOORE: Again I think in response to the chairman's earlier request indicates that you're modifying the approval of whatever year it was to delete any provisions of the bait shop.

MS. BITTER: Okay. I'll give a report of that showing.

CHAIRMAN HODOM: And Rob just to clarify, you're sheet 10 of 21 is replaced by sheets A 3.1 and A 3.2, which are the elevations of the building?

MR. SPIEK: Yes ultimately the future submission will be in that plan set and there will not be an attachment, but we just incorporate those right into 1-plan set so there's not...

CHAIRMAN HODOM: But for our use tonight that's what it is?

MR. SPIEK: That is correct, for tonight yes.

CHAIRMAN HODOM: Okay.

MR. MICELLI: Also Rob when you look into the menu board, maybe cut that out like at midnight or whatever you come up with, can you also look into the vacuum cleaners to?

MR. SPIEK: Sure.

MR. MICELLI: Because how many are you going to have proposed?

MR. SPIEK: There are two proposed.

MR. MICELLI: Okay so maybe you can have a time, you know after a certain time that they won't be a use either because of the noise.

MR. SPIEK: Sure.

CHAIRMAN HODOM: Are there any questions or comments from the audience? Please just introduce yourself to us and your address.

MR. CICCONE: Ed Ciccone, 111 Corning Hill. The easterly driveway is there a buffer between the property line and where the easterly drive is? I'm not sure if we touched on that. How close to the property line would that drive be? If I'm looking at it on there correctly it looks like it's close to the property line where they're coming in and out.

MR. SPIEK: If you would come up here sir and we can look at it together.

MR. CICCONE: Okay.

MR. SPIEK: I just want to make sure we're talking about the right driveway. There's your pavement located right here, is that the one your referencing?

MR. CICCONE: Well I'm looking at where the property line is. I'm taking it that this is the property line?

MR. SPIEK: That's correct.

MR. CICCONE: And this is where the drive is going to be.

MR. SPIEK: That's correct.

MR. CICCONE: Your proposed. And now it's probably at least 100 feet away from my property. I'm asking what is the buffer zone between my property line and where they're coming in and out now, what you're proposing?

MR. SPIEK: Proposing basically there's a 5-foot requirement by the Town at this point. The edge of this driveway point is going to be approximately 5 feet off of the property line. This line here is approximately 18 feet, the curb line will be 18 feet from the property line.

MR. CICCONE: So pretty much it will come right through my driveway.

MR. SPIEK: The drive is going to be right along the edge of the property line, the residential property line is the main line coming into that place.

UNIDENTIFIED MAN: That's correct. Does the 18 feet – that curb ought to be 18 feet off of that property line.

MR. CICCONE: There might have been something proposed possibly when the truck stop was in there, there was supposed to be a buffer zone, 15 feet, 20 feet possibly back.

CHAIRMAN HODOM: You may that sense – that’s a site plan. If in fact that was part of the previous submittal that would be part of the requirements and conditions of the resolution and we’ve got to look at that. I didn’t have that site plan with me this evening but we will take a look at that as well.

MR. CICCONE: Okay. I was just concerned about increased traffic so close to the property line.

CHAIRMAN HODOM: Thank you Ed.

MR. CICCONE: Thank you.

MRS. GRANT: Hi I’m Kris Anne Grant and I live in that house in the back.

CHAIRMAN HODOM: What the address there?

MRS. GRANT: 109. I have a couple questions here.

CHAIRMAN HODOM: Sure.

MRS. GRANT: What else is going back here, a sand filter? What is that?

MR. SPIEK: That’s underground storm water management systems. It’s nothing that you - - it would be completely grassed over. It’s basically – right now all of the storm water on this property basically blows into the right of way and runs down to the creek. The new storm water requirements by New York State require us to catch it, treat it, and then release it so that’s what those structures are but they’re completely underground.

MRS. GRANT: And you’re talking about moving this whole thing up front here?

MR. SPIEK: That’s correct, yes.

MRS. GRANT: So in that section right there with the diesel, that’s currently where the kerosene is right?

MR. SPIEK: Yeah approximately. And this is the existing condition plan here, you basically got the fuel storage tanks and I believe the kerosene dispenser is over in this area so it’s generally the same location, yes.

MRS. GRANT: And you’re going to get rid of the kerosene, right?

MR. SPIEK: That’s correct.

MRS. GRANT: Are you going to - - I don’t know you’re not going to allow the trucks to park there but is there going to be any kind of signs telling them that they can’t park there?

MR. SPIEK: Yes, there will be signage that there's no parking allowed and also it will be policed by Cumberland Farms personal.

MRS. GRANT: Okay so they can't stay there.

MR. SPIEK: That's correct.

MRS. GRANT: What about the parking for the convenience store? Sometimes when people aren't at the pump they're going to pull off somewhere.

MR. SPIEK: Most of the parking for the convenience store has all been isolated to the front portion of the property. The idea of the design was more or less to separate the truck traffic from the vehicular traffic. We've got 14 parking spaces along the front of the store here and then another 20 on the side here so all that traffic should be well isolated from the activities going on back here. It should be more than sufficient for the demand of the store also.

MRS. GRANT: So the westerly exit that's before the fork in the road because it splits?

MR. SPIEK: Yeah just beyond it so the traffic that's heading south bound or was coming off south bound – north bound, sorry on 9W could enter the site here.

MRS. GRANT: Okay. And you said it will be open 24 hours?

MR. SPIEK: That's the proposal, yes.

MRS. GRANT: And you wouldn't move the existing 6-foot fence, you wouldn't move it back or forwards?

MR. SPIEK: No.

MRS. GRANT: So you're going to consider the taller trees?

MR. SPIEK: Yes absolutely. And the whole fence, we haven't honestly, we haven't taken a hard look at the fence, the condition of it, etc. as to if needs to be replaced it will be replaced in the same location.

MRS. GRANT: They did do some work on it last year that I know of.

CHAIRMAN HODOM: Rob you might just want to touch on that the truck parking and so forth. There are no designated places for parking of trucks and trailers on that site.

MR. SPIEK: Yeah that's correct the only intent and Cumberland Farms intent here is again is to remove that use completely and just still provide that fuel service opportunity because this area up and down the hill there is existing truck traffic that's going to be

there and they want to capture that, but again the provisions are that they can pull up and fuel if they've got to run in the store, great and move on basically.

CHAIRMAN HODOM: So there's no overnight parking.

MR. SPIEK: No.

CHAIRMAN HODOM: No overnight idling or idling other than while they're fueling up.

MR. SPIEK: That's correct.

CHAIRMAN HODOM: Any other questions? Yes ma'am?

MRS. GRANT: I assume there will be public restrooms there?

MR. SPIEK: Yes there will be. They are required by the New York State Building Code and for our facility here it will be a separate women's and men's room in this building.

CHAIRMAN HODOM: Any other questions or comments?

MRS. GRANT: Will they be locked?

CHAIRMAN HODOM: Pardon me?

MRS. GRANT: Will they be locked?

MR. SPIEK: They're internal to the store so we don't lock them. The customer has to come into the store.

MRS. GRANT: Okay.

CHAIRMAN HODOM: Please introduce yourself to us.

MR. JENSON: My name is Craig Jenson. I live at 22 Old Route 9W and in reference – I also have some concerns if you don't mind. This is my driveway and this is a yield sign and coming off of here when there are no cars coming here this is 45 miles per hour off of here. People don't tend to slow down. It's a hard enough time getting out of my driveway right now with new influx of traffic from Wal-Mart and everything else that's going in on the other end and let's say that Dunkin Donuts, just speculation, but Dunkin Donuts or Krispy Kreme goes in there and it draws quite a morning crowd. For me to safely get out of my driveway with my two children to bring them to school in the morning I have some big concerns because I've been almost hit there numerous times right now. My other speculation is how does one come off of a yield sign and drive right into that main entrance it seems like if you wanted to utilize the pumps.

MR. SPIEK: That will be addressed in the traffic study that we'll provide as requested by the chairman.

MR. JENSON: One more thing. In the morning this gets busy at the stoplight there's only room from here to here for approximately 6 cars. If that backs up – no entrance here, how do I get out? These are just things that I'm asking you to consider. I do not deny that the looks of this would increase better than what it is now. However the traffic that's already increasing here is going to become increasing here because when this gets busy people are going to start shooting down here to 144 to go up to Glenmont and so forth and other parts. Once that starts to happen it's too late because this is here and this is happening. The other thing is with an influx of traffic this road just got re-paved last year, I've lived there 10 years now. That's the first time in 10 years that from here to here got repaired. With the trucks and the wholes that are there it creates a major problem with more traffic are there any considerations for maintenance for that road because we've made numerous calls and no one seems to want to take responsibility for this small stretch of that State Road. These are just things I'm asking you to take into consideration.

MR. SPIEK: Yeah, I can give you an indication of what the traffic study is going to look at. It's going to look at the timing of the signal. This report will obviously have to be submitted to the DOT as part of any permit for these curb cuts here and stack time and things like that will be one of the considerations that they look at. Obviously as you mentioned that they did just improve this intersection here. It is all of the State's right of way, we don't have much control over it who should be maintaining it. It should be the State in my opinion but that's some of the things to look at, to look at here of whether a stop sign is warranted here now to. Just a number of those items that will be approached in the report up to and including car counts, etc. and then that report will sort of make recommendations and dictate – maybe this doesn't end up here at the end of the day. It may not, that's some of the things the report will look at.

MR. JENSON: Because my concern is that that doesn't end up there and it ends up here, that's even worse. And it's not feasible that it would end up down here because of the berm of hill and the slope that one would have to go over to get there. My other concern is large trucks – there's only two lanes here. A truck coming this way wants to get in and a truck coming this way wants to get in – backed up traffic. How long does one wait?

MR. SPIEK: The report at the end of the day to may recommend improvements for this area here. Maybe the road needs to be widened slightly, shoulders improved, etc. Quite honestly, I mean we'll take that into account when we develop the traffic report. I can't tell you what it's going to say at the end of the day right now.

MR. JENSON: I'm just asking you to consider so it's on record and I do want to speak while I can if you will excuse me.

CHAIRMAN HODOM: No that's fine.

MR. JENSON: Another concern is right now with the trucks, this is a dead end road, we

have one street light that we had to request after we were vandalized and robbed. We're the only house on there. If I go in and buy my beer or whatever I buy at Cumberland Farms I'm a kid and I have a dead end road – nice place to hang out. Any considerations for that? I have two children that live there and my wife walked in on a robber.

MR. SPIEK: Is it a Town right of way right now or is it private property?

MR. JENSON: It's a Town right of way.

MR. SPIEK: That maybe something we can look at with the Town of Bethlehem.

MR. JENSON: Because the noise is going to increase, I know that and you know it is – when you buy a property in Delmar and in Bethlehem are no different than anybody else and I buy it for certain reasons, one of them is privacy and quietness. The only thing we get now is trucks that do idle for 24 hours a day in there and sometimes the smell. How would a Cumberland Farms employee possibly handle someone who has their truck idling as they do now for over that time period?

MR. SPIEK: Well again the intent is here that the trucks that would access this property are for fueling only so the only time that is going to be their policy for the trucks remaining there is to allow them to fuel. If they want to come into the store and grab something, get back in their truck and leave, that's the policy they intend to enforce.

MR. JENSON: Is it unreasonable in a Town – and I'm not sure maybe it's unreasonable without a truck stop that when you do fill up your car – I mean when I fill up in the past cars have blown up when they're pouring gas in them and they're running and I do realize that in wintertime it's a problem for diesel trucks. Do they have to run when they're fueled? Could they have to be turned off when they fuel?

MR. SPIEK: The New York DEC actually I think limits idling to 5 minutes although the DEC is the only enforcement of that also. My client can't write the ticket quite honestly. All we can do is we can post signs to that effect. This is the law and we can ask DEC to enforce that but I'm not sure whether the Town police can enforce that or not also.

CHAIRMAN HODOM: Just to answer your question that was a previous condition as well to one of the resolutions that they can only idle for 5 minutes, but it's very hard to monitor it.

MR. JENSON: Extremely because trucks park here at night when there's an overflow in the truck stop. They park right along here on the other side of my road and we can see the ruts and so forth. My concern – light now I realize the concern the light going this way. I do sit back in the summertime there's considerable trees, in the wintertime the trees don't exist. I'm concerned because obviously there's going to be a nice gas sign out here. One of the other things that you're going to get I'm sure is the traffic coming off the thruway for a 24-hour station because over this thruway bridge there's a direct site that everyone uses. I know in my family they say that's where Craig lives, you can see from the bridge

to the Main Care so when they see it on the thruway and say there's somewhere that's open. How much traffic is that going to increase at 2:00 or 3:00 in the morning. I know you can't answer this but I'm just asking.

MR. SPIEK: Yeah that's one of the items that the traffic study will also address or to look at this site here, it will also look at the other gas stations that are in the City of Albany side of the property because chances are good that some of that traffic that does see us off the thruway will say alright Cumberland way down here, Mobile right here but that will be factored into the study also.

MR. JENSON: And one more question. Trash – would it be the responsibility of Cumberland Farms to maintain this area as well as all of this area for trash that either blows over or it dumped or the cups that are thrown or any of that because presently it isn't maintained by Main Care. It is picked up by me quite honestly and I don't have the time to do that to control this side of the street. Is there anything in the Code that says it has to be maintained by...

MR. SPIEK: Generally speaking our client if you drive around and look at some of the sites, they're pretty good about maintaining their own property. And obviously we can't control everybody that drives off the site. We like to think that we do the best we can with it. There are limitations and liability issues with cleaning up State right of ways to and stuff like that, but I can pretty much tell you that we'll take care of our own property and see what else can be done.

MR. JENSON: Thank you.

MRS. JENSON: Is there going to be a picnic area?

MR. SPIEK: We're not proposing any outdoor seating at this time, picnic tables or anything along those lines.

MRS. JENSON: Okay.

CHAIRMAN HODOM: I think you'll find Cumberland Farms a neighbor friendly organization and they'll probably do a pretty good job of maintaining the property if in fact it's approved, but again it was part of the one of the resolutions that the Big "M" Stop maintain their property, now the DOT right of way is another issue.

MRS. JENSON: With all these resolutions that have now come to light, are they public record?

CHAIRMAN HODOM: Yes they are.

MRS. JENSON: How do they get enforced if they're not being enforced?

CHAIRMAN HODOM: As best as possible.

MRS. JENSON: Who do you contact them to enforce them I guess?

CHAIRMAN HODOM: The Building Department.

MRS. JENSON: The Building Department to say that - - I also think that in one of the resolutions there was supposed to be a fence put up along - - against Corning Hill at one time to stop the trash from coming and blowing over. I haven't seen the resolution. I'll have to take a look at them myself because it seems that a lot more could be done with the current truck stop. I mean do you have to be on the phone for 24-hours to make them live up to what they're supposed to be doing?

CHAIRMAN HODOM: No, I mean if they're contacted and there's a violation to my knowledge they're very - they act very quickly.

MRS. JENSON: Okay. There was one thing that was mentioned earlier in the evening about a cow?

MS. BITTER: Oh it's attached to the copula.

MRS. JENSON: I'm concerned about the cow, we can't have flags but we have a cow.

CHAIRMAN HODOM: It's like a weathervane; it's just very small. It's a weathervane on top of a copula.

MRS. JENSON: Okay.

CHAIRMAN HODOM: Ma'am could you just introduce yourself?

MRS. JENSON: Oh, I'm sorry I'm Doris Jenson. I'm at Corning Hill over on Route 9W. We say proposed 24/7, is there anyway to change that - - is that open to change?

CHAIRMAN HODOM: That something the Board will look at and I'm sure the Cumberland Farms and their representatives will probably look at it. If there's a big enough concern I'm sure they will take a look at it.

MRS. JENSON: Has there been any kind of study for a need for this?

CHAIRMAN HODOM: A need?

MRS. JENSON: Yeah. We have a Dunkin Donuts and Wal-Mart; we have a Stewarts. There is - - this is, you know coming becoming quite the commercial area, which is I guess not the end of the world but it - - we really need this every time we turn around.

CHAIRMAN HODOM: If they were only going to put in the Cumberland Farms and the restaurant it's allowed by use in the Town Code. The reason they're here in front of us is

for the gasoline stations and the diesel station.

MR. PLATEL: And drive-thru.

CHAIRMAN HODOM: And the drive-thru.

MRS. JENSON: And this drive-thru that they keep talking about regardless of what type of donut it is are we talking just a donut?

CHAIRMAN HODOM: Well that's what we have in front of us at this time.

MRS. JENSON: Because they said there's no cooking, we're not going to end up with a McDonalds in our back yard.

CHAIRMAN HODOM: As far as the information that we have in front of us today it's a proposed donut shop.

MRS. JENSON: Okay. And also all the stuff will be dropped off and picked up with delivery, like the papers will be dropped off to Cumberland Farms – is there going to be a lot of delivery traffic as well, not just the trucks picking up diesel and a car getting gas.

CHAIRMAN HODOM: There will be deliveries certainly.

MRS. JENSON: That is definitely a fact, that will happen there because your donuts will be getting dropped off and they'll be getting all these big trucks dropping...

CHAIRMAN HODOM: That's another issue we can address.

MRS. JENSON: Where is it going to be delivered?

CHAIRMAN HODOM: A concern about times of delivery and so forth we can address that as well.

MRS. JENSON: Okay. I think that's it for now, thank you.

CHAIRMAN HODOM: Thank you. Any other questions? We won't close the hearing this evening, we'll adjourn it to a date uncertain when you are able to put together all the information that was requested. Contact Karen or Mark and we'll re-establish a new hearing date and go from there.

MS. BITTER: Now if we were to make your next meeting just sake is it even possible or not possible? So we have to submit by a certain timeframe to make the October meeting I guess you would be talking about.

MS. GUASTELLA: My deadline is the Thursday before the public hearing just to get it re-scheduled unless you call me and I will call Mike and possibly get a query from the

Board and re-schedule it that way.

MS. BITTER: Okay. So you don't already have an October meeting date yet?

CHAIRMAN HODOM: We've got how many hearings? September is pretty well taken up, September 7th, September 21st and we have two new applications this evening, which we'll probably set for that date. So you're probably looking into October.

MS. BITTER: Can I ask the question since we're talking about it next week this comprehensive plan could be adopted. What exactly would happen with this submission, obviously we've had an extensive discussion and we know what the neighbor's comments and concerns are and we've heard of yours and we have a package to submit now. Would that package get submitted and then just get transferred to the Planning Board or what exactly would be the procedure with that?

ATTORNEY MOORE: At a minimum it would get - - well it all depends on whether the Town Board passes the code in it's present form, which again would transfer this to the Planning Board, so yeah we'd take this record and these submissions and send them to the Planning Board. Based on what we know of the proposed code that's going to be before the Board next week, the setback requirements will change so that would require a new or a modified application that would probably come back to this Board for the setback or area variance's, but obviously we can let you know after the 24th or you can certainly contact the Town clerk yourself and you can see what transpires.

CHAIRMAN HODOM: Right that's my understanding of course we would rather have you come in front of us because we're probably the better Board to come in front of.

MS. BITTER: I can appreciate that.

MRS. JENSON: Do we get notified again?

CHAIRMAN HODOM: Yes you will.

MRS. JENSON: So the next time the Board meets...

CHAIRMAN HODOM: For the next meeting but when we set something for a date uncertain we do re-advertise for it. Any other questions? As soon as we have the information depending on which way the Town Board goes we'll act on that.

MS. BITTER: Thank you very much.

CHAIRMAN HODOM: Thank you all for coming this evening.

Hearing adjourned to a date uncertain 9:00 p.m.

- - -

The next order of business this evening is a re-opening of a public hearing for a Variance under Article X, Highway Frontage & Access, Section 128-39, Residential Lot to Abut Accepted Highway or Street & Article X, Highway Frontage & Access, Section 128-41, Driveway Placement on Residential Lots requested by Joseph Rappazzo for property at 126 Smultz Road, Glenmont, New York. The Applicant is proposing a 1-lot subdivision of a parcel, which will not meet the 28-foot road frontage access required for an existing residence and the driveway will not meet the abutment requirements to the highway at premises 126 Smultz 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 to subdivide the existing lot, which does not have highway frontage. With the split, the residential portion would be required to meet the 28-feet of highway frontage and also have the driveway located in the abutment of the highway. At this time the property is accessed by an easement and does not meet these requirements.

The property in front of the Board is located in a Light Industrial District and the structure is occupied as a single-family dwelling. The remainder of the property is a proposed golf course, which is currently under construction.

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 August 17, 2005 at 7:45 p.m. at the Town Offices, 445 Delaware Avenue, Delmar, New York to take action on application of Joseph Rappazzo, for Variance under Article X, Highway Frontage & Access, Section 128-39, Residential Lot to abut Accepted Highway or Street of the Code of the Town of Bethlehem for a one lot subdivision of a parcel, which will not meet the 28-foot road frontage access required for an existing residence at premises 126 Smultz Road, Glenmont, New York. Michael C. Hodom, Chairman, Board of Appeals. Attached to this Notice is notarized proof of its publication in the August 10, 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 the last time we were here. Just introduce yourself to us and tell us what's happened that's new.

MR. RAPPAZZO: Joe Rappazzo, 126 Smultz Road, Glenmont. Since the last time we had a meeting I actually widen the road to 34 foot. I've also added 20 foot of culvert

yesterday to the top of the hill, which wasn't wide enough so I actually put another 20-foot length of culvert in. The pond - - requested that we do something with so I actually filled that in. I put all new fill in on top of it so that takes care of the pond problem. We also notified the radio station, which gave us an access of 50-foot right of way through their property. So instead of having 10 feet we have actually 50-foot right of way now and that's about it for what we've done. I've also done the - on the map we also had to get a new - for the radio station it wasn't the right radio station name so we went and we got clarified and I went and got copies. That's the new copy that you have so we went and done that and that's about it.

CHAIRMAN HODOM: Joe I was out there the day and we talked and I know you have widened the roadway and we also talked about whether or not you've agreed to construct the roadway in compliance with the Town of Bethlehem Town Engineers recommendations and I think at that time you said you had no problem doing that.

MR. RAPPAZZO: Right, well like I say I haven't seen that copy that - remember I said that I didn't see the copy of what the Town required. So I haven't really seen that copy so I don't know exactly what the Town wanted.

CHAIRMAN HODOM: Well he's looking for a 24-foot roadway to accommodate 2-way traffic.

MR. RAPPAZZO: Okay that's 34 foot now. What I put in is actually 34 foot now and where we looked at on the top of the hill I actually added 20 foot on that yesterday. So that on the top where you measured across that's actually 34 foot across now. So I did put a 20-foot length of pipe on there.

CHAIRMAN HODOM: This was a - actually this was a request from the Board to the Town engineer after our last hearing and really it comes about because of the golf course. If it was just a drive to your residence we wouldn't be having this discussion. There are liabilities that we must address for safety issues as a Zoning Board. I'll read to you what it says here and you can also have a copy.

MR. RAPPAZZO: Right, I believe Karen gave me copy.

CHAIRMAN HODOM: Did she?

MR. RAPPAZZO: But I just haven't - - I mean we...

CHAIRMAN HODOM: The only thing I don't agree with here is that you have to take it down to the railroad tracks. I think my recommendation to this Board would be and I assume that they would agree with me is that if you would construct the roadway in - now you have a 50-foot right of way, up to where the Town road ends. He's asking you to change some of the Town road and I don't think we can do that. That's up to the Town, but they have a sign where their maintenance ends...

MR. RAPPAZZO: That's correct.

CHAIRMAN HODOM: If you were to agree to as a condition if this Board were to approve your application comply Mr. Deyoe, the Town Engineers recommendations, which are the standard specifications for the Town of Bethlehem. From your house down to where the Town roadway ends where they maintain it I think that's all we're asking. Mr. Deyoe is looking to bring it down to – for the proposed site to the railroad crossing. That's about 150 feet of Town road or more.

MR. RAPPAZZO Jr.: 750 feet.

MR. RAPPAZZO: 750-feet.

CHAIRMAN HODOM: Is that what it is? So I don't think you're responsible to do that I mean if the Town is not happy with their roadway then let them change it. And if you're willing to agree to that condition then that's the way the Board would address your application. Again the two letters that we received from Regent didn't really address that they, you know it said – the first one was giving the right of way to use the right of way, which you already have. And the second one apparently was very recent where they've given you a 50-foot easement to – it doesn't say that in there but I assuming to do what you have to do to meet the Town requirements as far as the roadway.

MR. RAPPAZZO: The problem is we really don't a whole bunch of, you know for the standard stuff...

MRS. RAPPAZZO: The problem is I mean we could approve this is somebody could give us the money to do it.

MR. RAPPAZZO: Normally if we were to – I mean we've got a base that I put in. It used to be blacktop but now it's 34 foot of a foot-and-a-half of shale. I mean I put it up to a foot and a half of shale through the whole road and – but we were supposing we wanted to do is we want to put crusher run on it and then put...

MR. RAPPAZZO, JR.: Sprayed on calcium.

MR. RAPPAZZO: Sprayed on calcium, which a lot of roads do. I mean that's - - but we don't have the money to go ahead and blacktop a road. It's going to cost us a 100,000 dollars to go...

MR. RAPPAZZO, JR.: 45,000.

MR. RAPPAZZO: Up that road, you know with the blacktop, I mean as far as the base and everything it's there.

MR. MICELLI: Joe you lost me for a second.

MR. RAPPAZZO: Yes.

MR. MICELLI: Coming down from your property are we talking blacktopping that just to where the sign says...

MR. RAPPAZZO: Yes.

MR. MICELLI: Okay so beyond that we're not worried – it would be 45,000 to do that 30-foot...

MR. RAPPAZZO: Right just that little, that little piece is 45,000 dollars.

MR. RAPPAZZO, JR.: And that 24 feet would actually wider that we have to blacktop then what the Town road actually is most of the way down to the tracks. Unless they widen their section, I mean maybe we could possibly match theirs and go up.

MR. MICELLI: Right because seeing it coming down the hill today the way you have it correctly is 34 feet and it's no problem passing even if you had to go over a little bit more towards the guard rails going down.

MR. RAPPAZZO: Definitely.

MR. MICELLI: You're pretty safe and then when you get to the Town's road you're narrower again.

MR. RAPPAZZO, JR.: And there's no guard rails.

MR. MICELLI: And all the way to the point to the railroad tracks and once you're over the tracks then you can...

MR. RAPPAZZO: Right then you can double pass again.

MR. MICELLI: Then there's no problem so I would imagine that would be that 700-foot strip from that sign, okay now I understand.

MR. BROOKINS: I was up there today and one of Beer's vehicles was coming down as I was going up and that 18-wheeler was filling up a good chunk of the road but that's not what we're talking about here in terms of the size of the road, but the point you make I think is an important point with all due respect to the Town Engineer who I'm sure would love and most of the Town officials would love private individuals to help us with our Town road's. The reality is I would be hard pressed to support having you have a – or requiring you to have a better road then the Town road to your road. As Greg Sagendorph points out there's – at one point there's 13, by his letter of the 23rd of June, 13 feet from I think, my guess is it's right about at the railroad crossing and then that next section. And then he does point that at the curve it widens, which is appropriate. It was obvious that you've been doing some work up there and it didn't go without our attention I guess.

MR. RAPPAZZO: Right and I also, you know when you're talking, you know the size trucks that are going over it if we were to blacktop it now we still have a lot of work to do. We've got, you know sod to come in, we've got heavy equipment to come in again. We've got sprinkler systems to put in so if we were to put a road in we'd probably destroy it again and have to do it all over again so that's one of the reasons that we're asking if we can stone it and tar it and calcify it.

MR. RAPPAZZO, JR.: We do have an estimate for the golf course construction. We plan to crusher run that whole section when we do eventually get the financing for the golf course, that's when we – after all the heavy equipment leaves and everything is when we're going to do that.

MR. RAPPAZZO: I mean I want it safe for people coming in and out and that's the reason we went through the last time. We've done the approvals that the Town wanted, I mean I put along the guard rails from the bottom all the way up. We put the pipe in and we were open to the public I mean we had a lot of cars coming in getting meat and stuff every day and that's why you know it's another reason why – I don't understand you know now why, you know it's got to be wider or whatever. I mean I don't mind widening the road that's fine I don't mind doing that it's just that we were open to the public and we came to the Town and we had everything done I mean we had – John was there and he approved everything it's just that we can't finance everything.

MR. MICELLI: Joe how long were you open. I don't remember the meat market.

MR. RAPPAZZO: Okay we were open 5 years and besides the radio was in progress then to I mean they had cars 24 hours a day.

MR. MICELLI: So you had traffic going both ways up and down that road.

MR. RAPPAZZO: Yes we had traffic going both ways.

MR. MICELLI: From 144 up to your residence.

MR. RAPPAZZO: Yes.

MRS. RAPPAZZO: And delivery trucks.

MR. RAPPAZZO: And delivery trucks I mean we had all our suppliers coming. We did have thruway traffic and the road right now is actually way wider than it was.

MR. MICELLI: Was there any incidents in that period of time where...

MR. RAPPAZZO: None what so ever.

MR. MICELLI: Accidents, nothing.

MR. RAPPAZZO, JR.: I had to walk down in the snow to catch the school bus. They said the school bus didn't have room to turn around up in my dad's 52-acre parcel so I had to walk down to 144 to get the bus.

MRS. RAPPAZZO: Well that wasn't so bad your sister had all those problems when she was passing out on the road to and they wouldn't bring her home.

MR. MICELLI: It would have a nice sled on the top of that hill.

MR. RAPPAZZO: But that's where we are, I mean that's – I don't think there's anything else I can say. If you've been there you know what it is.

MR. RAPPAZZO, JR.: As far as the Town specs, their road isn't even up to those specs. Their road isn't even up to those specs, they might have 2 inches of binder or something. They don't have the full 4 inches of blacktop and they don't have to base under there. It's gravel it's not the crushed stone and stuff which they're requiring us to put in there. As far as – It's my belief that the crusher run, the 4 inches of crusher run compacted and sealed with the spray on calcium would be sufficient and up with the base that we already have in there.

CHAIRMAN HODOM: Do you have any testing done on the base that you have in there? Did anybody come in and check it for density?

MR. RAPPAZZO, JR.: There's no compaction test done.

CHAIRMAN HODOM: And compaction?

MR. RAPPAZZO, JR.: No.

MR. RAPPAZZO: Well when you can run 10-wheelers over it full of sand and you know cement trucks full of concrete and the road doesn't go any place you know it's compacted.

CHAIRMAN HODOM: Well the portion that you've just improved...

MR. RAPPAZZO: Right.

CHAIRMAN HODOM: Haven't been tested and there are ruts and so forth even from your equipment in that portion.

MR. RAPPAZZO: Right, but I mean coming up the road I mean that's - - we've been drawing a lot of, you know fill going in and out so I mean – I'm sure I mean if that's what you wanted I mean we could do a test for it, but I'm sure that you'll see it's well compacted.

MR. BROOKINS: Didn't we, excuse me, didn't we have something from the fire department, didn't they bring a truck up there?

MR. RAPPAZZO: Yes they did.

MR. RAPPAZZO, JR.: Their ladder truck.

MR. PLATEL: From a previous time, yes.

CHAIRMAN HODOM: But that was the...

MR. WIGGAND: The fire department does not have a problem with it.

MR. RAPPAZZO, JR.: Pardon me?

CHAIRMAN HODOM: That was a 13-foot wide road that they came up and there's no question that the center part of that roadway, which has been there since you folks have been there, which is primarily 13-foot wide. It's probably very sound and over the years it's just been compacted and compacted and so on. The new portions that you just built, you know why don't this I mean it doesn't sound like you want to comply with the Town Engineer's recommendation, why don't you put together a specification of what you want to do to make it suitable for 2-way traffic. What you've already done; what you plan to do and when you plan to do it if the other Board members agree with that.

MR. WIGGAND: Well exactly what are you asking for Mike?

CHAIRMAN HODOM: I'd like to know what they intend to do in improving that roadway other than just putting in shale in there because that's all he's done right now.

MR. RAPPAZZO, JR.: After all the heavy equipment and stuff has gone we have in our budget...

CHAIRMAN HODOM: But whatever your final determination is once you've got all your heavy equipment up there, before you open it up to the public...

MR. RAPPAZZO, JR.: Right, of what we're going to have...

CHAIRMAN HODOM: What you're going to do to improve that roadway to make it acceptable.

MR. RAPPAZZO, JR.: Right, okay.

MR. MICELLI: Mr. Chairman just their section up to that sign?

CHAIRMAN HODOM: Yes, I would not ask them to...

MR. MICELLI: Forget about the Town part.

CHAIRMAN HODOM: To do anything on the Town road I mean I don't think we can do that.

MR. WIGGAND: No that wouldn't be fair.

CHAIRMAN HODOM: And Mr. Greg Sagendorph feels that that portion is acceptable for 2-way traffic but I'm just very at ease – ill at ease I should say, you're going to open that area to the public and I understand that the butcher shop was but that didn't come in front of our Board, I told you that...

MR. RAPPAZZO: No, I realize that.

CHAIRMAN HODOM: The only part of that that came to us was the sign and I don't know what the Town was thinking when they gave you permission to open that up to the public on a 13-foot wide roadway but I wasn't there and that's their decision. I think it's our obligation as a Zoning Board to protect the life and safety of the public and a 13-foot wide roadway is not adequate for 2-way traffic as far as I'm concerned. I don't know what the other Board members feel but I would like to see what you propose to do once your work is done because I understand that the golf course does not need a special permit as referred to in the engineers letter here. And he's working with you as far as parking and sanitary facilities and so forth. So before you open it to the public I'd like to know what you intend to do to improve that roadway to make it accessible for 2-way traffic. How soon could you put some kind of specifications to us?

MR. RAPPAZZO, JR.: Within a few days. I'd like to set up somebody to do compaction tests and such.

MR. RAPPAZZO: If that's what you want then we can do that, but you know....

CHAIRMAN HODOM: How do the other Board members feel?

MR. WIGGAND: Well I do certainly see an improvement Mike in what they've done already. I can see an improvement that two cars can pass...

MRS. RAPPAZZO: We travel that road ourselves to.

CHAIRMAN HODOM: If it was strictly for the residence...

MRS. RAPPAZZO: I'm more concerned about me and the family whether the...

CHAIRMAN HODOM: Well if it was strictly for the residence I wouldn't – I don't have a problem with it.

MR. RAPPAZZO: I mean instead of being 13 foot, we're 34 foot and you know that's

quite a difference. I mean, you know the cars 9 foot wide or 8 foot so that's 16 foot...

MRS. RAPPAZZO: He's talking about the safety of the road.

MR. RAPPAZZO: I know, I know what he's talking about.

CHAIRMAN HODOM: Did you compact, did you put a roller on it, a vibratory compactor?

MR. RAPPAZZO, JR.: The trucks.

CHAIRMAN HODOM: Well I didn't see any trucks on the side. I saw some tracks from your dozer, but that's all I saw on them.

MR. RAPPAZZO: Well that's because I just leveled that, just skimmed the top off and knocked the bank down because like I told you the radio station – we didn't have the right really to even to do this stuff...

CHAIRMAN HODOM: Correct.

MR. RAPPAZZO: And so by getting the okay from the radio station I said well I'll knock the edge back and level it off and get back as far as I can so when you do come down that you can see that we did widen it to 34 foot and this way here as you go up the road there's like this grass growing there. I was trying to get it down so you could see where we went up and then of course where you were yesterday I actually put another section of pipe in of 20 foot. So now when you go up around the corner it's actually widened up to 34 foot up there on the top where you said it was narrow coming down. I actually widened that up.

CHAIRMAN HODOM: Yes right at the curve there.

MR. RAPPAZZO: Right. I put another 20-foot section of pipe in there yesterday.

MR. BROOKINS: I would agree Mr. Chairman with your request and I think it would actually a submission from you folks that address these issues would actually strengthen your application but in addition to that I think it would probably help your business plan and your ultimate financing objectives for the larger project because probably any bank or venture capitalist would have the same questions. How are people going to get up and down and so if you could give us some sense of you know some milestone table as to when you plan to have this done, when you plan to have that done, compaction studies or the aggregate that you've got in and what you plan on that and some measurements at key points. That I think would certainly help us.

CHAIRMAN HODOM: Is that acceptable?

MR. RAPPAZZO, JR.: Yes it is. One of the latest person I've been dealing with at the

bank did say that, the road needs a little work and we do plan on doing it.

CHAIRMAN HODOM: When you think you can have that information to us?

MR. RAPPAZZO, JR.: Today's Wednesday, no later than Monday.

CHAIRMAN HODOM: Okay. If it's no later than Monday we can re-schedule the hearing for 21st. Is that okay with the Board?

MRS. O'BRIEN: Yes.

MR. MICELLI: Yes, at 7:30?

CHAIRMAN HODOM: At 7:30, sure, but please give us the information that we need to move on.

MR. RAPPAZZO: Now do you actually want the results of the compaction test now?

CHAIRMAN HODOM: Yes.

MR. RAPPAZZO: Okay.

CHAIRMAN HODOM: I'd like to know the depth of the shale and then once you get all your heavy work done, what's your proposed finished product is going to be not only the materials but if you don't want to go 24 feet how wide are you going to go?

MR. RAPPAZZO: Right.

CHAIRMAN HODOM: And let us make a judgment on that, but and not that you agree with me if you don't want to go 24 feet, how wide are you going to go and let us make a judgment on that. And I think you agree with me right now it's not really acceptable.

MR. RAPPAZZO, JR.: We're going to go as far as we can because, again it's our business and it's a family venture and we're trying to get anybody hurt that's for sure.

CHAIRMAN HODOM: That's right it's your liability as well.

On a motion made by Chairman Hodom, seconded by Mrs. O'Brien and unanimously carried by the Board to adjourn the public hearing and re-schedule it on September 21, 2005 at 7:30 p.m.

Hearing Adjourned 9:30 p.m.

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The next order of business was to consider the application of Nicholas & Cherises Vitello, 207 Maple Avenue, Selkirk, New York. The application was found to be in order and Mr. Micelli made the following motion:

An appeal having been filed with the Board of Appeals of the Town of Bethlehem, Albany County, New York by Nicholas & Cherise Vitello for Variance under Article X, Highway Frontage and Access, Section 128-39, Residential lot to abut accepted highway or street for the construction of a residence, which does not meet the abutment requirement at premises 207 Maple Avenue, Selkirk, New York, it is hereby ordered that a public hearing on this matter be held September 21, 2005 at 7:45 p.m., at the Town Offices, 445 Delaware Avenue, Delmar for the purpose of hearing all those interested in this matter.

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

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The next order of business was to consider the application of Thomas & Susan Cunningham, 25 Middlesex Drive, Slingerlands, New York. The application was found to be in order and Mr. Micelli made the following motion:

An appeal having been filed with the Board of Appeals of the Town of Bethlehem, Albany County, New York by Thomas & Susan Cunningham for Variance under Article XVIII, Rear Yards, Section 128-79, Required Depths for the construction of a screened porch addition, which will encroach into the rear yard setback requirement at premises 25 Middlesex Drive, Slingerlands, New York, it is hereby ordered that a public hearing on this matter be held September 21, 2005 at 8:00 p.m., at the Town Offices, 445 Delaware Avenue, Delmar for the purpose of hearing all those interested in this matter.

Mrs. O'Brien 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 Malka Evan for Variance under Article XI, Accessory Uses, section 128-36 Private Garages in Residence Districts for construction of a detached garage addition with an existing 3-car attached garage at premises 22 Devonshire Drive, Slingerlands, New York. The following points were brought up by the Board members that approved the application: An adjoining neighbor was granted a Variance of which exceeded the door limit for a detached garage. The location of the proposed garage is set back from the road and will not be visible. There is no detriment to the neighborhood. The following points were brought up by Board members that opposed the application: The proposed garage exceeds the Code requirements. It is not necessary to have more than 3-doors. It's a residential area and there is no need for additional garage space. On a motion made by Mr. Wiggand, seconded by Mr. Brookins, on a vote 3 to 2, the Board directed Attorney Moore to prepare a proposed resolution granting the Variance, for presentation at the next Board meeting on September 7, 2005.

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The next order of business was to consider the proposed resolution of Betty Nolan, 1250 Route 9W, Selkirk, New York 12158.

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

RESOLUTION

WHEREAS, the Zoning Board of Appeals for the Town of Bethlehem held a public hearing on November 3, 2004, March 16, 2005 and June 15, 2005 to take testimony and comments on the application of Betty Nolan (“Applicant”) for a use variance under Article VI, Permitted Uses, Section 128-23, Rural Districts Not Zoned, to install a 32 foot by 48 foot canopy with fuel pumping stations and underground fuel storage tanks at an existing convenience market, on premises located at 1250 Route 9W, Selkirk, New York; and

WHEREAS, the Board reviewed the testimony and documents presented at the public hearings, including a review of the environmental impacts that may arise as a result of this project; and

WHEREAS, the Board has determined that there are no significant environmental impacts associated with the project; and

NOW THEREFORE, BE IT RESOLVED THAT:

The Board adopts a negative declaration pursuant to the New York State Environmental Quality Review Act as set forth on the attached document.

August 17, 2005

Michael C. Hodom
Chairman
Board of Appeals

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
Robert Wiggand Marjory O'Brien Gilbert Brookins Lennie Micelli	Michael Hodom	None	None

(Resolution filed with the Clerk of the Town of Bethlehem on August 18, 2005.)

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The next order of business was to consider the proposed SEQRA resolution of Betty Nolan, 1250 Route 9W, Selkirk, New York.

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

**STATE ENVIRONMENTAL QUALITY REVIEW ACT
DETERMINATION OF SIGNIFICANCE**

This notice is issued by the Zoning Board of Appeals of the Town of Bethlehem ("Board"), acting as lead agency, in an uncoordinated environmental impact review, pursuant to and in accordance with Article 8 of the New York State Environmental Conservation Law and the regulations promulgated under Article 8 and set forth at Part 617 of Title 6 of the New York Code of Rules and Regulations (collectively referred to as "SEQR").

The Board has determined that the proposed installation of a 32 foot by 48 foot canopy with fuel pumping stations and underground storage tanks at an existing convenience market (collectively "Project"), will not have a significant impact upon the environment and that a negative declaration pursuant to SEQR may be issued. Reasons supporting this determination are fully explained below.

Applicant: Betty Nolan

Project Name: Addition of Gasoline Station and Associated Facilities to Existing Convenience Market

SEQR Status: Type [_____] Unlisted: XX

Project Description: Installation of a 32-foot by 48-foot canopy with fuel pumping stations and underground storage tanks at an existing convenience market.

Location: S.B.L. No. 121.04-2-1, 121.04-2-7, Town of Bethlehem, State of New York ("the Project Site").

Reasons Supporting This Determination:

1. The Board as Lead Agency conducting an uncoordinated review, has considered the full scope of the Project and has reviewed the environmental assessment form and the application of the Applicant for a use variance, and all supporting documentation.
2. The proposed use is consistent with existing land uses in the area.

3. The Project Site has no unique or unusual land forms (cliffs, dunes or other geological formations), and the Project Site is not used by the community as open space or recreation areas.
4. There will be no air emissions from the Project.
5. The Project will not substantially affect water discharges from the Project Site.
6. The Project will not generate solid or hazardous waste.
7. The Project will not significantly alter the visual and/or aesthetic resources in the area of the Project Site and will not have significant adverse visual impact upon the scenic quality of the landscape.
8. The Project will not significantly affect plants and animals in and around the Project Site.
9. The Project will not impact agricultural land.
10. The Project is not substantially contiguous to, nor does it contain, a building, site or district listed on the State or National Registers of Historic Places, and thus will not have an adverse impact upon historic or archeological resources.
11. There are no anticipated changes in traffic flow to and from the Project Site as a result of the Project.
12. The Project will not generate any unpleasant noise or odors.
13. There will be no adverse environmental impacts as a result of the Project.

For Further Information Contact:

Town of Bethlehem
Zoning Board of Appeals
445 Delaware Avenue
Delmar, New York 12054
Attn: Karen Guastella, Secretary

Copies of this Negative Declaration shall be filed with the Town Clerk of the Town of Bethlehem.

Authorized Signature

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
Robert J. Wiggand			
Gilbert Brookins			
Marjory O'Brien			
Leonard Micelli			

(Resolution filed with the Clerk of the Town of Bethlehem on August 18, 2005.)

The next order of business was to consider the proposed resolution of Betty Nolan, 1250 Route 9W, Selkirk, 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 VI, Permitted Uses, Section 128-23, Rural Districts Not Zoned, requested by Betty Nolan for property at 1250 Route 9W, Selkirk, 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 3, 2004, March 16, 2005 and June 15, 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 install a 32-foot by 48-foot canopy with three fuel-pumping stations and 2 – 10,000 gallon underground storage tanks in order to operate a retail motor fuel filling station. This is not a permitted use listed in the Town Code in a Rural Not Zoned District (RNZ). The existing structure is operated as a convenience market.

At one time the Town Zoning Code stated that all operations such as this would require a Special Exception in any part of the Town. That requirement was repealed and deleted sometime in the 1980's. After that time, the Applicant's proposal would have been a permitted use as the Code was then being interpreted in the RNZ Districts of the

Town. Since August 7, 2003, due to a Zoning change, the Applicant's proposed use is not a listed permitted use or a use permitted by Special Exception.

By Resolution dated August 27, 1980, the Board denied a previous request for a Special Exception to allow the construction of underground gasoline storage tanks and above ground fuel dispensers at the property.

By Resolution dated August 27, 1980, the Board denied a previous request for a Special Exception to allow the construction of underground gasoline storage tanks and above ground fuel dispensers at the property.

Following the 1980 determination, there was formerly a Hess gasoline station directly across the street from the property (a permitted use at the time). There is also a "Stewart's" facility with gasoline dispensing systems located several hundred feet from the property on Route 9W, in a different zoning district.

The Applicant's submissions to the Board included a conceptual site plan, and a written statement from a trade association regarding the trend in the industry to include gasoline-dispensing facilities at convenience stores.

The Applicant provided the Board with information indicating that she has realized limited profits from the property in recent years.

At the March 16 and June 15 public hearings, the Applicant provided additional information and modified site plans to the Board including: removal of the proposed kerosene pump from the rear of the building; modifications to the curb cuts and traffic flow patterns on the site plan; increased green space; a letter from the NY Department of Transportation confirming that the modified curb cuts were acceptable entrances onto State roads; reduction in the size of the proposed signs on the property, so as to avoid the need for a variance for the signs; traffic studies addressed to the increased traffic that is expected to be generated by the addition of the proposed gasoline dispensing facilities; and a statement addressed to the financial impracticability of converting the property to a use permitted by the Zoning Code.

By Recommendation dated October 21, 2004 (Case No. 04-10/04-021), the Albany County Planning Board recommended that any approval issued by the Board include a requirement for review by State and County Agencies with jurisdiction over other aspects of the proposed project.

CONCLUSIONS OF LAW

Based on the above Findings of Fact, the Applicant has demonstrated that the zoning regulations and use restrictions presently applicable to the property have caused unnecessary hardship, and the Board has determined that the requested use variance will be granted.

The Applicant has demonstrated, based on competent evidence, that she cannot realize a reasonable return at the property under the current regulations and restrictions of the Zoning Code.

The hardship related to the property is unique, and does not apply to a substantial portion of the neighborhood.

The requested use variance will not alter the essential character of the neighborhood.

The alleged hardship necessitating the use variance has not been created by the Applicant.

The requested use variance is the minimum variance that is necessary and will preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

Accordingly, the Board grants the Applicant's request for a Use Variance on the following conditions:

14. The project will be constructed in strict conformity with the testimony presented to the Board at the public hearings, and with all documents, plans, reports and other material submitted with the application;
15. The Applicant shall submit the project to the Town Building Department and Planning Board for any necessary approvals or permits;
16. The Applicant shall comply with the Albany County Planning Board's Recommendation for project review by the involved or interested County and State Agencies;
17. The proposed project will be completed within two (2) years of the date of this Resolution.

August 17, 2005

Michael C. Hodom
Chairman
Board of Appeals

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

YES	NO	ABSENT	ABSTAINING
	Michael Hodom	None	None

Robert Wiggand
Marjory O'Brien
Gilbert Brookins
Lennie Micelli

(Resolution filed with the Clerk of the Town of Bethlehem on August 18, 2005.)

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The next order of business was to consider the proposed resolution of Rebecca Smiley, 185 Krumkill Road, Slingerlands, New York.

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 XVI, Front Yards, Section 128-67, Fences and Walls, requested by Rebecca Smiley for property at 185 Krumkill Road, Slingerlands, 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 July 20, 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 6-foot solid fence along the front yard property line. The Town Zoning Code allows for a solid fence to be only 4-feet in height. The proposed fence will be 2-feet higher than allowable.

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

The Applicant was the victim of a criminal act some years ago. The perpetrator of this act, a former acquaintance of hers, is to be released soon from incarceration.

At the recommendation of the Town Police Department, the Applicant has implemented a number of safety measures and procedures in the home to protect herself from further threatening behavior by this individual.

The Applicant's home has direct frontage on Krumkill Road. Among the safety measures recommended to her is the installation of a 6-foot solid fence on the property line along Krumkill Road, to block any view into the property or the home from the Road.

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

Other than the application and its supporting material, the Board has received no documents from any person related to this proposal.

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 Applicants at the July 20, 2005 hearing. In particular, the Applicant shall strictly comply with the 6' height limitation for the fence;

2. The Applicant shall stain the fence white, and shall maintain the fence so as to present an attractive appearance from the public road;
3. If the property is sold, the fence shall be removed, or reduced to a height conforming to the limitations of the Town Zoning Law.
4. The project shall be completed within one (1) year of the date of this Resolution.

August 17, 2005

Michael Hodom
 Chairman
 Board of Appeals

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

YES	NO	ABSENT	ABSTAINING
Michael Hodom	None	None	None
Robert Wiggand			
Marjory O'Brien			
Gilbert Brookins			
Lennie Micelli			

(Resolution filed with the Clerk of the Town of Bethlehem on August 18, 2005.)

On a motion made by Mrs. O'Brien, seconded by Mr. Micelli, and unanimously carried by the Board, the minutes of the July 20, 2005, meeting were approved.

The meeting was adjourned on a motion made by Mrs. O'Brien, seconded by Mr. Brookins and unanimously carried by the Board.

Meeting Adjourned: 10:05 p.m.

Respectfully submitted,

Secretary