

August 25, 2021

James Bacon, Esq.  
PO Box 575  
New Paltz, NY 12561

**RE: Gas Land - 5200 Route 9W, Planning Board Project 19-16  
CHA Project No. 70801**

Dear Mr. Bacon:

Per your request, CHA Consulting, Inc. (CHA) has conducted an independent review of additional material submitted to the Town of Newburgh Zoning Board of Appeals (ZBA) related to a commercial development proposed by Gas Land Petroleum at 5200 Route 9W. We are providing this letter summarizing the scope and findings of our additional review.

#### **Background**

CHA completed an initial review of the subject application and summarized our findings in a letter to you dated May 26, 2021. Our understanding is that you provided that letter to the Town of Newburgh ZBA, and that they subsequently issued a SEQR Negative Declaration and granted all of the relief sought by the applicant. Subsequent to that action by the ZBA, we understand the applicant resubmitted an amended application which the ZBA intends to consider at a "re-hearing" on August 26, 2021.

#### **Documents Reviewed/Comparison to April 8, 2021 ZBA Application Package**

Below is a listing of the materials in the applicant's resubmittal referenced above, along with a summary of revisions made:

- Application form including project description, description of area variances sought, references to local zoning law, and analysis of the five criteria for issuance of an area variance. The resubmitted application form does not bear a revision date (it is still dated April 8, 2021). However, there are some revisions filtered into the form. Notably missing from the resubmission package is an affidavit of posting of the Notice of Public Hearing, which raises the question of whether public notice was made.
- Addendum to application expanding on the five criteria analysis. Minor edits have been made to the summary of requested variances. No changes were made to the area variance criteria narrative.
- Site photographs - unchanged.
- Correspondence from the applicant's attorney - unchanged.
- Property deed - unchanged.

- Full Environmental Assessment Form (FEAF), with expanded narrative report bearing the revision date of July 27, 2021. The Expanded EAF includes the following sections:
  - 1.0 Project Description – unchanged.
  - 2.0 Land use, zoning and public policy – language added to section 2.2 dealing with impacts related to zoning and land use.
  - 3.0 Police, fire & emergency services – unchanged.
  - 4.0 Soils, water resources & floodplain – language added to section 4.2 dealing with water resources.
  - 5.1 Water/wastewater – minor change to water usage calculation related to decrease in # of bedrooms in the apartment from 2 to 1.
  - 5.2 Stormwater – unchanged.
  - 6.1 Traffic – unchanged.
  - 6.2 Parking – unchanged.
  - 7.1 Noise – unchanged.
  - 7.2 Lighting - unchanged.
  - 8.0 Solid waste - unchanged.
  - 9.0 T&E – language has been added clarifying the efforts made to address the potential for the existence of threatened and endangered species.
  - 10.0 Cultural resources - unchanged.

### Review Comments

With the exception of Review Comment #14 which was addressed by the clarifying language added to Section 9.0 of the Expanded FEAF, the resubmission does not respond to the comments raised in my May 26, 2021 letter. Comments 1-13 of my previous letter stand. They are repeated below:

1. The project is located within 1,000 feet of an existing Stewart's Shops convenience store with gasoline dispensing. As also noted in the Town Designated Engineer's (MHE) comment letter dated 3/12/2021, the proposed use for this site is inconsistent with Section 185-28g of Town Code which states "in no instance shall a motor vehicle service station or any other establishment dispensing gasoline be permitted within 1,000-feet in any direction from a lot on which there is an existing motor vehicle service station or other establishment dispensing gasoline." This non-conformity is an issue of use, not area. The proposed use is not permitted on the project site. The applicant has submitted a variance application; however, it does not address the use non-conformity at all. The applicant has entered "Not Applicable" to all questions pertaining to a use variance on the application form. The applicant should be required to submit a use variance application.
2. It appears that the previous/existing use on this site includes the dispensing of diesel fuel, but not gasoline. Therefore, the GasLand application proposes a new use on this site. The applicant's area variance application makes reference to this as a "slightly modified use", which is inaccurate. While there may be similarities between diesel fuel and gasoline in that they are both fuel used by motor vehicles, the actual operation of a gasoline dispensing facility is significantly different from that of a diesel fuel-only dispensing facility. These differences include but are not limited

to the types and intensity of customer traffic, trip generation and customer turnover. The Town Code is specific in the requirement that gasoline dispensing facilities be separated by at least 1,000 feet. The applicant's proposal does not address the impacts of this new use at all, and instead inappropriately deals with it as a pre-existing non-conformity.

3. On the matter of area variances, the variance application focuses on the matter of relief from the required separation between uses. It does not sufficiently present compelling, specific arguments on each of the required criteria for granting an area variance for the required area variances identified in MHE's 3/12/2021 comment letter, which include: a) side yard setback for accessory building, b) maximum percentage in yard area, and c) accessory building projecting into front yard beyond main building. The applicant repeatedly proposes as justification on numerous criteria that "the requested variance is not substantial as it is less than 50%" without any additional analysis, and seemingly implies that the Zoning Board of Appeals has the authority to grant relief of up to 50% of an established threshold without any additional consideration of impacts.
4. The trip generation assessment presented in the FEAF only considered the trip generation of the site in the context of the 12 general-use fuel positions rather than the proposed 16 fuel stations (including the 4 diesel fueling positions). The trip generation also ignores other associated factors provided by ITE for estimating the site's trip generation potential. For example, the ITE data for this land use correlated to the convenience store building size as well as multi-variable regression analysis that considers both the store and fueling services indicates that the project can be expected to generate 40%-50% more vehicle trips during the AM and PM peak hours of adjacent street than is reported in the FEAF.
5. The Town Engineer (MHE) recommends that a TIS be conducted for the project and notes the requirement for NYSDOT review and permitting of the driveway access design. This traffic study should include analysis of the impact of the increased traffic on existing commercial site accesses in the area.
6. The site plan shows a reduction of the number and width of curb cuts along the frontage to a single access. The consolidation of curb cuts is consistent with NYSDOT Access Management standards; however, the proposed access design produces conflicting on-site vehicle interactions that can increase safety risk. This should be addressed in both the TIS and on a revised site plan.
7. The site plan provided with the application is conceptual in nature, and does not include information about grading, drainage, stormwater management, subsurface wastewater disposal and site lighting that will be important and necessary to making a Determination of Significance under SEQR for this project.
8. The site plan does not show the locations of the existing wastewater subsurface disposal system (SDS) to remain or the new SDS proposed for the new building. The locations and extents of

these facilities, including area for expansion must be determined in order to finalize the site layout. The final layout may change the area variances that are currently being sought.

9. Soil percolation test results and confirmation of satisfactory performance of the existing SDS to remain are critical factors in determining the site layout and should be considered as part of SEQR and the variance application.
10. The applicant should also provide a characterization of existing and proposed sanitary wastewater, including any existing/proposed floor drains associated with the towing operation and/or vehicle maintenance. Demonstration by the applicant that adequate on-site treatment can be provided is an essential component of the SEQR review.
11. There is a municipal water line with hydrants along Old Post Road, but no access to the site from this side. Fire access to the site would be from Route 9W, where there does not appear to be a nearby hydrant. The applicant proposes a 2-inch water service from old Post Road. We would recommend a larger service with a hydrant extended to Route 9W in order to be consistent with applicant's statement in Section 3.0 of the Expanded FEAF regarding adequate accessibility for fire protection.
12. The concept plan is unclear with respect to whether all the existing structures to remain will be connected to municipal water, and whether any of the existing wells will remain.
13. The construction of the project will physically disturb more than 1 acre, and therefore coverage under the New York State Pollutant Discharge Elimination System (SPDES) General Permit for Construction Activities (GP-0-20-001) will be required. The applicant should submit the required Storm Water Pollution Prevention Plan (SWPPP) for consideration as part of the SEQR review.

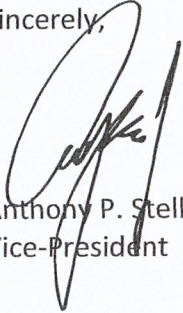
Additionally, it is noted that the applicant has provided in the area variance addendum a tabular summary of the area variances it requests, indicating that the new gasoline filling station is proposed to be 900 feet from the existing Stewart's and the new motor vehicle service station is proposed to be 950 feet from the Stewart's. The code states "in no instance shall a motor vehicle service station or any other establishment dispensing gasoline be permitted within 1,000-feet in any direction from a lot on which there is an existing motor vehicle service station or other establishment dispensing gasoline." With respect to the separation distance requirement, the code distinctly uses the terms "establishment" and "lot". It does not say "fueling pumps" or "maintenance bays". This indicates that the 1,000-foot separation requirement applies to the establishment as a whole, and it should be measured between the nearest points on the lot line of each establishment. This distinction suggests that the applicant has understated the relief sought, and that the relief should be the same for either variance. The applicant should submit a scaled map showing the distances between the establishments.

Finally, the applicant concludes in its justification under area variance criterion #1 that no undesirable change or detrimental effect to nearby properties will be created by granting the area variance. This is simply untrue. Stewart's Shops at 5223 West Street is a nearby property. The code-protected 1,000-

foot separation requirement is a significant existing benefit enjoyed by Stewart's in the operation of their business. The applicant's attempt to diminish this benefit represents a potential significant detriment and undesirable change to the Stewart's property. Stewart's perspective as a potentially damaged nearby property owner must be heavily weighed by the ZBA before any relief is considered.

If you have any questions, please contact me at 518-453-3927 or [tstellato@chacompanies.com](mailto:tstellato@chacompanies.com).

Sincerely,



Anthony P. Stellato, Jr., PE  
Vice-President

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