

CHILI ZONING BOARD OF APPEALS
December 16, 2008

A meeting of the Chili Zoning Board was held on December 16, 2008 at the Chili Town Hall, 3333 Chili Avenue, Rochester, New York 14624 at 7:00 p.m. The meeting was called to order by Chairperson Paul Bloser.

PRESENT: David Cross, Adam Cummings, Tracy DiFlorio, Robert Mulcahy, James Wiesner and Chairperson Paul Bloser. Jordon Brown was excused.

ALSO PRESENT: Chris Karelus, Building Department Manager; Keith O'Toole, Assistant Town Counsel.

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

PAUL BLOSER: The Board discussed the notification signs. The Board indicated they had no problems with any of the notification signs.

1. Application of Francine Roveda, owner; 416 Fisher Road, Rochester, New York 14624. for renewal of conditional use permit to allow a cosmetics counseling business in home. at property located at 416 Fisher Road in R-1-12 zone.

Francine Roveda was present to represent the application.

PAUL BLOSER: This is a renewal. Previous one was issued five years ago.

How is the business going?

MS. ROVEDA: Very good.

PAUL BLOSER: Going through the log, the Town has no record of any complaints from neighbors as far as traffic or violation of any of the conditions we have placed on you prior.

Are there any changes that you're going to be making?

MS. ROVEDA: No.

PAUL BLOSER: Based on what you had before?

MS. ROVEDA: No. I do the same thing.

PAUL BLOSER: Any hours changes --

MS. ROVEDA: No.

PAUL BLOSER: -- from what you had before?

MS. ROVEDA: No. Maybe sometime -- actually, it is not a change. It is the same thing. Sometime it may be 6:30 -- there is only one person at a time in any way. By appointment only, and maybe on Saturday I may shorten it a little and I take one Saturday a month. That's it. Less. One Saturday less a month.

PAUL BLOSER: I have a sketch here of some changes that were to be made.

Chris (Karelus), were these changes that were made prior for the last application or are these new changes that are being proposed? Chris (Karelus).

CHRIS KARELUS: To my knowledge, that's a question for the -- for the applicant but it wouldn't be anything we would --

PAUL BLOSER: This footprint that you provided, are these new changes that you're making? Or is this something that was done before?

MS. ROVEDA: No. That was years ago. I can't see from here. May I approach?

PAUL BLOSER: Absolutely. It was just part of the package. Wasn't sure what it was.

TRACY DiFLORIO: Looks like they put an addition on.

MS. ROVEDA: That was many years ago. What year?

TRACY DiFLORIO: '89, it looks like.

MS. ROVEDA: That's when I put the addition on the house.

That is when you did the kitchen, Honey.

No. That is when we put in the first addition for the, um -- for the business.

PAUL BLOSER: So you're not doing any changes?

MS. ROVEDA: No. Nothing new.

COMMENTS OR QUESTIONS FROM THE AUDIENCE: None.

Robert Mulcahy made a motion to close the Public Hearing portion of this application, and Tracy DiFlorio seconded the motion. The Board was unanimously in favor of the motion.

PAUL BLOSER: We had five on this last time. The only thing I think I would write into this is that we grant this for a period of ten years at this time to go a little longer on it.

MS. ROVEDA: That would be nice.

PAUL BLOSER: The same conditions would be -- apply as we had last time: No on-premises advertising. No on-street parking pertaining to the business. Hours of operation as per the application, how you have them posted. No outside employees. Any applicant -- applicant to maintain and obtain any required State and local licenses that you're required to hold.

I don't think there are any other conditions on here that I want to include other than I would be willing to move this out to a ten-year permit.

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

Robert Mulcahy made a motion to approve the application with the following condition, and Tracy DiFlorio seconded the motion. All Board members were in favor of the motion.

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

1. Plans be presented to the Town Building Department for permits and approvals prior to starting work on the project.

The following finding of fact was cited:

1. The variance will have no adverse effect physically or environmentally on neighboring properties.
2. Application of Ronald Ort, owner; 54 Sunnyside Lane, North Chili, New York 14514 for variance to allow a 32' long recreation vehicle (28' allowed), variance for recreational vehicle to be parked and stored in driveway (side or rear yard required) at property located at 54 Sunnyside Lane in R-1-15 zone.

Ronald Ort was present to represent the application.

PAUL BLOSER: Basically what I'm seeing here is you kind of -- the variance we gave you for the garage, you're kind of landlocked into getting into the back.

MR. ORT: Right.

PAUL BLOSER: Not that you have a whole lot of room in the back. You have a small lot. We run into these -- we have been running into a few of these lately. It's a big vehicle in a small spot.

MR. ORT: Right.

PAUL BLOSER: And on the bend, it's on this one when you're coming around. The code is 28 foot.

How long have you had this?

MR. ORT: This particular -- this last one, since 2002.

PAUL BLOSER: You have been parking in there since then?

MR. ORT: Yes. All of the past 34 years, all of my campers have been on this exact same spot.

DAVID CROSS: What is the -- what is the hardship, or -- have you looked into storing this off site?

MR. ORT: Well, it's mostly accessibility. Um, I use it just about all year round. There is probably only one month, February, that I don't use it. So I wouldn't have the accessibility to be able to -- especially with the snow to get it, to be able to use.

And also, where I have it in my yard, I have underground electricity to maintain the refrigerator so I can use it on a year-round basis, as well as I have a generator installed, which in power failure, I can feed to my home. I would lose that also. As well as my security system, because the camper is protected with the same security system that my home is, which is a wireless system which will call out to my cell phone, and I wouldn't have the availability of all these, as well as -- my main thing is accessibility. I'm widowed, and I have relatives all over the country and I use it all of the time.

I would only have a minimum of -- it's 26 foot -- feet from the -- from the road to the motor home, so I would only have the minimum with the wintertime, the snow blowing, to get back out into the road.

DAVID CROSS: Approximately how many days out of the year is the motor home parked in the driveway?

MR. ORT: I keep it there year round.

TRACY DiFLORIO: But how often are you gone? You said you use it all of the time.

MR. ORT: Oh, oh.

TRACY DiFLORIO: Is it there more -- are you away more than you're home or home more than you're away?

MR. ORT: No. I'm home more than I'm away. I may go for two or three weeks over more of the winter months. In the summertime it is more local camping because it is warm up here and I enjoy the warm weather.

Weekends in the summer, probably maybe eight weekends for the summer and, of course,

the holiday weekends I usually stay for two weeks at each holiday weekend. Usually at a State park.

PAUL BLOSER: Have you approached any of your neighbors about getting an easement to drive the thing out to the back lot?

MR. ORT: I talked with my one neighbor. On the other side, it almost isn't a consideration because it is my cellar wall and 14,000 pounds in that area, especially when the ground is soft, would be detrimental to my cellar wall. I was advised by an engineer not to even drive it on that side of my home.

The other side of my home where I have only the 5 foot, I have talked with my neighbor, and the discussion there was if he decides to sell his home, I would have that available to purchase some land from him and have it surveyed and so forth so that I would be able to use that area. That was a discussion I did have.

PAUL BLOSER: Well, an easement would go with the property; is that correct, Counsel?

KEITH O'TOOLE: Well, yes, but I believe the gentleman just indicated that the use of the land isn't available until at some future date and I would assume you would have to have the easement surveyed as well and purchase that.

ADAM CUMMINGS: When was the previous RV -- you said you bought this one in 2002. About when did you buy the one prior to that?

MR. ORT: That was in 19 -- um -- '86.

ADAM CUMMINGS: How big was that one?

MR. ORT: That one was 30 feet.

CHRIS KARELUS: I would ask the Board if anybody does come up with a complaint and the Board sees fit to grant the variance, that we establish a buffer, something for the plan. That's it. No additional comments.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

JAY AUDET, 44 Sunnyside Lane

MR. AUDET: The back side of the property that abuts Mr. Ort. Been his neighbor since November of '03, just over five years. Saw the sign out in the yard, was worried that he may face some sort of opposition. I took a gamble and wanted to speak well for him.

While I don't know Mr. Ort, the vehicle has always been in pristine condition, on leveling blocks, skirts on the wheels. There is never any mechanics' work going on at the driveway like you might see somewhere. You never here hear the vehicle. There is obviously not a muffler problem. Appears to be a stand-up guy that I never met, but everything seems to be going right. I would ask that no hardships be placed on him under that circumstance.

PAUL BLOSER: You're to the rear; is that correct?

MR. AUDET: Right. At 44.

Neighborhood is tight. I don't know how you would ever get that vehicle out of the driveway. Again, I have seen it there for five years, you know. When it is not in use, it is up on blocks, done very professionally, leveled and skirted and everything is cool.

PAUL BLOSER: Thank you.

DOROTHY BORGUS, 31 Stuart Road

MS. BORGUS: Could you tell me why Mr. Ort is in here tonight for a variance? If he has been doing this for years, why is he here tonight?

PAUL BLOSER: To get a variance.

MS. BORGUS: Why?

PAUL BLOSER: Because he needs one because of the vehicle he has.

MS. BORGUS: Was there a complaint?

MR. ORT: I can tell you what the situation was, ma'am.

PAUL BLOSER: Can you address the Board, please? The comments come directly to the Board.

MR. ORT: Sorry.

PAUL BLOSER: Chris (Karelus), have there been complaints posted? Is this as a result of code compliance?

CHRIS KARELUS: Yes.

MS. BORGUS: Thank you.

As has been pointed out, this rather long recreational vehicle does sit on a curve so that you can't miss it when you go down the street. It sticks right out on the curve. It's very, very obvious.

The gentleman that just -- that just spoke brought up a point that I think needs clarification. He asked the Board not to put a hardship on Mr. Ort. Actually, the situation is the reverse. Mr. Ort wants to be exempted from part of the law. The man who spoke has that exactly backward.

I haven't heard any comments from Mr. Ort that would be different than I've heard from other people here that have come in and wanted to leave a super long vehicle in their front yard. I don't see where he is any different than anybody else here that -- that I have heard before this Board before. I, therefore, don't see why he is any different than anybody else that would like to have their possessions in their front yard.

There is storage for these RVs right in North Chili. Right off of King Road. Fenced storage that is very secure, safe. I believe lit. Couldn't ask for anything closer or safer for his

possessions, and I can appreciate the fact that he wants everything handy, when he wants to go away and get in it and use it, but that's no different than everybody else who buys one of these and doesn't know what they're going to do with it after they get it.

Now, I take it, from the comments that this gentleman had a variance to put this garage up recently?

PAUL BLOSER: It's in the past. There was a variance requested and it was granted to put a larger garage up.

MS. BORGUS: That took up more of his clearance he would have had to get into his backyard?

PAUL BLOSER: By looking at the prints and the applications previous, it now restricts him from rear access to the lot with a vehicle on his own lot line.

MS. BORGUS: He would have been able to do that before he built the garage?

PAUL BLOSER: I'm not aware of what the original size was so I can't answer to that.

MS. BORGUS: I'm just getting to the point maybe he has created his own hardship here, if there is a hardship.

PAUL BLOSER: I understand your point.

MS. BORGUS: I'm not sure there is a hardship. He is just like everybody else who bought a vehicle that is too long to fit Town Code. I will remind the Board once again, you do this once, you will have everybody who owns one of these in here. You will start a very, very bad cycle with that you won't be happy with once it gets rolling.

Thank you. Too close.

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

CHRIS KARELUS: For the Board's information, we have looked at the property card. Requirements by the district are 10 feet for the side setbacks. So by setback, it would allow passage.

PAUL BLOSER: From the front are you talking about?

CHRIS KARELUS: Side. And, if you note also to the north property line he had better than 10 feet available on that north end. So there is an available area for passage to the rear.

DAVID CROSS: The applicant mentioned he was concerned about driving the vehicle because --

PAUL BLOSER: Right. That -- basically you would have to have a stone sub layer put in to support the weight, displace it so it wouldn't be across -- against the foundation. But it could we brought back on that side.

The only comment I will make on this, as I said before, it's very ominous. When I turned onto the street myself, to look at it, instead of pulling the paper up and looking at the house number, I thought I would just drive until I could see something. You can't miss it. It's a large vehicle in the driveway in a small residential neighborhood. It is almost like another house sitting on the driveway.

We do have a 28 foot code. We're starting to see these come in, and I know we have to look at every application individually. But these are big vehicles. It's not any different than someone driving a tractor-trailer truck home, even a short box, parking it there for -- for the weekend. And it's something we have to look at.

With the new code, this is not changing. We're keeping the restrictions on the length. And there they're there for a reason. We have a lot more lot lines on the side, if it were a larger lot -- we still have the option of taking it to the back for storage. Those options are here:

JAMES WIESNER: There is no place to conceal it basically.

PAUL BLOSER: Not with going out back.

JAMES WIESNER: It's too small a property, with side lot restrictions. There is no place to conceal it in any manner. Like you say, a very large motor home in a very small residential lot.

PAUL BLOSER: I agree with the Building Department. If it was to be parked in back, that we would have to look at buffering. Based on the size of the property here, I would be inclined to think that that would be necessary here.

Any other comments or suggestions?

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

James Wiesner made a motion to approve the application, and Tracy DiFlorio seconded the motion. All Board members were opposed to the motion.

DECISION: Unanimously denied by a vote of 6 no for the following reasons/finding of facts having been cited:

1. The requested variance can be mitigated by other means. The length of the vehicle is out of Town Code and not consistent with character of the neighborhood.

2. Hardship is self-imposed.

There was a discussion about some alternatives.

KEITH O'TOOLE: Should be clarified there are essentially two components to the variance request. One is front yard location and the other is length. So with the denial of the variance, he can't park it anywhere on the property because it is too long.

PAUL BLOSER: Because of the length of it, yes?

KEITH O'TOOLE: Unless you're going to approve the length and not the location.

PAUL BLOSER: We're denying the application. He is proposing to park it -- I guess it is not specific. He is just saying on the lot. You're not saying in the driveway. The denial of this would be we have denied the application flat out. If he wanted to locate it specifically in the back, would that be a different application then?

KEITH O'TOOLE: If you will give me a moment, I will get the code section here.

One boat or one travel-trailer or recreational vehicle may be stored in the rear yard or side yard only if it has a current license and is no longer than 28 feet.

PAUL BLOSER: So it is very clear.

KEITH O'TOOLE: So he would have to take the vehicle off site.

PAUL BLOSER: Off site to park it.

KEITH O'TOOLE: Thank you.

PAUL BLOSER: Do the Board members understand that?

The Board indicated they understood.

PAUL BLOSER: We can't go in the backyard with this then. Comfortable with our vote on that?

The Board indicated they were still comfortable with their vote.

PAUL BLOSER: This vote stands as you can't park it on the property. You would have to look at off-site storage of the vehicle for that length.

MR. ORT: Okay.

3. Application of Sandra Burkhard, owner; c/o Jay Witkiewitz, 25 Tarrycrest Lane, Rochester, New York 14606 for variance to erect a deck to be 37' from front lot line (45' req.) at property located at 77 Chestnut Drive in R-1-20 zone.

Jay Witkiewitz was present to represent the application.

MR. WITKIEWITZ: May I add one thing to that?

PAUL BLOSER: Yes.

MR. WITKIEWITZ: It is also to be used for a handicapped accessibility lift.

PAUL BLOSER: That was noted, for the Board.

This is, I'm assuming, a wood structure?

MR. WITKIEWITZ: Yes, pressure-treated.

PAUL BLOSER: The construction of this, are you doing -- it is a straight run down? Is it a U-turn, an L-turn? It is hard to tell what your construction is on this.

MR. WITKIEWITZ: It is pretty much a square. 8 foot from the house, 8 and change, and from the edge of the house to the one end is 10 foot, into -- along the house.

PAUL BLOSER: So it is just one level, no turns in there any place.

MR. WITKIEWITZ: There has to be one section that is going to be 3 foot wide, but the lift itself will be placed inside, so you have got --

PAUL BLOSER: So this will be a lift, not a ramp?

MR. WITKIEWITZ: No. It is a lift.

PAUL BLOSER: It is a lift?

MR. WITKIEWITZ: Yes.

PAUL BLOSER: Okay.

MR. WITKIEWITZ: The lift has to be actually built -- it's got to be inside the deck.

PAUL BLOSER: Okay.

MR. WITKIEWITZ: If you need to see the plans, I have the plans.

PAUL BLOSER: If I could, please, yes.

Mr. Witkiewitz explained the plans to the Board at the dais.

PAUL BLOSER: This will sit on a cement pad itself, the lift?

MR. WITKIEWITZ: Correct.

PAUL BLOSER: That will be on footers?

MR. WITKIEWITZ: The pad itself, no.

PAUL BLOSER: Would that be important to the Building Department if it is not on a pad?

CHRIS KARELUS: He will need to get a permit, so we'll review the plans after the decision is rendered tonight.

PAUL BLOSER: That will be a condition of approval, certainly that everything be submitted to the Building Department for approvals on what you're doing, how it is being constructed. Same with the electric. That will have to be run and inspected.

MR. WITKIEWITZ: Yes. It is a separate -- separate line to the box. There is a ground fault at the box and also outside, and --

PAUL BLOSER: That doesn't really concern us, but the contingencies are that everything is done through the Building Department and 100 percent to code.

MR. WITKIEWITZ: Uh-huh.

PAUL BLOSER: It's a wide open front. It's on the corner. It has good exposure. I don't have any questions.

COMMENTS OR QUESTIONS FROM THE AUDIENCE: None.

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

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

The Board discussed the application.

PAUL BLOSER: I see this looking like a nice project when it is done, based on what I see on the prints.

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

Robert Mulcahy made a motion to approve the application with the following conditions, and Tracy DiFlorio seconded the motion. All Board members were in favor of the motion.

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

1. Granted for a period of ten (10) 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.
6. Applicant to obtain and maintain any required State and local licenses.

The following finding of fact was cited:

1. The requested permit renewal will have no adverse physical or environmental impact on neighborhood.
4. Application of Ronald Young, owner; 56 Freedom Pond Lane, North Chili, New York 14514 for variance to allow existing deck to be 5' from side lot line (6' req.) at property located at 56 Freedom Pond Lane in PUD zone.

Ronald Young was present to represent the application.

KEITH O'TOOLE: Mr. Chairman, before we begin, due to a potential conflict, I cannot give any legal advice on this application.

Thank you.

PAUL BLOSER: Thank you.

MR. YOUNG: Ronald Young, 56 Freedom Pond Lane, North Chili.

PAUL BLOSER: When this deck was put on, did you do it as the original owner? Was this on when you purchased it?

MR. YOUNG: First of all, could I submit a couple of photographs?

PAUL BLOSER: Yes, sir.

I see a flat deck, 6 inch rise around --

MR. YOUNG: It's 6 inches at the farthest point.

Actually, when it was initially constructed -- we had the house built. We moved in November, the end of November, 1994, and at that time, it was cold obviously and we wanted to have a -- we call it a patio because what it was was a concrete pad that -- as you can see from the drawing, we -- there was a porch originally on the -- on the back of the house, and we had this concrete pad put on the same size as the porch from the end of the porch and then from the

corner of the -- of the house structure.

And what happened was, about two years ago, the concrete started to spall. I think that's the term you use. But what was happening was when we were getting some -- it was flaking and that on the top. So my son-in-law and I, we took a Trex-like material. It's not Trex I don't think, but at any rate all we did was put like 1 by 2s over the top of the concrete, and then we put the Trex down over the top. You know, it's like -- like I say, it's probably up -- maybe it's up an 1 1/2 higher than it was originally because of the Trex being mounted on top of the concrete.

But what happened was that we just -- we just had -- we have had our house for sale and we have a buyer for the house, and we're supposed to close the end of this month. And when I got notification from the attorney that we should be checking for permits and so forth, I went -- came to the Town and I wanted to check because I -- the fellow that put on the patio -- or -- yeah, the patio at the time, um, he was working for the builder, but then what we said to him was, you know, "Wait until the weather clears and then, you know, could you put this on for us?"

So consequently, I will be honest with you, I had no idea that, you know, he didn't get a permit for it. I, you know -- I put everything in his hands and figured that whatever had to be done, he was going to take care of.

I didn't discover until I came to the Town and I just wanted to check to make sure that everything -- we were in compliance with everything, and all of a sudden, the gal at the -- in the Building Office said to me, "Can you give me a description of what" -- you know, what this -- she called it a deck.

I said we have always called it a patio. It's not up off the ground very much.

Then she said, "Well, you know, it looks like it is too close to the lot line."

Which again, I had no idea. I thought it has been fine. We had the arborvitaes up. It has been there for 14 years. Nobody has ever complained about it. The Arborvitaes provide privacy to both us and our neighbor on that side, so I really wasn't concerned about it.

Then all of a sudden when she brought up the fact it could be too close to the lot line, I said, "Well, there's going to be a survey done very shortly, so we should know pretty much where we stand with it."

So then when the survey came back, we found -- see, our lot is, as you can see, a pie shape, and what we found is that we were close by 1 foot on the -- let's see. I guess it would be the -- the north -- I guess it would be the northeast corner. So I just found out, you know, a couple of weeks ago. I'm trying to rectify it.

PAUL BLOSER: How big was the concrete pad before? Is it basically the same size?

MR. YOUNG: It is the same size, yes. It just came to the edge -- the edge of the house and the edge of the -- of the porch.

PAUL BLOSER: Chris (Karelus), at C of O, when the house was built with the pad, if just the pad was there, would it have made a difference at the time?

CHRIS KARELUS: The concrete pad is not tied into the foundation, so it generally wouldn't have been asked to be looked at. Decks are considered structures. Patios and porches are not considered structures unless they're tied into the foundation.

PAUL BLOSER: This is just still sitting a top the pad and not attached to the house.

CHRIS KARELUS: Not a structure.

PAUL BLOSER: Okay. Just for clarification.

JAMES WIESNER: The Building Department hasn't reviewed the construction of it at all as far as --

MR. YOUNG: There was -- there was a Building Inspector that came out. I requested to have one come out.

CHRIS KARELUS: We have had no review of a plan. There has been no application made. You know, obviously if the Board sees it fit to grant a variance, one of the conditions I will ask is Number 1, that the project moves forward with a permit, that a condition be placed on it, this variance, that the Board formally review and permit -- even hearing 1 by 2s are on top of this thing, they will have to do a plan review and based on the code see if it complies.

The second thing, the survey that we got faxed to us, it has to be wet sealed and stamped. A copy of the instrument survey will need to be supplied for the building permit also.

Outside of that, being a structure, it has to be outside the setback.

JAMES WIESNER: State Code is 5 feet?

CHRIS KARELUS: State is 3.

PAUL BLOSER: Mr. Young, did you understand what Building Department Manager just said? What he was looking for?

MR. YOUNG: That you want to -- an updated survey, right?

CHRIS KARELUS: No. Excuse me. What -- the steps you take, if the Board were to grant you a variance, then you have to get a permit from our Department. So we can't permit anything -- we don't review anything until this Board passes a decision on this project. Since they built the deck illegally, we're kind of working backwards. We would intelligently like to work with construction so we see the deck built, see what is under, the foundation.

In this case you're going to have to work with our inspectors to see what they can accept as far as an inspection process and plan review.

MR. YOUNG: Well, what would -- have you seen what it looks like at all?

CHRIS KARELUS: I have not.

MR. YOUNG: Would you like to take a look at the pictures?

CHRIS KARELUS: The appearance of a deck and any structure -- again, structures have foundations. Looking at a deck, you really can't see what it is built over. You can't see -- I

appreciate the pictures.

MR. YOUNG: But it's not the typical deck, is my point.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

DOROTHY BORGUS, 31 Stuart Road

MS. BORGUS: I don't find the 1 foot variance here as troubling as I do about some other things here.

Mr. Young, I believe, is a -- is -- must be very familiar with real estate because he is a member for the Board of Assessment Review for the Town of Chili and has been for many years. It's a paid position, too. And I find it very troubling that he -- he didn't go through our permitting process.

It seems to me anybody who is a realtor or is involved in real estate as much as he must be to perform his duties here in Town, certainly should have checked on a permit. That's kind of Building 101 here.

And also I find it more troubling that when I checked with the Assessor's Office, I find that Mr. Young -- there is no record on his assessment record of this deck -- this deck or whatever at all. So that has never impacted his tax base at all since 1995, I guess, and with that kind of -- his own personal record, he sits in judgment of everybody else's tax base as a member of the Board of Assessment Review. I find that appalling.

Thank you.

DAVID KELLY, 125 Freedom Pond Lane.

DAVID KELLY: I would ask you, Mr. Chairman, to ask Mr. Young to answer the original question you asked. He -- he avoided that and instead brought up photographs. I would like to know the answer to your original question. You may have to go back to the stenographer to find out what your original question was, but I think it was evasive, and I would like an answer.

Thank you.

PAUL BLOSER: Thank you. Any other public comment?

If there is no other public comment, do I have a motion to close public comment?

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

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

The stenographer read back the requested material.

MR. YOUNG: I wasn't trying to avoid the question.

PAUL BLOSER: I think you answered that by saying that you had -- you had it added after you were in there.

MR. YOUNG: Yes. It was within a couple of months. Like I say, we had made arrangements at the time the house was built. I was strictly -- like I say, it was not put on as a deck. It was put on as a patio.

PAUL BLOSER: Was this the builder that you made the arrangement with?

MR. YOUNG: To be honest with you, I'm not positive. I can't remember if I talked to the builder or if I talked directly to the contractor, but he was the -- it was the mason that did the work on the property.

PAUL BLOSER: Thank you.

ADAM CUMMINGS: I don't think it really matters if it is a patio or a deck. We're just looking at 5 feet from the side lot.

PAUL BLOSER: Versus 6. I'm still looking at also if this doesn't meet the building code, it has to be taken off and it has to meet building code. Period.

TRACY DiFLORIO: That is for the Building Department.

PAUL BLOSER: It's not our jurisdiction. We're strictly looking at the easement on this. The Building Department is sharp enough to know what they're doing and what their process is. If there are footers required, tie-ins required, that's their business.

What we're looking at is a pie-shaped lot and where that one corner hits, for the 1 foot.

ADAM CUMMINGS: By the looks of that map, if they then took a slice out of that deck or patio --

PAUL BLOSER: Made a step down to the yard --

ADAM CUMMINGS: Not even a step down, just cut it so it is parallel to that lot line to be in the proper space, he wouldn't even need a variance. But once again, that is financial because he has to saw cut that.

PAUL BLOSER: The patio wouldn't have -- the concrete would have to be cut. It is just a saw cut of the wood back 1 foot.

ADAM CUMMINGS: That is just overlayment.

PAUL BLOSER: You still have the 2 by 2 furrings underneath it.

ADAM CUMMINGS: I thought he had concrete and --

MR. YOUNG: It's a concrete slab.

ADAM CUMMINGS: He would have to cut the concrete.

PAUL BLOSER: The concrete wouldn't make a difference. It is not tied to the house.

TRACY DiFLORIO: But you would have the ugly corner of concrete sticking out.
PAUL BLOSER: Correct. It is just the structure itself is overlapping.

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

MR. YOUNG: Can I make a comment to this one lady's comment here? She mentioned that I should know about what requirements there were. The fact of the matter is, that I have not been on the Assessment Review Board. The deck was put on 14 years ago. I have not been on the Assessment Review Board anywhere near close to that, so, it was -- it was -- I certainly wouldn't be aware of it.

Not only that, being on the Assessment Review Board would not make me aware of that kind of information.

PAUL BLOSER: Okay. Thank you.

Paul Bloser reviewed the proposed conditions with the Board.

Adam Cummings made a motion to approve the application with the following conditions, and Tracy DiFlorio seconded the motion. All Board members were in favor of the motion.

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

1. Applicant must obtain a building permit and official inspection of structure.
2. Hard original stamped copy of survey map to be submitted to Building Department.

The following finding of fact was cited:

1. The requested variance will have no adverse physical or environmental impact on neighborhood.

The 11/25/08 Zoning Board of Appeals minutes were approved.

The meeting ended at 8:00 p.m.