

**TOWN OF BETHLEHEM
BOARD OF APPEALS
December 7, 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
Gilbert Brookins
Leonard Micelli

Michael Moore Attorney to the Board

Mark Platel Building Inspector

ABSENT: Robert Wiggand
Marjory O'Brien

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

- - -

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 continuation of a public hearing for Variance's under Article XIII, Use & Area Schedules, Section 128-100 A, Minimum Front, Side & Rear Yards, Article VI, Supplementary Regulations, Section 128-35 D (1), Specific Regulations for Districts, Article VI, Supplementary Regulations, Section 128-54 E (4), Signs requested by Cumberland Farms (Applicant), The Big Main Truck Stop (Owner) for property at 68 Route 9W, Glenmont, New York. The Applicant wishes to demolish the existing building and construct a convenience mart with an attached drive-thru 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. This is a re-opening of a previously adjourned public hearing. The Applicant is proposing to demolish the existing Big M Truck Stop and construct a new Cumberland Farms Convenience Mart with Gas Sales and drive -thru Dunkin Donuts.

The proposed structure will have 2-front yards, which will require a setback of 100-feet from the property line to the main structure The proposed canopy, which is

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

considered a main structure will have a setback of 35-feet at its closest point, encroaching into the setback by 65-feet.

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

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

The proposed size and location of the signage will require Variance's also. The minimum setback from the front property line is 15-feet. There are 6-signs that will encroach into the front yard setback. The setbacks for the signs will be, 13-feet, 13-feet, 9-feet 2-feet, 1-foot and 1-foot respectively from the property lines creating encroachments of 2-feet, 2-feet, 6-feet, 13-feet, 14-feet and 14-feet respectively. The amount of signage permitted for the site is also in excess of the allowable. The total allowable signage for the site is 100-square feet. The new signage requirements figure a 2-sided sign only once rather than adding both sides as in the past. I didn't get to do the signage down here but the proposed signage – I think I gave you the numbers last time. I didn't have them but the proposed signage is over the allowable and I'll just leave it at that for right now. The height of the proposed pylon sign on 9W will 50-feet tall, which is 40-feet higher than the 10-foot allowed.

The flags that are proposed on the canopy are not exempt from the signage requirements and will be added into the Variance application for total signage allowed. The location of the flags since they are considered signage are not allowed to be higher than the building in which they are attached to. This is under section 128-54, Signs, C, General Standards, 7.

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

Notice of Public Hearing. Notice is hereby given that the Board of Appeals of the Town on Bethlehem, Albany County, New York will hold a public hearing on, Wednesday November 16, 2005 at 8:00 p.m. at the Town Offices 445 Delaware Avenue, Delmar, New York to take action on application of Cumberland Farms, the Applicant, Big M Truck Stop, the owner for Variance's under Article XIII, Use & Area Schedules, Section 128-100 A, Minimum Front, Side & Rear Yards, Article VI, Supplementary Regulations, Section 128-35 D(1), Specific Regulations for Districts, Article VI, Supplementary Regulations, Section 128-54 E (4), Signs of the Code of the Town of Bethlehem for the demolition of the existing building and construction of a convenience mart with an attached drive-thru restaurant and gasoline station at premises 68 Route 9W, Glenmont, New York. Michael C. Hodom, Chairman, Board of Appeals. Attached to this Notice is notarized proof of its publication in the November 9, 2005 edition of the Spotlight,

official paper of the Town of Bethlehem. All persons listed in the petition as owning property within 200 feet of the premises in question were notified by mail at least five days prior to this hearing.

CHAIRMAN HODOM: Thank you, Karen. 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 wishing to speak in opposition of the Applicant. Anyone desiring to speak will be allowed to do so, we just ask that you come up, stand or sit close to the black microphone, it's for recording purposes only. Any questions or comments should be directed to the issue this evening and directed to the Board. Ms. Bitter will you be making the presentation or starting it?

MS. BITTER: I'll start it. Stephanie DeLallo Bitter, local counsel for the record. As was indicated in the notice that we're providing for construction of a Cumberland Farms Convenience store and fueling station with also a drive-thru restaurant on this site. We're going to be demolishing all existing structures. At our last appearance Mark provided his determination as to the Variance's necessary. Due to the fact that there is a slight difference as to the Variance that we originally requested we did submit a revised map which indicated the Variance's that Mark had identified, which I'll let Rob go over in just a second. I'm not going to go over the Variance's since Mark just gave a detailed explanation as to what's necessary, but I will say that we will be removing the flags so that we don't complicate things any further.

As we indicated again, at our last appearance we'll be discontinuing the truck-stop overnight stay, the diner use and the shower use as well. The tractor-trailers will only be allowed on the site for fueling and access to the convenience store. The total area of the building that's being proposed is 4,905-square feet which is detailed in the memo that Rob had provided to you in the supplemental submission. As you can recall this process started in February really, we sat down and met with the staff. Unfortunately since our submission in June the Town had revised the Zoning Code and we went from needing 1-Variance to the list that Mark just provided. So although we are asking for a number of Variance's, we feel that this will be a substantial improvement to the site and we would request that is not be deemed a substantial request.

Also since our last appearance Rob had an opportunity to meet with some of the neighbors to discuss the landscaping plan, which I'm going to turn it over to him now to go over some details on that. And he also took some photographs of the free-standing or the high-rise sign that you had requested which I'll also let him describe now.

CHAIRMAN HODOM: Rob just before you get started, looking at your narrative in the introduction you reference a 4-position tractor-trailer diesel fueling area.

MR. SPIEK: Yes.

CHAIRMAN HODOM: Are there not 8?

MR. SPIEK: No these are set up with what they call masters and slaves where you'll note if you look at the details of the little squares that are on there. It's setup so you basically got 4-fueling positions because typically the large diesel trucks have tanks on both sides of them so the operator can fuel both tanks at once. You'll note that the first island here has a square in the rear, which lines up with another square over here, which would be 1-fueling position. The next island happens to line up in the front and the rear and the last one lines up with the front. So there's 4-positions for diesel trucks per say – for the larger trucks you're talking about. A box van obviously has typically got one so, but there's 4-positions that trucks can pull up into.

CHAIRMAN HODOM: I thought you had referenced 8 in your previous – in our first hearing, but your explanation tonight is fine.

MR. SPIEK: I may have.

CHAIRMAN HODOM: Okay. Would you consider that also for regular vehicles using diesel?

MR. SPIEK: Yes because there's no way for - - there's only a hose on this particular single dispenser here there's only a hose on the interior side here. The way the hoses are set up there's only these 4-positions that a vehicle no matter it is could pull up to and use. It's not like a - - these end dispensers are not like the ones where you've got the hoses on both sides. There's only a hose on 1-side.

CHAIRMAN HODOM: On page two in the second paragraph, the forth line down says the overnight portion of the use and the sit down food operation will be removed from the site. In looking at your sheet number 13 there are sit down booths.

MR. SPIEK: There are seats in there. The statement there was made that the idea of the setup here is for the fueling large trucks to get in, fuel their trucks and if they want to walk in and get something and get out but they're not meant for sit down type lunch, breakfast or dinner dining that currently exists or formally exists to that site. That was the intent of the comment.

CHAIRMAN HODOM: The booths will remain?

MR. SPIEK: There are a few seats in there, yes. It will be the job of Cumberland Farms on-site personnel to keep those trucks moving along.

CHAIRMAN HODOM: Okay you may proceed if you would.

MR. SPIEK: I think as Stephanie had mentioned the last time we were before the Board here we've gotten some more comments, we had made some adjustments to the change which were basically revolved around Mr. Platel's interpretation of the rear yard and the side yard and some buffer setbacks from residential areas which I think consequently at

the end of the day it gave us the same number of Variance's all with a little bit of difference and the distances on it.

One of a couple main things we did since the last time we were here is again I had spoken with a couple of the neighbors and stuff like that to mostly talk about and focus on this or at least what I call the rear buffer line here to the existing residence's here. As you recall in the previous landscaping plan there was some gaps in here and stuff like that. We basically we filled those gaps in with some evergreens, we've added on deciduous trees in this area. We're going to replace the fence along the entire property line there so it's a newer fence in that area and it's our opinion that that should give some coverage and everybody seemed to be on board with that idea there as far as protecting these gaps that exist today out there.

We've also added some additional landscaping along the right of way here, some low level plantings that grow to about 3-feet high, but the purpose I know there's another residential driveway that's located here, it comes back. The intent of this was this grade does sit higher than down there so it should serve as a decent buffer for car headlights shining in that direction was the intent of that.

The rest of the plan again, to stay basically the same it was just basically a numbers game in the zoning table. The other presentation last time that this Board asked for was some additional justification, reasoning behind our request for the 50-foot high-rise ID sign. In the packets that were submitted to you folks we had 2-exhibits, I've blown them up on the boards here. One of those exhibits was basically to show a line of site from the thruway position which is what we're trying to attract here, what we're trying to grab for the site and you know, as per the narrative this site – or up until recently did a decent amount of truck traffic. We want those truck traffic to know we're still there. Cumberland Farms has invested a lot of money for the diesel positions over there and we want to let the truckers that now see a vacant site realize that they can still come there and fuel up for diesel.

This exhibit here basically was the intent to exhibit that from the thruway bridge there, there's a small gap in here that vehicles have a line of site to this property and it's approximately 932-feet from the thruway at that position that position there. The second exhibit that was enclosed in your packs there was a photograph from pretty much the what would be the south side of the bridge before going over 9W to give as best we could a representation of what vehicles from the thruway will see there and this is pretty much the representation of the 50-foot high sign again, with trying to get the prices out there. Price is a big thing for our customers, a big thing for all customers these days and to promote obviously the fact that predominately the fact that there's diesel here.

So those couple of exhibits along with the narrative there I think everybody's read the narrative. I'll answer any questions on it that have come up here, but I think that's pretty much what the Board had requested last time.

CHAIRMAN HODOM: Thank you. The other thing in your introduction again,

referencing back to the narrative, you refer to the Bohler Engineering drawings dated 4-11-05, which was the original date.

MR. SPIEK: Correct.

CHAIRMAN HODOM: But the latest date is 11-22-05?

MR. SPIEK: Yeah some of the plans have different revision dates on them so it was easier to capture the original date on the plan versus - -some plans have a 11/5 revision, some of the plans we did not make a revision on.

CHAIRMAN HODOM: Okay just so we're clear here on what you're proposing we're looking at a 11-22-05 revision date?

MR. SPIEK: That's correct.

CHAIRMAN HODOM: Okay. In your narrative in page two, you're referring to the Federal Highway Administration – publishes a calculation that was used to determine the minimum readability in their manual of uniform traffic devices and then in the next paragraph traveling at 65-miles per hour when the average setback of 300-yards has a viewing time of less than 3-seconds per mile with a letter size of 28-inches at the height of 50-feet. Can you provide us the information that you used?

MR. SPIEK: For that formula, sure.

CHAIRMAN HODOM: For that formula and can you also tonight relay how it does relate to the 932-foot distance, which I guess is the 300-yards.

MR. SPIEK: I'll pull some numbers.

CHAIRMAN HODOM: And then your sign is actually 12-foot high.

MR. SPIEK: It's 50-foot high.

CHAIRMAN HODOM: I mean the actual sign itself. I'm really questioning the 28-inch letters versus the 4-foot or 8-foot – the 4-foot height you have for Cumberland Farms and the 8-foot height for the pricing of the gasoline, which seems to be a lot larger than the 28-inch letters.

MR. SPIEK: Yeah, briefly the formula that's provided in there is – it's a complicated formula that basically is related to speed of the vehicle, the turning of the head and the vision rings that they've got there. It's plotted on a series of bar graphs that if your speed is X, the height of the sign is X, it tells you what the optimum letter size and height of the sign that it should be and I'll provide all this information, but I thought for this exercise here it would be easier because they're not the cleanest charts in the world that it would be easier just to sort of spell it out and try to spell it out in the narrative form but as you

stated at the speed of 65 miles an hour, approximate 300-yard setback basically what the formula says is that you have - - the average person has 3-seconds to turn their head and view this sign over here and also based on that they're saying letter height of 28-inches and the maximum height of the mid-point of that letter of 50-feet would be the optimum sign. Now the sign detail that we provided to you folks that we're showing 50-feet to the top of the sign there, we don't dimension on there the letter heights although if you fit proportionally there the biggest thing that we're trying to get across here – our client wants to get across is those price numbers there. They're about 42-inches high so they are higher than what the recommended minimal would be as per the Federal Highway Administration there. Quite honestly the Gulf and the Cumberland, we didn't really take them into account as far as the formula, as far as determining what size works and what size doesn't work. The focus for us was the letters for the numbers of the price there. So basically I think what I'm telling you at the end of the day is those letters could be reduced – those numbers could be reduced and we could still have a sign that you know works at this height with a reduced number size that would be – work with the Federal Highway Formula and be acceptable.

CHAIRMAN HODOM: I think at our last hearing you mentioned a balloon test.

MR. SPIEK: Yes.

CHAIRMAN HODOM: Is this similar to the balloon test? We've had balloon tests provided to us – cell phone towers and so forth and they gave us a pretty good picture of a comparison at various distances.

MR. SPIEK: Between the time was that I mentioned it last time. We did some balloon tests out here way back when. The problem when I sat back down and looked at that data back in the office, the balloon test and the photos that were taken of it were basically from 9W angles. There wasn't a shot that was taken from the thruway and in our opinion the other two they are really not what we're looking for. And quite honestly we would have to and will if this Board requests go out and do a balloon test from this same angle to give you the same perspective if you think that's helpful, but the data that we had originally here to look at this site it's not the good data that we want or really helps or hinders the case quite honestly.

CHAIRMAN HODOM: So you're saying the Federal Highway Administration formula is a little better system than the balloon....

MR. SPIEK: Signage is always one of those items where there's a couple industry standard sign counsels to that publish their own formulas that are even different than this. I wanted to use the Federal Highway one just because – I mean it something that's at least recognized by the Federal Government here. The other two are recognized by the - - certain sign societies that they deal with here. There's a lot of ways that we could look at this is the bottom line.

CHAIRMAN HODOM: I think also at the last hearing and I believe Mr. Brookins was

the Board member that requested it was that some kind of comparison or overview similar to what you've shown in these photos but comparing it to the signage at the Quality Inn or Comfort Inn or which ever Inn it is across the road, was that ever done?

MR. SPIEK: We did and I didn't put it in the narrative but I do have the specs on it. That sign is located I believe but it doesn't show it to well but somewhere in this area right here. That sign is – I went out on the field and measured it with a survey rod and it came out to be – that sign was 24-feet high and the square footage of – approximately 120-square feet per face.

CHAIRMAN HODOM: And that was for the Quality Inn?

MR. SPIEK: Yes. And we had looked at trying to do some of the same photos coming up from the Normanskill, up towards the bridge, the problem we were running into is that sign at a different elevation by about 12-feet than where this sign would be located so in a certain way you're not comparing apples to apples from the view shed that you're looking at because of the elevation differences and the grades where the signs are physically located.

CHAIRMAN HODOM: The grade on your property is higher by 12-feet than their property?

MR. SPIEK: Yes.

CHAIRMAN HODOM: And when you use the Federal Highway Formula, does that take into account the elevation of the vehicle and the elevation of the property where the 50-foot sign is?

MR. SPIEK: The elevation is from the driver's eye to the mid-point of that letter is how they do it and if you want to compare the elevation of this bridge to the base or the grade level here plus or minus a foot.

CHAIRMAN HODOM: Okay so you've taken documentation.

MR. SPIEK: Yeah of the US,GS maps, yeah we've gotten – there's a - - they've got an elevation close to this bridge here which is plus or minus a foot from where our finished grade will be at this location.

MR. BROOKINS: Do you happen to know, well – the other view has a comparison for reference purposes the size of any of those letters on the building currently the truck stop, the Big "M", the exit 23?

MR. SPIEK: We did not physically measure the letter height. Any ideas Dave of what they might be?

MR. TARSE: The actual letters are approximately 2 ½ to 4-feet.

CHAIRMAN HODOM: Just introduce yourself to us again if you would.

MR. TARSE: I'm David Tarse; I'm from Main Care Energy, the current property owner and that sign is not illuminated but it's lit up at night when we were operating so it covers a pretty sizable square footage now. That sign over in the corner seems a lot less square foot, I'm not sure the difference.

MR. SPIEK: Yeah I mean if they are 42-inches, I mean you can sort of look at the letter height there it is probably comparable to the letter height there, which is - - we are proposing approximately 42-inches. We did go out and physically measure that sign and came up with a rectangle around it of about 186-square feet.

CHAIRMAN HODOM: That's the sign currently on the Big "M"?

MR. SPIEK: Yeah that's if you took basically the smallest rectangle around this here, you know when we were calculating this from the ground we came up with about 186-square feet. Maybe that was just from the bottom, I'm sorry that was just the bottom piece. That was 46 1/2-feet by 4-foot and then 26 by 4-feet on top for the exit 23. The total there you've got basically 290-square feet.

CHAIRMAN HODOM: As compared to your 192?

MR. SPIEK: Yes.

CHAIRMAN HODOM: Did that square footage for that high-rise sign as you refer to it, did that change?

MR. SPIEK: It did change from the original application; originally we proposed 50-feet, 100-square feet on the base.

CHAIRMAN HODOM: Why did that change?

MR. SPIEK: The reason behind is basically we came up with a generic square footage to sort of get the ball rolling on things and when the sign planners at the sign company sat down and worked this thing out they said that we need this to make the sign work and it also goes back to the additional information as to some of the logic behind the sign for the visibility, etc. on there that, you know a 100-square feet just isn't going to do it.

CHAIRMAN HODOM: In your signage table, where you refer to existing signage, you don't list in the existing signage the Big "M" signage on top of the building.

MR. SPIEK: What we're representing is items 1 and 2 encompass the rectangles around the exit 23, the big "M" Truck Stop. No, we didn't specifically say that that 46 1/2-feet by 4-feet is Big "M" Truck Stop.

CHAIRMAN HODOM: But that's what it is?

MR. SPIEK: That's what it represents, yes.

CHAIRMAN HODOM: And then the top portion is 26 by 4?

MR. SPIEK: That's correct.

CHAIRMAN HODOM: And what is the 8 ½ by 4?

MR. SPIEK: The 8 ½ by 4, I believe it was a sign on the side of the building here.

MR. TARSE: Correct.

CHAIRMAN HODOM: And the 6 by 2?

MR. SPIEK: The 6 by 2 I think we have one – I think there's one on the other far side of the building over here to or is it on the back?

MR. TARSE: The restaurant had one on the backside.

MR. SPIEK: Oh okay that's it then.

CHAIRMAN HODOM: Okay so they - - and they also have signage on the canopy?

MR. SPIEK: Yes, there's 2-small – and you can see one of them right there and one of them right there.

CHAIRMAN HODOM: So they currently have 354-square feet of signage?

MR. SPIEK: That's correct.

CHAIRMAN HODOM: And you're proposing 433.5-square feet.

MR. SPIEK: At this time 433.5, yes. In consideration of the high-rise also I mean we could explore reducing some other signage on the property also if that would make it more appealable to the Board.

CHAIRMAN HODOM: Is the 6-foot fence height allowable today?

MR. PLATEL: It's acceptable.

CHAIRMAN HODOM: Okay. And you had changed some plantings in that green area along the easterly property line.

MR. SPIEK: Yes.

CHAIRMAN HODOM: And that's roughly 18-feet of green space?

MR. SPIEK: Yes that's correct.

CHAIRMAN HODOM: Had you looked into perhaps adding additional Colorado Blue Spruce like in a staggered form – what I'm getting at is that and this going to be reviewed by the Planning Board but in my way of thinking this is the most critical side of the property because it abuts that residential zone. Along the other side of 32 is also residential but its a little bit farther away. You would not be in a position to say that this is the extent of the plantings you will put in that area, you're open for further discussion as to adding more plantings?

MR. SPIEK: Absolutely.

CHAIRMAN HODOM: Mr. Spiek, in your professional opinion the layout that you've proposed to us on the latest plan, is that the closest layout that you can come to the current code requirements for the Town of Bethlehem? I realize that you can't meet them because of the site as it currently exists.

MR. SPIEK: Right, yes I would say that it is the minimum here. Before when this application first became before this Board as a special use here we had looked at the minimums that we could get away with on here for A) satisfying the client's needs related to the uses they wanted on the property here and B) from a technical design point. Storm water management is very expensive these days with the sand filter chambers and stuff like that, they run around about 1,000-dollars a lineal foot and the client obviously as much they want their nice lay up there's other considerations on that so it was very important to us to maximize the green space on this property.

Every 2,000-square feet of green space we can get back on here that reduces a lineal foot of the storm water chambers, taken that into account and being able to provide the minimal turn radius's we need for these trucks is what led us to the bottom line of this layout here. Obviously there's a large swap of right of way out there that, you know as I've talked about in the past is currently paved out there so if you look at the site today it's a little bit deceiving. We had looked at other options for pulling the entire property forward, but due to the nature of the property that we're dealing with here, we come close on other pinch points and stuff like that in order to try to maximize this green area over here. So those main reasons there I think we've made our best good faith effort to minimize every Variance that's out there today and as we're all aware prior to the code coming into effect here, which is not relevant for these discussions sort of but we did - - I think we looked at every layout in here.

CHAIRMAN HODOM: Is it possible in your opinion to decrease that 30-foot drive area to increase the 17.9-foot buffer area?

MR. SPIEK: I would have to check the truck turn templates on it. I don't want to say

yes, I don't want to say no, it's something we can certainly look at. Generally for truck isles such as this 30-foot is a pretty typical standard for the truck isles like that, but I can certainly investigate it and maybe we can get it down to 24-feet, which is more of typical 2-way car type island.

MR. BROOKINS: Do we run the risk of comprising of safety issues as the isle is pinched?

MR. SPIEK: Well there's several issues, there's safety issues which sort of run into the fact that when you squeeze things – the 30-foot dimension is a nice dimension for tractor-trailers and stuff like that. I guess to sort of say it sort of takes a little bit of thinking for the driver. They've got plenty of room and when you start reducing that down to like 24-feet and stuff like that they have to be a little tighter with their turns and if they miss their turns a little bit they will jump curbs, which is you know it's a maintenance issue for my client and stuff like that. So the 30-foot is a nice issue, I mean quite honestly we don't expect a lot of pedestrian traffic in that area or anything like that. There are a couple potential conflicts with cars vehicles coming around and stuff like that but it's pretty wide open there also. At the end of the day we can probably – I'm almost positive we can get a couple feet out of it.

CHAIRMAN HODOM: Your turning radiuses really don't come into effect until you get up towards the diesel fueling islands. It's pretty much a straight run.

MR. SPIEK: Yeah I mean you've got a turn radius right here that's affected.

CHAIRMAN HODOM: Right.

MR. SPIEK: And then when you get down into this area, hence the widening of the pavement. We've run these templates so starting at this point here which is sort of what of you start with the pinch point here which is a 30-foot dimension and a truck to be able to make each of these radius turns from here. I mean it may be an option where when we run the - - for all the movements on here on top of each other that maybe you've got to stay 30-foot here and you can come into 24 and then you've got to come back out.

CHAIRMAN HODOM: And Ms. Bitter did I understand you to say earlier that you will be removing the flags from the canopy?

MS. BITTER: Yes.

CHAIRMAN HODOM: Why?

MS. BITTER: Just because it would be an additional Variance request and due to the fact that they're not exempt because at the last meeting we kind of went under the impression that it could possibly be exempt.

MR. BROOKINS: How consistent is the use of the flags on other Cumberland Farms,

similar kind of facilities?

MS. BITTER: I think most of them.

MR. SPIEK: Yeah it's just about all of them.

MR. MCILROY: There's a few municipalities that they consider them signage and we don't use them because quite frankly those typical flags are – we've actually got the dimensions on those flags also.

CHAIRMAN HODOM: I just want to get your name on the record.

MR. MCILROY: Tom McIlroy, I'm from the operations.

CHAIRMAN HODOM: For Cumberland Farms?

MR. MCILROY: For Cumberland Farms.

CHAIRMAN HODOM: And the spelling of your last name?

MR. MCILROY: M-C-I-L-R-O-Y.

CHAIRMAN HODOM: Thank you.

MR. SPIEK: I want to say off the top off my head that those flags are 4 by 6. They're a pretty decent size flag so 24-square feet of flag, we've probably got 20 of them.

MR. BROOKINS: Let me just make sure, we're talking about American flags?

MS. BITTER: Yes.

MR. BROOKINS: That are considered signage?

MS. BITTER: I'd have to agree with that.

MR. PLATEL: I'll read you what it says.

MR. BROOKINS: No, I'm not doubting that the new code says that. I'm just amazed that it says that.

CHAIRMAN HODOM: I think it's because of the quantity.

MR. PLATEL: It basically says exempt signs. Flags would be exempt except when displayed in connection with commercial promotion and I would say obviously if you have 20-some flags on top of a building it's promoting. You know more than – patriotic is a flag and 20-flags is...

MS. BITTER: We're just very patriotic.

MR. SPIEK: And we would still consider putting up a single flag.

CHAIRMAN HODOM: That's fine that would not be a problem.

MR. PLATEL: A single flag would not be a problem.

MR. SPIEK: Typically what we've done on properties where flags are not allowed on the canopy's for whatever reason is we'll find a place on the property for a single standing flag-pole.

MR. PLATEL: Can I state on the record that I have no problem with American flags.

CHAIRMAN HODOM: I don't think any of us do.

MR. PLATEL: It's just what the book says.

CHAIRMAN HODOM: Let me clarify something to if I can and it's regarding the front side yard, which is the westerly side of the property paralleling Route 9W and I guess my question is I can understand the canopy dimension of 58.6 being considered from 9W, but I would think that the 35-foot dimension from the property line to the canopy would be on the Route 32 side. I mean all it does is change the encroachment from the setbacks they're both 100-foot setbacks.

MR. SPIEK: Right.

CHAIRMAN HODOM: And the front canopy – they're both the 35-foot and the 58.6-foot setbacks require Variance's?

MR. PLATEL: It requires it actually for the whole canopy. What I did was just give you least dimension because I believe that whole canopy is located within the 100-foot setback isn't it?

MR. SPIEK: Yeah pretty much except for a very small portion in this area here. The logic behind the way we listed it to I sort of looked at this as the entire area is the front yard and that's why I just gave you the minimum to show you the worst case scenario.

CHAIRMAN HODOM: Okay.

MR. PLATEL: You could do it like that, Mike like I said there would be 2-front yards, you could do the 2-dimensions. I just gave the least dimension on it because it's hard to cut it off at a certain point and say where does one front yard start and where does the other one begin.

CHAIRMAN HODOM: Well I guess my question is because they don't show any encroachment on the Route 32 side because the building structure is setback 105.3-feet but the canopy, which is now considered a structure from Route 32 is really 35-feet.

MR. PLATEL: Correct.

CHAIRMAN HODOM: I just want make sure that we've got all the required Variance's.

MR. PLATEL: We can add that to the other one for the other front yard.

CHAIRMAN HODOM: I think to me it makes sense because it is coming off the 32, Corning Hill Road.

MR. PLATEL: Sure so you'd have the one from Corning Hill then you'd have the other one with the Route 9W.

MR. SPIEK: So what you're saying is this one you'd like to see revised to 58.6 and then we'll add a line for 35-feet.

CHAIRMAN HODOM: For the minimum front.

MR. SPIEK: Okay.

CHAIRMAN HODOM: On Route 32 side.

MR. SPIEK: That's fine.

CHAIRMAN HODOM: And then also in your zoning analysis table I think where you have the minimum front / buffer setback, the buffer should be removed and then added to the minimum side setback/buffer because there you have a 40-foot setback and a 100-foot buffer.

MR. SPIEK: Yeah I tried to short circuit it by just putting residential in parenthesis but if you want it to say buffer that's fine also. And then I had added the separate category down below for the side-parking setback of 100-feet to sort of break that out separately.

CHAIRMAN HODOM: Yes right. And you eliminated the line item for maximum accessory building coverage because we really aren't looking at any accessory buildings today, correct?

MR. SPIEK: Yeah, based on Mark's determination they're principle and that now the setbacks apply to them.

CHAIRMAN HODOM: Okay. I think that's all the questions that I have based on the revised drawings. Any other questions from the Board?

MR. MICELLI: I just want to ask Rob a couple of questions that at the last public hearing I'm concerned about the vacuum cleaners, we thought that we were going to - - rather than have it 24/7, we were going to cut those hours back maybe to a decent hour because of the loudness on that. Have you decided on that, you know like 11:00, midnight, did you come up with anything?

MR. SPIEK: We didn't come up with anything specific. We're willing to go to 11:00 p.m. if that's acceptable to the Board.

MR. MICELLI: That would be fine.

CHAIRMAN HODOM: Again that issue is basically going to the Planning Board.

MR. MICELLI: That would be Planning, exactly.

CHAIRMAN HODOM: And they will take a look at that.

MR. MICELLI: That's fine. And my other question just for the record was your billboard for the Dunkin Donuts would that be facing the resident's or - it looks like it's facing away from them on an angle but I couldn't make it out.

MR. SPIEK: It's sort of - - if you want to take the progression of it the menu board probably faces up in that direction.

MR. MICELLI: Okay.

MR. SPIEK: The speaker is orientated towards the vehicle itself.

MR. MICELLI: Okay, and that's going to be 24/7 to?

MR. SPIEK: That is the proposal at this point.

MR. MICELLI: Thank you.

MR. PLATEL: Did you mention that sometimes you shut those off at night where you'll just have them drive up to the window?

MR. SPIEK: Yes.

CHAIRMAN HODOM: Again that will be a Planning Board issue. I think if in fact we approve the Variance's or some of them, this Board would make several recommendations to the Planning Board for items to review and what our concerns are. Are there any other questions from the Board?

MR. MICELLI: I don't have any Mr. Chairman.

CHAIRMAN HODOM: Gil?

MR. BROOKINS: No.

CHAIRMAN HODOM: Are there any questions or comments from the audience? Yes Ma'am? Just come up close to the black microphone, you can sit if you'd like, introduce yourself and give us your address.

MS. GRANT: Chris Ann Grant, 109 Corning Hill Road. The high-rise sign, I was just wondering is that going to be lit on both sides or just in front?

MR. SPIEK: It's proposed to be lit in both directions at this point which would be that way and that direction.

MS. GRANT: Is that where it's going to be on that map?

MR. SPIEK: Yes.

MS. GRANT: The little line you have there?

MR. SPIEK: Yes right there.

MS. GRANT: Okay.

CHAIRMAN HODOM: That's internal illumination, is that right?

MR. SPIEK: The lower portion of the sign, the Cumberland Gulf portion is proposed to be your regular typical box internal illumination sign. The numbers for the prices as we represented in the past will be what we call – they're little tiny LED lights that are – a bunch of them together will form the pattern of these prices for the purpose of the fact that somebody doesn't have to climb up here and change price panels. The illumination I guess is on or at the level of a typical box sign anyway, they're not bright they're not meant to be bright.

MR. BROOKINS: But there's no floodlights that are going to cause spill over?

MR. SPIEK: Correct.

MS. GRANT: I was just wondering, I forgot what is in front of the pumps and I was wondering where the vacuums are?

MR. SPIEK: These here – these are the underground fuel storage tanks.

MS. GRANT: Oh okay.

MR. SPIEK: Those are them and then the vacuum area is still up front here.

MS. GRANT: Oh okay, that's all I can think of beside the Planning Board stuff. Thanks.

CHAIRMAN HODOM: Is that it.

MS. GRANT: Yup.

CHAIRMAN HODOM: Thank you. Anyone else have any questions or comments?

MR. JENSON: My name is Craig Jenson and I live at Old Route 9W and I am the neighbor who is across and lives up that driveway. Quite honestly I feel slighted that just because I have a little separation of woods between my house and what's going to be an increase in traffic that it's not important to have any kind of fence or anything put up on that side of the road and I just question that because the reality is 1), as I've listened to 3-meeting now the concept of business is to ask for all you can get and accept what you will be given is what it sounds like. There's going to be an increase in traffic, no doubt about it and we're trying to bring more traffic off the thruway. Why would it make any difference at 3 o'clock in the morning when trucks sit out in that road because they can't quite get in there yet that I wouldn't be woken up because I'm only 180-feet away. I mean if I'm important enough 200-feet to be called to this meeting and got a note about it why wouldn't it be as important to do any landscaping on the other side of the road. I've picked up a ton of trash from Main Care in the 9-years that I've been there; bags and we can say that it's only people coming up from the port but I highly doubt it because some are truck tires and everything else. So I'm just curious if there is any chance of having something of that nature done.

CHAIRMAN HODOM: You're asking for landscaping...

MR. JENSON: On the other side of the road – for something along this side of the road, like a fence along this side.

MR. SPIEK: Sure.

MR. JENSON: There is one there already that I...

MR. SPIEK: That's what I thought, you've got one coming down this way.

MR. JENSON: Yes, there's one out in front that I have to maintain and quite honestly – financial commitment for that and then there's another one that goes there but it ends – is it okay if I step up here?

CHAIRMAN HODOM: Sure.

MR. JENSON: I can approximate.

CHAIRMAN HODOM: You might want to take that mic with you.

MR. JENSON: Okay.

CHAIRMAN HODOM: Tape it right to your thumb.

MR. JENSON: There you go.

MR. SPIEK: At least it won't cut it off.

MR. JENSON: It might be even easier to see on the aerial here. Right – the fence ends, well it ends right around here.

MR. SPIEK: Right.

MR. JENSON: But my concern is now, I mean even with the truck traffic that's there now at night let alone an increase in cars I mean the noise is quite considerable. And then the trash blows right through here into this whole wooded area. I would love to be wrong and I hope that I am, I don't disagree with the aesthetics that it's going to make it look nicer but making it look nicer and having noise there if I ever have a resale issue is not going to be – it's not going to be of someone's concern that it looks nicer. They're going to say how about the noise, so that's my concern.

CHAIRMAN HODOM: Mr. Jenson I will just advise you again that that issue – these folks if we approve the Variance's must go in front of the Planning Board and that really is a Planning Board issue. I think they've indicated tonight that they certainly would consider that request but I would bring it up again. I would advise you to bring it up again at the Planning Board hearing.

MR. JENSON: I just wanted to let you know that the landscaping - I mean I see happening on 1-side, but I don't see it happening on the other and I can see that 1-side looking nice and getting a buffer zone which is essentially what's it for with nothing else on the other side because what's there now? The cover is minimal as far as in the front. It's nice, but it doesn't cover that whole area that drifts over particularly when the main entrance – the main entrance is on that side.

MR. BROOKINS: Is that your property that you're talking about?

MR. JENSON: Yes.

MR. BROOKINS: Where you want them to put a fence?

MR. JENSON: Well it doesn't have to be on my property, but in front of my property.

MR. BROOKINS: But now we're getting dangerously close to the road.

MR. JENSON: No, not necessarily.

MR. SPIEK: It would have to be on his property anyway because DOT wouldn't allow us to put it in the right of way.

MR. JENSON: There's an existing fence that runs right along here so what I'm talking about is a continuation as a noise buffer because obviously there's going to be traffic that sits here to get in here. I mean if a truck or 2-trucks comes up from the port and they're making a turn and people are coming in here to turn in, they're going to have to wait – or more trucks so I think the noise issue is highly relevant. I mean Jake breaks at 3 o'clock in the morning also – they wake you up and those types of things.

CHAIRMAN HODOM: Mr. Spiek was there any consideration of perhaps putting blue spruce in that green space or does it become a line of site issue?

MR. SPIEK: In this area there's probably – there's certainly things that can be done to address the concern here. The low level tightly spaced plantings do a better job of the blowing trash issue because the spruces and the larger trees do grow and they are able to slip right under them so this is a better option for both, in our opinion screening headlights shining through that way and keeping the trash on the property. And again it would be my thought at this point at least without getting too deep into studying the property over here that there could be considerations for a fence and/or some spruce plantings on the gentleman's property also.

MR. JENSON: And it's woods there so I mean in the wintertime...

MR. SPIEK: The leaves fall.

MR. JENSON: The leaves fall.

MR. SPIEK: Well if you get the spruces or like that they hold their needles so they're a little better.

MR. JENSON: I guess.

CHAIRMAN HODOM: All right, fine and I would bring that same topic up to the Planning Board and let them know that Mr. Spiek and Ms. Bitter promised you a fence and you going to hold them to it.

MR. SPIEK: And then of course I assume the traffic study would come at the Planning Board to.

CHAIRMAN HODOM: Yes it will.

MR. JENSON: Okay that's all, thank you.

CHAIRMAN HODOM: Thank you. Are there any other questions or comments? I'll ask

the other Board members, I don't think there's a reason to continue the hearing at this time. The additional information I think you can get to us within 5-days or so?

MR. SPIEK: Sure.

CHAIRMAN HODOM: There's a lot of information we're going to have to go through anyway to make some determinations. I really think we can probably close the hearing. Anyone else with any questions? Anyone wishing to speak in opposition to the Applicant? Anyone desiring to speak favor of the applicant other than those that have all ready done so? Hearing no further questions or comments we'll declare the hearing closed and we'll notify you in a timely manner as soon as you get that information to us we'd appreciate it and we do have 62-days to make a determination, we like to make it within 30-days and hopefully we can in this case as well.

MR. SPIEK: That's fine and 7-days shouldn't be a problem in getting that information and we'd be happy to come back here to answer any questions that you may have on that material because like I said when I hand you this Federal Highway stuff it's - - (inaudible)

CHAIRMAN HODOM: Well we'll just have our esteemed counsel help us along the way.

ATTORNEY MOORE: I'll put my engineering hat on.

MS. BITTER: Can I ask a procedural question? Since we obviously have to go before the Planning Board is it necessary that we wait for the determination to actually be received as to the Variance before we can submit those applications?

CHAIRMAN HODOM: No.

MR. TARSE: Just a comment we've had an agreement for well over a year now, which has a deadline and I know and no fault to this Board but because of some of the changes in the regulations and the rule in the Town we're now kind of pressing up against some of those deadlines and as I've said it has been well over a year as Stephanie indicated I think we started back in February so what ever we can do to expedite it would be appreciated because I guess no one anticipated the length of time to get this far.

CHAIRMAN HODOM: We'll do our best.

MR. TARSE: Thank you.

CHAIRMAN HODOM: You're welcome. Thank you for the presentations they we're very helpful.

Hearing closed 8:30 p.m.

- - -

The next order of business was to consider the application of Gary Barkman. The application was found to be in order and Chairman Hodom made the following motion:

An appeal having been filed with the Board of Appeals of the Town of Bethlehem, Albany County, New York by Gary Barkman for Variance under Article VI, Supplementary Regulations, Section 128-54 Signs of the Code of the Town of Bethlehem for the construction of a free standing sign, which does not meet the requirements at premises 821 Route 9W, Glenmont, New York, it is hereby ordered that a public hearing on this matter be held January 4, 2006 at 7:30 p.m., at the Town Offices, 445 Delaware Avenue, Delmar for the purpose of hearing all those interested in this matter.

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

The next order of business was to consider the application of Allen Hicks, 125 Jefferson Road, Glenmont, 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 Allen Hicks for Variance under Article XIII, Use & Area Schedules, Section 128-100 A, Minimum Rear Yards for the construction of an addition, which does not meet the minimum rear yard setback at premises 125 Jefferson Road, Glenmont, New York, it is hereby ordered that a public hearing on this matter be held January 4, 2006 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. Brookins seconded the motion and it was unanimously carried by the Board.

- - -

The next order of business was a discussion of the previous public hearing held in the matter of RDA Associates, Antonio Califamo, CEO for Variance under Article XIII, use & Area Schedules, Section 128-100 A, Minimum Lot Width for a vacant lot that does not meet the minimum lot width at premises Russell Road, Albany, New York. The following points were brought up by the Board members: Due to the Zoning changes the applicant cannot meet the requirements. The proposed request is very minimal. This will not adversely affect the neighborhood. On a motion made by Mr. Brookins, seconded by Mr. Micelli, and unanimously carried by the Board, the Board directed Attorney Moore to prepare a proposed resolution granting the Variance, for presentation at the next Board meeting on December 21, 2005.

- - -

The next order of business was to consider the proposed resolution of Stewarts Shops Corporation.

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 seeking a Variance under Article XIII, Use and Area Schedules, Section 128-100A, Minimum Rear Yards, requested by Stewart's Shops Corporation ("Applicant") for property at 33 Frontage Road, Glenmont, New York; and,

WHEREAS, the Board of Appeals, acting on said application, duly advertised in the Spotlight and sent written notice to all persons listed in the petition as owning property within 200 feet of the premises in question and held a public hearing on said application at the Town Hall, 445 Delaware Avenue, Delmar, New York on November 2, 2005; and,

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

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

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

FINDINGS OF FACT

The Applicant is proposing to add a 14-foot by 8-foot freezer addition to the existing main structure, which will encroach into the front and rear yard setbacks. The rear yard setback will be 6-feet, which will encroach 44-feet into the 50-foot required setback, and the front yard setback will be 31.5-feet, which will encroach 18.5-feet into the 50-foot required setback.

The existing building is occupied as a convenience store and is located in a Rural Light Industrial District. The existing location of the structure is a pre-existing and non-conforming condition and would not require any Variances.

Applicant proposes to add additional freezer space onto its existing in-store freezer, by extending the freezer unit out the back of the building, and into the area of the front and rear yard setbacks. The freezer would be accessed from inside the store. Applicant's store requires additional freezer space.

The Applicant's store is located on an irregularly shaped lot.

Applicant will relocate the garbage "dumpster" from the area behind the store where the proposed variance is requested.

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

CONCLUSIONS OF LAW

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

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

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

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

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

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

The requested variance is granted, on the following conditions:

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

December 7, 2005

Michael Hodom
Chairman
Board of Appeals

- - -

Mr. Micelli 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	Robert J. Wiggand	None
Gilbert Brookins		Marjory O'Brien	
Leonard Micelli			

(Resolution filed with the Clerk of the Town of Bethlehem on December 8, 2005.)

- - -

On a motion made by Mr. Brookins, seconded by Mr. Micelli, and unanimously carried by the Board, the minutes of the November 16, 2005, meeting were approved as amended.

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

Meeting Adjourned: 9:00 p.m.

Respectfully submitted,

Secretary