

A meeting of the Chili Zoning Board of Appeals was held on January 27, 2004 at the Chili Town Hall, 3333 Chili Avenue, Rochester, New York 14624 at 7:00 p.m. The meeting was called to order by Chairperson Beverly Griebel.

PRESENT: Dan Melville, Richard Perry, Michael Martin, Peter Widener, Dennis Schulmerich and Chairperson Beverly Griebel.

ALSO PRESENT: Daniel Kress, Director of Planning, Zoning & Development;
Keith O'Toole, Assistant Counsel for the Town.

Chairperson Beverly Griebel declared this to be a legally constituted meeting of the Chili Zoning Board of Appeals. She explained the meeting's procedures and introduced the Board and front table. She announced the fire safety exits. The Pledge of Allegiance was cited.

The Board discussed notification signs.

Dennis Schulmerich made a motion to table Application 5 for lack of proper notification sign posting. Peter Widener seconded the motion. The Board was all in favor of the motion to table.

Dennis Schulmerich made a motion to table Application 6 for lack of proper notification sign posting. Peter Widener seconded the motion. The Board was all in favor of the motion to table.

1. Application of Brenda Covill, owner; 2 Cornflower Drive, North Chili, New York 14514 for conditional use permit to allow an office in home at property located at 2 Cornflower Drive in R.M. zone.

Brenda Covill was present to represent the application.

Ms. Covill explained her application to the Board. She mentioned there are two non-family employees that work on premises.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

JENNY COVILL, 4433 Buffalo Road
Ms. Covill spoke in favor of the application.

Beverly Griebel made a motion to declare the Board lead agency as far as SEQR, made a determination of no significant environmental impact, and Dennis Schulmerich seconded the motion. All Board members were in favor of the motion.

Michael Martin made a motion to approve the application with the following conditions, and Richard Perry seconded the motion. All Board members were in favor of the motion.

DECISION: Unanimously approved by a vote of 6 yes with the following conditions:

1. Granted for a period of one year.
2. No on-premises advertising.
3. No on-street parking pertaining to the business.

4. Hours of operation as per application.
5. One outside employee.

The following finding of fact was cited:

1. Customary Home Occupation.

The stenographic record began at 7:18 p.m.

2. Application of Anthony Comunale, owner; 51 King Road, Churchville, New York 14428 for variance to allow existing 10' x 24' fabric storage building to be 6' from existing garage (8' req.) at property located at 51 King Road in L.I. zone.

BEVERLY GRIEBEL: This went to Monroe County Planning and came back as a local matter. This has been before the Board before. It has been tabled because of the Public Hearing notice sign was not posted properly. This went to the Planning Board and they sent you here because of the placement of that -- what do you call it, canvas tent kind of thing?

MR. COMUNALE: Right.

BEVERLY GRIEBEL: Okay. This is a temporary storage type of thing; is that correct?

MR. COMUNALE: Well, yes. It -- you know, it's -- it is the type of construction. It is not like a permanent.

BEVERLY GRIEBEL: Right. So you're coming here because you didn't want to move it?

MR. COMUNALE: Well, if I didn't -- no, if I didn't have to. If -- if -- didn't know, you know, about the requirement, the -- if I put it in the -- I put it in the spot I did because it was the spot where it would be most useful to me, plus it was kind -- it was just wasted space there. Put it out of the way, and then there is a -- there is a -- you know, pretty good sized oak tree to the other side of it, so that is kind of why I sat it where I did, and I didn't want to get it any closer to the tree than I had to.

BEVERLY GRIEBEL: You didn't get approval for it before you put it up. This was all done after you had put it up; is that right?

MR. COMUNALE: Right.

BEVERLY GRIEBEL: Well, I know that you were before this Board when that large temporary canvas tent thing was put up, vinyl or whatever it is, and you had done that after the fact and had to come in here for approval, after it had already been done, if I recollect correctly. And -- so you put this one up without approval first; is that right?

MR. COMUNALE: Uh-huh.

PETER WIDENER: I'm looking at the map and I don't understand where this building is.

BEVERLY GRIEBEL: I drove back there.

DENNIS SCHULMERICH: This is already up?

MR. COMUNALE: Yes.

DAN MELVILLE: It has been up.

DENNIS SCHULMERICH: So we're applying for a variance for a building that is already in place?

BEVERLY GRIEBEL: A shelter or cover -- or temporary type shelter.

DAN MELVILLE: This has been tabled twice.

DENNIS SCHULMERICH: These are not as permanent as some of the homes that are put up.

BEVERLY GRIEBEL: Right. This is easier to move.

DENNIS SCHULMERICH: Or take down completely.

BEVERLY GRIEBEL: Why did you not put it on the other side of the tree? As I remember, when I looked at it the first time, there was a vacant space there.

MR. COMUNALE: Well -- that was where I wanted to have it.

BEVERLY GRIEBEL: But where you have it is not an allowed spot. Well, let's see what the rest of the Board thinks.

If anyone wants to go up and look at the diagram on the board, just feel free to go check it out.

PETER WIDENER: What we're in question about is, he is 6 foot from the building and an 8-foot requirement. I have no question on that.

MICHAEL MARTIN: What is the purpose of the structure?

MR. COMUNALE: I just use it to -- I keep my pickup truck in there with the snowplow that I use for, you know, plowing the driveway and the parking lot there.

MICHAEL MARTIN: So the position where it is now is important to you for access to your driveway to get in and out?

MR. COMUNALE: Well, like I say, it -- it is -- you know, that was a logical spot to put it because it is just a wasted space, and it keeps it close, you know -- it is fairly handy for me to -- to get in and out of there.

RICHARD PERRY: There is not an extra 2 feet between the tree and where it currently stands to move it the 2 feet, since this is a portable structure?

MR. COMUNALE: Well, yes, there probably is, but then it gets closer under the tree, and there is a concern there if, you know, like on a night like today or during the winter when we get snow, in the right situation, if the snow were to unload off the tree, you know, it is going to fall right on that.

RICHARD PERRY: It is currently not under the tree at all? Because as I recall, I think the tree branches out that way.

DENNIS SCHULMERICH: It's a big tree.

RICHARD PERRY: I don't see where it could be a problem. I guess the problem I'm having is that the first time you came for the other structure, that was after the fact, and this time, you are coming in, you know, pleading ignorance for a second time, which I find a little bit hard to accept.

MR. COMUNALE: I don't remember pleading ignorance to anything.

DENNIS SCHULMERICH: So you just chose to violate the code then; is that right? If you aren't pleading ignorance, the interpretation is you chose to violate the code.

MR. COMUNALE: If you're referring to the 6 feet and the 8 feet, that I didn't know about.

BEVERLY GRIEBEL: But putting it up without approval I think is what he is getting at.

MR. COMUNALE: Well, you asked me that, and I told you that already. I answered that question, I think.

RICHARD PERRY: Okay. But that tells me that you didn't give the zoning laws much regard the second time. After having gone through this once, it would seem that you might think of asking the question whether or not this is in the proper position and is it within code. I have no other questions.

DAN MELVILLE: This is kind of a temporary structure. Is this going to be up permanently? Will you take it down in the summer?

MR. COMUNALE: No, I wouldn't take it down in the summer. You know, it only has a certain life span.

DAN MELVILLE: What is the life span of something like that?

MR. COMUNALE: I don't know. I would say probably max about ten years.

DAN MELVILLE: Well, I guess that's a pretty good life span. You say you use it to park the pickup truck in?

MR. COMUNALE: Correct.

DAN MELVILLE: Do you store anything else in there?

MR. COMUNALE: No. It is big enough to fit that in there with the snowplow. I don't use that -- only when I need to, so that keeps it out of the elements.

DAN MELVILLE: Do you have to travel across the grass to get the truck on the driveway?

MR. COMUNALE: No.

DAN MELVILLE: Is there gravel there?

MR. COMUNALE: Yes.

BEVERLY GRIEBEL: What is the material of the side? This is four poles in the ground or six poles or something like that? Then roof supports, and it has this material.

MR. COMUNALE: What it is, is there -- there -- there are -- there is a tube framework that goes in the ground. In the ground, around and back down.

BEVERLY GRIEBEL: Two holes with an arch over?

MR. COMUNALE: Yes. They're pieces that bolt together. And there is probably -- I think there is six on each side, and then there is a piece -- a piece of tubing that runs down the ridge and a couple pieces down the side that holds it together. That is all there is to it.

BEVERLY GRIEBEL: What material is the outside made from?

MR. COMUNALE: It's -- I mean I -- they don't really have a name for it. It is like a -- like a Tyvek material with a vinyl coating on the outside of it. It isn't anything that you can buy.

BEVERLY GRIEBEL: How do those poles go in the ground?

MR. COMUNALE: There is -- there is, you know, anchors that are holding them in there.

DAN MELVILLE: Are those concreted in?

MR. COMUNALE: No, no.

DAN MELVILLE: So they just go in the ground?

MR. COMUNALE: Well, that one there, there is a -- there is a concrete apron around the side of the building, and it is anchored into that. Just goes through the bottom tube and --

BEVERLY GRIEBEL: Like for a swing set?

MR. COMUNALE: Right. Right. The -- so, you know, I placed it -- I placed it there on that concrete apron, and it's right to the far edge of it.

BEVERLY GRIEBEL: Now, I think you went to the Planning Board because you had two of these smaller shelters. They approved one. That position was okay. This one you had to come here because of the closeness to the garage; is that correct?

MR. COMUNALE: Correct.

DAN MELVILLE: That is basically all we're discussing, is the --

BEVERLY GRIEBEL: Right. The placement.

DENNIS SCHULMERICH: I have a couple questions. First of all, in applying for an area variance, it was applied for in perpetuity. If this variance is granted, it is forever. There are five conditions that need to be met to substantiate the passage of area variance or should be considered in passage of area variance. Those five are possible changes -- change to the neighborhood character, available alternatives not requiring a variance, substantiality of the question, the effects on the physical or environmental conditions and is it a self-created situation.

From my perspective, a possible change to the neighborhood character, I don't see that being an issue for the location of the business.

Available alternatives not requiring a variance, it is not clear to me from what I have heard that other alternatives have been considered. I guess I would like to hear you talk about that for a second.

Another thing I would like to hear about is the substance of the request. If you had other alternatives, why weren't those pursued. And quite frankly, I'm bothered by the fact we're looking at another situation where the zoning code has not been adhered to.

Effect on the physical environment, I don't see an issue.

And is the situation self-created, clearly it is. So when it comes time to my vote, I see you have failed three of the five conditions for the area variance.

If you have comments around the three I am concerned about, I am open to listen to those, but I'm not inclined to support this at this point.

In terms of available alternatives, were there others that you considered?

MR. COMUNALE: Well, I -- I didn't know that this was going to be a problem. The 2 feet.

DENNIS SCHULMERICH: Okay. So basically you weren't aware of the code at that point?

MR. COMUNALE: No, I was not.

DENNIS SCHULMERICH: The substance of the request, from the perspective of your pickup truck, if that building were moved to another location, would you still be in the same situation to be able to park your truck there and get in and get out?

MR. COMUNALE: Well, I mean I -- yes. I could put it in there regardless where it was, but like I said, I put it there because that was the spot that made most sense and was of the most -- you know, it had the best function for me. It made use of an area that was --

DENNIS SCHULMERICH: Sure.

MR. COMUNALE: -- that I wouldn't use for anything else, and it is not really very visible where it is. So for all of the those reasons, you know, it just seemed a lot more logical to place it there, and, you know, had I known about the -- the 2 feet, I --

DENNIS SCHULMERICH: Sure. I understand. Thank you. I appreciate that.

DANIEL KRESS: For the record, for the applicant's information, as when I mentioned this before the Planning Board, if this is approved, building permits are required for the structure, so I will need information how this thing is anchored to the ground and how this thing is constructed.

BEVERLY GRIEBEL: Whether it stays in the place it is, or whether he has to move it?

DANIEL KRESS: That's correct.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

DOROTHY BORGUS, 31 Stuart Road

MS. BORGUS: I maybe missed it, but am I to understand there is no building permit for this building, this structure?

BEVERLY GRIEBEL: Right. I guess from what Mr. Kress said, he did not get a permit.

MS. BORGUS: It seems that this gentleman has a good size lot. Space shouldn't be a problem. I guess if I were the gentleman, I would just move the building the 2 feet and save everybody a lot of grief. If I could get a building permit and get away with it, having the building -- if you call this is a building. I guess to -- I haven't heard him ask, and maybe it is not appropriate for this Board, but why doesn't he build a traditional structure if he needs all this storage?

BEVERLY GRIEBEL: Well, I don't know.

Sir, why did you go with a temporary structure rather than building a more substantial garage type thing? Instead of -- now you have three of these vinyl tent things on the back lot.

MR. COMUNALE: Because buildings cost a lot of money. These are just for -- they're just for what I told you I use them for.

MS. BORGUS: Well, I'm glad that everybody in town doesn't take that outlook, because we would have a mess in Town if everybody who wanted some storage just threw up one of these horrible looking things.

The other question that I would have and whether it is not really apropos to this application, I'm wondering if this gentleman has removed the illegal signs that he had on King Road.

BEVERLY GRIEBEL: Oh, I'm not sure. Mr. Kress, do you know anything about that?

RICHARD PERRY: First of all, this has nothing to do with this issue. That is something you should take up, Dorothy, with --

MS. BORGUS: Well, as long as the question has been asked, could I have an answer?

RICHARD PERRY: No. That is not part of this hearing.

MS. BORGUS: You don't have to take it under advisement. I'm not asking you to do that.

RICHARD PERRY: I understand. It is an inappropriate question for this meeting.

MS. BORGUS: Thank you.

Beverly Griebel made a motion to declare the Board lead agency as far as SEQR, made a determination of no significant environmental impact, and Michael seconded the motion. The vote on the motion was 5 yes to 1 no (Dan Melville voted no.)

Dennis Schulmerich made a motion to deny the application, and Dan Melville seconded the motion. The vote on the motion was 5 yes to deny, to 1 no (Peter Widener voted no.)

DECISION: Denied by a vote of 5 yes to deny, to 1 no (Peter Widener) with the following finding of fact/reason having been cited:

1. Applicant has alternate locations on the property.
3. Application of Kayex Corp., c/o Total Identity Group, 2340 Brighton Henrietta TL Road, Rochester, New York 14623 for variance to allow a total of three signs on property, Sign #1 is existing permitted wall sign, Sign #2 is existing 11'9" x 1' freestanding sign, Sign #3 is proposed 4' x 3' double-faced freestanding sign at property located at 1000 Millstead Way in G.I. zone.

BEVERLY GRIEBEL: This went to Monroe County Planning and came back as a local matter.

Tony Tefel and Bryce Griffin were present to represent the application.

MR. TEFEL: Tony Tefel. I work for Total Identity Group.

MR. GRIFFIN: Bryce Griffin, the Manufacturing Manager at Kayex.

BEVERLY GRIEBEL: You have a comment on your application that trucks are having difficulty figuring out exactly where to go and having to back around on this narrow Millstead Road?

MR. GRIFFIN: Yes.

BEVERLY GRIEBEL: It is kind of tough.

MR. GRIFFIN: Yes.

BEVERLY GRIEBEL: There is a large tree on the neighboring property and drivers don't see your entrance until they're past it, so you need these signs to better identify where they need to turn in and deliver stuff to you?

MR. GRIFFIN: The existing sign is within code, but it is small print. By the time they hit our driveway, they are already going too fast to stop and they miss the driveway.

BEVERLY GRIEBEL: There is high-speed traffic there. They turn off Scottsville Road and they're still going on there.

MR. TEFEL: Right.

BEVERLY GRIEBEL: Okay. We have pictures of the signs. I guess maybe we'll go to questions, Dan (Melville).

DAN MELVILLE: Are these signs going to be illuminated?

MR. GRIFFIN: No.

MR. TEFEL: The one on the wall existing now, the large one is illuminated. The one we're proposing to put up --

DAN MELVILLE: You don't get deliveries at night?

MR. GRIFFIN: I don't believe so, not after 5 o'clock.

RICHARD PERRY: You're feeling is that the sign being 21 feet from the street is going to be visible and --

MR. GRIFFIN: Between my property and the next property and the intersection of Scottsville Road, there is a berm that stands maybe 4 feet tall with a row of trees on it. You can't see my property until you're right on top of us.

RICHARD PERRY: 96 feet from the street is a little severe.

MR. GRIFFIN: The sign is set way back behind the berm. They can't see it until they're already past it.

PETER WIDENER: I'm trying to locate the new sign.

MR. GRIFFIN: The new sign is not shown on the map. But it will --

MR. TEFEL: I can show you where, if you would like me to point it out.

DENNIS SCHULMERICH: Yes, that would help.

MR. TEFEL: This is not the clearest map, but the main building is here (indicating). This is Millstead and Paul Road is here (indicating). The entrance for deliveries, um, comes on this side of the building, and -- the sign would go in the corner here (indicating).

PETER WIDENER: Off Paul Road?

MR. GRIFFIN: Right. It is on the Paul Road side.

BEVERLY GRIEBEL: There is a wall sign and the new sign.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

CHARLES RETTIG, Coldwater Road

MR. RETTIG: Just a question. Just to understand where you're putting the new sign as you pointed it out on the map. Is that as you're coming from Scottsville Road, the first driveway turnoff to the right into your property, before you hit Millstead?

MR. GRIFFIN: That's correct.

MR. RETTIG: Okay. Thank you.

DENNIS SCHULMERICH: Thank you for having your business in Chili. We appreciate it.

BEVERLY GRIEBEL: That should make it easier for the truck drivers.

MR. GRIFFIN: I hope so.

Beverly Griebel made a motion to declare the Board lead agency as far as SEQR, made a determination of no significant environmental impact, and Dennis Schulmerich seconded the motion. All Board members were in favor of the motion.

Michael Martin made a motion to approve the application with the following conditions, and Dennis Schulmerich seconded the motion. All Board members were in favor of the motion.

DECISION: Unanimously approved by a vote of 6 yes with no conditions, and the following finding of fact was cited:

1. Signage needed to direct truck traffic into the business.

Note: A sign permit is required for these signs.

4. Application of Mr. & Mrs. John Kemp, owner; 2143 Westside Drive, Rochester, New York 14624 for variance to erect a deck to be 53' from front lot line (75' req.) at property located at 2143 Westside Drive in R-1-15 zone.

Mr. Mackey was present to represent the application.

BEVERLY GRIEBEL: This went to Monroe County Planning and also came back as a local matter. This is a kind of a ramp, wheelchair ramp that is already in place?

MR. MACKEY: Yes. There is a deck --

DAN MELVILLE: Name and address?

BEVERLY GRIEBEL: You are Mr. Kemp?

MR. MACKEY: No, Brant Mackey, B-r-a-n-t, M-a-c-k-e-y. I work for Capstone Remodeling Construction on 2146 Westside Drive which is kind of right across the street from here. We're the ones that will be doing the work on the property and they asked me to come for them.

BEVERLY GRIEBEL: This is a ramp that is already built?

MR. MACKEY: There is a deck and a ramp, but it is in disrepair.

BEVERLY GRIEBEL: It is going to be replaced?

MR. MACKEY: Yes. It will be replaced. Because she is in a wheelchair some or most of the time -- it just depends. She has a condition, polyneuropathy, whatever that is, but it is a degenerative disease of the spine, so sometimes she needs to have a wheelchair, sometimes she doesn't, but the doctor says she is not supposed to walk down any kind of stairs, so she needs this ramp when she goes out and that, and so basically it is taking the same area that the old ramp and deck were in.

BEVERLY GRIEBEL: Just replacing the existing one and making it safe?

MR. MACKEY: Yes.

DENNIS SCHULMERICH: The only question I would have is I think in replacing the existing deck, will there be any further protrusion towards the road than what the current one has?

MR. MACKEY: No. It is one for one.

RICHARD PERRY: In the footprint of the old one?

MR. MACKEY: No, identically. It will go the same area it is, but because the ramp that they have now is shorter than what it is supposed to be --

RICHARD PERRY: To code you mean?

MR. MACKEY: Right. We didn't want to build anything bigger than what is there, so we said -- we can make the ramp run down and -- the existing concrete steps that are there and she could have a little patio kind of a deck so she could go out on it so she can sit. Because she can't go down stairs.

RICHARD PERRY: The whole thing will be built to code?

MR. MACKEY: Yes. It is an all vinyl deck so they won't have to worry about repair.

DAN MELVILLE: Don't forget to get a permit.

MR. MACKEY: I won't.

COMMENTS OR QUESTIONS FROM THE AUDIENCE: None.

Beverly Griebel made a motion to declare the Board lead agency as far as SEQR, made a determination of no significant environmental impact, and Dennis Schulmerich seconded the motion. All Board members were in favor of the motion.

Michael Martin made a motion to approve the application with the following conditions, and Peter Widener seconded the motion. All Board members were in favor of the motion.

DECISION: Unanimously approved by a vote of 6 yes with no conditions, and the following finding of fact was cited:

1. Replaces the existing handicapped ramp.

Note: A building permit is required prior to construction of this deck.

BEVERLY GRIEBEL: Number 5 and 6 we tabled. If anyone is here for those, they have been tabled until 2/24.

5. Application of Kevin McMullen, owner; 55 Bowen Road, Churchville, New York 14428 for variance to erect a 26' x 32' pole barn to be 29' from side lot line (50' req.) at property located at 55 Bowen Road in PRD zone.

DECISION: Unanimously tabled to 2/24/04 at 7:00 p.m. by a vote of 6 yes for the following reason:

1. Applicant failed to properly post the required public hearing notice sign.

Note: Applicant to obtain new sign(s) at the Building Department to post and maintain as per Town regulations. Applicant must be present for the public hearing.

6. Application of Mark's Pizzeria, Inc., 246 E. Main Street, Palmyra, New York 14522, property owner: Towne Plaza, LLC; for variance to erect a 16' x 4' wall sign to be 64 sq. ft. (22 sq. ft. allowed) at property located at 4390 Buffalo Road in G.B. zone.

DECISION: Unanimously tabled to 2/24/04 at 7:00 p.m. by a vote of 6 yes for the following reason:

1. Applicant failed to properly post the required public hearing notice sign.

Note: Applicant to obtain new sign(s) at the Building Department to post and maintain as per Town regulations. Applicant must be present for the public hearing.

7. Application of Gail Buck-Vonberg, owner; 133 King Road, Churchville, New York 14428 for variance to allow existing 6' high fence in front setback area as per plan submitted (4' high allowed), variance to allow existing gazebo to be 5' from front lot line (55' req.) at property located at 133 King Road in R-1-15 zone.

Gail Buck-Vonberg was present to represent the application.

MS. BUCK-VONBERG: I'm Gail Buck. I have a -- some pictures that I want to submit that you can look at. I will show you in 1960 what my yard was, the beginning, and over the years, many changes have been made to improve my yard. Over the years I have had many changes done to my house and my yard, and there was not even a stick growing in my yard back in 1960. And everything that has been done in my yard I have done myself, and occasionally I have had my husband do a few things, but most of the stuff I have done by hand, and without the greatest tools.

And unfortunately, I had the fence put in by Chase-Pitkin and they never said anything about a permit or anything of that sort, and my husband and I put the arbor in that is in between the fencing. We used to have push-out windows in the bedrooms and we did away with those. My husband was a fireman for many years in Chili and we felt they weren't safe so we did that, and as you can see, everything was barren in my backyard and then we added the barn way back in the '70s. It has just been total improvement over the years. And I don't know what to add to this except that I devoted a lot of years as organist to St. John's in Spencerport and spent a lot of time in my yard. Over these 43 years I have been the sole caretaker. I did all of the lawn mowing and everything, and I'm going to be 68 years old and I wanted to -- my retirement to be my gazebo to sit in and just enjoy my yard.

BEVERLY GRIEBEL: It was just vacant land in the beginning.

DENNIS SCHULMERICH: Wow. I have seen it grow over the years. I didn't realize how vacant.

MS. BUCK-VONBERG: In the very beginning -- and there is a picture of the way King Road was before they took the hill down, back in 1960.

BEVERLY GRIEBEL: This application went to Monroe County Planning and this came back as a local matter.

MS. BUCK-VONBERG: I spent the whole spring, summer and fall to do a pathway that had deteriorated over the years as well, and that led down to where the arbor is with the gate in it, and where the dog-eared fencing meets the arbor. And I tried to do the fencing to glamorize rather than to have it just like straight and look ugly.

BEVERLY GRIEBEL: Now, I was looking at your tape map, and your house is 94 feet from the front property line --

MS. BUCK-VONBERG: One of the photographs -- if you don't mind me interrupting, one of the photographs showed I had split-rail fence years ago, and if you will note, the split-rail fence is in front of my two lampposts. I put the dog-eared fencing behind the lampposts so that it was further in.

BEVERLY GRIEBEL: Yes. The question here is the two -- the two questions, the height of the fence, and then the gazebo which is close to the road.

MS. BUCK-VONBERG: I have a reason for that as well, to buffer. We have had such increased traffic there. And we have absolutely no privacy and at all hours of the day and night we have heard, um, motors, um -- motorcycles, trucks, coming out of that new street that is across from Salatinos, which is to my left, which -- I don't know what the name of that road is.

BEVERLY GRIEBEL: That new development there?

MS. BUCK-VONBERG: Yes. And the traffic is just awful. We have the homes behind my neighbors across the street loom so high above that they can see out over -- I mean you just don't have any privacy. My neighbor across the street is very unhappy. They even put the dog-eared fencing on their deck for privacy and they still don't have the privacy because the homes are so high.

BEVERLY GRIEBEL: Now, you put the fence, the 6-foot fence so it would be --

MS. BUCK-VONBERG: To buffer the noise.

BEVERLY GRIEBEL: -- between the road and where you sit in the gazebo; is that correct?

MS. BUCK-VONBERG: Yes. The gazebo is on this side of it.

DENNIS SCHULMERICH: The fence is on both corners of the lot?

BEVERLY GRIEBEL: No, it is just an arch right around here (indicating). Here is the house (indicating). Here is King Road (indicating). The gazebo. It is just an arch, very short portion of fencing.

MS. BUCK-VONBERG: I want you to know on the opposite side of my fencing hidden behind all my trees and bushes is another portion of the fencing which is not very much.

DENNIS SCHULMERICH: That is what I thought. I thought there was another one on the other side.

MS. BUCK-VONBERG: I don't want to pretend I don't have something.

PETER WIDENER: How long has the fence been up?

MS. BUCK-VONBERG: Two years.

DAN MELVILLE: Chase-Pitkin installed it?

MS. BUCK-VONBERG: Yes.

BEVERLY GRIEBEL: Two portions of fence. Like an L-shaped.

MS. BUCK-VONBERG: You can't see it from the street at all.

DENNIS SCHULMERICH: If we came back and said the 6-foot fence has to go to a 4-foot fence and the gazebo had to be moved, what would you do?

MS. BUCK-VONBERG: I would be terribly, terribly distraught.

DENNIS SCHULMERICH: That would be your initial reaction?

MS. BUCK-VONBERG: I don't travel, drink or smoke or any of those things. That is my only -- that would be my only --

DENNIS SCHULMERICH: I'm not trying to upset you. My question is so we can understand the variance request. What options --

MS. BUCK-VONBERG: Had I known, I would have applied and I'm sure you would have told me what I could and couldn't do, but I didn't know that.

DENNIS SCHULMERICH: I understand that. My question is different. What I would like to know is, you have a yard, and -- front and back, and if there was a requirement to move the gazebo, what could you do with it? Is there someplace else in your yard?

MS. BUCK-VONBERG: No. I will tell you why. I want to be able to see all of the way back center wise through my yard, because I purchased recently the property all of the way to the tracks. And I want to be able to see out there. In these days and age, I would like to be able to see.

DENNIS SCHULMERICH: The gazebo is in the front yard and positioned so you can see towards the back of your -- the back --

MS. BUCK-VONBERG: I want to be able to see out of my home, clear out.

DENNIS SCHULMERICH: Okay. I was wondering how would you see around the house to see -- you want to see from the back of your house?

MS. BUCK-VONBERG: Yes. And I want the gazebo to just enjoy my front yard.

DENNIS SCHULMERICH: You personally don't see any options to --

MS. BUCK-VONBERG: Well, the fencing is already cemented in. They did that.

BEVERLY GRIEBEL: But we might require that that be taken down.

MS. BUCK-VONBERG: Well, the purpose for wanting the variance is because it was to buffer the noise. The noise is terrible on the street.

BEVERLY GRIEBEL: But the problem is, you know, with the 4 versus 6.

MS. BUCK-VONBERG: I won't have any privacy.

BEVERLY GRIEBEL: That might be unfortunate. Could you put the gazebo somewhere in the backyard?

MS. BUCK-VONBERG: No, that is what I just told this gentleman.

BEVERLY GRIEBEL: But not smack in the middle. What about on the side?

MS. BUCK-VONBERG: The past two years I have been working on a whole peony path, peonies on the side of a path I have been making in the backyard and clumps of pine trees, and I have weeping willows on each side. And my barn.

BEVERLY GRIEBEL: Because, according to the code, the gazebo needs to be 55 feet from the front lot line. Your house is 94 feet. So there is space in there so it could be moved back from the road.

MS. BUCK-VONBERG: Back to where?

BEVERLY GRIEBEL: Well, there is --

MS. BUCK-VONBERG: It can't, because I have leech beds there, and I can't put anything heavy there.

BEVERLY GRIEBEL: The leech beds are where?

MS. BUCK-VONBERG: In the front yard.

BEVERLY GRIEBEL: That doesn't show on this map.

MS. BUCK-VONBERG: We all have septic tanks there.

DAN MELVILLE: This is just a tape map.

MS. BUCK-VONBERG: Since 1960, I have had --

BEVERLY GRIEBEL: So it is directly in front of the house?

MS. BUCK-VONBERG: Yes.

BEVERLY GRIEBEL: Is it right in front of the house?

MS. BUCK-VONBERG: The gazebo is toward my driveway, so it is away from the leech beds.

DAN MELVILLE: I wonder if we should table this and get documentation on that --

MS. BUCK-VONBERG: I couldn't handle that. You don't know what I have been through just waiting for this.

DAN MELVILLE: -- to find out exactly where that leech bed is.

MS. BUCK-VONBERG: This is nowhere near the leech bed.

BEVERLY GRIEBEL: I'm looking at an alternative site in the front yard because --

MS. BUCK-VONBERG: I also have an arbor up by my house so I can't possibly do that.

DAN MELVILLE: Well, we'll just vote on it the way it is.

BEVERLY GRIEBEL: It may be that you would have to move it somewhere, or get rid of it. I don't know. I'm trying to look for an alternative in the front yard because you said you don't want it in the backyard.

MS. BUCK-VONBERG: No, I do not. And I don't know if you have -- if you have come down and looked at it or not, because it has beautified my yard and I have all those flowers that --

BEVERLY GRIEBEL: I don't think that is the point at all. That is not the point. The point is, that it was built -- the fence and the gazebo were built too close to the road. That is the problem.

PETER WIDENER: I'm a little concerned on the closeness to the road as far as the pole and line easement right-of-ways, if she is into them. The pole and line easement right-of-ways, for the --

DAN MELVILLE: You don't know if you're on utility easements?

MS. BUCK-VONBERG: They're across the street.

DAN MELVILLE: No gas or anything?

MS. BUCK-VONBERG: That is way over --

DAN MELVILLE: We don't have anything here to show us anything.

MS. BUCK-VONBERG: Because whenever they did anything, they come down, Chase-Pitkin come -- Chase-Pitkin come down and they flag everything, and it is over towards Snyder's driveway.

BEVERLY GRIEBEL: But the applicant is responsible for it anyway. It's always the homeowner that is responsible.

MS. BUCK-VONBERG: The RG&E is over toward Snyder's, the next-door neighbor. It is nowhere near my driveway at all. Nowhere near my gazebo at all.

BEVERLY GRIEBEL: How tall is the gazebo?

DENNIS SCHULMERICH: I have a question for the side table. Gazebo, irrespective of placement on the property, would it require a building permit? It is a sizable structure.

DANIEL KRESS: Strictly speaking, yes. I mean basically as long as -- with most gazebos, as long as I can see the thing is constructed in such a way it will not fall down upon itself with its own weight, I don't worry about it, but strictly speaking, yes, it should have a building permit.

DENNIS SCHULMERICH: The application for a permit would typically involve getting an appropriate placement around septic, utilities. That is usually a requirement of a building permit, so that is what the purpose was for the question.

DANIEL KRESS: I did, for the Board's information, go out on January 7th because I was concerned not so much about the location of those sorts of items, but just more basically making sure that all of this was out of the public right-of-way.

PETER WIDENER: Was it?

DANIEL KRESS: The 6-foot high fence that is in the northwest corner is approximately 7 feet back from the edge of the right-of-way, based on my best ability to measure. The additional fence that is approximately 5 foot high is closer to the gazebo and appears to be about 2 feet back from the edge of the right-of-way. The gazebo itself appears to be 5 feet back from the edge of the right-of-way. So

I'm basically just giving you those numbers to clarify approximate distances from the front property line. And the only other comment I had is, I'm not concerned based on that about any of these structures being in the right-of-way, but I think Mrs. Buck needs to understand as far as some of the flower beds and such that she has ahead of them, if the Board sees fit to approve these, that doesn't relate to the rest of it, which probably is, in fact, in the right-of-way.

MS. BUCK-VONBERG: I have had flower beds out there all of the years I have been there.

PETER WIDENER: If the utility company wants to come through --

MS. BUCK-VONBERG: Oh, yes, they can take them. That doesn't bother me at all.

PETER WIDENER: That was my concern, that we didn't constructively evict them off their land because they have that easement.

MS. BUCK-VONBERG: Everything I have out there is moveable.

BEVERLY GRIEBEL: Everything is moveable?

MS. BUCK-VONBERG: Yes.

DAN MELVILLE: Except the gazebo.

MS. BUCK-VONBERG: What I mean is we're talking about -- in front of that.

BEVERLY GRIEBEL: The fence and the gazebo are moveable? Or not moveable?

MS. BUCK-VONBERG: They're not moveable.

DAN MELVILLE: Everything is moveable when you come right down to it.

MICHAEL MARTIN: My greatest concern was just the line of sight for accessing the driveway, coming around the fence.

MS. BUCK-VONBERG: I have no problem with that.

MICHAEL MARTIN: It doesn't appear to be an issue. That is my biggest concern.

PETER WIDENER: How do your neighbors feel?

MS. BUCK-VONBERG: I submitted all kinds of letters.

BEVERLY GRIEBEL: We have a lot of letters from neighbors that say they like it and enjoy it, et cetera, et cetera. A lot of them don't understand what is going on, but it is technical questions about being too close to the road that is the problem.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

CHARLES RETTIG, Coldwater Road

MR. RETTIG: Just a couple of comments. It is an existing gazebo. Chase-Pitkin might have put it in without the permit, although the land owner --

MS. BUCK-VONBERG: No. The gazebo --

DAN MELVILLE: Chase-Pitkin put the fence in.

MR. RETTIG: Thank you for the correction. Landowner put the gazebo up without the permit.

MS. BUCK-VONBERG: Well, the reason for that --

BEVERLY GRIEBEL: He is asking the question up here. Please wait.

MR. RETTIG: That is okay. I don't mind. The gazebo was put up without a permit. Comment was made, I believe you said that you had the gazebo concreted in; is that right, ma'am?

MS. BUCK-VONBERG: No.

DAN MELVILLE: You have to address the Chair, please.

MR. RETTIG: Yes.

BEVERLY GRIEBEL: It is not concreted? It was just brought to the site and placed there?

MS. BUCK-VONBERG: Yes.

BEVERLY GRIEBEL: It could be moved and placed somewhere else?

MS. BUCK-VONBERG: It could be.

MR. RETTIG: In other words, Madam Chair, it is apparently sitting on a concrete slab; is that correct?

MS. BUCK-VONBERG: No, it isn't.

BEVERLY GRIEBEL: It is just on the ground.

MS. BUCK-VONBERG: It's on stone. Crushed stone.

MR. RETTIG: Okay. Then my comment comes to the fact that it could be moved. Those things can be moved.

BEVERLY GRIEBEL: Right.

MR. RETTIG: It could cost something, but my comment is, if we have zoning ordinances in the Town, they should be enforced. This should not be a precedent, because I might come to you -- I might come to you or my neighbor might come to you, and my question would be, would a playground gym for my kids be reasonable in the front yard? And I think not. But -- that is not a building, but that is a structure of some type.

But my comment is we shouldn't make a precedent of this. If we had the zoning ordinances in this Town, and we can do anything we want to do, then why do we have the ordinances except if someone wants to ride their own motorcycles on their own property. That is a different story. So my comment comes to the fact that it is very close to the road right-of-way, as Mr. Kress points out, even though it technically may not be within the right-of-way, and if we set a precedent with everyone going with 6-foot fences and gazebos in the front yard, I think we're setting a bad precedent. I don't think it should be allowed.

MARY SPERR, 4043 Union Street

MS. SPERR: Just a comment. As I understand it, don't rulings of the Zoning Board not set precedent, that each application stands on its own?

BEVERLY GRIEBEL: Yes. Each one is separate.

MS. BUCK-VONBERG: I have lived in my home 43 years. I have lived in this town all that time. I have never, ever, done anything that I wasn't supposed to do in this town.

DAN MELVILLE: You just did.

MS. BUCK-VONBERG: But I'm saying I have always abided by all of the rules.

BEVERLY GRIEBEL: That doesn't really have any bearing on this. You know --

MS. BUCK-VONBERG: That may be true, but I wanted to make that statement.

BEVERLY GRIEBEL: Okay.

Beverly Griebel made a motion to declare the Board lead agency as far as SEQR, made a determination of no significant environmental impact, and Michael Martin seconded the motion. All Board members were in favor of the motion.

Michael Martin made a motion to approve the application with the following conditions, and Peter Widener seconded the motion. The vote on the motion was 5 yes to 2 no (Dennis Schulmerich and Beverly Griebel voted no.)

DECISION: Approved by a vote of 4 yes to 2 no (Dennis Schulmerich, Beverly Griebel) with the following conditions:

1. At such time as the structures are removed or rebuilt, these variances expire.
2. Reconstruction shall be defined as any repair which exceeds 50 percent of the replacement cost of said structure.

The following finding of fact was cited:

1. Won't harm the character of existing neighborhood on King Road.

Note: A building permit is required for the gazebo if it measures 100 sq. ft. or more in diameter.

Beverly Griebel indicated the Board was in receipt of a letter requesting application be reheard in the matter of Ontrac Equipment Corp., for a 6 1/2' x 11 1/2' double-faced freestanding sign, 25' high. The Zoning Board had previously approved a maximum 100 sq. ft. sign, 20' high.

After some discussion, the Board declined by a vote of 5 yes to 1 no (Peter Widener) not to rehear the

request of the original application as submitted.

Beverly Griebel indicated the Zoning Board was not in receipt of information requested relating to the tabled application of Antonio Rosato of 4053 Buffalo Road, Rochester, New York 14624 for variance to create an undersized lot to be 1.916 acres (5 acres req.) at property located at 252 Ballantyne Road.

Dan Melville made a motion to deny the application without prejudice, and Peter Widener seconded the motion. The Board was unanimously in favor of denying the application without prejudice with the following finding of fact/reason having been cited:

1. Application was tabled in November pending additional information from applicant for December or January meeting. No information has been presented.

The meeting ended at 8:38 p.m.