

1 PLANNING BOARD COUNTY OF ALBANY
2 TOWN OF COLONIE

3 *****

4 PAPA JOHN'S PIZZA
5 402 ALBANY-SHAKER ROAD
6 REVIEW AND ACTION ON PAVEMENT SETBACK WAIVERS,
7 SEQRA AND FINAL SITE PLAN APPROVAL
8 *****

9 THE TAPED AND TRANSCRIBED MINUTES of the above
10 entitled proceeding BY NANCY STRANG-VANDEBOGART
11 commencing on April 12, 2011 at 7:07 p.m. at the
12 Public Operations Center 347 Old Niskayuna Road,
13 Latham, New York 12110

14 BOARD MEMBERS:

- 15 PETER STUTO, CHAIRMAN
- 16 MICHAEL SULLIVAN
- 17 THOMAS NARDACCI
- 18 LOUIS MION
- 19 TIMOTHY LANE
- 20 KATHLEEN DALTON
- 21 PAUL ROSANO
- 22 ELENA VAIDA, Esq., Attorney for the Planning Board

23 Also present:

- 24 Tom Andres, ABD Engineering
- 25 Joe LaCivita, Director, Planning and Economic Development
- Christian King, Property Owner
- Mary Alice Morgan
- Stephen Kircher
- Tina Connell
- Jim Kitts
- Chuck Fitzsimmons
- Kelly Farrell
- Margaret Binsse
- Jeff Baker, Esq., Green Meadows Civic Association
- Douglas Cichon
- Mary Fitzsimmons
- Judith Tate

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1 CHAIRMAN STUTO: We are ready to talk
2 about the Papa John's project and I know that
3 there are some complexities with that with the
4 variance that was granted.

5 If you could give us an introduction, we
6 would appreciate it.

7 MR. LACIVITA: Before us this evening is
8 Papa John's located at 402 Albany-Shaker Road.
9 It's before the Board this evening as it was
10 referred to us under a variance that was
11 granted by the Zoning Board of Appeals.

12 The variance was signed by James
13 Campbell, the Chairman on February 9, 2011.
14 The granted stipulation was that they granted
15 the use conditionally and it was granted with
16 the stipulation that there be a protected berm
17 placed along the abutting property lines of
18 402 Albany-Shaker Road and 445 Everett Road,
19 as well as 400 Albany-Shaker Road; that the
20 hours of operations be determined by the Town
21 of Colonie Planning Board; that stormwater
22 management must be reviewed for the project,
23 that there be a traffic study done to address
24 traffic concerns and that Christian King must
25 enter into discussions with the owner of

1 145 Everett Road to discuss concerns.

2 Those were the five components of a
3 variance that was approved, again, by the
4 Zoning Board of Appeals and conditionally set.

5 MR. STUTO: Joe, there is obviously
6 great public interest in this project. Can you
7 read the paragraph on the top of the variance
8 which shows what variances were granted? In
9 other words, what were the standard uses and
10 what deviations are permitted by this
11 variance?

12 MR. LACIVITA: The proposed change of use
13 from a motor vehicle repair minor to a fast
14 food establishment in a commercial office
15 residential (COR) zone with a 32-foot setback
16 with a single family residential SFR zone
17 including additional parking with a 20-foot
18 setback and a proposed 10 foot by 16 foot
19 cooler addition with a 41-foot setback does
20 not comply with the minimum 200-foot setback
21 for a building in a 50-foot setback for
22 parking, and is prohibited in use within the
23 said setbacks from an SFR zone as stated in
24 Sections 190-20(c)(1) and 190-20(c)(2) of the
25 Town of Colonie Land Use Law. Also, the

1 proposed 10 by 16 cooler addition with a
2 six-foot side yard setback and a six-foot
3 setback from existing single family use does
4 not comply with the minimum 10-foot side yard
5 setback in a 25-foot setback from a single
6 family use as stated in Sections 190
7 attachment two, the dimensional table,
8 including note number 5 of the Town of Colonie
9 Land Use Law and did on the basis of
10 allegations made in and said appeal -

11 CHAIRMAN STUTO: Okay, that shows what
12 the variance is.

13 MR. LACIVITA: That's what it was granted
14 under.

15 CHAIRMAN STUTO: Do you want to talk
16 about the project, or do you want to turn it
17 over to the developer? Members of the public
18 will have an opportunity to be heard, as well.
19 If you want to be heard, please sign in and
20 sign the sheet on that table over there.

21 Do you want to talk more about the
22 project, or turn it over to them?

23 MR. LACIVITA: We can turn it right over
24 to Christina King, the developer, and Tom
25 Andres and Victor Caponera.

1 MR. CAPONERA: Thank you, Mr. Chairman,
2 members of the Board.

3 With me tonight is the contract purchaser
4 of the project, Christian King. Of course,
5 it's under an LLC. Also, with us is ABD
6 Engineers, Tom Andres and Mr. Scadino is here.
7 He is a broker that has been involved in this
8 deal. For the sake of the Board who has not
9 been involved with this project as long as I
10 have, I'm going to give a little history of
11 the property and the use.

12 I think that everybody knows where the
13 project is. On the foam board in front of me
14 and in front of you is an aerial that was
15 taken by ABD Engineers. We can see that this
16 is Albany-Shaker Road and of course this is
17 Everett Road (Indicating). The property that
18 we're talking about is at the corner, which is
19 currently vacant. Directly across the street
20 is a Stewarts, and right next to the property
21 is a church. I believe that it's the Jehovah
22 Witnesses. Across the street this shows the
23 old development which was a - we'll call it a
24 fence company. It has presently been changed
25 to a two story office building built by

1 Mr. Crisafulli.

2 This is according to Zoning Appeals Board
3 Member Sheehan when we were at the last
4 meeting from the zoning Board - About 60 years
5 ago, the property was used for a gas station.
6 Your normal two-bay repair facility where they
7 repair automobiles and trucks, sold gasoline,
8 changed oil and repaired vehicles.

9 In 1986 the owner of the property came
10 before the Zoning Board of Appeals of the Town
11 and received a variance. It was variance
12 number 86-118 that the Zoning Board of Appeals
13 granted, which allowed a modification of this
14 previous gasoline and repair facility into a
15 Valvoline facility. I think back then it was a
16 Rapid Oil Change where they allowed automobile
17 oil changing fluids and draining of your
18 various fluids in your car and radiator.

19 Then again, in 1994, the applicant came
20 back in front of the Zoning Board and asked
21 for a modification where they wanted to tear
22 down the building that is currently there,
23 rebuild the building and basically use it for
24 the same purpose - for a fast oil change and
25 lube facility. That included reconfiguring the

1 building.

2 The application went in front of this
3 Board. I don't believe that any members were
4 on the Board back in 1994, but at that time
5 the Board granted the site plan approval for
6 that project. It was never built. Anyone that
7 drives by the property will see that it looks
8 about like this right now (Indicating). This
9 is another photo of what the property
10 currently looks like. So, obviously the 1994
11 approval was not acted on. So ever since 1996
12 the property reviews for this automotive
13 repair facility -- that's what this is defined
14 as in the code - not only the old code, but
15 also the new Colonie Land Use Law. The current
16 owner of the property has entered into a
17 contract with my client, which is actually
18 K & C Touch Free Carwash Inc., whereby he
19 would purchase the property, provided he gets
20 all necessary approvals to develop it into a
21 Papa John's establishment.

22 As everyone should know, the property is
23 in a commercial office residential zone. That
24 zone is shown on this aerial (Indicating) and
25 it is shown on the dotted line. I'm sure that

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1 everybody has got a plan showing this, but
2 it's kind of an unusually marked commercial
3 office residential zone. It kind of borders
4 the Crisafulli Development, borders my
5 client's property and then runs down on both
6 sides of Everett Road and goes approximately
7 200 feet on the other side of where Stewarts
8 is.

9 When we developed this project and did
10 this aerial, we did a 200-foot buffer from the
11 property line. It's been kind of circled here
12 as you can see.

13 In the COR zone, it allows for
14 restaurants such as the one that we're
15 proposing, and it also allows for motor
16 vehicle repair shops such as the one that was
17 there, so long as it's 200 feet setback from a
18 residential zone. As you can see, this
19 encroaches in this area in here where the
20 Jehovah's Witnesses building is. You can see
21 where the encroachment is. However over here
22 it doesn't. It's all in the COR zone and it
23 encroaches a slight bit on this single
24 property owner right over here, which is on
25 the corner of Green Meadows and Albany-Shaker

1 Road (Indicating).

2 I came before the Zoning Board and on
3 February 9, 2011 and they granted all of the
4 variances that were referred to when Joe read
5 the decision of the Board to allow the
6 elimination of the automotive repair facility
7 that is currently there. Those are allowed by
8 the variances that I referred to in 86 and 94.
9 It further allowed us to change the existing
10 site into a Papa John's establishment.

11 Now, I will note that the building is not
12 going to be torn down. It's not going to be
13 rebuilt. The building essentially stays, but
14 it's going to be completely renovated; much
15 the same as Mr. King did recently on the
16 corner of Route 2 and Old Loudon Road. If
17 you're familiar with what I'm talking
18 about - I'm sure the Board is because you
19 approved this - there was a preexisting
20 structure at Route 9 and Old Loudon Road as
21 well as a single story structure that believe
22 it or not I got a variance on many years ago
23 for a pizza establishment in this structure to
24 the right (Indicating). Obviously, that never
25 happened.

1 Mr. King came and got all the approvals
2 necessary and has constructed a Papa John's on
3 that corner and this is the way that it looks
4 today (Indicating). In my opinion, this is a
5 far better aesthetically pleasing operation
6 than what was there. This is similar to what
7 Mr. King is proposing on this project. This
8 was all presented to the Zoning Board back in
9 the February meeting.

10 As Joe had indicated, one of the
11 requirements was that we meet with the
12 adjacent land owner who owns the property at
13 145 and who is here tonight and we have indeed
14 met with him. I haven't, but my client and Mr.
15 Andres has. They have gone on the property and
16 reviewed the berming issue. The plants have
17 been modified to include a berm; not only on
18 the side of this property, but also on the
19 side where the Jehovah's Witness property is.
20 There has also been the addition of a six foot
21 vinyl fence that is going to be placed on the
22 property along and between the two properties,
23 and it was extended out further after they met
24 on the site. That six-foot fence is going to
25 be on top of a two-foot berm. So, technically

1 speaking it's going to be approximately eight
2 feet high.

3 CHAIRMAN STUTO: Would you mind waving to
4 the Board? I don't mean to embarrass you, but
5 thank you for coming tonight.

6 MR. CAPONERA: There is also some
7 arborvitaes that are planted here. The
8 decision between the neighbor and my client
9 was to move those and replace it with new,
10 fresh, better looking landscaping, together
11 with a split-rail fence that is going to be
12 put up along my client's property to
13 differentiate the properties. Tom can get into
14 exactly what is going to go there.

15 One of the other requirements was the
16 berm on the Jehovah Witness side, which as you
17 can see on the site plan has been replaced
18 with planting trees on top of the berm.

19 The other requirement was stormwater
20 management review. This was reviewed by the
21 Town of Colonie. In your packet is a comment
22 made by the Town Planning Department with an
23 indication that's been done to the
24 satisfaction of the Town's water management
25 review.

1 The hours to be determined by the
2 Planning Board - that was discussed at the
3 Zoning Board meeting. The normal hours that is
4 required by the Papa John's franchise is 10:30
5 in the morning until 11:00 at night. That's
6 pretty much standard. That's what we are
7 requesting tonight.

8 I will note that the Stewarts across the
9 street has steeper hours than that. They're
10 open earlier in the morning, and I'm not sure
11 how late they are at night. Let's assume it's
12 about 11:00.

13 The other issue was the traffic and on
14 page 88 of the transcript - this is the
15 transcript from the Zoning Board of Appeals
16 meeting - I will read what was stated:

17 "Mr. King entered into discussions with
18 the land owner on the Everett Road side of the
19 property to satisfy his needs and concerned."

20 We just addressed that. I've just
21 indicated that we've done that.

22 "We refer to the Planning Board that we
23 feel that there are some traffic concerns that
24 have been voiced by the residents tonight and
25 they should be addressed."

1 I'll have Tom Andres discuss the traffic.
2 We'll note to the Board that the proposal here
3 would add zero cars to AM peak traffic. Why?
4 Because we're not going to open until 10:30 in
5 the morning. Peak traffic is obviously earlier
6 than that. There is going to be approximately
7 22 trips per hour in the PM peak traffic. You
8 will hear from Mr. Andres, who will tell you
9 that this is not one that is going to require
10 a full traffic study. There is also a comment
11 made by Mr. Jukins in his review of this
12 property and he mentions that in his comments
13 that he has reviewed.

14 So that proposal was acted on and
15 approved by the Board. Of course, Joe read you
16 the salient parts of the decision that was
17 signed and filed on February 9th of this year.

18 One of the other things of great
19 importance is that Papa John's does not have
20 any fryers or any such cooking devices in
21 this. They use the conveyor ovens. So, that
22 eliminates any grease and any frying. There
23 would be only two conveyor ovens with this
24 project.

25 Now after the decision of the Zoning

1 Board, which was filed in the Clerk's office
2 in the town on February 9th, ABD Engineers set
3 out to answer and to work on the requirements
4 of the Zoning Board's decision. He'll talk
5 about what he and Mr. Kirchner - who just
6 raised his hand - who lives right here on the
7 adjacent property discussed.

8 Since this type of a proposal is a change
9 in use and is allowable in the COR zone, the
10 scope of work falls under what we consider to
11 be the Planning and Economic Development
12 Department's review. It's classified as a
13 minor site plan. Under the conditions granted
14 by the Board, the Planning Board has to review
15 and act on what the hours of operation should
16 be as required by the Zoning Board and be
17 satisfied with stormwater and the other two
18 issues I mentioned.

19 I'm not 100 percent sure on this, but I
20 don't believe based on the type of operation
21 that grease traps are even required by this
22 service. Joe, maybe I'm wrong. Am I correct?

23 MR. LACIVITA: That's a department
24 review, but typically on operations like this,
25 I don't believe that there was one required.

1 MR. CAPONERA: Mr. Andres is indicating
2 to me that it's not required.

3 Now, also, there is no seating in this
4 operation. It's strictly for take-out and
5 delivery. I'm going to submit to you with all
6 due respect that should this property not be
7 operated as Papa John's, anyone that is going
8 to come and want to use this property is
9 probably going to be using it for more intense
10 use. I'm going to submit that. I also suspect
11 that their hours won't be from 10:30 in the
12 morning to 11:00 at night.

13 The fact of the matter is that it's fast
14 food without a drive-thru window. That's what
15 it's determined to be. Therefore, the parking
16 spaces are minimal at this point because there
17 is no sit-down. You either go in and pick it
18 up or it's delivered to site; requiring a less
19 intense operation on this property. There is
20 also going to be a small three-percent
21 increase in greenspace, which will obviously
22 add to the aesthetics and the drainage. We
23 have, at the request and suggestion of the
24 Planning Department, move the storage that's
25 going to be on the north side, as indicated on

1 the site plan. That will be away from this
2 gentleman's property. So, it won't have any
3 problems with the downgrade in property.

4 Also, as mentioned, after the stormwater
5 management was reviewed, it was found to be
6 acceptable by the Town; the Stormwater
7 Management Office.

8 As mentioned before, the proposed hours
9 of operation will be 10:30 AM to 11:00 and
10 that's consistent with the other operations
11 that are ongoing in the area. It's less than
12 what's going on across the street and very
13 consistent with other similar type operations
14 in this area.

15 We feel that this proposal will obviously
16 improve the aesthetics of the area for the
17 whole outside rendering, as you can see here
18 (Indicating). It will substantially increase
19 the aesthetics of this area when compared to
20 the existing operation that is presently
21 there. Everyone has obviously seen and driven
22 by this many times. I feel that the existing
23 site is unsightly. Pictures clearly show what
24 it looks like and what we're proposing to do
25 on the site. Again, we're not constructing the

1 building. We're just upgrading it.

2 The other thing that we've done, which in
3 my opinion is very important to the Town and
4 to the surrounding neighbors, is that we did
5 not only a Phase I environmental, but a Phase
6 II environmental. We found that there is an
7 existing tank in the front of the property,
8 which has the waste oil. Then there is also an
9 existing oil tank buried in the back of the
10 building. Mr. King is committed to removing
11 those tanks, but we've also found that for the
12 most part, the property is clean. There is one
13 small area that they have determined probably
14 from the preexisting tanks that has some
15 contamination. Mr. King is committed to
16 cleaning it up as a result of this proposal.

17 So, other than the setback variance that
18 was granted by the Zoning Board on the
19 February 9th decision, this site meets all
20 other criteria, based upon the Town of Colonie
21 Land Use Law. In fact, but not for the fact
22 that the Zoning Board instructed us to come in
23 front of this Board for the hours of operation
24 and the other items, I'm submitting to you
25 that we wouldn't even be here if it was minor.

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1 Essentially, that's where we are,
2 Mr. Chairman, and members of the Board. We'd
3 be happy to answer any questions.

4 CHAIRMAN STUTO: You've given a fair and
5 good presentation in terms of educating us
6 about a little bit of the history and what
7 your intensions are for the property. I
8 appreciate that.

9 You pointed out something that in some
10 ways it's the elephant in the middle of the
11 room, for me. That's a condition of the
12 variance which says "there shall be a traffic
13 study done to address traffic concerns."
14 You've read a portion of the transcript and I
15 don't want to make the point for you. What was
16 the point of reading the transcript? I'm not
17 laying a trap for you. I just want to get the
18 facts out.

19 MR. CAPONERA: I was a bit confused by
20 that because when we discussed it at the
21 Zoning Board, there was never a true request
22 for a traffic study. Instead, it said - and
23 I'm going to read it again "We refer to the
24 Planning Board that we feel that there are
25 some traffic concerns that have been voiced by

1 the residents tonight and they should be
2 addressed."

3 That's basically what they talk about. I
4 want to have Tom talk about that because I
5 think that's important enough for the Zoning
6 Board to give you guys the luxury of looking
7 at this, and I would like time to talk about
8 this, if you wouldn't mind.

9 CHAIRMAN STUTO: Are you saying that
10 there is an inconsistency?

11 MR. CAPONERA: It seems to be
12 inconsistent because the minutes don't talk
13 about an actual traffic study, but the
14 decision does. When you look at the ITE that's
15 done by the nation's Institute of Traffic
16 Engineers, when you're dealing with 22 trips
17 in the peak PM, there is no requirement for a
18 traffic study. This does not create a
19 situation where a traffic study would be
20 required and I'm not an engineer, but I think
21 that Mr. Andres would agree with that.

22 Is that correct, Tom?

23 MR. ANDRES: That's correct.

24 CHAIRMAN STUTO: I've spent more time
25 probably focusing on this issue than the rest

1 of the Board. I have talked to Tom and I have
2 talked to Joe and Elena about it. The bottom
3 of the decision of the Zoning Board of Appeals
4 is certified by the Chair who says:

5 "I, Jim Campbell, Chairman of the Zoning
6 Board of Appeals of the Town of Colonie do
7 hereby certify that the foregoing is a true
8 copy of a decision of the Zoning Board of
9 Appeals made at a meeting hereof, called and
10 held on the third day of February 2011."

11 One of the conditions is clearly that
12 there be a traffic study done. There has not
13 been a traffic study done, correct?

14 MR. ANDRAS: The answer is simply yes,
15 there hasn't been a traffic study. It's been
16 presented to this Board as part of the
17 narrative statement that came in as part of
18 the minor.

19 CHAIRMAN STUTO: Okay, let's go to your
20 narrative. Is this the document that says
21 narrative on top?

22 MR. ANDRES: I believe that is correct.

23 CHAIRMAN STUTO: ABD Engineering on the
24 bottom?

25 MR. ANDRES: Yes. On the first page there

1 is the discussion in reference to traffic,
2 which is the third paragraph down. It
3 discusses drainage and it discusses traffic
4 generated by Papa John's. There is not any
5 traffic in the AM hour. It goes on to discuss
6 the difference being generated by the Quick
7 Lube versus the fast food restaurant with a
8 drive-thru window. Those are two of the
9 Institute of Traffic Engineers definitions for
10 uses, and it fits the closes to the existing
11 use and the proposed use is a Papa John's.

12 It notes that there are 22 vehicle
13 additional trips being generated by this
14 business. Not in this report, but the report
15 that was done - there was a full traffic
16 report done which this Board had the
17 opportunity to review. There was the
18 Crisafulli development across the street which
19 resulted in improvements near Albany-Shaker
20 and Everett Road. That actually was part of
21 the determination of the peak PM hour. It was
22 from 4:30 to 5:30. There is a two-hour window.
23 We looked at that and said that between 4:30
24 and 5:30 in the evening people are either
25 coming or ordering out at 5:30. The activity

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1 usually starts here at 5:30 and goes to 6:00.
2 So that was something that wasn't added into
3 this report. Our activity is slightly passed
4 the PM hour.

5 We then speak about the use of the
6 facility as Papa John's and that as a pizza
7 facility there are other pizza facilities in
8 the area and that a lot of the traffic that
9 will be generated from this could be existing
10 traffic that would be potentially going to
11 another pizza use that might come to this one
12 instead. There is drive by traffic that would
13 reduce the number of trips on the road.

14 The third page basically resummarizes the
15 traffic in number four under the conditions of
16 the Zoning Board of Appeals. We have mentioned
17 in there, again, of the statement of
18 22 vehicle trips. We go through the study from
19 the standpoint of a full study and there was
20 no definition in the Zoning Board of Appeals
21 on what the traffic study is. There is no
22 definition to my professional knowledge that a
23 traffic study has to be done. It's determined
24 by the individual doing the study for the site
25 or the municipality. This is not a DOT road.

1 This is an Albany County road. Albany County
2 maintains the same standards, pretty much, as
3 DOT. DOT does not require a traffic study
4 unless there are more than 100 vehicle trips
5 in the PM peak hour. So, a full-blown traffic
6 study would not be warranted. We did a very
7 concise study. Then, it also discusses the
8 items of drive by traffic that could
9 potentially reduce that number of 22.

10 CHAIRMAN STUTO: Okay, you're saying that
11 this constitutes a traffic study.

12 MR. ANDRES: Yes.

13 CHAIRMAN STUTO: Do you have any
14 questions, Counsel? I just think that it's an
15 important technical issue, unfortunately.

16 MS. VAIDA: I was actually thinking that
17 we were thinking along the same lines as -

18 CHAIRMAN STUTO: I don't want you to draw
19 any conclusions. But if you ask any questions,
20 that might help us.

21 MS. VAIDA: It's not really a question,
22 but it's more of a statement. The Albany
23 County Planning Board - this project was
24 referred to them, to my understanding. They
25 issued a recommendation. In their

1 recommendation is there any mention of a
2 needed traffic study? As you pointed out, it
3 was an Albany County road. Is that correct?

4 MR. ANDRES: That's is correct. We had
5 the opportunity also to speak with Albany
6 County in reference to this specific site to
7 find out if they had any concerns about
8 previous operations or any operations that
9 would be occurring with this. They didn't see
10 any issue with this. I think that the Board is
11 well aware of all the improvements that have
12 been done. I think that there has been pretty
13 significant improvements in how that whole
14 intersection works. It is also a note that
15 there will be some type of view of the traffic
16 in a certain number of years, based upon the
17 improvements of Crisafulli. That might be just
18 a review of the timing, but there will be
19 something at that intersection to see whether
20 it needs to be tweaked and more than likely it
21 will be signal timing.

22 In addition to that, I think that you had
23 in the packet by Planning and Economic
24 Development - a statement from CDTA, in fact,
25 not only agreeing with our traffic study but

1 saying that we were probably overestimating
2 the number of vehicles.

3 CHAIRMAN STUTO: Was that CDTA or CDTC?

4 MR. ANDRES: CDTC. They didn't see any
5 problem with this intersection.

6 CHAIRMAN STUTO: Okay, I want to keep the
7 questions on traffic for just a moment.

8 MS. VAIDA: Is it also your opinion that
9 the use of the word traffic study - that's not
10 a term of engineering and it doesn't mean
11 anything in particular?

12 MR. ANDRES: It's a generalized term.

13 CHAIRMAN STUTO: Mike, do you have any
14 questions?

15 I'm going to go through the Board. Just
16 stick to traffic for the moment.

17 Do you have any questions on traffic?

18 MR. SULLIVAN: Yes. The one question that
19 I had does deal with the memo from Mr. Jukins.
20 He said that I don't think that you need a
21 full traffic impact study. However, a formal
22 driveway location and potential conflict with
23 traffic at the intersection would be
24 appropriate. Access control at the
25 intersection would be a huge issue.

1 The concern that raises with me is I
2 understand that you'll be able to get into the
3 site because there are two entrances. You can
4 take a right turn in. However, if you wanted
5 to make a left turn out at the PM peak
6 hour - has any study been done there to see if
7 you'd be able to physically get out or will
8 there be a queuing problem where traffic is
9 blocking you in, basically?

10 MR. ANDRES: That is specifically what we
11 looked at. That was one of the points that we
12 made to the Zoning Board of Appeals regarding
13 how well this site works. Stewarts is a little
14 more difficult to get in and out of because
15 it's on the other side to the west to get into
16 the site and to get out of the site. You
17 really don't have to make a left hand turn. If
18 this site didn't have an entrance from
19 Albany-Shaker Road, you would be coming
20 eastbound on Albany-Shaker, you'd have to turn
21 southbound on Everett and try to cross those
22 three lanes to get into here (Indicating). It
23 would be a very difficult left hand turn and
24 you'd end up stacking a lot of it behind you
25 and creating a significant issue for the

1 traffic flow. Luckily, all you have to do is
2 go through the intersection to make a right
3 turn in. Everyone coming from Everett Road of
4 course, coming to the facility just has to
5 make a right turn in. People traveling
6 westbound on Albany-Shaker do have to make a
7 left turn in. However, there is a dedicated
8 left turn lane to allow them to make that left
9 turn in and not blocking traffic; the same way
10 in exiting the site. You can honestly get out
11 onto Everett Road to make a right turn to
12 either go to west or east. You can exit out
13 Albany-Shaker to make a right turn to go east,
14 because you do have that gap there at the
15 light and you do have a left turn lane and the
16 stacking isn't necessarily a problem on that
17 side as much as it is stacking up on Osborne.
18 The issue there is that you can still make a
19 left turn out there so that you would be able
20 to go west on Albany-Shaker.

21 To come out of the lower entrance onto
22 Everett and make a left turn would be
23 difficult. But you do have the ability because
24 you're going to be crossing three lanes. You
25 do have the ability to go out Albany-Shaker,

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1 take a left and be in that left turn lane, and
2 then you would realize the defined left turn
3 from Albany-Shaker to go onto Everett. So, it
4 has a lot of opportunities. They may not
5 realize it the first time, but they certainly
6 will learn that they can. This is not a sit
7 down restaurant.

8 Chris, you say that 50 percent is take
9 out?

10 MR. KING: It's 60 percent delivery and
11 40 percent take out.

12 MR. ANDRES: Okay, so you have 60 percent
13 of the traffic is employees delivering. I
14 think from that statement, that addresses
15 that. Again, my discussion with Albany
16 County - they didn't see any issues with this
17 project.

18 MR. SULLIVAN: I appreciate your
19 explanation. My concern is that there is no
20 gap available when you're trying to exit
21 westbound on Albany-Shaker to either go
22 westbound on Albany-Shaker or then get a left
23 turn and head south on Everett. That's my
24 concern. Will there be a gap there at peak
25 hour?

1 MR. ANDRES: I guess the question comes
2 back to this Board - this Board is charged
3 with the site plan approval for a use that's
4 allowed in the zone. Any other uses that are
5 allowed there, including the existing use,
6 would have the exact same issue, or
7 potentially worse with the generation of
8 traffic that they would have. So, yes, I mean
9 if all of these things work against you, it
10 would be more difficult and you'd have to
11 spend more time. In fact, because of the
12 lighting, it does have a certain amount of
13 gaps.

14 MR. KING: I just wanted to make a point.
15 Albany County looked at the inclusions as well
16 as CDTC. If there were really impact issues
17 with the existing uses that were there, they
18 would have said so and we would have gotten
19 clean bills of health from both of those
20 agencies, because they look at the traffic
21 access and functionality of the intersection.
22 The fact that they have already signed off on
23 it, if you will, I think speaks to a lot of
24 the functionality of the site, and the
25 entering and exiting.

1 MR. NARDACCI: As Mike mentioned, though,
2 in Dave Jukins' letter that you're
3 referencing, he says

4 "However, a formal look at driveway
5 location and potential conflict with traffic
6 at the intersection would be appropriate."

7 That doesn't equate a sign-off.

8 MR. SULLIVAN: I have one other point. If
9 the traffic study that is due to come out in
10 2012 - if there should be a problem in the
11 future, could you limit the left turns out of
12 the location? They would have to take a right
13 turn out or at least until 6:00 pm or
14 something like that, if it does become an
15 issue?

16 MR. ANDRES: I think that we would be
17 willing to work with whatever that traffic
18 study comes out with. I'm not going to say at
19 this time that we're willing to eliminate that
20 left turn because that's a what if. They may
21 never request that of us. If there is a
22 significant study that shows that there is a
23 significant problem, then we would certainly
24 want to work with that study.

25 MR. KING: Mike, you're talking more

1 concern about the left out?

2 MR. SULLIVAN: Yes, my main concern is
3 people that come out that left.

4 MR. KING: I would be fine with that
5 because like I said, the two year study is
6 from September of 2010, correct, Joe?

7 MR. LACIVITA: The recommendation was
8 that build-out.

9 MR. KING: Mike, I think that you're
10 asking, hey, what if that comes out and there
11 are impact issues with egress and ingress?
12 Would we be willing to work with that study?
13 The answer, from being a developer, would be
14 yes.

15 MR. SULLIVAN: My concern is - and not to
16 stereotype anybody but pizza delivery guys are
17 usually young and it would be quicker to get
18 out if you were willing to take a risk. My
19 concern is people trying to take a left turn
20 out of there when they really shouldn't be.
21 That's my concern. If it were a problem or
22 there were a higher incident with accidents or
23 whatever, perhaps we could limit the left
24 turns out of there.

25 MR. ANDRES: Again, going back to my

1 point earlier - say this was developed as an
2 office site. Even though it's very small,
3 something might go in here that was a little
4 larger and different. You might have the peak
5 of that use corresponding to the fact that the
6 adjoining roads would really cause an issue.
7 The main use of the generator is significantly
8 different. There is always traffic on Everett
9 and always traffic on Albany-Shaker, but it's
10 much less once you get out of that peak
11 period.

12 MR. SULLIVAN: I thought that there would
13 be a bit of an overlap there say between 5:30
14 and 6:00. You would still have that overlap of
15 pizza and peak traffic.

16 MR. ANDRES: You will have an overlap.
17 However, the specific study that was done for
18 the Crisafulli project determined that the
19 peak time of traffic is 4:30 to 5:30. You
20 could do a study of 15 minute increments
21 through that 4:00 to 6:00 period and then you
22 take the highest four increments that are
23 together. That determines the peak. It's the
24 time when the peak of PM traffic occurs; that
25 was 4:30to 5:30. We were not the traffic

1 engineers for the project. That was Creighton
2 Manning.

3 MR. SULLIVAN: How close were the
4 numbers? I have to believe that the
5 numbers - they're not going to change that
6 much in 15 minutes. There is still a lot of
7 traffic there at 6:00.

8 MR. ANDRES: They're not, but there is a
9 standard that's done when you're looking at
10 that. That standard determines when that peak
11 PM hour is. The statement in that report is
12 that the PM hour is 4:30 to 5:30, so the
13 traffic from 5:30 to 6:00 is less.

14 MR. SULLIVAN: Do you have any sense of
15 some numbers? I think that we're splitting
16 hairs here. I think that we're still going to
17 have a traffic problem.

18 MR. ANDRES: I don't have the specific
19 numbers here with me. The point was that it's
20 off a little bit.

21 MR. SULLIVAN: That's 15 minutes off.

22 MR. ANDRES: Well, 15 to 30 minutes, but
23 if you had someone come in here that was pure
24 office, they most likely would have the
25 corresponding hours to the high peak.

1 CHAIRMAN STUTO: Tim any comments?

2 MR. LANE: Has anybody looked at the
3 accident rate in that intersection? Is there
4 an accident report that anybody has reviewed,
5 especially since the new office building has
6 been built?

7 MR. ANDRES: There hasn't been any study
8 since -

9 MR. LANE: Wouldn't Public Safety have
10 that information?

11 CHAIRMAN STUTO: Joe, would Public Safety
12 have an accident history for that location?

13 MR. LACIVITA: Traffic Safety would, yes.

14 MR. LANE: That might be something that
15 we might want to see.

16 MR. LACIVITA: If it's something that
17 this Board determines to get an accident
18 count, yes. That is something that you could
19 look for. We could very easily find out if
20 there is any generation of numbers moving
21 forward. If there is any history, we should
22 know right away.

23 MR. LANE: In reference to the exits in
24 and out, the width - is it wide enough for two
25 cars to go through? Is there going to be a

1 conflict there where it's going to be wide
2 enough? What is the width of these entrances?

3 MR. ANDRES: They will be at least the
4 24 feet.

5 MR. LANE: Will they be signed or
6 arrowed?

7 MR. ANDRES: There won't be any signs
8 because both entrances and exits are both
9 ways.

10 MR. LANE: What about arrows just to keep
11 people directed?

12 MR. ANDRES: There isn't any proposed,
13 but we certainly can.

14 MR. LANE: When you're dealing with a
15 narrow space, it's kind of an odd intersection
16 and on the Everett side there is a slope to
17 it.

18 MR. ANDRES: There is a slope across the
19 whole thing. We would have no problem of any
20 condition of painting arrows, or any other
21 signage for that matter. That's fine.

22 CHAIRMAN STUTO: Paul?

23 MR. ROSANO: When I look at this project,
24 I see two things. I see the corner of Osborne
25 and Albany-Shaker Mobil gas station - no

1 different from the issues that you have here.
2 I see Fresh Market on 9 and 155 where there is
3 a lot more traffic and I still have not heard
4 any problems. Has anybody come up with
5 anything that shows me that there is a
6 difference between the two? I see the same
7 situation and I don't see a problem.

8 MR. ANRES: I think that you'd have a
9 much more significant situation across the
10 street at Stewarts. It works. It's not
11 perfect, but it works. You're cutting across
12 lanes when you're going into the Fresh Market.
13 You're traveling northbound on Route 9.

14 CHAIRMAN STUTO: Tom?

15 MR. NARDACCI: To come back to an initial
16 point that Peter made: I'm a little concerned
17 just by the language in the ZBA decision and
18 the fact that they say that a traffic study
19 should be performed. An internal question that
20 I would have is: I looked quickly through the
21 Land Use Law and I didn't see the ZBA's
22 authority to refer something like this to us.
23 I think that's a question that we answer
24 ourselves. What is their authority to refer it
25 to us?

1 On the traffic study itself, I'm just
2 going to respectfully disagree that this is
3 not a traffic study. This is my fourth year
4 here, and we spent a lot of time with traffic
5 issues all over town. The one thing that I
6 know is that the 250 words dedicated
7 here - this is not a formal look at traffic.
8 Now, I'm not saying that you need a traffic
9 study or not. That was something that was in
10 the Zoning Board, but if you're representing
11 to us that this is a traffic study, I deem
12 that as incomplete. I think that we don't have
13 stacking information provided, queuing - I
14 think that's information that we would need to
15 make a determination whether there is a
16 traffic issue. I think that you reference the
17 study for the other project. You should have
18 included references to the information that's
19 already available. If you're representing that
20 this is a traffic study, I think that it's
21 inadequate.

22 MR. ANDRES: We represent a traffic study
23 that meets the conditions of the Zoning Board
24 of Appeals. I believe and I think that we
25 would have to check - I don't know how the

1 Zoning Board of Appeals works, but I believe
2 that decision came out quickly. I don't have
3 the transcript. I don't know if that was fully
4 reviewed in the minutes of that transcript and
5 if the decision was written. I'm just
6 wondering if the decision was made without the
7 benefit of actually looking to see what was
8 said.

9 MR. NARDACCI: Here is my comment. We are
10 left to interpret it - what the meaning was.
11 You quoted a transcript - I have a signed
12 document from the Chairman. That's black and
13 white, and I'm not a lawyer but it seems
14 conflicting. I would rather have a clear
15 understanding of what the ZBA's intension was
16 here.

17 MR. ANDRES: I don't think that there is
18 any question about intension. The transcript
19 is the ZBA's official document.

20 MR. NARDACCI: I'm going to disagree. The
21 signed ZBA decision is the official document.

22 CHAIRMAN STUTO: It's a true copy of
23 their decision.

24 MS. VAIDA: Victor, Did you make any
25 attempt to contact the Board to clarify the

1 decision?

2 MR. CAPONERA: Yes. Nothing happened.
3 They didn't formally go back and review the
4 minutes compared to what the decision said. I
5 did informally discuss it with the attorney
6 for the Zoning Board, Mike Garry.

7 MS. VAIDA: You didn't have the minutes?

8 MR. CAPONERA: No, the minutes weren't
9 even available, so it was pretty tough to do.
10 I know that Mr. King wanted to advance the
11 project because he's on a time constraint
12 here. Under ordinary circumstances - and I
13 must disagree with Mr. Nardacci - this is not
14 a case where you do a full traffic study.

15 MS. VAIDA: I don't think that's what
16 he's saying.

17 MR. NARDACCI: That's not what I said.

18 MS. VAIDA: The decision seems to be
19 ordering us to have a traffic study.

20 MR. CAPONERA: I understand and again,
21 it's a question of: Was it a full-blown
22 Creighton Manning 98 page study?

23 CHAIRMAN STUTO: You could have at least
24 put it in a blue back binder with traffic
25 study on the top.

1 MR. CAPONERA: I understand. This is a
2 tough scenario. I've been doing this a few
3 years and I've never seen a Zoning Board in
4 any municipality require this. It is what it
5 is. This is what we're dealing with.

6 MR. NARDACCI: The Zoning Board provided
7 us with their exact intent. We're up here
8 trying to interpret it -- and that's what I'm
9 trying to say. Obviously we've reviewed a lot
10 of different projects with different scales.
11 There are different scales. I'm looking at
12 what it says - that there be a traffic study
13 performed and that's my opinion.

14 CHAIRMAN STUTO: I agree.

15 Lou?

16 MR. MION: None, right now.

17 CHAIRMAN STUTO: Kathy any questions or
18 comments on the project?

19 MS. DALTON: No, actually.

20 Sixty percent of their volume is going to
21 be taken care of by delivery. You're really
22 talking about a limited use facility that you
23 might get from another situation. The fact of
24 the Zoning Board of Appeals asking to do
25 something -- I think that we got an atypical

1 response to an atypical question. I'm not
2 really as concerned about that. Unless I'm
3 missing something, it looks like you covered
4 the bases to me.

5 CHAIRMAN STUTO: Lou, any general
6 comments?

7 MR. MION: No.

8 CHAIRMAN STUTO: Tom?

9 MR. NARDACCI: Can the applicant run us
10 through the architecture and the materials
11 that you plan to use?

12 MR. KING: This front wall will, for the
13 most part, be taken down with the windows in
14 it. This is the side of the two bay doors so
15 depending on what kind of condition - we may
16 just take this out and put big windows in
17 (Indicating). This will be aluminum with
18 windows. This is going to be either a hardy
19 board or stucco (Indicating). We're still
20 trying to decide between those.

21 MR. NARDACCI: Not vinyl, though.

22 MR. KING: No, it would be hardy board,
23 but we're just trying to figure out if it's
24 appropriate. The back side would be similar
25 and wrap right around, but not on all sides.

1 The side of the building would stay the same.
2 We're just trying to elevate it. Really, this
3 is only going to end up being about a foot and
4 a half to two feet higher. This will just make
5 it look like it's a little bigger. This is a
6 small building. It's only 1,268 square feet.
7 So, we're just trying to make it look a little
8 nicer.

9 The standing seam metal roof is your
10 typical metal roof. You can see that the
11 solars slide off. The flat roof - all the
12 mechanics will be on top, covered, and inside
13 the parapet of the cupola.

14 MS. LANE: So, there won't be any
15 visibility of those rooftop mechanicals?

16 MR. KING: No. So, we're trying to do the
17 best that we can with the 1,268 square foot
18 building. That's the best that we could come
19 up with without tearing it down like we did
20 over on 471 Troy-Schenectady Road.

21 MR. NARDACCI: In addition to the
22 landscaping to screen with the
23 neighbor -- what other landscaping elements do
24 you have?

25 MR. KING: First of all, it's going to be

1 sodded and sprinklered, so you'll have that as
2 an aesthetic standpoint. This will be all
3 sodded in here. This will be all ripped down
4 and sodded with the plantings and the flower
5 beds and all sprinklered with water. It's the
6 same thing here.

7 We talked with Steve and Stephanie, our
8 next door neighbors here. We had originally a
9 two-foot berm and a six-foot fence. We were
10 sitting in their kitchen trying to make them
11 happy. We decided to extend that all the way
12 down to here (Indicating). Steve and Stephanie
13 didn't like what was here now, so we agreed to
14 remove all those and put eight smaller shrubs
15 in and two crabapple-type flowering trees.
16 It's like more of an ornamental fence that
17 we've agreed to put all along through here
18 (Indicating). The berm that was discussed in
19 the Zoning Board is a two-foot berm with pines
20 on top for the screening on the backside of
21 the Jehovah's Witnesses. Again, out front is a
22 small planting area with flowers and some
23 small shrubs and sod.

24 MR. NARDACCI: So, the sod is grass.

25 MR. KING: Right. Just like we did at

1 471, we'd do the same type of landscape.

2 MR. ANDRES: One point that Mr. King
3 didn't bring up is that the existing site is
4 33.5 percent green. With these improvements it
5 will be 36.9 percent. That brings it above the
6 percentage that the Town requires. We're
7 trying to redevelop this into a different type
8 of use and to have someone else here, you'd
9 have to have someone put a lot of work into
10 this. This project is actually bringing the
11 site into conformance.

12 MR. NARDACCI: That's all I have.

13 CHAIRMAN STUTO: Paul, do you have any
14 general comments or questions?

15 MR. ROSANO: No, I'm all set.

16 CHAIRMAN STUTO: Tim?

17 MR. LANE: No.

18 CHAIRMAN STUTO: Mike?

19 MR. SULLIVAN: You had mentioned that the
20 fuel storage tanks were located there, and
21 there is a slight bit of contamination, but it
22 will be addressed?

23 MR. ANDRES: Yes. There is actually a
24 waste oil tank that was utilized for the Jiffy
25 Lube that's in the front that's going to be

1 removed. There is an oil tank in the rear that
2 has been used for heating oil for heating the
3 building. That's going to be removed. The area
4 that's in the middle here, where there were
5 fuel tanks before with the use of the gas
6 station - that area has all been cleaned up,
7 but there was a small area there that had a
8 small amount of contamination and that will be
9 taken out as part of the project.

10 CHAIRMAN STUTO: Okay, we're going to
11 hear from the public. I'm going to read a note
12 from someone from the public. I just want to
13 be sure that we know that we've seen it. It
14 was circulated electronically to the Board
15 Members and it will be made part of the
16 record.

17 When you speak, please go up to that
18 microphone and say your name.

19 Kathy Ordway is President of the Green
20 Meadows Civic Association.

21 MR. NARDACCI: The Green Meadows Civic
22 Association wishes to express their strong
23 opposition to the approval of Papa John's
24 Pizza at the corner of Albany-Shaker Road and
25 Everett Road; the property currently occupied

1 by Valvoline. The Green Meadows residents have
2 the same reasons for this opposition that they
3 had for the restaurant occupying the Loudon
4 Square development. Food service so close to
5 our neighborhood will affect the value of our
6 homes and quality of our lifestyle, due to the
7 everyday conditions brought by a food service
8 operation. Those conditions are: noise, heavy
9 equipment, delivery, garbage pick up trucks,
10 cars, vermin, small animals attracted to a
11 food operation, neighboring property, odor
12 from the pizza oven and dumpsters.
13 Traffic - especially customers leaving the
14 restaurant that make left hand turns out to
15 Albany-Shaker Road and Everett Road and
16 increase that peak rush hour traffic times,
17 and remaining open until 11:00 PM every night.
18 These conditions prevailing until hours which
19 are very late for residential neighborhoods.
20 In addition to these conditions occurring
21 every day, the number of parking spaces, only
22 13 spaces with eight being used by employees
23 and one handicapped space will leave only four
24 spaces for customers. Overflow cars waiting to
25 park will back up on Albany-Shaker and Everett

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1 Roads and cause worse traffic problems. This
2 property is in as close proximity to the Green
3 Meadows neighborhood as Loudon Square is and
4 in fact, sits within the 200 feet setback
5 required for food service operations stated in
6 the Town of Colonie Land Use Law. We feel that
7 a precedent was set by the Town Planning Board
8 when it agreed that a food establishment would
9 not be appropriate bordering the residency of
10 Green Meadows at its June 9, 2009 approval of
11 Loudon Square development. As President of the
12 Green Meadows Civic Association, I ask that
13 the Planning Board adhere to this policy at
14 its April 12th meeting and deny approval to
15 Papa John's. Kathy Ordway, President, Green
16 Meadows Civic Association.

17 CHAIRMAN STUTO: Thank you.

18 Just in fairness, I'm going to call the
19 names in the order that they were signed in.

20 Mary Alice Morgan.

21 MS. MORGAN: MY name is Mary Alice
22 Morgan. I live within 57 feet of Albany-Shaker
23 Road called the upper entrance to Green
24 Meadows Lane. I respectfully disagree with the
25 experts tonight talking about the traffic and

1 the impact on our neighborhood. The
2 intersection right there at Everett Road - the
3 road widens. It is much wider at the top and
4 it is quite wide at the end of our end of
5 Green Meadows opposite Wedgwood Road. There
6 are accidents there that are not reported to
7 the police. I've seen them, too.

8 There are people that run that traffic
9 light on the Albany side coming very fast.
10 They want to get into that second lane. I've
11 seen those cars get to the end of Green
12 Meadows and screech. Nobody is hurt and it's
13 usually at the rush hour of traffic between
14 4:00 and 6:00. I saw one Sunday that it took
15 45 minutes for police to come. At that hour,
16 you don't get policemen so quickly because a
17 pile up can occur and it's hard for them to
18 get there, too. I've seen those things occur.
19 I would like to respectfully say that this is
20 not going to be easy for people to get pizza.
21 If you're coming from Albany going west and
22 turn left into the Papa John's, to get out,
23 they're either going to have to go out and
24 make a left briefly, go right, or else go
25 right down Shaker. I'm afraid that they're

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1 going to turn right onto Shaker, cut across
2 the lanes of traffic that are stacked up
3 between 4 and 6:00 and really start zooming at
4 a quarter to four. It's constant gridlock for
5 people who live there. I think that they will
6 shortcut and go around to lower Green Meadows
7 and go through and around upper Green Meadows,
8 across Cloverfield and down our Green Meadows
9 upper area.

10 I don't think that the pizza parlors that
11 I've seen in our neighborhood are especially
12 careful with other people's concerns. They are
13 just in a hurry to get that pizza there on
14 time and get paid and then on to the next
15 delivery. I really think that it's going to be
16 very difficult for people to do that and to
17 survive there and doing anything during those
18 hours. You have to turn right and go up
19 Shaker, heading toward Osborne and then try to
20 make a left.

21 I stopped an exercise class because I
22 couldn't get out of there in those particular
23 hours. You're taking your life in your hands.
24 You have approximately three seconds where the
25 right hand lane might be stopped and between

1 the light and two traffic lanes coming up
2 shaker, up Everett, bringing them down to
3 Shaker and it's very difficult. I really think
4 that the Board should consider the impact that
5 this will have on us.

6 I also think that Valvoline didn't have
7 anything at night. The hours at night - they
8 only had daytime hours. I have been there
9 since '77 and when there was a garage there,
10 they closed. They weren't open on Sunday. They
11 were opened a little while on Saturday
12 afternoon. It wasn't all day and all night.
13 This is 10:30 until 11:00 at night. I think
14 that it's going to be difficult for customers
15 to get in and out. I think that it's going to
16 be very difficult. It's going to make our
17 lives much harder to bear. When I hear about
18 traffic study, I don't think that it's right.
19 I think that the people in the county don't
20 understand. They don't see how bad this
21 gridlock is.

22 I don't know anything about traffic
23 engineers. I don't know about where the 22
24 trips comes from. I'm just a citizen and not
25 an engineer. I don't know about the 22 trips

1 that we're talking about at the peak times.
2 Does that mean 22 cars go in and then out
3 again, or is that 11 cars going in and out
4 again?

5 CHAIRMAN STUTO: Can you answer that
6 question? I don't want to have a back and
7 forth. The 22 cars?

8 MR. ANDRES: That 22 is the total vehicle
9 count that in most instances, the counts are
10 equal in and out.

11 CHAIRMAN STUTO: Would that be half or
12 would that be one?

13 MR. ANDRES: That would be one car. When
14 that car pulls out, that's another trip.

15 MS. MORGAN: I travel down into the city
16 by way of Everett Road and I've noticed in my
17 travels that there are empty spaces that are
18 certainly better suited and I wondered if they
19 have been considered for this operation.

20 There is a plaza where there are lawyers
21 and a flower shop and there is one place that
22 has been empty for the last few months. That
23 was big enough and the parking lot there and
24 two exits could get you out onto Everett Road.
25 I wonder if Papa John's has checked those

1 other areas. If you needed another pizza
2 place, it seems like you could have looked at
3 some other options.

4 Thank you, very much. I just think that
5 it's difficult to get in and out of where we
6 live. There are times when I just don't go out
7 because it's too difficult and I take my life
8 into my hands to make a left hand turn out of
9 Green Meadows. Regardless of what they say, or
10 what traffic studies you're saying, it's very
11 dangerous.

12 CHAIRMAN STUTO: Thank you.

13 Stephen Kircher?

14 MR. KIRCHER: The only thing that I'm
15 concerned about right now is how will they
16 oversee what's going on with the berm. Right
17 now, with the driveway that they have and a
18 parking lot, the water lays there and it
19 drains there. I'm concerned about my driveway
20 and my basement from where I live at
21 145 Everett. That's my concern.

22 CHAIRMAN STUTO: I think that it's
23 reasonable to address the drainage issue right
24 now.

25 MR. ANDRES: We did have an opportunity

1 to meet with Mr. Kircher, but we also had an
2 opportunity to meet with the stormwater people
3 over at the Town. They actually went out to
4 the site to take a look at the situation,
5 also. There was a response back from them. We
6 actually made changes to the plan. When we
7 met, the Town had referenced that they looked
8 at it and were satisfied with the changes.

9 What we're proposing to do on the first
10 sheet and also the second sheet is by creating
11 this berm, they had asked us to extend the
12 berm not only from a visual standpoint, but to
13 help the drainage that's coming off this
14 corner of the building that is going onto the
15 adjoining property. So, it would run out to
16 the curb line. There is a curb line along the
17 south side of the property. The curb will
18 remain and we'll have asphalt put in there and
19 that will actually divert the water and bring
20 it out onto Everett Road.

21 CHAIRMAN STUTO: Any other questions from
22 the Board?

23 ***(There was no response.)***

24 MR. KIRCHER: As long as somebody
25 oversees it, right?

1 MR. ANDRES: Yes.

2 CHAIRMAN STUTO: Joe?

3 MR. LACIVITA: It is part of the process
4 during construction, Peter, that stormwater is
5 out there weekly visiting the site during the
6 course of construction until the point of CO.

7 CHAIRMAN STUTO: And you keep an eye on
8 it yourself.

9 Thank you.

10 Tina Connell.

11 MS. CONNELL: Thank you for allowing me
12 to speak. I found it interesting that this
13 establishment was characterized as fast food.
14 Not that I'm against this, but fast food is
15 based on volume and speed. That section there
16 is a nightmare and with all due respect, these
17 people that have addressed these issues don't
18 live there.

19 I bought my house about 10 months ago. I
20 love it there. It's a great Town to bring up
21 your kids. We have great neighbors. I'm not
22 conservative. I need to get to work. I have to
23 be to work on time, and getting out of that
24 intersection is dangerous. I can tell you that
25 from someone that drives it every day with two

1 kids in the car, it's significant. Let's say
2 you had an office building of 62 or so. Those
3 62 people go in and they park there at one
4 time and then they leave at one time. They
5 don't need to be coming in and out and
6 crossing lanes of traffic in a certain amount
7 of time so that somebody can get their pizza.

8 Another thing that I didn't think of, but
9 I also believe would be significant would be a
10 that pizza delivery places can be busy and
11 there are a lot of kids in that neighborhood
12 that ride their bikes. The residents do keep
13 an eye on things because it's an awesome place
14 to raise kids. A business is going to go
15 there. It's a great location. It should go
16 there.

17 Thank you.

18 CHAIRMAN STUTO: Jim Kitts.

19 MR. KITTS: Mr. Chairman, members of the
20 board, I'm Jim Kitts and I live at
21 5 Thistledown Court. I have several concerns
22 with this project. First is that it's food
23 close to a residential area. There are odors
24 from pizza ovens. They do smell. There are
25 odors from a dumpster. There has to be a

1 dumpster there. Such a small piece of
2 property. In the dumpster there there is going
3 to be vermin. They will migrate to nearby
4 neighbors.

5 Traffic has been talked about and I have
6 a lot of comments about that. The normal rush
7 hour in the morning, there might not be any
8 change. Valvoline had one or two cars in there
9 before 9:00 - if they did, that was a lot.
10 Stewarts - there are accidents there every
11 week when they are making those left hand
12 turns out of the property. Add Papa John's to
13 it and you've got them coming at you from both
14 directions. They're all over the place on
15 Everett and on Shaker.

16 The narrative on page 3 from ABD
17 Engineers, under comment number four says

18 "Because of the entrances off of
19 Albany-Shaker and Everett Road, the site
20 allows access without the need for left hand
21 turns from the roads into the site. Left turn
22 motions cause the principal back ups on the
23 major roads."

24 Traffic backs up all the way out to
25 Crumitie and many times I've sat coming off of

1 Crumitie. If you're coming up there and you
2 want to stop and get a pizza on the way home,
3 how do you get into the place? There is only
4 one way. It's a left in turn into Papa John's.
5 It's left hand turn back out, too, onto
6 Albany-Shaker. So, I question some comments in
7 that.

8 Parking spaces - there are 13 parking
9 spaces. They said that was for up to eight
10 employees and one handicapped. That leaves
11 four for customers. I know that Papa John's is
12 not going to make any profit with only four
13 parking spots for four people at a time there.
14 They're going to be backed up onto Everett,
15 and Albany-Shaker waiting to get in. I
16 question that.

17 What if six of these 22 customers an hour
18 preordered and come at the same time? What's
19 going to happen to traffic at that point?
20 There isn't going to be room to go in and
21 park.

22 As I talked to the Albany County Planning
23 Department and they said that this project is
24 on the Planning Board for April 21st. That's
25 after tonight. I don't know how this works,

1 but I would think that the County would have
2 to react to this before the Town. I was
3 surprised that Albany County has it on the
4 agenda for April 21st.

5 CHAIRMAN STUTO: Do you know the answer
6 to that, Joe?

7 MR. LACIVITA: Yes, actually when
8 speaking to Leslie Lombardo on that, they had
9 reviewed the exact same site plan that they
10 offered the comments for in January. I don't
11 have the exact date right now, but it was the
12 same site plan and the same narrative went
13 down to the Albany County Planning Board for
14 the zoning variance. I just note that the
15 three components that they looked at - that
16 none offered any recommendation to address
17 traffic at this time. That was a conversation
18 that I had with Leslie, but currently based on
19 our internal processing's for minor
20 applications on a road that addresses an
21 Albany County road, we send it down there for
22 their review anyway.

23 CHAIRMAN STUTO: Do they have to have a
24 meeting before we act?

25 MR. LACIVITA: Based on the conversation

1 that I had with Leslie, I know that one of the
2 things that she says the recommendations that
3 we would probably see come out of this was the
4 DEC issue - the concern that they had. In
5 fact, I had forwarded her some comment in the
6 study that Mr. King had provided to me. That
7 was the only thing that they were leaning
8 towards, based on comments that they had from
9 CDTC's review and other things that they had
10 before them. That was the only anticipated
11 comment that I was going to be looking for
12 from Albany County.

13 CHAIRMAN STUTO: Does the applicant have
14 any answers to that or any knowledge about
15 that process?

16 MR. CAPONERA: I would agree with what
17 Joe had to say. It's already been submitted to
18 Albany County and they have already given
19 their report and their recommendation. They
20 didn't say anything about traffic. In my
21 opinion, there isn't any need to respond
22 again. Remember, this is a minor application
23 that typically we wouldn't even do before this
24 Board if not for the Zoning Board's decision.

25 CHAIRMAN STUTO: I don't know if that's a

1 full answer or not.

2 MR. KITTS: But there will be a full
3 hearing at Albany County on the 21st.

4 My last comment is that the existing
5 building will stay as is, but two walls will
6 be replaced. Thank you.

7 CHAIRMAN STUTO: Thank you.

8 Chuck Fitzsimmons?

9 MR. FITZSIMMONS: I'm Chuck Fitzsimmons
10 and I live at 7 Green Meadow Lane. I've been a
11 resident there for about 30 years.

12 Tonight before coming here, the traffic
13 was backed up on Osborne Road. On the east
14 side of Everett it was backed up, also.

15 Most people order pizza at dinner time.
16 Most of the cars for pizza delivery will be
17 going east on Albany-Shaker Road. I think that
18 it's curious that a variance was granted.

19 I think that it would be fair for the
20 Board to suggest that there would be a further
21 search to see where this business might be
22 more appropriate so that there would be less
23 of an impact.

24 Can you make a decision to mitigate the
25 decision of the Zoning Board?

1 CHAIRMAN STUTO: I'm not sure how that
2 concept would even apply to the Zoning Board
3 except to say that we can mitigate impacts on
4 the outside neighborhood - the outside
5 environment. That includes things like how we
6 would do the screening, visual impact,
7 drainage, traffic and those types of things.
8 That's what we do have the power to mitigate.

9 Do we have the power to overturn the ZBA?
10 I think that I can categorically say no.
11 That's where we are. Their variance that was
12 delivered to us, we have to take as the force
13 of law.

14 Would you agree with that Elena? We can't
15 overturn that decision, can we?

16 MS. VAIDA: No, of course not.

17 CHAIRMAN STUTO: That's the best that I
18 can do for you on that.

19 MR. FITZSIMMONS: Why have the zoning
20 when they're not going to adhere to it?

21 CHAIRMAN STUTO: Margaret Binsse?

22 MS. FARRELL: I'm actually going to speak
23 first. I spoke with Joe earlier.

24 I'm going to talk realistic and then you
25 can hear my mother. I'm going to admit that

1 the Valvoline is an eyesore. Do I want Papa
2 John's? No. Do I want the hours? No. I'm going
3 realistic right now because I'm still in
4 vacation mode.

5 The view on Albany-Shaker Road is not
6 aesthetically pleasing to me. I live on
7 Albany-Shaker Road. I'm going to suggest a
8 redesign of less glass. I don't want to see
9 this all lit up. It's in view of my front
10 yard, my living room/dining room window and at
11 11:00 I don't want to see office lights or any
12 kind of light like that.

13 Right now my only concern is that if this
14 project does go through if we can make it look
15 more residential looking. I don't know if
16 that's an option - if it's possible to make it
17 more residential looking. Crisafulli worked
18 with us. We asked that he go a little bit more
19 residential and he did that. I think that this
20 might be a little bit too much of an eyesore
21 and be commercial. That's my comment.

22 CHAIRMAN STUTO: I think that question is
23 important enough to have the developer address
24 it. I think that I get the point that they're
25 making. Most of people like a good quality

1 brick. Stewarts doesn't have that much glitz
2 and glare to it and everything else is
3 residential. There is a church next door, I
4 know.

5 MS. FARRELL: I live down further and I
6 don't want their office or their facility lit
7 up until 11:00 at night. I think that it would
8 draw attention to it at 11:00 at night. I'm
9 thinking that if it does go through, I would
10 just like it to be a little bit more
11 residential, if that's possible.

12 CHAIRMAN STUTO: Do you want to react to
13 that?

14 MR. KING: I suppose that I could look at
15 anything.

16 MS. FARRELL: When you have over
17 60 percent delivery -

18 MR. KING: I don't want to get into the
19 business aspects of why I want to be on the
20 corner.

21 MS. FARRELL: Right now all we see are
22 these two windows from Valvoline and we see
23 them lit up with their lights on and it
24 attracts attention to it.

25 MS. BINESSE: Toward the end they were

1 leaving their lights on all night long. That
2 shines into our living room and dining room.

3 MS. FARRELL: That's why I was just
4 thinking a little bit more residential.

5 MR. KING: One of the things that I was
6 thinking about is put some of the tinting in
7 the window to address some of that concern
8 towards the east. The tint on the windows
9 could reduce some of the glare that was a
10 concern.

11 MS. FARRELL: I do understand that it is
12 small there. I don't know how you guys feel,
13 but the commercial mixed in with the
14 residential doesn't fit the neighborhood. I'm
15 trying to be realistic.

16 MS. BINSSE: Mr. Crisafulli was perfect
17 with us.

18 MS. FARRELL: I just don't think that it
19 fits in. Crisafulli's project - there is still
20 supposed to be another building built there.

21 CHAIRMAN STUTO: Okay, point well taken.

22 MS. BINSSE: I also think that this is
23 an aspect for Mr. Crisafulli because he still
24 has a building to build. On top of that, there
25 is still two more acres for sale there that

1 will bring in more traffic. When
2 Mr. Crisafulli builds his second building that
3 will bring in even more traffic.

4 CHAIRMAN STUTO: Joe, do you have a
5 proposal for the second building.

6 MR. LACIVITA: There is an improved pad
7 site, but there hasn't been a bank put forth
8 yet.

9 MS. BINSSE: I'd like to pass these out.
10 We took these today, except for the snow one.
11 I wanted to show that traffic is an issue even
12 with Stewarts because you've got cars piled up
13 now more. One car couldn't even get out
14 because they had so many people there. That
15 was at 3:30. So traffic is a problem.

16 MS. FARRELL: We're concerned about the
17 noise from the cars with the pick up and the
18 delivery.

19 I also have a question about the current
20 Valvoline sign that's now down, but the whole
21 length of the sign - is that still going to be
22 utilized as a Papa John's sign, or are you
23 taking that down completely and just having
24 the sign on the façade?

25 MR. KING: We haven't been before the

1 Sign Review Board.

2 CHAIRMAN STUTO: I don't want to get into
3 a debate, but I think that's a good question.

4 Joe, do you know anything about the sign?

5 MR. LACIVITA: As Mr. King said, the sign
6 wasn't part of this review. He can go to the
7 Sign Review Board and it has not been acted on
8 yet.

9 MR. KING: Peter, just from the project
10 we completed, we're allowed one free-standing
11 sign and one building sign. On the site that
12 we did over at 471 Troy Schenectady Road we
13 opted to build a sign. We've shown just the
14 one. We would not reuse the pole sign. It just
15 doesn't look good. Right now it's in the
16 middle of our parking. If the Sign Review
17 Board worked with us, we'd reposition that
18 free-standing sign and we haven't gotten to
19 that stage yet. I've talked with Dave Jojo in
20 the Building Department briefly about it just
21 because we're trying to get through this
22 process first.

23 What I can say for sure is that we would
24 not be utilizing the pole sign that's in the
25 middle of the parking lot. That much I know. I

1 just don't know where I would reposition
2 another free-standing sign.

3 MS. BINSSE: If you could make that here,
4 and just have that as your glass -

5 MS. FARRELL: It would make it more
6 residential. Our concern is more residential.

7 CHAIRMAN STUTO: Thank you.

8 Jeff Baker.

9 MR. BAKER: My name is Jeff Baker and I'm
10 an attorney with Young Sommer representing the
11 Green Meadow Civic Association. I'd like to
12 get in a few primary points, but let me first
13 get into a few legal and technical points that
14 many of these are covered in this letter. I'll
15 just summarize what they are.

16 The first question is the position of the
17 traffic study. The ZBA made it clear that it
18 is a condition of their approval that there
19 has to be a traffic study. As several of the
20 Board Members pointed out, you don't have a
21 traffic study. A traffic study is, to a large
22 degree, a broad term. It's not one size fits
23 all. We are not talking about the same level
24 of detail and scope of a traffic study that
25 for instance is being done for the Boght area

1 GEIS. It's not a traffic study that's being
2 necessitated, per se, by the traffic
3 generation of this project of 22 cars an hour.
4 As you can see, a good chunk of the traffic
5 that was generated from this project would be
6 bypass traffic. People who normally would be
7 passing there anyway might stop to get a
8 pizza. That's one.

9 The difference is the turning directions;
10 queuing, stacking and the safety issues and
11 the geometrics of the entrance to the light to
12 get into the property. It is a condition of
13 the ZBA approval. I think that the ZBA
14 approval, in and of itself, is fatally flawed
15 legally on a number of issues. They did not go
16 through the steps that articulate the reasons
17 that are required for the zoning use variance.
18 My clients only came to me about three weeks
19 after the statute of limitations passed on
20 that determination, so it's too late to
21 challenge it. But similarly the ZBA imposed
22 that condition on the approval or probably
23 they found to balance the impacts of the
24 project, they were going to require that a
25 traffic study be done before this Board

1 undertook a site plan review. If the applicant
2 was not satisfied or disagreed with that
3 condition, it was the obligation of the
4 applicant to bring a challenge to that
5 determination. They didn't do so. It is a
6 section of the law. The case is binding on you
7 and if it's not complied with, the zoning
8 variance is void. I cited some authority for
9 that in my letter.

10 The fact is and as far as I can read it,
11 it's relatively silent on the question of a
12 formal referral to this Board, but that isn't
13 necessary because I agree with Mr. Caponera;
14 this is a minor site plan approval. It could
15 have been determined by the PEDD on their own,
16 but under the Town Law, the PEDD can determine
17 when it is appropriate to refer it to this
18 Board for a full review, which he
19 appropriately did in this case.

20 It is incumbent upon you to even decide
21 the ZBA conditions that you normally look at
22 under the site plan conditions - you look at
23 the traffic flows. It is the same turning in
24 there. How does the traffic pattern work?
25 You've got so many inherent problems here. How

1 do you take a left turn out of this project to
2 go south onto Everett Road? How do you go
3 west? How does someone who is approaching the
4 property westbound on Albany-Shaker Road enter
5 the property? They then have to take a left
6 turn on Everett and another left turn right
7 into the Papa John's.

8 My office is off of their road. I just
9 came up by there on the way here. I drive by
10 there all the time. The stop light with the
11 left hand turn leaving Everett Road to take a
12 left hand turn onto Albany-Shaker - that stop
13 light is right where the entrance to the Papa
14 John's would be. Unless you're not going to
15 have any cars there at all, by definition,
16 there is going to be a queuing and a blockage
17 there, and there has to be some kind of
18 analysis of stacking, queuing and geometrics
19 of all the issues. You don't have a traffic
20 study and it's something that you should
21 require.

22 This Board, when they reviewed the Loudon
23 Square project with Mr. Crisafulli, made a
24 determination that a restaurant in this area
25 is not appropriate. Mr. Crisafulli agreed to

1 that as a condition, but it was also a
2 condition of you conceptual site plan approval
3 in April of 2008 and then the subsequent site
4 plan approval which specifically incorporated
5 conditions of the conceptual approval in June
6 of 2009 and it was a recognition that a
7 restaurant in that area was really not
8 appropriate, responding to the comments of the
9 Green Meadows Civic Association. There is
10 nothing different here now. The distance is
11 immaterially different. The level of
12 operations - you're still having the issues of
13 noise and odors and vermin that can occur and
14 again, it's not appropriate for this area.

15 On the issue of hours, I want to make it
16 clear that we are saying that we do not think
17 that the project should be approved. But
18 should it be approved, we believe that the
19 hours should be limited to far less than 11:00
20 at night.

21 I did a survey of the pizza restaurants
22 in the area. With the exception of Inferno
23 Pizza, none of them are open to 11:00 at
24 night. Inferno Pizza is open until 11:00 on
25 weekdays and 12:00 on weekends. As you know

1 where that is - it's west of Osborne Road.
2 It's directly across from Kimberly Square.
3 It's adjacent to 24 hour businesses and it's
4 appropriate in that area.

5 At this location, Stewarts is open until
6 11:00 but if you're going to put another
7 significant business directly across the
8 street, that is also going to be open until
9 11:00, you're doubling the relative impact of
10 the change in that area. If you look at the
11 other pizza places around there - Anthony's
12 Pizza place which is at 115 Everett Road,
13 which is one of the closer ones, is only open
14 until 8:00 at night. Primo Pizza at
15 462 Albany-Shaker Road, when you get to
16 Osborne, is open until 9:00 at night and 10:00
17 on weekends. Finally, Abate's Pizza which is
18 down on Sand Creek Road is only open until
19 9:00 at night. Now I understand that this is
20 Papa John's preferred business mode to be open
21 at 11:00, but that is not the usual
22 requirement of a local Planning Board. You
23 have to look at the circumstances that are
24 appropriate here and part of the purposes and
25 the standards that you look at under the Town

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1 Zoning Law is - is this harmonious with the
2 community? Will it have an adverse impact? It
3 doesn't work - that type of business at that
4 location and it isn't appropriate. You have
5 the power to restrict that. If you are
6 inclined to do this approval, after you go
7 through a proper study for the traffic
8 impacts, you take that into account.

9 I want to make a few other points.

10 General Municipal Law Section 239(m)
11 requires that whenever there is a site plan
12 approval within a certain distance of a county
13 route, the county referral is mandatory. The
14 fact that this may normally or commonly be a
15 minor site plan approval could be handled
16 internally with a PEDD, does not obviate the
17 need for the 239(m) referral. There is nothing
18 in the General Municipal Law 239(m) that makes
19 a distinction between a minor and a major site
20 plan. Most towns don't have that kind of
21 distinction. That's something that Colonie
22 has. I'm not criticizing it. That's fine. The
23 point is that you have to make the referral to
24 the county and it has been made. You have to
25 wait either 30 days from the referral or until

1 they make a determination before the 30 days
2 has passed. If they haven't made a
3 recommendation, then you're free to move
4 ahead. You have to at least wait that time.
5 You have to give them a full statement of the
6 application. It's disconcerting to think that
7 all they have is the same information that
8 they provided when they reviewed the ZBA
9 decision because obviously they don't have the
10 ZBA decision and there needs to be a traffic
11 study.

12 CHAIRMAN STUTO: Let me ask as a matter
13 of record, when the referral was made? Was it
14 before the ZBA?

15 MS. VAIDA: It's not 30 days yet. We
16 already checked that.

17 MR. LACIVITA: The referral went down
18 March 15th.

19 CHAIRMAN STUTO: But 30 days have not
20 expired.

21 MS. VAIDA: That's correct.

22 MR. BAKER: There is one final issue to
23 raise. I don't want to make too big of a deal
24 of it, but it's an important procedural issue
25 and it highlights the fact that you don't have

1 the full information in front of you. This is
2 an action subject to SEQRA and as far as I can
3 tell, the Zoning Board ignored SEQRA. We know
4 that they certainly didn't do a coordinated
5 review, because it wasn't sent to you to
6 comment on. Obviously, this is a small project
7 and it's under 4,000 square feet. You would
8 first think that it's a Type II action, but
9 it's not a Type II action because the 4,000
10 square feet exemption only applies as a use
11 variance. It's not part of the project. The
12 use variance was part of this project, it is
13 therefore an unlisted action under SEQRA. You
14 need an environmental assessment form and you
15 need to make a determination of significance
16 as part of that. All this really goes to and
17 for the record, the information that's missing
18 here particularly on traffic -- it would
19 warrant an Environmental Impact Statement.
20 This reinforces the need that you should at
21 least need to be requiring the full traffic
22 study to look at all of these issues before
23 you're making that determination to approve
24 the project. I think that in terms of saying
25 that there may be a traffic study by somebody

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1 two years from the date that hasn't even
2 kicked in yet that may have been a condition
3 to the Crisafulli approval - my understanding
4 is that the traffic study there is only after
5 two years after that final pad is filled. So,
6 that clock hasn't even started to run. If
7 you're doing a traffic study, that's the
8 proverbially closing the door after the horse
9 has left the barn. You put in these projects
10 and you've done this work and you may have had
11 the permanent problem with that intersection.

12 As Mr. Caponera said, the uses of this
13 property predate probably any zoning in the
14 Town of Colonie. Certainly it predates all the
15 changes in the roads and everything that
16 happened there. The point is that now there is
17 an opportunity to fix this and this is the
18 time to look at it carefully and make it so
19 that we understand the impacts. You don't
20 allow it to go in and then say, maybe we'll
21 look at it later and maybe we'll do something
22 and we don't have any money, or we don't know
23 how it's going to be fixed, or who is going to
24 be responsible for it. Certainly your
25 questionable ability to alter a site plan

1 after the fact based on a study -- I'm not
2 even going to give a legal opinion as to if
3 that's possible or not. Clearly, you can't
4 make a decision tonight because the Albany
5 County Planning Board hasn't ruled. You should
6 hold this public hearing open. You should
7 demand that the traffic study be done and have
8 these other questions be answered.

9 I think that the last question from the
10 ladies that were up here before about the
11 nighttime impacts of lighting of this is an
12 excellent and very good comment. You should
13 also ask for information on nighttime visuals
14 that are going to be coming from here, or at
15 least clear conditions to reduce lighting.

16 It's in Mr. King's interest that he wants
17 to attract attention to his business and be
18 highly visible at all times. That's not the
19 same as the community's interest. So, I think
20 that this needs a lot more work on this
21 application. Of course, while you can't
22 approve the project until Albany County has
23 come in and given you their recommendation,
24 nothing stops you from turning it down. You
25 can't overrule the ZBA's grant of a variance,

1 but the variance is not binding on your
2 decision for site plan approval and your
3 decision if this meets the requirements of the
4 Land Use Law for Colonie. As presented now,
5 you should turn it down. It needs a lot more
6 work. Thank you.

7 CHAIRMAN STUTO: You're saying that it
8 doesn't meet the Land Use Law requirements,
9 taken in concert with the variance?

10 MR. BAKER: No, I don't think that it
11 does.

12 CHAIRMAN STUTO: In what respect? You may
13 say that we haven't heard from 239 and SEQRA
14 because we haven't completed the traffic study
15 which is a condition of the variance. In what
16 respect is it not -

17 MR. BAKER: Because it is not harmonious
18 with surrounding neighborhoods because of the
19 impacts of odors and noise from the restaurant
20 operations as determined previously with
21 regard to the Crisafulli project. You did not
22 allow a restaurant in there because it was not
23 harmonious with the surrounding neighborhood.
24 That was one of your standards, Mr. Chairman.

25 CHAIRMAN STUTO: No, we didn't forbid

1 that over there. The applicant agreed not to
2 do that.

3 MR. BAKER: It was also a condition of
4 the approval.

5 CHAIRMAN STUTO: Because we got the
6 consent of the applicant.

7 MR. BAKER: But you specifically made it
8 a condition and put it in there.

9 CHAIRMAN STUTO: That doesn't mean that
10 it doesn't conform with the Land Use Law.

11 MR. BAKER: I would submit that because
12 of the dialogue and the review that happened
13 at that time, it was an agreement and
14 consensus that a restaurant was not
15 appropriate there and the Planning Board did
16 impose that as a condition.

17 CHAIRMAN STUTO: With the consent of the
18 applicant; that's correct.

19 MR. BAKER: Regardless, it was a
20 condition.

21 CHAIRMAN STUTO: That doesn't mean that
22 it doesn't conform with the Land Use
23 Law - that not having a restaurant doesn't
24 conform with the Land Use Law.

25 MR. BAKER: I would submit that it does

1 make that precedent and is relevant. But
2 putting that aside -

3 CHAIRMAN STUTO: That may be relevant.

4 MR. BAKER: And I think that the traffic
5 problems generated around here are not
6 harmonious with the surrounding neighborhoods,
7 as the people who live there can testify to a
8 lot better than I can about that. You have
9 problems with this intersection, and the
10 traffic patterns going in and out really don't
11 work. There are other locations for this
12 business. Nobody is defending that the
13 Valvoline is an aesthetically pleasing or a
14 good use for the site. Something else might
15 come up to it. We don't know that efforts were
16 ever made to try to market that. I didn't see
17 anything in the ZBA decision.

18 CHAIRMAN STUTO: You made a lot of good
19 points and how you're going into an area of
20 what your opinion is and you're getting off
21 the legal - you know what I'm saying? What the
22 legal requirements are and what our job is.
23 You lose credibility every time you go further
24 and further -

25 MR. BAKER: I'm not losing credibility.

1 I'm pointing out that because of all the
2 developments, I submit that it does not meet
3 the standards of the Land Use Law. That's your
4 decision to make. I think that certainly
5 absent the information on traffic - the
6 traffic studies, you don't have enough
7 information to make the determination that it
8 clearly is harmonious with the surrounding
9 neighborhood.

10 CHAIRMAN STUTO: Thank you.

11 MS. DALTON: With regard to SEQRA, are we
12 required to table this until after Albany
13 County Planning Board meets?

14 MS. VAIDA: I don't believe that we can
15 act without waiting the 30 days, or having a
16 decision before the 30 days.

17 MS. DALTON: What about the SEQRA, Elena?

18 MS. VAIDA: I believe that it would be an
19 unlisted action and I think that there was a
20 full environmental assessment form completed.
21 The Town Attorney's office took a look at it
22 and it was a short form that was submitted.

23 CHAIRMAN STUTO: I'm not sure what they
24 did on that ZBA level. We have in front of us
25 prepared by the Town Attorney's office a short

1 form EAF. I don't know if that answers the
2 question, but we had to go through and
3 consider all the things.

4 Douglas Cichon.

5 MR. CICHON: My name is Douglas Cichon. I
6 live at 48 Cloverfield Drive. I don't think
7 that you guys realize -- let me put it this
8 way: We purchased our home a little less than
9 two years ago because this is a very family
10 friendly neighborhood. It's a child-friendly
11 neighborhood, specifically. I live at
12 48 Cloverfield, directly behind the Stewarts.
13 I can tell you that we do have light issues
14 from that Stewarts. We are planting evergreens
15 to block the light. The traffic light also
16 throws a red light into our living room. So,
17 she's going to have issues with that light.

18 Second of all with the traffic flow - I
19 come home this way from work up Everett Road
20 every single day. The easiest thing to do when
21 you're making a left going west out of this
22 Papa John's - it will not take the pizza
23 driver long to figure out that they just take
24 a right and a quick left and cut through the
25 neighborhood, our neighborhood, which is a

1 cul-de-sac. You can bypass the light. There is
2 at least 10 children under the age of 10. I
3 have a 22 month year old at home that lives on
4 that horseshoe. There are a lot of kids in the
5 street and that pizza driver is driving
6 through that. I'm not happy about that. Kids
7 play in the street. I drive very carefully
8 down that street because there are a lot of
9 children on that street. You have the light
10 issue, you have a lot of kids that are exposed
11 to more traffic and there's one other point.

12 I forgot my third point, but my primary
13 concern is the traffic. There are a lot of
14 kids in the neighborhood and I wish that you
15 would consider that.

16 CHAIRMAN STUTO: Thank you.

17 Mary Fitzsimmons.

18 MS. FITZSIMMONS: I was just wondering,
19 if you granted this variance how might
20 Mr. Crisafulli might feel when he wanted to
21 then put a restaurant into the office
22 building. Then we might have multiple
23 restaurants.

24 CHAIRMAN STUTO: The variance has already
25 been granted by the Zoning Board of Appeals.

1 That's a different board. They granted the
2 variance permitting this use.

3 MS. FITZSIMMONS: Thank you.

4 CHAIRMAN STUTO: Thank you.

5 Anybody else from the public want to
6 speak?

7 MS. TATE: My name is Judith Tate and I
8 live at 46 Green Meadows.

9 One of the things that was not yet
10 addressed is the appearance of the building.
11 Even with our care and your care, we think
12 that they should change it before they put it
13 up. This building is certainly not in keeping
14 with the residential flavor of the community
15 and what we have tried to achieve. I think
16 that it's very, very commercial. You've spent
17 a great deal of time on other projects and the
18 work that's needed. I think that you should
19 take your time on this, also.

20 CHAIRMAN STUTO: Thank you.

21 I guess we'll give an opportunity for
22 rebuttal for the applicant. There were a lot
23 of legal issues raised and so forth.

24 MR. CAPONERA: Just a quick point,
25 Mr. Chairman, and members of the Board. I

1 listened to Mr. Baker's comments in regard to
2 case law in the State of New York, and it is
3 quite clear. When a variance is granted for a
4 particular use, under the law, it becomes a
5 conforming use and any comments that were made
6 relative to what happened on the Crisafulli
7 property is completely irrelevant to what's
8 going on here. We have a variance that was not
9 appealed. It's the law. Therefore it becomes a
10 conforming use under the cases in the State of
11 New York. So, I don't think that the Board
12 should consider what happened across the
13 street on the Crisafulli property, which by
14 the way is far closer to the 99 percent of the
15 people who have spoke here tonight in terms of
16 where that property is. The Crisafulli
17 property is right in their back yard. I
18 already showed the Board the area here
19 surrounding the property (Indicating), the
20 200-foot area of where this property is. These
21 folks, if you're talking, are back up in here
22 - four, five, six or seven hundred feet away.
23 It's not within the 200 feet.

24 The Farrell's spoke about the design of
25 the building. The one person that I think is

1 most effected is a gentleman that's sitting
2 right here who we have met with, we have
3 answered his concerns and we agreed to
4 accommodate him.

5 As far as SEQRA is concerned, it's
6 already been acted on. I've filed a SEQRA form
7 and I believe that the Town Attorney has acted
8 on that and indicated what type of action it
9 is. Relative to your other question about the
10 application and submittal, the county and the
11 General Municipal Law - Elena, you said that
12 it was submitted on the 17th of March?

13 MS. VAIDA: The 15th.

14 MR. CAPONERA: So, you do have to wait
15 the 30 days. That's about it.

16 MS. DALTON: I have a question for you
17 and Mr. King. I'm not sure if this is a fair
18 question. I believe that Mr. Baker has made it
19 quite clear that there will be a lawsuit if we
20 act on this in ways that he feels are not
21 compliant with the law. I'm not going to come
22 down one way or the other about whether or not
23 I think that he's right. At what point does
24 this become not a viable project? If you don't
25 want to answer that, that's fine.

1 MR. KING: There isn't going to be an
2 answer that's going to be conducive to this
3 environment. I guess I'm getting too old for
4 this stuff. I think that I'll defer any
5 comment on that just under the circumstance. I
6 do appreciate the question. Your thought
7 process is good.

8 MS. DALTON: I'm sorry about that.

9 MR. KING: That's okay.

10 MR. NARDACCI: Just one follow up. The
11 neighbor that spoke that's within that
12 200 feet, would you consider trying to make
13 some other changes that are a little more
14 reasonable?

15 MR. KING: If this project is going to
16 get somewhere, yes. I think that at this
17 juncture, that's probably a secondary thought.
18 You've worked on other projects of mine. I
19 live in this Town. I went to Siena College. I
20 do all the right things. We can of course look
21 at that and you know that I will and you know
22 that from my track record here.

23 MR. NARDACCI: I think that you have an
24 idea of our track record being reasonable and
25 fair. I think that's a good point that was

1 brought up and it's something that's germane
2 to the law. Other applicants who have worked
3 with it and have done some really nice
4 designs. That would really be the only
5 structure in that area that would be a little
6 more modern with all the glass. There is
7 nothing else like that around there.

8 MR. KING: I was trying to make it stick
9 out a little bit. There was a theory behind
10 it.

11 MR. NARDACCI: It is a challenging site
12 and I respect that.

13 MR. KING: If I felt that we were getting
14 somewhere. I have been in business a long time
15 and I do things the right way. We want to be
16 here. It's a great site and it's perfect for
17 what we want. If we hit an impasse with some
18 of this other stuff, we'll try to appease the
19 neighbors.

20 MR. NARDACCI: I know that it's a
21 challenging site. It's a small site and we
22 have tried to work with applicants that were
23 redeveloping parcels. It's a lot easier to
24 just go to some green field and say, we're
25 going to build here new. It's harder to work

1 with constraints. We try to take that into
2 consideration.

3 MR. KING: I'm in the gas station
4 business, too. We want to be on corners and
5 we're dealing with that high visibility and
6 the egress/ingress. I'm well versed in that.
7 That's just the way it is. Retail sites have
8 that. You pay for it and you get the return. I
9 wouldn't be doing it if I thought it was going
10 to fail. That's not the business that I'm in.

11 MR. NARDACCI: I just speak for myself,
12 but having an opportunity to see a different
13 architectural rendering would be helpful.

14 MR. KING: I'd be happy to look into
15 that, if we feel that we can get on the other
16 side of this. I want to be a part of the
17 community. I don't want to be an adversary.

18 MR. NARDACCI: How is the other store
19 doing?

20 MR. KING: Doing well.

21 CHAIRMAN STUTO: Paul, do you have
22 something?

23 MR. ROSANO: We talked a couple of times
24 tonight about the - it was brought up in my
25 notes about the hours of operations. Is that

1 set in stone, or is there something that we
2 can negotiate?

3 MR. KING: If we need to change them, I
4 can't do it. It's a requirement from
5 Corporate. There are some that are 24 hours.

6 MR. ROSANO: Thank you.

7 CHAIRMAN STUTO: Tim?

8 MR. LANE: Nothing else.

9 CHAIRMAN STUTO: Mike?

10 MR. SULLIVAN: Nothing.

11 CHAIRMAN STUTO: Lou?

12 MR. MION: I have seen a concern on both
13 sides with the traffic. Based on what Elena
14 had said, I think that we have to wait for
15 Albany County. I can see the logic on both
16 sides. The law says one thing about what you
17 have to do, but in reality is the traffic
18 there going to get any better? Is it going to
19 get any worse? Do we need a full-blown study?
20 I think that what we have to do is wait for
21 Albany County and see what they expect. We
22 need some clarification.

23 CHAIRMAN STUTO: Unless we can define
24 what we want in a traffic study and make sure
25 that's credible -- it's in front of us now.

1 Let me give you my opinion and we can
2 continue the discussion.

3 I think that the attorney for the
4 neighborhood association made a lot of good
5 technical points. The Section 239 review is an
6 excellent point.

7 The point on the traffic study - I think
8 it's an excellent point. Victor says that it's
9 the decision of the Zoning Board of Appeals
10 that has the force of law and it says that
11 there shall be a traffic study done. My
12 personal opinion is that what was presented to
13 us does not constitute a traffic study. That's
14 my opinion as a Board Member.

15 With regard to the 239 review, we got an
16 opinion from our Counsel that it has to be
17 sent back and we have to wait anyway on that
18 point so we may as well get the traffic study
19 the next time we come back. That's my opinion.

20 With respect to the project, I agree with
21 Victor on this point. It's now a conforming
22 use. The proposed use is a conforming use,
23 given the Land Use Law in tandem with the
24 variance. I think that our hands are tied as a
25 Board to say that we're not going to approve

1 this use.

2 MS. VAIDA: In the Land Use Law, just so
3 it's clear, on final site application
4 requirements -- this is under minor review.
5 First of all, I think I that the Board would
6 have the authority to ask for any additional
7 reports and materials that they felt that they
8 needed, which I think encompasses the traffic
9 study, if the board wanted one. The
10 anticipated impacts on services i.e. traffic
11 sewer and water is something that the Board
12 can consider. The impact on adjoining
13 property, noise, visual, drainage, hours of
14 operation -- there are a whole list of
15 factors.

16 CHAIRMAN STUTO: I think that we're all
17 aware of that as a Board.

18 MS. VAIDA: I guess what I'm saying is
19 that even if there is a variance, there might
20 be a problem with the other criteria. Just
21 because it's permitted doesn't mean that it's
22 permitted under the Land Use Law.

23 CHAIRMAN STUTO: I'm not sure that I get
24 your point, to be honest with you.

25 MS. VAIDA: I'm going through the

1 criteria and I'm not suggesting anything, but
2 under the criteria, if the Board felt that it
3 was too much of an impact on traffic that it
4 was too nonconforming and the impacts couldn't
5 be mitigated, theoretically it could be -

6 CHAIRMAN STUTO: It's a very, very hard
7 standard to reach - almost impossible.

8 MS. VAIDA: I think that the applicant
9 has already said that they're willing to work
10 with us.

11 CHAIRMAN STUTO: I won't speak to the
12 merits of the project. I agree with a lot of
13 what the neighbors said, me personally. I
14 think that the architecture and the lighting
15 have to be looked at and I think that it has
16 to be toned down a lot. If you look around
17 everything that's there, these are things that
18 are within our power to have an impact on. I
19 think that it has to be toned down a lot and
20 I'd agree to talk and listen. That's my
21 opinion. I think that there is too much glass.
22 I think that it's too big of a front. I think
23 that there is probably going to be too much
24 light. I think that the hours have to be
25 examined as well. That's my opinion.

1 The final point is that I think that we
2 do need a traffic study. I think that we need
3 to talk about what we want in that traffic
4 study. I don't know if you could help us out
5 in that with the turns and all that stuff.

6 MR. SULLIVAN: I would like to see the
7 effectiveness of left turns exiting between
8 4:00 PM and 6:00 PM to see -- I don't think
9 that you can put a level of service on it, but
10 basically see if you can make a left turn out
11 of there when traffic is queuing up at the PM
12 peak hour.

13 MR. KING: At both exits, Mike?

14 MR. SULLIVAN: Yes, please.

15 MR. LANE: We also requested the accident
16 history for that?

17 CHAIRMAN STUTO: Yes. Sure.

18 MR. NARDACCI: Joe, if we could request
19 from the Traffic Safety folks, the accident
20 history.

21 Mike, is your comment what Dave Jukins
22 mentioned?

23 MR. SULLIVAN: Yes. I think that you can
24 get in. I agree that you can get in because
25 you would take a right turn in whether you're

1 coming off of Everett or you're coming down
2 Albany-Shaker, you can take a right turn in.
3 Getting out, I think, is going to be a
4 problem.

5 FROM THE FLOOR: Who does the traffic
6 study?

7 CHAIRMAN STUTO: They do.

8 FROM THE FLOOR: They do their own?

9 CHAIRMAN STUTO: They do it and we review
10 it with our engineers.

11 FROM THE FLOOR: Shouldn't it be an
12 independent study?

13 MR. LACIVITA: One of the things that we
14 do is we typically would have the Capital
15 District Transportation Committee look at it.
16 They are one of our consultants with all
17 traffic impacts within the Town of Colonie.

18 MR. KING: Can I ask a question? I know
19 that we're getting late here. Can we just run
20 through what you're asking of myself just so
21 that I can make a decision after this meeting?
22 The texture of the building, I know that's
23 what you're looking for.

24 The architecture of the building, the
25 traffic study and the lefts out of both

1 Everett and Albany-Shaker.

2 MR. NARDACCI: The lighting also.

3 MR. KING: Okay, hours of operation.

4 Where are we going for that? If we want to
5 vote on that right now, that might be a whole
6 lot easier.

7 MS. VAIDA: He already said that he can't
8 adjust the hours of operation.

9 CHAIRMAN STUTO: I want it thought about.

10 MR. ROSANO: What power source are you
11 going to use for heat? You said you're going
12 to be taking the fuel tank out.

13 MR. KING: Actually, they're on natural
14 gas now, Paul. That was an old abandoned
15 heating oil tank on the backside. The front
16 side is the waste oil that they used to use in
17 the old days. They just dumped it in and it
18 hasn't been used for a long time. It's on
19 natural gas.

20 CHAIRMAN STUTO: Mr. Baker, did you have
21 a point you wanted to make?

22 MR. BAKER: Just for asking for
23 clarification on the traffic study.

24 MR. SULLIVAN: My main concern is the
25 left turns out.

1 MR. BAKER: Not just left turns out but -

2 MR. SULLIVAN: Those were your concerns.
3 My concerns were the left turns out. That was
4 my requirement.

5 CHAIRMAN STUTO: I'd appreciate it if you
6 could address that as well.

7 Some questions arose in my mind whether
8 the 22 cars - whether that includes delivery.
9 I may ask more in depth questions on how that
10 is generated under that traffic
11 count - whether those are patrons pulling in
12 and out or whether that includes deliveries
13 and how they calculate that. Is there one
14 sheet out of that book?

15 MR. ANDRES: That will all be included in
16 the traffic study. That is the total for all
17 the activity that would be going on at that
18 facility.

19 CHAIRMAN STUTO: I think that we'll make
20 a motion to table this until the 30 days pass
21 or we hear from the county on Section 239. I
22 guess that's the County Law or General
23 Municipal Law. I think that we're going to
24 continue the hearing at the next meeting.

25 MR. KING: The hours of operation? That's

1 something that you can vote on this evening.
2 Because if that's going to be an issue, then I
3 can't consider this. I'm sure that you guys
4 understand that I don't want to get through
5 all that and then find out the hours are an
6 issue.

7 MR. NARDACCI: I can certainly understand
8 the neighbors concerns with regards to hours,
9 but the fact is that you have a business there
10 that's open until 11:00 with Stewarts. I
11 understand that creates more impact, but if
12 one business can do it, how can we tell
13 another business that they can't be open until
14 11:00? If you're looking to go beyond that -

15 MR. KING: I'm going with the minimum
16 that they require.

17 MR. NARDACCI: My opinion is that I don't
18 have a problem with that. There are a lot of
19 other things that I have a concern with and
20 that's not one of them.

21 CHAIRMAN STUTO: I'm personally reserving
22 my opinion on that. I want to think about it.

23 MS. DALTON: I don't think that it's a
24 deal killer.

25 MR. MION: I agree with that.

1 MR. SULLIVAN: I agree with Tom.

2 MR. LANE: I do as well.

3 MR. KING: That helps. I appreciate you
4 doing that for me.

5 CHAIRMAN STUTO: Okay we have it all on
6 the record. I don't think that we need a set
7 of conditions. I think that we just need to
8 adjourn.

9 MR. LACIVITA: Based on the count, Peter,
10 I guess my question is - is the hours of
11 operation - has that just been identified that
12 it would be 11:00?

13 MS. VAIDA: No, it's not binding.

14 MR. LACIVITA: So I'll read the
15 conditions?

16 CHAIRMAN STUTO: No, it's on the record.
17 We're just adjourning.

18 MR. KING: Before you do that, just for
19 my benefit I just want Joe to read it quick.
20 There has been enough ambiguity from early on
21 now and I want to make sure I understand what
22 is required of the project.

23 Joe, could you read those for me, please?

24 CHAIRMAN STUTO: He can just read them.
25 They're not part of any motion.

1 MR. ROSANO: Can we adjourn first and
2 then read them? Let's do that.

3 CHAIRMAN STUTO: Yes. That's fine. Can we
4 adjourn to a date? Do we have any idea on a
5 date?

6 MR. LACIVITA: It would be based on the
7 applicant's ability to get the information
8 back to us. I know that we will have a
9 decision by the Albany county Planning Board.
10 They meet April 21st and we'll have a decision
11 by April 22nd. The next meeting after that is
12 April 26th, which we could possibly put it
13 there, or it's a May 12th.

14 MR. LANE: May 12th. Let's give it a
15 little more time.

16 CHAIRMAN STUTO: Tentatively May 12th.

17 MR. LACIVITA: If you adjourn it to a
18 specific date, there will be no posting
19 required.

20 MR. NARDACCI: I would require it to be
21 reposted. Most of the neighbors are here, but
22 repost it just to make sure.

23 MR. LACIVITA: So, it will be a May 12th
24 date.

25 MR. ROSANO: That's May 10th.

1 MR. LACIVITA: You're right. That's
2 May 10th.

3 MR. BAKER: I'm just wondering how we can
4 get access to the reports and the new
5 information and how far in advance that would
6 have to be done?

7 CHAIRMAN STUTO: We're talking May 10th.
8 Can you get it to us by the end of the month?

9 MR. KING: Yes.

10 MR. ROSANO: I'll move to adjourn.

11 MR. LANE: I'll second the motion to
12 adjourn.

13 CHAIRMAN STUTO: All in favor?

14 ***(Ayes were recited.)***

15 CHAIRMAN STUTO: All opposed?

16 ***(There were none opposed.)***

17 CHAIRMAN STUTO: The motion is passed.

18 MS. DALTON: Motion to adjourn

19

20 ***(Whereas the proceeding concerning the***
21 ***above entitled matter was adjourned***

22 ***at 9:34 p.m.)***

23

24

25

