

# TOWN OF CARMEL ZONING BOARD OF APPEALS

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60 MCALPIN AVENUE, MAHOPAC, NY 10541 - 845-628-1500 – FAX 845-628-7085

## ZONING BOARD OF APPEALS MINUTES

MAY 26, 2011

**PRESENT:** MARK FRASER, CHAIRMAN, ROSE FABIANO, LORRAINE MARIANI, ROGER GARCIA,  
JOHN LUPINACCI, JOHN MAXWELL, SILVIO BALZANO

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<u>APPLICANT</u>	<u>TAX MAP #</u>	<u>PAGE</u>	<u>ACTION OF THE BOARD</u>
Cardillo, Ron	75.10-1-27	1	Heldover.
Stillwater Auto Body	86.5-1-23	1-9	Heldover.
Fitzgerald, Joan	44.14-1-62	9-11	Granted with Condition.
Putnam Property Group (BP Gas Station)	44.18-1-21	11-13	Granted.
Minutes – 2/24/2011		14	Approved as Submitted.

The meeting was adjourned at 8:28 p.m.

Respectfully submitted,

Rose Trombetta

Application of **Ron Cardillo D/B/A Romali Realty, LLC.** for a variation of Section 156-15 and use variance (expansion of an existing non-conforming use) for permission to add 2<sup>nd</sup> story to existing building.

<u>Item</u>	<u>Required</u>	<u>Existing</u>	<u>Proposed</u>	<u>Variance Required</u>
Min. lot area	120,000 sf	28,750.57 sf	28,750.57 sf	91,249.43 sf
Min. lot width	200 ft.	112.94 ft.	112.94 ft.	87.06 ft.
Min. lot depth	200 ft.	197.64 ft.	197.64 ft.	2.36 ft.
Min. Setbacks:				
Principal Building:				
North Front Yard	40 ft.	0.59 ft	0 ft.	40 ft.
East Front Yard	40 ft.	15.77 ft.	10.21 ft.	29.79 ft.
South Side Yard	20 ft.	12.98 ft.	12.98 ft.	7.02 ft.
Retaining walls:				
North Front Yard	40 ft.	n/a	0.88 ft.	39.12 ft.
East Side Yard	25 ft.	n/a	7.79 ft.	17.21 ft.
Use	Residential	Commercial	Commercial	Use variance required for expansion of an existing non-conforming use

Property is located at 175 Myrtle Avenue, Mahopac Falls, NY and is known by Tax Map #75.10-1-27.

Mr. Greenberg sent a letter requesting a holdover of this application based on the fact that the accountant is not ready with the financial information they need to justify the use variance.

Mr. Maxwell moved to hold the application over. The motion was seconded by Mr. Lupinacci with all in favor.

Application of **Stillwater Auto Body** for a variation of Section 156-57(c), Modification of Decision & Order for permission to eliminate three of the seven conditions from the May 1991 Decision and Order. First, the applicant must report to the Building Inspector regarding lease extension; second, that the use is limited to five (5) vehicles; and third, that the variance does not run with the land. Code permits 156-57(c) modification of order; exists use variance to permit continuation of auto body business on site; variance required modification of D&O. Property is located at 121 Stillwater Road, Mahopac, NY and is known by Tax Map # 86.5-1-23.

Mr. Greenberg appeared for the applicant and was sworn in.

Mr. William Schilling, ESQ. explained that Stillwater Auto Body, Aaron Kass is the sole shareholder and Director. He is here this evening. Joel Greenberg is the Architect who designed the site plan and revised the site plan years later. The property is at 121 Stillwater. The zoning is currently commercial. It was formerly an industrial site in the 80s. The site now contains about 135,000 square foot of commercial usage. There are offices and warehouses, construction equipment, storage for personal, there are other commercial usages. The property is on 4 acres. His client, as you probably all know, run an Auto Body Collision Shop on the premises, which he has done since 1989. The use initially was done through a

purchase that Mr. Kass made in 1987 for \$80,000. In 1991, he was stopped work by the Building Department and notified that the use was illegal. It's at that point, in 1991, that his client petitioned the Zoning Board for a use variance, which he received in 1991. What they seek this evening is to modify the Decision and Order from 1991 and effectively to eliminate three of the seven conditions which were imposed at the granting of that use variance in 1991. The first and the most important one to his client is that the Zoning Board found that the variance didn't run with the land. That is that it ran with his client, Mr. Kass and his then partner, Mr. Ray Likar. There's a corollary condition to that as well and that was that every time the lease expired and had to be renewed, his client had the obligation to go to the Building Department to give the Building Department status of the lease negotiations and of the consummation of the lease. The third condition in which they would ask for modification of is the limitation for 5 customer cars on the site. They submitted Mr. Kass' affidavit and a memorandum of law. He spoke briefly about the history of the property. In the 80s to 1991, at the time this Board heard this matter, there were about 65 -75,000 square feet of commercial use. There were 2 or 3 other businesses (a radiator shop and a storage area for commercial vehicles)... there was an Auto Body store that started there in 1985, but didn't have a legal basis. They started it without approvals and it was not a permitted use. His client negotiated and made the deal with the seller at the time. The purchase was in error in that his client believed as did his attorney that its use was of permitted use. That was the basis of the use variance two years later. Mr. Schilling briefly spoke about his client and his client's business. He's looking to solidify his business interest there. Now, since 1991, the property and the circumstances have changed dramatically. It's changed from 3 or 4 businesses to about 8 or 9 businesses. They request the modification of the Decision and Order. They have different reasons as to why they believe they should have the modification. These are very serious restrictions for his client's ability to do business and ultimately, sell his business. They don't question the Zoning Board's right to impose conditions (that's an important part of your job) and it's codified under Section 156-57 of your code and in the town law. But similarly, the Zoning Board has broad discretion and a broad opportunity to modify a Decision and Order. They can do it on the basis of a court decision, on a mistake of law, on a change in facts (substantial change from the time the decision was initially granted) and they can grant a rehearing in which case one board member has to make a motion and all have to agree. With regards to conditions 3 and 5 of the Decision and Order, Mr. Schilling read from his memorandum of law that explained the invalid, illegal condition. With regard to the condition of the 5 car, understood it back then, but the change since the Decision and Order was made, this commercial established firmly entrenched in this business setting. These new facts justify the modification in the Decision and Order.

Mr. Greenberg commented that it was the left-hand side of the property where the Stillwater Auto Body Shop is located. He explained the drawing he brought with the presentation. There is a minimum of 8 cars that can be accommodated for customers that are going into to either talk to them or leave their cars. The nice thing about is this area back over here from the first gate to the second gate is also an area that can be used by the Stillwater because again, this cuts it off from here from this section of basically the other businesses that Bill was talking about. They really have no use for this area over here. Aaron can park his cars here and have them ready for entrance into the body shop without any problem. As you can see from the topo here, Williamsburg Ridge is probably 30 or 40 feet higher in elevation than this. So, from any of the condos over here in Williamsburg Ridge, you can't even see this property, you can't see the drive or anything. Plus the fact that in between the last condo and the property of Stillwater is the swimming area (the pool area). This is also heavily landscaped too. So as far as visually is concerned, there is no problem here by having or allowing this additional parking to occur. So, again, in front of the gate, customer parking here in the area outside his garage plus this area up to this gate, they can have the stored cars that are getting ready to be prepared.

Mr. Fraser asked if the mailing went out to the whole condominium or just to the HOA.

Mr. Schilling responded that it was just to the HOA. He thought there were 200 or 300.

Mr. Fraser asked what Mr. Carnazza's understanding of that is.

Mr. Carnazza said he didn't know. They did an interpretation a couple of years ago for something else. He thinks it was at the Planning Board when they did the large addition on the back. But, he's not sure what they did back then.

Mr. Greenberg said he was actually involved with that Mr. Carnazza is talking about is this section of a building that was added on. He forgot how many years ago, but said it was probably about 6 or 7 years ago. At that time, there was a whole series of individual properties alongside of this property. There were a whole bunch of houses across the street and at that time they, as Bill said, they notified the President of the HOA. He would then, therefore, notify the residents. Williamsburg Ridge, the condos themselves, should go way beyond the 500 feet. So, it would be probably very quite difficult to figure out which ones exactly are within the 500 feet. But, the President was notified and they feel that notification was adequate. It's been done before with the Planning Board, which requires a certified mailing or returned receipt.

Mr. Fraser asked just to the HOA.

Mr. Schilling responded yes.

Mr. Balzano asked when it was done because the HOA usually has a monthly newsletter.

Mr. Schilling said by affidavit of service, which is part of their record, indicates that it was done last Wednesday. Rose had a deadline and she asked him to do it because getting over there was difficult and he did.

Mr. Fraser has discussed this with the Town Attorney and he's of the opinion as well as he is that this is a new application and it's not a rehearing. They also don't argue the fact that that was an illegal condition imposed by this Board way back when. Where they differ is the fact that one, it was an illegal condition make the entire variance null and void, which could be argued. Two, he believes and so does the Town Attorney that this would fall under the use variance criteria. However, with that being said, he also personally believes that due to the illegal condition being put on the variance being granted, that that may cause for this Board to reissue a variance.

Mr. Schilling wonders why Mr. Fraser feels the way he does with the Board's clear ability to modify, not rehear, modify a part of a Decision and Order. He does understand that a rehearing requires review of what the board did 20 years go. But, the Board has the right to modify a part.

Mr. Fraser asked subject to what criteria.

Mr. Schilling responded in extensions it says just a question of the substantial evidence.

Mr. Fraser asked Mr. Schilling in these two cases that Mr. Schilling cited, once those courts made those rulings (which they don't argue with), did they mandate the Board to issue the variances.

Mr. Schilling said no that they remanded them back to the Board.

Mr. Fraser added back to the Board for further consideration.

Mr. Schilling said yes. Mr. Schilling said the consideration being the modification of the illegal decision, not the entire use variance. Mr. Schilling wouldn't have come or let his client come here if he thought the whole use variance was in jeopardy.

Mr. Fraser said if the use variance based on an illegal condition, he asked if it makes the use variance null and void.

Mr. Schilling said there was a use variance where four necessary findings were made with seven conditions. One of the conditions was illegal. It doesn't invalidate the findings that the Board made to grant a use variance. It simply says that one of the conditions that he thinks was meant to curb the effect of the Decision and Order is illegal. Mr. Schilling doesn't think it invalidates the use variance.

Mr. Fraser stated that Mr. Schilling differs in opinion from the Town Attorney.

Mr. Maxwell said in the nature of the business, he doesn't see why they would have made a 5-car restriction even back then. The business calls for whenever there's a damaged car or accident, which you can't control...

Mr. Schilling told Mr. Maxwell that he was there and he could tell him there was a great deal of concern about Mr. Kass' predecessor and title, that he did what he wanted to do, he got no approval and they came into what they thought was a relatively non-responsive Board. He thinks they imposed conditions because they were concerned about the use being established illegally. He may not have known about Mr. Kass' intent and his believe that it was a legal use. There were a lot of conditions there that they sort of were concerned about. He thinks the background of how it was started was why they did that.

Mrs. Fabiano said that it seemed to her to expect somebody to go for a use variance after they've been in the business for 20 years doesn't seem fair. It almost seems as if he should be grandfathered in because he's proven himself and how do you show dollars and cents after 20 years.

Mr. Fraser said he wasn't saying that. Mr. Fraser is saying that since this Board, a previous sitting Board, made a mistake in the issuing of the variance that that may be enough to justify the granting or the re-issuance of the variance. He's not saying that they need to go to an Accountant to show that they're not getting a reasonable return. He thinks that would be an unreasonable request. He still thinks it's a use variance.

Mrs. Fabiano agreed. Mrs. Fabiano added that it may have been a use variance 20 years ago, but not today. After 20 years of service, after working on the business.

Mr. Lupinacci stated that this was commercial zoning not light industrial.

Mr. Fraser confirmed that it was commercial.

Mr. Schilling said it was formerly light industrial.

Mr. Lupinacci asked that why if it was commercial, why can they not put up a Auto body...

Mr. Fraser said none are allowed.

Mr. Carnazza asked what the use is right now (the district).

Mr. Schilling answered commercial.

Mr. Carnazza asked if it was commercial or CBP.

Mr. Schilling said he wrote down commercial.

Mr. Carnazza said he was going to take a quick look.

Mr. Lupinacci said that because he read it was commercial that he was trying to figure out why...

Some members of the Board pointed out that it said commercial on the application.

Mr. Schilling said he got that from someone in the Building, but not Mr. Carnazza.

Mr. Carnazza said it's commercial and does not need a variance. Mr. Carnazza said he doesn't need a variance to be there.

Mr. Lupinacci reiterated if it's commercial, then why does he need, if he wants to do commercial business.

Mr. Schilling said his understanding was the use had to be existing prior to 1982 to be grandfathered in.

Mr. Fraser said that was his understanding too. No new allowed.

Mr. Carnazza said but, it's permitted by the use variance. Mr. Carnazza then said no, auto body is not permitted under the use variance.

Mr. Schilling said it is permitted if it existed prior to 1982. Mr. Schilling thinks that was his code says. Mr. Schillings thinks the interesting thing is if it started three years prior previously...

Mr. Fraser chimed in that it would be fine.

Mr. Garcia asked when the business was started.

Mr. Schilling replied that it was started in 1985 from Mr. Kass' predecessor.

Mr. Carnazza asked when it was legally started. Mr. Carnazza asked when they got the variance that permitted it to be started.

Mr. Schilling responded that in 1991, they got the variance.

Mr. Carnazza said that would be the year you would really use.

Mr. Lupinacci asked that even though it's commercial, there is a section that prohibits auto body...

Mr. Carnazza said it had to be existing as of 1982...

Mr. Schilling said it only limits it to only those in existence prior to 1982.

Mr. Carnazza read that it says exclusive of body work and auto body shops... existing as of July 7, 1982.

Mr. Garcia asked that you're required to get a use variance because it's outside the code.

Mr. Carnazza said he already got the use variance.

Mr. Lupinacci asked Mr. Carnazza (just for education) that if Mr. Kass wanted to open it up today...

Mr. Carnazza said he could not.

Mr. Lupinacci wanted to ask Mr. Carnazza after the meeting why there are three new auto body shops in town.

Mr. Carnazza asked if they were auto body or auto repair. Mr. Carnazza said they are two different things.

Mr. Fraser said he's not aware of any new auto body in town.

Mr. Carnazza said there weren't any auto body repair shops.

Mr. Lupinacci said to him it makes perfect sense. Mr. Lupinacci said no neighbor could possibly be bothered by it because the screenage, the fence area... Mr. Lupinacci would love to see him clean up the immediate area following inside the fence to make it a little more presentable. Mr. Lupinacci said you couldn't even from Stillwater (you really have to pull in to see that). To Mr. Lupinacci, it's commercial and it has been there for so long (since he left college). This is another one similar to Bee and Jay Plumbing that came in front of him that it's been there for so long... he questioned why it was even coming in front of him.

Mr. Maxwell said it was the cleanest collision repair shop that he's seen in town compared to other sites. There are body parts, but they're neatly stacked...

Mr. Lupinacci agreed and added that you couldn't even see them.

Mr. Garcia said they're behind the fence.

Ms. Mariani had no questions.

Mr. Garcia asked that when the business was started in 1985 by the applicant's predecessor, if it was named Stillwater Auto Body Inc.

Mr. Schilling said no, that the name was different.

Mr. Garcia continued by asking that when they bought it in 1989, if they changed the name to Stillwater Auto Body Inc. Mr. Garcia asked to make sure they were the applicant right now.

Mr. Schilling confirmed that Mr. Garcia was right that it was 1989. Mr. Schilling also confirmed that the name was changed when they bought it. Mr. Schilling said Mr. Garcia was correct that they are the applicants right now.

Mr. Garcia asked whether or not he has any interest in ownership of the building whatsoever.

Mr. Schilling said no.

Mr. Garcia verified that he was strictly a tenant... no other entity that he's involved with.

Mr. Schilling said yes to being strictly a tenant and no that he's not involved with any other entity.

Mr. Garcia asked if there was any reason why the owner wouldn't be participating in this application as well or...

Mr. Schilling said that he would gladly be here. Danny Maloney and Aaron Kass, they've been together for 20 years and they are month-to-month for many years. They are very good friends. Getting Danny here might be a little difficult. Mr. Schilling didn't ask him.

Mr. Schilling said that the last lease expired three years ago. Mr. Schilling said the reason for this is because they are handshake kind of guys. When he's ready to sell the business, you can be sure that Mr. Schilling will advise him to get a long-term lease (nobody would buy it without it). There just hasn't been a need now.

Mr. Garcia asked that even though there's been a change to the corporate structure, there's still the same applicant that was here before...there hasn't been a change in the applicant (that's the first thing).

Mr. Schilling informed Mr. Garcia that there was no change and that he was correct.

Mr. Garcia said the second thing was that the lease that they did have expired three years ago...

Mr. Schilling said they had a number of leases that went up to like three or four years ago. They haven't renewed it yet.

Mr. Garcia then asked if it was month to month.

Mr. Schilling said yes.

Mr. Garcia asked Mr. Greenberg how many parking spaces he was using now and if he's using that whole piece behind there now (parking spaces and everything right now).

Mr. Greenberg said yes that area between the two gates where he's stores the cars before they're ready to go inside.

Mr. Garcia asked Mr. Greenberg if there was any other entrance back over there, no other tenants that utilize those parking things or anything of the nature.

Mr. Greenberg shook his head no.



Mr. Garcia asked where the original 5 spaces were.

Mr. Greenberg pointed to where they were and said that they were for customers who wanted to come in and talk and there's an area right behind it where you can get another three cars, so they can have at least 8 customer cars at one time.

Mr. Garcia asked if the finding that they had was limited to 5 spaces, so that customers could come in or it was limited to 5 cars being parked there being ready to be repaired to or a combination of both.

Mr. Schilling read Mr. Kass and Mr. Likar are limited to outdoor storage of 5 vehicles waiting to be repaired in the area of the easterly portion of the site.

Mr. Balzano said so then it has nothing to do with the customer parking

Mr. Garcia said not with the customer parking or of his own employees or anything like that, just 5 that are there for repair.

Mr. Carnazza said unless they're parking to car to be repaired.

Mr. Fraser added that that's a very vague condition right there because 5 waiting to be repaired, he could be repairing 10 others. Mr. Fraser asked for confirmation from Mr. Carnazza.

Mr. Carnazza said it would be very difficult to enforce.

Mr. Garcia's next question was asking where the cars are located when they are in the process of being repaired. Mr. Garcia asked if they were all in the shop or if they...

Mr. Kass replied they were all inside the shop.

Mr. Garcia repeated that Mr. Kass could work on the cars inside the shop, but only store 5 outside.

Mr. Greenberg said yes, according to the condition.

Mr. Lupinacci said he could store 5 outside waiting to repair... he could repair five of the ten, put them outside, they're repaired... they're not waiting to be repaired. Get another 5 waiting to be repaired, fill the whole inside... so, again, that 5...

Mr. Garcia said that 5 was a moving number.

Mr. Lupinacci and Mr. Greenburg agreed with Mr. Garcia.

Mr. Lupinacci question that since it's almost not a restriction, why even have it as a restriction...

Mr. Schilling added just potential sale.

Mr. Balzano said the only thing there concerned about is too is making sure those cars are stored behind the fence, which is done. So, other than that as a condition, he doesn't have any further comment.

Mr. Fraser asked the audience if anyone wished to speak on this application. No one came forward.

Mr. Maxwell moved to close the public hearing. The motion was seconded by Mr. Lupinacci with all in favor.

### **Decision of the Board**

Mrs. Fabiano moved to grant that all equipment and cars to be serviced need to be behind the fence well screened. The motion was seconded by Mr. Balzano.

#### Discussion

Mr. Lupinacci questioned the motion about removing the conditions and not granting a new variance.

Mr. Carnazza said that is correct. The applicant asked to remove three conditions.

Mr. Fraser said they asked to remove three conditions but our town counsel disagrees with the way they are going about the request.

Mr. Lupinacci said the granting would be to remove all three conditions and add one.

Mr. Balzano asked if the motion on the floor was to remove the three conditions only.

Mr. Fraser said I believe, the motion was to remove three and add one (keep all cars behind the fence).

Mr. Garcia said my thought would have been to hold it over so we could speak to town counsel to get a better idea of this before we make another improper decision since one was made already.

The board agreed to hold it over to get a better understanding from town counsel.

Mrs. Fabiano withdrew her motion and Mr. Balzano withdrew his section to that motion.

Mr. Balzano moved to hold the application over. The motion was seconded by Mr. Lupinacci with all in favor.

Application of **Joan Fitzgerald** for a variation of Section 156.15 for permission to construct a garage/shed. Code requires 40 ft. front; 35 ft. exists; variance required 5 ft. Property is located at 73 Fair Street, Carmel, NY and is known by Tax Map #44.14-1-62.

Mrs. Joan Fitzgerald appeared and was sworn in. Mrs. Fitzgerald said they wanted to build a 24 by 24 garage/shed in the spot of an existing shed.

Mr. Fraser asked why it needed to be located there as opposed to a place on the property where it could comply.

Mr. Reilly, Ms. Fitzgerald's husband, approached and was sworn in. The reason is because right behind where the shed is, there's a stone wall that goes across the whole backyard. They would have to take the stone wall down to comply.

Mr. Fraser asked if there was an elevation on the property or...

Mr. Reilly said there was an elevation, but it would be brought down 2 ½ feet, so that it would be right onto the, from the driveway to about a foot and a half...

Mr. Lupinacci said to Mr. Fraser's point that whole thing is a hill going up... they're going to have to carve into it. So, if you wanted to, you'd have to put it up there (pointing to drawing) and then, run a driveway up too.

Mr. Maxwell, gesturing with his hands, that to the left it tapers... the incline gets higher. It seems to be the best spot for it.

Mr. Fraser asked if they were going to store cars in there or if it was really just a shed.

Mr. Reilly said storage.

Mr. Fraser asked what the need for so much storage was... that's a large shed.

Mr. Reilly replied that he has a storage unit in Dover that's 20 by 30 and it's pretty close to full... of junk.

Mrs. Fitzgerald said it's a small house and the attic was converted many years ago to two bedrooms. So, there's no attic storage.

Mr. Reilly attested to no attic space and said that the basement has some exercise equipment in it and that's even full.

Mr. Maxwell said with two kids he saw running around and a dog...it looks like its kind of cramped quarters too. The only thing Mr. Maxwell said is that there's plenty of screening and a fence along the right side. Mr. Maxwell thinks it's the ideal spot for it. Mr. Maxwell doesn't think their neighbors would have any issues. Mr. Maxwell didn't see any other issues and said it was a minimal variance.

Mrs. Fabiano asked how high it is.

Mr. Reilly said he thinks it 9 feet at the peak.

Mr. Fraser asked that there's no loft for storage above. It's just one story.

Mr. Reilly said it was just one story and whatever the peak is. Mr. Reilly guesses the walls are 8 feet and it goes up, so it's probably 9, maybe 9 ½ feet.

Mr. Lupinacci said it could be 12 feet, which is still small because the door is a 7-8ft. door per this picture.

Mr. Fraser would guess 12' too.

Mrs. Fabiano asked if that was the exact building they were going to put up (pointing to picture).

Mr. Reilly said that was correct.

Mr. Lupinacci reiterated what Mr. Maxwell said that he think it's the ideal spot because of the topography and the screening. Mr. Lupinacci is a big fan of stone walls, so they don't have to remove a stone wall, he's all for it. Mr. Lupinacci agrees it's a small variance.

Ms. Mariani, Mr. Garcia and Mr. Balzano had no comments.

Mr. Maxwell moved to close the public hearing. The motion was seconded by Mr. Lupinacci with all in favor.

### **Decision of the Board**

Mr. Lupinacci motioned to grant with a condition to restrict the height of the storage shed to 15 feet. The motion was seconded by Mr. Balzano with all in favor.

Application of **Putnam Property Group, LLC.(BP Gas Station)** for a variation of Section 156.30 for permission to construct canopy in front yard. The following variances are required:

<u>Item</u>	<u>Required</u>	<u>Will Exist</u>	<u>Variance Required</u>
Min Lot Area	20,000 s.f.	13,764.96 s.f.	6,235.04 s.f.
Min Lot Width	200 ft.	130.3 ft.	69.7 ft.
Min. Lot Depth	200 ft.	110.3 ft.	89.7 ft.
Front Yard	40 ft.	11 ft.	29 ft.
Floor Area	5,000 s.f.	1,490 s.f.	3,510 s.f.

Property is located at 2 Fair Street, Carmel, NY and is known by Tax Map #44.18-1-21.

Ross Winglovitz of Engineering Properties appeared and was sworn in. Mr. Winglovitz appeared on behalf of Putnam Property, LLC. and proposed a canopy, that's the only site improvement proposed, for this site. This is a piece of property on the corner of Fair Street and Route 52, just north of the County Building. The applicant has done extensive work on renovating the building, cleaning up the site, re-striping it, state of the art pumps, new tanks... what they're looking to do is now, if you notice it's probably one of the only pump islands that's not covered anywhere in town. What they're looking to do is cover the pump island with the canopy. It's a BP Gas Canopy, very similar to the one north on 52 on the left-hand side. This will prevent a) customers from getting wet as they're dispensing fuel and also rain water from washing fuel that may spill on the concrete pad into the storm water and then, into the lake. What they are looking for is a variance for front yard; the canopy is going to be located square over the existing gas islands that are there, which requires a variance of 11 feet... two 11 feet for the front yard from 40 feet. There are other non-conformities, existing non-conformities with the property that he has outlined with Mr. Carnazza and also requested as part of the variance.

Mr. Fraser asked if it was going to be additional signage on the canopies. Mr. Fraser doesn't see any sign variance request.

Mr. Winglovitz said the canopies have a little sunburst logo (green logo, green striping)... there's really no signage. Mr. Winglovitz provided the Board with a picture. It's the same as the one on 52 to the north.

Mr. Balzano said logos have come in front of the ARB.

Mr. Carnazza said they have to go to the ARB for the whole thing because it's an improvement.

Mr. Fraser asked Mr. Carnazza if he wouldn't consider that additional square footage on a sign.

Mr. Carnazza said no, not something painted on like that. It's a decal.

Mr. Fraser said it obviously had to be placed where they are proposing; it needs to be over the gas pumps and the other three or four variance requests are all inherent to the land.

Mr. Winglovitz said that was correct.

Mr. Maxwell asked what the height of the canopy was.

Mr. Winglovitz said 15 feet.

Mr. Maxwell asked if it wasn't any higher than what is there right now with the two lights. Mr. Maxwell is assuming the fire suppression equipment...

Mr. Winglovitz didn't know the exact height of the existing lights, but he would guess they were probably 14-foot high.

Mr. Maxwell added close to it. Mr. Maxwell doesn't think they'll hamper anyone's view; it might enhance the property. But, Mr. Maxwell doesn't think they'll be blocking out anyone's view from anything. That would be his only concern.

Mr. Fraser agreed.

Mr. Maxwell said it doesn't look like they're encroaching too much wider than the parking area anyway. So, it seems fine.

Mrs. Fabiano had no questions.

Mr. Lupinacci said the only thing he has, which is outside their capability, is just town-wide even for this. The flat canopy just does nothing for the aesthetics surrounding it or anything like that. It would be a shame... it would be better, in his opinion, if they could copy the roofline of the existing building or buildings around... just to put up this general flat roof, which they all do it, but it's just a shame that the town doesn't take more of a position. They can't do it on the Zoning to make it more architecturally more appealing to the current building and buildings around it. But, that's not for here. Mr. Lupinacci had no further concerns or comments.

Ms. Mariani had no comments.

Mr. Garcia asked Mr. Carnazza that since it's not closed on any sides, why do they need.

Mr. Carnazza said that it was because it's a structure.

Mr. Garcia then asked if it was any structure within that setback.

Mr. Carnazza replied the structure setback, yes.

Mr. Garcia questioned that it was covering the islands where the gas pumps are, so is that considered a structure.

Mr. Carnazza said anything with a roof is definitely a structure. The roof makes it a structure or a wall over 6 feet. There's a definition in the (pointed to codebook)...

Mr. Fraser said a cantilever deck would be a structure too, roof or not.

Mr. Carnazza said that would be correct.

Mr. Balzano said that would be true too.

Mr. Lupinacci said that it would have to be a certain elevation off the ground...

Mr. Carnazza said 12 inches or more. A deck is a structure. Mr. Carnazza is just saying a flat thing.

Mr. Garcia asked about the other variances are just with the property.

Mr. Fraser said no matter what they did, they would need those variances. There's no property for sale around them that they can increase the size of this lot.

Mr. Garcia said that this was a gas station before, prior though.

Mr. Carnazza said it is a gas station now.

Mr. Garcia said again it is a gas, so wouldn't they of had these variances before.

Mr. Carnazza said they may or may not have, but to clean up the lot, when they come in front of the Board, we have them get them get the variances to clean it up.

Mr. Garcia commented that was to get it all taken care of in one shot.

Mr. Balzano asked the height of the building as opposed to the height of the canopy.

Mr. Winglovitz said the height of the building is probably about 10 feet.

Mr. Balzano asked if the canopy was going to be higher than the building.

Mr. Winglovitz said yes, it will be slightly higher.

Mr. Maxwell moved to close the public hearing. The motion was seconded by Mr. Lupinacci with all were in favor.

### **Decision of the Board**

Mr. Lupinacci moved to grant. The motion was seconded by Mrs. Fabiano with all in favor.

**Minutes – 2/24/2011**

Mr. Lupinacci did not receive the minutes.

Mrs. Fabiano moved to accept the minutes as submitted. The motion was seconded by Ms. Mariani with all in favor, except Mr. Balzano, Mr. Maxwell and Mr. Lupinacci who abstained.

Mr. Maxwell and Mr. Lupinacci were not present at the meeting and Mr. Balzano was not a member of the board for this meeting.

The meeting was adjourned at 8:28 p.m.

Respectfully submitted,

Rose Trombetta