

TOWN OF SOUTHTON
 ZONING BOARD OF APPEALS
 TUESDAY, JULY 13, 2010

Chairman Joseph LaPorte called the Public Hearing and Regular meeting of the Southington Zoning Board of Appeals to order at 7:00 o'clock, p.m. in the Town Council Chambers with the following members in attendance:

Robert Salka, Patricia Potter & Edward Kuklinski

Alternate: Robert Sherman
 Ronald Bohigian

Others: Frank Vinci, Zoning Enforcement Officer
 Mary Savage Dunham, Town Planner

Absent: Joseph LaRosa, Alternate
 Michael Milo, Alternate
 Paul Bedard, Commissioner

Mr. Sherman is sitting for Mr. Bedard this evening. A quorum was determined.

The Pledge of Allegiance to the American Flag was recited by everyone in attendance.

Mr. Salka explained to the audience the procedure to be followed in the presentation of an appeal. He advised that should their appeal be approved, they file it with the Town Clerk's Office before proceeding with the project.

JOSEPH LAPORTE, Chairman, presiding:

Public Hearing Items:

Note: For A & B, Mr. Bohigian will be sitting in for Mr. Sherman.

A. Appeal #5792A, application of John & Clare Salerno to vary the Zoning Regulations to allow a 6' high privacy fence in the front yard where less than 4' is allowed on a corner lot under Sections 2-19S & 15-04 of the Zoning Regulations, 7 MacIntosh Way, property of John S & Clare L. Salerno at the intersection with Pleasant Street in an R-20/25 zone.

MR. VINCI: Will the applicant please state your name and address for the record.

JOHN SALERNO: Good evening, everyone. My name is John Salerno. My home is located at 7 MacIntosh Way, Southington, CT.

This lot on the corner of MacIntosh Way and Pleasant Street with our "front yard", driveway and front door on MacIntosh Way. Therefore, Pleasant Street is our hypothetical side yard.

Due to the topography of my backyard and if you refer to the pictures in the application, we have limited space in our back yard. As a result, the Pleasant Street side is where our children spend much of their time playing daily.

In an effort to create a more pleasant and save environment for our children to play, we installed a row of arborvitaes along our side and rear yard on Pleasant Street. In addition, we also installed a 6' high fence from the front corner of our house to Pleasant Street, east to west, and also four additional sections of fence behind the arborvitaes along Pleasant Street to the rear of our lot north to south.

The fencing and shrubbery does not create any line of sight conflicts for cars moving out on to Pleasant Street from MacIntosh Way. Furthermore, for aesthetic purposes, we have two trees in front of the fence that is facing MacIntosh Way.

In regards to the town's regulations, we had the fence installed by a professional not realizing that it was not in compliance with the zoning regulations requiring 4' high sections in these areas. Because both areas are considered front yards. For this, I do take responsibility.

I also understand others with corner lots have similar issues with respect to the zoning regulations and the planning & zoning commission's continuous improvement subcommittee may recognize some of these issues as hardships as they are considering revising certain zoning regulations pertaining to corner lots.

As a result, due to the topography of our backyard, the heavy and noisy traffic on Pleasant Street and owning a corner lot on a very busy road, we are asking the ZBA to recognize these as hardships and to consider granting a variance to the fencing location heights to the existing installed fences in both of our front yards.

Just furthermore, I'd just like to have you guys consider obviously Pleasant Street does have a high police presence on Holland View Drive on a regular basis in order to catch speeding cars.

Again, my hill does encompass my backyard so I really don't have a tremendous amount of room in my backyard. You can see that in my photos. And, that's about it.

THE CHAIR: I have one quick one, so if the fence guy came and told you that a 4 foot - you would've went with a 4'?

MR. SALERNO: Initially, we did want a 6' for the privacy because you're looking out on Pleasant Street. I think, yah, we would've considered a 4', also. But we did go with the 6'.

MR. SALKA: One of the comments that you made concerning safety, um, how does this fence really provide for the safety simply because you could walk between the arborvitaes and you can almost crawl underneath that fence in the front. And, then when you've only got a 4' section, I mean - it's not really a hardship from a security standpoint simply because it's not really protecting.

MR. SALERNO: The fence in the front -

MR. SALKA: If it went all the way around, you know, maybe.

MR. SALERNO: Okay, the fence in the front, facing the front, facing MacIntosh Way, I do know we have a little bit of section that is up. That's where some landscaping is going to be done. But obviously, we held off on that until we see what happens tonight.

And, the arborvitaes, as they continuously grow and grow; I feel that you know, no child is going to go crawling through an arborvitae. And, those arborvitaes do creep together very nicely.

THE CHAIR: So this fence contractor, he doesn't know the rules?

MR. SALERNO: Unfortunately, I don't know. He said this fence was okay.

MR. SALKA: Was he a local, from Southington?

MR. SALERNO: No. New Britain.

THE CHAIR: Any more questions for the applicant?

MR. SALKA: Well, the concern I have is that you know, I haven't --- I know we were going to get together with the planning & zoning about issues. That hasn't happened.

My concern is that when --- if we approve this one, and we have a second one coming up, there's really just no way we're going to be able to stop it until such time as the planning & zoning does something within the regulations. I mean, how can we say, you know, this one here is okay and the other one on MacIntosh is okay and then you know, we have three or four that'll come in for the same reason.

The contractor put it up knowing or unknowingly. You know, then we're just a rubber stamp board for putting up a 6' fence against the regulations. That's my concern.

MS. POTTER: How many feet is it back from the sidewalk to you fence?

MR. SALERNO: From the sidewalk on MacIntosh?

MS. POTTER: Yes.

MR. SALERNO: It's all the way to the front of the house, so it is at least 40'.

MS. POTTER: It's 40' from the road?

MR. SALERNO: Yes.

MR. SALKA: Not from Pleasant Street. From Pleasant when I drove by, it's only; you've got the sidewalk, the arborvitaes and then the fence. So, it's maybe 15' from the sidewalk. Is that correct? That's what I saw when I drove by.

MR. SALERNO: Yes. That's in my application, also.

MR. VINCI: Mr. Chairman, if I may? It appears that part of the fence and probably a few of the arborvitaes are within a sight line easement at the corner. If you look at the map provided, there is a sight line easement that goes from the corner down to the side towards the back of the house and out to the property line there. That's supposed to be kept clear.

So, if you do decide to approve the application, I would approve it with the condition that the sight line easement be kept clear.

(Pause)

MR. SALKA: This board is not in a position at this point to start changing planning & zoning regulations. And, I understand from your standpoint and I understand from the next applicant's standpoint that both of them went up. Both of them used - the vendor put up a 6' fence either knowingly or unknowingly of our regulations. But we're not really here to supersede the planning & zoning regulations at this point.

THE CHAIR: That's not our responsibility. It's the homeowner's responsibility.

MR. SALERNO: My question to you then --- obviously, this opened my eyes to a lot more fences all around town that are on corner lots. And, I know I'm not talking about anybody else, I just, you know, just to stay consistent. You know?

MR. SALKA: Well, the issue we've got is someone needs to bring it to the zoning enforcement officer as an issue. We can't go out and

say, oh, there's a fence and go to the applicant and make him apply to this board. There needs to be -

MR. SALERNO: But it was one of your commissioner's that brought it forward.

THE CHAIR: Well, that's why you're here.

MR. SALERNO: I know.

MR. SALKA: I don't know who brought it forward. I don't even ask that kind of question.

MR. SALERNO: I understand.

MR. SALKA: So.

MR. VINCI: There have been some variances granted in the past years ago for fences within the front yard, but not recently. In addition, some of these fences date back to 20, 30 years.

MR. SALERNO: Right.

THE CHAIR: Okay, are we all set here?

Have you finished your presentation?

MR. SALERNO: Yes.

THE CHAIR: Thank you.

Anybody here to speak in favor of the applicant?

(No response)

Anybody to speak in favor? Anybody opposing the applicant?

(No response)

Anybody opposing the applicant?

(No response)

If not, this appeal is closed.

B. Appeal #5793A, application of David Thibault to vary the Zoning Regulations to allow a 6' high privacy fence in the front yard where less than 4' is allowed on a corner lot under Sections 2-19S & 15-04 of the Zoning Regulations, 176 MacIntosh Way, property of David & Lauren Thibault at the intersection with Pleasant Street in an R-20/25 zone.

DAVID THIBAULT: Good evening, Dave Thibault from 176 MacIntosh Way.

Again, the same issue as they had. We live at 176 MacIntosh Way. I had a 6' fence installed along the front of my yard and along the side of the yard where Pleasant Street is.

At the time it was put up, I did not know it was not in compliance with the Town's regulations. It was put up with the best of intentions.

There is no line of sight issue regarding the fence when entering or exiting MacIntosh Way or Pleasant Street. Again, I would welcome from the planning & zoning to come out and take a look as I described.

There are a few reasons that I had the fence installed. We bought the house almost 4 years ago. We did not have children nor did we realize how busy Pleasant Street is. There's a lot of traffic and noise that comes from Pleasant Street.

In the 4 years that I've lived there, I've witnessed numerous instances of cars pulled over for traffic violations and one multi car accident that happened right at the intersection of MacIntosh, my intersection with MacIntosh Way, and Pleasant Street. While not as busy as Route 10, it is used as a bypass to Route 10. It is a heavily travelled road.

I have two young children who play in the backyard as much as possible and their safety is my number one concern and my wife's as well. To let them play in the backyard without having to worry about them chase a loose or stray ball or toy into the street, even while supervised, is a burden off our minds.

Prior to having the fence installed, I would frequently find liquor bottles and beer cans and other trash scattered throughout my backyard. I continue to still get garbage along the sidewalk but no longer in my backyard.

With everything stated above, I'm just asking that the ZBA recognize these hardships and a grant a variance located at 176 MacIntosh Way.

MS. POTTER: Would a 4' high fence keep your children safe?

MR. THIBAUT: I'm sorry. Say that again?

MS. POTTER: Would a 4' high fence keep the children safe?

MR. THIBAUT: Absolutely, sure.

MR. SALKA: Were you aware when you applied to the vendor, was it a local vendor?

MR. THIBAUT: No, it was out of Waterbury. When I asked if I needed a permit, he told me and I remember this, he said only if you're increasing the square footage of your house do you need a permit. That's what I was told.

MR. BOHIGIAN: What is your hardship that you're requesting?

MR. THIBAUT: Well, my kids. The road itself.

MR. BOHIGIAN: Safety issues.

MR. THIBAUT: Safety issues.

MR. SALKA: But in each case, you've said that a 4' fence would certainly keep the children out of the road and 4 or 6 is not really going to stop the noise, I don't believe. You know, whether its 4' or 6' fence.

Again, we have the same concern, same issues as with the previous applicant.

There is really no hardship as far as --- I mean, it's a self imposed hardship in a sense. You bought the house knowing the street, et cetera, et cetera.

And, again, I don't necessarily - I don't think we can really start changing the planning & zoning -

MS.POTTER: Our hands are really tied. Yah, our hands are tied at this point. I know I understand its money and you have to move it and take it down and everything. But if you start with one, then it's everybody. It's like you've already set a precedent to the next.

MS. THIBAUT: But there have been appeals made.

MR. VINCI: Please state your name and address.

MS. THIBAUT: Oh, I'm sorry. I'm Lauren Thibault, 176 MacIntosh Way.

From my knowledge there have been appeals made, though. On Jude Lane there was an appeal made.

MS. POTTER: I don't know. I've only been on 3 years.

MS. THIBAUT: Okay, but I know there have been appeals made in the process. We've done research on it. So, if you've done for one -

THE CHAIR: Each one is separate. Excuse me, each one is separately.

MS. THIBAUT: But I know it was stated before that you said that you can't make an exception for one. I know that you have in the past. That's what I'm saying.

My biggest thing is money. Because we put it up for safety. And, I realize it - we've never --- we didn't realize it and I take full responsibility for that. But the fact that to take it down to put another one back up would be a hardship for us moneywise.

And, my safety. I have a 3 year old and a 17 month old. And, it was a huge relief to know that I can go in the backyard and play with them and not have to worry about it.

THE CHAIR: This Board doesn't look at financial hardship.

MS. THIBAUT: I'm just saying.

MR. SALKA: When I drove by, when I drove by your house, um, versus the one on 7 MacIntosh, you've got the whole front along and then it runs all the way to the back. You've got this big white 6' fence on a corner lot which is large to look at, if you will.

And, it's not broken up by any shrubbery or anything. I just don't think that this, we can start changing again, I'm going to say it again, start changing planning & zoning regulations as we go forward. I think we've got to adhere to them unless there truly is an exception or a real hardship. And, in this case, I hate to say it, but they're basically self imposed hardships. With corner lots, that's just the way it is in town until the planning & zoning changes that.

And, I know it's going to be a considerable expense. I realize that and I'm sorry about that.

THE CHAIR: Any more questions for the applicant?

(No response)

Have you finished your presentation?

MR. & MS. THIBAUT: Yes.

THE CHAIR: Thank you.

Okay, anybody here to speak in favor of the applicant?

MS. ABELL: My name is Lori Abell. I've driven by there a gazillion times and for both of the last two, I have to say that for one thing I don't really understand what the look of a fence would do, if it's for protection.

And, number two, I have to say that if someone puts up a little 4' fence --- I'm 5' --- so a 4' fence (indicating), and you have little kids right out front there, someone could walk over, all you have to do is turn your head, and someone could walk over and grab them and they're gone!

So, that's what I'm speaking for them for. I don't know them but I think it's really important.

THE CHAIR: Thank you. Anyone else to speak in favor of the applicant?

(No response)

Anyone here opposing the applicant?

(No response)

Anyone opposing the applicant?

(No response)

If not, this appeal is closed.

Mr. Sherman re-entered the meeting.

C. Appeal #5794A, application of Esaul Rodriguez for special exception approval to allow alcoholic beverages to be served on proposed patio at Puerto Vallarta Restaurant under Section 4-03.32A & 15-05 of the Zoning Regulations, 826 Queen Street, property of West Queen Developers LLC at the intersection with Aircraft Road in a B zone.

MR. VINCI: Is the applicant here?

(No response)

Is anyone here for Appeal 5795A?

(No response)

MR. SALKA: Mr. Chairman, make a motion that we table the public hearing.

MS. POTTER: Second.

(Motion passed unanimously on a voice vote.)

D. Appeal #5795A, application of Southington Community Services for special exception approval to allow the 2nd Annual Farmer's Market on Fridays July -October under Sections 3-01.31G & 15-05 of the Zoning Regulations, 991-1003 South Main Street, property of Saucier Realty, LLC at the intersection with Werking Street in a B zone.

JANET MELLON: Hi, my name is Janet Mellon and I'm here representing Southington Community Services.

And, we're here looking to see if we can get an exception again this year for the farmer's market which will be located --- um --- I'm looking for the address --- 991-1003 South Main Street which is owned by Gary Saucier.

THE CHAIR: And, we have conditions. You would agree to the same conditions?

MS. MELLON: I would.

THE CHAIR: Frank, could you read them? There's five.

MR. VINCI: Sure.

(1) The approval is good for one year.

(2) The applicant will clean up the area at the end of the day of each event.

(3) The sign will not be larger than 32 square feet in size.

(4) The sign will be set back at least 10' from the property line.

(5) The farmers are fully insured. The insurance for the event shall be private and the town has no culpability.

MR. SALKA: There were no issues last year.

MR. VINCI: There were not.

THE CHAIR: Any more questions for the applicant?

(No response)

Have you finished your presentation?

MS. MELLON: I have finished my presentation.

THE CHAIR: Anyone here to speak in favor of the applicant?

(No response)

Anyone here to speak in favor of the applicant?

(No response)

Anyone here opposing the applicant?

(No response)

Anyone opposing the applicant?

(No response)

If not, this appeal is closed.

E. Appeal #5796A, application of Warren & Lori Abell, Jr. for a variance to erect a 6' high privacy fence in the front yard where less than 4' is allowed under Section 2-19S & 15-04 of the Zoning Regulations, 787 West Center Street, property of Warren R & Lori A. Abell opposite the intersection with Jubilee Drive in an R-20/25 zone.

LORI ABELL: Hi me, again.

MR. VINCI: Excuse me. I skipped an application. I think we can hear yours and then we'll go back to that one. I apologize.

MS. ABELL: This will be real quick. At first, the first thing I heard was privacy fence. And, I know that it is written down there but what it is --- it isn't a privacy fence unless it's private for the snapping turtles we have in our pond.

We want a 6' wooden fence to go in front of the pond and not in front of our home on 787 West Center Extension. Here in Southington. It's for the protection of every little kid that I look across the street and see --- little tiny ones. Temptation is within all of us and to see this and to see those little kids across the street --- even young boys that are say between 6 and 15.

When I was a kid, if I saw a pond and it was getting dark and there wasn't anybody around, I would have been the first one in the pond.

All these years there hasn't been a fence there but um, by the grace of God no one was hurt in that pond. And, as much as we love it and its beautiful and everybody that jogs by it or drives by it or we've driven by it, we've said wow, we'd love to have that home with that beautiful pond there and all the woods behind it. But once we started looking at the house and decided we wanted to buy it, it was just put in our hearts that it's more important to have a safety fence there to keep anybody out from getting hurt in the pond.

I'd be glad to - we both would - to bring them over to view with them and their parents and they can see what's going on there but it's just a safety issue and that's it.

Like I said, it doesn't go in front of our home.

Do you have anything?

MR. ABELL: No, you've said it all.

THE CHAIR: Okay, I was out there today. What they do have is they have the pond. And, the land from the road slopes down maybe about 2'?

MR. ABELL: Right.

THE CHAIR: Okay? So, I've got to ask you a question. How far off the road -

MR. ABELL: This is going to be about 10 to 12 feet away from the road. So, there's going to be trees in front of the fence. The trees that are out there.

MS. ABELL: Yah, those big trees.

MR. VINCI: The large trees, it will be behind the large trees?

MR. ABELL: Right.

THE CHAIR: That's about 20' off then, right?

MR. VINCI: No. I measured it tonight. The trees are about 8' to 9' off the -

MR. ABELL: They're going to go behind the trees.

MR. VINCI: If you go behind the trees, then you are --- the grade change is probably going to be a 1.5' drop.

MR. ABELL: It's actually going to be a little lower than. It'll look like a 4' fence from the road.

MS. ABELL: Yah, because of the trees.

MR. ABELL: Because it does slope down.

THE CHAIR: You are going to put the fence in front of the trees or behind the trees?

MS. ABELL: Closer to the pond. Behind the trees.

MR. ABELL: The trees will be between the fence and the road.

THE CHAIR: Well about, maybe 4', all of 4'.

MR. BOHIGIAN: How much does it dip down, 2'?

MR. VINCI: Uh, probably about 1.5' to 2'.

MR. SALKA: Well, I guess the question for me --- I drove by it, I don't know, a couple of days ago - and you've got the pond there and you're going to put it in front of the pond. It's certainly not going to stop anybody from going into the pond because they can around the fence; it's going to be straight across. And, you said it's going to be probably 10' or 15' from your property line on the left side and

then you've got quite a bit of space on the righthandside where your house is.

So, what is the purpose of the fence other than - you won't be able to see it from the road, is that the point?

MR. ABELL: Safety. Yes, exactly.

MS. ABELL: It is to take away the temptation of little tiny eyes.

MR. ABELL: If the trees weren't there, we would probably put trees up. But because the oaks are there, um, you can't really put trees in there. So that is why the fence.

MS. ABELL: And, the 6' fence would probably end up going even further back because in order to dig down with all those enormous trees that are there, there is going to be roots. So we're kind of figuring it's going to be kind of a --

MR. ABELL: The fence is going to be 12' back from the road.

THE CHAIR: Did you say this was going to be a wooden fence?

MS. ABELL: Yah.

MR. SALKA: So, it's going to be stockade at 12' off the road behind oak trees.

MS. ABELL: All the trees.

MR. ABELL: The oak trees.

MR. SALKA: So it will be between the trees and the pond.

MR. ABELL: Exactly. Yes.

THE CHAIR: Any other questions for the applicant?

MS. ABELL: It is definitely not a safety --- or a privacy issue.

THE CHAIR: By putting the wood fence there, what would you do, blend the color into the landscape like that?

MS. ABELL: Oh, yah, absolutely.

MR. SALKA: From a safety standpoint, I think this is, you know, even though somebody might be able to go around it, they won't be able to see it there. If you're walking by, you may not see the pond, which I think it is a hazard there.

MR. BOHIGIAN: Would you be able to see the pond driving down the road with the fence from the driveway over? Are you going to put something this way, also?

MR. ABELL: We might put some trees that come across that way.

MS. ABELL: Actually, we've already begun doing that. We've already got a 9' pine that we just planted there.

MR. SALKA: So there are trees on the other side of it.

MS. ABELL: We're planning on putting a lot of pricker bushes.

THE CHAIR: So, with the slope there, we're talking about probably seeing a fence that's 4' high. That's what we're talking about.

Have you finished your presentation?

MR. & MS. ABELL: Yes.

THE CHAIR: Anybody here to speak in favor of the applicant?

(No response)

Anybody here to speak in favor of the applicant?

(No response)

Anybody here opposing the applicant?

(No response)

Anybody here opposing the applicant?

(No response)

If not, this appeal is closed.

F. Appeal #5773A, Application of Floyd D. Gollnick to (1) appeal ruling of Zoning Enforcement Officer, (2) to vary lot width from 200' to 79' and (3) to vary lot area from 80000 sf to 25,867 sf to allow 3 living units, under Sections 3-04.2B, 9-00 and 15-03 of the Zoning Regulations, 91 aka 89-91 Grove Street in an R-12 zone.

ATTORNEY MECCARIELLO: Bryan Meccariello, 142 North Main Street on behalf of the applicant and owner of the property known as 89-91 Grove Street in Plantsville. If I may approach, I made a little packet with tabs for the board members to follow. I'll be brief in my presentation recognizing you have more on your Agenda plus there are quite a few people here speaking, I believe, in favor of the application.

(Passed around handout)

Before I take you through that packet, first of all, we are here tonight regarding three matters that Mr. Vinci mentioned. But we are here basically because Mr. Gollnick received a letter dated March 22, 2010 from Jim Butler the building official in the Town of Southington notifying him that he had exceeded the scope of his permit and the use of his permit for a detached garage. He recognizes he has done that. He ceased any work on the detached garage.

However, a second letter that was sent as a result of that inspection, a letter dated March 29th, 2010, which now brings up the house that we're here for. This is the three family house, two family according to the town.

What I want to do is actually take you through the package I submitted. You can just follow me. I'll be brief, again.

Tab 1 is the Southington property information and map data base and the detailed property information. What I've done is in yellow highlight. I just highlighted the sections that you can follow which in this case, at the bottom of Tab 1; the property information land use is a three family.

Tab 2 is the Town of Southington website and the Assessor's records which on Page 1 of 2, land use description is three family.

Tab 3 and residential property card which is the data card which is the one that preceded the one in Tab 1 and Tab 2. And, that takes us back a little bit in time. Unfortunately, I can't tell you the date it takes us back, however on Page 1, the class is identified as three family as well as the living units is as a three family.

The point I'm trying to make with those three exhibits is that the Town of Southington and the Assessor Department, which generates the information to create tax billing, for nearly the last ten years this property has been identified at least to the Department of the

Assessor, the Assessor's Office and the Tax Office, as a three family. Mr. Gollnick has been paid taxes for the nearly ten years as a three family property.

Tab 4 is an appraisal that Mr. Gollnick obtained as a result of a mortgage refinance. And, on Page 1, again, from the appraiser's point of view, this is back --- this is a document that's dated March 17, 2009, before the letter that Mr. Gollnick received - the design is a three family. And, also, it talks about units one, two and three. And, the size of those properties. As well as the income approach because this is a multifamily, simply wasn't his primary residence, so the underwriting of that mortgage needed the information regarding the income approach. That's Tab 4.

Tab 5 is a letter dated March 30th, 2010 from the Southington Fire Department, Neil Cassarella, Deputy Fire Marshal. Real brief, I'll read it:

"Mr. Gollnick: Per your request this letter is being sent to you in response to our inspection on April 20th, 2009. Our records show that your house was inspected as a three family dwelling and according to the Connecticut State Fire Safety Code, it passes this inspection.

This says all apartments, three family and above, are required by the Connecticut State Fire Code to be inspected annually.

Sincerely, Mr. Cassarella."

Tab 6 is an Allstate Insurance Certificate which if you look on Page 1, the relationship --- this must just be part of their relationship, since July 13th, 1006 between Allstate and Mr. Gollnick. On Page 2, this is a three family house that is being insured.

And, lastly, Tab 7 is what's on this board. It's just you have the 8.5 x 11. This is significantly larger. We had a house planner just go out for the benefit of the board to show this is three separate living units.

This is the two family house (indicating) up and down in the front. And, the back is a separate --- it's attached but it's the subject I think of what we're here tonight for.

What I've highlighted in pink is the first floor of; I'll call it, the main house. And on Tab 1 and 2, and even I believe on Tab 3 the Assessor's Office, when they don't have the exact of building, they put 1900. So this house which is pink first floor, yellow second floor, existed in this condition in 1900.

And, then as a result of the building permit applied for and pulled in 1986, wasn't completed until 1991. Mr. Gollnick will explain why. That's the blue section. It's the rear, attached part.

MR. BOHIGIAN: Bryan, could I ask you a question? On Tab 3, what's that convert to three family, 28 by 30?

ATTORNEY MECCARIELLO: That's the issue. When we look at - the information I discussed with Mr. Vinci, the reason why he's of the opinion that it was originally only a one family and Mr. Gollnick applied for a permit and pulled a permit in 1986, to convert it, according to the records to a two family, it had always been a two family. However, the records that you're referring to, is the same information that is on the building department's records.

And, we're here. I mean he filled out, he filled it out and he can explain.

The people that are here tonight are going to provide just testimony that - they're tenants; they're people that've occupied that top as a rental unit. There's three meters on the property, on the building itself. There were two prior to the building being built in the back.

THE CHAIR: What does the building permit say? When he took out the building permit?

ATTORNEY MECCARIELLO: The building permit says what I --- what I

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THE CHAIR: It does say ---

ATTORNEY MECCARIELLO: --- convert from a one to a two family.

THE CHAIR: Okay. A one to a two.

ATTORNEY MECCARIELLO: Right, in 1986. That's what it said.

And, that should be --- I don't have that in front of me. I do have a copy but I don't have it for the board. I just - don't know if it was part of the -

MR. VINCI: It's part of my packet that I sent to the board.

ATTORNEY MECCARIELLO: Okay.

Tonight, Mr. Gollnick needs to explain and testify that his property had always been a two family, up and down. Prior to zoning. We're not standing here trying to wrap ourselves in the nonconforming status. The property was a two family house. Why the language on the application says for a one family, two family, I don't know. He's going to answer any questions you might have.

But clearly, it was a two family. And, the third unit which permit was in 1986 and was CO'd in 1991, establishes a three family or

a third living unit. And, it's been consistent since then, at least from the Town of Southington's Assessor and tax record.

Mr. Gollnick has filed tax returns. I have them here. You can see those. For the past ten years because he's collected rent. He has got his receipt book, receipt books. He's maintaining it that through insurance purposes, as well.

THE CHAIR: Were there inspections on this property when they were doing it? Inspections? Electrical inspections? Plumbing inspections?

ATTORNEY MECCARIELLO: Yes. Because he received a CO for the third unit.

MR. VINCI: He received a CO for a second unit.

ATTORNEY MECCARIELLO: I mean, that's where the difference is. I mean, and I respectfully say that the information they have at the building department is not the same that the Assessor's and the Tax Office has. And, I know the Tax Office picks up --- they'll go out and maybe look, three mail boxes, three meters, you know, three sets of people out there. So, I'm not sure how the Tax Assessor, how they confirmed it, whether they looked at plans or whatever.

This building did exist as a two family prior to the permit being pulled for this. This is Mr. Gollnick's position.

MR. SALKA: Right now, there is no dispute, I don't think, at least I understand, there's no dispute it's a two family. Is that correct?

MR. VINCI: No. There is no dispute that it is being used a three family. There's no dispute about that.

MR. SALKA: Right.

But as far as, you keep mentioning that it's all been approved up to 1986 as a two family.

ATTORNEY MECCARIELLO: Well, it was all being used up to 1986 as a two family.

MR. SALKA: As a two family.

ATTORNEY MECCARIELLO: And, then he put the addition on.

MR. SALKA: Right. Now the point of contention here is what happened after 1986 that made it into a three family.

ATTORNEY MECCARIELLO: Well, that was the rear - the blue? That was the separate building permit which staff's position is when you

created a second - we didn't recognize the pink and the yellow which is up and down as a two family. We only recognize it as a one family. By adding the attached section in the back which I highlighted in blue, that made it a two family.

Staff is saying that made it a two family. Our position is that made it a three family. Staff's saying that made it a three family, then we're going to leave.

MR. VINCI: Well, staff is under the opinion that it was made an illegal three family at that time. It should've been a two family.

ATTORNEY MECCARIELLO: Okay. And, that's where we're at. That's the difference.

There was no intention to sneak this through. A midnight meeting. It is what it is and it was what it was. So, he had a two family. He put an addition on the back and it's another living unit.

THE CHAIR: But the permit that he took out was a three family or a two family when he took the permit out?

ATTORNEY MECCARIELLO: On the permit you have in front of you it says concerting from a one to a two family.

THE CHAIR: Okay, nothing about a three family?

ATTORNEY MECCARIELLO: No.

Just for the record, Section 18-13A of the Connecticut General Statutes on nonconforming building and land uses may be applicable here. I did approach Mark Sciota, the Town Attorney. I wanted to give him a head's up on this. I wanted him to provide an opinion. He couldn't do that today. In fairness to him, I mentioned that I would discuss this with him after today. I shared the package with him.

It's an issue for I think you to decide on whether or not Mr. Vinci's cease and desist and his decision, I think we have to address that. Obviously, if we're not successful in appealing that, then the second request is for a variance and as indicated it is an 80,000 sf lot. Density there.

And, then there's also the frontage if you want --- it clearly doesn't meet either.

This is a --- in terms of the neighbors I can only speak that there are other multifamily uses in the neighborhood. I have those addresses. None of them are three family. But to say this is really a two family in a residential one family home, um, if you like I have those addresses. I don't need to get into that. You can determine that for yourself.

I do have affidavits from individuals and I'll hand those up to staff right now.

Barbara Barlow dated April 12th
Daniel Reynolds, II
Judy Ames & Alden Ames
Gary Hagstrom
Richard Gollnick
Jonathan Gollnick
Jeremy Gollnick
Robert Gollnick

These are affidavits which they've actually filled in the date that they were aware that this property was being used as a two family. The dates go back to 1940. Those individuals - I'm not sure if they're here, but those are the ones that if they couldn't be here they wanted to complete that affidavit. So, you have that for the file, as well.

Briefly, I'd like to have Mr. Gollnick speak, if you'd like. If you have any questions of him, I think you've got to clear the air on this issue of what happened in 1986 when they applied for the building permit.

If you don't mind?

THE CHAIR: No.

FLOYD GOLLNICK: I'm the owner of 89-91 Grove Street. I can remember when I was younger that we used to rent the upstairs out to my uncle and aunt - Rose and Ray Maccio.

After that the Gazecki's lived there. And, then after the Sokolowski's lived there. And, then the Gray's lived there. And, then we had a young couple that came from Maine. I remember they lived there. And, they had a little tiny girl and I used to babysit for her.

And, then on my own, I had tenants - uh, I had Ron Tanaway lived there and Owen Ames. And, also Raphael and I can't remember his last name. But he also lived there upstairs when this was all a two family.

And, then I had, took out a permit to put a - take down the shed in the back there and put up a new garage dwelling and I - um - Mr. Meccariello showed me that they had signed it as a single family but I don't recall that. I guess that I can mention in 1993, I don't remember doing that.

When I put the addition on, I assumed it was a going to be a three family thing.

Are there any questions?

MR. SALKA: I think what we need to do is follow the paper trail. I mean I can understand on the Assessor, when they go out and see three meters, you know, the same thing.

But what we need to do is go through and see based on the CO, based on the building permits. I think that's really what we have to follow the trail.

We are hearing half of it, rightfully so. I think we need to hear the other half first so we can make a determination.

And, you know, the applicant is basically saying, you know, all the people that lived there as it was a two family, whether that was legal or illegal. I don't think it has been determined, yet.

THE CHAIR: Have you finished your presentation?

MR. GOLLNICK: I guess. Unless you have any questions of me.

MS. POTTER: Didn't we just do this for the person on Mount Vernon Road where all the way back it said two family but he's always had a three family? He just tore the whole thing down and he built it. He lives across the street from --- Frank, weren't you able to pull and file and go back?

MR. VINCI: Yes. And, I have this one, as well.

MS. POTTER: What I'm saying is that that one says two family, two family, two family. But the guy all that time had the three family?

MR. VINCI: He may have had this three family up into the 70's. I didn't agree with the board's decision on that -

MS. POTTER: Yah, I mean, I went through -

MR. VINCI: You gave him permission to be a three family. But he established back to around 1971. Uh, I think this is a little bit different.

MS. POTTER: Because it said two family, two family. I remember when you pulled all the paperwork and it said two family and he had a three family and then we let it go as a three family because it had three meters.

And, at that point I said, well, when they went in, they said two bathrooms, two kitchens, but three meters? What makes it a two family to a three family? What makes it? Is it the amount of bathrooms? Is it the amount of kitchens?

THE CHAIR: Kitchens, bathrooms.

MR. VINCI: Living area.

MS. POTTER: Well, that's what I'm saying; all that time that other guy had two family, two family, two family. And, then he had a three family.

And, at that time, I'm like, well what changed it to that three family? He didn't change anything. He said he had a three family all that time but when he went through the papers, it said two family.

MR. SHERMAN: You look at the zone, too.

MR. VINCI: Yes. I'll go through all of this with you.

MS. POTTER: Yah, he's got it. I just want to know what constitutes a two family from a three family. At what point do we say, okay, this is a two family and this is a three family.

MR. VINCI: When you have three separate living quarters.

MS. POTTER: But what I am saying is that other gentlemen only had two because it was inspected all that time as two.

MR. VINCI: Well, I agree with you ---

MS. POTTER: Oh, okay. I just want to know.

MR. VINCI: I didn't agree with your decision on that one, but I respect it.

THE CHAIR: Well, let's stay with this one.

MR. SALKA: I think what we need to do is to focus on this one.

MS. POTTER: Well, no. I just wanted to say what the paper work says. He says it was a one family to two and he's staying it goes back a two family and then they made it into a three. Well, was it a one family or a two family is what I'm asking. What made it -

MR. SALKA: Well, that's what I think Frank's paperwork will show.

THE CHAIR: This is a little different, okay?

MR. GOLLNICK: I think I'm all set.

MR. VINCI: I sent out a packet to you of exhibits I'd like entered into the record.

On March 18th of this year, I received an anonymous complaint from a caller who claimed to be a resident of Grove Street. He was very concerned that the property at 89 Grove Street owned by Mr. Gollnick was being converted into four living units. He explained that Mr. Gollnick had erected a detached garage in the back of the property a few years earlier and now was planning on converting it to a fourth unit, a living unit about the garage.

Upon receiving this information, I went over to talk to the building official and he pulled his records on the property and found that a building permit was issued for a detached, two car detached garage, period. No living unit or anything like that.

He went down there. He made a visit that day. He found that the

(End of Tape #1, Side A)

(Beginning of Tape #1, Side B)

(Continuing)

-- letter. The second page is the building official's notes. I highlighted for you there he made a note that the apartment or the garage was 80 percent finished. With living area and a full bath.

Mr. Gollnick was not at the property at the time. So he went back to the office. He went out the next -- or on the 23rd. And, with Mr. Gollnick present and the building department electrical inspector. They made another inspection of the property and found that the detached garage had a full bath, partly finished. A heating system, a full electrical system with 100 amps, and a septic system - a cesspool in the back. All of these were done without permits.

THE CHAIR: What was that you said in the back?

MR. VINCI: A cesspool. Make shift septic system.

On talking to Mr. Gollnick about the electrical, it was noted that --- Mr. Gollnick noted that he had a three family dwelling.

THE CHAIR: A what?

MR. VINCI: A three family dwelling. When he went back to the office, he found that a permit was issued in 1993 for an addition off the back of the house to convert a single family dwelling to a two family. If you look in my exhibits, there's a zoning permit and it's dated, it was approved on April 12th, 1993 and it was for a 28 by 30 foot addition to change to two family from single. That was the addition off the back of the house. It was supposed to make that existing single family a two family, okay?

It's my belief that this was a two family from day one. But if he came in at the time and said I have a two family and I want to

create a three family, we would have denied it because it would not meet the regulations. When you go from two to three, it becomes multifamily and you need 80,000 sf of area and 200 feet of road frontage. So he would not have been able to create a legal three family.

Okay, backing up. So the zoning permit was approved in April.

The next copy is a copy of the building permit, also in April. And, if you look on the bottom of the building permit, it says: proposed to be work to be done. Addition changed to two family. Changed to two family.

So construction probably was started some time after that date. The CO wasn't issued for this addition off the back until 2001. A copy of that CO follows this. And, again on that CO, it says: addition, change one family to two family, 28 by 30.

The next item is a letter from the building official. Stop Work Order on the garage.

And, the next item is another Stop Work Order which not only puts a stop work order on the garage, but also on the third unit because all of the building department records indicate that what was supposed to be changing was supposed to be going from a one family to a two family.

MR. SALKA: That one again, Frank.

MR. VINCI: The CO.

MR. SALKA: No, go back. That last document you were talking about. You issued the CO.

MR. VINCI: Stop Work Order.

MR. SALKA: Assuming it was two and then you gave them a Stop Work Order on the garage.

MR. VINCI: The second Stop Work Order was for the garage and also mentioned immediate cease occupancy on the third living unit at the house.

MR. SALKA: Stop Occupancy. Not building because it had already been completed.

MR. VINCI: Occupancy.

MR.SALKA: Got it. Okay.

MR. VINCI: And, then lastly is my cease & desist based on the information I received from the building official when he was out

there and Mr. Gollnick who said it is a three family. I issued a cease & desist order because again, if he applied for a change of a two family to a three family, that would have been denied.

He only got the addition because it was misrepresented as a two family, converting from a one to two family.

The Assessor's records, which I have a copy of all the records, the first one is the most current one. And, it shows it as a three family. This was changed in 2005 by the Assessor. So at some point in time around that he became aware that the use of the property became a three family.

The Assessor goes out, sees what's there, make notes for assessment purposes so that taxes can be applied to the property. He makes no judgment as to whether or not it is legal or not.

The Fire Marshal, as well. You have a letter from the Fire Marshal. The Fire Marshal went out. He gets his information and he goes to the Assessor's and looks for all three families to make sure that they meet the fire code. This meets the fire code but it doesn't meet the zoning code.

If you look through these successive cards, the last card is the first card. That's the card we usually go back to to find out if something is grandfathered. It's the 60's card. On this card, it shows it as a two family.

I have no question that this was probably a two family over the years. The 60's card shows it as a two family. The 70's card shows it as a one family. That's a little bit fuzzy. But sometimes people own two families and they have family living in them and they go to the Assessor and say listen, we're not using this as a two family any more. We don't want to pay the additional taxes.

So the Assessor, in the past, has made concessions like that. The 80's card shows it as a one family. The first 90's card shows it as a one family.

In fact, again, probably 2001 it was picked up as a three family.

Again, just to summarize, I have no doubt that this was a two family over the years. If somebody came in with a two family wanting to convert to a three family, they would have been denied.

The only way they could have got a permit to add another unit is to misrepresent it as what it was. And, I think that's the case here but you have to sort through that.

If you find, if you overrule me, then Mr. Gollnick has made his case. You can overrule me and approve the variance, although, I would suggest you don't. I think the variance would be excessive. I don't

think it would be in harmony with the neighborhood. But those are the options you have.

MR. SHERMAN: What is the status of this now, Frank? It's four months after the cease & desist.

MR. VINCI: Mr. Gollnick, from my knowledge, vacated that third unit. So right now it's in compliance.

MR. SHERMAN: Did they then take out the improvements that they made?

MR. VINCI: Oh, no, no. Not yet. No. Not yet. That's up to this board here.

MR. SHERMAN: They had thirty days to do it. March 30th.

MR. VINCI: Well, yah, once he submitted application he basically stayed an appeal for him to have this hearing before you.

MR. BOHIGIAN: Does he have to dismantle the third apartment?

MR. VINCI: Absolutely. I mean, if you find that I acted, you know, I was right in my assessment of the situation, the relief would be, yes, bring it back to a two family. Absolutely.

MS. POTTER: Well, it wouldn't have to be dismantled. He'd just have to make the first unit a one unit.

MR. VINCI: Yah. I mean, he would have to make this - he would have to bring this into conformance with a two family which the zoned required.

MR. CYR: (From the audience) Mr. Chairman? Could you please use the microphones? We can't hear a word you guys are saying. Please!

THE CHAIR: Okay. Talk into the microphone.

Are you all set, Frank?

Do you want to rebut?

ATTORNEY MECCARIELLO: Well, first, there are individuals who may not only be speaking in favor but are going to offer some testimony as to, as Mr. Vinci pointed out, and I was unable to get that card from the Assessor's office, the 1960's card, establishes it as a two family house at that point.

THE CHAIR: Anybody here want to speak in favor of the applicant?

DANIEL E. REYNOLDS, III: Hi, my name is Daniel E. Reynolds, III. I've known Floyd ever since I was ten years old. We played ball

together and all that in town. He's been a wonderful resident of the town and helped out churches. He worked for the town as in schools and all that and he's always helped people out as much as he can.

Southington is one of the main towns that always helped out its citizens. Now, if there has been some kind of mistake all along, for a while, and I knew this house was always a two family house. It was a two family house because people were always renting upstairs. That's the original house.

Then, he got permits and stuff to build a big addition. Which he did. He paid for that addition. He got the town approval to do it. Now he was also taxed as a three family house all these years.

Well, now it's time for our town to come back and help this person out and get it rectified. It's crazy to knock down another house that's there when you have three families paying him rent.

And, the poor man had to leave his own house that he lived in all these years. A town resident, that grew up here and was born here. Grew up in Southington. His family.

Me, myself, I'm the same way. I know my family is the Tavalozzi's and we've been here for how many years. The DeLucco's, Laundrette's. I mean, wonderful family.

And, I mean, the main thing is that my family always helped people out. And, I think that this is a case that we've got to help this person out, let him get back to his own home, and live like he always did. And, make it a three family house.

He's paying taxes on it. The town already accepted these taxes for years. Now, it's time for us as citizens to help out a man that helped out so many other people. I think this would be a wonderful thing. Keep the three family.

You don't want to start knocking down and making it an eyesore. There's no neighbors complaining about it. He lived in there for how many years. Nobody said oh, get rid of him. Let's just leave it like it is, make it a three family, and I think it'd be just wonderful.

There's nothing --- there's been no complaints or nothing else. We can always make this variance - I don't think there's anybody else having this same variance in the whole town.

But a man living in his own house?

THE CHAIR: This isn't about personalities, though. This isn't about personalities.

MR. REYNOLDS: No, but this would help out. This would help out.

I think as citizens of the United States and Southington that it's time to help out our citizens. Definitely, he's been paying the taxes. And, you've accepted it. He built the house and he paid for it. And, he made the addition through the town. He's been paying taxes.

So, I think the best thing would be to just give him the variance.

Thank you so much.

THE CHAIR: Anyone else want to speak in favor of the applicant?

GARY HAGSTROM: I own a house 81 Fox Run, Southington. I've been a resident here all my life. I've known Floyd for probably around since I was 10 years old. Well, I was a neighbor of his.

He, uh, there always was somebody --- it was always a two family that I can recall. He lived downstairs with his parents. And, there was some people living upstairs. I didn't know the people but I was over there many times. I lived at 739 Main Street, right down the road near the church.

Floyd is one of the people that, you know, I'd give anything for this kid because he's such a good guy. He would do anything for anybody. If I left a wallet on --- he'd give your wallet back with all the money in it. That's how this man is. He's a hard worker. He's worked two to three jobs all his life.

You know, if there's a mistake in the application, I'm sure it was a mistake. All right? It was a two family house and I think it would be up to the town to verify that it was a two family house when he applied for it and found the mistake. And, ask the question at that time.

He's put a lot of work into this house and I'm sure he did a lot of it --- he used to be a carpenter. He did a lot of carpentry work. I remember that.

And, so, I just what to say I'll leave now but you know, this man deserves, if there was a mistake there, a break.

And, I appreciate it.

THE CHAIR: You know what I have to ask myself is what it a mistake when he was working on the garage, too?

SPEAKER: I don't know anything about the garage, okay? I wasn't involved. I'm just, I'm here as a support for what I know. I have no idea about the garage, okay?

Thank you very much.

THE CHAIR: Anybody else speaking in favor of the applicant?

ALDEN AMES: I live at 42 DeFashion Street. I've been living in the town since 1966. I've known Floyd since the late 70's. I've been over his house and in fact, one of the people that rented the upper floor of the main part of the house was my son: Owen Ames.

So, I was aware of that at that particular time. When Floyd put in his application to put the addition on the back of the house, I lent a little hand and boost in erect a wall myself. So, I was, I was there when that was happening.

One of the things that maybe people don't realize is that when Mr. Gollnick starting putting the addition on, he was putting that on himself, working himself while working several jobs. And, the delay in time, before it got to the point where he could get the CO for the thing, was because he was doing the work himself. So, you know, it was an ongoing process.

As the previous speakers have said, if there's a person in town that is a credit to the town, it's Mr. Gollnick.

That's all I have to say.

THE CHAIR: Thank you. Anyone else speaking in favor of the applicant?

BOB GOLLNICK: Hi. My name is Bob Gollnick, I'm Floyd Gollnick's brother. I grew up at 89 Grove Street. It's always been a two family. My brother gave you a list of most of the people he remembers living there. It's always been taxed as a two family. It has two meters.

He went to the town and got the permit to put the addition on. Then it had three meters. You sent the inspectors down and they inspected the plumbing and inspected - you sent them down a number of times.

The building was red on the top and white on the bottom. When you drove up to it, it looked like a two family. My brother finally vinyl sided it. Nothing, all the property tax records, everybody here that has testified that it's a two family and it always has been.

The problem is with the permit. It looks like it says it's going from a one family to a two family. Nobody ever went down to the town hall and said we want to change a two family to a one family. That never happened. Somebody down here did it. I don't know who.

But you went a number of times. The building looks like a two family. You've had it, you gave him the permit, you gave him the approval, gave him the CO. And, now it is a three family.

Now, he gets crazy and he built a garage and put stuff on top of it. So, he is in this predicament. You're digging up figures that don't apply. He was as honest as you could be. How much?

I mean, everybody is going to agree that it's a two family. Even the enforcement officer agrees that it's a two family. You gave him permission. It seems like there is some deceit here, but there wasn't. Because you were there. You're the one who did the inspection. It's so obvious that it's a two family and he converted it to a three family.

Why on paper it says from one to two, I don't know. All these people are going to testify that it was a two family and you gave him permission to build a three family. I don't know what else to say or how simple else it could be.

I understand where you're coming from a legal standpoint. That what should have happened is that ten years ago you should have said, Floyd, this is a two family and you're converting it to a three family. You've got to have a zoning variance. And, he probably would have been denied according to the way the laws are now. But he wouldn't have built it.

Now, you're going to take this away from him. He's going to lose - I do his tax returns. It says three family on it. Ever since he built. So, you're going to take this away, you're going to cause a great economic hardship. To me, you were the ones that made the mistake.

He did everything he was supposed to do right. I don't know what else to say.

THE CHAIR: Anybody else to speak in favor of the applicant?

(No response)

Anyone else to speak in favor of the applicant?

(No response)

Anybody here opposing the applicant?

KEITH GRAY: 100 Grove Street. I am in a dilemma. I came here tonight to oppose it with the understanding that the garage was going to be a fourth addition to his house. That's what I was opposed to.

In the early '60's ---

THE CHAIR: Are you speaking in favor of the applicant? Or opposing the applicant?

Sir? Are you speaking in favor of the applicant or are you opposing the applicant?

MR. GRAY: If it's for the garage, I'm opposing it. But I don't know where you are at?

MR. VINCI: The garage is not the issue tonight.

MR. GRAY: I'm done.

THE CHAIR: Thank you.

Anyone here opposing the applicant?

SUE PHILIPS: Hello. My name is Sue Philips. I'm the - I live right next door to Floyd at 81 Grove Street. And, I have lived there for 22 years now moving in in 1988.

When I - and I want to state first because I've heard from other people echo, it's very hard not to make this type of thing a personal thing. And, this is not a personal situation. It's a situation about the fabric of the neighborhood and the type of neighborhood that we have and the fact that we want to protect that and protect our property values.

We have very small lots in this area. When I moved in in 1988, I was aware that Floyd and his father lived in that two family. And, yes it was red on the top and white on the bottom. And, I just misspoke. I was aware that Floyd and his father lived in the house next door to us. I had no idea it was a two family. And, Floyd and his dad lived there together. So, his father passed away and then Floyd to my knowledge, lived there alone.

I remember when the apartment was being built as a two family. I was certainly not in on the ins and outs of zoning regulations and the like, but he knew Floyd was building a second apartment. I remember taking my young son trick or treating at one point and finding that there was a second door with new people there who I hadn't even known had moved in at some point. So at that point, it was a three family.

Then a couple of years ago, I became aware of the possibility of it being a four family because of the apartment over the garage.

Had we known when we moved in in 1988 that that was going to go from a two family to a three family in a zone where that's not allowed, we certainly would have spoken against that.

We have extremely small yards there. And, it certainly isn't appropriate to have something outside of the zoning.

I also have to say as I've said already, I wasn't aware of all of the ins and outs of the zoning process through all of this, but

hearing that in 1986 it was stated it was a one family going to a two family, um, and now hearing that when the garage was built, it wasn't for a garage with an apartment but it was for a garage. And, that's if I heard that properly.

Those have been two rather large mistakes. Two rather large mistakes that impact the neighborhood and the value of my home negatively.

Thank you.

THE CHAIR: Thank you. Anybody here opposing the applicant?

ELMER LEPREAY: 82 Grove Street. I'm right across the street. And, I've been there for 40-something years. And, I've only known it as a single family house knowing that it was grandfathered in as a two family.

And, what he did and I agree with Mr. Vinci, is wrong. And, I am definitely against it.

THE CHAIR: Anybody else here opposing the applicant?

KEVIN CONNOLLY: I live at 79 Grove Street, two doors down from Floyd. And, there is not a question that Floyd is a good guy. He's an outstanding man. This is not about a personal thing. This is about safety. This is about property values.

Grove Street is --- there are no sidewalks. You want an idea of what the safety issue is? Drive by there tonight. There's the bible camp tonight. You try to get up and down Grove Street with Faith Living Church and the enormous crowd that is there all this week. And, I guarantee you; you can't even get up and down Grove Street.

There are no sidewalks as I said. There's a crest right where Floyd's driveway is. And, I don't want it to turn into a condo complex. That's what it will, you know, the way it looks like it was going because we've all known for some time now that this garage was being converted.

So, it's not about Floyd not being a nice man or a good citizen or kind guy. This is about our property values and sticking to the policies and procedures that have long been established by the zoning and planning commission and following those protocols. And, maintaining the integrity of this neighborhood.

Most of the two families are really down on Hillside. And, Grove Street primarily is a single family street.

And, that's the real integrity of the neighborhood.

Thank you.

THE CHAIR: Anyone else opposed to the applicant?

(No response)

Anybody else opposed to the applicant?

(No response)

Attorney rebuttal?

ATTORNEY MECCARIELLO: Yes.

Briefly once again, Bryan Meccariello on behalf of the applicant. Just to need to identify the other properties on Grove Street that are multifamily dwellings. In addition to 89-91 Grove Street, 27 Grove Street owned by Gregory Galske, 28 Grove Street owned by John Degumbia, 40 Grove Street owned Ed (Inaudible). I understand that another property may as well be that.

Right on the corner, 12 Hillside Avenue, 31 Hillside Avenue.

Yes, most of the houses are single family. I mention this because it's not like this is the only multifamily property as may have been represented tonight but Mr. Gollnick had resided here --- he's resided here and the second floor all his life as he testified.

This property clearly based on the information that we have has been used as a three family for ten years and you know, obviously, as a result of his over use on the garage, okay, which he has ceased and desisted and abandoned that. And, he now knows why.

This property consistently has been used by Mr. Gollnick as a three family. The rents received, the insurance paid and the taxes paid, again, that may not go back and erase the information on the building, zoning permit that says concert a one to a two.

All that is important based on the fact that more than three years have gone by since the issuance of the CO for this building, this use.

And, according to the town tax records, at least from that perspective, it's a three family.

And, also more importantly, prior to 1957 is the testimony which was offered and the affidavits established that it was a two family prior to 1957.

We have, obviously, the gap in the 70's and 80's where it was changed and for some reason from a two to a one and then was represented on the application from a two to a one or a one to a two in 86 to 93.

Other than that, if there are no other questions or comments?

THE CHAIR: All set. Thank you.

ATTORNEY MECCARIELLO: Thank you.

THE CHAIR: This appeal is closed.

Continued Public Hearing Items:

A. APPEAL 5787A, Application of Standard Petroleum for special exception approval for a gasoline filling station/convenience store under Sections 4-03.32B, 11-03 & 15-05 of the Zoning Regulations, 2004 West Street (next to Kizl's Restaurant), property of Ghio Family Limited Partnership in a B zone.

And

B. APPEAL 5788A, Application of Standard Petroleum for approval of location for a gasoline filling station/convenience store under Section 14-321 of the Connecticut General Statutes, 2004 West Street (next to Kizl's Restaurant) property of Ghio Family Limited Partnership in a B zone.

MR. VINCI: Also, Mr. Chairman, I have Mr. Bruce Hilson, traffic engineer.

ATTORNEY DENORFIA: Mr. Chairman, members of the board, again, my name is Anthony Denorfia representing the applicant Standard Oil. And, this is a continuation of a public hearing seeking the approval of location for gas service station at 2004 West Street. It's in a business zone. And, it is at a signalized intersection.

At the last meeting, you continued the public hearing so that way we could obtain more information about the traffic situation out there and various improvements basically I did not have those answers available.

Since that time we have provided to the board and I think you have copies of a report by F.A. Hesketh & Associates dated December 10, 2007 which was prepared for the Dunkin Donuts facility which was previously approved at this location.

In addition to that, we've supplied a map which was prepared by F. A. Hesketh Associates dated November 20, 2007 showing the roadway improvements that the state required when they approved the Dunkin Donuts facility.

And, we also supplied a report by F.A. Hesketh & Associates dated May 18, 2010 revising the report taking into account this proposed change and with the conclusion that the intersection would work at a level of service C or better as required by Section 9-03.17 of your regulations.

In addition to that, since that time, the town's traffic consultant has requested some additional information. I believe we supplied most of it.

Tonight, I have Mr. Hesketh, who is here. He'll be giving a presentation on the traffic but before that I would also ask Andrew Quirk to come up and go through the preliminary site plan at this point and also some requirements that were put on this application --- on this site the last time this application was acted on as a full Dunkin Donuts instead of a gas station with only a 600 sf Dunkin Donuts.

ANDREW QUIRK: Good evening, Chair and Commission members. My name is Andrew Quirk and I'm a professional engineer and principal with Kratzert, Jones & Associates.

As stated, before you is a proposal for a 2800 sf convenience store and a 600 sf Dunkin Donuts inside the convenience store and a gas station service station.

Just briefly I'd like to go through the site layout as it stands now and as stated some of the previous approvals for this site. All traffic would enter through a signalized intersection on West Street opposite a condominium complex. The signal does exist today.

And, as part of the site plan the area to the south which is on plans that was submitted by Hesketh which we can go through in further detail. The striping on West Street would be changed so that there would be a left turn lane at the signal. The signal would be revised to accommodate the left turn lane northbound on West Street to enter the site.

There exists today a left turn lane south on West Street into the condominium complex. So there would be opposing lefts as a courtesy.

THE CHAIR: Can I ask you a question? Who okayed the change? You said there was a change. The traffic pattern on the state road?

MR. QUIRK: The site was previously approved for a Dunkin Donuts. Which was approved by the town planning & zoning commission --- two approvals. The original approval and then we went through the Department of Transportation and there were some comments that required a site plan modification which went back to the town planning & zoning commission and that was also approved. So, it has been approved by the DOT district office for the improvements on West Street as well as a Dunkin Donuts site was approved for this location. A site plan approval.

THE CHAIR: How many years, how long ago was that?

MR. QUIRK: The original approval was ---

THE CHAIR: No, the one you just were talking about.

MR. QUIRK: Well, the first approval was got around 2006 and then the last one was 2008? 2007? 2007.

So there is a site plan that could still be constructed.

So those, as part of that approval, those improvements to West Street were contingent upon that site plan approval.

The traffic would enter the site through the signal. We have provided the traffic queuing to the drive-thru window that is required by DOT and approved by --- similar layout was approved by the town planning & zoning commission. And, we have accommodated the gas station location with the pump islands as well as meeting the parking requirements for the convenience store and the Dunkin Donuts facility.

As part of the previous approval, we did meet with DOT on several occasions. And, they raised some of the same concerns that your traffic consultant engineer raised about in the future with the other parcels adjoining this that come to the same entrance point on West Street, whether there would be traffic conflicts at the signal.

This came up as part of the site plan approval process previously. A concern is that with the drive being close to the signal, if there was someone exiting the Dunkin Donuts turning left towards West Street, that queue would block the cars trying to enter the site. And, this was discussed previously in the same concern was presented then.

That conflict point would only arise when the other parcels are built. Today, the site as proposed, there is no conflict point because it comes in and it turns towards the proposed site. But in the future, that conflict point would be alleviated by moving the exit from the site as far west on the property and that was also part of the previous site plan approval and was stipulated as a condition on the previous site plan approval.

That with the build out of the other two parcels that the site drive be moved as far west on this parcel (inaudible) from West Street.

MR. SALKA: Question: Why wouldn't you do that --- you're saying that there could be a conflict prior to the build out.

MR. QUIRK: No. No. There's no potential conflict like that today because there's no crossing movement at this location.

MR. BOHIGIAN: No, what I think he's saying is why wouldn't you -- - why wouldn't you make that modification now knowing that in the future you'll put those other buildings in?

MR. QUIRK: There's several reasons. We don't know how the other parcels are going to be built. There's no approval for the other two sites. We don't know.

We also don't control that land. We have an easement in this location (indicating) over that parcel to construct this common entrance in this location. We don't control the land.

We don't know how the other site is going to be built and developed.

MR. SALKKA: So there's no way to put the exit behind the gas station, to the left of the gas pumps and south?

MR. QUIRK: We don't have that easement.

MR. SALKKA: So that exit has got to go between the Dunkin Donuts and the gas station in and out.

MR. QUIRK: That's correct. And, there is no conflicts today. The vehicles - they're not crossing --- there are no crossing patterns at that entrance. The vehicles simply enter and exit never crossing each other.

And, it only becomes a conflict point if there is future development. There is no conflict, there's no traffic conflict today.

We don't control the land. There's no easement for that area. We don't know how those sites are going to be developed. And, it's nearly 170 feet more of entrance drive that is not necessary for the development of this site.

THE CHAIR: Are you saying that's safe with all that activity that's going to go on there? That that's safe?

MR. QUIRK: Yes. And, there's no, there's no line --- there's no point at which the vehicles will be crossing paths. You simply enter and turn and exit and turn. Without ever crossing. There is no crossing movement.

MR. SALKKA: And, when you--- and when you did your traffic --- when the traffic study was done, is there going --- reading all of this, I --- it wasn't as clear to me as when you're going southbound on 229, is there going to be a right-hand turn lane?

MR. QUIRK: There is not a proposed right hand turn lane there. I'll let our traffic engineer go over the numbers in the report. And, the numbers don't justify a right turn lane now. And, he will talk about future development, whether that's required.

We're also deeding an area along West Street that's land to be deeded for highway purposes to the state.

MR. SALKKA: I guess it really comes down to volume as far as the traffic. I know, for example, I made a couple of notes. The Dunkin Donuts on 322. Sometimes the traffic is backed out onto 322 and you

can't even get into it. But again, it is a much smaller area. It only has probably enough room for maybe ten cars or eight cars before it backs up onto 322.

How many cars could be in that queue prior to it backing up onto 229?

MR. QUIRK: Nearly 20 cars.

MR. SALKA: Twenty cars?

MR. QUIRK: Right.

And, that's an excellent point about the other Dunkin Donuts. There is a conflict point there between the hotel and the Dunkin Donuts site.

MR. SALKA: Right.

MR. QUIRK: There is no conflict point crossing maneuvers for the pattern goes all the way up to the drive-thru, there is no crossing maneuvers. The crossing maneuvers that the planning & zoning commission mentioned before and that will be alleviated by moving the exit as far west. We've designed the site here to accommodate that so that in the future it would simply be in the construction of the drive - in this location here (indicating), without any other site changes. The site was designed to allow that to happen.

MR. SALKA: That's the ideal.

MR. QUIRK: Exactly.

MR. SALKA: That's the ideal traffic flow.

MR. QUIRK: And, again, I know it wasn't in front of this board before but there were site plan approvals. There's a lot of information that was submitted and we're happy to go through and present that again. There was a lot that went through on both of those approvals as well as seeking the encroachment permit. And, those were the reasons for the design of the site the way that it is.

What's changing here is the Dunkin Donuts is going from nearly 3,000 sf to 600 sf. It's a smaller section within the convenience store. And, the gas station location.

THE CHAIR: What's going to slow this traffic down even though you've got a light. What's going to slow this --- what is it 40 mph on that road?

MR. QUIRK: We'll have the traffic engineer go through the traffic questions you have.

THE CHAIR: And, I know you said 600 sf versus - people are just dying for Dunkin Donuts, so that's not going to slow them down, going in there.

MR. QUIRK: The travel speed?

THE CHAIR: No, I mean just going in there. It doesn't matter if it's a big Dunkin Donuts or a small Dunkin Donuts. You are still going to get that crowd. You're going to get a back up.

MR. QUIRK: And, the site has been designed and was previously approved to accommodate that.

The difference here is that we're providing a gas station whereas in the previously approved Dunkin Donuts site.

MS. POTTER: And, also it goes from two lanes to one lane which slows it down automatically into a smaller ---- slower.

MR. QUIRK: If there are no other site questions?

MR. SHERMAN: Did you say that the traffic was going to go between the gas station and the convenience store as they're exiting or around the gas station and out or both?

MR. QUIRK: For the present proposal or for the future build out?

MR. SHERMAN: For this?

MR. QUIRK: Oh, the present proposal, there is a one way traffic flow around for the drive-thru as well as providing an additional by pass lane for anyone who is parked those areas or whoever has mistakenly gone in the drive-thru. All that traffic circles back around and they can come around on the southerly or the northerly side of the gas pumps. There's two isles in this location here (indicating). Two isles here and then they come back out to the signal.

MR. SHERMAN: How would you justify the movement of traffic between the gas station and the convenience store with customers walking from the gas station to the convenience store to pay, prepay for the gasoline and also people backing out that didn't use the gas station but rather use the convenience store? They didn't use the Dunkin Donuts drive-thru or the gas station, but used the convenience store and now have to back out to get out.

MR. QUIRK: Well, it provides to options. You can come down and around and avoid that area. Or someone may want to fill up with gas after they go to Dunkin Donuts. It gives flexibility in terms of the options.

At that time, the traffic coming out of the drive-thru is going to be on site, slow traffic. Some of it may go to the gas station. Some of it may go to the convenience store. Some may exit. We've provided aisle widths to accommodate these alternatives.

MR. BOHIGIAN: I have a question for you. I think you said 20 cars. I'm counting like 13, 14 cars before it loops around. Is that going to be coming off of West Street coming in --- is that a one way to go in and then the opposite side is to go out?

MR. QUIRK: That's correct.

And so the 20 car statement was the total number of cars from the pickup window all of the way around out to West Street.

MR. BOHIGIAN: That's the concern where what if they're not going into Dunkin Donuts and trying to get across. They're not going to be able to get into the convenience store or to the gas station.

MR. QUIRK: And, we've shown a 15 car queue to that point.

MR. BOHIGIAN: Right.

MR. QUIRK: And, you've got the ability to go to the gas dispenser island. You've got the ability to go to the convenience store. We've provided a bypass lane for -

MR. BOHIGIAN: Where?

MR. QUIRK: In this location there (indicating) that goes around the site if you're parking on the perimeter of the site. Or mistakenly gone into the drive-thru.

MR. BOHIGIAN: I mean I understand why you're putting it there. I understand that it's going to be for business purposes. Anybody goes to Dunkin Donuts. It's just at the queuing time, I see a line of cars trying to get into the Dunkin Donuts and other people trying to come in to go to the convenience store and get gas. I don't know where they're going to queue up.

MR. QUIRK: And, that's after the 15th car. Scott Hesketh, the traffic engineer, can -

ATTORNEY DENORFIA: Scott Hesketh can discuss the queuing. It's my understanding on queuing is that you're somewhere between 10 maximum 14 on Dunkin Donuts. You're never anywhere near this. So, we're way past, we're way over engineering this. But I'm sure Scott and Bruce can answer those questions better than I can.

MR. BOHIGIAN: I mean, is there a reason why that island has to be there?

MR. SALKA: You're looking --- you're looking at the future. Turn the page. Look at the way it's going to be proposed.

When I look at it, it looks more confusing that way. The concern is I have is traffic coming in, they can go by pass, go around or they can go through the drive-thru. If they want to just get gas, what is that line, it looks like they're going to cut around the --- no, the other way --- going that way --- no. Cut over. Between. Right there. And, then you've got an arrow and yet the cars are facing the way everything is slanted. How would you even get in there?

How would you turn to get fuel? You've got people coming out of the drive-thru to pick up and you've got traffic ---you've got an arrow going right to left to get into the gas pump.

MR. QUIRK: That's the aisle that ---that's just the aisle - the travel aisle. It's a 24 foot wide travel aisle. For cars to go to the dispensing island, they come from West Street, and they would pull in, directly into the gas pumps.

And, they could go down the aisle and pull in.

MR. SALKA: What is that arrow on the top between the two buildings? Going left --- right to left? That one there?

MR. QUIRK: That's the traffic, two way traffic aisle. Traffic can go ---

MS. POTTER: They don't want gas. They only want to go into the store.

MR. QUIRK: They can go to the store. That could be --- it could be - it's site traffic flow.

MR.SALKA: Or, they can go in that way to make a loop around in order to get gas. Is it wide enough to do that?

MR. QUIRK: Oh, yah. Sure.

MR. SALKA: Okay. It just looks confusing. Twenty-four feet.

MR. QUIRK: The aisle is 24 feet between the islands.

(More than one person commenting at the same time.)

I think at this point for the presentation, we'll have Scott Hesketh our traffic engineer present.

(End of Tape #1, Side B)

(Beginning of Tape #2, Side A)

(Continuing)

SCOTT HESKETH: I'm the author of the Traffic Impact Report dated June 18, 2010. And, the previous reports which were alluded to earlier which have been submitted for your consideration.

The proposal has been explained to you so I won't go through that. And, the site access has also been explained.

In our report, we uh, our office did the report for the Ridgeview Estates which is located across the street. We were contacted to do a report for this particular site. We were asked to do it in short order. So we took that Ridgeview Estates report and since the original Ridgeview Estates was not fully built out at this time - they were approved for a number of condominium units and also there's two retail buildings out front. And, since site had not been fully built out at that time, we used the combined traffic volumes from that report as the background for our report we submitted to you today.

Subsequently, the town had the review completed by Bruce Hilson. He suggested that we might want to do some updated counts. We concurred it's a good idea. We had installed a traffic counter last week and picked it up today. And, the traffic counts out on Route 229 appear to have decreased substantially over the last number of years.

Obviously, you would expect that with the economy the way it is. But the traffic volumes are significantly less today than they were in the volumes that we based our report on.

So we're pretty confident that the traffic volume information which we submitted to you in our report indicates a worst case scenario, so to speak.

Let me just go through that quickly. Based on the traffic volumes in that report, Route 229 carries peak hour traffic volumes of approximately - let me make sure I have the right numbers --- approximately 1,930 vehicles during the morning peak hour. Approximately 2,500 vehicles during the afternoon peak hour. And, on Saturdays carries a peak hour volume of about 1,600 vehicles.

As opposed to the counts we just picked up today. Again, the morning peak hour we based our report on 1900 vehicles. During the last week we counted 1200 vehicles. That's 700 less. During the pm peak hour, our report is based on 2500 vehicles. The afternoon peak hour counts for the last week were about 1350. Saturday peak hour volumes, approximately 1600 the report is based on. The counts over the last week, the peak hour last Saturday was about 1300 vehicles.

So, substantially less vehicles today than the report is based on.

THE CHAIR: You did that on the weekend with Lake Compounce open and everything? You got this count?

MR. HESKETH: The count was done over the last 7 days. I assume Lake Compounce was open. And, it was pretty good, pretty good weather. I assume Lake Compounce had a pretty good attendance.

I think the difference in the traffic volumes is we've got an unemployment rate of about 10%. A real unemployment rate probably in the range of 17 to 20 percent. So, that's a lot of people not going to and from work that used to be going to and from work.

Basically, our report is based on the higher volumes. So all of the information that I'm about to give you in terms of level of series, queuing information and things like that are based on volumes that are significantly higher than currently exist out in the field.

Now, Mr. Hilson suggested we update the counts just in case the volumes had gone higher. And, that's a reasonable assumption because as time goes by generally speaking, traffic volumes go up 1 to 2 percent a year as time goes by.

Unfortunately, in the last 7 or 8 years, the traffic volumes have been decreasing as Connecticut has one, last population and two, the economy has gone down.

So, I just wanted to present that information to you so you're aware that one, we know what the traffic counts are today. And, the information we're giving you is based on the higher volumes from the previous years.

In terms of the proposed site, the trip generation calculations, we based on our calculations on the Institute of Transportation Engineers Trip Generation Report. We used the convenience store with seven vehicle fueling positions. There's a six --- there's room for seven vehicles at a time to fuel on site.

We also added to that the trip generation of a 600 sf donut shop, which is a Dunkin Donuts facility. We assumed that everyone going to the gas station would be independent of everyone going to the Dunkin Donuts facility. I assume there will be some interplay of people. You'll come, you'll get your gas, you'll go in and get your donut, come back out. So there will be a shared use. We assumed everybody is brand new. If you came in to get gas, you left the site and you didn't get a donut. If you came in to get a donut, you didn't buy gas. So we're being pretty conservative in that respect, as well.

So, based on those assumptions, during the morning peak hour, we anticipate 400 vehicles entering and exiting the site. Two hundred in/two hundred out, during the morning peak hour based on this proposed facility.

During the afternoon peak hour, we anticipate 250 trips, half of them in, half of them out.

And, during a Saturday peak hour, about 211 trips. Approximately half in and half exiting.

Because this is a convenience use, it's a gas station, it's a Dunkin Donuts, and it is the kind of facility you'll use because you are driving by the site. It's not something you're sitting at home saying, I'm going to go out and get coffee, I've got to go fill up the car with gas, and come back home. Generally, it's the type of thing you do on your way to and from somewhere else. So, in terms of our report, we used a pass by percentage of 75%.

We also assumed a 75/25 distribution for the facility. These types of facilities, most of the people enter making a right hand turn in and a right hand turn out. Again, it's a convenience use. You tend to do it on the way to and from somewhere else. It's difficult to make left turns; you're probably going to pass another gas station, another coffee shop which is on the right hand side of the road so generally you'll tend to make a right turn in and right turn out of these types of facilities.

Based on that, we distributed the traffic to the roadway network. We conducted capacity analysis calculations of the signalized intersection based on those assumptions. The calculations indicate that the intersection will operate at a level of service B or C during peak hours with the intersection as it exists.

With the proposed site driveway providing a dedicated left turn land out, a shared thru and right turn lane. We would also propose to restripe the northbound approach to provide a left turn --- exclusive left turn lane into the facility.

As was mentioned by Mr. Quirk earlier, we have been in negotiations with the Department of Transportation over the last several years. Based on the previous approvals for this particular site, unfortunately, we don't have an approval from them as of yet. We're 95% along the way. It's just that the project got to a certain point and stalled. We never dotted the I's and crossed the T's with them. But we are at a point where we believe we have - with a few responses to them; we can get the project going again and restripe that roadway.

So we do believe that do we have the ability to stripe that roadway for a northbound left turn lane to accommodate the traffic of this development.

MR. SHERMAN: How many cars will be in queue in the left hand turn?

MR. HESKETH: I believe we're proposing and I didn't write down the numbers for the northbound queue, but we believe we are proposing 150 foot turn lane. And, I will look here at the morning peak hour queues. Under this proposed development, the northbound left turn queue was calculated to be ---

(Pause)

-- calculates to be 25 feet. It doesn't calculate to be much because we've got a left hand turn lane. We're going to give it an exclusive phase. They'll be able to make the turn. I think we are striping it for 125 or 150 foot of left turn lane. So, we'll be able to accommodate four to six vehicles in that area.

THE CHAIR: But you haven't got approval on all this, right? Am I right?

MR. HESKETH: We do not have a DOT approval to restripe the roadway.

THE CHAIR: You're assuming a lot.

MR. HESKETH: I'm not assuming a lot. We've spent three years working with them. They've given us 25 to 30 comments. We've addressed 21 to 26 of those comments. There's 2 or 3 comments which were not addressed. Some of them related to the deeding of the easement. They had asked for a dedication of property. We proposed easement of the property. We went back and forth with that on a number of occasions. So, um, the basic concept of the signalized intersection, the lane arrangements, the length of the turn lanes, I think we're in agreement upon. There was 1 or 2 minor issues which we are still working out with them. But we do believe that we can settle those 2 or 3 minor issues and obtain an encroachment permit from them to make the restriping.

And, that restriping would be required whether or not we were going with the gas station location here for if this was retail facility or it would be just a Dunkin Donuts facility or whether it was an office complex. So, um, the encroachment permit would be required no matter what development goes on this site because the location of the signal and the fact that we have a left turn lane on the opposite of the roadway, it would be prudent to provide an exclusive northbound left turn lane for this driveway as well.

We believe we can get that encroachment permit in short order.

MR. SHERMAN: Back to the left turn lane, what impact would it have if there was a trailer truck turning left into there? How much would that reduce your queue of cars able to turn in?

MR. HESKETH: Again, the tractor trailer would take up two to two and half vehicles. The gas station/Dunkin Donuts facility, I would expect they would receive two to four tractor trailers a week making deliveries to the facility. I'm not sure it is the type of facility that tractor trailer drivers would stop at all the time ---

MR. SHERMAN: No, I'm thinking about people making a delivery.

MR. HESKETH: In terms of delivery, yes. They get maybe two to four deliveries a week. Perhaps. I would expect the Dunkin Donuts

would be getting most of their deliveries from a smaller box truck, a 35 foot truck, as opposed to a tractor trailer. Because this is a smaller facility, 600 sf, they're not doing the baking here. The donuts would be baked at another facility and delivered here in the morning.

MR. SHERMAN: And, the gas station would also receive the gas ---

MR. HESKETH: The gas station would receive, yes, they would receive deliveries. Generally, they receive two to three deliveries a week depending upon the volume of sales. And, generally speaking, they are not done during - hopefully, they are not done during the peak hours. Hopefully, they come during off hours.

MR. BOHIGIAN: I have a question for you. When you said a 25% entry and 75% pass by. Is that a standard that ---

MR. HESKETH: Yes. It's been our experience that convenience type uses that a significant proportion of the traffic, one makes right turns in and right turns out because it's a convenience use. And, because of the fact it's a convenience use in terms of the generation of the site; the driveway volume is high because people are going into and out of there. But the additional traffic to the roadway network is not very high because the only reason you're stopping is because you're on the road going to and from somewhere else. So, the 75% it's been our experience at counts we've done at a number of facilities, that 75%, even as high as 80% of the traffic is pass by traffic.

MR. BOHIGIAN: Is that a convenience with a gas station or is that just pure convenience?

MR. HESKETH: Well, it's convenience, gas station, fast food type restaurant. You can even go so far as to apply those types of rates to banks, perhaps.

They're the types of uses you do on the way to and from somewhere else.

MR. SHERMAN: I would think that the equation might be thrown out a little bit because people coming to The Hartford, which is probably the biggest peak hour traffic through, will do this type of thing on their way home and not on their way to work which would be going north.

And, also the Lake Compounce people coming from out of state or out of town would be more apt to do it when they're going towards Lake Compounce rather than when they are coming back out.

So that might throw that equation, that right turn equation to the left turn.

MR. HESKETH: I guess it's possible to have a different distribution.

MR. SHERMAN: There's a different dynamic there, I think, in that area because of The Hartford. The bulk of the traffic being to one area and back from one area. I think the people would be more inclined to do everything when they were on leisurely taking their way home rather than when they're hurrying to get into work on time.

MR. HESKETH: If I am not mistaken, I believe the driveway to Lake Compounce is located north of the facility.

MR. SHERMAN: I didn't know whether you did a study on both sides to see what the southbound and northbound traffic was separately.

MR. HESKETH: Well, the traffic volume counts which we have are directional. Yes. The counts that we collected were directional. We have a northbound flow and a southbound flow. Yes, we're aware of that.

Generally speaking, it's a convenience use. Typically, it's right in and right out. And, it's typically 75% pass by.

In addition to doing the study on just, on this facility, as well, it's prudent for us to make sure that we design the driveway to accommodate the full build of the --- with the other sites, as well.

I know it is not part of this application, but I think the commission should be aware that we did take a look at what happens when the other two lots here are developed as is shown on the plan here.

Again, we don't control those two facilities, those two lots. We don't know what will be built there. But we did run through a number of different development scenarios to determine a traffic volume that we could apply to the driveway to see how the intersection would operate once those two facilities are developed.

We looked at three different scenarios. We looked at a mix of retail and office use which is shown here before you.

We looked at two high turnover sit down restaurants. Sit down restaurants have a higher trip generation than retail or office. So, if you were to put a TGIFridays and an Applebee's on this site along with this facility, we wanted to look at that, as well.

We also looked at what if you put two fast food restaurants here. Fast food restaurants have the highest trip generation. So if you wanted to build a Taco Bell and a McDonald's here, as well, what type of traffic would that generate.

And, it turns out that, again the fast food restaurants had the highest trip generation potential. So, although we're showing you a potential development here, this is probably the most likely development. Again, we don't control those lots. We can't draw it up for you. We can't promise you anything. But this is probably the

most likely development. But if they went with the two fast food restaurants, what would that mean for the intersection?

Well, two fast food restaurants at this site would generate peak hour volumes of approximately 370 trips during the morning peak hour, about 250 trips during the lunchtime peak hour and 414 trips during the Saturday peak hour. Half of them in, half of them out of the site.

We assume for a fast food restaurant --- we use a 25% pass by on that. A little lower than I just discussed with you. But I wanted to be conservative.

THE CHAIR: There is that word again.

MR. HESKETH: I'm trying to give you high traffic volumes and show you that even with the very high traffic volumes; the intersection is going to work. And, if the intersection works for the very high traffic volumes, then when something with a much lower volume like this which is much more likely comes in, you can be confident that the intersection is going to continue to work. That's kind of the way traffic engineers think. Mostly because the DOT makes us think that way.

If I were doing it myself, I'd show you what we think is most likely and maybe it will be a little higher or maybe it would be a little lower. DOT doesn't like that. They want to make sure that when we design the intersection that it's going to work. And, then anything less than that, that's gravy.

For the fast food restaurants, we assume a 50/50 split from the highway. I don't know where they're coming from. A 50/50 split, they'll go in either direction. We've got ESPN on one side and we've got the center of town on the other side. Lake Compounce. We don't know where they're coming from. Fifty/fifty split seemed reasonable.

When I put that traffic onto the intersection in addition to our proposed development and run capacity calculations, again, I get intersection levels of service of B and C during peak hours.

Now, in order to make that happen, I assume that in the future, should it be two fast food restaurants, that West Street will be widened to provide a southbound right turn lane into the facility. Because at that time the volumes will be high enough to warrant or to justify an exclusive southbound right turn lane for the facility. And, that's how we obtain a good level of service.

And, that's why on the plan there is a 10 foot dedication to the Department of Transportation for highway purposes so that in the future when these two lots are developed, if they're developed with a type of development that generates high volumes of traffic and a southbound right turn lane is necessary, there's plenty of right of way there to accommodate that.

Now, it might be a church and therefore we don't need the right turn lane. But we've provided enough room for that to happen in the future, should it happen.

Now, the comments from town staff mostly had to do with the internal circulation of the site and the interplay with the traffic. There was some concerns with again, the blocking of traffic with vehicles coming out and blocking entering traffic. And, that's why the full development plan was provided just to demonstrate that in the future when the other properties are developed, that it is possible to provide a driveway with sufficient stacking distance to accommodate the highest volumes of traffic which we have analyzed.

We've got, I believe 170 feet of queuing there before you reach the internal intersection. The calculations that we've done show that 170 feet of queuing is likely the 95% percentile queue. Will it be exceeded on occasion? Yah. But 95% of all queues will fit within that area without blocking the traffic moving into and out of those internal driveways.

So, we believe we've got a site here which one can accommodate the traffic, provide good levels of service and one which we're confident we can be - we can get approved by the Department of Transportation.

MR. SALKA: Did staff suggest or --- why wouldn't we have two lanes in. You've got two lanes out. Why wouldn't you have two lanes in? Especially when you build out and you've got traffic trying to turn in from going south and traffic coming in going north. Why wouldn't you have two lanes in versus one?

MR. HESKETH: Well, it's not possible for two vehicles to physically enter the driveway simultaneously in any event. So, to have two lanes entering doesn't --- if it's not really necessary.

If you're coming southbound and make a right hand turn in, the guy coming northbound making a left is going to wait until that vehicle makes that movement and follow behind him. So, really, a single entering lane is all that's needed at this type of facility.

We don't have, it's not a shopping center where we've got supermarkets and Macy's and other things going on with significant volumes of traffic. We have some traffic on the driveway certainly, but double lane is not really necessary.

MR. SALKA: I'm only envisioning like what we have with Target and Lowes. They've got two in and two out.

MR. HESKETH: Well, if you look down there at Target and Lowes, there's a double left turn lane in the northbound direction. So, two cars can move simultaneously into that driveway or actually it's a town road and not the driveway. But in this instance, it wouldn't be a good idea for two vehicles to try to turn in simultaneously. And,

it would be difficult for them to occupy the same space. So, the single lane should be sufficient.

MR. BOHIGIAN: There is an existing traffic signal there, right?

MR. HESKETH: There is an existing traffic signal at that location. The traffic signal, when it was designed, was designed to accommodate a driveway at this location. So, the traffic signal poles have been placed, hopefully, far enough side of any potential envelope for a driveway.

MR. BOHIGIAN: Will that have a separate left hand lane in?

MR. HESKETH: Well, it is anticipated that the northbound left will move simultaneously with the southbound left and they will receive arrows and move simultaneously. Then depending on how the DOT lets us do it, they'll remain green and allow to go while the thru traffic is moving or they'll be shut off.

MR. BOHIGIAN: That would help the queuing a little bit. You know?

THE CHAIR: Where Target is and places like that, that's got to be about what, 20 or 15 20 feet wide, that road there, wouldn't it be to make two lanes in?

MR. HESKETH: The entrance drive for Target?

MR. BOHIGIAN: Yah, to make two lanes in.

MR. HESKETH: The northbound double left, I believe the northbound lanes there, there are two 11 foot lanes and when they turn in, they turn in to a minimum of a 20 foot width there. Because the DOT standard is if you have a double left turn lane, they like to have 30 feet of width to accommodate that. As two vehicles turn side by side, the right hand vehicles tends to drift a little bit, so they like to have that a little bit wider.

MR. SHERMAN: When they approved the original Dunkin Donuts, did they have that type of dramatic turn in to it with the - I'm talking now right turns coming south.

MR. HESKETH: Did the driveway look like this? I am going to defer --- but I believe it did. The original Dunkin Donuts approval had a driveway which looked similar to this in the initial phase.

MR. SHERMAN: With a right turn, without a right turn lane, the driver automatically looks ahead and sees he's got to make this dramatic turn in and he's going to slow down before he turns into it rather than having a driveway like you have on your home where you just swing into it. He's got to come in and go around. He's got a -

MR. HESKETH: I think most vehicles will slow down to maybe 20 or 15 mph in order to make the turn. Maybe 25 to 15 mph. So, yes, they will be slowing down, whether or not there is a turn lane or not.

MR. VINCI: Mr. Hilson, the traffic engineer is here.

BRUCE HILSON: For the record, Bruce Hilson, Traffic Engineering Solutions. I reviewed very quickly a couple of weeks ago the June 18th, 2010 letter report that F.A. Hesketh & Associates prepared.

I identified two or three items that I thought needed to be addressed at that time. One of them was the queuing that was going to occur on the site driveway upon full development potentially or likely blocking the area where you turn into this site as shown on the plan you are looking at now.

And, my concern was that vehicles pulling out of the site would block vehicles trying to get on to the back lots and then potentially back out on to 229. And, as the applicant has indicated, they had discussed that previously under the Dunkin Donuts application with the Department of Transportation and they've prepared the plan that they showed you tonight.

The second item that I had a question on was the queuing on the southbound 229 which they indicated would be 800 plus feet under the full build scenario. And, I just question just for comparison purposes what is it under the no-build scenario so that we would have a better understanding of what the impact this development has on the southbound queue.

And, the third item was the age of the traffic counts. And, Hesketh & Associates has gone out and redone traffic counts. They were done beginning the 6th of July, immediately following the 4th of July weekend. That in itself may account for some of the lower volumes that they had experienced from the earlier count. But I have no doubt that it's during the fall or the same time frame that the earlier counts were done that they would be similar if not a little lower than what they had earlier. And, that's because of the economy and other things that are going on in the state.

I do have a couple of thoughts about the site plan configuration. And, it relates to circulation on the site and how the gasoline pumps and everything else will operate with everything going on on the site.

And, the first thing that came to mind is that the pumps being angled as they are could create more of a circulation issue than they would solve rather than having them perpendicular to the convenience store or the driveway. There are too many sharp angles. If you go in the wrong way to get out or to get into the pump area and if it's perpendicular than it's just a 90 degree turn from either direction, either entering or leaving.

The second thought I had is the location of the diesel fueling area is probably not ideal as it relates to vehicles circulation on the site particularly when you get development on the other two lots and you need to modify the exit so that it goes right past where that diesel fueling area is. There's the potential for a larger vehicle pulling out of the diesel area and another car leaving the convenience store or coming out of the Dunkin Donuts, having a sideswipe. I think there might be a better location for the diesel. In fact, if everything gets turned 90 degrees as far as the pumps are concerned, maybe you just add it to the pump island.

As far as some of the questions that the commission has raised with the applicant, the answers that were provided by the applicant, I think were pretty much appropriate and in line with present day standards. DOT requires you be able to store or stack on your site before it backs out on to the state road, 14 cars at a drive thru window to a Dunkin Donuts.

In this case, you have more than enough stacking on the site to accommodate that many cars let alone backing out on to 229.

The 14 cars in a queue are, as I say, what DOT has found in the studies that they've done is being the required stacking given that this is a smaller Dunkin Donuts and not a full stand alone, it is somewhat hidden, probably won't experience the same volume of traffic that a standalone Dunkin Donuts would have. If they did have that kind of traffic, I'm sure they'd be more than thrilled from a business perspective. Return on investment.

So, I think with those comments, the site driveway, the configuration they show for the full build is appropriate to allow vehicles to enter and leave this lot as well as the other two lots without conflicts and without causing stacking on to West Street.

(End of Tape #2, Side A)

(Beginning of Tape #2, Side B)

(Continuing) --- gas pump area and the diesel location to the site I think has appropriate circulation. It is not unusual to have parking in front of a store like this. We have gas pumps located away from the store. I've seen it at a number of locations. Everything seems to operate and flow smoothly under those conditions.

So, I would say that the layout that they have again, turning the fueling stations the 90 degrees, um, I think works quite well.

The one thing I do want to talk about very quickly is the bypass allotment than Mr. Hesketh had referred to. And, he had indicated 75% of the trips to and from the site more than likely from people who are on the roadway system anyway. He's likely correct in that.

However, Connecticut DOT only allows 20% for a bypass figure. So I'm sure when they get into the planning and zoning process as well as reviewed with DOT that that may become a question that needs to be addressed at that time.

If you have any questions, I'd be happy to answer them for you.

MR. SHERMAN: Do we have any information that would indicate that a reduced size Dunkin Donuts actually reduces the volume? It's my feeling that people don't really notice or care what the size of the place is. If it's a Dunkin Donuts, it's a Dunkin Donuts is a Dunkin Donuts. So, I don't subscribe particularly to the fact that the reduced size of it would alter the customers or the availability of customers to it.

MR. HILSON: I guess the short answer to that is, for a development project I worked on a few years ago, I did actual counts at two locations similar to this that had gasoline pumps, convenience store, and a small Dunkin Donuts with a drive thru window. And, we counted the total number of vehicles entering the site and the number of vehicles that went exclusively to the fueling positions, the number of vehicles that went exclusively to the convenience store, the number of vehicle that went exclusively to the drive thru window and then the number of vehicles that made a combination of two or more of the uses on the site.

And, what we found is that the total number, including those vehicles that entered and went to the drive thru and did something else or just went thru the drive thru, the total number was something in the range of 80 vehicles an hour. Which is left than half of what DOT expects or would tell you to use for a standalone Dunkin Donuts.

So based on my experience, the number of people who use a Dunkin Donuts in this situation is considerably less than what a standalone Dunkin Donuts would generate.

THE CHAIR: Any more questions?

MR. SALKA: The question I have is, can we stipulate the perpendicular of the --- I'd like to hear some comments from the applicant on whether that's possible. Because that was really what my comment was with the arrows. The way the vehicles are facing, there seems to be, there's going to be a conflict there with the people backing out, people driving forward to get out of the gas site versus if they were perpendicular. It would make the flow seem better.

ATTORNEY DENORFIA: I questioned that, too, Bob. Especially at the point in time when the exit now gets to the western side, okay, which makes it more difficult.

My client has no problem with changing it. The only thing that I would caution this board is that we still haven't had Tony Tranquillo's review and we still haven't had staff's review. They may have something totally different in mind.

What we are here for is again you are to make a finding that - if I can read it right --- that the traffic conditions, the width of the highway, the effect of public traffic and that such use for the proposed location will not imperil the safety of the public.

I think you've heard more than enough testimony that we're not going to create this big, huge traffic problem there. As I mentioned, my client doesn't have a problem with that stipulation, at all. The only question I have is that you know, Tony Tranquillo may have an issue and we've got to get into the site specific design with the engineering department and the planning department. So, um, I mean, Mary is here and Frank's here. I'm sure they can pass along the comments.

And, Bruce is going to be reviewing it and he's going to be reviewing it for planning & zoning. We still have to go through their Section 9 review.

So this is just preliminary. Then we have to go through planning & zoning and then after that's approved, we can't DOT approval until the planning & zoning commission acts.

But you know, again, we don't have a problem with that stipulation, but I would ask ---

MR. SALKA: Mary and Frank can take that back and that's fine.

MS. SAVAGE-DUNHAM: Certainly.

MR. SALKA: I think it makes sense.

ATTORNEY DENORFIA: Is it up to me to make my comments now or are you done with the questions?

(Everyone speaking at once)

I didn't finish my presentation. I know there's a couple -

THE CHAIR: This is only one part of it, though.

ATTORNEY DENORFIA: Yah, I know that. That's why I want to hit that.

Just a couple of the comments that were mentioned about Target and Lowes. I think what I'd like to do is bring this project back to scale. You know, we're asking for approval of a facility that's roughly 3400 sf. Target and Lowes if Sev and my calculations are

right, we represented them, they got approval for build out for 300 - almost 310,000 sf. So we're asking for one-one hundredth of that. The maximum build out that we show of everything else is only 30,000 sf. So, it's only a couple of, you know, small -- just to get you - I know we're getting you so much in statistics that I am starting to get confused, but I think we've got to bring it back down to scale of what we're actually asking about.

There are, as the Chairman mentioned, some other factors that you have to look at in the statute and also under our regulation and those are the proximity to schools, to churches, theaters, playhouses and other areas of public gatherings. And, state statute says you have to look at those, the proximity to those different items that are mentioned.

And, it is interesting that under Section 11-03.1 of the regulations, they actually show standards. What they say is that it's prohibited to grant these approvals if you're within 400 feet of any of these locations that are mentioned.

Well, the bottom line is that we are nowhere near any of these types of locations or not within 400 feet or probably 1500 feet or beyond of schools, churches, theaters, playhouses and other areas of public gatherings. I mean the one good thing about this site and the reason why I think it's so ideal is because you're on a stretch of clear state highway that's travelled and it's almost in the middle of nowhere and almost in Bristol, which is a big advantage.

The other thing under 11-03.1 is that you have to have a minimum of 30,000 sf and we actually have, not including the access easement which is on a joint parcel of property, in excess of 42,000 sf. So, we're well over those standards.

And, also that the pumps have to be a minimum of 25 feet from the road. We're actually about 100 feet back from the road.

So the site is tucked back. I mean if, it's not like when you're driving through town and you have these gas stations and gas stations which all sell donuts and have convenience store and they're right up, you know, the pumps are ---in the old days there wasn't a requirement of 25 feet and they're all 10 or 15 feet back from the road. And, you're accommodating the same amount of traffic on a main road.

We're at a signalized intersection which is obviously key.

The other standards that you have are just the general standards under 15-05 that will not hinder the orderly development of the area and that it's in harmony with the surrounding area, et cetera, et cetera.

Well, this is the type of use that, as I mentioned last time, that I think the planning & zoning commission would envision when

you're on a state highway and you are in this type of area and they zoned this for actual a B zone.

Again, we're able to put modern engineering practices on an industry that's used to having the old gas station designed in the 30's and the 40's when they became very popular.

As has been mentioned, the traffic has been decreased. So there is not a conflict with the property in accordance with those regulations and that we don't believe we will hinder the orderly development of any adjacent property which is contemplated. Again, we're surrounded by business zoned land which would all be hopefully developed into business zoned land and start to generate some tax dollars the same as we hope this will for the town.

I know, Mr. Chairman, I hit very briefly on the different standards, did I hit very briefly on them because again, given the location of this use, they basically don't apply or will have a very incidental conflict.

If you have any specific ones that you would like me to get more in detail, I'd be more than happy to.

We also have a couple of gentleman from Standard Oil. I gave you a presentation last time as to what their operation was, how they've been in business, they operate 40-some odd stations right now. They've been in business for an excess of 60 years. And, by the way, I was informed by them that when their tractor trailers --- excuse me, when the tanker trucks do make deliveries, they only make deliveries at night. So gas is only delivered to the site at night. That's their business.

If you have questions, we'd be more than happy to answer.

THE CHAIR: Is everyone done?

Anyone here to speak in favor of the applicant?

(No response)

Anyone to speak in favor of the applicant?

(No response)

Anyone opposing the applicant?

(No response)

(Anyone opposing the applicant?)

(No response)

If not, this appeal is closed.

9:21 pm.

REGULAR MEETING

Approval of Minutes - Regular Meeting of June 22, 2010

Mr. Salka made a motion to approve the Minutes as presented. Ms. Potter seconded. Motion passed unanimously on a voice vote.

NEW BUSINESS:

Mr. Sherman recused himself and left the room. Mr. Bohigian sitting in his stead.

A. Appeal #5792A, application of John & Clare Salerno to vary the Zoning Regulations to allow a 6' high privacy fence in the front yard where less than 4' is allowed on a corner lot under Sections 2-19S & 15-04 of the Zoning Regulations, 7 MacIntosh Way, property of John S & Clare L. Salerno at the intersection with Pleasant Street in an R-20/25 zone.

Mr. Salka made a motion to approve. Ms. Potter seconded.

Mr. Salka commented that he didn't think we were in a position to change, as much as I know this is a hardship on the applicants, but we are not in a position to change the zoning regulations unless there is a real hardship and I don't see that here on this application.

Ms. Potter added she felt bad that they didn't know the rules.

Motion fails 0 to 5 on a roll call vote.

B. Appeal #5793A, application of David Thibault to vary the Zoning Regulations to allow a 6' high privacy fence in the front yard where less than 4' is allowed on a corner lot under Sections 2-19S & 15-04 of the Zoning Regulations, 176 MacIntosh Way, property of David & Lauren Thibault at the intersection with Pleasant Street in an R-20/25 zone.

Mr. Salka made a motion for approval of 5793A. Ms. Potter seconded.

Mr. Salka said the same comments apply to this application as they did to the first.

Ms. Potter agreed.

Motion fails 0 to 5 on a roll call vote.

Mr. Sherman re-entered the meeting and seated.

C. Appeal #5794A, application of Esaul Rodriguez for special exception approval to allow alcoholic beverages to be served on proposed patio at Puerto Vallarta Restaurant under Section 4-03.32A & 15-05 of the Zoning Regulations, 826 Queen Street, property of West Queen Developers LLC at the intersection with Aircraft Road in a B zone.

Tabled during the public hearing.

D. Appeal #5795A, application of Southington Community Services for special exception approval to allow the 2nd Annual Farmer's Market on Fridays July -October under Sections 3-01.31G & 15-05 of the Zoning Regulations, 991-1003 South Main Street, property of Saucier Realty, LLC at the intersection with Werking Street in a B zone.

Mr. Salka made a motion to approve Appeal 5795A with the stipulations that were on last year's approval. Ms. Potter seconded.

Mr. Salka said they run a real nice operation and I think it is well received by the town. With the stipulations it will be a safe environment.

The Chair agreed there were no problems.

Motion passed 5 to 0 on a roll call vote.

E. Appeal #5796A, application of Warren & Lori Abell, Jr. for a variance to erect a 6' high privacy fence in the front yard where less than 4' is allowed under Section 2-19S & 15-04 of the Zoning Regulations, 787 West Center Street, property of Warren R & Lori A. Abell opposite the intersection with Jubilee Drive in an R-20/25 zone.

Mr. Salka made a motion to approve 5796A. Ms. Potter seconded.

Ms. Potter noted this is the one that's touchy. This is the two feet down, six feet back behind the tree line.

Mr. Salka said again we take each application on its own merits and I think in this case we do have a safety issue. I think it's

appropriate again with the way the topography of the property is. It slopes down so in fact it's not really going to be - even though it is a six foot fence --- the typical purpose of a six foot is from a visibility standpoint, et cetera --- we're only going to see four to five feet of it and it's going to be behind some large trees. I think from a safety standpoint I think it makes sense to approve this appeal.

It's going to be a wooden fence and it's going to blend with the environment.

The Chair commented the safety is the big thing.

Motion passed 4 to 1 with Ms. Potter opposed.

F. Appeal #5773A, Application of Floyd D. Gollnick to (1) appeal ruling of Zoning Enforcement Officer, (2) to vary lot width from 200' to 79' and (3) to vary lot area from 80000 sf to 25,867 sf to allow 3 living units, under Sections 3-04.2B, 9-00 and 15-03 of the Zoning Regulations, 91 aka 89-91 Grove Street in an R-12 zone.

Mr. Salka made a motion to approve Appeal 5773A. Ms. Potter seconded.

Mr. Vinci advised the commission make a motion on the first part of it, the appeal. And, then if you approve the appeal, then we don't have to worry about the variance because you overruled me.

Mr. Salka noted that would be taking Appeal 5773A, number 1, first.

Mr. Vinci advised if you approve the appeal, you are overruling me. Just so you know.

Mr. Sherman stated the problem he has with it is that clearly, it's taking emotion out of the mix; the town I don't see is culpable, at all. The best thing or the worst thing depending on the view is that the town did is collect the proper taxes for the property, the illegal three family house. That in no way takes away the fact that it is illegal.

And, clearly, on the building permit application which the person filed, it says: one to two.

On the building permit which was issues it says: one to two.

On the certificate of occupancy it says: one to two.

So, I'm having difficulty figuring out where the town has any culpability in this whole mix. Everything along the way from the building department which is the authority --- the Assessor is not the authority nor is the fire department the authority. They just do what is there. They don't talk about whether it should be there, or not. Everybody, the people that discussed whether it should be there or not clearly said that it was one to two. And, they never mentioned three.

Two family. No, they said it was a one family converted to a two family in 1993. Never had any mention of a three family from the building department.

Now you would guess that the individual who sees a copy of the building permit is involved in the application for the building permit and sees a copy of the certificate of occupancy, to me there is nothing ambiguous about them at all. They clearly say what the building department issued.

And, I just have trouble, like I say, sentiment and emotion is one thing, but if they look at it factually, the building department did exactly what they should have done and it was nothing that was done underhanded. The paperwork clearly stated that they went from a one family to a two family. I don't see where the discussion on how the three family ever became legal.

My feeling on it is that the zoning enforcement officer is absolutely correct in his analysis that it one, is a three family, two is not authorized as a three family. It never came before the zoning board of appeals to be authorized as a three family. And, the neighborhood is in consistent with that type of building or type of character of building in that neighborhood. I think it's an enormous variance and I think it would be unfair to the people who also want to do the same thing on that or a larger lot.

I would say that I don't see any justification for overriding the zoning enforcement officer.

Ms. Potter said that in 1964 it was a two family. It says: two bathrooms, two bedrooms. Okay somebody said now we're going to make it a one family. But it never changes. Two bathrooms, two bedrooms.

MR. SHERMAN: What the Assessor says.

MR. VINCI: But we have no problem with it being a two family. We have a problem with a three family.

MS. POTTER: No, what I'm saying is when he came in; there must've been a miscommunication because you don't all of a sudden say - two family. He had to come in --- somebody had to say it was a two family all the time and you're making it into a three family.

MR. SALKA: Which document are you looking at?

MS. POTTER: I'm at 1964?

MR. SALKA: What is that document?

MS. POTTER: The -

MR. SALKA: Assessor's?

MS. POTTER: Yes.

MR. SALKA: You can't go by that.

MS. POTTER: The main building description.

MR. SALKA: Same thing is you can't go by what the fire department says. He saw three meters, three family. That's not what the records show.

MS. POTTER: Are you looking from 1964? Yes.

MR. VINCI: If you want me to respond to that, I will.

THE CHAIR: Go ahead.

MR. VINCI: In 1964, the Assessor's records indicates this is a two family. We don't have a problem with that.

MS. POTTER: Yes.

MR. VINCI: In 1970, the Assessor has it recorded as a one family and for whatever reason, we don't know. Maybe the family said well, we're living as a family and we don't want to be taxed as a two family, so we don't want to be considered a two family.

It doesn't make any difference whether that was even --- it doesn't make any difference if the two family continued right down the chain. It doesn't make any difference.

In 1993, they came in and represented it as a one family going to a two family. When I received the zoning permit application, that's what I review, okay? I look at the property. I said okay, it's in an R-12 zone. The applicant is representing that this is a one family. I have no reason to dispute that. And, he wants to go to a two family.

Okay, does he have the required area? Is it in the right zone? Yes. Okay, he can do that.

That's the answer.

MS. POTTER: No, no. What I'm saying is that at some point no red light went off that ---

MR. VINCI: We base our applications on what we receive. I mean, somebody's representing one thing, you know, unless we have a reason to think that it's not what it is, you know, we don't go doing a full title search or anything on every application. Otherwise, we'd need another five people in the office.

THE CHAIR: Any more discussion?

(No response)

Motion fails 0 to 5. The motion to appeal the zoning enforcement officer fails.

Now we have the variance part of it.

Mr. Salka stated this kind of variance is truly excessive. We talk about 25%, we talk 10% and we talk 5%. Here we're talking you know --- a lot.

And, not only have you got a width problem but you've got a square footage issue which is significant, 50%, 60%, 70%. I don't know how we could approve something of that magnitude. That's something that we don't do.

Motion fails 0 to 5 on a roll call vote.

Continued Public Hearing Items:

A. APPEAL 5787A, Application of Standard Petroleum for special exception approval for a gasoline filling station/convenience store under Sections 4-03.32B, 11-03 & 15-05 of the Zoning Regulations, 2004 West Street (next to Kizl's Restaurant), property of Ghio Family Limited Partnership in a B zone.

And

B. APPEAL 5788A, Application of Standard Petroleum for approval of location for a gasoline filling station/convenience store under Section 14-321 of the Connecticut General Statutes, 2004 West Street (next to Kizl's Restaurant) property of Ghio Family Limited Partnership in a B zone.

Mr. Salka state he would take these two together. He made a motion to approve Appeal 5787A and 5788A. Ms. Potter seconded.

The Chair reviewed West Street. From I-84 to the location north from Curtis Street south, there are three gas stations right at 84.

Approximately one tenth of a mile from Curtis Street. From Curtis Street, I'd say roughly it's a two mile road, okay? North, there are three churches, one school and we have a driving range there. We have a minigolf course, a dog grooming, two garden centers, a church retail and two small restaurants. And, we have approximately 40 residential homes on that street.

A gas station, in my opinion, would not be in harmony with the area.

Right across from the proposed gas station, you've got a 60 condominium or a 60 condo complex. In my opinion, this is not a suitable location for a gas station.

It's a very heavily travelled road. The in and outs of traffic is very dangerous. A gas station would not be in harmony with the area. A gas station would be out of character on this road.

MS. POTTER: I thought this was not about how we felt privately on this.

THE CHAIR: No, it's not.

MS. POTTER: I'm just saying you're saying it as your own personal opinion but this has to do with -----

(Interference)

THE CHAIR: I will give my opinion.

MS. POTTER: I'm just saying it's -

THE CHAIR: The three businesses at this location would be out of character and nature and location and size and intensity of the site layout would not be in harmony with the appropriate or orderly development of the area.

A gas station would be out of character in a neighborhood with traffic. In my opinion, it's very dangerous. It would be hazardous and conflict with the normal traffic of the neighborhood.

MS. POTTER: I couldn't see a better place to have it.

THE CHAIR: Well, you have three businesses going into one. It is not in harmony with the neighborhood.

MS. POTTER: But, that's what I'm saying, you've got, you've got, you've got TJ Max and I just approved signs for a Red Robin and you've got The Hartford. How could you not ---

THE CHAIR: That's down, two miles down the ---

MS. POTTER: But I'm just saying, how could you not. That's the perfect place because there is nothing around it. That would be the perfect place to put it where you have sixty condos and you have ESPN. Why would they want to put a place where they can't make money?

Let's like stick it down you know, behind that pond behind the fence? I could not even imagine not wanting to have it on a main road on a highway.

THE CHAIR: Going 40 mph --- that's the traffic pattern out there.

MS. POTTER: Forty miles an hour. We're not talking 50 or 60 mph on the highway.

THE CHAIR: I want to finish this.

In my opinion, it will impair the safety of the public, heavy traveled road traffic going --- I would say 40 mph, that strip that -- - and a gas station is not in harmony with the area.

MS. POTTER: The DOT gives its approval. The --- it is a highway.

THE CHAIR: Who gives their approval?

MS. POTTER: The DOT.

THE CHAIR: Right up to date?

MS. POTTER: Up to 2007 with just a few things that they've got everything finalized. But I can't even imagine that we would want to stick it somewhere else.

THE CHAIR: The vertical turning movements and-

MS.POTTER: (Interrupting) Why don't we just put it in Bristol and let them take the taxes with ESPN.

THE CHAIR: (Continuing) - involving the traffic flow and a great deal of activity internal to the site as well as entering and exiting on to the state road.

The intensity of the site is not in harmony with the area. Because it's three business on one lot.

MR. SHERMAN: My feels is it a lot of activity in a very bad place. If you try to come out of the condos, as I did today, if you don't wait 30 or 40 seconds when you're coming out, you will get hit. Because people just come and their mind apparently is their destination and they're getting to their destination.

MS. POTTER: When you're on the Merit Parkway and you're pulling off, you have to wait. It's with anything. You have got to proceed with caution. We're not saying, you know, hit at 50 mph. Any place you put anything you have to proceed with caution.

I didn't want the center of town to go one way, but you know what I'm saying? It's not like I had a say. And, how many people have gone down the wrong way? And, it's posted!

I mean, the most thing that they could do is post it. I could not even, like I said, I understand that they're making a lane --- it goes from two lanes to one lane which automatically slows the traffic down. You're talking a traffic light. Not like pulling out of the condos.

Like I said, let's just put it down with ESPN and give them the taxes, too.

MR. SHERMAN: What you have to do is put it in the context of a people scenario. It's nice to talk about traffic flows and so forth. Then you put people in there and people don't always do what you think they're going to do or should do. Or, this activity, I think, is too much, too intense for the area that they're anticipating.

MS. POTTER: Well, why did we pay Bruce to come in here and say everything was perfect? I mean, let's just throw our money away.

THE CHAIR: We didn't know what Bruce was going to say.

MS. POTTER: Oh, I'm just saying. We hired him! We hired him!

THE CHAIR: We're talking about traffic now.

(Audience comments)

MS. POTTER: We hired him and I can't even believe we're not even going to take our own guys word. You know what ---

THE CHAIR: We're talking about the harmony and character of the neighborhood.

MS. POTTER: The harmony and character of the neighborhood --- its two miles down the road or one mile down the road ---

THE CHAIR: Let's talk publicly and not between ourselves.

MR.SALKA: The bottom line is, does it meet our regulations? And, I think it does. I think what we're looking at is just what was explained to us on why we're voting for it. I think it does meet the regulations.

MS. POTTER: I'm with you.

MR. SALKA: And, I think it's going to be passed off to the planning and zoning department. They're going to make their changes to it which their much more cognizant of the turns and the traffic. We don't normally even get into that kind of thing.

Is it in harmony with the neighborhood? I mean, how can say it's not or how can you say that it is? There are gas stations on that road. There's restaurants -

(End of Tape #2, Side B)

(Beginning of Tape #3, Side A)

(Continuing) --- than other types of businesses in my mind. I think they've documented well enough that it's passed my concerns. I mean it satisfied the questions that I had. I do like the idea which doesn't pertain us is with regards to the way the vehicles are lined up at the pumps. But I think the traffic flow, I think the turn signal being there, I don't think it has anything to do with the apartments across the street.

To me, it's ---

MS. POTTER: (Interrupting) This is not personal.

MR. SALKA: --- in harmony with the neighborhood.

MS. POTTER: This is not personal.

THE CHAIR: It's about a gas station.

MS. POTTER: This is not personal. It's not whether I like it or you like it. We're talking about did it meet the standards? Did it meet it? Yes, it did.

THE CHAIR: Well, what are you talking about?

MS. POTTER: I'm talking about the DOT standards. Our own gentleman said it.

THE CHAIR: That's only one part of it, though. How about the character of the neighborhood and everything like that?

MS. POTTER: That's not what I'm here for. I'm here because they asked me to be here to vote on whether it can handle the traffic. That's all I'm here for.

THE CHAIR: No. You're here for the whole thing.

MS. POTTER: I'm not missing the whole thing. It's not personal.

MR. SALKA: There is a number of sections within our ordinance that we need to look at and that we have to take into consideration.

MS. POTTER: I understand that.

MR. SALKA: Not just traffic.

MS. POTTER: Oh, I understand that. But I'm just saying ---

MR. SALKA: (Interrupting) Is it in harmony. Is --

MS. POTTER: (Interrupting) --- we hired the guy that came in.

MR. SALKA: (Interrupting) --- it with the distances and all that. And, it is meeting every one of those requirements. I can't see one that it doesn't meet.

MS. POTTER: Yah, the, the ---

MR. SALKA: The bottom line is -

MS. POTTER: (Interrupting) queue and the -

MR. SALKA: (Interrupting) --- if you don't want a gas station, well that's, I mean, fine if that's what your --- that's you can agree or disagree.

But the point is it meets every one of the requirements of our current zoning regulation. And, that's what we have to look at when we vote on something like this.

THE CHAIR: You're just talking about traffic.

MR. SALKA: What's that?

THE CHAIR: You're just talking about the traffic?

MR. SALKA: Me? No, no. No. I'm looking at it all.

THE CHAIR: You're looking at the whole picture?

MR. SALKA: I'm looking at the whole picture. She's talking traffic. That's why she was here. And, no, that's not why -

MS. POTTER: (Interrupting) No, I'm saying I'm here to make sure it meets the queuing. I'm here to make sure it meets the standards. But I am saying I am not here to make sure it fits in with the condos across the street. They are not into it.

Those buildings that they're putting --- I cannot decide if that's a McDonald's or - or a TJ Max behind them. I can't vote on that because I don't know what they're going to put into those buildings.

All I can vote on is what they have brought before us and what our own gentleman has said.

THE CHAIR: Who?

MS. POTTER: Bruce.

THE CHAIR: Okay.

MR. VINCI: Yah, the test if 15-05. If it meets the test of 15-05, you have to approve it.

If you don't feel it makes ---meets the tests of 15-05, then deny it. That's our test. Right here.

MS.POTTER: Yes. I understand. I ---

MR. SHERMAN: Why don't you review that for us, Frank?

MR. VINCI: You want me to read it?

MR. SHERMAN: Then there'll be no question.

MR. VINCI: 15-05 Special Exceptions. To hear and decide requests for special exceptions where required by specific terms of these regulations. Each specific special exception for which a permit is sought shall be considered as an individual case and shall in addition to other standards prescribed in the regulations conform to the detailed application of town standards in a manner appropriate to the particular circumstances of the use.

15-05.1. The nature, location, size, intensity and site layout of the use shall be such that it will be in harmony with the appropriate and orderly development of the area in which it is situated and that its operations will not be detrimental by reason of dust, noise, odor, fumes, explosions, glare or otherwise.

15-05.2. The nature and size of the use, the nature and intensity of the operations involved in or conducted in connection with its site layout and its relations to streets gaining access to it shall be such that both pedestrian and vehicular traffic to and from the use and the assembly of persons in connection with it will not be hazardous or inconvenient to the appropriate character - predominant character of the neighborhood or conflict with the normal traffic of the neighborhood taking into consideration among other things convenient routes of pedestrian traffic, particularly street intersections, vehicular turning movements in relation to routes and volumes of traffic flow, sight distances, adequacy of parking facilities.

15-05.3. The location and height of the buildings, location major and extent of landscaping on the site shall be such that the use will not hinder or discourage the appropriate development and use of adjacent land and buildings or impair the value thereof.

THE CHAIR: Thank you. Thank you.

MS. POTTER: It has, it has met those, has it?

MR. VINCI: That's up to you.

MS. POTTER: I mean, I am asking your opinion now?

MR. VINCI: That's up to the board right now.

MS. POTTER: It has met - it has met the size.

MR. SHERMAN: Now, without getting emotional, my take on it is -

MS. POTTER: Too late!

MR. SHERMAN: --- that, my feeling is that it's too heavy a concentration for that site.

My analysis of it is that it may meet the standard that's set forth. That doesn't mean that we have to like it. I could care less whether it's a gas station, a McDonald's, or what it is. It has no bearing on my feeling on it.

Its three items. A convenience store, a Dunkin Donuts and a gas station. On one lot, at one light.

My personal feeling on it is that it's too heavy a concentration for that particular site.

Now, we can argue it until the cows come home, I guess, but that's my feeling on it. It's just --- it's heavy weighted too much for the particular place.

THE CHAIR: Are we all set? Okay.

Are we all set?

(No response)

Roll, Frank.

MR. VINCI:	Commissioner	Salka:	Yes
		Kuklinski:	Yes
		Potter:	Yes
		Sherman:	No
		LaPorte:	No

Motion fails.

MISCELLANEOUS / OLD BUSINESS / NEW BUSINESS

Nothing this evening.

Mr. Salka made a motion to adjourn which Ms. Potter seconded.
Motion passed unanimously on a voice vote.

(Whereupon, the meeting was adjourned at 9:50 o'clock, p.m.)

Joseph LaPorte, Chairman
Zoning Board of Appeals