

CHILI ZONING BOARD OF APPEALS
October 26, 2010

A meeting of the Chili Zoning Board was held on October 26, 2010 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 Paul Bloser.

PRESENT: Adam Cummings, Robert Mulcahy, Michael Nyhan, Fred Trott, Robert Springer James Wiesner and Chairperson Paul Bloser.

ALSO PRESENT: Ed Shero, Building & Plumbing Inspector; Keith O'Toole, Assistant Town Counsel.

PAUL BLOSER: On the agenda tonight, I'm going to change the order on how they appear. Item Number 1, I will be hearing last, so we'll just move the other two up in the order that they appear.

Chairperson Paul Bloser declared this to be a legally constituted meeting of the Chili Zoning Board. He explained the meeting's procedures and introduced the Board and front table. He announced the fire safety exits.

PAUL BLOSER: Signs posted on the property? I didn't have any problem with them.

The Board indicated they had no problems with the notification signs.

2. Application of Paul Marinucci and Pam Elliott, owner; 28 DaVinci Drive, Rochester, New York 14622 for variance to allow existing 10 foot by 12 foot utility shed to be 5.5 feet from side lot line (8 feet required); variance to allow existing deck to be 7.7 feet from side lot line (10 feet required) at property located at 28 DaVinci Drive in R-1-20 zone.

Steve Hall, Paul Marinucci and Judy Marinucci were present to represent the application.

MR. HALL: Thank you, Board members. I'm Steve Hall, attorney for Paul and Judy Marinucci. And Ms. Elliott is here, as well, the buyer and current owner of the home.

PAUL BLOSER: So by what you just said, the house is being sold?

MR. HALL: Yes. It was actually conveyed in -- was it late September, I believe?

MR. MARINUCCI: October 4th.

MR. HALL: The issue came up in the course of closing and we kind of made a good faith agreement to resolve it. The Elliotts, through their attorney, went and had it closed. I think the Marinuccis were in the house for 30 years.

MR. MARINUCCI: 31.

MRS. MARINUCCI: 31.

MR. HALL: At some point obviously the deck and the wood shed went up inside the side setback. It's never been an issue. In fact, I think the application includes a consent from the adjoining neighbor to the east who has no objection.

Just simply, what we are trying to do is eliminate an issue --

PAUL BLOSER: Clean it up for sale?

MR. HALL: In terms of the property going forward, there is no safety -- it's only aesthetic issues. It is just simply a state of facts which cause a problem yet for no real practical purpose. There is -- is really not too much to say about it.

PAUL BLOSER: Okay. Were these both put in at the same time?

MR. MARINUCCI: Um, the deck I think was --

PAUL BLOSER: For the record, too, could you please state your name?

MR. MARINUCCI: I'm sorry. It's a long time ago. I think -- I think --

MRS. MARINUCCI: You have to tell him who you are.

MR. MARINUCCI: Paul Marinucci, for the record. I'm sorry. I think one was '81, and the other one was '83. I believe the shed was '83. The deck was around 1981.

PAUL BLOSER: They're obviously mature buildings. They have been there a while. From both elevations that I can see, I went by, they seem to be well maintained and well kept at this point. So they -- they blend in nicely.

I am going to split this in two because they're two different structures, so there will be two votes on this tonight.

Didn't get a letter from the Town on this.

Ed (Shero), do we have anything open on this? Are there going to be building -- I'm assuming some permits are required on --

ED SHERO: Permits required for the shed but not the deck.

PAUL BLOSER: Not for the deck?

ED SHERO: No. I think there was -- as I recall, it was built prior to 1990. They brought in some affidavit, if I recall, that it was there before 1990 and a permit was not required at the time.

PAUL BLOSER: Okay. What was the square footage of the shed?

ED SHERO: Just over 120 square feet. Looking at the survey, just over 120 square feet, which would require a permit.

PAUL BLOSER: So are you going to require a permit then for that inspection?

ED SHERO: For the shed, yes.

PAUL BLOSER: I don't have any other questions.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

DOROTHY BORGUS, 31 Stuart Road

MS. BORGUS: Again, it is so much easier to ask for forgiveness than permission. It seems as though every time you people meet, you have at least one of these. People should realize you can't just build anything you please in any town, and -- I think even the most remote of towns and the smallest of towns these days have zoning codes. They have had these for years. This is not new, and this gentleman can say there is no practical purpose in -- in prolonging this or making a problem about it. Well, if everybody did that, we would have a mess in this Town.

Nobody cared about this until they wanted to sell. And it is just unfortunate that people that have lived in Town for 30 years can't obey the law and pay attention to what the rules are before they go putting buildings up and decks on houses. It's -- it's a waste of you people's time and it's wrong. They wrong everybody in this Town who goes by the law when they don't. And I think this Board should make an example of some of these things and reject them, turn them down.

Thank you.

PAM ELLIOTT

MS. ELLIOTT: I'm the new owner.

PAUL BLOSER: For the record, state your name and address.

MS. ELLIOTT: My name is Pam Elliott, 28 DaVinci Drive. I am the new owner, and if you come by and look at it because the -- I really would hate to move anything. Like you said, it is well established and not hurting anything. We do have consent of the neighbors on the other side. So I do understand what -- what the other comments that the woman is just saying.

However, again, I have purchased the property. It's been there. I would just like to say that, you know, 7 1/2 feet and 5 1/2 feet off the property line, it may be that the zoning is 10 feet here in Chili, but in other towns, it is not quite 10 feet. It is not 10 feet. I came from Livingston County and -- where you had -- you don't have to be 15 feet off. You can be closer to the line. I do understand it is the Town's rules, but at this -- at this point because it has been up for 20 years, I hope you vote to not move it. My lawn mower fits in there lovely, so.

Robert Mulcahy made a motion to close the Public Hearing portion of this application and Adam Cummings seconded the motion. All Board members were in favor of the motion to close the Public Hearing.

The Public Hearing portion of this application was closed at this time.

PAUL BLOSER: We have heard public comment on this. This is a common thing we get on a sale of a house, exchange of properties.

Paul Bloser reviewed the proposed conditions with the Board.

PAUL BLOSER: Pretty straightforward. The fence and the shed are both painted the same color as the house at this point. They have obviously been maintained, but the Building Department will make an inspection. If there is anything required at that point, they will be required to complete that.

On the shed portion of the application, Paul Bloser made a motion to declare the Board lead agency as far as SEQR, and based on evidence and information presented at this meeting, determined the application to be a Type II action with no significant environmental impact, and Michael Nyhan seconded the motion. The Board all voted yes on the motion.

On the shed portion of the application, Fred Trott made a motion to approve the application with the following condition, and Michael Nyhan seconded the motion. All Board members were in favor of the motion.

Paul Bloser reviewed the proposed conditions with the Board.

PAUL BLOSER: Assuming this sale just happened and it is current, I am going to ask that these drawings be submitted and stamped, so whoever did your surveys, get a certified copy of that --

MS. ELLIOTT: Yep.

PAUL BLOSER: -- into the Town.

On the deck portion of the application, Paul Bloser made a motion to declare the Board lead agency as far as SEQR, and based on evidence and information presented at this meeting, determined the application to be a Type II action with no significant environmental impact, and Michael Nyhan seconded the motion. The Board all voted yes on the motion.

On the deck portion of the application, Robert Mulcahy made a motion to approve the application with the following conditions, and Adam Cummings seconded the motion. All Board members were in favor of the motion.

DECISION (on the shed portion of the application): Unanimously approved by a vote of 7 yes with the following condition:

1. Any permits or applications required by the Town of Chili must be obtained and all inspections complete within 30 days.

The following finding of fact was cited:

1. The proposed variance will not create an undesirable change in the character of the neighborhood or to nearby properties.

DECISION (on the deck portion of the application): Unanimously approved by a vote of 7 yes with the following conditions:

1. Current lot map of all existing structures placement to be filed with the Town.
2. Maps submitted must have current seal of approval by licensed surveyor.

The following finding of fact was cited:

1. The proposed variance will not create an undesirable change in the character of the neighborhood or to nearby properties.
3. Application of Gerald Mead, owner 131 King Road, Churchville, New York 14428 for variance to erect a 12 foot by 24 foot utility shed to be 288 square feet (192 sq. ft. allowed) at property located at 131 King Road in R-1-15 zone.

Gerald Mead was present to represent the application.

MR. MEAD: Gerald Mead, 131 King Road.

PAUL BLOSER: This is for a shed that you want to put up, correct?

MR. MEAD: It's actually up.

PAUL BLOSER: It is up?

MR. MEAD: Yes.

PAUL BLOSER: I couldn't see it from the road.

MR. MEAD: It's there.

PAUL BLOSER: Are there two sheds out there?

MR. MEAD: There are. There is an 8 by 8 currently there that is going to be moved.

PAUL BLOSER: Moved or removed?

MR. MEAD: It will be removed.

PAUL BLOSER: Okay. How long have you had this 12 by 24 up?

MR. MEAD: Five weeks.

PAUL BLOSER: Is this prefab or something that you built?

MR. MEAD: Built it.

PAUL BLOSER: So there has been no inspections done on this?

MR. MEAD: No. My initial visit to the permit office, the young lady I spoke with -- I went in with measurements and -- said all I needed was a permit. I didn't know I needed a variance.

The second trip I spoke to a different lady in the permit office. She informed me anything over 192 square feet required a variance.

I had some friends from out of town who were here. They helped me put the shed up. I thought well, it's just a permit. My mistake.

PAUL BLOSER: Are there footers on this?

MR. MEAD: Yes.

PAUL BLOSER: Did you have any footer inspections?

MR. MEAD: No. It's cinder block that is underneath it.

PAUL BLOSER: It is just sitting on block?

MR. MEAD: Yes.

PAUL BLOSER: You didn't dig footers.?

MR. MEAD: No, we did not dig footers.

PAUL BLOSER: So you do have a building permit for it?
MR. MEAD: No. I was told needed to get the variance before I got the permit.
PAUL BLOSER: You didn't get the permit when you went in the first time?
MR. MEAD: No. I went in and picked up the application. When I came back with the application, I was told I needed to get the variance.
PAUL BLOSER: What is the siding on this building?
MR. MEAD: It's a T 1-11, I guess you would call it.
PAUL BLOSER: And the siding on your house is?
MR. MEAD: Vinyl.
PAUL BLOSER: Okay.
MR. MEAD: It is painted to match the house.
PAUL BLOSER: Do you have any drawings of the shed, what it is?
MR. MEAD: No. I did not bring any drawings.
PAUL BLOSER: What have you got on it for doors and windows?
MR. MEAD: There are three sliding windows, double-paned. There are 23 foot doors on the front center of the shed.
PAUL BLOSER: No overhead doors?
MR. MEAD: No.
PAUL BLOSER: Roofing shingles, what have you got on that?
MR. MEAD: A 25-year, three-tab shingle.
PAUL BLOSER: What is on the house?
MR. MEAD: As 50-year shingle. Architectural shingle.
PAUL BLOSER: What colors are they?
MR. MEAD: Black.
PAUL BLOSER: Both?
MR. MEAD: Both.
PAUL BLOSER: Is there any electric running to the shed?
MR. MEAD: No.
FRED TROTT: He is just going for a variance for the size, not --
PAUL BLOSER: No setback issues. Strictly size.
FRED TROTT: And you are going to remove the other shed?
MR. MEAD: Yes.
ADAM CUMMINGS: Actually, I do have a question. The survey map that you gave us, you hand drew that -- a surveyor didn't locate that, so it may be closer 10 feet to the property line.
MR. MEAD: Actually, it is 11 feet from that existing fence, my neighbor's fence. It is 10 feet from the line. I didn't draw that. That is what my surveyor gave us.
PAUL BLOSER: Okay.
ADAM CUMMINGS: Once again, I would just try to get a sealed one. I don't even see a seal --
PAUL BLOSER: On this one.
ADAM CUMMINGS: -- on this one.
PAUL BLOSER: I have already got it down as a condition of approval.
ED SHERO: We did talk about removal of the 8 by 8 shed?
PAUL BLOSER: Yes.
ED SHERO: Variance would only be for the 12 by 24, so the 8 by 8 would have to be removed or added to this, correct?
To get a building permit, we will need a better copy of the survey. I can't even make out the line between the wood fence and the property line.
PAUL BLOSER: Okay. I already have that down as condition of -- of approval.
ED SHERO: Out of curiosity, what is the 17 foot line from? Is -- there is a dotted line there.
MR. MEAD: That is actually -- it's two parcels. That is the first lot to where the shed is from that lot line, the first lot line.
ED SHERO: You just took the shed that is existing and measured forward and reversed it?
MR. MEAD: Pretty much. I did come from the house down, as well.
ED SHERO: We would probably want that measurement and just have a better measurement.
MR. MEAD: Okay.
PAUL BLOSER: As a condition of approval, Ed (Shero), I'm putting down that a stamped survey must be submitted with the application.
ED SHERO: Okay. And, of course, the drawings that meet the building code will have to be submitted.
PAUL BLOSER: This is complete now?
MR. MEAD: Yes, it is.
ADAM CUMMINGS: I have a quick question. You say there are two different lots, so to get the back lot, it is just landlocked and you can't get to the right-of-way from it? I'm struggling to read the map.
MR. MEAD: Um, yes. Exactly. It -- it backs all of the way up to CSX's tracks.
ROBERT MULCAHY: You own both of those lots?
MR. MEAD: Yes.
PAUL BLOSER: Have you put gutters on this?
MR. MEAD: No. Not yet anyways.

ADAM CUMMINGS: Do you have any sheds on Lot 6, the front one?

MR. MEAD: No. Nothing.

ADAM CUMMINGS: Just curious why didn't you put it on the front lot?

MR. MEAD: It -- we have the yard fenced in, and it's -- it looks a little more proportionate to the fenced-in yard, in the back, sitting back that far. I didn't want it right at the house.

ADAM CUMMINGS: Do you own any properties to the east or west?

MR. MEAD: No. Nothing.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

DOROTHY BORGUS, 31 Stuart Road

MS. BORGUS: Shall I repeat what I said last time?

PAUL BLOSER: It's already on the record.

MS. BORGUS: That's what I think.

It's bad enough when you have somebody live in this Town for 30 years and disobey the law, but it is -- is something else when you have somebody build something five weeks ago and disobey the law. It is too bad this Board doesn't have the ability to institute fines of some type, because this is terrible. This is terrible.

What have we got here? We have a shed that was built out of a -- a -- instead of vinyl or something to match the house, which would have been the recommendation or the requirement of this Board, now we have -- we have Texture 1-11 on it.

We have a building that doesn't conform to code.

We don't have a proper survey map.

We have no drawings of the shed.

We have no permit, no variance and no inspections.

I think this beats all. I don't think I have ever seen anybody come to this Board ever in all of the years I have been coming to these meetings with such a mess, and it's only five weeks old, and to say, "It's just a permit and it doesn't matter, I'm going to go forward," is terrible. It shows that this man has no respect for our laws, our codes, nor his fellow Chili residents.

This is terrible. And if this Board had it in their power, I think that they should make him come up with, as you say, a new survey map. We -- footings should have been looked at. He should have full inspections, which I am sure you will see to. This man should not get away scot-free just coming in here after the fact after he has ignored every rule and law we have. This is despicable.

STEVE HAVEN

MR. HAVEN: I'm one of the neighbors. I have personally talked to all of the neighbors around here. The shed looks nice. None of us have an issue with the shed. None of us that live in the area have a problem with it.

Robert Mulcahy made a motion to close the Public Hearing portion of this application and Fred Trott seconded the motion. All Board members were in favor of the motion to close the Public Hearing.

The Public Hearing portion of this application was closed at this time.

PAUL BLOSER: As we were going, I have written down my proposed conditions of approval I will ask the Board to consider as part of this vote.

Paul Bloser reviewed the proposed conditions of approval with the Board.

PAUL BLOSER: They're not going to be moving things. They are going to want to see it for all intents and purposes almost emptied.

Paul Bloser further reviewed the proposed conditions of approval with the Board.

PAUL BLOSER: Four, this will be kind of stiff, but when we have done sheds, oversized -- this is, again, the size of a garage at this point. Um, and even the neighboring property last year, we were kind of strict with what we wanted and how it was put together. So Number 4 is, this Board is going to want to have the siding, type and color to match with the what the main dwelling is. You have vinyl siding on the house. We are going to want to see similar on the shed to match.

That's going to be a financial addition, but that's the way we do things in the Town when we get into over-sized for consistency purposes.

The gutters to be installed and diverted away from the west lot line. There is a low-lying area back there. I know several neighbors have had water problems in there. So because of the displacement there, the size of this, um, I do want to see gutters up. I want them diverted away from the lot line just because of the proximity to the lot line where you have got it.

Condition 6, the roof colors, window and trim colors to match the main dwelling.

I am telling you right now that they are -- I'm going to go with that. Normally, we want the same type of roof on the shed that is on the house. Because of the distance of separation here, you're telling me you have almost 100 foot separation, I'm going to let that one pass right now.

But that's the way we do things here. We want it to look like it belongs, like it matches. So you have got some work to do on this.

I am making these conditions as a -- I don't want to say a message, but this is the way we do it. I am going to ask the Board to consider them in their vote at this point.

Any other Board comment or additions they would like to see?

JAMES WIESNER: Did you say a building permit as one of the conditions or no? Because I don't think Ed (Shero) said he had one.

PAUL BLOSER: It is not written down here, but that is a given. All Town permits and applications to be filed through completion.

ADAM CUMMINGS: I think I would feel more comfortable to table it until next month to allow the applicant to bring in some of this information that we typically see during the application. Now he has been informed we would like to see drawings of the construction. A little different in this case, because it is already built.

PAUL BLOSER: Tape maps?

ADAM CUMMINGS: Yes.

PAUL BLOSER: Well, if we approve it tonight, he is going to have to show if -- the Town Building Department sees a discrepancy on this, they're going to have to file another additional application for setback issues.

ADAM CUMMINGS: If it passes tonight. If it doesn't pass tonight, he has to wait another year to ask for a variance.

PAUL BLOSER: Okay. But if he is -- is going through the permit stages with this as part of conditions of approval, and we sign off, he has to follow through with all of this. If he does not get the C of O, because there is a discrepancy on placement, then he would have to file a variance, a separate variance for setback and he would be coming back to us anyway. This will just allow him to get it done, completed. I guess we are looking it is coming towards winter. If the drawings are discrepant, he will have to come back for a whole separate variance.

ADAM CUMMINGS: Right.

PAUL BLOSER: The Building Department will see that at the time of application. So I -- myself, I mean, we can do this as a vote. Myself, I don't see a problem moving forward with this, knowing that it's still going to be scrutinized by the Building Department for placement.

ADAM CUMMINGS: Okay.

PAUL BLOSER: Any other comments?

Paul Bloser made a motion to declare the Board lead agency as far as SEQR, and based on evidence and information presented at this meeting, determined the application to be a Type II action with no significant environmental impact, and James Wiesner seconded the motion. The Board all voted yes on the motion.

PAUL BLOSER: Before I move on, one other thing on this, Ed (Shero), aren't there some wetlands back in there?

MR. MEAD: There --

ED SHERO: There are. It looks like it is on the back to the right. It says approximate limits of federal wetlands, which -- with the dotted line, it looks like you're out of them. But that is the same dotted line as he will put the shed --

PAUL BLOSER: I will just put a note in here on a condition that the shed must be clear of any wetland setbacks. Just so that when the paperwork gets looked at in your office, we are looking at that detail to be sure.

ADAM CUMMINGS: The illegible map seems to say about 722 feet from that lot line back to the end of the lot, but you have to eyeball it to find out how far it is from the wetland to that lot line.

PAUL BLOSER: When the maps are submitted, if you will just check that, Ed (Shero). It's in the notes.

ED SHERO: Okay.

PAUL BLOSER: Thank you.

Michael Nyhan made a motion to approve the application with the following conditions, and Robert Springer seconded the motion. The vote on the motion was 5 yes to 2 no (Adam Cummings, Fred Trott).

DECISION: Approved by a vote of 5 yes to 2 no (Adam Cummings, Fred Trott) with the following conditions:

1. Stamped survey map must be submitted with application.
2. 8' x 8' shed must be removed within 30 days from date of this meeting.
3. Drawings of shed construction details must be submitted at time of building permit application.
4. Siding type and color must match main dwelling.
5. Gutters to be installed and diverted away from west lot line.

6. Roof colors, window and trim colors to match main dwelling.
7. All Town permits and applications to be filed through completion.
8. The shed must be clear of any wetland buffers or setbacks.

The following finding of fact was cited:

1. The proposed variance will not create an undesirable change in the character of the neighborhood or to nearby properties.
1. Application of Lou Bivone, 55 Alliance Drive, Rochester, New York 14623; property owner: Alliance Door & Hardware; for variance to allow front parking for 55 vehicles, variance to allow access driveway within the buffer area at properties located at 3763 and 3765 Chili Avenue and 2 Willowbend Drive in NB and FPO zone.

John Caruso was present to represent the application.

MR. CARUSO: I will just pass out a colored rendering. That is what I am going to put up.

PAUL BLOSER: For the record, CP-104 is the correct drawing, correct?

MICHAEL NYHAN: Colored drawing and black and white drawings are different?

MR. CARUSO: That was correct. The black and white drawing is showing you where we were. The difference between the old design the new design --

MICHAEL NYHAN: Okay.

MR. CARUSO: -- is relevant to tonight's meeting because we'll talk about a change and how we minimized the variance request. Okay?

MICHAEL NYHAN: Okay.

MR. CARUSO: Are there extras? Because I would like to give the side table a copy. Are there any extras? I sent them like this (indicating).

When you're ready. Ready? Okay.

Well, good evening. I'm John Caruso from Passero Associates, and I'm here tonight on behalf of Mr. Louis Bivone.

We have been working on this project for ten months or so now, and we have been before every board in this Town to get to this point, and so I tell you that because it's a little bit about the story that you will need to know in -- in evaluating our request for our variance tonight. I won't go into too much detail, but I think the significance of a point I want to make to you earlier -- or later is that we asked for this parcel to be rezoned from Residential to Commercial, and the type of commercial zoning we asked for was Neighborhood Business, even though there is some discussion about whether the area should have been General Business. We agreed because our client wasn't looking to do more than what he is proposing, is -- sort of a neighborhood type of business that we didn't really need to have General Business.

That is because our -- our owner is a local gentleman who is looking to do a neighborhood type business development, and he really wasn't thinking like another developer might think, which is I want the highest and best zoning, I want GB zoning even though I want to put in Neighborhood Business. He agreed to go with Neighborhood Business.

So it was sort of a compromise on his part. It was a good compromise, and it was appropriate because what we are trying to do here is transition zone from the General Commercial zoning across the street. Byrne Dairy is Neighborhood Business. We're proposing Neighborhood Business and then right next to us is this gentleman's house (indicating), and it's Residential. So it was appropriate to do the transition zoning which is the neighborhood type business.

Well, the reason I say that is I'm -- I'm moving to a point about the request of our variance to park -- have parking 10 foot within the front setback.

One of the things that we are looking to do and prove to you is are we compatible or are we really fitting into the character of the neighborhood. And we feel there is many things that we did with the project to maintain the integrity and the character of the neighborhood. One of it was to agree to this type of neighborhood type zoning.

Another thing that we did was that we took a -- an original commercially looking building, which we showed to earlier boards as we moved through our approvals, and we transitioned that building to a more residential look. That is something we worked on with the Architectural Review Board. They made changes to our plan to add cupolas to it, take some of the commercial windows out and put in more type residential. We made some changes to accommodate the neighbor's request, Architectural Review Board, to the back of the building to put covered gables over each of the doorways, so it wasn't just a big flat back of the building.

So again, I think the -- the changes that we made to the building, um, were appropriate because we were trying to fit into the neighborhood.

And similarly, we think that allowing parking in the front yard of this property is also compatible and within the character of the neighborhood, because if you look at the aerial photos, um, you know, Byrne Dairy has all of their parking in front of their building. Not that we want to be them. They don't have anywhere near the landscaping that we are proposing.

Across the street you can see the islands in the parking lot. The cars are 10 feet from the

curb line, and they're parking right up into the right-of-way. You know, we are not proposing to do that, but we do have parking in our front yard. So generally, I'm saying that I think the way we have our design, it is compatible with what is going on in and around the neighborhood. I don't think it would be compatible if we put our building right up at the road because no other building is like that in this area or up at the road, and it's really not conducive to what the neighbors were thinking.

Because one of the first things that we did when we started this project, is we went over and sat down with the neighbors. We found out what is it that you're looking for so that we don't try to devalue your property. We wanted to be respectful. Our client was all about doing that. With all of the money he is spending here, to put 15 trees along the property line and a fence to screen this gentleman's property are the least of our worries.

So with that approach, we met with them and we talked about how the building would be placed and how we would screen his property, and I think that the design we have with a smaller parking lot, and -- in front of the property, but not right up into the right-of-way, like the other properties have, is in the character of the neighborhood.

So let me -- let me just finish up on that point. I think that the design you're looking at now is the result of a lot of work with the Planning Board, and if you will notice, it is a bit of a compromised design in that we do have 20 or so parking spaces behind the building. In many ways, it was a compromise of us to try to put some parking behind the building.

But the biggest change and challenge that we faced at the Planning Board level was there was a time that we had a building that was too big for the site. And -- and the Planning Board showed that to us.

With the Board showing us that the building was too big, we cut back the size of the building. And the Board told us at one of the meetings before we had made this change, that they wanted the building closer to the road and would even entertain a small infraction into the front setback if we could make those changes. And so we sat down with our client. We said, "Look, the building is too big for this Board to approve. We need to make a change."

We reduced the size of the building almost 25 percent and a lot of great things came from that. Here they are. Three great things came from that design change.

Number one, the building got smaller. That Board wanted that building to get smaller; the building got smaller.

Number 2, when the building got smaller, the building needed less parking. You know, that's how it is. Number of spaces per thousand. The building got smaller. It needed less space. As the parking lot got smaller and -- we lost a whole row of parking along the front of the property.

The third thing that happened was we were able to slide the building then up where the Planning Board wanted it. They wanted it more northerly towards the road. And in doing so, we made the Planning Board happy. We eliminated a row -- row of parking, and we freed up some of the area behind the building, which the Town Engineer had a litany of comments on, which he thought the ponds were a little bit tight and the grades were tight.

Well, now the ponds get smaller because the roof got smaller and the parking lot got smaller. So all of the storm water management needed, instead of big ponds, we had smaller ponds. So a lot of good things happened when we made this design change.

One of the things that the Board had requested we do, when sliding the project forward, they said they would be able to live with a little bit of tolerance into the front setback. No more than 10 feet. And we are no more than 10 feet.

So I want to say that in trying to keep with the character of the neighborhood, I think that we are able to achieve that through reducing the building size, the zoning that we changed to, the transition zoning. I think that putting a little bit of parking in the front and some in the back was a good compromise in our design, and -- and the other thing that I want to talk about is, um, we have 65 feet of grass before we hit a 20 foot strip of adjacent area in -- in the right-of-way.

Nobody else has that. And if this wasn't a State road, if it was a Town road, the required setback would be 65 feet. So really, it's only required 75 feet because it is a State road.

So the difference between the two is only because of the name -- who owns the road.

So let me -- me just leave that with you on the character of the neighborhood.

The other point I wanted to look at here -- I'm just sort of going through the proofs -- is, you know, can a variance be mitigated? Well, I think that the design change that we had, we were encroaching -- that's the black and white drawing. We were encroaching 37 feet. Now we are encroaching ten. So can the -- can the impact be mitigated by design change? Yes, it can.

And not only that, we have 65 foot in a landscape area -- if you look at the design plans, um, I think we have mitigated any sort of visual impairment by the landscaping that we are proposing in there. Usually it is done in 20, 25 feet. Here it is done at 65 feet.

With respect to the substantial size of the variance request, again, we are only into a 75 foot setback by 10 feet. But if this was a Town road, we would not require a setback at all.

Or a variance at all.

So I think that our -- our -- the substantial portion of -- of our variance is minimized by the design change significantly. I mean, it is much better than 37 feet. I think that was very palatable to the Planning Board because then they went on to grant us an approval based on this new design.

And will a variance have any adverse environmental effects. You know, we are looking at the physical impacts. You know, actually it was a positive impact we had, because by making this design change, we eliminated more roof, more parking, all that runoff, and as a result, our

ponds got smaller, and so the disturbance area in total on the site actually was reduced.

And then we mitigate it by putting in this landscaping package all along the front.

Then to talk a little bit about was the variance self-created? You know, of course, we want to take the blame for that. You know, yeah, it's self-created, because we chose to slide it off forward and off the design to the Planning Board and encroach by 15 feet. But I want you to know that was after two Board meetings in which they wanted this building moved forward. It was a big thing to them. Even to the point where they would allow some sort of encroachment into the setback, but that is because we had the room. I really think it was palatable to them because we have 65 more feet between us and -- and the property line.

And moreover, I just want to leave and point for a second. There is 20 more feet of grass in here (indicating) before that lane line. Almost 85 feet. Landscaped with a sidewalk in it. That was one of the other things that our customer agreed to do, was to put a sidewalk in it.

So I think -- so I think that we fit into the neighborhood. I think we have done it tastefully. We don't have a big huge parking lot up there like the other businesses do. Nothing against them.

I think we worked well with the Planning Board to get a smaller parking lot, to put some of it behind it. So I think we do fit into the character of the neighborhood. We really tried to do that with the traditional zoning. We really tried to do that with the redesign of the building. I think the variance is not substantial in nature as our past variance request was.

I think that we have mitigated by the landscaping and the screening that we propose, in addition to the distance we have -- I believe we have had a positive effect on the physical environmental impacts from the variance request, and although, you know, we agree that it is a self-created hardship, I think it was in conjunction with an agreement to the Planning Board that we would move this building closer to the road. That was one of the things that they wanted to see. They didn't want it set back as far as we had it.

So Mr. Chairman, I would be happy to open it up and answer any questions on this. We also have another variance to discuss, if you want me to go to that one.

PAUL BLOSER: Why don't you cover them both?

MR. CARUSO: Okay. The second variance request was us agreeing to -- at DRC, we noticed that -- we have an existing condition to deal with. That is the property has an access easement through it that the neighboring properties share. And so we always intended to provide a new roadway. Right now it is a stone -- 10 foot stone wide drive -- it was back to those homes. We always intended to pave it and continue that pathway all of the way back and honor the rights of the easement that is there.

Unfortunately -- I will leave for a second -- when we tie back into the existing place (indicating), it encroaches into the 30 foot buffer requirement. When we rezone, there is a 30 foot buffer to the adjacent residential area. We have been able to keep our entire project westerly justified out of that landscaping buffer, except for that spot where we have to dive down and tie into the existing roadway. We cross into the buffer.

So it wasn't a big deal and it still isn't when we evaluated it through the process, but when we, um, realized that we were going to be asking for some variances, we told the DRC and the Planning Board we would clean that variance up when we came before this Board to -- to clean up the front setback.

So we are really not proposing to do anything over there. The vegetation is there. We are planting where it is -- is thin. We have been working together with the -- with the adjacent landowner, which is Rick Taubold, who is here tonight.

It's pretty much we are matching existing condition.

With that, I will open it up to any questions you might have.

PAUL BLOSER: Okay. The second part of this, um, basically, my understanding of this, and Keith (O'Toole), I'm going to ask you just for possibly a quick clarification, in '99, June of '99, this permanent ingress and egress was granted for this. So this is just an adjustment to that?

KEITH O'TOOLE: No. It has -- it actually has nothing to do with the easement. The Town has a buffer requirement for where commercial property meets residential. Paving in the buffer is a violation of that. So basically what they're doing is asking for relief from that.

PAUL BLOSER: So nothing from that is changing? We are not changing from that original --

KEITH O'TOOLE: You don't have the power to change their easements.

PAUL BLOSER: I just wanted to clarify that. So we are not doing something we are not supposed to. Okay.

On that portion I don't have any other questions, because like you say, that will clean that right up -- Keith (O'Toole).

MR. CARUSO: Keith (O'Toole) said it well. We are not proposing to make any changes and it was clear to the Board, and we had discussion at the Planning Board about that. We are literally encroaching in an area where it is not allowed, but it is an existing condition. We are trying to tie in a new roadway for those residents to get to their homes. It is an infraction, so we wanted to clear it up when we were here before the Zoning Board.

PAUL BLOSER: On the part one of -- of -- I have been following this project pretty much since day one. We were supposed to hear this last month, and through agreement of all parties, we tabled -- actually, you tabled it yourself so that we could get comments back and approval from Architectural, and also I was quite adamant that on this particular one, I wanted to get site plan approval from Planning. With everybody's input across the board.

You have at this point met those requirements. They are substantial changes from what we

were originally looking at. Substantial changes.

I like the way you have buffered out to the east side of the property to the neighbor. The green space you have in front, um, also is -- I like the changes there from what was original. It's -- it's a much better transition from the corner into Residential.

You know, these -- these applications are always tough when it was a house and now it is something else. Moving that line.

I -- there is a lot going into this, a lot has been changed on it. I -- I really -- at this point I don't have any other questions myself, because I -- because I have been following this for quite a while.

Pretty much I will open it up to the Board, anything else they have got.

Jim (Wiesner), or anyone?

JAMES WIESNER: The lay of this land, the elevation falls off as you come back from the road to the -- the back of the property. The way the building sits right now, is that below the grade of the road?

MR. CARUSO: Yes.

JAMES WIESNER: How far down actually is that, where it is sited right now?

MR. CARUSO: How far down you mean elevation wise?

JAMES WIESNER: Yes. Will you be looking down into the building just a small amount?

MR. CARUSO: The building's first floor elevation is lower than the road, yes, but the building is 30 something feet, so you wouldn't be looking over it. It's not that low. But I will give you an idea of how far it is.

ADAM CUMMINGS: While he is doing that -- I have a quick question. We tabled last month's which was a variance application for front parking of 55 vehicles and now we have got two new ones. Should we have asked for a new application, or is it okay to move on with these ones?

KEITH O'TOOLE: As I understand it, we started out with 55 and their latest plan actually shows 39 spaces in the front setback, so it is a reduction, and reduction is not a problem.

ADAM CUMMINGS: And before they had a variance to allow access driveway in the buffer area, so that is fine there. The parking area in the front setback, but -- was that there before? I don't remember.

KEITH O'TOOLE: The earlier plan had parking in the front. It is just they had more parking.

ADAM CUMMINGS: Got you.

MICHAEL NYHAN: Three rows instead of two.

ADAM CUMMINGS: Got you.

MR. CARUSO: Jim (Wiesner), to answer your question, the center line of Chili Avenue there is -- is 10 feet higher than the first floor. So what we'll be doing is we'll be cutting our road in and down and then curbing in and cutting in the parking lot, so that this buffer area will come down to a level of the parking lot, and then the building will come up out of that. That is why we have the retaining walls over near the westerly property line to Byrne Dairy. That is why there is no cross access opportunity on this property, because the difference in the two parcels, the elevation from Byrne Dairy to ours is about 6 feet.

So this retaining wall you will see will be one of the types of walls that there are some texture to it like a cut-back wall, maybe like you have seen in Victor. So it will look neat. The parking lot will be cut in and it will have that background on it.

PAUL BLOSER: Similar to what was done at Walgreens?

MR. CARUSO: Yes.

PAUL BLOSER: Chili and Paul?

MR. CARUSO: Yes.

JAMES WIESNER: Then it looks like by the time you get to the back side of the property, it looks like that parking lot is a little lower. It looks like there is stairs to get up into the building.

MR. CARUSO: You bet. And people don't realize that. Because they look at that site, and even our client argued with us one day, "That site is flat. What are you talking about needing 2,000 yards of cut?"

That site drops almost 30 feet across it. Anybody wants to look at it, look at it that way. When we tried to put a flat building and a flat parking lot, something has to give. This site was really a challenge.

One of the best things he could have done to us was allow us to cut back the square footage on the building. It really gave us all of the wiggle room, front, back, sides. It took another foot off the retaining wall, so they're not so high. We are able to slide the building forward, which a lot of the Board members were looking for.

But we weren't putting it in -- in Mr. Taubold's front yard. That was very important to him. He didn't want to have this building in his front yard. Nor did he want the parking lot, so we are able to screen the parking lot with solid screening.

So -- I don't want to get to far off task, but you understand what I'm saying. Did I answer all your questions?

PAUL BLOSER: There is also a fence on the east side; is that correct?

MR. CARUSO: Yes. We are proposing a solid fence to screen his property.

PAUL BLOSER: Is that going to be vinyl?

MR. CARUSO: Yes. It's a vinyl fence. It's the same color -- his wife picked it out -- that

is used at Walgreens.

PAUL BLOSER: So it is the darker tone. It's this the -- a white?

MR. CARUSO: That was correct. It is something that has been used in this community and found acceptable before.

PAUL BLOSER: It is an earth tone color that will blend in?

MR. CARUSO: Yep.

MICHAEL NYHAN: Just for clarification. Mr. Bivone will not own the private property behind this commercial lot, correct? That will still be owned by another person?

MR. CARUSO: That is correct.

MICHAEL NYHAN: This easement is for the egress and entrance into that --

MR. CARUSO: That was correct. It's an easement on both property owners. They both have rights to the easement.

MICHAEL NYHAN: So the buffer setback is for both pieces of property; is that correct? For the -- for the Willowbend Drive address as well as the neighbors to the east on Chili Avenue? Where the -- where the -- where the roadway and the back corner here encroaches on the easement, the buffer?

MR. CARUSO: I'm sorry, Mike (Nyhan), could you say that again?

MICHAEL NYHAN: Sorry. I didn't make that clear. The buffer goes all of the way back to the edge of Mr. Bivone's line?

MR. CARUSO: Yes.

MICHAEL NYHAN: Where you're going to be encroaching is the property to the east with the Chili Avenue address, correct, at the very end here?

MR. CARUSO: He is encroaching -- well, it is all on his property. It is on Mr. Bivone's property, but he is encroaching into the 30 foot buffer.

MICHAEL NYHAN: Correct.

MR. CARUSO: And it's going to tie up to the existing residential houses in the back.

MICHAEL NYHAN: So the property line ends. There is not a line here showing where the property line ends.

MR. CARUSO: It is. Right here. This is the south property line. When we rezoned to Neighborhood Business, rezoning required a 30 foot buffer to any residential.

And so if you just stripe 30 foot off, that is where we started his current roadway, as it is approved, and it is not in the buffer. But here in order to drive back to where their driveway is, we had to dive into it a little bit. And so the new roadway is -- will be built over the current roadway, but it is inside this new 30 foot buffer line, and that's -- it's an encroachment. So we are just asking for a variance to allow that portion of the road to be in the buffer.

MICHAEL NYHAN: Okay.

MR. CARUSO: It's really just cleaning it up.

PAUL BLOSER: Paving stops right at the property line, though; is that correct?

MR. CARUSO: Yes.

PAUL BLOSER: Do they put -- just informational question.

Do they put a concrete apron or is it just blacktop right up to the property line and then the dirt goes from there? The gravel driveway goes from there?

MR. CARUSO: Yes. It's blacktop and then we would --

PAUL BLOSER: Go to gravel.

MR. CARUSO: It's all gravel already.

PAUL BLOSER: Okay.

ROBERT SPRINGER: Just a quick question. On the sidewalk that comes down on the right-hand side of the entrance, that comes down to the front portion of the building; am I correct? And then from that, there is just -- like across the asphalt walkway.

I see on one of the previous prints that the portion of the concrete sidewalk to be constructed by others is not part of this contract. Is that from the front of the building, going all of the way down through the easement, that someone else is going to do that? Is that fact or fiction?

MR. CARUSO: Someone else's. It's fact.

ROBERT SPRINGER: So someone else is going to do it is a fact.

But is it fact or fiction that that is going to be done, is my question?

MR. CARUSO: Well, it is an access easement to the adjacent property. We are proposing it and showing it on our plan. It will be up to him if he wants to install it.

ROBERT SPRINGER: If he doesn't do that, would it stay asphalt and just a walkway down through there?

MR. CARUSO: Well, if he doesn't do that, the design change at the Planning Board was to take it from the asphalt, up on top of the curb. So we -- we moved the road over, and we made a concrete sidewalk, showed it approved on the plans, all of the way down, and at the front of the building, we'll transition down the grade into the crosswalk there, and then if the owner of the -- if the owners of the residential want to continue the sidewalk, they have a place that they can build it. Now they have rights to that. That's an access easement. They have rights to do improvements in there, too.

ROBERT SPRINGER: I understand that. We don't know for sure that they are going to do anything?

MR. CARUSO: No, we don't. We don't know that, but we wanted to get -- to get clear that he has rights to do it, and we put it in the approved plans for you.

ROBERT SPRINGER: Okay. You have answered my questions.

ROBERT MULCAHY: I just have a statement. I -- I see you have done a great job here.

MR. CARUSO: Thank you.

ROBERT MULCAHY: The building is probably a very pretty building. We don't see the front of it. You have great landscaping there. What bothers me the most is that you put parking right in front, to hide that building. And I -- I don't like the parking in front like that. It's too bad you just can't have the -- the landscaping and the building, because the building is pretty. And you would -- because when you drive in that driveway or drive down the street, the first thing you see or the second thing you see is cars. It would be nice if you could just see the nice building.

MR. CARUSO: Yeah, you know, that issue has been bounced around and bounced around. Our customer is adamant about having parking in a place for people to see in order to park. He has had feedback from some of his potential tenants that if -- if they have to hide their cars in the back, that they weren't interested in coming there. And, you know, whether you agree with that or not, or I agree, is not the point. I think when we look around this area, there is no other buildings that are right up at the street, and really trying to fit into the character of the neighborhood -- I could probably argue better that if the building was right up at the setback, it would not fit into the character of this neighborhood.

And Mr. Taubold would be the first one, because this is what he was afraid of, is that we would have this 11,000 square foot building now in his front yard. Because you will see that if we go up to the front setback line -- look on the drawings in front of you and look where all of the other buildings are in around this property, none of them are nearer to the road than we are.

ROBERT MULCAHY: I don't think they need to be to the road. I think -- I think the landscaping is nice. It is just that I don't like the parking.

MR. CARUSO: I understand.

ROBERT MULCAHY: I know it coming from California. They're doing the same thing. They're doing away with parking in front of the buildings.

MR. CARUSO: I don't disagree with you, but we -- but we just thought that looking at the compatibility of the site -- we have a compromised design. We only have a two-bay parking stall arrangement up front. It's not three or four. It's not a parking lot. It's a small version of a parking lot, I should say, though. And you know, we -- we sit as a consultant to the Comprehensive Plan meeting, and, you know, we know that they're looking for doing things different in the future, about parking behind buildings. But I can tell you that that's -- that is really -- they're looking at doing something like that more in the core center of Chili, and not on this particular site.

This site is just -- it's not that compatible to put all of the parking behind the building. And you know, if we were to redo Chili Center and we were to redo the facilities up at the old Town Hall site, if that was ever to go, it would be appropriate to put the buildings on the street, use a green field, a reuse type design, but this -- it would just sort of be out of character with that building up there. And Byrne Dairy has their parking and gas, and our building is there and then the parking has to be behind it. But --

ROBERT MULCAHY: But somebody has to start it someplace.

MR. CARUSO: I just don't think this is the site. I -- you know, and I think that we have really tried to get a quasi version of that. You know, we don't have all of the parking in front. From zoning to building change, we have really tried to transition this thing down, and we have 65 feet of landscaping in front of it. I think we can do it. I think it will be all right.

But thank you for your comments.

FRED TROTT: I have to agree with Bob (Mulcahy). I don't like the parking in the front. Like you said, this is -- this -- we don't want this as far as the Master Plan. And this is part of the Chili Center Corridor. Um, I -- I think it -- if you look at it -- I don't know. I'm not an engineer, but it looks to me that you can move it forward. I don't see why we can't. Why you can't -- it would be nice to have -- the view of -- of a coffee shop, the cafe to the front. I think that would be more pleasing to those people. I just -- I have a problem with the parking in the front. I will tell you that right now. I just can't wrap my arms around it. I think you have a nice building, like you said, and I think it should be shown and not parking lot. You know, comparing yourself to Byrne Dairy, you're not selling gasoline.

MR. CARUSO: What about the -- the project across the street?

FRED TROTT: They sell gasoline, too. And yeah, how old is that?

MR. CARUSO: But forget that. I mean it is what it is.

FRED TROTT: It is what it is, and yeah, you could still move it up, and it's not right on the road.

MR. CARUSO: Still move what up, Fred (Trott)?

FRED TROTT: The building up.

MR. CARUSO: So if we move the building up, then we eliminate the parking in the front?

FRED TROTT: Uh-huh.

MR. CARUSO: But the variance is -- is not about parking in the front.

KEITH O'TOOLE: Actually, it is.

FRED TROTT: It is.

MR. CARUSO: The variance is about an encroachment into the front setback, with the parking.

FRED TROTT: The variance is for parking.

KEITH O'TOOLE: The code prohibits front yard parking. That is the issue.

MR. CARUSO: Okay.

FRED TROTT: I also have another question. Over here on the side by the dance studio, in

the back, there is this little triangle here on an angle. What is that?

MR. CARUSO: Can you point it out?

JAMES WIESNER: Actually a trapezoid, isn't it?

MR. CARUSO: Existing drainage easement from Byrne Dairy that comes onto our property that we have to -- it's an existing drainage easement.

FRED TROTT: Would that be affected by the building at all?

MR. CARUSO: No. We have rerouted it on the engineering plans, but that is the --

PAUL BLOSER: That was one of the Highway Department, Dave Lindsay's comments, Town Engineer, Lu?

MR. CARUSO: Yeah.

PAUL BLOSER: Any other comments from the Board? Questions?

KEITH O'TOOLE: The only comment I would have is that in the event that you grant the variance, they're only showing 39 spaces. They should adjust the variance to 39 from 55.

Thank you.

MR. CARUSO: Thank you, Keith (O'Toole). We -- we -- I should have asked for that at the beginning.

The whole application tonight has been adjusted to try to minimize the impacts that we had from the last design, and that is why I wanted to give you sort of the before and after.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

DOROTHY BORGUS, 31 Stuart Road

MS. BORGUS: I would like to start by asking this plan -- from -- the architectural viewpoint has changed so many times. Is there an up-to-date rendering of this building so I and the Board can envision how this would look closer to the road with the parking eliminated?

MR. CARUSO: (Indicating).

MS. BORGUS: I mean architectural, a picture, a rendering of the building itself. It has been changed so many times that I certainly don't know what it look like any more. We have added cupolas. Now I didn't hear about that. We have switched, you know --

PAUL BLOSER: That was all presented at the site plan.

MS. BORGUS: Right. I would have been there that night if my mother hadn't died that day.

PAUL BLOSER: My apologies.

MS. BORGUS: It takes a lot to keep me away from that Planning Board meeting.

I had a friend once -- and just bear with me for a minute. This will only take a minute. She liked to shop, and she spent a lot of money on clothes and her husband was very upset about it. So she came up with a plan.

She would go out and buy something, same thing she would have bought regardless, came home and told him it was twice as much in price as what it really was. She would wait until he flipped his lid, got angry, vented at her, and then she would say, "Oh, but it was only," and then she would give him the right price.

That's what Mr. Passero -- that is what this gentleman is doing for Passero. He is telling you what they had, what they wanted, what they didn't get and he hopes that they'll pacify you with the thought they have given in a lot. They have not given in anything.

I agree with Mr. Trott, Mr. Mulcahy, and I certainly understand the -- the questions of Mr. Wiesner about the -- the questions about this -- this front parking. We all know it has been many years since the Town has -- has advocated for front parking.

As a member of the Comprehensive Plan 2030 Committee, and I won't mention names, but there is a member also on this board, sitting right here now -- we know this isn't what we want in Chili. That is why it isn't in our code now. And going forward, it will be toughened up even more. This is not something we want.

And when you talk about Byrne Dairy, you're talking as -- it has just been mentioned that that is a gas station. You can hardly have gas pumps behind a building. And when you're talking about the building behind, across the street, that has been there longer than I have been in Chili, so that's a very old building, I can tell you right now. And so let's not compare to that.

We are -- this is today. This is now. We are going forward in this Town and we are supposed to be making improvements. The Comprehensive Plan Committee, the last one, and the one that is sitting now coming up with an updated version, as well as the Town Code, and as well as the architectural review parameters all agree this isn't what we want. It isn't what we want.

And it is up to this Board to put an end to this. You can't say, you know, "Next time we'll make it stick. Next time we'll make it stick."

There comes a point when you have to make it stick and the time is now.

This building -- I haven't seen the last drawings of it. It may be a very pretty building, but it can be close -- put closer to the road. And don't forget Mr. Wiesner made a good point. You are looking down on these cars. Not only do you have front parking, you are looking down on that front parking by 10 feet. That makes it even worse. Worse yet.

The developer wants what he wants. Well, you know, that's too bad. That's what this Board is for. To not give him everything he wants when it runs counter to what is best for Chili. Developers always want what they want.

And as far as this being a compromised site and difficult to work with, the man knew it before he bought it. So to come in here now and complain and cry because he can't get what he

wants, well, that's tough luck. That's the way the world goes. You buy it. You know what you can do with it. If it is not a satisfactory site -- nobody put a gun to his head and told him to buy it. He did it of his own freewill knowing there would be restrictions and restraints.

What he doesn't count on is the Town's code and the wishes of the Chili people to govern what he does. We cannot have developers coming in and riding over all of the plans that have been in place in this Town for years just because it doesn't suit their plan.

And now, um -- now we are hearing that -- that -- that moving a building in -- closer to the road and having a neighborhood feel is -- would be all right for Chili Center, but it's not right for West Chili? Well, what's the difference here? When do we start to get what we want?

A nice building put closer to the road would not be out of place there if it was done well.

And as this gentleman has said, it is a self-induced hardship. Which if you look at the -- at the rules and regulations from the New York Planning Federation, if it's a self-induced hardship, it -- then you must deny this. You must meet all four criteria. Every one, on every application. And you can't do that. Because he admits this is a self-induced hardship.

In short, it's time to draw the line and it's time to go with what this Town has wanted for a long time and start to get this straight and not have everybody say, "Well, he did," and "he did" and "they did, so I have to." No more. No more.

If that's the case, then I don't know why volunteers sit on boards for -- in this case on the Comprehensive Plan Committee -- Update Committee. We are at this well over a year. This is -- is a huge commitment on the part of some very dedicated towns people to -- to bring this code up to date, and I don't know what we sit there for and make these recommendations and come up with these plans when any developer can come in here and just ask to be forgiven from the rules and regulations and the wants that this Town has had for years and years and years.

Say no.

RICK TAUBOLD

MR. TAUBOLD: Rick Taubold. I own the property to the east. Just a brief comment. While I totally agree with what you're --

PAUL BLOSER: Sir, your comments get addressed to the Board.

MR. TAUBOLD: I'm sorry. I'm sorry. While I totally -- while I agree with what the lady has said about, you know, conforming more to that, I'm looking also at the fact that I sit to the east of it, and what would I rather look at? You see, because of the way that the site plan is designed, the way it is shielded now, I am basically not going to see that parking lot. The fence, the trees.

But if you move that building up, now I'm going to be looking at a rather large building right next to me. The way it is set back now, it keeps it out of my sight, and the neighbor even to the east of me sees the same thing. They're looking straight across at landscaping and not seeing a big building sticking up there.

I realize, and I certainly understand why you would like to see it closer to the road, but I think in this case, it would destroy -- well, not destroy, but definitely be a detriment to what the residents down the road to the east would see. They will be looking at this big building; whereas, the way it is designed here, we'll be looking at landscaping.

The same with Byrne Dairy. When I look down there, I don't see the building because the building is set back so far. That's all I have to say.

Robert Mulcahy made a motion to close the Public Hearing portion of this application and Robert Springer seconded the motion. All Board members were in favor of the motion to close the Public Hearing.

The Public Hearing portion of this application was closed at this time.

PAUL BLOSER: There has been a lot of discussion about does this belong here and doesn't it and everybody -- many people keep referring to the -- to the Master Plan, Comprehensive Plan. While I wholeheartedly support it and agree with it, it is not in place. It has not been voted on. It has not been approved yet by the Town. To use that as a driving criteria at this point --

FRED TROTT: But in the same respect, it is no parking -- he is -- is asking to change the variance from what -- what it is now. I mean it is already in play.

PAUL BLOSER: He is asking for a reduction, though, from what it was.

FRED TROTT: Yeah, but I mean he is saying well, he puts -- I apologize, but he is saying he is putting parking -- look at this whole map. He had parking in the back before. Just because he reduced the size of the building, he is able to cut down on the parking he had in the front. That's all.

PAUL BLOSER: Well, and again --

FRED TROTT: I mean, you know.

MR. CARUSO: There was a move before that, Fred (Trott). Before that the building was still big and we had all of the parking in the front. We went to DRC and they wanted some of the parking moved to the back. So you're looking at the second version of it. It was a compromise to go to the way we -- the route that we had.

I know it may not be to where you want it to be, and I respect that. But -- but it -- it -- the -- the statement that you made is just -- it was the second version of us making revisions to this plan to try to fit in, and -- and guys, this -- this didn't happen overnight. We were at the

Planning Board four times for this project. Four times. This thing was thoroughly thought through, and maybe not everybody got what they wanted out of it, but I can tell you that as many men and women as you are there and all of those on the side table that worked on this project, we have got this thing as close as we can get it.

You know, whether Dorothy (Borgus) stands up and says, "This is -- is not what the community wants," I got to think that boy, I worked for six months to get this thing to where this community wanted it.

FRED TROTT: I just -- I think you -- there is no reason why you can't have the parking in the back. I would -- I would be -- a compromise would be one row of parking in the front. I would be comfortable with that, but two rows of parking like that is just -- to me, it just kind of takes away from the building. It takes away from what we want to do, and -- he has got the best line. Well, Byrne Dairy is this and the other one is that.

Now, when the next guy comes, the Master Plan is -- is already put in place, he will say, "Look at that one that just got built a year ago. Why didn't you do it then?"

And even -- he had to get a variance for this. For front parking.

PAUL BLOSER: But the codes or the plans --

FRED TROTT: That is --

PAUL BLOSER: But if it is going to change with the Master Plan -- I understand.

FRED TROTT: It's not going to change with the Master Plan. The Master Plan says no parking in the front with village type buildings.

PAUL BLOSER: The existing code does.

FRED TROTT: The existing code says no parking in the front. That is what he is asking for relief from.

MR. CARUSO: The reason we say that is because when you look around, all of the other parking is parking in the front.

FRED TROTT: And then the next guy is going to say the same thing.

MR. CARUSO: The next guy, though, can be in this position down the road where you're trying to create something new that came out of an induced Master Plan.

FRED TROTT: He will say the same thing that you're saying, "Well, look at the guy next to me. That was only a year ago."

MR. CARUSO: Not if you're looking to do a master plan of the core center of Chili. That's a different story. That is what you're talking about in the Master Plan. That's what going on in there. They're talking about the core central --

ROBERT MULCAHY: I don't think so. I don't think so. I think they're talking about all of Chili, not just the core.

MR. CARUSO: This site is so specific --

ROBERT MULCAHY: Every site is so specific.

MR. CARUSO: This site is so specific. There is not multiple buildings in here which you could try to create the effect that you were talking about. I don't disagree with you. I do it in other communities. In the City of Rochester, they want the buildings right on the street and the parking behind it.

But you -- but that cannot happen here. If you stick this building up in there, it won't look right. And it's not what is going in and around the neighborhood. It's not that a whole litany of other Board members have looked at and evaluated with us, and we have the neighbor's testimony that he really doesn't want to see that. And that's why -- we are trying to make everybody happy here.

FRED TROTT: Well, I'm not happy.

MR. CARUSO: I know.

FRED TROTT: I don't think Dorothy (Borgus) is.

MR. CARUSO: I'm speaking too freely.

FRED TROTT: The Planning Board wasn't a unanimous decision.

MR. CARUSO: I should have not been more (inaudible) about that.

FRED TROTT: I listen to what he says and I can understand it. Like I said, I don't know about you, but I could be swayed into one row of parking in the front.

ROBERT MULCAHY: I don't want any.

FRED TROTT: I don't either, but I could live with that. I --

ADAM CUMMINGS: So what do you want to have a variance for, parking spaces to go down? Is that what you are saying?

FRED TROTT: I don't want any parking in the front, to be honest.

ADAM CUMMINGS: In order to get in the front, you would have to reduce the amount of spaces. That is one option, to reduce the amount of spaces that we would require for the site.

MICHAEL NYHAN: The real issue at hand here is whether or not to have parking in the front or not, not how many spaces. That is not the issue.

KEITH O'TOOLE: That is the -- the issue. In fact, what one could do, whatever the merits is to pull the building forward and then put parking behind it in the space you picked up by moving the building forward.

MICHAEL NYHAN: Right.

ADAM CUMMINGS: Well, I -- I vote to move forward. We -- we obviously know there is an issue with front parking. So it is almost a "yes" or "no."

PAUL BLOSER: Okay. Do you want to put any conditions of approval on this other than as he is putting it here now, the drawing showing 39 spots? The application is for 55, so the condition of approval here is that the variance would not exceed 39 spaces as shown.

Are there any other conditions of approval that the Board would like to see?

JAMES WIESNER: Now we are voting on them as two separate applications, the buffer and the front parking?

PAUL BLOSER: Yes. They are. The buffer for the driveway.

JAMES WIESNER: So the first one we are going after is the front parking right now?

PAUL BLOSER: How are they listed on the application? Yes. There will be two votes. One for the parking and one for the buffer.

MR. CARUSO: Well, Paul (Bloser), before the Board takes a vote, do we want to take a straw vote because --

KEITH O'TOOLE: No. No.

MR. CARUSO: No? Why?

PAUL BLOSER: We have never done one of those before.

MR. CARUSO: Okay.

KEITH O'TOOLE: The process is somebody makes a motion with whatever conditions they feel is appropriate. If that motion doesn't carry, then somebody else can make another motion if that is what they want to do.

PAUL BLOSER: Are there any other conditions of approval the Board would like to see? For either of the two parts?

JAMES WIESNER: No.

On the parking portion of the application, Paul Bloser made a motion to declare the Board lead agency as far as SEQR, and based on evidence and information presented at this meeting, determined the application to be a Type II action with no significant environmental impact, and James Wiesner seconded the motion. The Board all voted yes on the motion.

On the parking portion of the application, Adam Cummings made a motion to approve the application with the following condition, and Robert Mulcahy seconded the motion. The vote on the motion was 4 yes to 3 no (Fred Trott, Robert Mulcahy and Michael Nyhan).

Paul Bloser reviewed proposed findings of fact with the Board.

PAUL BLOSER: Second part of this application is for the variance with the access to the buffer, paving into the buffer.

Counsel, do I need to do SEQR on this portion also?

KEITH O'TOOLE: Actually, you're supposed to be doing SEQR for both, a combined environmental impact.

PAUL BLOSER: Are there any conditions of approval on this one, Counsel, that you would see?

KEITH O'TOOLE: No.

On the buffer portion of the application, Paul Bloser made a motion to declare the Board lead agency as far as SEQR, and based on evidence and information presented at this meeting, determined the application to be a Type II action with no significant environmental impact, and Robert Mulcahy seconded the motion. The Board all voted yes on the motion.

On the buffer portion of the application, Michael Nyhan made a motion to approve the application with no conditions, and Robert Springer seconded the motion. All Board members were in favor of the motion.

DECISION (on the parking portion of the application): Approved by a vote of 4 yes to 3 no (Fred Trott, Robert Mulcahy and Michael Nyhan) with the following condition:

1. Variance will be reduced to 39 spaces in the front of the lot as shown in the submitted plans.

The following finding of fact was cited:

1. The proposed variance will have no physical or environmental impact on Neighboring properties. Downsized submittal is more consistent with recommendations and approvals of Architectural Review Committee and Planning Board.

DECISION (on the buffer portion of the application): Unanimously approved by a vote of 7 yes with no conditions, and the following finding of fact was cited:

1. The proposed variance will not result in an undesirable change in the character of the neighborhood or to nearby properties.

The 9/28/10 meeting minutes were approved as modified.

The meeting ended at 8:44 p.m.