

PLANNING DEPARTMENT

P.O. Box 470
1142 Route 311
Patterson, NY 12563

Sarah Mayes
Mary Schartau
Secretary

Telephone (845) 878-6500
FAX (845) 878-2019



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**TOWN OF PATTERSON
PLANNING & ZONING OFFICE**

**Zoning Board of Appeals
September 21, 2016 Meeting Minutes**

Held at the Patterson Town Hall
1142 Route 311
Patterson, NY 12563

Present were: Chairman Lars Olenius, Board Member Mary Bodor, Board Member Marianne Burdick, Board Member Michael Carinha, Board Member Stephanie Fox, and Nancy Tagliafierro – Attorney with the Town Attorney’s Office

Sarah Mayes was the secretary in attendance for the meeting; Mary Schartau transcribed the following minutes.

There were approximately 15 audience members present.

Chairman Olenius called the meeting to order at 7:00 p.m.

Chairman Olenius addressed the audience, stating that the Board would be moving Case #15-16 to the end of the agenda in anticipation of an extended presentation time.

- 1. Joseph DeLizza: Case #16-16
5 Ripley Road
Tax Map #36.9-1-16**

Joseph DeLizza was present to represent the application.

The Secretary read the following legal notice:

Joseph DeLizza: Case #16-16 – Area Variances

Applicant is requesting area variances pursuant to §154-27A(12)(a) & (b) of the Patterson Town Code: Permitted accessory uses, in order to legalize a 8’ x 10’ shed and a 12’ x 12’ gazebo with a hot tub on the property. Patterson Town Code requires accessory structures to meet a minimum side yard setback of 5’;

Applicant's shed is 3.2' from the side property line; Variance requested is for 1.8'. Patterson Town Code requires accessory structures to meet a minimum front yard setback of 15'; Applicant's gazebo is 9.5' from the front property line; Variance requested is for 5.5'. Patterson Town Code requires accessory structures to meet a minimum separation distance of 15' from other structures; Applicant's gazebo is 1.5' from another structure; Variance requested is for 13.5'. This property is located at 5 Ripley Road (RPL-10 Zoning District).

Mr. DeLizza stated that he and his wife are looking to sell their home, and when a town official visited the property, it was brought to their attention that the shed and gazebo did not meet the required setbacks. He stated that the shed was in existence when they purchased the home, though they installed the gazebo and hot tub. Mr. DeLizza confirmed that the property is sloping and that Thompson Road sits lower in elevation than the home; he also confirmed that the septic fields are located to the side of the dwelling. He stated that everything beyond the shed is wooded; the property adjacent to the home on the shed side of the property is vacant.

The Board reviewed the color photos that the Applicant submitted; Mr. DeLizza confirmed that the gazebo is directly adjacent to the patio that is connected to the dwelling. He stated that he purchased the property in 1997, at which time the shed was already in existence; he also confirmed that the gazebo was constructed with the intent of housing the hot tub and that there are screens attached to the inside.

Chairman Olenius stated that the survey shows that the property has frontage on two streets; Mr. DeLizza stated that the property is, in fact, accessed from Thompson Road, and that he views the Ripley Road-facing side of the property as being his rear yard. Board Member Bodor clarified that the property is considered to have two front yards because it has frontage on both Ripley Road and Thompson Road.

There was no audience input.

- Chairman Olenius made a motion to close the public hearing. Board Member Burdick seconded the motion. *Motion passed by a vote of 5 – 0.*
- Chairman Olenius made a motion to approve the application for an area variance of 1.8' pursuant to §154-27A(12)(a) of the Patterson Town Code in order to legalize an existing shed 3.2' from the side property line. Board Member Burdick seconded the motion. *Motion passed by a vote of 5 – 0.*
- Chairman Olenius made a motion to approve the application for an area variance of 5.5' pursuant to §154-27A(12)(a) of the Patterson Town Code in order to legalize an existing 12' x 12' gazebo with hot tub 9.5' from the front property line. Board Member Bodor seconded the motion. *Motion passed by a vote of 5 – 0.*
- Chairman Olenius made a motion to approve the application for an area variance of 5.5' pursuant to §154-27A(12)(b) of the Patterson Town Code in order to legalize an existing 12' x 12' gazebo with hot tub 1.5' from the dwelling. Board Member Carinha seconded the motion. *Motion passed by a vote of 5 – 0.*

**2. John and Jill Karell Case #17-16
121 Cushman Road
Tax Map #13.-1-3.1**

John Karell was present to represent the application.

The Secretary read the following legal notice:

John & Jill Karell: Case #17-16 – Area Variance

Applicant is requesting an area variance pursuant to §154-7 of the Patterson Town Code: Schedule of regulations, in order to construct a front porch addition to the dwelling. Patterson Town Code requires principal buildings to meet a minimum front yard setback of 40'; proposed front porch addition will be 30' from the front property line; Variance requested is for 10'. This property is located at 121 Cushman Road (R-4 Zoning District).

Mr. Karell stated that he is looking to install a small front porch, and confirmed that there is currently a small stoop under the front door that extends out 5'. Chairman Olenius stated that the proposed porch, then, will extend 5' beyond the existing stoop; he questioned whether the 30' noted as the distance from the front property line was actually measured from the edge of the road, or according to the surveyor's location of the edge of the Town property. Mr. Karell confirmed that it is, in fact, 32' from the front property line, with the edge of the road being approximately 40' from the front of the proposed porch; Chairman Olenius remarked on the design of the proposed porch. Board Member Bodor stated that the design is well-balanced, as the porch will only stretch along the main part of the front of the house; Mr. Karell confirmed that the house had been in existence since the 1800s. Chairman Olenius noted that the lot was rather large, at over 18 acres in size.

There was no audience input.

- Chairman Olenius made a motion to close the public hearing. Board Member Burdick seconded the motion. *Motion passed by a vote of 5 – 0.*
- Chairman Olenius made a motion to approve the application for an area variance of 10' pursuant to §154-7 of the Patterson Town Code in order to construct a front porch addition 30' from the front yard line. Board Member Carinha seconded the motion. *Motion passed by a vote of 5 – 0.*

**3. Vimal and Vineetha Joy Case #18-16
25 Clifton Court
Tax Map #34.-4-28**

Vimal Joy was present to represent the application.

The Secretary read the following legal notice:

Vimal & Vineetha Joy: Case #18-16 – Area Variance

Applicant is requesting an area variance pursuant to §154-7 of the Patterson Town Code: Schedule of regulations, in order to legalize an extension to a rear deck. Patterson Town Code requires principal buildings to meet a minimum rear yard setback of 80'; attached deck extension is 73' from the rear property line; Variance requested is for 7'. This property is located at 25 Clifton Court (R-4 Zoning District).

Mr. Joy confirmed that he was unaware when he purchased the home 12-13 years ago that the existing deck extension was illegal, as it was in existence when the home was purchased; he stated that the original deck actually does not meet current setbacks either, but was legal at the time it was constructed, so it does not require any variances. Chairman Olenius stated that the deck extension does not appear to extend any farther towards the rear property line than the original deck; Mr. Joy stated that the lots behind him are wooded and undeveloped and that his lot has a lot of privacy, with woods on one side and wetlands on the other. He also confirmed that Building Inspector Bob McCarthy had instructed him to make 2 structural amendments to the deck extension, which have since been made.

There was no audience input.

- Chairman Olenius made a motion to close the public hearing. Board Member Burdick seconded the motion. *Motion passed by a vote of 5 – 0.*
- Chairman Olenius made a motion to approve the application for an area variance of 7’ pursuant to §154-7 of the Patterson Town Code in order to legalize a rear deck extension 73’ from the rear yard line. Board Member Carinha seconded the motion. *Motion passed by a vote of 5 – 0.*

**4. James Bacon: Case #15-16
Patterson Crossing Retail Center
Intersection of Route 311 and Interstate 84
Tax Map #22.-3-1**

James Bacon was present to represent application.

The Secretary read the following legal notice:

James Bacon: Case #15-16 – Interpretation of Zoning Code

Applicant is seeking an interpretation challenging the July 13, 2016 determination by Robert McCarthy, Director of Codes Enforcement, finding that the proposed 16-dispensor Costco fueling facility is not an accessory use as defined under the Town Code §154-4B and instead is a principal use stand-alone gasoline station, as that term is defined in the Town’s Zoning Code also at §154-4B. The Town has determined that the addition of the fueling facility to the site constitutes an additional principal use on the site. This property is located at the intersection of Route 311 & Interstate 84 (I Zoning District).

Chairman Olenius: Mr. Bacon.

Mr. Bacon: Alright, thanks. Save the best for last!

Chairman Olenius: How are you doing? I’m sorry to make you wait. It’s just...

Mr. Bacon: No, no, no...

Chairman Olenius: I figured this would be a little bit more lengthy.

Mr. Bacon: It's no problem at all. I would have done the same thing in this position. Sure. *[Adjusting microphone]* Let's just get this up to the right spot. Alright, so, thank you, for, um...

Chairman Olenius: Could you just state your name and...?

Mr. Bacon: Oh, sure. James Bacon and I'm, uh, here on behalf of Harry Hitner. He's a, um, neighbor. He's in the back – if he could raise his hand there in the gray sweatshirt. So, um, again, thank you for holding this, uh, um, hearing on this interpretation, and, um... just, uh, to clear something up: it... this is sort of an usual application – that a neighbor asks for an interpretation of a... of an adjoining property. Usually it's the owner who comes in, so the form is... is not quite set up right, and, um... Mr. Steinmetz's office, being, uh... uh, right on the ball, picked that up, so I just want to make clear: I'm not the Applicant. It's, uh, Mr. Hitner, and I'm here on his behalf.

Chairman Olenius: Okay. Thank you.

Mr. Bacon: Alright, and, um... also, this, uh – it's a little bit unusual in that...

Chairman Olenius: Sorry – do you swear the testimony you provide will be the truth and the whole truth?

Mr. Bacon: Yeah, uh, I do, uh... to the best of my knowledge, and, uh... I affirm that. Yes.

Chairman Olenius: I'm sorry. Thank you.

Mr. Bacon: No problem. Alright, so, um... this is, uh, a little bit unusual in that, uh, there's a Code Office, uh, Enforcement interpretation that's also, uh, signed off on by the Town Planner, who also happens to be the, uh, Town Supervisor, and, um... I have great respect for, uh... uh, Supervisor Williams and the work he does, and... and the dedication he has to the Town, but, I think it places, uh, the Board in a, uh... difficult position if...if Mr. Williams is in the room, um... looking at... at, uh... at the proceeding, because, uh... he's the one who, uh... appoints you and... and decides whether or not to reappoint you, so, I think it... the... there's sort of a conflict of interest with the burden being, uh, you know... it's uh... it gives you a little bit too much of a, uh... um... a – a burden, I think, for him to be in the room. So, I would ask if he wouldn't mind...

Nancy Tagliafierro: I think that's – that's a little bit...

Mr. Bacon: Recusing himself....

Nancy Tagliafierro: Of an overstatement. He doesn't appoint them individually. It's a Town Board determination. He doesn't get to make the appointments by himself, and...

Mr. Bacon: Alright. So, I – maybe I misunderstood.

Nancy Tagliafierro: This is a matter of public record – anyone can review the minutes, so, um... I mean, it's totally up to the Supervisor if he... if he wants to leave, but, I don't – legally speaking – think it's necessary.

Mr. Bacon: Alright. I just thought it would – I bring that up because, uh, if any of the Board Members felt that that would make their job a little bit more difficult in terms of maintaining neutrality, I think that, uh... if I was on the Board and... and, uh... I would be, uh... thinking about that so, I bring that up. I don't know...

Chairman Olenius: No, he doesn't scare me.

[Laughter.]

Board Member Burdick: Me neither.

Mr. Bacon: Alright, so, uh... then, moving on... so, I think that, um, the reason we really wanted to come in is to be clear about this use, and that, uh, we really disagree with the interpretation that it's 2 separate uses, and, the – our... the basis for that, I believe, is not something that I – we've – made up. It's something that the applicant has... has talked about, and the way that they define their business, so, um... uh, I'd like to just, uh, present to you the um... the application that, uh, Mr. [Tim] Miller [Associates] put in on behalf of Costco – some excerpts of it that, uh... I've made 5 copies. I have a copy for Mr. Steinmetz, as well, and, um... uh, I'd like to cite this. There's some specific references that Mr. Miller, uh, how he... he refers to his business – and also there's a, uh, um... excerpt from a testimony by Costco's representative in a matter in Yorktown, where we also went through this exact same sort of, um, exercise in, uh... determining – in questioning where or not a, uh, Costco that sells gasoline is a, uh, use that's permitted by the Town Code. So, if I could hand that up to you – I'd like to do that. There's, uh... they're back to back so, uh, um... So, the, um... the primary, uh, um... uh, statement by Mr. Miller basically says “this site plan modification is sought at the request of Costco, the prospective Building “B” tenant, which desires a vehicle fueling facility as part of its retail services for its members.” And, that's really the key phrase, that the... the fueling service is part of the... the retail operations of Costco. *[To Chairman Olenius]* Is that 4?

Chairman Olenius: I guess so.

Board Member Burdick: I – for the file. Thank you.

Mr. Bacon: And, um... again, this is something that we didn't come up with, uh... Mr. Miller talks about 497 other similar facilities in... in the United States, and, uh, the Costco provides fueling, uh, services for its members only, uh... um... for its members only, so you... the... the regular public can't just drive up and put their credit card into a, uh, Costco gas station. It won't be accepted, so, that... that makes it different from every other gas station in town, and... and, so, um you need to actually either go into the store, or – and get a, uh... a fueling card – become a member – and so that... that means it's a... it's a single operation from the standpoint of the business, and you'll see in the, uh... in the testimony from, uh, Yorktown, the applicant's representative – the Costco representative said – this... the Costco store and the fueling facility go hand-in-hand. We can't have one with – without the other. It's just – we won't even come into the site without the gas station. That's how important it is to...to the, uh... to the store. In fact, as we all know, and we all – we've all seen Costco and probably many... many are members, I think, since members in the audience, uh, might talk about this: the, um... the gasoline sales really ask – uh, act – as a loss leader to draw customers to Costco. That's part of their – the draw – is the, uh... is the cheap gas, and, um... that's why, uh, Mr. Miller calls, uh... uh, Costco a “unique sales model.” It is unique. This is a big box store selling gasoline – it's not

provided for in the Town Code or the Comprehensive Plan, and, because of that, it creates a, uh... a conflict in that, if there's not a, uh... a use that's listed in the Town Code, then it's really not permitted, and I cite the case in my, uh... Notice of Appeal that, uh, talks about that, and, uh... so, uh... there's a couple of phrases that Mr. Miller talks about again, uh... on the... on the last paragraph on page 2 which is, uh, the... the, uh, front cover that I gave you: "Costco vehicle fueling facilities are unique in that they sell fuel only to Costco members, and, therefore, sales would not be open to the general public." Now, other aspects of... of Costco's operations support that. They have only Costco employees that are... that are manning the gas station. They're trained by Costco. They're trained to deal with fuel spills, and Mr. Miller goes through how that happens, um... and they have an interactive training program and, uh... and the other thing is that, um, in... in assessing the impacts of the... of the project, the, um... Costco said, well, the... "The majority of the customers for the proposed fueling facility will be Costco members who are shopping at Costco and at other stores in the regional center." So, I think, from the app – from what the applicant has said, or from what Costco said, is that there's – these are not two separate uses. It's one – one single... it's a... it's a big box store that offers gasoline to its members. It's... it's not – you don't have a Costco standalone gasoline station. You don't. There's not one in the whole country, that that's... there's no evidence of... that there's that type of use anywhere in the country. So, um... and, uh, again, the testimony, uh, from, um, the Costco representative that I said that I... that I... that's included in the second, um... uh, attachment, basically says, "Of course, the people who are getting gas there put it... put it in their own Costco card. I made that mistake. I didn't put a Costco card in; I put a credit card in. Nothing happened. So, you have to be a member in order to buy gas there. You have to put the Costco card in, so... and, I believe from the ZBA's precedent and the way things are in the town, that's the way the other gas stations are defined by this Board and the history of people coming before the Board. They... you don't separate out the gas pumps and say, "Oh, that's a – that's a separate use from the convenience store, or... or a mini-mart that's next to it." It's, a... it's a single use on... on, uh... on the site... and the definition of gas station says that in... in your code. That the definition of a gas station is, "an area of land" together with everything else, but, the strange thing is that the gas – that your code's definition of gas station doesn't permit any retail use, so... this is... that another – that's another evidence that a big box store selling gasoline is just not contemplated by the Code... and... and the Code is... is very clear in terms of how the Board – or how the town – must proceed if the list... if the, um... if the use is not listed, uh... [Patterson Town Code] §154-23 says, "compliance required; in any district, no building, structure, or premises in whole or in part shall be used, and no building or structure in whole or part shall be erected, enlarged, structurally altered or moved, except for the following purposes or as herein elsewhere specially provided or by their prospective districts together with specified accessory uses," and, again, a big box store selling gasoline is not one of those uses. Now, if you had to cram this use into one of the... an industrial zone, and... and look at it from that perspective, you have a big box [store] selling gasoline and the sale of gasoline is a subordinate use to the main use of Costco. The Costco is 152,000 sq. ft., and the gasoline is a much, much smaller part of that... and, so the only box that fits this in is an accessory use, and the... in the industrial district, the Code specifically says that gasoline stations are not an accessory use that... that is listed there, so, that, um, again, is a... is a reason why I think that the... the, uh, interpretation by the Code Enforcement Officer was an error... and, uh... I guess lastly I will say that because of Costco's business model – and they say it's a "unique sales model" – the gasoline station couldn't stand on its own because their... they... they don't charge enough for gasoline. It's – it acts as a draw into... to bring people to the... to the larger Costco store, and Mr. Miller alludes to that, saying, "the people who come to Costco, they come to Costco, buy something, then they get some gas." You know, it's an in – it's an interactive thing, and, again, that... that, uh, makes it separate, so, I'd like to let the

public give their views, and... and just reserve some time at the end to uh... um, give a little follow-up.

Chairman Olenius: Okay.

Mr. Bacon: Thanks.

Chairman Olenius: Anyone from the audience have a comment? *[To James Byron]*
Please, approach. State your name for the record, please.

Mr. Byron: Hi, uh, yes. It's, uh, James Byron, and I reside in the Town of Patterson on Farm to Market, and I also run a, uh, business in the Town of Patterson – Patterson Auto Body – where we also sell gasoline. So, I'm standing in front of you on both sides of the aisle, uh... I'm also a Costco member, so, I'm really running the gamut here tonight, um... I want to say that, when I heard Costco was coming into the community and it was going to be up on that piece of property, I... I felt... I felt that it was a – if... if a Costco was needed in our community, that it was right off of [Interstate] 84 and that it would make sense... and, initially, there was never any talk about gasoline. But, that was before internet shopping became such a common – uh, competitive, uh, business that was competing against these box stores, uh... I'm not here to talk about Costco's business – it's their business, it's not mine. But, I look at a gasoline station. Now, uh, this Board walked me through a very trying process to redevelop my... my property out on Route 22, which is a commercial piece of property. A lot of what's there has been grandfathered because it's been an auto body/gas station/repair shop/store since World War II, so I wasn't doing anything differently than was already there, but, we needed... we needed to make sure that we were abiding by the Town's rules and regulations about gasoline stations. So, it was a cumbersome process to get that done, and, with the Town of Patterson – Rich Williams, especially; this Board – uh, I was able to do that and I was able to get it up and running to where it fits a nice model for the Town and the Route 22 corridor – a commercial corridor. So, I felt... I... I really believe that what I did was for the right reason. I know the business is going well, and... and, so that's all good. There's 4 gas stations in the Town of Patterson. What you're about – well, if... if it goes through – the Town of Patterson, overnight, is going to have 10 additional gas stations. This – this facility is being built, conservatively, to do 10 million gallons. An average gas station in the... in the country does 1 million gallons-a-year. So, this is 10 additional gas, uh... gas stations competing against the 4 that exist in the Town of Patterson. We're not going to exist. You can't – you can't triple the population of any business – body shops, delicatessens, restaurants – you can't... you can't triple overnight the... the capacity. It... it's just... it's... it's the... it just can't be done. So, it's going to negatively impact, and possibly blight other – blight other – parts of this community, um... there's no way of knowing. That's... that's a crystal ball... And, again, let... let the, uh... let the strongest survive. That's... that's the model of any business. But, to go against... to go against Costco, um, selling at a loss-a-liter, like the gentleman was talking, it's... it's their model. They sell at a lost-a-liter. You know, back in the [19]70s, New York City had to come out with a law banning supermarkets selling milk below cost because the local... the local delicatessens couldn't compete. So, that's a little analogy – sample, or – analogy, but... but, those things do happen. So, you can have a... you can have a gas station on [Route] 311 selling 10 million gallons of gasoline. To deliver 10 million gallons of gasoline, in today's trucks, you're going to go 3 ½ times-a-day off of [Interstate] 84 and up the hill – 3 ½ times a day. Well, guess what? They don't deliver gasoline during the day. It's generally – they close at 10:00 or 11:00 at night and they reopen at 10:00, 11:00 in the morning. So, in that 12 hour frame, you're going to have 3 ½ trucks carrying full loads of fuel, climbing the... climbing the hill to get up to that high elevation. They're going to

park. When they park – and you can watch any fueling of a gas station – it looks like a... it looks like an accident scene where they'd have the floodlights and they have a lot. There's mandatory O.S.H.A. requirements that you must have ample during the discharge of gasoline, to... to keep the driver safe, and to make sure that there's no spills, and this goes on... the average truck discharges in about an hour-and-a-half. The vapors of Phase II recovering, for the vapors to be properly recovered, they do a good job at that. The D.E.C. really has great cause about that. But, it's not fool-proof. You get – humid... this was a humid – at times, we had humid summer days. The gas odor is very heavy and it stays stagnant for hours after the truck leaves. So... so, throughout the night – for 10 hours every night – every night, 7 days-a-week, you're going to... you're going to be up on the hill and you're going to have the odor of gasoline.

Nancy Tagliafierro: *[Inaudible – turned away from microphone]...*

Mr. Byron: You can't – all the vapor recovery in the world, and all the promises in the world – it doesn't happen. You're not going to hide that. A little gas station in a retail setting – in a... in a residential setting that gets 2 loads a week – 2 ½ loads a week, like myself – you're not going to notice that. I'm in a commercial setting. There's no houses around us at all. So, when we get gasoline delivered, it... it doesn't bother anybody. You're just running up and down Route 22.

Nancy Tagliafierro: Could I just interrupt for one moment? With all due respect...

Mr. Byron: Yep. Sure.

Nancy Tagliafierro: And we all appreciate your concerns, but... do you have any comments on whether this is an accessory use or a principal use? I mean, that's really the only issue before this Board right now.

Mr. Byron: Okay. Okay. I... I just think that it's all one. I believe what was being said before is that it's all one use. That Costco – Costco... you're not going to – it's not in... it's not a separate business operating on the same piece of property. You're going there as a Costco member to buy Costco fuel. So, if that's – if that's the topic, that's...

Nancy Tagliafierro: It's – it's just...

Mr. Byron: Okay.

Nancy Tagliafierro: I – I mean to be very respectful...

Mr. Byron: Okay.

Nancy Tagliafierro: We all appreciate your concerns.

Mr. Byron: No, I...

Nancy Tagliafierro: But, it – that's really the only issue before the Zoning Board.

Mr. Byron: I didn't know – I didn't know what the topic is.

Nancy Tagliafierro: Yeah.

Mr. Byron: But... but, if I lived up on – if I lived in the area of that facility, uh... I would be really concerned about that. Okay?

Chairman Olenius: Thank you very much, Mr. Byron.

Board Member Fox: Thank you.

Nancy Tagliaferro: Thank you.

Mr. Byron: Thank you.

Mr. Steinmetz: Good evening, Mr. Chairman. Members of the Board. David Steinmetz from the law firm of Zarin & Steinmetz here representing, uh, Patterson Crossing Retail Company, LLC. With me this evening, Fred Koelsch from Patterson, uh, Crossing, as well as my colleague, Kate Roberts, uh...

[Inaudible chatter in audience.]

Mr. Steinmetz: Hopefully, you've all has a chance to, uh, see – we did make a written submission to your Board, um... a letter responding to the application for the interpretation dated September 13th [2016], and just, for the benefit of the record, um, we did attach, uh... the Supervisor/Town Planner's memorandum of July 7th [2016], the, uh, Supervisor/Town Planner and Director of Code Enforcement memo of July 13th [2016], and the Planning Board's, uh, unanimous resolution of amended site plan approval. I just want to make sure that all of those are before you and in tonight's record.

Chairman Olenius: Yes, sir.

Mr. Steinmetz: I would venture to say, if tonight's, uh, agenda is indicative of, uh, normal proceedings here at the Patterson ZBA, your typical application is an area variance. Most Zoning Boards typically see, um, matters before them for variances. And, I would venture to say that, on occasion, there are applications for, uh, interpretations, but they're kind of rare. Probably the only thing that I would agree with Mr. Bacon about, uh, tonight, is it's extremely rare to see an application for, um, an interpretation that's not filed by the proponent of the development project, but is actually filed by an opponent – or a neighbor – and that's what you have before you tonight. You actually have a neighbor coming in before you, filing an application saying that the Town has done something wrong, and, the reason that it's unusual, if not extraordinary, to see this happen is that zoning is interpreted every single day by zoning officials. Zoning ordinances are enacted to constrain development, to place certain limitations on our common-law property rights, and zoning is interpreted every day by Building Inspectors, by Code Enforcement Officers, by Planning Directors, occasionally by Planning Boards, and... I'm not arguing that, um, Mr. Bacon and neighbors don't have a right to come before a government and make an application for an interpretation, but the expertise and the prerogative of the interpretation of zoning really is truly vested in those who are expert in that, and that is Code Enforcement Officials. So, there's really very good reason why the courts tell us that your Building Inspector, your Code Enforcement Officer, your Planners are entitled to tremendous deference when they're reviewing their own zoning, and the courts say that repeatedly to us. They actually also tell us that your Board sitting in an appellate fashion, as you are tonight, you, too, are entitled to tremendous deference as to how you view what your Code Officials did, and how, tonight,

you're going to view how the Code has been interpreted. So, what do we have in front of you? We have your – the Town of Patterson – Code. We have some definitions of principal uses and accessory uses, and we have some very important determinations that were made by the Town Planner, who happens to be the Supervisor, and I think that it's somewhat disrespectful to question, um, his ability to come into a public place, and, um... and participate in the process. Your town government decided to have one individual sit as Supervisor and Town Planner, and if that's who he is, and that's what his roles are, in fact, I'd be shocked if he wasn't here tonight, because tonight his – his interpretation and the interpretation of how to apply zoning is called into question by somebody who resides here in the Town. So, it's totally appropriate for him to be present. So, in... in taking a look at what has been done, we have your Town Officials interpreting whether or not this proposed gasoline filling station is a permitted use or an accessory use, and, to us, it's pretty clear, and it's pretty straightforward, that their interpretation and their application of the law was correct. It is a permitted principal use under your Code. It makes no difference whether it's on its own tax lot. It makes no difference whether it's on its own subdivided lot, uh... it makes no difference whether it's operated by Costco, by Mobil, or by my mom. It's a gasoline station, and I... I say my mom because I kept getting sick of reading "mom and pop." I thought, "Why not say it's just simply my mom?" Um... gasoline stations are not permitted accessory uses in the I Zoning District. We all know that; they're not listed as accessory uses, uh... they're expressly permitted principal uses. In fact, I'm not certain Mr. Byron is right, but, if he's right and 10 million gallons are potentially being sold there, I find it extraordinarily difficult to imagine that 10 gas stations – and, again, I'm simply listening to what has been said. I'll take him at his word. We know an awful lot of gasoline was the potential of being sold there. If that's the case, it's not accessory or subordinate to anything. It is clearly, um, a significant and a principal, lawful use. Accessory uses, um, are defined very clearly, both in your Code and in the law in general, um... phrases such as "incidental" and "subordinate" to the principal use predominate – we see those words in Zoning Ordinance all the time when they try to define a typical accessory use. They're usually subject to lesser or reduced setbacks. Accessory uses are allowed to kind of be in the back corners, like sheds and things, uh... what we frequently refer to as the "edges" or the "nooks and crannies" of a piece of property. That's where an accessory use can be. Gasoline stations are not supposed to be in the back corner next to someone else's property; they're principal permitted uses. This is a principal permitted use, um... allowing accessory uses under the Code, uh, you've got things such as lighting facilities, fences, parking and loading areas, outdoor recreation facilities like pools and tennis courts, locker rooms... those are accessory uses. Those are what we're used to seeing as accessory uses. The existence of those types of accessory uses are entirely dependent upon something else going on on the property. This gas station is independent, and I know we've heard some, uh, differing opinions on that, so we need to... to talk a little bit about that. This gas – gasoline station, um, could operate without the Costco store operation. It doesn't need to be in conjunction with one another. They don't require one another in terms of operation: hours of operation, payment in one versus payment in the other. You don't have to go from the gasoline station into the Costco store in order to pay. The Costco store doesn't have to be open in order to receive deliveries at the Costco gasoline station. But, the issue that we're sitting here talking about this right now as a Costco gasoline station, in my opinion, is fundamental and critical to the analysis. We're here talking about a gasoline filling station. Yes, it happens to be located on the property upon which there will be a Costco – and, yes, nobody's hiding the ball on this one. Initially, no question – it's proposed to be owned and operated by Costco. It could be owned and operated by Mobil; it could be owned and operated by my mother – it would still be the same gasoline station, and it's interesting that Mr. Bacon points to testimony and submissions by Tim Miller. Tim Miller did his job, uh... he was a planning consultant processing the application under SEQRA and coming forward with candid information. I don't question that he said what Mr. Bacon claims he said,

and, in fact, when I take a quick look at your I Zone – we’ll remember we’re in the industrial zone – we’re allowed to have gasoline stations. We’re allowed to have this retail shopping center, and I checked right now – and you can correct me if... if I’m wrong – you can have an office building, as well. So, let’s assume that tomorrow I tell you Costco’s going to come in. They’re going to have the store over there. They’re going to have a gasoline station over there, and they’re going to put an office building for their corporate executives over there. It’s allowed under zoning. Did my office building just become accessory to the store just because it has the Costco name on the front? I don’t think so. Zoning is about land use, not about land user. Zoning is about what’s going on on the property, not the name of the person that’s doing it. So, if I have 16 gasoline filling... filling pumps – filling dispensers, if I have 30,000 gallons of tank beneath the surface; that’s also in Tim Miller’s report that Mr. Bacon just handed to you. Same information we’ve always been telling you, but, Tim said the same thing: 30,000 gallons of fuel storage, 16 dispensers. That’s what we’re talking about. Your Code Officials reviewed that and they said, “That’s a gasoline station. It’s a principal use on this property.” There’s no question it’s a principal use – it’s not accessory to anything. Costco card, um, method of payment: interesting. Interesting. No question that that’s in Tim’s materials, and I don’t question Mr. Bacon. He’s been making this argument – I watched him make this argument in Yorktown against BJ’s. I watched him make this argument against, uh... against Costco in Yorktown. He’s been unsuccessful on both, uh... at least in that community, I’m fairly certain there’s an element of the gas cartel that’s clearly behind the opposition. Here, I’ll take him at his word – that he’s representing Mr. Hitner. Whether or not somebody has to pay for gasoline with a Costco card and whether your government can tell Costco, “Sorry, you can’t use a Costco card for payment. You have to use Amex,” or, “You have to use MasterCard,” or, “I’m sorry, you must use cash,” I think you all know the Town of Patterson and its local zoning can’t regulate business operations. So, we’re not here tonight – with all due respect to comments – to tell anyone what cards they can and cannot use to transact business in the town. Not under zoning; zoning won’t allow that. That’s the regulation of business activities. I didn’t anticipate that argument because it wasn’t in the submission, but, I can tell you, off the cuff, that the case – which I don’t know the cite – is Summit School vs. The Village of Upper Nyack, which stands for the proposition, that zoning will not allow a municipality to regulate business activities – only the use of real estate. So, I can’t give you the citation – I’m happy to share it with your counsel – but, I’m certain that I’m citing the right document. Now, it’s interesting that somehow the opponents argue that this all might be okay, ironically, if my mother was operating that gas station. That’s – that’s been testified to in open proceedings, it’s in the written submissions. If it was a mom and pop – my mom decides to operate that gas station, it’s perfectly fine. Well, I’m here to tell you that that’s not what your zoning ordinance is regulating, um... again, it’s the same doctrine of use v. user. It’s not a question of my mother versus Costco versus Mobil. It’s a gasoline station, and that’s how that land is being used. Your – your ordinance talks about how land may be used, and the land may be used for a retail center, and the land may be re – may be used for an office building, and the land may be used for a gasoline station. That’s what the zoning ordinance tells us. I’m not talking about fences – that’s accessory. I’m not talking about lighting – that’s accessory. Now, I don’t think I need to go through the criteria, but I’m going to just make sure I cite it for the benefit of the record, because your Code Officers all did that. Gas stations are expressly permitted under Section 154-38.S of the Code, provided they meet 3 specific criteria. They’re really not before you tonight, but I want to state for the record that your Director of Code Enforcement, your Town Planner, and your Planning Board all found that those requisite criteria were all satisfied, and they’re about individual customers, proximity to Route 311, um... and adequate safeguards for the environment. So, the fact that the proposed gas station meets those critical 3 criteria, the fact that it’s located in the I Zone, the fact that it is on land and meets the requisite zoning bulk requirements, the fact that I’m being told it may sell 10 million gallons

worth of gasoline. It's a principal use. It's a permitted principal use. Now, the other argument – and I don't think we heard much about it, uh, tonight... in tonight's presentation, but, we read about it, so I feel obligated to just touch it quickly – the project opponent argues that the gas station is not allowed because gas stations should not include other types of retail sales. This gasoline station sells nothing other than gasoline. It sounds like it doesn't even sell a pack of gum or oil; it sells gasoline. There's an attendant, there are filling stations. There is no other retail sale going on. Is that a little odd? Yeah. But, your Code is a little odd in that regard; your Code tells us very clearly, if you're going to have a gasoline station, you can't sell other things in conjunction with that gasoline station. I find it a little ironic that, um, one of the folks that gets up in opposition – Mr. Byron at Patterson Auto Body, which I don't know a lot about, but I did take a quick look at – that particular piece of real estate has many different uses on that piece of real estate. Whether he correctly argues they're all preexisting, nonconforming, or some are nonconforming – I think it's an excellent example of my concept. The Town of Patterson allows multiple principal uses to exist on a piece of real estate. There's nothing unlawful or un-American about having multiple principal uses. You can have an auto body shop, you can have a gasoline station. You can have a retail facility. That's allowed. Shopping centers are typical of that. You can have clothing sales in one location, you can have a supermarket in another. You might be able to have a dry cleaner and a rental facility – all multiple different structures, multiple different users, multiple different uses. They're all multiple principal uses. In terms of, um, impact, I just – I want to just address that only to say that I... I genuinely appreciate counsel's comment. I didn't know whether the Board was going to cut it off, and counsel probably was as tolerant as she could be before she couldn't take it, um, so I will simply state for the record that I am not here tonight with environmental consultants. I'm not here to make any kind of environmental submission or arguments because it's completely and totally inappropriate for... for this evenings', uh, proceedings. I think the Board knows that, but I want that in the record. This is a Type II interpretation. There is no need for a SEQRA analysis. The SEQRA analysis has already been issued. The amended site plan approval has already been issued. As I understand it, you know, some folks are already... exactly who... some folks were already challenging that. That's an issue to be resolved elsewhere. Tonight's really simple. So, in conclusion – and, uh, we're happy to answer questions and we're happy to sit patiently and listen to other folks in the public – it's a principal permitted... permitted use. I think it's obvious under your Code. I think you all have to recognize it's not Patterson Crossing that made that argument. It's not Costco that made that argument. It's your Code Enforcement Officer. It's your [Town] Planner. It's your Planning Board. So, the Town of Patterson's professionals on land use have been quite uniform and quite straightforward. I think it's a straightforward and simple issue. We have... we're sorry that your Board has gotten pulled into this, um, but, we have no control over that, as I said at the beginning. I'll conclude with: it's extremely odd for me as a project developers, uh, land use advocate to be standing here defending the Town's interpretation of its own Code because a neighbor told the Town it didn't do it correctly. But, heck, it's Wednesday night - it's my third night in a row on my feet. This is a little more interesting than the last 2. Why not? So I'm happy to answer any questions that you may have. We thank you for listening, and your patience, and everything else is in our submission. Thanks.

Chairman Olenius: Anyone else?

Ms. Groepl: Good evening. My name is Johanna Groepl. I happen to be the wife of Mr. Harry Hitner. I was out of town for a while, and, otherwise, you would find me with him together being represented by Mr. Bacon. I didn't plan on speaking tonight, so forgive me if I'm a little bit, uh, all over the place right now. However, um, by profession, I am a psychotherapist. When I treat a client, I don't only look at the client. I look at the family, I look at

his children. My title is Marriage Family Therapist, so, I have to consider to really, um... make due respect to a lot of people. Don't do harm. I think you are in a very similar position. The gentleman here, um, talked about that these are only Codes. Yes, these are only Codes, but, the Codes are also protecting the citizens. I'm a citizen since 12 years. Ever since I moved here, I've dealt with Patterson Crossing. We were lied to by the people who sold us the house, and see – and also by the real estate agent. I think it wasn't truthful or open, um... so, this has impacted my life dramatically. I have, uh, just recently, um, done a detox. The detox is something that happened, um, because I was full of metals. Where do these metals come from? Nobody could tell me. I couldn't tell them either. I grew up in Europe in a small town. My parents grew their vegetables. They didn't use artificial, uh, anything, so where did I get the metals from? Um... it is conceivable that I got the metals from being exposed to the traffic that was close by the apartments where we lived in. At the time there wasn't catalytic converters, but, I lived there, um, I want to say, um, 12, 15 years – 12 years, until we moved – and it's most likely that I got it there. It was very difficult to remove it out of my system. It cost me money, and it cost me nerves. In my profession, I also know that, uh, gasoline, uh, particles from catalytic converters are so minute that they will, uh, attach to your blood and go into your brain, and they have found in Alzheimer people that these particles are actually causes the plaques to build. The reason I know this – my mother has Alzheimer and Parkinson and I'm taking care of her. So, I want to give you a face to people who are affected by Code. If my town where I grew up in would have said, "No, these cars cannot drive here because there are people living on this road, and their life is at stake – their health is at stake – maybe that would have, um, helped me not to have to deal with this. I'm 57 now. I was 12 years when I moved. So, you can see how long this drags through one's life. Now, I'm living here and I have the potential of going through this again. The gentleman who left – the, the, auto body person from Patterson – I think he had a good point. You are representing not only Codes – you are representing also me and my livelihood. So, please, consider in your... in your decision, also, that we are people that will live up there, and that the enormous amount of gasoline and all its byproduct – I don't have to go through everything again – uh, is affecting us and you will make a difference in your decision how you decide, so thank you very much.

Chairman Olenius: Does anyone else have comment with regards to the actual application on this case? Regarding principal... *[Inaudible – chair sliding]*

Ann Fanizzi: *[Referring to the microphone]* It's a little high...

[Laughter.]

Chairman Olenius: *[Inaudible – papers shuffling]*...

Nancy Tagliafierro: *[To the Secretary]* Do you know how to adjust that?

The Secretary: You just turn it.

Ann Fanizzi: *[To the Secretary]* Can you turn it? There you go... Hi, good evening. My name is Ann Fanizzi, My address is 2505 Morgan Drive, which is right off of Fair Street. I, uh... I already have submitted, uh, my comments to the Board, but, I just want to reiterate a, um... a position on the Comprehensive Plan. It is not the first time that I have come to a Town Board or a Zoning Board and have found deficient the Comprehensive Plan. You are working under a comprehensive plan that is 15 years old, uh... a lot of things have happened. There are the mini marts and there've been now big box stores, and that comprehensive plan did

not envision gas stations with mini marts and gas stations with big box stores. It did not envision maybe [Route] 311 having a large retail until very recently, and, so, where you have a comprehensive plan that is, uh, deficient in terms of projecting the future, you have – you have a problem, and the problem is here and, unfortunately, it is up before the Zoning Board. So, it is an obsolete plan and it does not take into account all the different changes that this community has undergone, and I have been a member of the, uh, Putnam County community for almost 30 years – it will be 27 years, uh, soon. So, there have been drastic, drastic changes. Your comprehensive plan does not, in any way, deal with it, and what you'll have done over the years is that instead of having, truly, a comprehensive plan, you have sought to – and I called it a “Band-Aid” – band aid Zoning Code changes that really do nothing for the Town and nothing for the residents, and you have now this... this interpretation, which, by the way, Mr. Steinmetz, it was nice meeting you again – uh, and I've known him for a while – um, and it is a right, by the way, of a citizen to ask for an interpretation of their officials, and I really take... I really take issue with that and take umbrage with that, and I hope you will consider... consider the, um, the statements made by, uh... and the position made by Mr. Bacon and the citizens here, and my own position concerning the Comprehensive Plan that does not meet the Zoning Code requirements of this Town. Thank you.

Chairman Olenius: Mr. Bacon?

Mr. Bacon: Thank you, again, Mr. Chairman. *[Referring to the microphone]* I'll put this up... a little higher. So, I always appreciate hearing a good attorney speak and, uh, Mr. Steinmetz is right up there, and I'm... and, uh, just what I – what I expected. So, um... but, um, I need to go over a couple of things that, uh, Mr. Steinmetz brought up. Uh, first of all, you know, he said we haven't been successful in Yorktown, and I just had to say quickly about that case, in... in Yorktown. Costco, first, uh, wanted to put a Costco – a Costco right next to the Taconic, on, uh... or next to [Routes] 202 and 35. Right across the street was a Mobil station who had gone to the Town and asked for a 15,000 sq. ft. expansion. The Town said, “No, we're not going to let you do that.” So, Costco comes in with a gas station with 152,000 sq. ft., and we thought that was a, uh, big problem and we went to court on that, and, um... we've reached a settlement in that case where there's not going to be a Costco on that site, and, um, the judge has yet to sign that stipulation, but all parties have agreed to that settlement, and, uh, we've stipulated to a discontinuance of the action based on that settlement, so... So, we – we are very... well, the people I represent are very happy with that result, and the other thing that it... it does, is it removes the economic justification that the town used to rezone BJ's – to allow, uh, BJ's a big fueling facility. So, I think that, uh, you know, we have to – where we have to... before the chips are excited, we have to wait to see what the court's going to say on that, so... but, uh, we're... we're... we're, uh... very, um, happy with the results so far, um... now, in terms of deference, uh... uh, I think that um, you know, we could – lawyers argue about this all the time, about what standard of deference is, and, when we go to court, how much a deference a court should give to, uh, what the Board – what the particular Board is. A lot of that has to do with what the Board is looking at and how they decide it. If you're – if you go before a Planning Board... if you're fighting a Planning Board's decision on SEQRA, yes – that... that Board is going to get a lot of deference because they've had to consider all of the different factors, and, um... Just – and made judgements as to impacts of various.... Of various things, whether stormwater or traffic, and I agree with Mr. Steinmetz. That's not before this Board. This Board has a different charge to it. It's looking at its... its Code and making a... an, uh, legal interpretation about what... what... what the definition of gas station means. Whether or not this project fits that definition. Whether or not this project presents a pro – uh, a... a proposal or use that's unprecedented in the Town. So, in that kind – in that sort of case, there's really not a lot of

deference that the court shows, because the court can make that legal determination, as well. They can look at your Code and make a... make a, uh, legal determination. So, from that... from that standpoint, you know, you... you're... you're, uh, charge in what you have to do is... just like the court does. You're going to look at your Code and make a determination as what it means, um... so, um, like I said, I would be glad to, uh, brief that, but, I don't think we really need to, I mean, the... I think I... I put it right in my notice of appeal. I... I wrote down exactly what... I mean, uh, on page 3 of my notice of appeal, I say, "where the statute is clear and unambiguous on its face, the legislation must be interpreted as it exists. Absent ambiguity, the courts may not resort to rules of construction to broaden the scope and the application of the statute." Now, this... this, uh, body, has the same sort of situation. You can't expand what the Code says, and... I want to go back to the... The definition of a gas station, because I think that helps make things clear. So... the Code's – the Code's definition of gas station is, "an area of land" – you know, it's not... it's not limited to a tax lot, it's an area of land – "including buildings and other structures thereon that's used to dispense motor vehicle fuels, oils, and limited accessories, automotive products at retail." That's why Mr. Byron's property is considered a gas station. Now, you don't separate out his pumps from his convenience store. It's a nonconforming use now because the way that the Code has been adopted is it says an automotive gas station shall not include other types of retail sales, such as a convenience store or automotive parts store. Now, I don't know why it says that because many gas stations have mini marts and that's a typical way of developing gasoline stations these days, but, that's why your Code says, So, if Mr. Byron wanted to come in and change some of his auto body, uh, retail space to a, uh, convenience store, you'd say, "You can't do it. You'd need a – you'd need a variance because our Code says there can't be any retail associated with your gasoline station" You're not going to tell him, "Okay, we're going to separate your principal use out for your pump stations, and now, look at – look at it separately." It doesn't happen. You don't do that in... in this Board. You've never done that, as far as I know, and I've spoken to Mr. Byron about this – this is... and he went for you, uh, before you for about 6 years to try to settle out all his, uh... his, uh... his situation. So, if you... if you – if he couldn't get his... his, uh... uh, retail space changed to... to include convenience store goods, you shouldn't be allowing 152,000 sq. ft. of Costco retail space to go with their gas station. It just doesn't make sense. But... and, you know, Mr. Steinmetz is really good about going into, uh, theoretical and hypothetical instances, but, uh, again, I go back to what Costco said itself. It said that the gasoline station is part of the retail sales of the larger store, and you can't separate that out. It's... you can't divide... divide that out. It's like the old song – old

Sinatra song – love and marriage go together like a horse and carriage. You can't separate them out. That's just... that's the way that's... that – that system is. It's a unique sales model, as... as, uh, Mr. Miller said. So, again, that's really the, uh... the crux of the argument that you have to decide. Whether or not your Code allows for a big box store to sell gasoline, and that's really what... that what... what the end game query is. So, I thank you very much.

Chairman Olenius: Thank you.

Mr. Steinmetz: Mr. Chairman, may I?

Chairman Olenius: Yes, please.

Mr. Steinmetz: Just very briefly. I just want to, um... to the... I was surprised that, uh, he chose to read the definition of gas stations. He's got every right to do it. We're really here to talk about accessory vs. principal use, so, I feel like it – maybe the... the appropriate ending is, um, to... to really focus on accessory use. The definition in your Town Code – 154-4B defines accessory use as, quote: "a use that is located on the same lot as the principal use and is

incidental to and subordinate in area, extent, and purpose to the principal use.” I think if you’ve listened to everything that we’ve heard tonight, I think it’s pretty clear that this gasoline station – were it to be built and operating – is not subordinate and incidental, certainly, in its purpose, extent... yeah, the area? It’s smaller than the Costco store. It’s a – it’s smaller than the rest of the shopping center, too. It’s smaller than the Town of, uh, Patterson. But, if it’s got 16 pumps and it’s pumping 10 million gallons, um... the extent, the operation of purpose, um, is certainly not deficient or substandard or subordinate in any way, uh... and I... I appreciate, um... I’m glad he didn’t sing – I promise I won’t sing – but, I... but, I would... would quote, um, Sinatra as saying I did it my way, um... you know, Costco’s allowed to do this kind of thing. They’re... anybody is allowed to have multiple principal uses on their property and it’s great to try to come up with an argument that says, “well, my God, it’s... it’s somehow economically connected to something else.” Again, we’re getting into... it’s a... it’s a very clever – it’s a humble, but very clever – attempt to try to get you confused and to, really, what you’re here doing. You’re here focusing on land and land use. You’re not supposed to be getting into economic justifications and bookkeeping questions and the name on the, uh, marquee. That starts to get into regulating business, and that’s not what Zoning’s about, so... you’ve got a gasoline station over there, a store over there, and, as I said earlier, tomorrow maybe somebody comes in and puts in a corporate office – it doesn’t change the incidental/subordinate issue. If anything, it exemplifies the fact that you can have multiple principal uses on one site, even if they have the same name, so... just wanted to make that clear so that we remain focused on what your Code Officials focused on: Is it principal? Is it accessory? It’s principal. Are you entitled to deference? I’m a little surprised that the project opponent who’s asking you to overturn what they did is actually saying to you, “I don’t think you’re entitled to deference.” You’re entitled to tremendous deference. So are your Code Officials. Thanks.

Chairman Olenius: Thank you.

Mr. Bacon: Can I just say something about that? Since... [*Inaudible – speaker in audience*] so, I’m glad the, uh... that Mr. Steinmetz did read the, uh, accessory use definition, and I wanted to remind the Board how this project all came about. Costco already had its approval for the 152,000 sq. ft. box. It was there. It came before the Planning Board in April or May – it got its approval. Then, it returned and said, “Oh, by the way, we want to add something to our business. We want to add, uh... we want to bring this in as part of our use. We want to sell gasoline.” So... the... that is why it’s, uh – the gasoline station didn’t come first. It was a – it was an accessory after the... the project had already been approved, so... again, that’s why – that’s why... first of all, again, I go back to the... the simple fact that a big box store selling gasoline is not provided for in the Code, and if you had to put it in a box, it’s an accessory use, but, that’s not permitted. Thanks very much.

Chairman Olenius: Thank you... It’s a lot to swallow.

Nancy Tagliafierro: It is.

Chairman Olenius: But, the real reason we’re here is to decide on what... what’s appropriate for the use of the land as determined, or as written, by the Town Code.

Nancy Tagliafierro: Whether it’s a principal use or an accessory use.

Board Member Bodor: Which is – which are, to my way of thinking, defined well in our Town Code.

Nancy Tagliaferro: Pretty clearly.

Chairman Olenius: Is it also my understanding that, with the amended application to the Planning Board, by asking to permit the gas station, they eliminated another structure.

Nancy Tagliaferro: A 5,000 sq. ft. building and 30 parking spaces. Yes.

Chairman Olenius: Which would have been another principal use for the project.

Nancy Tagliaferro: Yes.

Chairman Olenius: This is replacing one principal use with another.

Nancy Tagliaferro: Correct.

Chairman Olenius: I'm trying to put everything else out of my head and focus on the task at hand right here.

Board Member Bodor: Well, we are responsible for supporting the Code, and part of that is interpretation of what's in there, and that's what we're here tonight to do – is to interpret what is a principal use as opposed to an accessory use to a piece of property that is under discussion.

Nancy Tagliaferro: And a particular use...

Board Member Bodor: A decision – go ahead.

Nancy Tagliaferro: And a particular use...

Board Member Bodor: Yes.

Nancy Tagliaferro: That's under discussion.

Board Member Bodor: We're talking about the use as opposed to the user.

Nancy Tagliaferro: Yes.

Board Member Bodor: That's a big thing.

Nancy Tagliaferro: That's correct.

Chairman Olenius: And I am correct, after reading a lot of the submission here, is that the fueling station is completely independent of the store in that you pay at the fueling station.

Nancy Tagliaferro: That was, uh, part of the testimony at the Planning Board hearing, yes... and I believe that Mr. Steinmetz also confirmed that in his presentation this evening.

Board Member Fox: And I think that if we are talking again about principal versus accessory, we should clearly look at those 2 definitions, and, obviously, I think, um... principal is a little bit more straightforward in definition, whereas use you really need to – uh, accessory –

you really need to, um, acknowledge the fact that there's the criteria of both being both incidental to, subordinate in area, extent, and purpose to the principal use. I think that those criteria are important to consider as to whether or not this portion... as whether it's accessory or principal. And if... if there's a portion that meets those 3, 4 criteria.

Chairman Olenius: Does anyone else have any further comments? I'm hearing none. Then I make a motion to close the public hearing.

Board Member Bodor: I'll second.

Chairman Olenius: All in favor?

Motion passed by a vote of 5 – 0.

Chairman Olenius: Okay.

Chairman Olenius read the following resolution:

**IN THE MATTER OF THE APPLICATION OF
*James Bacon, Case #15-16***

For an Interpretation on an Appeal of a Determination by the Code Enforcement Officer

WHEREAS, *Patterson Crossing Realty Company, LLC* is the owner of real property located at the intersection of Route 311 and Interstate 84 (I Zoning District), also identified as **Tax Map Parcel #22.-3-1, 33.-2-23, 34.-2-3, and 22.84-2-13** (the "Site"), and

WHEREAS, *James Bacon* has made an application to the Patterson Zoning Board of Appeals ***on behalf of Harry Hitner*** for an interpretation on an appeal of a determination of the Codes Enforcement Officer pertaining to **§154-4B** of the Patterson Town Code: Definitions, and

WHEREAS, on July 13, 2016, the Codes Enforcement Officer issued a determination that a proposed Costco gas station as depicted on the Patterson Crossing amended site plan would constitute an independent principal use, as defined under Town Code §154-4B, which principal use may coexist with other principal uses on the Site; and

WHEREAS, the Applicant is seeking an interpretation that the proposed 16-dispenser Costco gas station constitutes an accessory use as defined under the Town Code §154-4B, and

WHEREAS, §154-4B of the Patterson Town Code; Definitions, defines a gasoline station as "an area of land, including buildings and other structures thereon, that is used to dispense motor vehicle fuels, oils and limited accessory automotive products at retail. An automotive gas station shall not include other types of retail sales, such as a convenience store or automotive parts store, or any type of repair service, or automotive body repair work and painting as an accessory use," and

WHEREAS, §154-4B of the Patterson Town Code; Definitions, defines a principal use as "the main purpose for which land is used or a building is designed or used or for which the building may be occupied or maintained," and

WHEREAS, §154-4B of the Patterson Town Code; Definitions, defines an accessory use as “a use that is located on the same lot as the principal use and is incidental to and subordinate in area, extent, and purpose to the principal use,” and

WHEREAS, §154-4B of the Patterson Town Code; Definitions, defines retail as a building or any portion of a building, or any use thereof, conducted for the benefit of consumers at which the sale or rental of dry goods, groceries, commodities, or merchandise is available to consumers including, but not limited to, drug stores, super markets, delicatessens, department stores, home furnishing stores, clothing stores, pet supply shops, video rental stores, automotive parts and accessories (excluding vehicle service and installation) computers and electronics; and

WHEREAS, an application by Patterson Crossing Realty Company LLC for an Amended Site Plan was approved on May 5, 2016, and

WHEREAS, Patterson Crossing Realty Company, LLC subsequently applied for another Amended Site Plan at the request of Costco Wholesale Club to replace a previously approved 5,000 sq. ft. retail building and 30 parking spaces on the site with a Costco gas station, and

WHEREAS, on July 7, 2016, the Town Planner issued a memorandum to the Planning Board regarding the proposed amendment to the approved site plan, which specifically advised the Planning Board that the proposed gasoline station complies with the Town Code because:

- (i) a gas dispensing facility is permitted as of right in the I Zoning District pursuant to Town Code §154-38; and
- (ii) the gasoline station complies with Town Code §38.S because
 - a. the gasoline station will service individual customers and not be used for bulk distribution;
 - b. the gasoline station would have adequate methods of protection from petroleum discharge; and
 - c. the driveway of proposed gasoline station would be located 800 feet from the I-84 interchange; and

WHEREAS, the Planning Board held a public hearing on the application at their July 7, 2016 meeting, during which the Applicant suggested that the proposed gas station would constitute a subordinate use to the Costco Wholesale Club, therefore making it an accessory use that would not be permitted on the Site pursuant to Town Code, and

WHEREAS, on July 13, 2016, the Town Planner and the Director of Codes Enforcement issued a joint memorandum to the Planning Board regarding the proposed amendment to the approved site plan, which stated that the proposed gasoline station, in fact, constitutes a principal use on the Site, which may coexist with other principal uses, and is, therefore, a permitted use on the Site, and

WHEREAS, the application for an Amended Site Plan was subsequently approved by the Town of Patterson Planning Board on July 14, 2016 and the Planning Board / Patterson Crossing Realty, LLC demonstrated that the gasoline station will be servicing individual customers and is a permitted use, and

WHEREAS, the interpretation of an existing zoning regulation constitutes a Type II action under 6 NYCRR Part 617, and therefore, requires no further review under the State Environmental Quality Review Act (SEQRA), and

WHEREAS, a public hearing was held on the Application at the Patterson Town Hall, 1142 Route 311, Patterson, New York on *September 21, 2016* to consider the application; and

WHEREAS, the question presented is one of interpretation of the Town Code and whether the principal use of a retail establishment such as Costco Wholesale Club in the I District, as a matter of custom, carries with it a gasoline station as an incidental and subordinate use, or whether the proposed gas station is an independent, principal use; and

WHEREAS, when used to define an accessory use, whether the uses are under a single ownership is not determinative, incidental use must also incorporate the concept of reasonable relationship with the primary use on a site; and therefore it is not enough that the use be subordinate; it must also be an attendant use or a use associated with the principal use; and

WHEREAS, Director of Codes Enforcement noted in his July 13, 2016 memorandum that the retail store is not required to be open for the gasoline station operation to receive deliveries or dispense gasoline; the retail store and the gasoline station will have different hours of operation and payment for gas is made at the gasoline station and not in the retail store; and

WHEREAS the Town of Patterson has consistently permitted multiple principal uses on a single parcel so long as each principal use meets all applicable zoning criteria, such as Patterson Commons and Patterson Auto Body; and

WHEREAS, in addition to the Petition submitted by James Bacon, Esq., the Zoning Board of Appeals is in receipt of and has taken into consideration a letter from Zarin and Steinmetz dated September 13, 2016, and an undated letter from Ann Fanizzi received September 21, 2016;

NOW, THEREFORE BE IT RESOLVED, The Patterson Zoning Board of Appeals has given careful consideration to the facts presented in the application and at the public hearing and finds that the proposed Costco gasoline station *is* a permitted principal use on the Site and *is* in conformity with §154-4B of the Patterson Town Code, because:

1. the proposed gas station is on an area of land, as described in the Code, used to dispense vehicle fuels;
2. the proposed station will have different hours of operation than the primary retail store, and must be paid for at the pumps, so it is not incidental or subordinate to the retail store itself; and
3. the station could, in fact, be sold off and rebranded to another party at any given time.

Board Member Bodor: I'll second that.

Board Member Bodor	-	Yes
Board Member Burdick	-	Yes
Board Member Carinha	-	Yes
Board Member Fox	-	Yes
Chairman Olenius	-	Yes

Motion passed by a vote of 5 – 0.

Chairman Olenius: Thank you all for your time tonight and testimony tonight.

Mr. Steinmetz: You, as well.

Mr. Bacon: Thank you, Mr. Chairman and Members of the Board. Uh, Nancy, do you know when the resolution might be available?

Nancy Tagliafierro: Um... *[To the Secretary]* When will the resolution be available?

The Secretary: Um... it should be filed tomorrow.

Nancy Tagliafierro: Tomorrow. Okay.

Mr. Steinmetz: Goodnight.

Chairman Olenius: Goodnight.

Board Member Carinha: Goodnight.

Board Member Bodor: Goodnight.

Board Member Carinha: *[To Chairman Olenius]* Want to take a breath?

[Laughter.]

Supervisor Williams: *[In the audience]* Think about it, but, you can do what you want.... How are you? You can let her go...

[Inaudible chatter in audience.]

Nancy Tagliafierro: *[Inaudible – turned away from microphone]* ... *[To the Secretary]* Just talk about the minutes.

5. Other Business

A. Minutes

The Secretary: Yes.

Chairman Olenius: The minutes, uh... I make a motion to accept the minutes from August 16, [2016], as presented.

Board Member Fox: Second.

Chairman Olenius: All in favor?

Motion passed by a vote of 5 – 0.

Chairman Olenius: We have no site walks...

Board Member Bodor: That's good.

Chairman Olenius: Any other business?

Nancy Tagliaferro: Um, I just want to – just for the record – ask the Board, because I sort of jumped in, um... did any of you feel intimidated by Rich Williams presence here tonight as you were making your deliberations?

Board Member Burdick: Absolutely not.

Board Member Carinha: No.

Board Member Bodor: No.

Chairman Olenius: I did not.

Board Member Fox: No.

Nancy Tagliaferro: Can you – can you take a roll call vote?

Chairman Olenius: I honestly didn't even see him, but...

Nancy Tagliaferro: Okay.

The Secretary: Do you want me to...?

Nancy Tagliaferro: I mean, yeah, I mean... Mr. Carinha?

Board Member Carinha: Here...

Nancy Tagliaferro: Did you...?

Board Member Carinha: And no, I was not intimidated.

Nancy Tagliaferro: No.

Board Member Fox: No, I was not.

Nancy Tagliaferro: Board Member Fox? Chairman?

Chairman Olenius: No, I was not intimidated.

Nancy Tagliaferro: Board Member Bodor?

Board Member Bodor: Absolutely not.

Nancy Tagliaferro: Board Member Burdick?

Board Member Burdick: Absolutely not.

Nancy Tagliafierro: Okay. Thank you.

Board Member Fox: Okay?

Chairman Olenius: Are we good now?

Nancy Tagliafierro: Yes.

Board Member Carinha: You have to conclude the meeting.

Chairman Olenius: Okay, are you making a motion to adjourn?

Board Member Carinha: Oh, yeah, yeah, yeah, yeah! I thought you just....

[Laughter.]

Board Member Carinha: Sorry.

Chairman Olenius: It's okay. I make a motion to adjourn the meeting.

Board Member Burdick: Second.

Chairman Olenius: All in favor?

Motion passed by a vote of 5 – 0.

Meeting adjourned at 8:58 PM.