

September 26, 2005

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TOWN OF NEW WINDSOR
ZONING BOARD OF APPEALS
SEPTEMBER 26, 2005

MEMBERS PRESENT: MICHAEL KANE, CHAIRMAN
LEN MCDONALD
KATHLEEN LOCEY
KIMBERLY GANN
HOWARD BROWN

ALSO PRESENT: MICHAEL BABCOCK
BUILDING INSPECTOR

ANDREW KRIEGER, ESQ.
ZONING BOARD ATTORNEY

MYRA MASON
ZONING BOARD SECRETARY

ABSENT: MICHAEL REIS
STEPHEN RIVERA

REGULAR_MEETING _____

MR. KANE: I'd like to call the Town of New Windsor
Zoning Board of Appeals meeting for September 26, 2005
to order.

APPROVAL_OF_MINUTES_DATED_9/12/05 _____

MR. KANE: Motion to accept the minutes of September
12 as written.

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MR. MC DONALD: So moved.

MS. GANN: Second it.

ROLL CALL

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| MS. GANN | AYE |
| MS. LOCEY | AYE |
| MR. BROWN | AYE |
| MR. MC DONALD | AYE |
| MR. KANE | AYE |

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PRELIMINARY_MEETINGS: _____

ROBERT_KIRO_(05-60) _____

Mr. Robert Kiro appeared before the board for this proposal.

MR. KANE: Request for 27 ft. rear yard setback for proposed rear deck at 7 Stonecrest Drive. Tell us what you want to do, sir. Speak loud enough so this young lady over here can hear you.

MR. KIRO: So the existing porch is out ten feet from the house, that existing porch was there when I purchased the home. Under the guidelines I'm allowed to build up to the existing porch line without any sort of variance and what my variance is for is for that extra two feet what I did, the posts are along the existing line and then I want to cantilever it out two feet from there.

MR. KANE: Deck was existing when you bought the house, sir?

MR. KIRO: No, it's--

MR. KANE: Something you're building right now?

MR. KIRO: Yes, I'm waiting.

MR. KANE: Similar in size and nature to other decks that are in your neighborhood?

MR. KIRO: There's other decks in my neighborhood which are on the ground level but since I have a raised ranch what it does I walk out of my dining room onto it.

MR. KRIEGER: Directly adjacent to an exit from the house?

MR. KIRO: Yes.

MR. KANE: Without having a deck there, we'll get back to my first question, without having the deck there obviously walking out those doors is considered a safety hazard?

MR. KIRO: Yes.

MR. KANE: And when I ask if it's similar in nature and size to other decks that are in your neighborhood, I don't mean exactly, I mean other people have 10 x 20 decks or 15 x 20 or whatever size your deck is?

MR. KIRO: The people who are directly behind me have and it's, they have a two car garage and their deck or what you'd call it is that entire two car garage, a patio or deck, so they have like a raised ranch too also so then the entire floor area that would fit a two car garage that's their porch so it's huge, that's directly, that's behind me. And then over on the right of me you have a stone house and he has a huge porch that wraps around the entire house plus he has another patio at ground level which goes out to his garden.

MR. KANE: To make the answer simple is yes, your deck is similar to other decks that are in your neighborhood?

MR. KIRO: Yes.

MR. KANE: Create any water hazards or runoffs in the building of the deck?

MR. KIRO: No.

MR. KANE: Cut down any trees or substantial vegetation?

MR. KIRO: I cut down just a three foot pine.

MR. KANE: So nothing substantial there. How high is the deck going to be off the ground?

MR. KIRO: It starts around five feet and goes to about 8 feet or so.

MR. KANE: You're going to have steps coming from the deck down to the ground?

MR. KIRO: Correct.

MR. KANE: Any easements in the area where you're going to be building the deck?

MR. KIRO: No.

MR. KANE: That's it for my questions. Does the board have any further questions? I'll accept a motion.

MS. GANN: I will offer a motion that we set up Robert Kiro for a public hearing for his request for 20 foot rear yard setback for proposed rear deck at 7 Stonecrest Drive in an R-4 zone.

MR. MC DONALD: Second it.

ROLL CALL

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| MS. GANN | AYE |
| MS. LOCEY | AYE |
| MR. BROWN | AYE |
| MR. MC DONALD | AYE |
| MR. KANE | AYE |

MR. KANE: So you understand what happened and for the rest of the people that are here tonight New Windsor the way they do their zoning board is we have two hearings, everything that's decided by the zoning board has to be done in a public hearing. If we didn't have

the preliminary meetings and you came, you didn't have everything you needed and you came in, you would be denied and then you couldn't come back for six months. So this gives us an idea to feel out the applicant, see what we need from them and you'll see what you need from us, not just saying this for you but for everybody then when the public hearing comes there's no surprises. That's why we do this, we have just set you up for a public hearing where we can make our decision.

MR. KIRO: And the date on that?

MS. MASON: Just read that, tells you what to do next.

MR. KANE: That will tell you what to do.

MR. KIRO: Thank you, board.

MR. KANE: Thank you.

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MICHAEL_BUSWEILER_(05-61)

MR. KANE: Request for 9 ft. side yard setback and 9 ft. rear yard setback for proposed 12 ft. x 18 ft. shed at 219 Dairy Lane.

Mr. Michael Busweiler appeared before the board for this proposal.

MR. KANE: Evening, sir, tell us what you want to do.

MR. BUSWEILER: I'd like to buy a shed and put it in the corner of my property within a ten foot area.

MR. KANE: And this isn't an existing shed, you want to get a new shed and put it on your property?

MR. BUSWEILER: Yes.

MR. KANE: Can you tell us why it couldn't be put in your property in the legal boundaries which in Butterhill would be 12 feet off the property line, Mike?

MR. BABCOCK: It says 10, Mr. Chairman, but I think it's 12 foot requirement in Butterhill.

MR. KANE: Butterhill is 12, the rest of the Town is ten, I've lived there 18 years, I've been through this before, yes.

MR. BUSWEILER: That makes it even more ridiculous to make it that far off the fence.

MR. KANE: Any particular reason why this spot in your yard rather than something that may be legal?

MR. BUSWEILER: It's like you want it against the fence or as close to the fence as the Town will allow it.

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MR. KANE: So will putting it in that spot because you have a small yard basically it's going to inhibit you from using your yard unless you get a variance to put it off towards the side?

MR. BUSWEILER: Correct.

MR. KANE: The shed, the type of shed is going to be similar to other sheds that are in your neighborhood?

MR. BUSWEILER: Yeah, Mr. Shed, I haven't decided yet but he's one of the people.

MR. KANE: And you understand that if the variance is granted that you would have to meet all of the regulations from the building department?

MR. BUSWEILER: Yes.

MR. KANE: Any electric going to the shed?

MR. BUSWEILER: Negative.

MR. KANE: Cutting down any trees? I see the pictures, cutting down any trees, substantial vegetation in the building of the shed?

MR. BUSWEILER: No.

MR. KANE: Creating any water hazards or runoffs with the building of the shed?

MR. BUSWEILER: No.

MR. KANE: You're in Butterhill so you're on Town water and sewer so I'm assuming there's no easements in Dairy Lane in that area if I remember?

MR. BUSWEILER: No, everything is in the front of the houses.

MR. KANE: Mike, we have ten down we'll just need to check on that 12 and then--

MR. BABCOCK: Yeah, we'll change that.

MR. KANE: In time for the public hearing.

MR. BABCOCK: Actually we required both nine.

MR. KANE: Both will be nine.

MR. MC DONALD: Change them now.

MR. BABCOCK: Yeah, I'll change it and give it to Myra and she'll change it.

MS. MASON: Twelve is side yard as well?

MR. BABCOCK: Right.

MR. KANE: Does the board have any other preliminary questions for the gentleman? I'll accept a motion.

MS. LOCEY: I'll offer a motion to schedule the public hearing on the application of Michael Busweiler for his request for 9 foot side yard setback and 9 foot rear yard setback for a proposed 12 x 18 shed at 219 Dairy Lane.

MR. BROWN: Second the motion.

ROLL CALL

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|---------------|-----|
| MS. GANN | AYE |
| MS. LOCEY | AYE |
| MR. BROWN | AYE |
| MR. MC DONALD | AYE |
| MR. KANE | AYE |

LOUIS_LUPINACCI_(05-62) _____

Mr. William Hildreth appeared before the board for this proposal.

MR. KANE: Request for 27.5 ft. minimum lot width for lot #1 and Lot #2 of proposed two lot residential subdivision on Lake Road.

MR. HILDRETH: My name is William Hildreth, I'm a land surveyor that prepared the plan that was submitted with this application representing Mr. Lupinacci for this subdivision. What we have is a five acre vacant piece of land created by a subdivision in 1978, I believe Gina Nicola subdivision purchased by Mr. Lupinacci in 1985. And the 2 lot subdivision that we're proposing complies with all of the zoning regulations with the exception of lot width and that's only because of the most recent zone change. The amount of variance we need is 27 1/2 feet required now 175 as opposed to the previous which was 125. Had this subdivision been done earlier the 125 would have worked. The reason we're asking for the variance I'll cut right to the chase here, I have another plan here that's a preliminary that was prepared by the engineers who are going to be doing the septic system and we can subdivide this without a variance, however, it doesn't make sense because it creates two unequal lots in terms of development potential, the plan you have shows a line going down the middle, the red line would be compliant with zoning.

MR. KANE: For both, both pieces?

MR. HILDRETH: Yes, the yellow line would be the building envelope and you can see that the houses would not have the potential of being more or less lined up, one of them would be more towards Lake Road and there are unequal lot development envelopes that way. So we're asking for--

MR. KANE: Wait, step on back, the red line?

MR. HILDRETH: Would be a compliant subdivision line and the reason is by the way--

MR. KANE: How would the front on this--go ahead.

MR. HILDRETH: You have a private road become here the frontage counts and you add them up, I forgot to tell you that.

MR. KANE: Thank you.

MR. HILDRETH: I jumped ahead of myself, I'm sorry.

MR. KANE: Math didn't work.

MR. HILDRETH: I promise I'll do better the next time.

MR. KANE: What I was looking at was here's this lot line and he said they would be legal if they pulled it over here that would give it the 175 here but you can add this and there's a private road back here they can add to which--

MR. HILDRETH: They're not going to access but the frontage allows you to use that in the zoning calculations so we can make it a compliant lot along the red line but you'd have a severely diminished buildable area here and you'd be creating two unequal lots.

MR. KANE: I think we have enough crazy lots in New Windsor.

MR. HILDRETH: That's what I was hoping to tell you what we want to do isn't crazy.

MR. KANE: In the building of the homes on these two

particular lots, they won't need any variances?

MR. HILDRETH: Negative, everything else is fine. Now that's assuming whoever buys or develops and builds isn't going to come in with a 15 room idiot box, McMansion, I'm assuming sanity is going to prevail.

MR. KANE: Will there be septic and wells?

MR. HILDRETH: Correct, there's no public utilities out here, so there's well and septic. We have an engineer on board, designs are not complete yet, should we get through the variance, they'll be presented to the planning board prior to their approval of the subdivision.

MR. KANE: I have no further questions at this time.

MS. LOCEY: Access to both houses would be from Lake Road?

MR. HILDRETH: Correct, private road will not be utilized for either lots.

MS. LOCEY: Agenda indicates Lake Road but on the notice of disapproval from the planning board it says west side Lake Road. The name of the road is Lake Road?

MR. HILDRETH: The name of the road is Lake Road, it's located on the west side.

MR. KANE: Any other questions? I'll accept a motion.

MR. BROWN: Make a motion that we set up Louis Lupinacci for a public hearing for request for 27 1/2 minimum lot width for lot 1 and 2 of proposed 2 lot residential subdivision on Lake Road in an R-1 zone.

MS. GANN: Second the motion.

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ROLL CALL

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| MS. GANN | AYE |
| MS. LOCEY | AYE |
| MR. BROWN | AYE |
| MR. MC DONALD | AYE |
| MR. KANE | AYE |

PUBLIC HEARINGS: _____

CLEO_GUALTIERI_(MINUTEMAN_TAVERN)_(05-57) _____

Mr. Cleo Gualtieri appeared before the board for this proposal.

MR. KANE: Request for existing tractor trailer box to be used for storage purposes and request for 48 sq. ft. for total all signs for existing free standing pole sign at 171 Temple Hill Road.

MR. KRIEGER: This was never amended to ask for an interpretation first?

MR. KANE: I don't know anything about it.

MR. MC DONALD: It's in the minutes for an interpretation.

MS. MASON: Interpretation for what?

MR. KRIEGER: Whether or not this is in fact a trailer box as defined by the statute or whether it's lost its character as a trailer box to circumstances unique to this particular applicant.

MR. KANE: That it's been there and has become part of the building per se.

MR. KRIEGER: Yes, you see there's no break between the trailer box and the building itself, thereby it doesn't look like a trailer box, there's landscaping all around and lost one side whether it is in fact just simply part of the building at this point.

MR. KANE: Any complaints about the trailer formally or informally?

MR. GUALTIERI: Not at all.

MR. KANE: How long has it been there?

MR. GUALTIERI: Eleven years.

MR. KANE: No complaints at all?

MR. GUALTIERI: Not at all, no, sir.

MR. KANE: So the first thing we're going to do is we're also looking for an interpretation as to is this a separate entity or part of the actual building at this point. Mr. Gualtieri has presented pictures to the board that you can see that shows that the trailer has been in place for approximately 11 years. Let the record show that the trailer actually looks from these pictures to be part of the building, there's no separation, seems to be built right into it, and I would personally consider it part of the building myself. And we'll put these pictures in the record for the trailer. Did you guys see these?

MS. MASON: They did.

MR. KANE: At this point, I'm going to open it up to the public, ask if there's anybody here for this particular hearing. Nobody here? So we'll close the public portion of the meeting and ask how many mailings we had.

MS. MASON: On the 13th of September, I mailed out 34 envelopes and had no response.

MR. KANE: Okay and now the other part of the variance is the signs, do you guys want to take that in the two separate things, do you want the interpretation then tackle the signs?

MR. MC DONALD: Yeah.

MR. KANE: So I'll accept a motion on the interpretation.

MR. MC DONALD: I'll make that motion that we accept it as a part of the building, not a separate, not a trailer box.

MS. GANN: Second the motion.

ROLL CALL

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| MS. GANN | AYE |
| MS. LOCEY | AYE |
| MR. BROWN | AYE |
| MR. MC DONALD | AYE |
| MR. KANE | AYE |

MR. KANE: The sign out front has been an existing sign?

MR. GUALTIERI: Yes.

MR. KANE: How many years has it been up?

MR. GUALTIERI: Going on 19, the change I had put the letters on the bottom, the sign meets the criteria I believe except for I put the sign in with the letters on it.

MR. KANE: Welcome classes of NFA, how can we knock that down?

MR. GUALTIERI: Cornwall's on the other side.

MR. KANE: Since you added the bottom portion of the sign, has there been any complaints formally or informally?

MR. GUALTIERI: No.

MR. KANE: And you're looking for request for a 48 square foot the sign itself, is it similar in size and nature to other signs that are in the neighborhood?

MR. GUALTIERI: Similar.

MR. KANE: Any illumination on the sign?

MR. GUALTIERI: Yes.

MR. KRIEGER: Internal steady illumination, no flashing, no neon?

MR. GUALTIERI: No, sir.

MR. KRIEGER: Is that all correct?

MR. GUALTIERI: All correct.

MR. KANE: So we're permitted 64 square feet, we're at 112 square feet with a 48 square foot variance needed and it's, you've had no complaints, I said that, right?

MR. GUALTIERI: No complaints.

MR. KANE: Let the record show we're in possession of pictures showing the sign from the highway and in no way does the sign obstruct any type of traffic or view of vehicles coming down Route 300. Okay, as far as the sign, any other questions? I'll accept a motion.

MR. MC DONALD: I make a motion.

MR. BABCOCK: Do you have to open it to the public?

MR. KANE: No because everything was opened before and there's nobody here so it's one hearing but we're just taking the two decisions as two separate votes.

MR. MC DONALD: I'll make the motion that we grant the

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48 square foot request for the total all signs for the existing freestanding pole sign at 171 Temple Hill Road.

MS. GANN: Second the motion.

ROLL CALL

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| MS. GANN | AYE |
| MS. LOCEY | AYE |
| MR. BROWN | AYE |
| MR. MC DONALD | AYE |
| MR. KANE | AYE |

RUTH_GITA_NADAS_(05-47) _____

Ms. Ruth Gita Nadas appeared before the board for this proposal.

MR. KANE: Request for 14,660 sq. ft. minimum lot area and 50 ft. minimum lot width for proposed single family home on Bull Road. Do you want to, same as in the preliminary hearing, tell us what you want to do, tell us.

MS. NADAS: I'm applying for a variance for a lot that under the previous zoning which was changed last year was considered an approved building lot, it's one and a half acres, it has 125 feet of road frontage and there's more than, and is more than five hundred feet deep, a good portion of the lot, the front part is cleared and that's typically where people have chosen to build on the cleared portion. So I don't imagine anybody will be clearing anything much. And the lots in the area have been used similarly for single family homes and I don't know, that's about all I can think of and I have a larger map here if you'd like to look at a larger map. Would you like to?

MR. KANE: Single family home, will you be cutting down substantial trees and vegetation?

MS. NADAS: No, I'm not actually planning on building right now, I'm just applying for the variance.

MR. KANE: But the area on the property right now is clear for that so why don't we cover it?

MS. NADAS: Yeah, for that purpose it is cleared already.

MR. KANE: From looking at the property, it seems fairly flat, will you be creating any water hazards or runoffs?

MS. NADAS: No.

MR. KANE: In the area that the building is going to go is there any easements through that particular area?

MS. NADAS: No, there's not.

MR. KANE: And the purpose is to get the lot in legal shape to sell to build a home on it?

MS. NADAS: Yes, that's correct.

MR. KANE: At this point, I will open it up to the public and ask if anybody's here for this particular hearing? Seeing as there's no one we'll close the public portion of this hearing and ask Myra how many mailings we had.

MS. MASON: On the 13th of September, I mailed out 13 envelopes and had no response.

MR. KANE: On the lots next to it, you're 1.5a, 1.6a, that's owned by different people, are there homes on these lots?

MS. NADAS: There are homes on all of those lots.

MR. KANE: They're all the same looking at the tax map here they're all basically the same size as the lot you have now?

MS. NADAS: Yes.

MR. KANE: Board have any further questions? I'll take a motion.

MS. GANN: That we grant Ruth Gita Nadas her request for the 14,660 square foot minimum lot area and 50 foot minimum lot width for proposed single family home on

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Bull Road in an R-1 zone.

MR. MC DONALD: Second it.

ROLL CALL

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| MS. GANN | AYE |
| MS. LOCEY | AYE |
| MR. BROWN | AYE |
| MR. MC DONALD | AYE |
| MR. KANE | AYE |

CARL_SCHILLER_(05-48) _____

Mr. Carl Schiller appeared before the board for this proposal.

MR. KANE: Request for variance for proposed shed to be located between the house and the street at 6 Horseshoe Bend. Evening, sir, tell us what you want to do, just like the preliminary meeting, tell us what you want to do.

MR. SCHILLER: I'd like to build an eight foot by eight foot shed on my property. The reason I need the variance is because I'm on a corner lot and in order to put it in the back yard which is it would be most of the back yard.

MR. KANE: So being in New York State with a corner property you have two front yards?

MR. SCHILLER: Right.

MR. SCHILLER: A couple days after the last meeting I found the location that looked better closer to the property but it's the same distance so I spoke to Mrs. Mason and I took new pictures so this was what I had originally done.

MR. KANE: Actually looks better.

MR. SCHILLER: I only need one variance.

MR. KANE: Would you show the other members please? Okay, one thing we definitely need to clear up first on the denial we have 8 x 12 shed, on your application you have a 10 x 8 shed and over here it's an 8 x 8 shed, which one do you want?

MR. SCHILLER: It's 8 x 8.

MR. KANE: Would everybody please make those changes? Well, that's good because you're going for the smallest thing possible, that's actually a pretty small shed. Is it similar in size and nature to other sheds that are in your neighborhood?

MR. SCHILLER: Yes.

MR. KANE: Going to be cutting down any trees or substantial vegetation in the placement of the shed?

MR. SCHILLER: No.

MR. KANE: Create any water hazards or runoffs?

MR. SCHILLER: No.

MR. KANE: Any easements running through where you want to put the shed?

MR. SCHILLER: No.

MR. KANE: And even though the shed is going to project closer to the road than the home the shed, it's not going to inhibit anybody's view from a vehicle as far as the street is concerned?

MR. SCHILLER: No.

MR. KANE: At this point, I will open it up to the public and ask if anybody's here for this particular meeting? Boy, they're all here to gang up on somebody. We'll close the public portion of the hearing and ask Myra how many mailings we had.

MS. MASON: On September 13, I mailed out 59 envelopes and had no response.

MR. KANE: Bring it back to the board, ask the board if they have any further questions.

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MR. MC DONALD: Accept a motion?

MR. KANE: Yes, I will.

MR. MC DONALD: Make a motion that we grant the request for this variance to Mr. Carl Schiller proposed shed to be located between the house and the street at 6 Horseshoe Bend in an R-4 zone.

MS. LOCEY: I'll second that motion.

ROLL CALL

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| MS. GANN | AYE |
| MS. LOCEY | AYE |
| MR. BROWN | AYE |
| MR. MC DONALD | AYE |
| MR. KANE | AYE |

DAVID_GARCIA_(05-51) _____

Mr. David Garcia appeared before the board for this proposal.

MR. KANE: Request for 8 ft. rear yard setback for proposed 10 x 8 shed and for proposed shed to project closer to the road than the house on a corner lot at 2 Harth Drive.

MR. KANE: Tell us what you want to do, Mr. Garcia.

MR. GARCIA: Basically, I have the same problem as Mr. Schiller, I have a corner property and I want to put a shed in the back of the house which is considered by the Town a front yard. So my problem is I have a stream that goes, that runs through the property so sort of limits where I can pretty much put the shed.

MR. KANE: What's the blue line?

MR. GARCIA: That's the, yeah, I spoke with, said I have to, these are the boundaries where I can pretty much put the shed.

MR. KANE: Can you tell us why you want to put it in that particular location rather than someplace else on your property that's legal?

MR. GARCIA: Well because of the stream I have a serious slope that goes down into the stream so that takes a lot of property away from me as far as putting a shed in a stable place.

MR. KANE: Shed going to be similar in size and nature to other sheds that are in your neighborhood?

MR. GARCIA: Yes.

MR. KANE: Cutting down any trees, substantial

vegetation in the building of the shed?

MR. GARCIA: No.

MR. KANE: Creating water hazards or runoffs in the building of the shed?

MR. GARCIA: No.

MR. GARCIA: You understand then if the board grants your variance that you have to abide by all the building codes in the building of the shed?

MR. GARCIA: Yes.

MR. KANE: Any electric going to it?

MR. GARCIA: No.

MR. KANE: At this point, I will open it up to the public, ask if anybody's here for this particular hearing. And nobody's here. We'll close the public portion and ask Myra how many mailings we had.

MS. MASON: On the 13th of September, I mailed out 68 envelopes and had no response.

MR. GARCIA: It's a 10 x 8 shed.

MR. KANE: Ten by eight. Let it be noted he's putting in a smaller shed than what was asked for.

MR. KANE: Any further questions from the board? I will accept a motion.

MS. MASON: Does that change any of the numbers for the variance required?

MR. BABCOCK: Excuse me?

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MS. MASON: Does that change any of the numbers required for the variance?

MR. BABCOCK: No.

MS. LOCEY: I'll make a motion to grant the request of David Garcia for his eight foot rear yard setback for proposed 8 x 10 shed and for a proposed shed to project closer to the road than the house on a corner lot at 2 Harth Drive in an R-4 zone.

MR. BROWN: Second the motion.

ROLL CALL

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| MS. GANN | AYE |
| MS. LOCEY | AYE |
| MR. BROWN | AYE |
| MR. MC DONALD | AYE |
| MR. KANE | AYE |

FRANK_MANDATO_(05-45) _____

Mr. Frank Mandato appeared before the board for this proposal.

MR. KANE: Request for 20.1 ft. front yard setback for proposed deck at 7 Mitchell Lane. Tell us what you want to do.

MR. MANDATO: Just wanted to put a front porch on the house, before it was just concrete steps coming out, I need the variance cause of the depth, it's supposedly has to be 45 feet from the property line and the house is only 36 feet so I need the variance to build anything bigger than what was there.

MR. KANE: And obviously you're replacing the deck and the steps to your front door because the other ones are starting to fall apart a little bit and therefore we're looking at a safety issue?

MR. MANDATO: Yes, the concrete and the walkway heaved up to each step instead of being 7 1/4, the first one's 2 inches and 7 1/4 from there.

MR. KANE: How big is the proposed deck that you're putting on the front?

MR. MANDATO: Twenty feet wide by 9 feet deep.

MR. KANE: Going to go across the front of the house that's indented by the bay window?

MR. MANDATO: Yes.

MR. KANE: Cutting down any trees substantial vegetation in the building of the deck?

MR. MANDATO: No.

MR. KANE: Creating any water hazards or runoffs?

MR. MANDATO: No.

MR. KANE: Any easements in the area that you're going to be building the deck?

MR. MANDATO: No.

MR. KANE: At this point, we'll open it up to the public and I'll ask if anybody's here in the public for this particular hearing. We'll close the public portion of the hearing and ask Myra how many mailings.

MS. MASON: On the 13th of September, I mailed out 78 envelopes and had no response.

MR. KANE: Nobody cares. Ask the board if they have any further questions?

MR. MC DONALD: Accept a motion?

MR. KANE: I will.

MR. MC DONALD: Make a motion we grant Mr. Frank Mandato his request for 20.1 foot front yard setback for his proposed deck at 7 Mitchell Lane in an R-4 zone.

MS. LOCEY: Second the motion.

ROLL CALL

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| MS. GANN | AYE |
| MS. LOCEY | AYE |
| MR. BROWN | AYE |
| MR. MC DONALD | AYE |
| MR. KANE | AYE |

PATRIOT_PLAZA_ASSOCIATES,_LLC_(05-53)

Gregory Shaw of Shaw Engineering appeared before the board for this proposal.

MR. KANE: Request for 12 ft. maximum building height for proposed cupola on commercial retail center at 337 Union Avenue in a PUD zone.

MR. SHAW: Good evening, my name is Greg Shaw with Shaw Engineering tonight representing Patriot Plaza Associates LLC. The variance before the board tonight is for building height variance on the structure that's presently under construction. This building received approval from the planning board in June of 2004 with that all associated site improvements, we're requesting a variance of 12 feet with 35 feet being the threshold number that we're exceeding. The total variance again is 12 feet and primarily the bulk of that is for the cupola which is sitting on top of the building and the cupola is an architectural feature which was incorporated into the design of the building so it would match the cupola of the Heritage Middle School behind it. I'd like to point out to the board that this project kind of got stuck in time a little bit. Back in 1990-91, the Town Board granted a special permit for this site where it is not within a specific zone, it's within a PUD and that reference was made in the environmental review documents to a maximum building height of 35 feet while to the best of my knowledge that was not specified. Over time the zoning within the Town of New Windsor changed, this is purely a commercial building within a commercial zone, this site is 11 acres and it's ultimately going to situate three commercial structures totaling about 80,000 square feet. Zoning was changed in New Windsor for building height not to be set at 35 feet but is currently in a commercial zone 12 inches per foot to the nearest lot line with this structure being 64 feet from the nearest lot line that being Union Avenue, if

it was in a C zone before the board today we'd be allowed a total of 64 feet in height. We're proposing a building height of 47 feet, 12 feet in excess of what was referred to in the environmental review documents, therefore, the need to come before this board and ask for a variance. The structure is I think it will be an asset to the Town of New Windsor, it does have planning board approval along with all associated improvements such as landscaping, et cetera. And with that, we're asking this board to grant us the 12 foot building height variance tonight. Thank you.

MR. KANE: It's pretty straightforward I remember from the preliminary meeting. What I'm going to do is jump right now to the public and open the public portion of the meeting, see if anybody's here for this particular hearing. What I need you to do, come up, state your name and address.

MR. WELNER: My name is William Welner, W-E-L-N-E-R, I live at 1009 Ethan Allen Drive in Patriot Ridge. Can I take a look at the map? I happen to be a freshman here, what all you intend to do is go 12 feet higher?

MR. SHAW: That's correct without the cupola.

MR. WELNER: Other structures going up in that location?

MR. SHAW: There will be other structures proposed, presently there are two other structures when added to the square footage of this building which I believe is 12,000 square feet it will total approximately 80,000 square feet.

MR. WELNER: This is going to match the one on the other roof is that it?

MR. SHAW: That's what the intent is.

MR. WELNER: I don't have any problems with that.

MR. KANE: So you're either for or against it? You have no problem?

MR. WELNER: I'm for.

MR. KANE: Thank you very much. Ma'am?

MS. SULLIVAN: My name is Janet Sullivan and I live at 205 Windsor Highway, New Windsor. And I was just curious to see what was going on.

MR. KANE: Greg, can you show her what we're building?

MR. SHAW: What we have is a maximum building height that's permitted within this zone of 35 feet, I believe the ridge is 36 feet, so presently we're one foot above the building height that's allowed, the height of the structure determined by the highest point which is not the ridge line but it's the top of the cupola. So, therefore, from the ground elevation to the top of the cupola the structure will be 47 feet where 35 feet is referred to in the environmental documents which is the threshold this board is working with, therefore, we're asking for a variance of 12 feet, 35 feet which is permitted and 12 foot variance would allow us to build to a height of 47 feet which is the top of the structure. The top of the ridge which is what you're looking at as you drive by the structure is presently two feet above the 35 foot threshold.

MS. SULLIVAN: What is this used for?

MR. SHAW: Retail building.

MS. SULLIVAN: To add to the already congested area?

MR. KANE: The building is already there, just a matter--

MS. SULLIVAN: I know it's there, it's right across the street from where I live.

MR. SHAW: This structure does have approval from the planning board. The only thing that's really before the board tonight is the height of the structure and whether the cupola is added to the architecture of the building or actually detracts from the area, that's the issue before the board.

MS. SULLIVAN: Okay.

MR. KANE: Do you have an opinion ma'am, yes, no?

MS. SULLIVAN: No, not right now.

MR. KANE: Thank you. Ma'am, your name and address?

MS. MACRAY: Elizabeth Macray (phonetic), 1025 Ethan Allen Drive, New Windsor. Just wanted to see what I'm looking at, I'm for it, I think it looks nice especially with the school.

MR. KANE: You're for it?

MS. MACRAY: Yes.

MR. KRIEGER: Before you sit down, ma'am, just one question, from your place on Ethan Allen Drive, can you see the river?

MS. MACRAY: No.

MR. KRIEGER: Are there places around there that they have a view of the river?

MS. MACRAY: Yes.

MR. KRIEGER: And you don't think this will interfere

with that?

MS. MACRAY: Absolutely not, not from where the buildings are, from where the houses are.

MR. KRIEGER: Thank you.

MR. KANE: Anybody else for this particular hearing? At this point we'll close the public portion of the hearing, bring it back to the board. Any further questions guys? Do you have any questions? I'm going to ask my how many mailings we had.

MS. MASON: On the 13th of September, I mailed out 91 envelopes and had no response.

MR. KANE: I'll accept a motion.

MR. BROWN: I'll make a motion that we grant Patriot Plaza Associates' request for a variance for 12 foot maximum building height for proposed cupola on commercial retail center at 337 Union Avenue in a PUD zone.

MS. LOCEY: Second the motion.

ROLL CALL

| | |
|---------------|-----|
| MS. GANN | AYE |
| MS. LOCEY | AYE |
| MR. BROWN | AYE |
| MR. MC DONALD | AYE |
| MR. KANE | AYE |

QUICK_CHEK_FOOD_STORES_(05-54)

MR. KANE: Request for interpretation of code Section 300-25(a) relative to 1000 ft. spacing between gasoline facilities/stations. As per bulk tables this application is for convenience store with gasoline sales, freestanding sign, request for 27.9 square feet for sign, wall sign, request for 45 square foot for wall sign all at corner of Route 32 and Union Avenue in an NC zone.

Howard D. Geneslaw, Esq. appeared before the board for this proposal.

MR. KANE: You can proceed, sir.

MR. GENESLAW: Thank you. Good evening, my name is Howard Geneslaw from the law firm of Gibbons, Del Deo, Dolan, Griffinger & Vecchione and I'm here tonight representing Quick Chek Food Stores. Just by way of a little built of background as the chair indicated, this is an application in the alternative we're first asking the board to determine that the 1,000 foot radius requirement does not apply in this instance. And if the board concurs with that position then there's no need to address an area variance. If the board disagrees, then we would need to put in testimony in support of the area variance and we did ensure that the notice covered both of those so we would not need to come back for a second hearing. And then separately we're also seeking two sign variances, one for a freestanding sign and the other for a wall mounted sign. We also as I mentioned in our initial appearance on August 22 are seeking a classification from the board that this is an unlisted action pursuant to SEQRA. It was our understanding based on discussions with the Town engineer and our appearance at the planning board that the zoning board of appeals would be undertaking uncoordinated review pursuant to SEQRA and so in addition to the classification as unlisted

action, we also are seeking a negative dec on the basis that there will be no adverse environmental impacts or that any identified environmental impacts will not be significant. Now we did submit as part of the application a statement in support of the interpretation of an area variance in which we outlined a number of legal arguments. I'm not going to go through all of those again although you will hear some of them as part of our presentation. I would envision starting out with the interpretation and presenting our arguments in support of it and then depending on whether or not the board is receptive we can proceed with the testimony on the variance from the 1,000 foot requirement, if that becomes necessary. So if the board has no questions, I would call the first witness at this time.

MR. KANE: Go ahead.

MR. GENESLAW: I'd like to call Frank Antonelli as the first witness.

MR. GENESLAW: Mr. Antonelli, would you just state your name for the record and spell your last name for the recorder please?

MR. ANTONELLI: I'm Frank Antonelli, I live at 360 Union Avenue, last name A-N-T-O-N-E-L-L-I.

MR. GENESLAW: Mr. Antonelli, could you describe for the board what your relationship is to the subject property and are you the owner of the property?

MR. ANTONELLI: I'm the owner, my family owned the property since 1930 and we were in the process of leasing it to Quick Chek.

MR. GENESLAW: So being that it's a lease as opposed to a sale, your family will continue to own the property?

MR. ANTONELLI: Exactly.

MR. GENESLAW: And could you describe how you came to select Quick Chek as the proposed tenant for the property?

MR. ANTONELLI: Well, in the process of about two years to locate a proper company for that corner it's a hub of New Windsor we have been there since 1930, my family's been there, I've been there all my life and we came across Quick Chek Foods Inc. because it's a family operated operation which we're in favor of, very successful in New Jersey, they run a good store and we're very much in favor of that.

MR. GENESLAW: I'd like you to describe the history of how the property has been used since it came into your family's ownership?

MR. ANTONELLI: Well, 1930 my parents came from Brooklyn, New York and they bought that corner, they built a little restaurant, it started out as a gas station and it proceeded into a mini-mall and we ended up in the fuel oil business in 19 early '40s so we're fourth generation on that property. I live in New Windsor, I have no intentions of moving. I live up the hill actually from that site.

MR. GENESLAW: You mentioned that the property was used as a gas station at some point, do you recollect about what period of time that was and for how long?

MR. ANTONELLI: I think it was a gas station in the beginning probably about at least 20 years.

MR. GENESLAW: And do you have a photograph that identifies that?

MR. ANTONELLI: I do have a photograph here. Can we submit this, please?

MR. GENESLAW: Would you describe what's shown in the photograph?

MR. ANTONELLI: This is a photograph of the original building as you can see there are pumps here, it's a Mobil Station we operated.

MR. KANE: Circa 1940?

MR. ANTONELLI: Approximately, yeah, well, the building was started in 1930.

MR. KANE: Do you know how long they were pumping gas down there, how many years?

MR. ANTONELLI: Probably at least 30 years.

MR. KANE: I'll pass that photo around.

MR. GENESLAW: I have the 12 additional photographs that I'd like to present. I'd like to ask you to describe what's depicted in the photographs, would you describe what's shown in those photographs please?

MR. ANTONELLI: What happened was my parents kept adding, made a mini-mall out of this, this is what it ended up to be, Levine's Garage was on the end, we went into the fuel oil business so we rented out the garages and this is what it was up to last January, here's another picture shows you the location.

MR. KANE: So you had a garage and the fuel oil business running out of this building?

MR. ANTONELLI: Exactly.

MR. KANE: Any storage of oil on that location?

MR. ANTONELLI: No.

MR. GENESLAW: The garage that was conducted there that was the repair of automobiles?

MR. ANTONELLI: Right.

MR. GENESLAW: If you note--

MR. KANE: How long ago did we stop selling gas?

MR. ANTONELLI: Gas I would say probably in the '50s.

MR. GENESLAW: And those photographs show the evidence of the auto repair that took place at the property, as well you may see a Goodrich sign and an oil sign, again, all of which indicate that auto repair was taking place until Mr. Antonelli indicated January of this year. Now, during the time that the property has been in your family's ownership and in particular when it was used for the sale and the pumping of gasoline were there any traffic problems or any problems with fires or explosions?

MR. ANTONELLI: Never, no, never had any problem.

MR. GENESLAW: Any safety issues that related to the sale of fuel that you recall?

MR. ANTONELLI: No, never had any type of problem, safety problem down there.

MR. GENESLAW: I'd like to--

MR. ANTONELLI: Never had a traffic problem either.

MR. GENESLAW: I'd like to direct your attention to the property across the street which was previously used as a gas station, do you have any recollection about how long that property has been used as a gas station?

MR. ANTONELLI: I think it was probably the last 20 years before that it was a garage, it was a repair shop I think it was.

MR. KANE: Talking about the DB Mart/Hess station?

MR. ANTONELLI: It started out it was a service garage started out Fergazi (phonetic) Brothers ran it for quite a few years, they went out of business then they sold it and it became a convenient store that's when it became a gas station.

MR. KANE: I know that's been there at least 20 years.

MR. ANTONELLI: However it changed hands quite a few times, it's gone bankrupt I understand, we have no objections to the Hess Oil company but we'd like to also open up Quick Chek Food chain.

MR. GENESLAW: For about how many years were auto repairs taking place on your property starting with the end of last year going backwards?

MR. ANTONELLI: Auto repairs, it started auto repairs started in early '40s.

MR. KANE: Can I ask a question? Why are we focusing on auto repairs?

MR. GENESLAW: Well because the--

MR. KANE: We're not doing any repair, we're doing gas station and convenience.

MR. GENESLAW: Quick Chek is not doing auto repairs but in the zoning code the 1,000 foot radius restriction applies to gas stations and auto repair facilities and I just established through Mr. Antonelli's testimony for at least the last 20 years both properties have been engaged in one or the other of those uses.

MR. KANE: One's been engaged in gas, the other has been engaged in auto repair, no gas sales for the last 50 years approximately.

MR. GENESLAW: Correct, that's correct, the provision in the code though talks about 1,000 feet from a repair garage and also talks about a gasoline station and I think there's argument to be made that both properties were so engaged in those uses before the 1,000 foot radius restriction came into effect and that's an additional reason why we're asserting that the board should interpret the 1,000 foot restriction as not applying in this instance. I just wanted to get the historical background established for purposes of that argument. So I think that concludes my testimony from Mr. Antonelli, unless there are any questions.

MR. KANE: None at this point, I think what I want to do is--

MR. ANTONELLI: Thank you very much.

MR. KANE: I want to open it up to the public and hear what the public has to say.

MR. GENESLAW: Now I'd like to call my next witness or take public comment.

MR. KANE: How many witnesses do you have?

MR. GENESLAW: On the interpretation, I have one additional witness.

MR. KANE: Let's finish that and we'll hear from the public.

MR. GENESLAW: Robert Valario is the second witness.

MR. VALARIO: Good evening, my name is Bob Valario, I'm

the regional real estate director for Quick Chek Food Stores and I appreciate the opportunity to stand before you tonight to tell you a little bit about Quick Chek, what we do, where we come from.

MR. GENESLAW: Bob, why don't you first start by explaining to the board who Quick Chek is and how they came to engage in the sale of fuel oil?

MR. VALARIO: Quick Check Food Stores is a company based in New Jersey, we're in white House, New Jersey, which is in west central New Jersey. We have been in the convenient store business since the mid 1960's, we opened up our very first store in 1966 followed by our second store in 1967. Our focus, our mainstay of operations is always in the convenient store. Actually it started off as many of you probably remember as the milk stores that were around at one time where you got your milk, eggs and bread and eventually those grew to be more items and their whole industry of convenience then grew out of that concept all across the country and we were no different. The purpose of that of course was to provide a service to the community where there was a lack of food items, grocery items. Typically given neighborhoods that have a proliferation of convenient stores that started through the years as any business, any entity things grow and items are added and in the convenient store industry it became part of the norm to add as part of its offering the dispensing of fuel and in Quick Chek, we started embracing that concept as well in the year 2000.

MR. GENESLAW: For the stores that sell both convenience items as well as gas, can you give the board an indication what percentage of your customers are engaging in the use of the convenience store?

MR. VALARIO: Of course it depends on the location but our internal studies show that it's usually 60 percent or better of the number of patrons who come on to the

property and make use of the convenient store.

MR. GENESLAW: So then is it fair to conclude that Quick Chek views itself as principally a convenience store which sells fuel for the convenience of its customers.

MR. VALARIO: And if you take a look at our type of operation as proposed for particularly this particular site we're typically about twice the size of what you're typically accustomed to. Most of your oil companies, your branded oil companies are in the business of selling fuel with the items in the store as a secondary line. And typically you'll find in those stores more of the snack items and beverages than you will of the traditional convenience items whereas in our case in this particular exhibit outlines for example the store that's being proposed approximately 7,200 square feet versus a typical 3,000 square foot store, this is the interior dimensions of our store, this is the exterior dimensions of a 3,000 square foot store, the linear footage of the shelving that we have is almost 188 foot loaded up with all kinds of grocery items. We have never abandoned that. So you can get diapers, baby food, dry goods, et cetera. We also have an offering of between frozen items and fresh items behind the cooler doors and so forth. We have a full deli counter, a coffee bar, et cetera, so we position ourselves always as a convenience store and we have added dispensing of fuel as just an add-on item to what we currently do provide.

MR. GENESLAW: Quick Chek store is more than double the size of your typical On The Run or other facilities associated with the gas station?

MR. VALARIO: Yes, absolutely.

MR. GENESLAW: How do the number of items with the products sold compare?

MR. VALARIO: As I mentioned earlier, the number of items we carry somewhere close to four to five thousand items and it's a broad based collection of food items, again, if you're going into an On The Run or a local shop that maybe also has food items, you'll find the predominance of those to be pretty much snack items, beer, beverages, chips, things of that nature. We have that but our predominance is also on the food line so again, we offer milk, bread, eggs, freshly prepared food products and a whole host of grocery items as well.

MR. GENESLAW: Could you draw a distinction between a convenient store that sells gas as a convenience to its customers compared to a gas station that sells soda and snacks and cigarettes and things of that nature?

MR. VALARIO: Yes, as I previously mentioned, the emphasis on our company is on the convenient side of the store with the addition of the dispensing of fuel, almost all fuel companies emphasis is on fuel with the store as a secondary. We will employ somewhere between 25 to 35, maybe 40 employees in this particular store. Our stores are all company owned and operated. We don't franchise. The predominance of the people who work in our store come from the very neighborhoods where the stores are located, so we treat this as a miniature grocery store. Our departments are delineated that way, we have a deli manager, a dry goods manager, et cetera, as compared just to someone behind the counter collecting money because the predominance of the sales is in fuel.

MR. GENESLAW: Just to draw your attention to the zoning code for a moment, to the best of your knowledge, is there any playground, church, hospital, or library within 200 feet of this property?

MR. VALARIO: Not to my knowledge.

MR. GENESLAW: No servicing of vehicles that's proposed?

MR. VALARIO: No, we will not service vehicles.

MR. GENESLAW: Thank you. I have a number of legal arguments to sort of tie altogether which I'd be happy to address now.

MR. KANE: Go ahead.

MR. GENESLAW: What I did was because these are a little bit technical so I brought copies here of these sections from the code and I thought that might help to clarify the arguments that I will be making. I'd ask you to pass them down, there's three different ones there. Thank you. What I have done just to copy three specific pages out of the code that relate to the issue that's before the board tonight and the main focus is on Section 300-26A which is the provision that deals with the 1,000 feet and what I'd like to do is just sort of walk through that briefly, if I may, 26A applies only to gasoline stations and repair garages by its own terms. Now since we're not talking repairs clearly we're not dealing with a repair garage even though that term is not one that's defined in your zoning code. Now, the term gasoline station also is not defined in the zoning code, the code does define gasoline service station and it defines that as a facility primarily for the servicing of motor vehicles so again because there's no servicing taking place, we don't believe that this use constitutes a gasoline and service station. Twenty-six A also uses the term gasoline facility and that term also is not defined in the codes. We don't believe that that term would apply to Quick Chek because as you've heard, Quick Chek's principal operation is as a convenience store, not as a gas station, gas sales is something that's ancillary and for the convenience of the customer. So the

position that Quick Chek is advancing is that the 1,000 foot restriction doesn't apply in the, in this instance because Quick Chek is not a gasoline station. Now, if you look at the bulk table which is also one of the documents that I just passed out you'll see under the special permit uses of the planning board in the NC district it talks about this is paragraph 7 column B it talks about permitted gasoline stations including convenient stores which sell gas, service repair garages, car wash and car rental facilities. Now, what that paragraph does is it establishes a series of separate and independent uses and the use that Quick Chek falls within would be a convenient store which sells gas. Now, the provision in 26A that I talked about before that imposes the 1,000 foot requirement is specifically limited to gas stations and repair garages, it doesn't include convenient stores which sell gas, it also doesn't include car washes and it doesn't include car rental facilities. Certainly the Town Board when they were adopting the zoning code could have included those individual separate uses had they chose to even do so and so by virtue of the fact that they have not, that suggested to me that they're separate and independent uses and that convenient stores which sell gas were never intended to be included within 26A that applies to the--

MR. KANE: So you're saying the line in 26A that says a gas station may include a convenient store which customarily sells retail products and food including deli or bakery franchise, fast food, that's not a gas station?

MR. GENESLAW: I'm saying they're basically two different uses, the one references 26A, a gas station that sells retail products and food, right I'm saying--

MR. KANE: So you're a convenient store that includes a gas station.

MR. GENESLAW: The focus as you heard Mr. Valario talk about is a lot different, the retail area is more than twice as large, the main focus is on sale of convenience items as opposed to fuel, whereas the typical oil company the main focus is the sale of fuel and the convenience items are add on, soda, snacks. So Quick Chek's position is that the code essentially establishes two separate uses. And if you look at the bulk table, the bulk and use table and you compare that with the language in 26A, it does lend itself to there being two separate independent uses, the same way if you look in the bulk table it talks about car washes and car rental facilities being special permits, those are not included in the 1,000 foot radius restriction. So similarly we would argue that convenient stores which sell gas also were not intended to be included in the thousand feet. So that's the summary of Quick Chek's position as far as the interpretation is concerned. If the board after public comment and deliberation is in agreement with that position, we need not go further on the thousand foot issue, we can move into the sign variance testimony. If the board disagrees with our position, then in the alternative we'll be seeking a variance on the thousand feet and we'll present some additional testimony in that regard.

MR. KANE: Okay, thank you. I'd like to open it up to the public and see what you guys have to say. Would you take this out? We're going to pass a sheet around for your name and address for the stenographer. At this point I'm opening up to the public if anybody has anything they want to say please state your name and address, please stick to the topic and try not to be repetitive. Anybody want to talk?

MR. WELNER: My name is William Welner, 1009 Ethan Allen Drive, Patriot Ridge, I'm just curious what this proposal is. Can I take a look at the drawing up here?

MR. KANE: Sure.

MR. WELNER: What exactly is he asking the board for?

MR. KANE: They want to put a convenience station, gas station on the far corner. Sir, what would be good can explain what you're doing if you can turn that so the public can see that way maybe we can answer a couple questions up front.

MR. GENESLAW: I think what I'll do I'll ask our site engineer who's here tonight to explain it because I'm sure he can do it better than I can.

MR. MARTEL: Jeffrey Martel, sign engineer from Bohler Engineering. The application this evening is to construct a Quick Chek Food store which is basically the large gray area in the middle. As I was saying, we propose a 7,200 square foot Quick Chek Food Store which is the large beige area in the middle. In addition to that, we propose a gas sales in the form of a canopy and pumps in this light area, there's 16 fueling positions associated with the application, beyond that is a car wash in the rear of the site that's a 25 foot by 100 foot car wash, in addition, there will be a full movement driveway proposed on Route 32 and two driveways proposed on Union Avenue, also known as County Route 69, one driveway closest to the intersection will be restricted to not allow left movements out of the site. Additional site features include an excessive amount of landscaping, retention basin in the front and some other minor site features such as trash and recycling enclosure. There will be a total of 58 proposed parking spaces, just a point of reference, this is an existing Quick Chek facility located in Hazlet, New Jersey, it has all of the same features that I showed you on the board previous to this with the exception that this facility did have a car wash but you'll see a typical Quick Chek building, typical Quick Chek car wash, excuse me, canopy with the fuel pumps, additional signage and some variance other

photos showing the landscaping and general site features.

MR. KANE: Does that answer your question, sir?

MR. WELNER: Yes.

MR. KANE: About what we're doing there?

MR. WELNER: Yes, but my question is do these--

MR. KANE: Basically what the two things they're here for a couple variances on signs and the normal kind of thing, the other thing is they're here because New Windsor on a major highway has an older law that's been there that states no gas station can be set up within another gas station within 1,000 feet on a major highway and that's what it comes down and 32's a major highway.

MR. WELNER: That one's closed down?

MR. KANE: The one right across the street Hess is already going to be rebuilding, got their variances, they're going to be reopening whenever, so specifically the major point on this is the interpretation on the 1,000 feet rule.

MS. Noel: Nancy Noel (phonetic), I live in Wallkill, 579 Fostertown Road in Vails Gate. There's four gas stations right there, I don't understand that.

MR. KANE: Neither do I. I don't know if they predated zoning or what this is an older rule that's been there honestly I just don't know that's before my time being here but that was one of the questions I had.

MS. NOEL: Thank you.

MR. WELNER: I have a feeling there's enough gas

stations around, that's my feeling.

MR. KANE: Thank you very much. Anybody else?

MR. WELNER: I have no problem with food store, that's fine with me, got enough gasoline stations.

MR. KANE: Anybody else have a question or okay once I close it, it's closed. No other questions at this point we'll close it to the public, bring it back to the board. Let's take care of the interpretation first and then as needed or if needed we'll go to a variance scenario for the 1,000 foot if it's declined.

MR. KRIEGER: If I may, I think the first thing that the board should do is address the SEQRA requirement and in this case you have two alternatives, you can either declare a negative declaration which means that it has, will have no environmental impact as defined in the statute or a positive declaration which means that it either does or it may have, maybe is included in the positive and if there's a positive declaration then you have to indicate what the next step is for the applicant. And I think that's the first thing you have to do before because that applies to both the interpretation and the variances and all of the applications here. Once that's done, when you reach the statutory interpretation because it's a little different than the application is that this board has had in front of it in the past just want to touch on a couple of basic principles of statutory interpretation. If you find that a particular phrase is defined in the statute you must apply the statutory definition. If you find that it is not defined in the statute, then the phrase is to have its common regular plain English meaning. When interpreting any statute, you must presume that the authors of the statute meant to use the words that they meant, you may not assume that they were, it's a mistake or an oversight or redundancy or anything else, if they used a particular term, you must

assume that they meant to use that particular term and those words and not other words. With those basic principles which I offer for guidance the board should decide whether or not this statutory interpretation should be adopted or not and that's the task of the board.

MR. KANE: Thank you. So first thing we need is a SEQRA negative declaration would be my opinion on it.

MR. MC DONALD: Do we have a copy of the SEQRA report?

MR. KRIEGER: Did they ever complete?

MR. GENESLAW: Applicant submitted a short form EAF as part of its application.

MR. MC DONALD: I find it kind of hard for me to make a decision on anything that I haven't seen.

MR. KRIEGER: I might point out in this connection it is up to the board whether that supplies sufficient information or not. Short form is customarily asked for from the applicant, it's a minimum to meet the minimum standards but if you find that that doesn't answer questions that you have, you're not bound by it.

MS. LOCEY: May I ask why the Zoning Board of Appeals is entertaining the question why it's not a planning board issue since they're the ones?

MR. KRIEGER: There also is a SEQRA review in connection with the planning board. In order to avoid a separate SEQRA proceeding, an all encompassing proceeding, what has been done in the past and what is being done here is this board will conduct a SEQRA review for its own finding what's called an uncoordinated review, it's binding only on the Zoning Board of Appeals, not on anybody else, when if the application were either an application for an

interpretation or variance were granted here, it would go back to the planning board for a site plan review. At that point, they'd do a SEQRA review which would be not--

MS. LOCEY: I understand, don't have a problem with that. I'll offer a motion to make a negative declaration on the short form EIS.

MR. BROWN: I'll second it.

ROLL CALL

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| MS. GANN | AYE |
| MS. LOCEY | AYE |
| MR. BROWN | AYE |
| MR. MC DONALD | AYE |
| MR. KANE | AYE |

MR. KANE: I will now accept a motion on the interpretation.

MS. LOCEY: I'll offer a motion that the application of Quick Chek Food Stores does fit into the New Windsor code as described as a gasoline service station.

MR. KRIEGER: Would it be acceptable to say that in your motion that Section 300-26A does include this application.

MS. LOCEY: That's correct.

MR. KANE: I'll second it.

ROLL CALL

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| MS. GANN | AYE |
| MS. LOCEY | AYE |
| MR. BROWN | AYE |
| MR. MC DONALD | AYE |

MR. KANE

AYE

MR. KANE: So we move on. The interpretation is that we find it's still a gas station and the 1,000 foot rule applies we'll proceed with a hearing on a variance for that and the signs.

MR. GENESLAW: Thank you. What I plan to do is call two witnesses and just to facilitate things, I'm going to ask them about the, to give testimony on all the variances all at once so I need not have them get back up again. Jeff Martel, come back up, he's the site engineer who prepared the plans and I'd like to begin by talking a little bit about the equipment that the service station will employ to reduce the potential hazard or fire explosion, things like that. For the long history of these radius restrictions involving gas stations in New York State dating back to actually the beginning of the century, there's a lot of case law in the '50s and '60s that talks generally about how the two principle reasons are the potential risk of fire and explosion and secondarily potential traffic impacts. So I'm going to ask Mr. Martel to focus specifically on the former and then our traffic engineer will talk a little bit about traffic. So could you describe for the board the types of equipment and procedures that are in place to make this a safe operation?

MR. MARTEL: Of course. I think it's important to note now just to take a quick step back that with the determination that we are indeed a gas station, one of the variances that we're here to seek is that our facility cannot be located within a 1,000 feet of another service station. There's a, of course the Sunaco station across the street that's now in transition, let's call it, it's our understanding there's a Hess application in the process, so of course our facility would be across the street from a gasoline station. So we'd require the variance for the 1,000

foot separation. As Mr. Chairman described it, there's an old law that's essentially the ordinance was written some time ago of course when there was a fear for safety, there was a concern about the equipment being utilized for gas stations, storage of a large amount of fuel, dispensing of that fuel at the fuel pumps and the equipment at that time was of course inferior to what's being proposed today. There has been a large amount of technological advances since this ordinance was written and what I'd like to do is just describe a system that we propose to install today and describe to you how it is superior to the systems that were in place when this ordinance was of course passed. As far as the gas station that we propose to construct today there are variance safety elements that of course we'll be constructing which will far exceed the state requirements for the construction of such a facility. Specifically, we will propose double wall steel tanks with innerstitial (phonetic) monitoring, the tanks are in this light gray area here at the top of the page, point of reference would be the north side of the site, the top being north, this being Route 32, there are three underground fuel storage tanks proposed in this area with double wall steel tanks innerstitial monitoring that's a system that's set up to monitor the pressure of the area between the two steel walls of the tank, so if there were a fracture on either the outside wall or the interior wall the monitoring in between the wall would detect the pressure and there would be a sensor, a monitor and inside the store employees would be notified of such a fracture. In addition to that additional feature is overspill monitoring, which is essentially when the fuel tanker comes to fill the fuel storage tanks, there's a 90 percent warning which when the tanks are 90 percent full, it will alert the fuel delivery man that the tank is getting close to full and 95 percent fuel there will be an automatic shutoff which will shut the hose off from dispensing additional fuel into the tank so there's no case of overfilling the tank. In addition to that, there's also a five

gallon sump fill containment box within the fill area to detect any potential leaks that may occur while the gas fuel delivery man is actually hooking the hoses up into the tank, there's a detection area there. In addition to the double wall tanks, there's a double wall piping system which is essentially tested twice, once when the first single wall of the piping system is in place there's a pressure test that's run to ensure that it meets the required codes. Once that has been deemed adequate and exceeds the code regulations the second wall is completed at all the joints and then the area in between the two walls is tested to again meet certain pressure regulations to ensure that both the interior wall and the exterior wall are sufficient. There's at each dispenser there's a containment box again with a sump to again detect any fractures or leakages in the piping system. There's a double shear valve at each dispenser which indicates that there's any extraordinary stresses or forces on the pumps, the shear valves would both shut off the line back to the tanks and the line from the dispenser out to the hose that actually fuels your car. New York State requires that a fire suppression system is installed which of course will be installed, what that is is a canister which holds an agent, a dry chemical fire suppression agent that is stored on each column and there's a head to dispense the chemical out over each fueling position or each pump that has a heat sensor and is interconnected throughout all the columns. If the area reaches a certain heat due to fire or what have you, the entire system would be activated and that would be spread out through the entire canopy region. There are also shut-off valves at both the kiosks and the front of the store, these being automatic shut-off valves that can be reached, of course the attendants are trained to know exactly where they are and they are visible to the public as well in case of an emergency. Something that Quick Chek does as far as the site layout that further promotes the safety is that they have a fueling zone and many service stations you'll

see that the fueling happens in the parking lot or drive aisle areas, sometimes it's coned off, sometimes it's not, it's often in a main area where there's traffic trying to pass by. Quick Chek, one of their standards adds this 15 foot wide fueling zone, the truck will fuel off to the right and have a nice contained area that won't be exposed to traffic or pedestrians in that area so it will be contained in that, also additional wider drive aisles that further allow the cars and the trucks to move around the site freely. This is not a tight service station jammed up against an intersection where you're kind of, we've gone in and out of the pumps, this is a nice, it shows us the layout that will allow free circulation around the site. In addition as part of our office's investigation of this site was that we also reviewed other sites within the Town, other gas station facilities which I'm sure everybody is aware of, there's three areas I want to point out where and I think we touched on this briefly before where there are gas stations that are currently within a 1,000 feet of each other most notably I think what was pointed out was at the Five Corner intersection of Routes 94, 32 and 300, there's essentially five corners of the intersection, four of them are currently gas stations, as far as safety's concerned, they have curb cuts much closer to the intersection. The pumps are much closer to the right-of-way, the canopies are on top of the right-of-way, this is a far superior site design as far as distance from driveways to the intersections, controlled access points, the distance between the pump and the intersection of course and there's no, there's a large basin, detention basin in between so it's not really right next to the intersection by any means.

MR. KANE: Could you address the ingress egress from the site?

MR. MARTEL: Sure, I guess point of reference right now the existing site conditions and this would be an

aerial photo taken of the site of course outlined in our site is the yellow, right now, there are I believe two or three driveway cuts on Route 32 and an additional two along County Route 69, two of which are very close to the intersection in its current condition. What we're proposing right now for a total of three driveways, three ingress egress driveways, one of which is at the northern end with frontage on Route 32, proposed to be a full movement driveway, this is a 39 foot driveway, it does have two lanes for egress, one to make a right, one to make a left, an additional point for the ingress.

MR. KANE: So on that one particular one you have three lanes?

MR. MARTEL: There are three lanes, correct. On the Union Avenue frontage we do have two driveways, they have been pushed back away from the intersection, the driveway closest to the intersection has one restricted movement and that's the left egress, so you cannot make a left out of this site towards the traffic signal, you're only permitted to make a right out. If you'd want to make a left, you would have to come to the driveway further west and which is a turn further away from the intersection and make that left away from the turn lanes that are associated with the intersection.

MR. KANE: Is that going to be an entrance too?

MR. MARTEL: This would be a full movement driveway and this would be full ingress which means you can come in, make a right or left but you cannot exit making a left so this would be the only restrictive driveway.

MR. MARTEL: As described just to complete there are two other areas where the service station currently within a 1,000 feet of each other actually in both those cases they're right across the street, one of which is further south on Route 32 which I believe is a

Gulf and a Citgo and then again on Little Britain Road I believe it's a Citgo and Cenco, if I'm pronouncing that correctly. So there are three current areas active where the gas stations are right across the street from each other. So this wouldn't be something new to the Town of New Windsor, I would like to further point out with the superior or the advanced system that we'll be installing as far as the gas equipment, the pumps and the fuel tanks, there's no additional safety concern that comes out with two gas stations being across the street from each other. Therefore, so even though the Hess is proposed to reopen, I wouldn't see any additional safety concerns with having the two gas stations operate across the street from each other.

MR. KANE: Hours of operation?

MR. MARTEL: The Quick Chek is proposed to operate 24 hours a day seven days a week both gas and the convenience store, car wash, I know we had talked about it but it will be limited to probably, I don't know exactly for sure but 9 or 10 o'clock at night as far as that's concerned.

MR. KANE: Planning board would handle that.

MR. GENESLAW: If there are no other questions from the board on the 1,000 foot issue then we can talk about the two sign variances.

MR. KANE: Sure.

MR. GENESLAW: Why don't we start with the wall sign variance maybe as a point of reference we can start with the photograph of the, and this will give us a good idea of the amount of signage that's located on the building currently and again this is really just showing as a point of reference seeing as the building is to be removed but it gives you a sense of what's there today and how it would change.

MR. MARTEL: Yeah, current requirement in the Town of New Windsor for signage is that one wall sign is permitted per tenant or business, per business not to exceed 2 1/2 feet in height by 10 feet in width which equates to 25 square feet. What we propose today is a 3 1/2 foot by 20 foot wall sign on the front of the Quick Chek as you can see here for a total of 70 square feet, just to give you a point of reference as far as where that's located on the site this little bump out in the beige area equates to the--

MR. KANE: Approximately how many feet off Route 32?

MR. MARTEL: 205.

MR. KANE: Illuminated.

MR. MARTEL: Internally illuminated channel letters, no flashing, it's not a--

MR. KRIEGER: Steady illumination.

MR. MARTEL: Each letter will be illuminated individually as a point of reference in the photos that you have the front facade of the building that exists today is approximately, has approximately seven advertising signs, two additional signs that give a phone number and address but there are seven advertising signs totaling a 178, 180 square feet plus or minus what we're proposing of course is 70 square feet. In addition, there's some additional signs on the side of the building that 180 is all along the front so that all faces Route 32, there's some additional signs on Union off site and there's one freestanding sign so total plus or minus 220 square feet of signage on the site today. About 200 square feet of that will be wall signs, again, as briefly described 3 1/2 feet high by 20 feet wide for the Quick Chek sign, the words Food Store and I believe 24 hours

we'll be removing from the sign so the channel letters will be illuminated, white channel letters and the red band underneath will be illuminated but there will be no words within that red band. We'd like to point out a couple things to the board most notably that the sign definition in the ordinance we interpret it very conservatively when we say 70 square feet we mean the entire box one single box around the entire sign all the way out to the edge of the red band that would be the 70 square feet. If you looked at the definition a little closer and looked at the sign a little closer you could argue that essentially you can make a smaller box around the Quick Chek, smaller box around Food Store and just count those as the signage to be conservative on the plan. We noted 70 square feet but if you were just to actually add up the area of the Quick Chek and add up the band it would be 46 1/2 square feet so we'd like to stress that the 70 square feet is a number that seems big because we're adding a lot of area that isn't considered signage, we did that as a conservative estimate of course. The channel letters of the Quick Chek will be 2 feet high by 16 feet long, so now those are 32 square feet, the red band will have no words on it, it is proposed to be illuminated but it will not have any words on it, any advertisement of any kind, it's the Quick Chek logo as part of their brand recognition, something that's been around for a long time, obviously you'll see it in and around the canopy and within their store and it's obviously important to them but the words Quick Chek we'd like to focus on and that will be 2 foot high by 16 feet long for a total of 32 square feet. I would like just to point out one other thing to the board and that would be that the sign density as I will call it the ordinance requires since we're deemed a gasoline station I believe 125 foot minimum lot width, we have approximately I think about 250 we have a 170 plus an additional area so although 125 square feet would be allowed 2 1/2 by 10 foot sign we do exceed that frontage and we'd like to just keep that thought in

mind that additionally with only a couple more linear feet we could technically create a subdivision and you'd get two signs. What I'd also like to point out couple other things just to bear in mind the building's located 200 feet from the Route 32, if the site were located 300 feet from the frontage, it would be allowed 3 1/2 foot height, something to consider. And lastly if a building did have another main entrance if we were to put another main entrance on this Union Avenue frontage, we would be allowed another sign by definition of the ordinance. We don't, we want to promote the front of the store on the state highway so we have located all our signage facing the state highway as far as building signage and we have, we haven't asked for that additional building sign which we could be permitted with an additional entrance.

MR. KANE: To clarify on the main building it's going to be one sign on the front of the building?

MR. MARTEL: One sign facing Route 32, the front of the sign. As far as the I.D. signs, the freestanding identification signs that we propose there is of course one existing sign out there approximately 18 square feet, we're proposing two freestanding identification signs, again, internally illuminated signage, no flashing, one sign would be on Route 32 frontage which we're seeking a variance for for the overall area, this sign is located adjacent to the driveway as I described to you on the north end of Route 32, that's for 91.9 square feet, there's an additional freestanding sign located in the middle of the two driveways on Union Avenue and that sign does comply with your 64 square foot maximum area, that sign is only 60.1 square feet so we're seeking a variance for the signage.

MR. KANE: How far off of the road are those signs?

MR. MARTEL: Ten feet, I think ten feet in both cases.

MR. KANE: So in your estimation the poles for both of the signs no problem with visibility of vehicles?

MR. MARTEL: No problem with visibility, there will be I believe there's 8 to 9 feet above grade.

MR. KANE: With these two driveways over here there will be no problem with visibility?

MR. MARTEL: These two driveways no but the way the sign is oriented, it's a goal post sign, it doesn't start until you're about 8 feet above grade out of the line of vision for cars sitting approximately the height of 3 1/2 feet this sign will be several feet above where your eye position will be.

MR. KANE: Thank you.

MR. MARTEL: So the only thing is the 8 inch poles which obviously aren't enough of an obstruction to be concerned with. So the reasoning for the seeking the variance is of course that we're on a state highway, we do believe that it's in character with some of the other freestanding signs that the Town sees especially in the Vails Gate intersection down there with the four different driveways, there are two of those that are in the neighborhood of 80 square feet, so this is roughly in the neighborhood of those signs. In addition, we do need to advertise three separate items on our sign there's the Quick Chek Food Store, there's also the gas sales which of course we advertise our pricing and thirdly there's the car wash, so this I.D. sign 91 square feet is made up of basically advertising three different uses on site. My last note is just a total signage, keep in mind as I described to you briefly in the beginning the existing station or the existing facility has approximately 220 square feet of total signage which is inclusive of the wall signs and freestanding sign what we're proposing today is 210 square feet plus or minus so although we seek two

variances we will actually be reducing it to the total signage on site and we do feel that it is in the character of some of the other gas station facilities within the area.

MR. KANE: Thank you.

MR. KRIEGER: When you say in the character, you're saying they'll be no bigger than anybody else, no taller?

MR. MARTEL: Correct.

MR. KRIEGER: Than the signs already on the strip?

MR. MARTEL: Correct.

MR. GENESLAW: Just one or two points to conclude I'm sure it's fairly obvious in these times of high gas prices that a gas station has to advertise their pricing or else they won't get any customers, that's why you'll see the gas price posted, that's why some of the additional sign area is necessary. Also wanted to point out the drawing that we submit as part of the application package which you should have a copy of that's basically what's proposed. The only thing that's missing is the car wash panel down here which had not been designed at the time that this was submitted although we do have on the--

MR. KANE: But you're going to be looking similar to this with the Providian Bank on the bottom?

MR. GENESLAW: Right, that's the photograph basically the same panel but instead of Provident Bank it would be car wash, that's why we included that sign.

MR. MARTEL: There's of course black and white detail in the site plan package itself, so it wasn't submitted in the colorized version here but in the site plan

package it details reflective of the car wash.

MR. KANE: Okay.

MR. GENESLAW: We have our traffic engineer if there are any traffic questions. Mr. Martel did a pretty thorough job.

MR. MC DONALD: I'd like to hear him.

MR. DE PASQUALI: I'm Ray DePasquali, principle with Atlantic Traffic Engineers, Inc. We work very commonly with Bohler Engineering and Quick Chek throughout their facilities in New York and New Jersey so we have several different opportunities to get involved in this project. He's always tough to follow, Mr. Martel, because he's so good at what he does, he does half of my testimony for me, but if you can back up to the site plan drawing. Part of the discussion we wanted to have is the reasoning behind some of the discussions to keep the facilities away from one another, if we presumably have something to do with traffic calculation considerations in our particular case again re-orienting the board 32 running up and down on the sheet north and south Union Avenue running left and right across the bottom our two driveways on Union, one being restricted, one full movement, another full movement driveway the north end of our site on 32. Directly on the east side of 32 is where we have the proposed application for the Hess project. Now, if you recognize their orientation their site driveways they have site driveways in very close proximity from the signal, from what I can tell from the site plans, I don't have the transcripts but from what I can tell they haven't necessarily restricted the driveway movements themselves, I think in the old days it was common to see the curb cuts be placed in close proximity to the signals and that's what creates the driver conflict, the line of sight conflicts and certain elements to be almost confusing in some of

these older intersections, so you can see with our site layout we have maximized the separation distance we get from the traffic signal to obviously the more heavily traveled way is 32 and we have oriented our driveway as far as possible away from the intersection still maintaining the driveway on our property. This is consistent in keeping with what New York State DOT tells us in how they'd like to see the facilities oriented to our traffic signals, it makes good sense because of the existing driveways are being maintained on the Hess property of 125 feet of frontage, it's pretty tight and maybe not as open as our site. Certainly we've got a piece of property here that's some, is substantially larger, better frontage and so it allows us to provide an orientation that's maybe pretty unique for a gas station C store combination at signalized intersections. Why do they want to be close to each other, they want to be perceived as an area that you have these facilities available to you. Obviously down at Vails Gate, you know, you can get gas at any approach from any direction, whether you're coming and going and we're definitely creatures of habit in this society, these are definitely commute corridors when we talk about convenience movements and commute corridors we're a convenience food store, you recognize the pass-by trips, pass-by trips is a vehicle already on the highway system on 32 going north or out south or going east and west and it's going to stop, perform the convenience function that it's going to perform, come out and go on, continue on its same way in the most efficient effective manner possible. Recognizing that we're going to be servicing primarily those pass-by trip rates and the Institute of Transportation Engineers is pretty much our bible for statistics comes out around 70 percent, 66 percent in the evenings, 63 in the morning for what we call the pass-by trips. We found those numbers in New York and New Jersey area where we're heavily commute oriented to be up in the mid 80's, not uncommon for the peak hours. When we do our studies, we'll talk about the studies,

we talk about peak hours only so we're talking about the morning and the evening commute rush so we recognize that we're going to be capturing an awful lot of the southbound 32 percentages of vehicles coming down the highway right in, right out and continue on their way. Same with if we're coming up Union to the west we'll be making the right in, right out and as you're going eastbound on Union we oriented the two driveways because of the way it falls on the property the ability to have that extra long depth along the frontage and also to provide the option because we know there's a cuing condition along the eastbound movement on Union Avenue and actually the left turn bay as you approach signalized intersections and frankly it's probably not good practice to allow left turn movements across dedicated left turn bays you'll recognize there's a left turn bay as you're going south on 32, turn left onto Union, I know the project across the street has a driveway directly opposite the left turn bay, it's an existing condition, I think if it were a brand new condition, they would probably be doing an orientation more similar to what we have shown here. Again, this project having the luxury of a deeper and wider lot so in a lot of aspects the pass-by trip phenomenon is going to be serviced well by having stations on two different corners of a signalized intersection so we'll be capturing a lot of right-in right-out movements.

MR. KANE: You're feeling is that your, the majority of your customers are already traveling those roads?

MR. DEPASQUALI: Without a doubt, the vast majority, especially during the peak hours during non-peak hours, these facilities flow a lot more freely, you're familiar with what happens on 32 outside of commute peak hours especially true on Union with respect to why they orient themselves close to each other it's because you're as a driver anticipating that a certain movement can and can't be made or certain function can or cannot

be performed at a specific location along your commute corridor, that's what's going to develop in this area and I mean we have all at some point been familiar with the stopping point along our movement to or from work in order to perform our convenience moment and that's, that occurs on Saturdays as well, you don't go out of your way specifically to get your vehicle filled anymore, I mean, there's the ability to find these facilities along your commute corridor and along your typical travel path is really what we're looking to capture.

MR. GENESLAW: Do you foresee any traffic problems or issues by virtue of having the Quick Chek Food Store across from the proposed Hess gas station particularly in view of the permitted uses that could be developed on this property as of right?

MR. DEPASQUALI: No and in particular actually we have the ability to arrange our lot with this particular use to again provide the driveway separation that we show on our site plan, other types of uses like fast food stores, drive-thru banks with drive-thrus generate an awful lot of traffic, they don't typically capture, none of them capture the same amount of pass-by trips as our stores do, specifically banks, you know, you do make the specific trip to go to your bank because you have to go to your bank, it's a branded trip for you as opposed to a convenience store or a gas station where you don't have a branded trip necessarily most almost all of us have a specific bank that you have to attend to. So that's actually a trip that's not directly on your line of travel so they bring more trips, a sit-down restaurant, I mean, I can certainly fit that and a couple other facilities on this property and they're almost always destination trips rather primary destination trips rather than pass-by trips. So in terms of looking at the facilities and the appropriate operation of this facility across the street from another what I would perceive as being more of a gas

station as these are as opposed to this testimony you heard before I don't see a problem with that at all especially given the configuration of our site plan design.

MR. GENESLAW: Thank you.

MR. KANE: Thank you. Board have any other questions?

MR. GENESLAW: I have no further witnesses at this point.

MR. KANE: Any questions? Okay, we're going to take it in three steps, we'll take a motion and then a vote on the area variance which basically either allows the station or not, then we'll take the freestanding, the additional freestanding sign and the wall sign.

MR. GENESLAW: Any need to reopen based on the additional testimony given?

MR. KRIEGER: Just to be safe you might as well.

MR. KANE: We'll do that, yeah, sure. We're going to reopen it to the public and see if you have any further questions at this point. Again, name, address or comments, just your name and address, sir.

MR. SURINSKY: Hi, my name is Dave Surinsky, you all know me from a couple weeks ago. I live right across the street from this and the more I look at it the more I like it. Number one, it's three good reasons why I like it, it's a nice clean operation, it looks better than what's there now. Number two, the community needs it, we don't have any nearby gas station or convenience stores at the moment and number three, the biggest reason that I think is a plus we're going to have the Hess Mart across the street, if there's just one place there you're going to have people coming from all four corners to go into the Hess Mart, if there's this place

across the street, people are going to have a choice and I think it's going to disperse the traffic and I think it's going to be a big plus. You're not going to have everybody going to Hess now, you're going to have the people maybe going south, going into this gas station, the people going north going into the other gas station I think there's going to be a lot less confusion and congestion so I think it's a big plus for the community.

MR. KANE: Thank you. Anybody else? Comments, anything?

MRS. ANTONELLI: I'm Jean Antonelli and I'm all for this project because I miss my, the availability of coffee, of gas and I think that the design is very good and I think they'll do more business than across the street, I think it's very well planned and I hope that you support them in their endeavors. Thank you.

MR. KANE: Anybody else? Okay, we'll close this public portion and bring it back to the board. Any questions?

MS. GANN: No.

MR. MC DONALD: No.

MR. KRIEGER: Okay, first of all as you should be aware this is referred to the County Planning Department and it received a disapproval back. I have reviewed the disapproval and it appears to address itself to the sign variances, it appears to be largely silent on the area of the area variance. So as normally what would be required in the event of a disapproval say in order to pass it over the disapproval would require four votes instead of three. In this particular case, I would, my own feeling is that it would require four votes as to the sign variances, not as to the area variance because of the way they have answered the or not answered the question, question we have referred to

them. The second thing that I want to mention is just to remind you in the case of an area variance what the statute and the cases require is a balancing in essence between the interest of the property owner and the health, safety and welfare of the community in general and the neighbors in particular so it's a balancing test and when you look at the normal criteria for an area variance, you should bear in mind that this is the requirement that's what they're looking for as you address yourself to those items.

MR. KANE: One thing I want to say so you follow what we did here we started off with an interpretation as to whether they were a gas station or not and we found them to yes be applicable to that rule so when everything here has to be done in an affirmative so you vote now, we're taking it and giving them an area variance, not disturbing that particular law that's on the books, okay.

MS. LOCEY: And the area variance deals with the 1,000 foot.

MR. KANE: That's correct and we're going to take that one separate.

MR. KRIEGER: These properties are 35, 30 feet apart.

MR. KANE: From the closest point to closest point so basically the gas station across the street if that's--

MR. BABCOCK: It's got to be 50 or 60 feet the right-of-way.

MR. KANE: Then you would get a variance.

MR. BABCOCK: I think, I don't think we're looking for a number, I think we're looking for relief from that section of the code that says it has to be 1,000 feet which is--

MR. KANE: So when you make your, when we make a motion, make a motion to relieve them of the 1,000 foot restriction and we won't put a number to it.

MR. BABCOCK: Section 300-269A.

MR. KANE: So I'll accept a motion on the area variance.

MS. LOCEY: I will offer a motion to grant the area variance as requested by the application of Quick Chek Food Stores relative to code Section 300-26A as it relates to the 1,000 foot spacing between gasoline facilities and/or stations.

MR. BROWN: Second it.

ROLL CALL

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| MS. GANN | AYE |
| MS. LOCEY | AYE |
| MR. BROWN | AYE |
| MR. KANE | AYE |

MR. MC DONALD: I still have a few questions like everybody else with the Union Avenue and 32, you know, we have a real problem but I, with the presentation they gave I have to vote yes.

MR. KANE: Next would be the sign variances, one additional freestanding sign with a request for 27.9 square foot variance and then wall sign request for 45 square foot variance also.

MR. MC DONALD: I'll make the motion that we grant the variances for the freestanding sign and for the wall sign.

MS. GANN: Second the motion.

September 26, 2005

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ROLL CALL

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|---------------|-----|
| MS. GANN | AYE |
| MS. LOCEY | AYE |
| MR. BROWN | AYE |
| MR. MC DONALD | AYE |
| MR. KANE | AYE |

MR. KANE: Motion to adjourn?

MR. MC DONALD: So moved.

MS. LOCEY: Second it.

ROLL CALL

| | |
|---------------|-----|
| MS. GANN | AYE |
| MS. LOCEY | AYE |
| MR. BROWN | AYE |
| MR. MC DONALD | AYE |
| MR. KANE | AYE |

Respectfully Submitted By:

Frances Roth
Stenographer