

CHILI ZONING BOARD OF APPEALS

November 23, 2004

A meeting of the Chili Zoning Board of Appeals was held on November 23, 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: Gerry Hendrickson, Michael Martin, Peter Widener, Jeffrey Perkins, Dan Melville and Chairperson Beverly Griebel.

ALSO PRESENT: Daniel Kress, Director of Planning, Zoning & Development;  
Richard Stowe, Counsel for the Town.

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.

BEVERLY GRIEBEL: Before we start out, starting with Number 1, any problem with the hearing notice signs?

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

BEVERLY GRIEBEL: Application 2, on McMullen, any problems with that?

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

BEVERLY GRIEBEL: Application 3, Hobbs?

GERRY HENDRICKSON: No problem.

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

BEVERLY GRIEBEL: Application 4, James Ecker? Any sign problems?

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

BEVERLY GRIEBEL: Application 5, I was out Saturday, the 13th, after lunch. There was no sign. That is Reagan Boychuk on Stover Road.

PETER WIDENER: Fenton Road.

BEVERLY GRIEBEL: I mean Fenton Road. The applicant lives on Stover Road.

DAN MELVILLE: There was one there yesterday.

BEVERLY GRIEBEL: Yesterday?

PETER WIDENER: I saw one on the 14th.

BEVERLY GRIEBEL: Okay. I went by there four times on that Saturday, and there wasn't any sign. So at this point, I will ask for a motion to table that. That would be to the December 21st meeting. Second on that?

DAN MELVILLE: I will second it.

BEVERLY GRIEBEL: Okay. On the motion to table?

The vote on the motion to table until 12/21/04 was 6 yes to 1 no (Peter Widener.)

BEVERLY GRIEBEL: If anyone is here to ask any questions about that, you will have to come back in December or send a letter if you have any concerns. That is tabled until -- the December meeting will be the third Tuesday on the -- 12/21. We move that meeting because of its proximity -- it would be between Christmas and New Years.

Did you have a question?

MS. BOYCHUK: The sign was up on that date. It may not have been exactly when you drove by, but they told me that date.

BEVERLY GRIEBEL: I was there between 1 and 2:30 and it wasn't there so the application

is tabled. There is no additional discussion on it.

Number 6, James Godette, any problems with that?

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

BEVERLY GRIEBEL: Number 7, the Atlantic Properties?

DAN MELVILLE: That was there.

BEVERLY GRIEBEL: The signs were up this time. Good job.

DAN MELVILLE: Amazing.

BEVERLY GRIEBEL: They stayed up, I bet. Everybody goes at different times. We don't go as a group, so people could go any day. Board members can look at it at any day. That had been a problem the last two meetings.

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

BEVERLY GRIEBEL: Number 8, the cell tower. Any problems?

DAN MELVILLE: That was there.

BEVERLY GRIEBEL: Any problems with the signs?

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

BEVERLY GRIEBEL: Great.

1. Application of Jim Marlow, owner; 2272 Scottsville Road, Scottsville, New York 14546 for variance to erect a 32' x 38' garage to be 1,216 sq. ft. (900 sq. ft. allowed) at property located at 2272 Scottsville Road in A.C. zone.

Jim Marlow was present to represent the application.

PETER WIDENER: The interest disclosure needs to be verified.

BEVERLY GRIEBEL: Mine is checked "no." Rich (Stowe)?

RICHARD PERRY: Mine, too.

BEVERLY GRIEBEL: It was tabled from last time, Marlow. Did you bring it?

PETER WIDENER: No. That is why. Thank you.

BEVERLY GRIEBEL: You're in an AC zone. How many acres do you have?

MR. MARLOW: 1.5 acres.

BEVERLY GRIEBEL: And tell us why you need to build a larger garage.

MR. MARLOW: I have a greenhouse business, which is a private business, not open to the public. I need extra storage for greenhouse supplies and an oversized delivery van.

BEVERLY GRIEBEL: You have a business there on your property?

MR. MARLOW: Yes.

BEVERLY GRIEBEL: Okay. Mr. Kress, or Mr. Stowe, is that allowed in that AC zone?

DANIEL KRESS: Agricultural-related businesses are allowed in that zone.

BEVERLY GRIEBEL: He doesn't need anything special?

DANIEL KRESS: No, ma'am. It is a permitted use.

BEVERLY GRIEBEL: How long have you had the business there?

MR. MARLOW: Five years.

BEVERLY GRIEBEL: Five years, okay.

So you want to get things undercover?

MR. MARLOW: Right.

BEVERLY GRIEBEL: Dan (Melville), questions?

DAN MELVILLE: I assume you're going to be wired for electric and everything else?

MR. MARLOW: Probably not this year.

DAN MELVILLE: Concrete floor?

MR. MARLOW: Concrete floor, yes.

DAN MELVILLE: Will you do any retail business out of there?

MR. MARLOW: No.

DAN MELVILLE: Just storage?

MR. MARLOW: Just storage.

RICHARD PERRY: You will also store an oversized vehicle there?

MR. MARLOW: It is an extended van.

RICHARD PERRY: You will not do any outside repair work or anything?

MR. MARLOW: No.

PETER WIDENER: Will that van be stored inside or outside?

MR. MARLOW: Inside.

COMMENTS OR QUESTIONS FROM THE AUDIENCE: None.

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

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

Beverly Griebel made a motion to declare the Board lead agency for SEQR, made a determination of no significant environmental impact, based on the testimony and the material presented at this hearing, and Gerry Hendrickson seconded the motion. The Board all voted yes on the motion.

Michael Martin made a motion to approve the application with no conditions, and Gerry Hendrickson seconded the motion. All Board members were in favor of the motion.

DECISION: Unanimously approved by a vote of 7 yes with no conditions, and the following finding

of fact was cited:

1. Applicant wants to garage his delivery van and described need for additional storage.

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

2. Application of Kevin McMullen, owner; 55 Bowen Road, Churchville, New York 14428 for variance to allow the total square footage of attached and detached garages to be 1,532 sq. ft. (900 sq. ft. allowed), variance for detached garage to be 9'9" from side lot line (50' req.) at property located at 55 Bowen Road in PRD zone.

Kevin McMullen and Bob Avery were present to represent the application.

MR. McMULLEN: Hello.

BEVERLY GRIEBEL: This is coming back to us.

MR. McMULLEN: Correct.

BEVERLY GRIEBEL: When were you here before?

MR. McMULLEN: I was here, um, probably in the spring; March, April maybe.

BEVERLY GRIEBEL: And what has happened since then?

MR. McMULLEN: Took care of all of the issues with Mr. Kress and Chili. I hired Bob Avery here to plot everything on the property for you. If you have any questions, he is here with me. Just got everything in order, and now we're trying to get this thing resolved.

BEVERLY GRIEBEL: To leave it where it is versus moving it to another location?

MR. McMULLEN: Correct.

JEFFREY PERKINS: You say it is a garage?

MR. McMULLEN: Well, it is a pole barn.

JEFFREY PERKINS: What do you keep in there?

MR. McMULLEN: Lawn equipment. I have a tractor, a lawn mower, an old boat and an ATV.

JEFFREY PERKINS: Did the DEC give you --

MR. McMULLEN: They're -- Mr. Kress spoke with them.

PETER WIDENER: Have you spoke with Mr. Kress about the conditions that we had before?

MR. McMULLEN: Correct.

PETER WIDENER: Is he satisfied with your approach now?

MR. McMULLEN: I think so. I have all my permits and everything. All my final inspections are complete.

PETER WIDENER: Then I'm satisfied.

BEVERLY GRIEBEL: That is the specs for the deck and the pool?

MR. McMULLEN: Yes.

BEVERLY GRIEBEL: I guess we should note that the garage is oversized, plus it was built in the wetlands buffer, 100-foot wetlands buffer. So that is where the concern comes into --

MR. McMULLEN: The DEC had been out there. We paid a fine to them. We spoke with them. They're happy. They don't want us to move it. They're okay with it. Like I said, I know Dan Kress has talked to them, too.

BEVERLY GRIEBEL: What kind of work do you do for a living?

MR. McMULLEN: I do electrical work.

BEVERLY GRIEBEL: Electrical work?

MR. McMULLEN: Yes.

BEVERLY GRIEBEL: Commercial or --

MR. McMULLEN: Commercial.

BEVERLY GRIEBEL: Originally you came in here because the pool, the deck and the garage had been built without getting permits for it?

MR. McMULLEN: That's correct.

RICHARD PERRY: Dan (Kress), you concur with everything he has said as far as everything being straightened out to your satisfaction?

DANIEL KRESS: As far as the pool and the deck, permits have now been obtained by the application for those. They have been inspected and we're satisfied that the appropriate requirements have been met. So those two are resolved.

We also know, as was just stated, that the DEC basically considers the fine that has been paid to satisfy the matter of construction inside the buffer. At this point the remaining issue is I can't issue a building permit for the garage until this Board sees fit to issue a variance.

RICHARD PERRY: The DEC did not have any problems with that remaining in the same location?

DANIEL KRESS: The DEC considered the fine that was paid to settle the matter is the way it was put to me by the gentleman at the DEC.

RICHARD PERRY: That is interesting.

BEVERLY GRIEBEL: That is extremely interesting, because where I live, there is a wetlands buffer, and one homeowner was getting in trouble for trimming trees at the edge of the wetland buffer. So that is very mysterious that they allow a garage --

DAN MELVILLE: As long as you pay them some money, I guess they're happy.

MR. McMULLEN: What they did is they walked it, and they said if there were certain plant growth in there, they could make me move it. They explained the situations like in Braddocks and stuff. He said that thank God we're set. But he could -- if there was certain vegetation there, they could make you move stuff. Or a steeper fine.

DAN MELVILLE: Fine solved the problem.

BEVERLY GRIEBEL: That is kind of crazy.

DAN MELVILLE: Follow the money trail.

PETER WIDENER: Sometimes when they come out and walk the land, too, it makes a difference. I know a farm for sale in Chili, it was wetland, but when the DEC walked it, there was one acre of wetland even though the original map said something else.

DAN MELVILLE: Are you running the business out of that garage?

MR. McMULLEN: No. Business is out of Manitou.

DAN MELVILLE: You don't store anything there?

MR. McMULLEN: I only store my yard equipment, tractor and the old boat. There is not even a driveway going to it.

BEVERLY GRIEBEL: This instrument survey that is with the application, this is one that I guess you received it when you closed on the house?

MR. McMULLEN: No. I just hired Bob Avery to do that. As soon as I left that one time -- I knew I had to get everything in order, so I went and hired him for that.

BEVERLY GRIEBEL: But it was August -- August 9th, 1996, redated August 31st, '96, and then redated March 2nd, 2004. But this goes back to '96. Is that when you moved in there?

MR. McMULLEN: I might have bought the property in '96.

BEVERLY GRIEBEL: Which clearly showed the wetlands buffer. Then you built the garage there --

MR. McMULLEN: I didn't know it -- I mean I knew there was a wet area, but I never -- I never really noticed that or paid attention to it.

BEVERLY GRIEBEL: Because there are other wetlands behind the house.

MR. McMULLEN: Oh, yeah. If you go farther west from me, then it gets very wet. My

next-door neighbors, they're 3,000 foot away. It is all wetland.

JEFFREY PERKINS: Was the garage there when you purchased the property?

MR. McMULLEN: No. I built the house there six years ago.

BEVERLY GRIEBEL: It was vacant land when you got it?

MR. McMULLEN: Correct.

BEVERLY GRIEBEL: There was a flood down there recently. How was Bowen Road? I know Bowen was closed to Morgan Street?

MR. McMULLEN: No. We were high and dry?. I have a creek behind my house. It is so far back, though, it doesn't come to me.

BEVERLY GRIEBEL: Mill Creek.

MR. McMULLEN: Correct.

#### COMMENTS OR QUESTIONS FROM THE AUDIENCE:

DOROTHY BORGUS, 31 Stuart Road

MS. BORGUS: I just want to understand this. I remember this gentleman being here. Was his application at that time for this garage?

BEVERLY GRIEBEL: Yes. When he was before this Board earlier this year.

MS. BORGUS: It was denied?

BEVERLY GRIEBEL: Right. There were a lot of issues he had to straighten out.

MS. BORGUS: He went ahead and built it anyway?

BEVERLY GRIEBEL: It was already built when he came.

MS. BORGUS: Oh, it was already built before?

BEVERLY GRIEBEL: You built it when you originally built the house?

MR. McMULLEN: No, no, no. It has been there two, pushing three years now.

MS. BORGUS: And now what has been resolved? What conditions --

BEVERLY GRIEBEL: Well, he built the garage, the deck and the pool without permits from the Building Department.

MS. BORGUS: Right. Yes.

BEVERLY GRIEBEL: Had to square all those away. They can't give him a building permit until he gets approval from this Board for leaving the garage where it is.

MS. BORGUS: Now, I understand there was a fine for the barn. Was there a fine for the -- or the garage.

Was there a fine for the pool and the deck?

BEVERLY GRIEBEL: I don't know what the Building Department did, but I think he resolved the issues and got the specs. I believe that is what happened. That issue is resolved.

MS. BORGUS: You know, we see so much of this, people that regularly come to this meeting, and certainly the Board sees it. People don't seem to know that the law is meant to be obeyed in this Town. I think maybe it is high time we made an example. One of these days people have to move a building, get it where it has to be. How far would this have to be moved to get it outside of the wetland?

BEVERLY GRIEBEL: We should have posted a map up there. I have a diagram --

MS. BORGUS: No. That is all right.

DAN MELVILLE: About 40 feet.

BEVERLY GRIEBEL: To get it out of the buffer, he is -- one corner of it is in the middle of the 100-foot buffer, and the garage goes towards the wetlands area of it, so it would be 50 feet to get to the edge of the buffer, and then to probably 80 feet, 90 feet to get it out of the wetland area.

MS. BORGUS: I haven't heard this applicant say he has learned anything from this process.

MR. McMULLEN: I have. I have spent a lot of time. I didn't do it to make anybody mad. It is just I -- one of those guys who just go quick, and I -- I apologize, I wrote letters, and I am sorry.

MS. BORGUS: In this Town we go slower and by the law. I have said it before. I consider Chili to be a lawless town. It is lawless because we have people like this who not only build a garage, a deck and a pool and what else will he build next if he doesn't get a lesson here. I would say move it.

BEVERLY NEDER, 82 Attridge Road

MS. NEDER: How much acreage does this property have?

MR. McMULLEN: Six and a half.

MS. NEDER: So it wouldn't be a big hardship. I mean he has plenty of land that he could have built this garage within the proper specifications?

BEVERLY GRIEBEL: He has some other buffers, I believe, around the -- behind the house. Drainage easements and other things. It is -- it kind of --

MS. NEDER: This is the only land on six and a half acres he could have put this barn?

BEVERLY GRIEBEL: Please don't argue back and forth. Let her speak. You can have a seat while we listen to comments from the audience.

MS. NEDER: It appears this is a self-imposed hardship, that he knew he shouldn't have built there, and he went and did it anyway. So he has paid a fine to the DEC. I don't think that we should be rewarding people for flaunting the law in our face and saying, well, I'm going to go ahead and do it anyway and hope I don't get caught. He got caught. It is not right. He has other spaces to move that to, and I think that if you want to hold the line in this Town, that it should be moved.

MR. McMULLEN: Well, I just want to say, like this gentleman here, I wasn't aware. I knew my property had wetlands, but if you walked the property, you would see it is dry. It is high. It is not a creek around it. It is just a good place for a barn. It was a nice place. It wasn't wet. I wouldn't build a barn, which I -- in a swamp. There is swamp land on my property. But that is way out.

DAN MELVILLE: You didn't even consider the side setback, if anything, on that?

MR. McMULLEN: I don't understand.

DAN MELVILLE: You're only 9 feet, 9 inches away --

MR. McMULLEN: I thought I was in closer.

DAN MELVILLE: It is supposed to be at least 50 feet. You didn't even consider that when you built the garage?

MR. McMULLEN: I wasn't aware of it.

DAN MELVILLE: So you didn't check with anybody?

MR. McMULLEN: No. I knew -- my property is -- I just knew I had to keep it on my property. I didn't know about the -- like I said, I didn't do it to make anybody mad. It just went up quick, and I want to make it right.

BEVERLY GRIEBEL: So you didn't really look at the instrument survey when you plotted out the location for the garage?

MR. McMULLEN: No.

BEVERLY GRIEBEL: The survey probably came when you closed on the house. They don't have a lot of detail, but sometimes it can be important.

MR. McMULLEN: I learned. I have learned.

DAN MELVILLE: Did you build the house or did --

MR. McMULLEN: I had a lot to do with it, but I had a guy frame the house.

DAN MELVILLE: Did you have a permit for the house?

MR. McMULLEN: Yes.

DAN MELVILLE: You didn't think you needed a permit for the garage?

MR. McMULLEN: Just one of those things. I wasn't doing it to make anybody mad. The window was there, the builder was there, and I said, "Let's go." I didn't think about the permit. I grew up in Chili my whole life.

DAN MELVILLE: Somebody built that for you?

MR. McMULLEN: Yes.

DAN MELVILLE: They didn't even ask if there was a permit in place?

MR. McMULLEN: Just got built.

DAN MELVILLE: Must be not a very good builder. Most builders know enough to check with the towns and make sure they're not --

MR. McMULLEN: I understand. We have learned a lot.

MS. NEDER: As I understand it, the applicant runs an electrical business. And I'm sure that in the electrical business he is aware that many times he has to get permits.

BEVERLY GRIEBEL: Right. I would think that you would.

MS. NEDER: So he would be aware that there is a permit process, and I just don't buy that excuse.

PETER WIDENER: The garage that is attached to your house, what is the square footage on that?

MR. McMULLEN: Um, not right in front of me, but I think it is 24 by 28.

MR. AVERY: 667.

BEVERLY GRIEBEL: Mr. Avery, did you have any other comments to make, or have we kind of covered a lot of the issues?

MR. AVERY: Well, it is kind of going backwards, but ideally I probably should have been

called for a stakeout. I know the circumstances of getting the garage up before the end of the construction, or what the situation was. The garage was put up without our layout.

BEVERLY GRIEBEL: Because you would have looked at this, and --

MR. AVERY: Correct.

BEVERLY GRIEBEL: -- and probably given some advice?

MR. AVERY: Correct.

BEVERLY GRIEBEL: Because you know what all these things mean, which --

MR. AVERY: Well, the wetlands, the wetlands area and associated buffer, of course that was plotted on the original site plan that we did back when the house was built. That site plan was approved by the Town. But not everyone is, you know -- is aware of map reading.

RICHARD PERRY: The interest disclosure? That was not checked off on mine.

DAN MELVILLE: It was on mine.

BEVERLY GRIEBEL: Not on mine. Mr. Kress, is that checked off on yours?

RICHARD STOWE: No.

BEVERLY GRIEBEL: Do you work for a government agency?

MR. McMULLEN: Do I? No.

BEVERLY GRIEBEL: Any other comments?

MR. McMULLEN: No.

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

Beverly Griebel made a motion to declare the Board lead agency for SEQR, made a determination of no significant environmental impact, based on the testimony and the material presented at this hearing, and Michael Martin seconded the motion. The vote on the motion was 6 yes to 1 no (Dan Melville).

Michael Martin made a motion to approve the application with no conditions, and Peter Widener seconded the motion. All Board members were in favor of the motion.

DECISION: Approved by a vote of 4 yes to 3 no (Beverly Griebel, Richard Perry, Dan Melville) with

no conditions, and the following findings of fact were cited:

1. Location of building has no detrimental effect on neighboring properties.
2. Prior conditions for applicant regarding the pool and deck were approved by the Building Department.
3. Applicant described need for additional storage.
4. Apparently, DEC is not objecting to the detached garage site.

Note: A building permit is required for the detached garage.

3. Application of Patrick Hobbs, owner; 426 Fisher Road, Rochester, New York 14624 for variance to erect an 18 ½' x 23' addition to garage to be 4' from side lot line (10' req.) at property located at 426 Fisher Road in R-1-12 zone.

Patrick Hobbs was present to represent the application.

MR. HOBBS: Hi.

BEVERLY GRIEBEL: This went to Monroe County Planning for Airport Review approval. Mr. Kress, I don't have anything checked on that. Is that a local matter?

DANIEL KRESS: We actually have not gotten a response back for this one.

BEVERLY GRIEBEL: What do we do?

DANIEL KRESS: It has been more than 30 days. By default, it is up to you.

BEVERLY GRIEBEL: Well, the garage will not be in the way of the airplanes. If it is, we're in big trouble.

DANIEL KRESS: Seems unlikely.

BEVERLY GRIEBEL: It is pretty close, but I don't think you're near one of the runway

approaches. In fact, the back of your house is on –

MR. HOBBS: Beahan Road.

BEVERLY GRIEBEL: You're at the triangle of Beahan and Fisher?

MR. HOBBS: Yes.

BEVERLY GRIEBEL: On the other side of Beahan is the engineer property and the fence and all of the other stuff there?

MR. HOBBS: Yes.

BEVERLY GRIEBEL: Now, you presently have a garage. Is that going to stay?

MR. HOBBS: Yes, it is.

BEVERLY GRIEBEL: And your new garage will actually be further from the side property line?

MR. HOBBS: It will be offset to the existing garage by 4 feet to clear the variance.

BEVERLY GRIEBEL: Because the present garage is 1 foot, 7 inches or 1.7 -- well, the existing garage is less than 2 feet from the side property line.

MR. HOBBS: The house and garage was built before the neighbor's property was there. They sold the property afterwards.

BEVERLY GRIEBEL: They cut off that property for somebody else? They cut it close to your garage?

MR. HOBBS: Uh-huh.

BEVERLY GRIEBEL: So your new garage is going to be further away from the side property line than the existing garage?

MR. HOBBS: Yes.

BEVERLY GRIEBEL: Are the garages going to connect?

MR. HOBBS: Yes, they are.

BEVERLY GRIEBEL: Okay. How will you get from one to the other? Will you go through them, the side?

MR. HOBBS: I will just remove the front door. It has two doors on the old one now. I will just take one door off so I can have more space.

BEVERLY GRIEBEL: You will go straight back from the new one to the second one?

MR. HOBBS: Yes.

DAN MELVILLE: What is the need of this garage? What do you need it for?

MR. HOBBS: I'm involved in auto racing and where I used to keep my car, the guy sold his house so I can't keep the car in the garage any more. I'm trying to keep everything under wraps, out of sight.

DAN MELVILLE: It is not any kind of a business?

MR. HOBBS: No. Just hobby.

DAN MELVILLE: Concrete floor and all that?

MR. HOBBS: Yes.

RICHARD PERRY: Any additional variance for total square footage of all garages? Do we know what the square footage is of this new one?

MR. HOBBS: I don't know offhand.

RICHARD PERRY: Let's add up the dimensions.

MR. HOBBS: She calculated it when I applied for the permit. She said it was close, but it was good.

JEFFREY PERKINS: 425 feet.

BEVERLY GRIEBEL: That is the new one?

JEFFREY PERKINS: New one.

BEVERLY GRIEBEL: How about the old one? 18.3 by 20.3.

DAN MELVILLE: The new one is bigger than the addition.

BEVERLY GRIEBEL: So that would be less than that. So we must be under 900.

RICHARD PERRY: Have you had any comments from your neighbor on that side, discussed it with the neighbor?

MR. HOBBS: House is currently up for sale. No one is there now.

RICHARD PERRY: So you can't talk to somebody that is not there.

MR. HOBBS: The people that were running it before don't have a problem. I don't know if the people that will move in will or not.

MICHAEL MARTIN: The alternative to building a new garage is leaving the car out in the open, under a tarp or something?

MR. HOBBS: Yes.

MICHAEL MARTIN: Having a garage would present a much cleaner yard and allow you to

--

MR. HOBBS: Work on it, yeah.  
BEVERLY GRIEBEL: Do you do repairs on the car there?  
MR. HOBBS: Yes.  
BEVERLY GRIEBEL: You do that in the garage?  
MR. HOBBS: Yes.  
BEVERLY GRIEBEL: You just repair your cars?  
MR. HOBBS: Just my car.  
PETER WIDENER: What is the height of the new garage?  
MR. HOBBS: A single story.  
PETER WIDENER: Any higher than the existing garage?  
MR. HOBBS: No, it won't.  
PETER WIDENER: No height requirement for the airport.  
DAN MELVILLE: Higher than the main house.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

DOROTHY BORGUS, 31 Stuart Road

MS. BORGUS: A question. Is this garage behind the one? I'm confused with no map here.  
MR. HOBBS: It will be in front of it.  
RICHARD PERRY: It is between the house and the existing garage.  
MS. BORGUS: Between the house --  
RICHARD PERRY: Further away from Beahan Road than the current one.  
MS. BORGUS: So the house and the garage, and this is between the two?  
RICHARD PERRY: Yes.  
DAN MELVILLE: It will be attached.  
RICHARD PERRY: You can come take a look.  
BEVERLY GRIEBEL: The existing garage is real close to the property line. This is going to be pushed more towards the center of the yard.  
MS. BORGUS: Thank you.

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

Beverly Griebel made a motion to declare the Board lead agency for SEQR, made a determination of no significant environmental impact, based on the testimony and the material presented at this hearing, and Jeffery Perkins seconded the motion. The Board all voted yes on the motion.

Michael Martin made a motion to approve the application with no conditions, and Gerry Hendrickson seconded the motion. All Board members were in favor of the motion.

DECISION: Unanimously approved by a vote of 7 yes with no conditions, and the following findings of fact were cited:

1. Hobby vehicles to be under cover.
2. No change in the character of the neighborhood.
3. Garage addition to be further from the side lot line than the existing garage.

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

4. Application of James Ecker, owner; 25 Sutters Run, Rochester, New York 14624 for renewal of conditional use permit to allow an office in home for a perennial plant facility with outside storage of plants at property located at 25 Sutters Run in R-1-15 zone.

James Ecker was present to represent the application.

MR. ECKER: Hi. How are you?  
BEVERLY GRIEBEL: Good. Saw you a year ago with that gorgeous backyard.  
MR. ECKER: Thank you.

BEVERLY GRIEBEL: You grow a lot of hostas there.

MR. ECKER: Right.

BEVERLY GRIEBEL: And you have no retail sales from your property?

MR. ECKER: None. No.

BEVERLY GRIEBEL: You just grow these and take them to various --

MR. ECKER: Outlets. Public market. Garden centers.

BEVERLY GRIEBEL: That is still the same as --

MR. ECKER: Yes. Nothing has changed.

MICHAEL MARTIN: Wasn't the applicant supposed to bring plants for inspection?

(Laughter.)

MR. ECKER: Maybe in the spring.

DAN MELVILLE: That is only the cheesecake lady.

(Laughter.)

BEVERLY GRIEBEL: Now, for winter you put your plants in storage?

MR. ECKER: Yes. They're down in Webster at my dad's place.

BEVERLY GRIEBEL: I remember when this came in, I walked in the backyard. It was gorgeous.

MR. ECKER: Thanks.

BEVERLY GRIEBEL: Any complaints from your neighbors?

MR. ECKER: Haven't heard of any.

BEVERLY GRIEBEL: That's good.

MR. ECKER: I know.

BEVERLY GRIEBEL: Positive.

PETER WIDENER: Just to be certain about the complaints, anything, Dan (Kress)?

DANIEL KRESS: Nothing that has come to the attention of my office, no, sir.

DAN MELVILLE: Do you store any kind of hazardous materials there?

MR. ECKER: None whatsoever.

BEVERLY GRIEBEL: Did the goldfish stay there all winter?

MR. ECKER: They do.

BEVERLY GRIEBEL: As long as they bubble, they don't freeze?

MR. ECKER: Yes, they're fine.

BEVERLY GRIEBEL: That's good.

COMMENTS OR QUESTIONS FROM THE AUDIENCE: None.

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

Beverly Griebel made a motion to declare the Board lead agency for SEQR, made a determination of no significant environmental impact, based on the testimony and the material presented at this hearing, and Gerry Hendrickson seconded the motion. The Board all voted yes on the motion.

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

DECISION: Unanimously approved by a vote of 7 yes with the following conditions:

1. Granted for a period of five (5) years.
2. No on-premises advertising.
3. No on-street parking pertaining to the business.
4. Hours of operation as per application.
5. No outside employees.

The following finding of fact was cited:

1. The home office is a customary home occupation.

5. Application of Regan Boychuk, owner; 57 Stover Road, Rochester, New York 14624 for variance to erect an open porch to be 47' from front lot line (60' req.) at property located at 140 Fenton Road in R-1-12 zone.

BEVERLY GRIEBEL: Application 5 was tabled. If anyone is here for that tonight, you will have to come to the next meeting, or send in a letter.

DECISION: Unanimously tabled by a vote of 7 yes until 12/21/04 with the following reason/finding

of fact having been cited:

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 James Godette, owner; 690 Morgan Road, Scottsville, New York 14546 for variance to create a lot with a lot width of 195' (275' req.) at property located at 140 Fenton Road in R-1-12 zone.

James and Phyllis Godette and Bob Avery were present to represent the application.

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

MR. AVERY: Good evening. Bob Avery, Avery Engineering. I'm here with the property owner and applicant James and Phyllis Godette, sitting right here. They are the owners of the 24.9-acre parcel located at 665 Morgan Road. They currently rent out that house on approximately 5 acres of land surrounding it. They will be selling it to the folks that are currently renting, and they're here before you to request relief from the required 275 foot frontage in the AC zone.

The proposed lot line that you see on your drawing there, which would be the west line of the house parcel, follows close to the edge of the grass division between the lawn area around the house and the agricultural use for the balance of the property.

We were able to obtain the 5 acres, of course, the required area in our -- to create that lot.

We did a little study of the existing properties in the neighborhood and certainly do not feel this will be out of character. Basically, we studied the 23 properties that are located within 1200 feet of this lot finding that 14 or 60 percent are less than 5 acres, and 13, 56 percent, are less than the 275 foot width. Actually having an average of about 166 foot.

BEVERLY GRIEBEL: You want to have this 195'?

MR. AVERY: 195 is being requested. The existing septic system is in the front area yard, in the front of the house, so that is within this created parcel. You will notice that we have kind of a dilapidated barn on the west line there. That will be removed, because right now it is pretty much on the line. It is pretty much falling down now, and it is to be removed.

We wanted to make certain that we held 100 feet off of the corner of the long barn. It is a former chicken coop, I understand, because of the fact that the current renters have some horses, and I know that, of course, we have to maintain 100 feet for the State Health Code from any sort of a structure that houses livestock. We obviously can't do that to the existing side line to the east because we don't own beyond it.

BEVERLY GRIEBEL: That structure predates -- probably predates some of the town codes.

You don't want to make it a wider frontage, because I think you noted you want to preserve the rest of the acreage for agricultural use?

MR. AVERY: Correct.

BEVERLY GRIEBEL: That makes sense because it is in an Agricultural Conservation zone.

MR. AVERY: Yes.

PETER WIDENER: The framed barn, that is to be removed, will that be removed? Or will we ask for a variance to leave it that close to the lot line?

MR. AVERY: I'm not requesting that. I do not have a time frame as to the projected removal. Possibly Mr. Godette could answer that question.

PETER WIDENER: As long as you're not asking for a variance. That is very close to the

lot line. That will happen in the future.

BEVERLY GRIEBEL: This is all part of the official documentation. It says to be removed. You know, if there is a problem with that later on, the Building Department would address that issue.

MR. AVERY: It is partially falling right now.

BEVERLY GRIEBEL: We have a big wind --

MR. AVERY: Big wind, it will probably be taken care of.

DAN MELVILLE: You can only hope.

PETER WIDENER: It is a very long lot.

MR. AVERY: It is a very long lot. Quite deep. Some State wetlands in the back there, that you're aware of. It is close to you.

PETER WIDENER: The land to the west is not going to be subdivided?

MR. AVERY: No.

PETER WIDENER: Right now it is proposed for farmland?

MR. AVERY: Yes. I'm not sure. Who is the farmer that leases it?

MR. GODETTE: Sackett.

DANIEL KRESS: Just to -- one is that it might be a good idea to condition any approval, if the Board sees fit to grant approval, on specifying whatever you deem be a reasonable time period for removal of that barn so I'm not wondering about that a year or two from now.

The other question is, Bob (Avery), could you refresh my memory, is that portion of Morgan Road served by septic systems or by sewers?

MR. AVERY: Septic.

DANIEL KRESS: Approximately where do we think the septic system for this property is?

MR. GODETTE: Between the house and the barn.

MR. AVERY: I misspoke. It is directly behind the house, correct?

MR. GODETTE: Yes.

DANIEL KRESS: Just want to make sure we're not putting it on the next parcel.

MR. AVERY: We do have public water.

BEVERLY GRIEBEL: So it is between the house and the barn, or the chicken coop or whatever is going to stay?

MR. GODETTE: Yes. The one that is staying.

BEVERLY GRIEBEL: It looks like it will be in the center of that lot you cut up.

MR. AVERY: Yes. It is in the lawn area there.

#### COMMENTS OR QUESTIONS FROM THE AUDIENCE:

MELADY WASKO, 595 Stottle Road

MS. WASKO: I'm adjoining property to that. I guess I have a question as to why you're cutting -- it has sort of been evaded. You're taking one-third off the required -- off the required frontage. That hasn't even been brought up. All of the other questions have been brought up.

BEVERLY GRIEBEL: They're carving a lot out of the big parcel, I think is what he explained, because they want to sell that part with the house. Do you see the diagram?

MS. WASKO: Yes, I did. I'm not totally sure I agree with the diagram because I believe my property also comes around the back of that. We're showing my next-door neighbor, but I believe my property comes around the back of that also. So it is sort of -- does an L shape.

BEVERLY GRIEBEL: This is a survey done October 21st of 2004.

MS. WASKO: Well, I have been there 30 years. I can show you all my surveys.

MICHAEL MARTIN: Your property is noted on here.

MS. WASKO: Yes. I see it on one side. I'm not seeing it coming around the corner. Mr. Farley happens to be over on the other side of me. I swing around.

BEVERLY GRIEBEL: I see your property, and behind your property is another owner, Farley, that is noted on here.

MS. WASKO: Correct. He would be over to my left. If you look on -- is he over further to the left? My property swings around that property, and he is over to the left of that.

BEVERLY GRIEBEL: Well, we only see a little bit of your property, and then behind there is Farley. So I'm not sure.

MR. GODETTE: Can I ask what the question is? I'm not following this at all.

BEVERLY GRIEBEL: Well, I'm not sure if she knows exactly where her property is. Is that your question, ma'am?

MS. WASKO: No. I know where my property is. I'm just saying I don't believe the map is

actually correct. And I was just questioning why are you letting go of one-third of the frontage that is required?

BEVERLY GRIEBEL: Well, that is why they are asking for relief from that town law. This is the Zoning Board of Appeals. They're appealing that town law.

MS. WASKO: I realize that. 25 years ago I was here and spent four months for a 10-foot variance for a setback and it just seems like everything is going so easy now, to just give it away.

BEVERLY GRIEBEL: Well, Mr. Avery did make some comments that 60 percent of the lots are under 5 acres, the 23 properties nearby. 60 percent are under 5 acres. 56 of them are under 275 foot width.

MS. WASKO: That would be in the last obviously -- through this Board. It would be.

BEVERLY GRIEBEL: Well, I don't know.

MS. WASKO: It is a 5-acre area. They had pretty stringent rules then, but I guess they have changed.

BEVERLY GRIEBEL: I can't answer when all those occurred, what happened with them. I don't know.

MS. WASKO: Okay. Apparently they have changed. So the 5 acres doesn't mean much and the frontage doesn't mean much.

BEVERLY GRIEBEL: They're asking for relief from --

MS. WASKO: I realize that.

DAN MELVILLE: Not the acreage. He has the acreage.

BEVERLY GRIEBEL: He has the acreage, but not the frontage.

PETER WIDENER: Correct. The Ferrell Subdivision to the west were all 5- and 7-acre subdivisions.

MS. WASKO: I realize that.

PETER WIDENER: So they're staying with the 5-acre, but they're just asking for the variance on the front part.

MS. WASKO: I realize that. I'm just saying most of the questions you're bringing up are different questions. You're not addressing that they're taking one-third off the frontage. You're not addressing that. You have brought up the barn. That has been most of the talk.

MR. GODETTE: If I can make a comment.

RICHARD PERRY: Well, the entire variance is about the frontage. That is exactly what we're talking about and addressing.

MS. WASKO: I'm sorry. I didn't really hear very much of that discussion.

BEVERLY GRIEBEL: We'll, they're asking for relief from that Town regulation, to have a certain frontage. They're asking to have less frontage, and the application stated that they wanted to leave as much land in the agricultural condition as they could rather than to cut more off to get the frontage and take away from what is under cultivation.

MS. WASKO: Okay. Fine. That was just my question. I'm not hearing much about the frontage issue.

PETER WIDENER: We have it in writing here. They're asking for a variance to go to 195 from the required 275.

MS. WASKO: That is right. That is what I am reading. You were not discussing that. You were discussing a barn.

RICHARD PERRY: Well, the only issue here --

MS. WASKO: Is the barn? That is what you were discussing (indicating)? I would like to hear frontage discussion. Thank you.

MR. GODETTE: Just a comment on that. We have been there about 35 years, and that has been the property line since we have been there, right where we're making that frontage, that 195 feet. So that has been the existing yard and property there for at least 35 years, maybe longer, and to the west of that, the 20 acres that is agricultural, to my knowledge, it has always been that way. Maybe going even longer than 35 years, but it had been there at least 35 years.

BEVERLY GRIEBEL: So now you're defining that property line to sell off the property.

MR. GODETTE: We're just taking that same line and keeping the 20 acres that have been farmed, farmland, and the property that has been used as a residence is still used as a residence. So nothing is changing as far as the appearance or anything.

BEVERLY GRIEBEL: As far as the use of the land.

MR. GODETTE: Right. Use of the land, everything stays the same.

BEVERLY GRIEBEL: You need that larger portion to stay agricultural?

MR. GODETTE: That's right.

MR. AVERY: The proposed property line is following the usage line.

BEVERLY GRIEBEL: Good way to put it.

DOROTHY BORGUS, 31 Stuart Road

MS. BORGUS: How many acres are in this parcel?

BEVERLY GRIEBEL: Five. Is it five? Jeff (Perkins)?

MICHAEL MARTIN: 5.1.

MS. BORGUS: Thank you.

DAN MELVILLE: We're discussing the frontage, which is the 195 feet, but when we vote on this, we're also going to put a condition as far as removal of that barn.

BEVERLY GRIEBEL: When is this property getting sold?

MR. GODETTE: Hopefully by the end of the year, so the barn would be removed by that time, I would say.

BEVERLY GRIEBEL: Before the sale. If we have barn to be removed by the sale –

MR. AVERY: Yes.

RICHARD PERRY: Given possible weather conditions and so on, that doesn't pose a hardship on the owner?

DAN MELVILLE: It may have to be removed before the sale, otherwise it might not close.

PETER WIDENER: I don't believe it would need a demolition permit because it is almost on the ground now, but I don't know. I'm just thinking, you know --

DANIEL KRESS: As -- demolition permit is merely a formality to document that the barn was removed.

BEVERLY GRIEBEL: They need a demolition permit from you.

DANIEL KRESS: Consider if the entire structure is to be removed, that is also the mechanism to notify the Assessor the structure is gone. It is in the interest of the property owner to obtain permits for these things.

JEFFREY PERKINS: The westerly property line, it is straight except for right around where the horseshoe driveway is, kind of dog-legs in. What if that line continues straight? Is that a big deal to the owner?

MR. AVERY: Is he here if you want to ask him?

MICHAEL MARTIN: It could cut into the agricultural area.

BEVERLY GRIEBEL: He has been cutting that down to what has been agricultural for 30 years. He is just defining, as Mr. Avery said, a usage line rather than to cut more out to make that follow the property line, rather than making the dog leg. I don't remember what is there. Is there a hedge row? Trees?

MR. AVERY: Brush. Brush as you get out behind the house. The lawn only goes – not too far behind the long barn.

JEFFREY PERKINS: If that line was straightened out, that would increase the frontage.

RICHARD PERRY: Then you have a mixture of the 195 feet of residential frontage that has been there for a long time, trying to mix it with agricultural -- you know, two different things. I think the 195 feet residential frontage that has been maintained for all these years is appropriate.

BEVERLY GRIEBEL: Right. It is an Agricultural Conservation District, which by definition would be to preserve all of the agricultural land you can. That is the object of it.

MICHAEL MARTIN: It is still 30 feet above what the average of the frontages are in the area.

MR. AVERY: 166 of those that are less than the required width.

RICHARD PERRY: 195 feet certainly exceeds what the majority have.

BEVERLY GRIEBEL: The average of the undersized lots.

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

Beverly Griebel made a motion to declare the Board lead agency for SEQR, made a determination of no significant environmental impact, based on the testimony and the material presented at this hearing, and Gerry Hendrickson seconded the motion. The Board all voted yes on 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 7 yes with the following conditions:

1. Removal of barn prior to the sale or no later than six months.

2. Proper permits to be obtained from the Town of Chili.

The following findings of fact were cited:

1. Consistent with area frontages.
  2. Preserves existing agricultural area.
7. Application of Atlantic Properties, owner; 301 Exchange Boulevard, Rochester, New York 14608 for variance to erect a senior apartment building to be 20' from proposed west side lot line (40' req.), building height of three stories, 42' high (2 ½ stories, 35 high allowed), variance to allow 23.4 units per gross acre (8 units per gross acre allowed), 80 units in one building (12 units allowed), efficiency apartments to be 410 sq. ft. (550 sq. ft. req.), one bedroom apartments to be 600 sq. ft. (700 sq. ft. req.), front parking per plan submitted at property located at 3793 Chili Avenue in R.M. zone.

John Caruso, Richard Rozen and Timothy Poley were present to represent the application.

MR. POLEY: Good evening. My name is Timothy Poley. I'm a consultant to the applicant, Atlantic Properties. And specifically I'm a consultant to the senior living industry and have been so for over 12 years and have worked in multiple communities and at this point in time over 1,000 units.

With me tonight is Richard Rozen, staff architect and planner of Mark IV Construction; and John Caruso of Passero Associates who leads the project engineering team.

The independent and assisted senior living concept has emerged over the past 15 years as a surprisingly affordable and very attractive living option for many aging seniors. The senior living housing and service concept, properly executed, extends independence and life span, offers needed lifestyle choices, and provides security and piece of mind for both the seniors and their families.

The model of senior housing which we call the social model in contrast to the medical model, which is best exemplified by nursing homes, provides congregate housing with a broad array of services for seniors who are across a broad range of ages and needs.

One of the primary tenants of this model are to provide small to moderate-sized apartments with large and spacious common areas.

The theory, which has been proven in practice over the past decade and a half is that seniors will thrive in an environment where they're induced to leave the solitary confines of their individual apartments into varied and lively social settings.

In fact, not counting the circulation areas, our proposed facility has over 11,000 square feet of common areas dedicate to things such as public and private dining rooms; intimate living rooms and seating areas; fitness and health facilities; libraries and audiovisual screening rooms; chapels and other places of worship; country kitchen for use of the residents; clubs and organization meeting rooms; beauty and barber shops; laundry areas; card rooms; music rooms, and computer rooms.

The communities also provide transportation, recreational and educational programs, health screening, but most of all, they provide for the dignity and prolonged independence of their residents.

This model has worked well nationally and has blossomed here in the Rochester market, particularly for the Legacy communities. The existing communities include Legacy at Willowpond in Penfield with 89 living units; Legacy at Park Crescent in Greece with 192 living units; Legacy at Cranberry Landing in Irondequoit with 96 units; and currently under construction, Legacy at Clover Blossom in Brighton with 181 independent living units.

Willowpond and Park Crescent opened in 2000 and 2002 respectively and have used the same market driven design and pricing model that has yielded considerable success by hitting targeted lease-up time frames, achieving early positive cash flow, and using efficient service delivery systems while not sacrificing quality of the senior living experience. Cranberry Landing opened in June of 2003, and has just recently reached stabilized occupancy.

The Clover Blossom community will open in 2005 and the level of interest is very strong.

Standing on the shoulders of these communities, Legacy at Parklands will follow in the Legacy tradition with even a more finely honed formula. Chili is an under-served marketplace.

In towns where there is not a specific senior zoning in place, it is often necessary to request variances from the established multifamily code since the needs of the elderly are unique and different than the traditional apartment renter.

This is true in Chili where most of the evening's requests of the Board are precipitated by the unique requirements of the seniors living in independent and assisted living communities.

We believe that the Chili market is replete with opportunities for a seasoned senior developer with insight into the local market, proven experience in cost effective service delivery, with superior economic and geographic location, and beautiful but functionally designed communities. We believe that the fact that the Town of Chili is an under-served market action, that Legacy at Parklands will be an added and, I think, valuable contribution to the community.

Legacy at Parklands encompasses all these attributes and promises to be one of the most successful communities we have on the drawing board.

With this I would like to ask John Caruso to discuss more specifically the variances we are requesting this evening.

MR. CARUSO: Good evening, everybody. I think one of the issues that came out of Tim's short presentation there was the issue with the Chili ordinance lacking a senior housing code, and one of the things that we noticed in several of the other communities that we work in is, you know, when is that actually kicking in. Is the Town of Chili code really deficient? I think the answer is no. As a matter of fact, it is a very good code. I have used the code, as you know, in several projects, and was part and party of reviewing the code when it was renewed. So I just think that in several communities you have to have several senior housing projects come before you before you ultimately say, you know, we need to do something, because when we have these projects, we don't want them to go away. They do generate a lot of variances.

So what we did on this project is we looked at some of the other towns and we talked with those people in that community, the directors of development, the people in -- in like Dan (Kress)'s position. At what point did your code click in? In Greece it was around the sixth senior housing project. We have two up in Chili now. One is under construction. This will be the fourth. So we have got -- we're about -- there is another one coming I hear. So we're ready to do that. I know if Dan (Kress) had his choice, he would have one established right away and he would know how to do it because he has seen these similar variances come. But I can tell you that we would normally not bring a project to the Planning Board or to the Zoning Board with five or six variances. We just certainly know better. Projects are more successful when they're done to code and so on and so forth.

I can tell you in our project, we can make four variances immediately go away, if we were to apply them to a senior housing code. You know, for example, the Town of Greece, they allow 20 units per acre, and in Irondequoit, 22 units per acre. We have 23 units per acre. You use it as a gauge. 3-acre minimum parcels. Ours is three point something. Three stories are allowed in some of these senior housing codes. Things that you would normally see.

I think -- and the unit sizes. Richard Rozen, our architect with Mark IV or Atlantic Properties, is here, and he will go through and show you how some of that developed. But with respect to the nitty-gritty on some of the variances, let me jump into them and go through them quickly. We will open it up. I would like to have Richard (Rozen) talk, too, about the unit sizes and then we'll open it up to questions.

Some of the area variances that could go away if there were a senior housing -- or there were a senior housing code to address them, the first one, let's talk about, is the density factor. We are required to do a subdivision for financing in order to be able to assign a tax account number and assess taxes and for the bank to secure and lien the mortgage on that property.

BEVERLY GRIEBEL: That is why you're cutting that off from the other section?

MR. CARUSO: Yes, ma'am. The reason we need to subdivide, it is a requirement of the lending institution to, you know, hold security on a piece of land that has a tax account and an address, and so on and so forth.

BEVERLY GRIEBEL: Special senior financing?

MR. CARUSO: This is a \$7 million project. It is not a cheap project. Legacy does things top of the line. You will not -- no lending institution will take a mortgage line. Not on a development like this.

So with that, we are required to do this subdivision, and with the subdivision, when we put it down, it is a three point something -- what is it exactly?

MR. ROZEN: 3.4.

MR. CARUSO: 3.4 acres, and then obviously with 80 units you wind up with 23 units per acre. I think the intent of the overall preliminary plan that was approved, just recently approved, was that we weren't going to exceed the 9.8 units per acre which we did receive a variance for from this Board. Whether that line is there or not, we still have the 80 units and we have not changed the original intent of doing an apartment project with a senior project in the northeast corner. So I think that that remained the intention. We have gone through SEQR and obviously there is no issue with that. Another variance that could go away is 80 units in a building where the code doesn't allow more than 12 units in the same building. And again, we're applying here an apartment-type zoning ordinance to a senior -- the two just don't match.

And any other senior housing facility we have done in the town we would have to grant the same variance.

I will skip over the floors and area for now.

I will talk about the building height. The building height on this project is -- this parcel is a bit unique. It is unique both in the east and west direction, but also in the vertical direction. I mean from Chili Avenue, to Park Creek Drive, there is a 20-foot differential in elevation change.

The architects have done a terrific job in fitting a building into the side of this site. And if you will, consider a single-family home that is a two-story at the street, but has a drop-off in the backyard. That drop-off in the backyard is a walk-out, but when you're standing at the walk-out, it has a door and all that, and a patio. That is not considered a three-story building. That is the same situation that we have here, except in reverse. In our case here, we did not want to have our main entrance coming off Chili Avenue with people turning in there. We did not want them coming off Union Street where that's a down slope from there. We wanted them coming off the subdivision road that we built and dedicated. That is where our main entrance is. Unfortunately, the grade is in the wrong direction there, and to have everybody come in there, you know, and to line up with the roof line that comes off Chili Avenue, it creates a three-story effect. I guess in looking at the minimal effect, which we try to produce to any Zoning Board argument, it is only in the lower buildings that it is three-story. It is not in the upper pod that we call it, near Chili Avenue. So the whole building is not all three story. It is just the part that is above ground, on the lower south side of the project.

BEVERLY GRIEBEL: That is three stories?

MR. CARUSO: Right.

BEVERLY GRIEBEL: The rest is two stories?

MR. CARUSO: That's correct. Now, let me say something to you about minimal height, because we tried to keep it as low as possible, and here is how we did that.

If you consider a story on a building like this 12 feet, 3 times 12 is 36. Then typically you have the roof that goes up, and the pitch of the roof usually is about 8 feet. That is why you will see in a code that will allow for two-story, they don't want buildings taller than 36 or 35 feet. If you have seen that, where is the difference? You have 24 feet for two stories, but how come they allow 35? The reason is that pitch on the gable, the roof, that distance there is. Well, we did the same thing, but if you add 8 onto 36, 3 times 12, and 8, you're at 44. So how are we at 42? Because we were sensitive to the fact. We looked at that. We were able to drop the roof down two more feet to try to minimize that effect. We can't go lower because the code requires we have a certain pitch. That is how we got to 42 feet.

All right. Moving on to the side setback variance. The side setback variance is really required and comes into play when we do the subdivision. When we lay that property line down -- I will point -- I have this right here so you can see both of it, but I will point to the plan over here (indicating). This is the property line that we're establishing (indicating). Now, this building could be placed on the site without the subdivision, and we would not need a variance between the two. So the fact that we put a property line here (indicating) doesn't create any hardship, or the impact isn't one that is measurable. It is really just for the case of mortgaging. When we do put the line down, we have a 20-foot setback. But I think it is important to note that this parcel has some incredible setback situation, and it is very unique. We are sort of the corner parcel that isn't. Here (indicating) is really the corner parcel. We're treated like all of the other impacts that come with a corner piece of land. We have 75-foot setbacks off of Union Street, off of Chili Avenue, and we have setback met off of Park Creek. So this parcel meets all of the setback requirements, and it is stuffed up, but because we laid this property line down in here (indicating), we're 20 foot short of the side line.

So we're really not doing too bad if you look at the uniqueness and all of the setback requirements of this property, you can see on your plan, these are set back 100 plus feet. We're 76

feet off of Chili Avenue. It really is set back. We do meet all those requirements. So do I think we're at the minimum? I think we are. I think we have done the best we can. That 20-foot setback is really insignificant because if we were to develop that property without that line, that building would still be placed right there.

And the last variance I will talk about, and then I will have Richard (Rozen) come up and spend a little more time with you on the unit area. The last variance is one that is of a practical -- the most practical. If all those other variances were eliminated because we had a zoning code, this is really why we would be here tonight, to ask if we could park a little -- a little parking area here (indicating) right next to the front door. It is a practical application we're asking for. We want our tenants to be able to park near the front door. Some of these people are older, obviously, and we don't want them to have to walk and traverse the site. We do want parking near the front door for visitors also. But one thing I would like to note is that we did obtain a variance from this Board to have buildings closer to the internal roadway, and we did obtain variances for some of these apartments to be in here.

The same applies to this building (indicating). We could have this building (indicating) closer to the roadway. The fact that we're having the parking area there, in lieu of a building, I think is actually a better situation, and could be considered in our argument the least, because we could have the buildings some 30 feet off the road way.

So -- we're just asking you to consider with what we have been able to do with the Fire Marshal and considering having fire access, two points in this property, and a point in through here (indicating), he is really pleased with the flow that we have. And we met with him right at 7 o'clock tonight to finalize some of our things. We talked about it with him. So that parking area allowed it to be in front, also allowing the circular fire lane all of the way around the building.

I would like to bring Richard Rozen up, who has really done a good job with putting a board together to try to describe to you some things that you may not see all of the time. I know you're used to area variances and setbacks and building height, but when you get into spatial layout of a building, it is probably a little bit more difficult. So I asked Richard (Rozen) to spend a little more time inputting some comparisons together, and I will let him talk with you about the unit size.

MR. ROZEN: I'm Richard Rozen, the architect for the project. The handout that Tim Poley is giving you now is the same as the labeling of the diagram.

As Tim (Poley) briefly mentioned, 10,500 square feet in this total 75,000 square foot project are the actual use areas for all those different socialization, exercise, health, et cetera, amenities that you would not have if it were a regular apartment house. A total actually of 23 percent of the building is in areas outside the actual apartments, the corridors, the elevators and stairs and all that. In garden apartment projects, which your ordinance was designed for them, the maximum 12 units in a building, you don't have any of that. So there is that tremendous extra expense in doing a building that provides for the amenities -- all these amenities which keeps these seniors, many of whom are frail, healthier and living longer. The basic theory which has been proven is that when people are socializing, not being lonely, and just watching TV in their own apartment, um, it is less likely that they will get depressed. Depression is so common among seniors in that isolated situation, so in order for us to be able to afford to build the 10,500 square feet of all these special facilities and to staff them, we, as is standard in the industry, cut the units back to what is just necessary.

Now, what I have given you there shows many projects, some built by us, some built by others. In Pittsford, in Penfield, in Brighton, in Canandaigua. We're not talking about in areas of lesser value than in Chili. There is a remarkable similarity here. When we first got into this business, we went to those projects that had been built already and frankly we borrowed ideas and that is -- the 80-unit size came out the same. The 600-square-foot is almost universal as a basic one-bedroom. 56 of the apartments here are the 600-square-foot one-bedroom units. There are only 17 of the smaller studios. And then there are four large two-bedroom apartments which meet the requirements of your zone, so they are not subject to discussion tonight.

The photographs there are of two of the studio apartments. They're each furnished in a different way.

The woman chose to put her dining area in a different part of the apartment than the man did. The diagram that you will see on the right-hand side is the typical furnishing plan which in a rental brochure we suggest to people who come to view the place so they can see how they might furnish the place.

BEVERLY GRIEBEL: These are not the efficiencies?

MR. ROZEN: These are.

MR. CARUSO: Are all these?

MR. ROZEN: Two efficiencies. There is one occupied by the gentleman, and that one shows the kitchen which has a two-burner cook top, a microwave, countertop and a sink, a regular refrigerator.

PETER WIDENER: Sleeping quarters where?

MR. CARUSO: Here is his chair and there (indicating).

BEVERLY GRIEBEL: Two different views of the room.

MR. ROZEN: Two different views so you can see the whole apartment. That gives variety in how they furnish it.

I didn't take pictures of one-bedroom units because it is kind of self-explanatory if you look at those room sizes. These are perfectly standard master bedrooms with walk-in closets that you would have in any home. Nothing deficient about those areas.

When we add up -- we actually did the arithmetic on this. When we add up the number of square feet that we're varying for the efficiency times 17 efficiencies and for the one-bedroom times 56, we come up with a total, which is about 25 percent less than all of the extra space we are building. So we have actually -- if the space we are building in common communal areas were added to the units, the units would be bigger than they are required in the zone. You can look at that in three different ways to convince you that this is not cheapening the life-style in any way, or the value. We only reduced the area by 79, 80, but we put back in 10,500.

BEVERLY GRIEBEL: For communal living?

MR. ROZEN: Right. Now, of course, you don't have this in your town as yet. The senior projects you have, the one is a licensed proprietary home, which is just a studio, which either comes furnished or they will put the furniture in storage and you can use your own if you want, but it is just one room. The other one under construction are senior apartments. Although they have large communal space where agencies might plan an activity, these people live independently. They go to the store, shop and cook their own meals. That is, of course, very different than this. Our Legacy communities have residents in their 80s, 90s and even in their 100s, and a large number become quite frail. All of the services provided and meals are part and parcel of a very different type of construction than the senior citizen apartments you're familiar with here in town.

BEVERLY GRIEBEL: Now, one of the early diagrams I saw, it had a dining area. So meals are provided in the rental?

MR. ROZEN: Yes, oh, absolutely. Let me take a moment then -- these are the plans that were given to you a couple months ago and given to the Planning Board and also posted up in the public office.

In yellow are the portions of the building -- this is the first floor (indicating). The portions of the building -- the portions of the building that are common space. A very large main dining room. A small dining room for birthday parties primarily. A large fireplace living room. This is the exercise room (indicating). There is the beauty parlor (indicating). This is another social room (indicating). Here is a small lounge (indicating). Here is a card room (indicating). Then as we go up on each floor, they are duplicated on each floor. Here is the chapel (indicating) which serves as movie house, too, of course. Another card room. Total of one, two, three, four separate function rooms, and the same on the third floor.

MR. POLEY: We probably should mention, too, the services, the meals and stuff are in separable aggregate. We just can't rent an apartment in our community that comes as a package with meals. You really can't say I want the apartment and forget about the services. It didn't come that way.

BEVERLY GRIEBEL: Even though there is a small kitchen area if they want snacks, but meals are included so it behooves them to use the money they're paying.

MR. POLEY: Candidly, we find very few people cook in the kitchens. These individual communities are -- the majority of the people, about 85 percent to 95 percent are female and we have found in literature one of the things that keeps up a sense of independence, from a feeling view, is to make sure you have a kitchen in your individual unit. Even though you may only use to it do coffee and even though you may not cook a gigantic meal.

One of the things we have is a common kitchen, a country kitchen where if an individual says, "I will cook a special meal for six or seven friends," they can do their special thing in a country kitchen. There is not a lot of cooking in the rooms except for warming and microwaving.

BEVERLY GRIEBEL: You don't need a big kitchen or dining area?

MR. ROZEN: Actually, the one-bedroom unit does have a big kitchen. Nothing small. A built-in circular table and a nook here for a computer on the side. Full-size refrigerator, stove, sink.

BEVERLY GRIEBEL: But all of the meals are included?

MR. ROZEN: All of the meals are included, yes.

There is much more we could say, but it might be wiser for us to let you call the shots what your questions might be.

BEVERLY GRIEBEL: I guess one concern I have is the closet space is part of the square footage?

MR. ROZEN: Yes.

BEVERLY GRIEBEL: Is there any additional storage area?

MR. ROZEN: Yes, there is. Because it is -- the wing that goes north to Chili Avenue is only two stories, the entire basement there is -- half is mechanical and half is storage. There will be storage lockers for every tenant.

BEVERLY GRIEBEL: Oh, okay. So they can put stuff there.

MR. ROZEN: Things that they took with them because they didn't want to sell them or give them to the kids and then discover, "What did we bring it for?"

BEVERLY GRIEBEL: That was one of the main questions that I had, was storage provided because sometimes the closet space gets diminished. Although that is an excuse to clean out and throw out before you move.

JEFFREY PERKINS: That building, it is sprinklered?

MR. ROZEN: Fully sprinklered.

JEFFREY PERKINS: You can get access all of the way around the building with emergency vehicles?

MR. ROZEN: Yes. When I met earlier today with the Fire Marshal and when John (Caruso) and I met with the Chief and Fire Marshal together just before this meeting, we provided them in the plan that you have -- that John (Caruso) has spoken from tonight with a fire lane from the apartments coming to the west side of the building where they -- and they all agreed that that is where they can park their ladder truck and get to the west side of the building. We gave them an additional fire hydrant that had not been in there previously and they're perfectly satisfied with that now. Yep.

PETER WIDENER: Were they satisfied with the ingress/egress from Chili Avenue?

MR. ROZEN: Yes. What we did is in four different locations, we modified the bump-outs at the side of the parking, which you have at the turns, and made them mountable curbs with concrete so that the public won't use it. They will respect it as an island, but the firemen will be able to drive over it. Even if every parking space were occupied. Yes.

PETER WIDENER: What fire district is that in?

GERRY HENDRICKSON: Chili.

PETER WIDENER: Is it Chili, Gerry (Hendrickson)?

GERRY HENDRICKSON: Yes.

BEVERLY GRIEBEL: He is our fireman down at the end.

MR. CARUSO: Peter (Widener), we just met with all of the Chiefs, Assistant Chiefs and Jim Christian and he is going to be preparing a letter to the Planning Board stating so, that we satisfied his concerns and we have gone so far as to actually -- we met with him, and made the plan changes and just presented them to him and he found them acceptable. Short of having him prepare a letter to bring it in to -- I don't know, maybe he can -- I don't know, Dan (Kress), did --

MR. ROZEN: Did he speak with you?

DANIEL KRESS: Fire Marshal indicated to me that he found the proposed arrangements to be acceptable, as did the Fire Chief.

BEVERLY GRIEBEL: That would please the Planning Board, I'm sure.

MR. CARUSO: He will send us a letter to that effect. If it works for some of your concerns, then so be it.

JEFFREY PERKINS: One of the things I see in the letter from Jim Martin dated November 15th, last paragraph, "In addition, although not binding, the Chairperson is courteously requesting that the developer look at a scaled back project that would meet their business case requirements."

Have you done that?

MR. POLEY: I would suggest to you, in fact, scaling back the project is not economically feasible. There is a critical mass of residents. You need to provide these services, the recreation director, the transportation and kitchen. You will find most likely the projects by and large average around 80 at the small end to about 200 at the high end. Our communities here, we have 89 is our smallest unit community. 96 is the next. 181 and 196. And you just really find in terms of providing the services at some reasonable cost-effective manner, you really have a lot of fixed

costs in these communities, and if you try to provide these services down in the 50s or 60s, you can't make the numbers work because you have to increase the monthly service charge so high it is out of the price range for most seniors. We really find getting down below 80 is a difficult economic thing to do. 80 is probably at the very, very lower end of senior communities here in the Rochester area and on a national basis.

RICHARD PERRY: What is the cost per month for someone to live in one of these?

MR. POLEY: What is the cost? They range from 1350 to 1750 a month, which is what our projected cost factor would be. Generally speaking, from an industry point of view, depending if the individual is basically getting the minimal amount of services or assisted living services, it ranges between 70 percent of your disposable income to 80 percent of the disposable income can be use for the service fee and the remaining portion -- since the meals are provided, the transportation is provided, the recreation portion is provided, but generally speaking, between 70 to 80 percent is probably about the maximum level an individual can spend on this particular type of housing, and the rest obviously is used for other incidentals. But this will provide so many of the individual services, they have utilities payments are included, no tax payments, and the services are so complete, that somewhere between 70 to 80 percent of the disposable income is used. In this particular community, about 1350 to 1750 is probably going to be the range, depending on the type of the unit and the amount of services.

RICHARD PERRY: That is including the meals?

MR. POLEY: Yes.

RICHARD PERRY: That is for somebody who is totally independent, doesn't need any assistance?

MR. POLEY: Does not need assistance with daily living activities. What we do in that situation, there are home health care agencies as a person starts to age in place, and if they need help with feeding or bathing, those types of situations, the home health care agency takes that over. We're not.

RICHARD PERRY: What if all they need is somebody to dispense --

MR. POLEY: Medical monitoring? That is available in our facility through the home health care agency.

RICHARD PERRY: So that would be an additional expense?

MR. POLEY: Yes. They're an a la carte basis. It depends how many of those individual services that they may need. I would suggest in our Greece facility, for example, I probably say that the minimum level there probably ranges about -- with additional services, ranges somewhere in the area of 2,000 a month and can go up as high as \$3,100 a month. That's a very large range of services. However, compared to a nursing home where, in fact, you may be looking at \$6,500 a month, assisted living, quite frankly, is a bargain compared to a nursing home. Prior to this particular type of housing, you often found individuals found themselves in a medical model nursing home because there was no other place to go. The person wasn't at the level of acuity they needed a nursing home, but there was no intermediate stage and they basically went from single family home into a nursing home because they needed lowest assistance because there was no alternative in the marketplace. I think this particular type of housing has now provided, I think, probably a prolonged ability to stay more independent rather than going to a higher level of care.

RICHARD PERRY: Are you associated with any nursing homes so if somebody progresses from being able to live on their own to needing nursing assistance?

MR. POLEY: What we really do is every one of the communities we're in, we usually make the contact within that general community rather than taking a person from the west side moving to the east side. So if we come out to Chili, we'll look at the nursing home in this vicinity and make our relationships with them so we can transition. We do find one of the things in these particular communities is that most of the residents who leave our community really leave for only two reasons. One, their demise or need a higher level of care going to a nursing home. There is very little switching in the communities. I don't like this community. I'm moving next-door. What happens is you develop a family atmosphere. You find these individuals in many cases may be living a relatively solitary fashion in their current situation, come into our communities and find, frankly, a whole new group of friends, and a whole new group of friends that probably stay with them for a very long period of time.

One of the things we do find and may find of interest is that because of the social model, the people are outside. If Mary doesn't come down to breakfast within a few minutes, everyone knows Mary is not at breakfast. Everyone is watching out for each other. One of the very important aspects of this particular model. I think that we often find people say, "Mom wants to stay in her home for a very long period." Mom's friends aren't driving any longer. It is hard for the kids to

get over during the day. Becomes an isolated type situation. In this particular model we find the individual is induced on a continual basis into a social environment. That is one of reasons you want to keep the bedrooms and living rooms small and compact. You want the services outside of the bedroom so that really you go out and sit in the congregate area, go to the card room, the billiard room. Some places we have workshops in the basements with saws, et cetera, with people who have woodworking skills. Outside garden facilities for individuals that are gardeners. We try to keep the people involved. There is a full level of recreational activities published on a weekly basis that if you go to look at, even at younger ages, I'm tired of looking at all of the activity literature.

PETER WIDENER: I have several questions. I will try to keep them right to the point and try to keep your answers right to the point. At the beginning you mentioned something about how many million dollars to build this complex?

MR. POLEY: We're not finished, but we'll suggest it is probably similar to our other complexes, between 110 and \$140 a square foot, making this project somewhere between a 7 ½ and \$8 million complex.

PETER WIDENER: I looked at your parking facilities here. At 80 units, I can only count about 61 parking spaces.

MR. CARUSO: We have gone through the parking issue with the zoning official, Dan Kress, and we don't have an issue with parking.

PETER WIDENER: You don't?

MR. CARUSO: We don't have a variance situation for parking.

PETER WIDENER: Okay. Do you feel that not enough parking spaces is okay? I mean if there are 80 units, and I'm thinking that each one would have a car.

MR. POLEY: Probably not. Our average resident age, in this particular community, is over 80. We find that probably less than 10 percent of our residents do drive. And even in those situations, we often find those vehicles are trophy vehicles, that, in fact, the person doesn't want to get rid of it, by in large, keeping it in the driveway. The reality is very little drive anyway.

BEVERLY GRIEBEL: You provide transportation?

MR. POLEY: We provide transportation to doctors, shopping, et cetera. We find 10 percent of the residents will have cars in the facility.

JEFFREY PERKINS: Do these residents stay indoors?

MR. POLEY: We try to have the residents outside in nice weather. As the winter, inclement weather comes, they're inside except for field trips going out. In the summertime you will have people outside. You will see that our courtyards and recreation areas usually have benches. We do a lot of barbecues outside with the residents. We have outdoor gardening usually with elevated gardening materials so there is no bending down. The recreational activities in the spring, summer and fall are outside. In Rochester, mostly inside in the winter.

MR. CARUSO: Couple places here and here (indicating) that we created outdoor recreation. Plus the rest of the entire project, they're entitled to go through the other facilities, the whole rest of the project.

MR. POLEY: The walking trails.

MICHAEL MARTIN: Where are the other, I guess, outdoor activity areas located for the rest of the property? You're subdividing this one section for the lending purposes.

MICHAEL MARTIN: Curious as to how close it will be.

MR. CARUSO: There is a trail that is around the back of the detention areas here, and there are sidewalks through the entire project. They're all illuminated.

RICHARD PERRY: A walk on the other side of the apartments and then a trail is being constructed now actually between Black Creek and the detention pond, around and then adjoining it. So it is probably simple to just cross the street at one point and then this is all -- this is quite an extensive walk to take through the woods all along Black Creek there. There is a formal declaration and easement which your attorney has been furnished which guarantees to these people the right in perpetuity to use the open space for that project.

MR. CARUSO: One of the concerns, Mike (Martin), of the Planning Board was if we do parcel this off, that then the open space that was provided for the entire project then is only for the balance of the Park Land apartment projects, and with an agreement that was made between this owner (indicating) and this owner (indicating) which is the same, a different company, the Planning Board attorney wanted a covenant and an agreement to allow these people (indicating) to come onto this property (indicating) to use the clubhouse. There is a clubhouse here. And the walking trail in and around the pond. Then the entire walkway system through the dedicated highway, and sidewalk system.

GERRY HENDRICKSON: How is the drainage?

MR. CARUSO: The drainage?

GERRY HENDRICKSON: Yes.

PETER WIDENER: Water run-off from the parking lot.

BEVERLY GRIEBEL: Those are Planning Board issues really.

MR. CARUSO: There is a storm sewer system to pick that up.

GERRY HENDRICKSON: It floods quite easy in there.

MR. ROZEN: They did give us our approval two weeks ago after extensive discussion.

GERRY HENDRICKSON: I know. It still floods.

MR. CARUSO: Maybe it won't –

BEVERLY GRIEBEL: That is up to the Planning Board.

MR. CARUSO: After the storm sewer system is put in.

GERRY HENDRICKSON: Have it understood, it does flood quite frequently there.

JEFFREY PERKINS: Has there been any consideration to acquire the corner property, the gas station?

MR. POLEY: It is under conversation right now. I will have to say, in fact, there is a lot of interest on the part of Mark IV to acquire that property. It is not satisfied completely at this point in time, but we're moving in that direction.

JEFFREY PERKINS: I think that would make this project better.

MICHAEL MARTIN: What would be the intention if you could acquire that?

MR. POLEY: No development really. We're not looking to develop that parcel. Just probably completes our site.

MICHAEL MARTIN: More creating buffering?

MR. POLEY: More buffering, yes.

BEVERLY GRIEBEL: More open space.

JEFFREY PERKINS: The building would likely move further to the east?

MR. ROZEN: No, no, no.

MR. POLEY: We would keep the building there.

MR. ROZEN: We think the building is -- I can illustrate it, too. In order to say would you move the building, you have to look at what we have created over here. You know the average setback here is 55 feet. Even those, these two single points were 21 feet. And the distance between the buildings is another 20 feet. And there is a large recreation area we have created here (indicating). There is no reason to move it this way (indicating). This is really quite satisfactory.

And this is the noisy intersection (indicating). You would stay away from that.

Now, we considered that, the setback here, as John (Caruso) mentioned to you, is quite substantial, and because the DOT controls our traffic, would -- knowing that all of our traffic is coming in here, we really designed the building to be an impressive facade which you view as you turn in, and that is properly done. Acquiring this parcel wouldn't -- it wouldn't enable us to do anything better here. It would just get rid of that particular kind of use.

MICHAEL MARTIN: Quite a few environmental issues with the parcel.

MR. POLEY: That is one of the –

MR. ROZEN: If you don't build on it, you don't have to clean it up.

MR. CARUSO: We would have to come back to --

DAN MELVILLE: Any kind of subsidies?

MR. ROZEN: No. We don't receive any subsidies. Nothing at all. Fully tax paying.

PETER WIDENER: Several questions. In your other units that you have shown us, how many of them are three-story? Several?

MR. ROZEN: Let's see. Ferris Hills is three-story. Um, St. John's Meadow, part is two-story, part is three. The Highlands, one of their buildings is three and one is two. Um, oh, let's see. The Summit. The Summit is three stories. When you drive by on 590, that is the big building you can see, the Jewish Home. And Village Wood is three stories.

MR. POLEY: I would probably say about half and half.

PETER WIDENER: Vacancy rates?

MR. POLEY: Average in the city ranges, generally speaking, between 10 and 12 percent. On our stabilized properties right now, we're running between six and eight. So we're doing better than the average on a national basis. About 68 percent vacancy is what we're running and 10 to 12 is a national average. One of the reasons that average is high is that even if you have a waiting list for your community, it takes some time period for that senior once you tell them they're ready to get out of the home into the community. So there's a little bit of a delay there. So these communities run around 10 to 12 percent nationally. We have been a little more fortunate, we're running six to

eight.

MICHAEL MARTIN: The three stories is more an effect on the elevation change from the north to the south to maintain a common roof line.

PETER WIDENER: Especially the land. I was just curious what --

MICHAEL MARTIN: It is not all three stories. It grades.

BEVERLY GRIEBEL: Right.

MR. ROZEN: There is another statement I may make to clarify that. It is strictly two stories from Chili Avenue, and that roof line is the roof line throughout. No part of that roof line is higher, because we're going down, the walk-out basement analogy. So as you look from Chili Avenue, the peak of that roof never changes and it is a two-story building from Chili Avenue. There is 21 feet in drop between the two.

PETER WIDENER: That complements my next question. About emergency egress from the buildings, if you will.

MR. ROZEN: Well, they are fully sprinklered buildings. There is a staircase at the end of each wing and in the center, and the fire -- we have an easement to the driveway at the service station so the fire trucks can come right through. They can come in either end.

PETER WIDENER: What about getting people out of the building?

RICHARD PERRY: They evacuate people -- oh, we purposely -- State code only requires the stairs to be 36 inches wide. We make them much, much wider after consulting with -- first in these projects with the Fire Chiefs. We discovered the way people are evacuated from the building in a fire with a man on each side of the gurney or wheelchair carrying down the stairs. All of the stairs are extra wide.

PETER WIDENER: Extra wide stairs?

MR. ROZEN: Yes.

PETER WIDENER: Some of our senior citizens don't move like they used to.

MR. ROZEN: Stairs are 54 inches wide. That is what they asked us for.

PETER WIDENER: Security on your buildings as far as public harassment or anything like that?

MR. ROZEN: It is like a private locked apartment house. You have key cards to get in, sure.

PETER WIDENER: Number of people in a unit?

MR. ROZEN: The -- there are some couples. There are some couples. It is a small number.

PETER WIDENER: We have experienced some problems where grandma will live in a unit, but five of her grandchildren will live there and go to the school district.

MR. ROZEN: And pay 1350 for each --

PETER WIDENER: Is there any investigating of that?

MR. ROZEN: No. That is utterly prohibited by the lease terms. I think that would happen in senior citizen apartments. This, as Tim (Poley) mentioned, each person is seen, all day long. They know -- this is not anonymous living.

PETER WIDENER: I'm just asking for the records. On the lease, do you address that?

MR. POLEY: Our lease basically says no one under 55 can live in our apartment building, number one. That only -- not only is that a provision, sometimes you may have an older spouse and a younger spouse. Our average age in our facilities is about 80 years old on the entrance. So we really find we don't have a lot of spry seniors. But no one under 55 can live in our facilities.

PETER WIDENER: Good to know you checked that out.

I have no other questions.

JEFFREY PERKINS: Could this facility be converted into a hotel sometime down the road?

MR. POLEY: I don't know. We haven't really thought about it. I guess there is a possibility.

JEFFREY PERKINS: It looks like it has everything you would need for a hotel.

RICHARD PERRY: And much more.

MR. CARUSO: Any interior renovation, depending on what you would want to spend -- I don't know structurally -- how big is a hotel room? 400 square feet or is that too big?

MR. ROZEN: It is not that different. His question is a valid one. I don't think there is really a material difference.

MR. POLEY: From a real estate point of view, it is possible.

MR. CARUSO: So we have a second use. Is that good?

DAN MELVILLE: One of the questions I had, talking about if we had a special zoning, or

ordinance to cover senior housing, which we don't, we have to deal with what we have now. Did I hear correctly what you said, if you had to scale this back, it probably wouldn't be feasible?

MR. POLEY: It is very difficult to scale it back because you just can't get the numbers to work in terms of your fixed costs. If you try to get the facilities to have 50 units, you can't have the Recreation Director and the Director of Activities and the transportation.

DAN MELVILLE: Would you have to cut out that stuff?

MR. POLEY: Or raise the price up so high. If you really look at any of the facilities in the Rochester market that are independent, I don't believe there are any facilities that are less than 75, and the average is probably around 130 to 135. You don't want to get above 200 because that becomes too much. The average range is somewhere between 100 and 200. 80 is scaling it down to the lowest level you could. If you get below 50, you can't support the fixed cost.

MR. CARUSO: These are different from some of the projects you have seen come through that may be funded from DHCR. Providence came through. This is different from that in that, you know, to compete, to get funding on a project like that, they submit that to the State with several other projects that are competing. And one of the ways to win is not come through with a 100-unit project, but to come through with a 50, because they will fund you with a 50 unit project because they can fund two 50-unit projects. But what you will find now, and if you see some of the newer ones come through, they can't make it on 50 units. The non-for-profits can't do it with 50 with funding. You're seeing them come through at 60 and 70 units just for the carrying costs of the maintenance of the facilities.

MR. ROZEN: Those are just apartments without services.

MR. CARUSO: Minimum is no longer in the 50s. They have seen to make them carry, non-for-profit, okay, they -- they're up around 70.

BEVERLY GRIEBEL: I did talk with College Greene Apartments. They don't have any studios. They have one-bedrooms, 611 square feet. They have two-bedrooms, 815 and 907. The larger one is two baths. They don't have any storage areas. There is no storage there. The bathrooms do have a spot for a stackable washer and dryer if people want to put one in, but some people don't bother with that because there are laundry facilities in the floors and they use that area in the bathroom for additional storage. There is no basement storage or anything.

MR. POLEY: Flat linens are included in our package so that -- in fact, all flat linens. There are washer and dryer units available throughout the facility.

BEVERLY GRIEBEL: For the personal laundry?

Seneca Towers I also called. I don't know how many years that has been there. A long time. Studios are 458 square feet.

MR. ROZEN: Seneca Towers is independent living again.

BEVERLY GRIEBEL: One bedroom is 625 square feet. They have some deluxe third room with no windows, 910 square feet. You have to be 55 at least and no storage. So I think the figures are -- well, they speak for themselves. I didn't call any other places. Just those two.

DANIEL KRESS: Just for the Board's information, I toured a comparable facility up in Greece off Mount Read Boulevard, Stone Road and it is consistent with what has been presented to this Board tonight.

RICHARD STOWE: I have a couple, but I apologize if you covered this at Planning Board. I wasn't there. As I understand this, the subdivision of this parcel is being driven by your financing?

MR. POLEY: Yes.

RICHARD STOWE: The unit and the costs and pay-back and the density is being driven by financing, as well?

MR. POLEY: Unit --

RICHARD STOWE: In order to have the project paid, you have to have 80 units. It has to be on a separate parcel and the way our code is written, that creates issues with setbacks and variances?

MR. POLEY: Yes.

RICHARD STOWE: Where is financing coming from?

MR. POLEY: We have different financing alternatives. I want to talk to that for a moment. First of all, two different types of financing. One is construction financing. I will suggest to you I don't think construction financing really is inhibited by the type of unit. But our permanent financing, this is done in securitization of the loans in the marketplace. What that means is they take these loans and they put them into homogeneous pools and build 100 million or 200 million pools and every loan in there has to be completely homogeneous. They all have to be single-purpose entities on single lots and they have to have a certain type cap rate and you can't get that

type of financing for these senior projects unless they're all identical. That is one of difficulties you find. So securitization of these loans on Wall Street is one of the reasons you have to have a separate single-purpose entity own its own property to get the financing.

RICHARD STOWE: I understand that. I'm not sure it was communicated to the Board.

BEVERLY GRIEBEL: For benefit of the Board and the audience.

MR. POLEY: That is really what the purpose is. The construction loan is not the issue. It is when you go to permanent financing, you find that the marketplace is pretty strict in terms of what they will take out to the capital markets and in order to get it out to capital market, you have to have a single-purpose entity that only owns one thing, owns its own piece of property. So if, in fact, they were foreclosed on it -- that is what they're worried about -- they basically have no entanglements. We have one property, one tax account now and now we own the property.

BEVERLY GRIEBEL: That is used to cut off from a large parcel. That is why you worked with the Planning Board on that issue.

MR. POLEY: Exactly.

BEVERLY GRIEBEL: Then that creates the --

MR. POLEY: The variance that we have.

BEVERLY GRIEBEL: And the coverage and all of that.

MR. POLEY: Exactly. So really this parcel -- we really don't have any setback problems really if we kept this as one parcel. We create a setback problem when we create that imaginary line going down there. But even though the average distance is still 55 feet in terms of our setback, it is just a couple little corners there we come a little closer.

MICHAEL MARTIN: If it was all one parcel, the density would be within code?

MR. POLEY: Yes. For our variance, we received 9.2 units.

MR. CARUSO: We have an 80-unit facility in there, that was the intent. That is why we came back with one. Actually I found it is going -- with a little adjusting, 77 units.

MR. ROZEN: 77.

MR. CARUSO: Our application is for 80.

MR. ROZEN: When I did the architecture, I could only fit 77 in. So that is what there is.

BEVERLY GRIEBEL: So that even though there is a boundary there, there will not be a fence or anything, and nobody would know unless they knew.

MR. POLEY: Transparent to both parties.

MR. CARUSO: That is my argument. Imaginary line creates no impact. Some of the other applicants tonight, some people were encroaching towards a setback line. That is not the case here.

BEVERLY GRIEBEL: You occupy that land and you stay off of it.

RICHARD STOWE: You already have your mortgage commitment, your financing committed and in place or no?

MR. POLEY: No. Right now we're working on construction financing. It looks like probably Canandaigua National Bank will be the construction. It is unclear at this point in time for the permit test two or three years out.

RICHARD STOWE: You're confident you have markets for this?

MR. POLEY: Canandaigua and First Niagara have done all our projects. They are both chomping at the bit. Everyone thinks the Chili market is under served. There are no independent or assisted living facilities.

RICHARD STOWE: Two other quick follow-ups. You have explained this to be an assisted living facility.

MR. POLEY: Independent really.

RICHARD STOWE: Hence the question. What unit of State government licenses and oversees this, if any?

MR. POLEY: Independent living facilities currently under State law are not licensed. What we really find in our facilities is that the licensing entity is the home health care agency who provides the services is really the licensed vehicle, so that, in fact, you have a licensed home health care agency or agencies that basically come in and provide what we call the hands-on touch services. Our people really aren't in the business basically of providing medical assistance or even assistance with daily activities, but the licensed home care agencies who are trained and licensed to do that actually provide that. The medical monitoring, for example, making sure the person takes their medication, transferring the individual from bed to a toilet, et cetera, those are done by home health care aides under a licensing under the State of New York Department of Health, and it is a licensed home health care agency. We are at this point in time not planning to have our facility licensed, but have licensed providers give those services that are outside what

we call the hospitality portion. We provide the meals, the maintenance, the recreation and the housing and the other portion of the services are provided by licensed providers.

RICHARD STOWE: Last one. I believe I heard the answer to this quickly, but I'm not sure if it was emphasized. You're not getting any sort of State subsidized DHCR funding, none of that?

MR. ROZEN: No.

RICHARD STOWE: I believe I heard it was not going to be a not-for-profit entity.

MR. ROZEN: Correct.

RICHARD STOWE: This is a for-profit, non-licensed facility with licensed providers providing the services, and, therefore, probably not going to have any tax exemptions on it?

MR. ROZEN: That's correct.

MR. POLEY: I will suggest that, in fact, is all true. However, I will suggest to you that, in fact, in our other facilities, we basically did qualify for the County of Monroe IDA Jobs Plus Program. I will suggest we did basically apply and were able to get the Jobs Plus because we do create jobs within the community both from our Executive Director, you know, chefs, dining room personnel, et cetera. So we are a source of jobs. And the IDA here in Monroe County does have a Job Plus Program. We applied for that in other facilities. We'll be a for-profit entity. There is no not-for-profit entity here.

BEVERLY GRIEBEL: You want to make a profit?

MR. POLEY: We do, yes.

JEFFERY PERKINS: Was there an environment assessment performed on the property?

MR. CARUSO: Yes. There was one done -- when we did the overall preliminary. There was a concern that there was some sort of issue with the gasoline station. We found it contained to the property line, I believe. That is what I recall.

RICHARD PERRY: I don't think there was a single drum uncovered on our site.

JEFFREY PERKINS: I would be more concerned about the gas station leaking over to yours.

MR. CARUSO: We did some testing at the south line and we found it to be okay. It was one of the first things we had done before we even started with.

MR. ROZEN: That was our due diligence.

#### COMMENTS OR QUESTIONS FROM THE AUDIENCE:

HEATH MILLER, 69 Bellmawr Drive

BEVERLY GRIEBEL: Please just address issues that are contained in this application for these variances.

MR. MILLER: I will. Good evening.

I would like to talk tonight about two of the requested variances. The variance for building height and the variance for density. I think the main reason there are so many variances requested for this project stems from the fact our Town does not have code which addresses senior housing. Two weeks ago at the Planning Board meeting, Mr. Caruso mentioned that there are other towns in Monroe County which do have code which specifically addresses residential multi-family dwellings for senior citizens. The Towns of Greece and Irondequoit have code which specifically address residential multiple-family dwellings for senior citizens. I realize that the code for the Town of Greece and the code for the Town of Irondequoit do not have binding authority on what we do in Chili. However, in the absence of senior housing in our Town's code, I think it is valuable to at least look at our sister towns for guidelines on building height and density for residential multiple-family dwellings for senior citizens.

The code for the Town of Irondequoit says the following about building height: The maximum height of structures shall be 30 feet. The applicant tonight is requesting 42 feet. Irondequoit's code also says that the maximum density is to be based on a minimum net buildable lot area of 3,000 square feet per dwelling unit. If this project were being built in Irondequoit, the 80 unit senior apartment complex would require a minimum of 24,000 square feet of buildable lot area. The applicant's lot is well below that. In fact, with that density requirement, the applicant could build only about 50 units on the parcel.

The code for the Town of Greece says the following about maximum density: In no case shall the maximum density for senior citizen residential facilities exceed 20 residential units per gross acre.

The applicant is requesting 23.4 residential units per gross acre.

Now, I would also point out the Legacy at Cranberry Landing in Rochester is only two stories high and Legacy at Willowpond in Penfield is also only two stories high.

I did make a couple copies of these two town codes, and if it so pleased you, Madam Chairman, I would be happy to submit a copy for the Board's inspection. I have highlighted the relevant sections. I also have a copy available for anyone in the audience who would like to look at it.

Finally, I would like to read from our town code, the conditions required for granting a variance. "A variance may be granted only in the event that all of the following circumstances exist:" The code then lists four circumstances. In particular, circumstance number two states that, quote, "The variances needed for the preservation of a property right of the applicant is substantially the same as owners of other property in the same zone or vicinity possess."

One of the questions which I would like this Board to address is whether there are other properties in Chili in an RM zone which are three stories in height and have density of 23.4 units per gross acre. If not, then I don't think these two variances should be granted.

Circumstance number four, under the circumstances required for granting a variance states that, quote, "The variance requested is the minimum variance which would alleviate the hardship. The hardships of building height and density seem self-imposed in a sense that this is how the building has been constructed."

The second question I have is whether it is customary to grant variances for self-imposed hardships.

I can't help but think the density variance is motivated by profit. As discussed at the last Planning Board meeting, the units would rent for anywhere between 1200 and 1500 a month.

It is certainly to a builder's advantage to have as high density as possible because more units mean more rent. For example, 30 more apartments at 1500 a month would mean an additional 45,000 a month, or a cool 540,000 a year.

While the Planning Board conditionally approved preliminary site plans, your former colleague, Dennis Schulmerich, voted no on the plans in part because he felt the hardships were self-imposed.

Both Karen Cox and Jim Martin, while they voted yes, also expressed that they, too, shared some of the concerns of Mr. Schulmerich. This plan did not receive unanimous support at the Planning Board.

In conclusion, I would like to say that I think senior housing is a wonderful thing. I'm not against senior housing. I am simply against the magnitude of this project for this parcel. If an 80-unit project is needed to be profitable, then I would like to see it developed on a larger parcel.

I hope you will give careful consideration to these variances, especially the variances for building height and density. The variances you grant here tonight will set a precedent for future senior housing projects in Chili. I would kindly ask that the Zoning Board consider voting no on the variances for building height and density.

Thank you for listening.

BEVERLY GRIEBEL: This Board doesn't set precedent.

DOROTHY BORGUS, 31 Stuart Road

MS. BORGUS: It happens, Madam Chairwoman, with all due respect. That is the principle that is supposed to guide you. However, when you open the door once, no matter what the rule is, you have let it go. And you -- I have heard it. I have sat here over and over and I have heard, "Well, we let somebody do it, so I guess we'll have to let this go through." So that is precedent.

I appreciate the thought, but it isn't always carried out that way.

I agree with Mr. Miller, if this project fit the site, they wouldn't need six variances. I too am all for senior housing. I think this is expensive senior housing. I'm wondering, although not a concern of this Board, just how many people, at least from this area, will be able to afford this. There is nothing wrong with this magical number. I'm sure they know how many apartments it will take for them to make money and make money is what they want to do. But not on 3.4 acres. There is the rub. There is the rub.

This is a wonderful project somewhere else. If it takes six variances, I don't think it belongs on that corner. And I, too, with Mr. Miller and some other people here tonight were at the Planning Board meeting two weeks ago. It was a long, long discussion, and the Planning Board certainly had their reservations. And some of the Planning Board members actually voted no or if they voted yes, they said it was, "Well, I guess so, but I don't like this and I wish you would rethink that."

Also, the preliminary plan was given approval, but with a lot of variance -- with a lot of conditions, one of which was your approval of all these variances. So it is not a gimme. It is far from a gimme.

I don't know of any other three-story apartments in Chili. I don't believe you will find any.

The mention was made that if we had an apartment -- or senior housing provisions in our zoning law, that these gentlemen wouldn't have to be here pleading their case. Well, as you have heard from what Mr. Miller tells you, they're asking for far more than exists -- would exist for them in other towns that do have provision in their zoning laws for senior housing. So they're actually asking for more than some of the towns they have mentioned. So it is all right when you need a variance for things, but these people already know that they're asking for more than they would have gotten in other towns.

I think there is a point being made that nobody has brought up, and that is that if this goes through and this is granted by the Boards of Chili, that the apartments, the existing apartments that are 22, 21 feet from the senior housing will then be in violation of our zoning law. It wasn't a problem when they were put there. When the apartments were built, there was no problem because there was no line. But if you grant this variance for the side setback on the west, you're going to create a problem you didn't think you were going to have, because now you have got the apartments too close to the line, as well.

These gentlemen have said they're not subsidized. Well, I think a project that goes out looking for COMIDA money is subsidized. That is your and my tax dollars. That's a fine line they're drawing when they say they're not subsidized.

I only hope that some of the people that live in these apartments, if they happen, and if they come about, don't have many medical bills because if they put 70 to 80 percent of their disposable income into rent, they better not need many pills. They won't need a nursing service to come in and give them pills because they won't have pills. And I don't believe that they're going to get subsidies for Medicaid when they're living in an apartment that costs from 1350 to 1750 a month.

Three-story buildings, let's get back to that. He mentioned that -- a mention has been made that there are other apartment -- senior apartment complexes this company has built that are three-story. That may be fine for where they are, but they're not on top of a major intersection in our town. This is very close to the road.

And mention was made could they be turned into a hotel. That is very good point. When they look at drawings, they're very attractive buildings, but they look like a Best Western. They -- it looks like a hotel. I don't believe a hotel would have been even considered on that site had hotel plans came in instead of senior housing.

In the three times that I ran for office in Chili, each time I was over to College Greene, knocking on doors and passing out literature.

And if there was one thing that I heard over and over and over from those people -- I said, "How do you like living here?" "It's wonderful, but these -- but they're so small. I had to give up most of my possessions, or else if I kept them, I have so much in this apartment, I can barely move. They're too small. They should be bigger."

In short, I agree with Mr. Miller 100 percent. These square footages are far too small. I, myself, regardless what amenities there were, would not want to live in a room 19 by 19. And that is what you're going to ask some of these seniors to do. That's pitifully small.

DAN MELVILLE: They don't have to live there.

MS. BORGUS: No, you're right, they don't. And maybe they won't.

DAN MELVILLE: That could be.

MS. BORGUS: That could be. That could be. But that is an awfully small space to live in. You got to get a bathroom out of that and pretty soon your couch is on top of the bed. You have to pick and choose. Do I have a decent size television or a chair. What do you do when you come to visit. My mother-in-law was over in North Chili at Union Square, and I know for a fact that she did not want to have her company out in the public area. And most of the people over there did not. She was there three years so I had a good feel for what people do and don't want. They don't want to receive their company and their family out in public areas. They just don't.

I would beg this Board to look long and hard at these variances. If this project fit the site, regardless what these gentlemen have told you, they wouldn't be here looking for six variances tonight.

Thank you.

BEVERLY NEDER, 82 Attridge Road

MS. NEDER: Communities have developed zoning laws for a reason. One of those reasons is that a piece of property is put to the best use, and conforms to the community. This property requiring so many variances can't possibly be the best use for that piece of property. Thus -- I mean it just -- it just doesn't fit. It is too dense. 80 units in one building. Worse-case scenario, if

there were a serious fire, the applicant has stated the means of evacuation would be two people to a gurney. You have 80 residents. That would require approximately 160 people to evacuate them.

Does the Chili Fire Department and volunteers have that type of personnel, plus the additional personnel that

would be required to fight the fire? Are we asking the impossible here?

And if that fire happened in the middle of the night, it would even be worse.

I think that you have to think about the safety of people. 80 people for 80 units in one building, there could be, worse case, 160 people in the unit.

If this goes through, I think we are headed for a disaster along the line. They're saying that 20 percent of seniors' income would be available for discretionary use. I would like to know what the average senior in their 80s being frail, as these clients would be, how much do they spend of their income, total income on medical bills and doctor bills and health insurance and what happens when people can no longer afford to stay there? They are then forced to leave their so-called, quote, family and friends that they have built up, because their frail health and medical bills require them to move somewhere elsewhere, they can be subsidized. They also mentioned that although this is going to be a separate piece of property, the residents can have use of the entire piece of property. I question whether the entire piece of property is handicapped accessible or friendly. Are there steps going into the community center? Do they have handicapped accessible doors? These are all things to be considered.

When they say that they can use the entire property, they talk about gardens for the residents.

Where would these gardens be located? Is there any room on such a small area taken up by buildings and parking lots to have any type of garden other than maybe a large flower pot?

And if the property is a separate piece of property, there is nothing to prevent that from being sold down the line. As we have heard tonight, trends in housing change both for seniors and other residents. Who is to say in five years there isn't going to be another trend for senior housing and this is going to be outdated and empty, and it is going to be sold off for some other use. And then you are in a dangerous position because you have allowed all these variances. Buildings will be too close to each other. I just don't think that this piece of property is a good fit for what they want to put on. It should have adequate land and should meet the zoning requirements of the Town. Thank you.

MR. ROZEN: There were some matters of fact that ought to be corrected.

It won't take but a moment. Rent. Did we come here because we would have exceeded the regulations under the new senior citizen ordinances in other towns? No. Legacy at Clover Blossom under construction now in Brighton was built according to their ordinance which permits three-story buildings. The one in Irondequoit, 96 units on a 3.8 acre site. Exactly analogous to what we have here. With variances granted for -- no. Excuse me. Not variances. With the ordinance permitting 280 square foot units for the small studio. So it is incorrect what we're doing would not be permitted under the new regulations in other towns.

Individuals who live here, of course, if they're eligible for Medicaid – because they have drawn down their resources are still eligible for Medicaid. If they have long-term care insurance,

most of the long-term care insurance companies will support people in this type of living. I have it for myself for that reason.

Most people walk. It is the occasional person who can't walk in a fire who has to be carried down in a gurney. It is, of course, a small percentage of people.

The community center. Let's not make a mistake about that. Because we have our own exercise facilities in this building, residents would not use the community center. They would use the open space, and the letter being drafted for the deed restriction will state that.

The gardens, when we mention gardens, we're talking about small raised constructed beds for a person to cultivate a few feet. We're not talking about the kind of vegetable gardening you do in your own home.

And then the last one, the building code of New York State under which this was built was built specifically for this use and the building permit, the occupancy permit states specifically permanent senior housing. Permits no other use without a new building permit being issued, which would mean the Town would have total control over any reuse of this building for any purpose other than senior citizen permanent housing.

Thank you.

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

The Board discussed the proposed project.

RICHARD STOWE: They don't show a lot of --

Are there variance issues created by striking the line with the existing building?

MR. CARUSO: Not that I know of right now. But not to say -- I haven't checked into it. I don't know if it is appropriate for the Board -- if there is, to grant a variance, you know, tonight, or ask us to come back and clean that up. Whatever is required, we would do to make it -- to make it appropriate. We would --

BEVERLY GRIEBEL: Yes. So that that question is -- you know, that is a good question.

DANIEL KRESS: I think it is fair to say that the setbacks on the west side of the line appear to be comparable to the setbacks on the east side of the line so we're probably looking at 20 feet on either side of the line. So on -- I don't have a scale with me tonight, but just doing a quick, impromptu measurement, it appears to be comparable on both sides of the line.

MICHAEL MARTIN: About 21 feet from the closest point to the west -- the new west line.

DANIEL KRESS: To the east of the line. Comparable distance on the west side of the line.

MR. CARUSO: About 20 feet.

JEFFREY PERKINS: Creates a variance situation for the adjacent property?

DANIEL KRESS: Strictly speaking, what the Board probably ought to do is take into account both sides of that line, yes.

BEVERLY GRIEBEL: Does that issue have to be clarified then before we give approval on this?

MICHAEL MARTIN: We can't deal with the other property that is subdivided, though, with this application, can we?

DANIEL KRESS: You're being requested to deal with the effects of creating a new property line. I'm not sure how you would do that in a vacuum on just one side of that line. You're certainly within your rights to request further specific measurements if you don't feel you have specific -- sufficiently specific information.

DAN MELVILLE: We really don't in order to be able to grant that variance for the other side of the property line. We're not sure on the other side.

MICHAEL MARTIN: If we grant 20 feet because it looks like 20 feet and ends up being 19, then we have to come back again.

DAN MELVILLE: Then we have to come back again.

MR. CARUSO: If the Board feels it is appropriate for us -- you can grant your approval, if you so see, with a condition that we come back and get that side legalized by asking for a variance. I would follow up with that.

BEVERLY GRIEBEL: Clarify that issue. Do the variances separately.

JEFFREY PERKINS: Would you have to do them simultaneously?

DAN MELVILLE: Bring them in in December and we'll deal with the whole thing.

BEVERLY GRIEBEL: The other issues I don't have a major problem with.

JEFFREY PERKINS: We're talking about 42 feet from 35, three-story. Are there any other buildings other than industrial buildings in this town greater than 35 feet? It does set -- we are setting the stage to go higher. I don't have a personal issue with that, but you have to understand once you do it, it is in writing.

MICHAEL MARTIN: We're actually going lower, not higher because of the elevation change. It is not going up.

There was further discussion about the application by the Board.

DECISION: Unanimously tabled until 12/21/04 by a vote of 7 yes for the following reason:

1. Tabled to allow applicant to clarify any setback issues which may be created concerning the property line of existing apartments west of the proposed lot line if the setback variance is approved.

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.

8. Application of Verizon Wireless, c/o Nixon Peabody, P.O. Box 31051, Clinton Square,

Rochester, New York 14603 for variance to extend existing telecommunications tower to 120' high (110' previously approved) at property located at 50 Jet View Drive in L.I. zone.

Tom Greiner and Sandra Brooks were present to represent the application

MR. GREINER: Hello. My name is Tom Greiner with Nixon, Peabody, located at Clinton Square in Rochester, here on behalf of Verizon Wireless. With me tonight is Sandra Brooks, who is an employee of Verizon Wireless as Project Manager for this project. I was attorney for the warehouse for Wegmans, by the way. Berm wasn't my idea, but it was clever. Just goes to show, visuals are subjective, I think.

We're here tonight to ask the Board for a variance for collocation on an existing Sprint monopole. The reason we're going on that monopole is that the current site that services the general area, the current Verizon area is located actually in the airport, on the airport. In fact, I can't remember, and my geography is -- I have sat on an airplane and I have looked out the window off the runway and seen the existing Verizon monopole.

The airport, as is its right under the lease we had with the airport, has required Verizon to move the pole to vacate. They're going to take it down. They have been patient with us, but it is something that we need to do.

So when that happened, Sandra (Brooks) and her people looked in the area for a site that was comparable that would actually serve the purpose for that cell. At the same time, she also looked to see if we couldn't collocate on an existing structure. And the monopole at Jetview came into play, and it was seen that that site would, in fact, be a good replacement for the existing site at the airport.

So everything really, the variances that we need tonight are driven by the collocation.

If we were somewhere else on a larger parcel, we wouldn't need any setback variance. We wouldn't need any height variance. Well, we would still need a height variance because your ordinance, the tower ordinance calls out the need for variance any time you're over 35 feet in height. So -- even for a tower. So we would need that, but we would not need anything else.

So with that, we have applied for a 10-foot extension to the Sprint monopole. And the reason for that is that the pole is actually -- it is a popular site. There are already three other providers there. If we would go below the lowest provider, we would be under the trees, and as this Board knows from your previous experiences with cellular --

DAN MELVILLE: Won't work.

MR. GREINER: It is at such low power -- that is why -- you actually get better coverage and reception in the winter than summer because the leaves block the signal. Sandra (Brooks) came up with the idea of putting a very short extension on to get above the Sprint array, and so that is why we have asked for the 10-foot -- that is why we're planning a 10-foot extension. That calls out the need under your ordinance -- although the site has already received the variances for the existing facility, because we're increasing the height, we need an additional 10 feet on top of the existing height variance, and also, although we're not moving the pole, since your setback is also tied into the height, and so we need a setback variance from the lot lines there, and from the east and west and the north lot lines, and the equipment shelter, although that is not going any closer to the lot line -- to the east than an existing building -- and it is actually behind one to the north, just strict reading of your ordinance requires about a 4-1/2-foot variance from the east and an 8-foot variance from the north, even though again we're south of a building that you have already given a variance to.

BEVERLY GRIEBEL: Now, that isn't on here.

RICHARD PERRY: No.

BEVERLY GRIEBEL: Setback variance and building variance.

MR. GREINER: Right. It is in our application and in our EAF. I just noticed myself that the minor building variances are for some reason not actually in the notice.

BEVERLY GRIEBEL: Are you building a new building?

MR. GREINER: We'll put -- not building it. It will be a prefab equipment shelter that houses the telephone equipment that will be placed on the site.

BEVERLY GRIEBEL: You will add a building to it?

MR. GREINER: Correct.

MICHAEL MARTIN: Shed basically?

MR. GREINER: Shed.

BEVERLY GRIEBEL: Near the existing building?

MS. BROOKS: Each company that puts in their antennas has to have an accompanying

shelter.

MR. GREINER: If you can look over here (indicating), this is an existing building (indicating). This is existing (indicating). This one is existing (indicating). We're adding the longer one here (indicating).

BEVERLY GRIEBEL: Side table, why didn't we get it on the application? Was this improperly advertised?

RICHARD STOWE: It is in this application (indicating).

BEVERLY GRIEBEL: Let's in the -- it is not on the addenda.

DANIEL KRESS: Why isn't it described in the legal notice?

BEVERLY GRIEBEL: The only thing on here is to extend the height?

MR. GREINER: Right. The extension of the height calls into play both the height and the setback variances for the tower. I noticed when I came in tonight for the first time that although our application mentions the rear and side yard setback variances, this notice didn't. I don't think it is particularly defective. Just because -- Mr. Stowe will tell you, that the -- that the essence of public notice for a hearing is to reasonably apprise -- or reasonably calculated notice that will apprise people of a project. Now, if you look at the signs that we have put out, the advertising done in the newspaper and the mailed notice, anybody that would be -- that would want to look at that would come in and see that we're obviously adding the building and would also see in the application that we're asking for some minor building setback variances. So I don't think the due process is at all called into question here.

And again, as I said, the setback to the north -- these are technical setbacks because you already have a building further north than our building, so the setback that we need from the north is about 8 feet, and yet, there is already a building north of that. And similarly, to the east, we're not really extending beyond east of what is already there, but technically, if you just -- if this were alone, you would measure that and say it is 4 1/2, 5 feet to the east and 8 feet too close to the north, even though there is other construction that has already received variances here. And it may -- I don't know if that is the reason it wasn't separately advertised. We put it in the application, and in the environmental assessment form. Obviously just because we are describing what we needed.

DANIEL KRESS: It is certainly specified in the application. In fact, it is specified in the application basically at the direction of myself and Mr. O'Toole because we wanted to basically err on the side of caution and make sure even though the tower obviously is not moving, that we cover that aspect of it anyways.

MR. GREINER: There was a question, as Mr. Kress was saying, whether we even needed the variance. Mr. Kress said just err on the side of inclusivity; we called them out.

RICHARD STOWE: There is nothing that prohibits the Board from proceeding with the notice as it was published.

BEVERLY GRIEBEL: So the variances would be equal to what is already there?

MR. GREINER: Yes. If you look -- if you look at the existing building to the north of our proposed building, that setback to the east property line is within a half a foot or so of the east side of our building. So we would not be asking for anything more than what is already there. To the east.

And as I said, to the north, that requires an 80-foot variance and we're 72 feet away. So that requires an 8-foot variance, but the building to the north of us already has a variance. I don't know, in fact, this might be a question for Mr. Stowe or Mr. Kress, if you have got a building that is next to a property line, and then you build one behind it further away, do you still need a variance? I think that was one of the issues we looked at. We decided to apply for it anyway.

BEVERLY GRIEBEL: Well, we had the garage that came in tonight. If you were here for that.

MR. GREINER: I was.

BEVERLY GRIEBEL: Further from the property line, but he had to apply for the variance.

RICHARD STOWE: Point of order. That previous building never had a variance.

MR. GREINER: This one did.

But anyway, whether it needed a variance or didn't, we thought the project is the project, we'll put it there, and Mr. Kress counseled us to apply for the variances. Couldn't disagree. I think we can prove the need for them. Again, this is all driven by the collocation. Which is, I think, a major point of the Chili tower ordinance, to really encourage collocation.

BEVERLY GRIEBEL: Right. Exactly. I think that the item that is going to affect the neighbors is the height because that is what they are protesting. I remember with that original application.

MR. GREINER: What we did, by the way, if I may, this is too far away here. Let me just

give you -- we did some visual simulations. I have extra two copies. If I may. This is of just the same thing that is up on the board. You may not be able to see this, but this is the existing tower (indicating). This is an actual pole that actually -- I think we were together.

MS. BROOKS: Yes, we were.

MR. GREINER: This is not from Jacklyn (indicating). It is from the one -- McNair, going around the bend. So here is the existing facility. With our 10 feet, this is -- all we did is have computer simulation with adding the additional 10 feet with the Verizon antenna array. Again, the alternative here is really just another tower.

BEVERLY GRIEBEL: I know that the neighbors were concerned about the height and the views and all of that, and I didn't get any letters. None were presented. Did you get any letters?

DANIEL KRESS: No.

BEVERLY GRIEBEL: I don't see anyone from that neighborhood here. There must not be anyone distressed with the additional 10 foot of height.

DAN MELVILLE: You would have to look hard to see it.

MR. GREINER: I think if we went in there in the dark of night, did it, took the lower array down so you still count the same number of arrays, I certainly wouldn't notice. Some people might. Some people are sharp.

BEVERLY GRIEBEL: I thought people might be in because they waited for the trees to grow and the trees grow and now you want to push it up higher.

DAN MELVILLE: You have to be above the tree lines.

MR. GREINER: You do. Great day for a field trip.

RICHARD PERRY: Is the intent to take one of the arrays off?

MR. GREINER: No. I was making a point --

RICHARD PERRY: This would be four.

MR. GREINER: Yes. Four. The Verizon. If you --

BEVERLY GRIEBEL: If you had done it that way in the dead of night --

DAN MELVILLE: Verizon going on bottom.

MR. GREINER: We're going right on top.

DAN MELVILLE: Top of the pole.

MR. GREINER: We'll have 10-foot extension on -- put the array right there.

DAN MELVILLE: That might help my cell phone reception?

MR. GREINER: If you have Verizon.

DAN MELVILLE: It stinks. Can I hear you now?

MR. GREINER: This will.

RICHARD PERRY: It looks like one of the things that is being done to appease neighbors is to give these things treatment so they don't look like a cell phone tower.

MR. GREINER: That is right. That is right.

RICHARD PERRY: Like a big tree. In this case, they could make it like into the Eiffel Tower, I guess.

MR. GREINER: I suggested that. Mrs. Griebel has -- we have spent a fair amount of time. I was telling Sandy (Brooks) you went out of your way to go to other towns to look at some of these when you were first learning about them.

BEVERLY GRIEBEL: Silo out in Mendon.

MR. GREINER: You were there for all of the fun with that. You know what people said? People said in the October '95 meeting for that -- one person said they moved to Mendon to get away from silos. Quote.

BEVERLY GRIEBEL: You can't win.

MR. GREINER: This would not be appropriate for a tree type of a treatment because there is no tree that I have ever seen that could actually maintain four antenna arrays because the bark and the branches already create a torque and a stress and the most I have ever seen is two on like a tree.

BEVERLY GRIEBEL: They don't end up looking like a tree anyway.

DAN MELVILLE: We have towers that are higher.

MR. GREINER: Most of your towers are higher.

RICHARD PERRY: Route 31 at the expressway, they have one.

MR. GREINER: We were on the one at the old town hall, as well.

MS. BROOKS: The one you're speaking of, they started -- I used to have an office there. It is next to lilac bushes. So it looked really dumb because there is all lilac bushes and then like an 80-foot pine tree, and they had just a few branches. They made them add more branches. But we have one actually in a row of pine trees in that area where it fits in and it does look okay because it

is among of the other high pine trees.

MR. GREINER: We worked on that one. The one off Knickerbocker. It is on Knickerbocker Farm. Sandra (Brooks) said it is like a line of trees, 10 feet higher I think. It -- when the Town was reviewing the one on 31 and calling it an inverted tongue depressor, they compared it against what they called a good tree. And where -- where -- that is decent, where you can do that, that is actually a decent way to do it, as long as it is not so tall that it stands out or so different that it stands out, in which case a lot of people want to disguise those trees as towers then because towers are starting to look more commonplace than a strange looking tree. That is really our presentation. It is really driven -- it is a good site. We need to get off the airport. It -- we think it is minimal intrusion. The variances are really called out by the drive to collocate here.

BEVERLY GRIEBEL: The neighbors must not be too concerned because I know we had a terrible time keeping those public hearing notice signs up.

MR. GREINER: Right.

BEVERLY GRIEBEL: They were gone. I don't know who took them down, but they were down and down and down and finally we gave up.

MR. GREINER: You're talking about the old one. We went out and periodically checked our signs and took pictures.

BEVERLY GRIEBEL: The other time was terrible. We just had to keep delaying it and finally we gave up because the signs just didn't stay up. I think the people felt if we keep taking the signs down, we won't hear the application. They were just gone.

DAN MELVILLE: Funny how nobody wants a tower, but they all have cell phones.

BEVERLY GRIEBEL: So the signs stayed up, the neighbors didn't come in. No letters. Nothing. I don't think there is any protest with that apparently. It will solve your problem.

MR. GREINER: Help the airport.

BEVERLY GRIEBEL: Help the airport and keep them happy.

I didn't get any airport review.

MR. GREINER: Oh, you did actually if you got the Monroe County Planning. They chimed in. They gave us airport approval. I have a copy, if you would like.

BEVERLY GRIEBEL: I figured they must have.

DANIEL KRESS: We have approval from County Planning.

MR. GREINER: It is right at the bottom of the County Planning.

DANIEL KRESS: This site is located within the Greater Rochester International Airport. This application has been reviewed for airport consideration and has been granted airport approval.

BEVERLY GRIEBEL: Okay. Granted.

DANIEL KRESS: They're well aware of the height of it, and the proximity of it.

BEVERLY GRIEBEL: So we'll put that in the minutes, Monroe County Planning Airport approval granted.

If they hit that --

MR. GREINER: They're in trouble.

BEVERLY GRIEBEL: Houses are in bigger trouble.

MR. GREINER: Yes.

DANIEL KRESS: Might be useful to clarify is the tower and extension of are of monopole type construction?

MR. GREINER: Yes.

DANIEL KRESS: The idea, if this were struck by lightning or otherwise causing it to collapse, it would collapse down and not over (indicating).

MR. GREINER: That is right. In fact, there is a structural report that -- I don't know if the Board probably know this, but they test these things at wind speeds sustained of 70 miles an hour with ½ inch radial ice around everything, so they're built very durably, and, yes, the characteristics is they don't have a timber effect. They actually will crumble. And looking at the site, we are as -- I mean I think I scaled it off, we're at least 200 feet from Jacklyn Drive and we're pretty far away from everything else. That is in a Limited Industrial District. So it won't fall straight over. It will crumble, as Dan (Kress) said. Plus we're not near anything.

COMMENTS OR QUESTIONS FROM THE AUDIENCE: None.

RICHARD STOWE: This is somewhat different from any other application we have heard tonight inasmuch as you haven't been to the Planning Board yet?

MR. GREINER: Yes. We're going December 14th.

RICHARD STOWE: If the Board is disposed to approve this, you have to condition it upon any Planning Board site plan approval. You haven't been doing that on any of the others because you haven't had to.

BEVERLY GRIEBEL: Now, the Planning Board has been doing the height variances lately on the original site plans.

DANIEL KRESS: It seems to me there are some limited circumstances in which the Planning Board is empowered to take that into account, but in this case Keith (O'Toole) and I both agreed it was appropriate for this Board to issue a variance.

BEVERLY GRIEBEL: And those other setbacks, we don't have to address those? The building setbacks?

RICHARD STOWE: I would address them.

If the Board has reviewed the applicant's application, in the narrative that was submitted, the applicant talks about those minimal variances that they are requesting, and if you simply review the application, and grant the variances that are requested in the application, I think you're covered with the setback requirements as well as the height requirements. It has been a few years since I sat with this Board, and it has been a few years since I have seen them go through each item and give their findings and minimum variances. So I think it is all set forth in the application. If you're comfortable with the applicant's rendition of the circumstances and the fact that the minimum variances are being requested, you can simply approve the variances as set forth in the application. It will take care of the setback requirements and the height variance.

BEVERLY GRIEBEL: Got you.

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

Beverly Griebel made a motion to declare the Board lead agency for SEQR, made a determination of no significant environmental impact, based on the testimony and the material presented at this hearing, and Gerry Hendrickson seconded the motion. The Board all voted yes on the motion.

Michael Martin made a motion to approve the application with the following condition, and Gerry Hendrickson seconded the motion. All Board members were in favor of the motion.

DECISION: Unanimously approved by a vote of 7 yes with the following condition:

1. Subject to site plan approval by the Planning Board.

The following findings of fact were cited:

1. Variance granted as requested by the applicant.
2. Addition height needed to co-locate on existing tower and eliminate additional tower nearby.

The meeting ended at 10:35. p.m.