

A meeting of the Chili Zoning Board of Appeals was held on February 24, 2004 at the Chili Town Hall, 3333 Chili Avenue, Rochester, New York 14624 at 7:00 p.m. The meeting was called to order by Chairperson Beverly Griebel.

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

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

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

BEVERLY GRIEBEL: Before we begin, I was out on Saturday, the 14th, and we'll discuss signs. Application Number 1, McMullen, I didn't have a problem with signs. Did anybody else?

The Board indicated they had no problem with the notification sign for Application #1.

BEVERLY GRIEBEL: Number 2, I was okay on that. Everyone else?

The Board indicated they had no problem with the notification sign for Application #2.

BEVERLY GRIEBEL: Number 3, Marks Pizzeria, no sign.

PETER WIDENER: I saw on it on the 18th and it was in proximity to the last sign, in that snow area.

BEVERLY GRIEBEL: I saw a blank board there on Saturday that didn't have anything on it.

PETER WIDENER: On the 18th I did see it there. It was right in the same area it was last time.

BEVERLY GRIEBEL: Apparently it was not out on the first day. This is --

MR. DREW: Mrs. Chairwoman, may I speak to you or the Board on that? I'm here representing Michael Drew, the applicant with Marks Pizzeria. Those signs were placed there late in the day on the 17th.

BEVERLY GRIEBEL: The date they were supposed to be posted.

MR. DREW: I'm sorry?

BEVERLY GRIEBEL: They were to be posted on February 14th.

MR. DREW: 14th, I believe.

BEVERLY GRIEBEL: 13th, just so they would be present.

DAN MELVILLE: What date did you say they were up?

MR. DREW: The 14th. They were there on the 14th. I have signed affidavits from people that I believe saw them. We asked them to be sure they have saw them. The weather has been terrible, as you all know what we went through in January. They may have blown down for a few days in January. We went back there this last time and we put the signs up on the 14th, which was my understanding of the required date, ten days before today, and I had five people come out and witness it and sign affidavits which I have here with me.

BEVERLY GRIEBEL: Well, I was out there sometime after lunchtime on the 14th and what I saw was the old board with nothing on it.

MR. DREW: On that same day they were put up there. I was part of the crew that put them up. As I say, I have affidavits here from the people who saw them, and we have their phone numbers. You can call them right now if you would like to verify.

BEVERLY GRIEBEL: The new instruction sheet says the posting date was the 13th.

MR. DREW: It was my understanding it was the 14th. If that was the case, we were off by a day and that's my fault.

BEVERLY GRIEBEL: The reason for having it the day before, because some people were telling us, well, I was going to put it up later and I didn't know if it had to be 8 in the morning or 8 at night. So in order to prevent any confusion on that, the instructions are now to have them put up sometime the day before so they are there in the morning. Now I used to -- I have a Board member who would go out on the way home from the night shift at Kodak and he would look at 2 or 3 in the early morning, so if he would happen to look on a day like that, we would want to be sure they were there. I did not see it on that Saturday.

MR. DREW: Well, if you would like to see them, I have these affidavits from the people right here.

BEVERLY GRIEBEL: Well, I don't think that that is material.

DAN MELVILLE: That means they were put up. It doesn't mean they were maintained.

MR. DREW: Actually, they were up and we have maintained them ever since. Again, despite the weather we have had, we have covered them with clear plastic. We have propped them up when they fell down in the snow and we have taped them to make sure they stay there. I have been out there myself in snow up to my knees to make sure they were there every day from the 14th until today.

BEVERLY GRIEBEL: They were not there when I went, because I happened to drive by today, and I did see it, I think, at the place where the old board was for the prior sign that was put up late. So at this point --

MICHAEL MARTIN: I guess that brings into question if we're out early in the day and the sign was up after or, what does that mean?

BEVERLY GRIEBEL: Well, the instruction sheet -- Mr. Kress?

DAN MELVILLE: Legally it is ten days, even though we put on the sheet the day before. Legally it is ten days they have to be up.

BEVERLY GRIEBEL: When the applicant takes a sign, do they take this copy of the -- when the signs need to go up? Is that what they get?

DANIEL KRESS: All of the applicants are told specifically when the sign needs to go up. What we have been telling people, in case someone does want to check first thing in the morning on the tenth day, is to please put them up on the eleventh day. The code clearly calls for ten days.

BEVERLY GRIEBEL: I was out in the afternoon, sometime the midafternoon that day. So they are to be posted -- I was around, seeing all of these that afternoon, and four people did fine.

MR. DREW: Well, I can tell you the signs were put up in the early evening that day, and there were three of us that put them up, and there were four more people that witnessed it.

BEVERLY GRIEBEL: In the early evening?

MR. DREW: Around dusk. I would say 6 o'clock.

BEVERLY GRIEBEL: That's too late.

MR. DREW: I don't think the code says what time of the day it has to be put up, does it?

BEVERLY GRIEBEL: Well, the instructions are to post them on the 13th.

MR. DREW: Now the instructions -- I'm sorry.

BEVERLY GRIEBEL: The Board has alternatives to deny it without prejudice or to table it until next month.

PETER WIDENER: Madam Chairwoman, in light of the fact that the sign was up most of the time in January and most of the time in February, I would like to make a motion that we listen to his statement tonight.

BEVERLY GRIEBEL: Well, there is a motion now to hear it. Is there a second on that?

There was no second on the motion.

Dennis Schulmerich arrived to the meeting.

BEVERLY GRIEBEL: The motion fails for lack of a second.

Now, our policy since I think the beginning of the year, maybe even November, has been if the

sign is not posted for the required time, then the application is not heard.

PETER WIDENER: On the second offense, do we table it again?

BEVERLY GRIEBEL: Well, that would be our option. We can table it or deny it without prejudice. If we deny it, it would mean they would have to reapply, and to reapply, they would be too late for the March meeting because the application deadline was February 20th. If we table it again in hopes that they get posted properly, they would be heard on March 23rd with a posting date being Friday, March 12th.

Do have a motion to table to that?

DENNIS SCHULMERICH: So moved.

BEVERLY GRIEBEL: Second?

PETER WIDENER: Second.

The Board was all in favor of the motion to table.

BEVERLY GRIEBEL: That is tabled until March 23rd. If anyone is here to address that application, it will not be heard this evening.

Moving on to Numbers 4 and 5, they were posted together. I don't have a problem with them. Anyone else?

The Board indicated they had no problem with those notification signs.

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

Kevin McMullen was present to represent the application.

BEVERLY GRIEBEL: This was tabled from last month, and the applicant submitted some aerial type photographs of the property. Did everyone get those?

Now, this is a barn or a garage?

MR. McMULLEN: A pole barn.

BEVERLY GRIEBEL: A pole barn?

MR. McMULLEN: Yes.

BEVERLY GRIEBEL: What do you store in the barn?

MR. McMULLEN: There would be a boat in there, a couple four-wheelers, a --

BEVERLY GRIEBEL: A boat and what?

MR. McMULLEN: Four-wheelers, ATVs.

BEVERLY GRIEBEL: Four-wheel recreational vehicles?

MR. McMULLEN: All-terrain vehicles, yes.

BEVERLY GRIEBEL: Okay. And what else is in there?

MR. McMULLEN: Lawn mower and maybe a cart we pull behind the lawn mower.

PETER WIDENER: Any livestock?

MR. McMULLEN: No.

BEVERLY GRIEBEL: What kind of floor does it have?

MR. McMULLEN: Concrete.

BEVERLY GRIEBEL: Concrete floor?

MR. McMULLEN: Yes.

BEVERLY GRIEBEL: And it has garage doors?

MR. McMULLEN: Yes.

BEVERLY GRIEBEL: It looks like a garage?

MR. McMULLEN: Yes, but it is a pole barn because there are no footings or anything. It is just built with wood poles.

PETER WIDENER: Any utilities out there?

MR. McMULLEN: Electric.

BEVERLY GRIEBEL: Okay. Well, it looks like a garage. I guess that is a question that I have. Now, there is also the question of the wetland, and I think maybe Mr. Kress can enlighten us whether this barn/garage, this structure, is it in a wetland area?

DANIEL KRESS: I contacted the DEC so we could get confirmation on that, and I was informed back in December by Scott Jones of the Avon office that the building is not located within the designated wetland on the property. It is located within the 100-foot buffer that needs to be maintained beyond the wetland boundary, so the matter has been referred to the DEC's enforcement unit with the recommendation that the building be allowed to remain if a civil penalty is paid. As of today, my understanding from the enforcement unit is that hasn't happened yet, so the matter has been referred to court.

BEVERLY GRIEBEL: So --

MR. McMULLEN: In going to court, I went to court and presented to the judge, and he seemed to have no problem with it. His thing was just give me a permit and we'll drop the charges.

BEVERLY GRIEBEL: Give you a what?

MR. McMULLEN: He said, "When you show me a building permit, we'll drop the charge."

DAN MELVILLE: Your fate is in our hands?

MR. McMULLEN: Exactly.

BEVERLY GRIEBEL: We don't issue a permit.

DAN MELVILLE: But he has to have approval here to get a permit.

BEVERLY GRIEBEL: The permit is issued by Mr. Kress.

MR. McMULLEN: Yes.

BEVERLY GRIEBEL: Can you issue a permit without the DEC --

DANIEL KRESS: Yes. Regardless of the decision the Board makes tonight, one way or another that would not relieve Mr. McMullen of his obligations to deal with the DEC. Until I know they're satisfied, I will not issue any building permit.

MR. McMULLEN: But he was fine with it. He told me that if you had any questions to call him because they went out on the site --

DANIEL KRESS: I did call him today. He said he is not fine with it. He said he has referred the matter to court.

MR. McMULLEN: Right. Exactly.

BEVERLY GRIEBEL: So this is something that is definitely up in the air.

I guess it is a question of whether this is a barn or a garage. How do you interpret it, Mr. Kress? And Keith?

DANIEL KRESS: The definition of private garage in the zoning refers to accessory structure associated with dwelling units used solely for shelter for private passenger vehicles and no space therein is leased to a non-resident of the premises. So I guess that would be what the Board has to apply here.

BEVERLY GRIEBEL: To a garage?

KEITH O'TOOLE: A pole barn can just be a manner of construction.

MR. McMULLEN: When he built it for us, he said it is a pole barn. I guess you can use it for whatever you want to, a pole barn.

MICHAEL MARTIN: You said you're keeping a boat, some sport --

MR. McMULLEN: Yes. It has a couple four-wheelers, a lawn mower we put in there. I mean it is nothing fancy. It is made out of wood. You can see through it, part of it.

MICHAEL MARTIN: Any passenger vehicles being stored in there?

MR. McMULLEN: No. No cars in there.

DENNIS SCHULMERICH: I have a question for the side table. Does the Town assume the liability if we approve a variance where a building resides in the flood plain buffer zone?

KEITH O'TOOLE: No. It is actually the property owner's responsibility to comply and if they -- and they have to get their permits from the DEC.

DENNIS SCHULMERICH: Now, I have another question that is associated with the -- not specifically the barn, but the property in general.

I was led to believe there was not a permit issued for the pool, for the deck, or for the pole barn; is that correct?

DANIEL KRESS: I contacted Mr. McMullen back in I believe it was November originally because when the issue of the barn or garage was brought to our attention we realized that, no, he did not have a permit for the structure.

MR. McMULLEN: They didn't say anything about a deck or a pool.

DENNIS SCHULMERICH: Was there a permit issued for the pool or the deck?

MR. McMULLEN: Probably not. I don't know. I paid a gentleman to put this pole barn up. I thought everything was all set. And when I got the notice from the Town in December, it was Barns, Et Cetera, out of Lakeville. I called there and the wife informed me that the man who owned it just died at Thanksgiving, so I am left here to clean it up.

DENNIS SCHULMERICH: So it appears to me we have multiple structures constructed on the property that were not --

MR. McMULLEN: The only thing I'm aware of was this, the pole barn. That is the only thing I got a notice.

DAN MELVILLE: Do you have a pool?

MR. McMULLEN: Yes, I do.

DAN MELVILLE: Did you put that up?

MR. McMULLEN: The pool, yes. It is a pool.

DAN MELVILLE: You didn't get a permit to put that in?

MR. McMULLEN: No.

DAN MELVILLE: Any electrical inspection?

MR. McMULLEN: I didn't think I had to.

DENNIS SCHULMERICH: Essentially you're ignoring the zoning code for Chili -- pardon me, I'm in the middle of a sentence. You're ignoring the zoning code for the Town of Chili and then you're coming here and requesting a variance after the fact; is that correct?

MR. McMULLEN: Right.

DENNIS SCHULMERICH: I have no other questions.

PETER WIDENER: The total acreage you have on the map is 6.3 acres; is that about right?

MR. McMULLEN: Correct.

PETER WIDENER: Thank you.

BEVERLY GRIEBEL: Mr. Kress, if this is a garage, then does he exceed the allowance for a garage square footage?

DANIEL KRESS: I don't have -- hang on.

BEVERLY GRIEBEL: There is a garage with the house.

DANIEL KRESS: I don't have dimensions on the drawing here, but my guess is it probably does.

BEVERLY GRIEBEL: So what do we do with it?

DANIEL KRESS: Well, if, in fact, the Board determines this is a garage and it is over the limit, then we have got a need for another variance in addition to the setback issue.

DENNIS SCHULMERICH: It is probably important to understand that, I would think.

Another question I had, Madam Chairwoman, is I'm personally uncomfortable passing judgment on the variance requested when there is litigation involved.

BEVERLY GRIEBEL: When we don't know really what the DEC is going to do.

MR. McMULLEN: Excuse me. What -- the DEC gave it to the Town of Chili's Court. I went to court and seen the judge, and his thing is once you show me a permit, we'll drop it. So this was the first step to make the court happy, is to get my variance, get a building permit, and to make him happy.

DENNIS SCHULMERICH: I guess I prefer to table this until I see that paperwork from the court.

MR. McMULLEN: It was a verbal. I'm sure they have it documented because --

BEVERLY GRIEBEL: They didn't give you any paperwork?

MR. McMULLEN: No. Just a new date. That is what he said. "Mr. McMullen, get a permit and we'll drop the charges."

BEVERLY GRIEBEL: That was in Chili Town Court?

MR. McMULLEN: Yes.

PETER WIDENER: That was solely for the pole barn garage?

MR. McMULLEN: Yes. Yes. Because -- because I got a ticket through the DEC. They came out the first time and said it was fine. It's not on wetlands. Then about two weeks later an officer came out and said he had to give me a ticket. He said, "I don't want you to move it. I'm all right with it, but I have to give you a ticket." He said, "Chili Town Court is where you're going to go."

I went there and that is what happened.

BEVERLY GRIEBEL: When did you go to court?

MR. McMULLEN: It was probably -- I had to table it because -- we got tabled last time, so my next court date, I am thinking it is like March 12th.

BEVERLY GRIEBEL: When did you go?

MR. McMULLEN: January. In January. Because then I had the -- I think I had the February Zoning Board. It got tabled because of the sign, and I called up to court and they postponed my next date to -- to sometime in March. I think it might be the 12th of March.

BEVERLY GRIEBEL: And they gave you no paperwork?

MR. McMULLEN: The judge just said, "Bring back a building permit and we'll drop it." He didn't seem too concerned about it.

DAN MELVILLE: The judge wouldn't give him any paperwork.

MR. McMULLEN: They mailed me a thing in the mail when I have to appear in court again.

DENNIS SCHULMERICH: So for sake of clarity, because I'm confused, what is the linkage between the permit and the fine with the DEC? Is there a linkage?

MR. McMULLEN: The DEC put it on Chili Town Court to decide if I should be fined or not. The DEC doesn't really care.

BEVERLY GRIEBEL: Mr. Kress called over to the DEC today and they told him it was still pending in the court.

MR. McMULLEN: Right. It is in Chili's Court.

DENNIS SCHULMERICH: What does the comment "they're not fine with" mean? I'm confused.

MR. McMULLEN: They can fine me, I don't know how much money, for not getting a proper variance permit or whatever. But like he said, if you get a permit, I don't care about your barn.

DENNIS SCHULMERICH: I'm just trying to understand here. I'm not trying to be contentious. Now, you indicated the DEC indicated to you they were fine with it. If you paid the fine, no problem.

MR. McMULLEN: Well, he said -- there might not even be a fine. It is in Chili Court now. It is like his ticket -- he wrote me a ticket right to Chili Court. It wasn't to the DEC or nothing.

DENNIS SCHULMERICH: I thought I heard Mr. Kress say in the conversation with the DEC today they were not fine with it. What does "not fine with it" mean?

DANIEL KRESS: What I was told is that the matter was referred to the enforcement unit with the recommendation that the building be allowed to remain within the wetland buffer if a civil penalty were paid. The civil penalty has not been paid and, therefore, the matter has been taken to court.

DENNIS SCHULMERICH: That helps. You said it the first time, but it doesn't register.

MR. McMULLEN: The civil penalty hasn't been paid because I haven't gone back to court yet.

BEVERLY GRIEBEL: It seems we're in circles on this. I don't know who is responsible, what when --

KEITH O'TOOLE: If I may.

BEVERLY GRIEBEL: Can you enlighten us?

KEITH O'TOOLE: The wetlands are not within the jurisdiction of this Board. The only jurisdiction of this Board is zoning. It is the same thing if you issued a zoning permit and it is up to the applicant to come up with building plans acceptable to the Building Department to issue a building permit. We don't handle that aspect of it. Whether the zoning permit is a condition precedent to the DEC permit or building permit doesn't matter for our purposes. It is simply enough that he complies with the standards for the variance and you grant it or deny it. You can deal with it in one fell swoop.

The other issues, the deck, the pool, the other things, I would say you slap these on as conditions of approval and be done with the whole package once and for all.

As far as the size of the barn is concerned, the public notice advertises the square footage of the barn. I think that gives adequate notice what is being constructed and permitted, so I would see it fine to issue a variance right here on the spot for that, too.

BEVERLY GRIEBEL: And call it a barn because that is what it was advertised?

KEITH O'TOOLE: You can call it a barn or garage. It is an accessory structure used for storage. I don't really think it matters one way or another.

BEVERLY GRIEBEL: Does it fall within the purview of being too large for accessory structures? Does he need to come back? Does he need a variance?

DANIEL KRESS: Upper limit garage is 900 square feet. 26 times 32 feet comes in just under 900, so I don't believe we have a size issue here.

BEVERLY GRIEBEL: But you add that to what he has on the house. There is a garage on the house?

MR. McMULLEN: I have a garage on the house, correct.

KEITH O'TOOLE: In fact, historically we have always used the aggregate all of the residential accessory structures, called garage space, essentially.

DENNIS SCHULMERICH: Which would say you're in access?

MICHAEL MARTIN: Add onto this application and also grant a variance for square footage, total square footage?

KEITH O'TOOLE: Yes.

DAN MELVILLE: What is the size of the garage on the house?

MR. McMULLEN: Probably 24 by 28. It is a two-car garage.

MICHAEL MARTIN: Give a not to exceed number?

BEVERLY GRIEBEL: Or does he need to come back for that?

KEITH O'TOOLE: Board's pleasure. The standard is 900 square feet in the aggregate.

MR. McMULLEN: I don't use it -- I don't put vehicles in there. I just store a boat in there.

DENNIS SCHULMERICH: It is a sum total of all square footage that we grant. That is the issue. It is less use and more size.

MR. McMULLEN: All right.

BEVERLY GRIEBEL: It is a peculiar application because it was all done before the fact and now we're asked to vote on something that is still in litigation with the DEC and with the court. I'm not totally comfortable with it either. But if it is not approved here, it doesn't get the building permit. You can't take that to -- conditional building permit I guess is what he would issue.

DENNIS SCHULMERICH: If this Town assumes no liability for approving the variance and since wetland is not our purview, it is really a question of are we comfortable adding it on to the square footage associated with the aggregate for the garage or do we need to come -- if we can append it.

BEVERLY GRIEBEL: If we can add that on -- because what is the total square footage?

DAN MELVILLE: Somewhere around 1200, I think.

BEVERLY GRIEBEL: I mean the lot -- how many acres?

PETER WIDENER: Six plus acres.

BEVERLY GRIEBEL: Six plus acres, okay.

Well, we have been approving things like that for people out in the country, if they need extra storage for various things on a farm, agricultural area, whatever. PRD. No, it is not agricultural. At that size, you would need more than a little push lawn mower, I would think.

So the total square footage of the garage, garage storage --

DENNIS SCHULMERICH: If you assume 24 by 28, you're coming in something under 1500 square feet. We don't have the exact dimensions of the garage.

MICHAEL MARTIN: Do a number not to exceed.

DENNIS SCHULMERICH: Not to exceed 1500 square feet.

DAN MELVILLE: You had two ATVs in there? Is there a limit on that?

MR. McMULLEN: ATVs in there?

DENNIS SCHULMERICH: Depends how many you're storing and --

DAN MELVILLE: And how many you're racing.

MR. McMULLEN: Two of them probably have been ridden in eight months.

DAN MELVILLE: Do you want to get that started?

BEVERLY GRIEBEL: Total square footage of the garage/storage --

MICHAEL MARTIN: Not to exceed 1500 square feet.

BEVERLY GRIEBEL: Not to exceed 1500 square feet. Is that going to cover it?

MICHAEL MARTIN: That should cover it. A little extra.

DENNIS SCHULMERICH: If we're -- if we're listing the qualifiers at this point in time, as well, I would also like to see a condition related to permitting of the pool, the deck and the as-built.

BEVERLY GRIEBEL: Condition, being applicant to --

KEITH O'TOOLE: To obtain all permits and final inspections --

DENNIS SCHULMERICH: That's what I was about to say.

KEITH O'TOOLE: -- for the existing pool, deck, and pole barn.

BEVERLY GRIEBEL: Existing pool, deck and pole barn.

Is the Board comfortable with adding that square footage of storage area without advertising it again?

DENNIS SCHULMERICH: Yes. I mean there is no decision that we would benefit from by tabling for a month except to come back and talk about the additional square footage. I don't know what we would gain by that.

DAN MELVILLE: I think we might be a little light on that square footage.

DENNIS SCHULMERICH: You think so?

DAN MELVILLE: Yes. Yeah. If you add those numbers up, I think I come out with 1876.

BEVERLY GRIEBEL: 1500? We don't want to go short.

MICHAEL MARTIN: Do you want to make it 1900 square feet?

BEVERLY GRIEBEL: A two-car garage is 900, if you add another one --

DAN MELVILLE: Yes, 1876.

BEVERLY GRIEBEL: Now, a two-car garage is what dimension?

DAN MELVILLE: 24 by 26. 24 by 28, just about that.

BEVERLY GRIEBEL: This is 26 by 32. So that is going to be bigger than 900.

DAN MELVILLE: Right.

BEVERLY GRIEBEL: What did we say, 2,000? What is the --

DAN MELVILLE: I will figure it out again.

BEVERLY GRIEBEL: 26 by 32.

DENNIS SCHULMERICH: 1504.

PETER WIDENER: 1508.

DENNIS SCHULMERICH: I'm glad math works the way it does.

DAN MELVILLE: What is the big one?

PETER WIDENER: The barn you're looking at, 836 square.

MR. McMULLEN: Part of that barn, too, has a porch on it, so some is not really covered -- maybe that helps you.

The Board further discussed the math.

MICHAEL MARTIN: 1800 should be fine.

DENNIS SCHULMERICH: The reason we're doing this is so we don't give you a number smaller than the square footage only to find out you're in violation.

MR. McMULLEN: Okay. You're confusing me.

MICHAEL MARTIN: We're approximating the square footage of the existing garage with the pole barn.

MR. McMULLEN: I'm pretty sure my existing garage is 24 by 28.

COMMENTS OR QUESTIONS FROM THE AUDIENCE: None.

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 Board all voted no on the motion.

Beverly Griebel made a motion to rescind the previous SEQR motion; and 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 new motion. The Board all

voted yes on the motion.

Dan Melville made a motion to deny the application with the following conditions, and Dennis Schulmerich seconded the motion. All Board members were in favor of the motion to deny.

DECISION: Unanimously denied by a vote of 5 no for the following reasons/findings of fact having been cited:

1. At the requested square footage, the variance asked for is substantial.
2. Location of the structure in a wetland buffer will have negative impact on the wetlands.

BEVERLY GRIEBEL: If anyone is here for Application Number 3, Marks Pizzeria, we will not be hearing that this evening. That has been tabled.

2. Application of Glenn Schneider, owner; 236 Old Chili Scottsville Road, Churchville, New York 14428 for variance to create two undersized lots: Lot #1 to be 2.40 acres (5 acres req.), variance to allow existing barn on Lot #1 to be 34.7' from proposed side lot line (50' req.); Lot #2 to be 1.04 acres(5 acres req.), with a lot width of 151.76 (275' req.), variance for proposed dwelling on Lot#2 to be 47' from front lot line (100' req.), 18 1/2' from north side lot line (50' req.) and 35' from south side lot line (50' req.)at property located at 236 Old Chili Scottsville Road in PRD & FPO zone.

Rob Fitzgerald, Jason Moore and Mike Hetting were present to represent the application.

BEVERLY GRIEBEL: Mr. Schneider called. He wasn't going to be here tonight. Counsel, I know this came up before. This was tabled from an earlier meeting, and we don't have the applicant's signature notarized. Is this going to be a problem for us to hear this application with the representatives here?

KEITH O'TOOLE: No. You can get a letter of authorization as a condition of approval.

BEVERLY GRIEBEL: Okay. Normally if the applicant isn't here, we have to have their signature. Okay.

MR. FITZGERALD: I'm Rob Fitzgerald with Avery Engineering. Also with me to tonight is Jason Moore, hopefully the future homeowner on the parcel, and his builder Mike Hetting.

This application was tabled several months ago and was referred from this Board to go to the Planning Board to see if the mechanics of the site would work. We have done that, and this past month we were approved by the Planning Board for this subdivision and site plan.

We also have information from the New York State D.O.T. regarding the proposed curb cut and that has been accepted with a condition that we revise some of the standard notes.

We also submitted to Monroe County Health Department and they have also given us approval based on some conditions as well, which I have supplied the Zoning Board Chairperson with.

BEVERLY GRIEBEL: This did go to the Planning Board. It is a much better diagram we have now. We'll put one on the board for the audience. If anyone in the audience wants to go look at it.

MR. MOORE: The house plans, too? We have those.

DAN MELVILLE: That doesn't have anything to do with us.

BEVERLY GRIEBEL: We had kind of a sketch when you came into us before.

MR. MOORE: You had the very rough, rough, rough draft.

MR. FITZGERALD: Since he did hang that up, we are not proposing a walk-out basement.

BEVERLY GRIEBEL: I have one concern, which is not really what we're asked of tonight, but we had concerns with the driveway and safety, and with the driveway coming out right at that intersection. Was there ever a proposal to flip the house over and have the driveway on the other side of the lot?

MR. FITZGERALD: Yes. That was a concern with the Planning Board, as well. They asked us to look into that. What we tried to do was slide the driveway as far as we could to the south. If we

were to flip it, it would actually be closer to the intersection unless we shared a common driveway with the commercial business to the north, which we don't want to do. We could do it with some cross-access ingress/egress easements, but with doing so, it is never clean to combine a commercial and residential drive. There were some discussions with the Town Engineer as well as our opinions that we actually thought this would be the safer entrance.

BEVERLY GRIEBEL: Really? Right out at an intersection -- I don't know the speed of that road. Although -- everyone drives pretty fast on that road.

MICHAEL MARTIN: 40, 45.

BEVERLY GRIEBEL: It is pretty fast. You couldn't flip it the other way? That is because the driveway comes out so far. You want the garage on the side of the house?

MR. FITZGERALD: If we were to flip it to access the other road?

BEVERLY GRIEBEL: To come out on Old Scottsville Chili Road.

MR. FITZGERALD: If we did that, we would be closer to the intersection. Unless we use the common drive. That was a condition, too. We actually did -- we got the permit for the barn to use it as a commercial use. I did not personally. That was one of the conditions to push that driveway as far away from the intersection. That is why we located it here. We would be hard-pressed to get another driveway in between that existing drive and the existing intersection.

BEVERLY GRIEBEL: I know that we had a lot of concerns which is why we tabled it before, and one concern we had was the backyard is taken up with the septic system. And I know -- this Board questioned whether that septic could be in the front, which would leave the backyard for a pool or something like that in the future. I know people have come back here because they can't fit what they want on a plot of land because of the early decisions that were made. Was that considered?

MR. FITZGERALD: Right. That was considered. A couple reasons we didn't go with that, the topography of the land does slope away from the road. If we put the septic in the front, it would be essentially draining towards the foundation of the house. That is obviously not good. We would also have to raise the house up. And we would have to get rid of the all of the trees in the front. They didn't want to keep them and maintain some of the larger pines.

DENNIS SCHULMERICH: We didn't have the elevation information before, which would have helped us with the septic.

DAN MELVILLE: You definitely don't want that draining towards the house.

BEVERLY GRIEBEL: The only practical place for the septic is where you have it due to perk tests and land configuration?

MR. FITZGERALD: Yes. And we do -- oddly enough, here in Chili we have a standard in-ground system for this site. I was also told, too -- we didn't do an exploration -- there was a tier that was placed in the front of this parcel which technically we're not supposed to put a septic system in anything but the virgin soil. That could have run into another problem.

BEVERLY GRIEBEL: They have got fill in there?

MR. FITZGERALD: That is my understanding from Glenn Schneider, yes.

DENNIS SCHULMERICH: I appreciate the detail on this diagram. It helped a lot.

BEVERLY GRIEBEL: That is what we asked you to do at the Planning Board.

COMMENTS OR QUESTIONS FROM THE AUDIENCE: None.

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 Peter Widener 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 Dennis Schulmerich seconded the motion. All Board members were in favor of the motion.

DECISION: Unanimously approved by a vote of 5 yes with the following condition:

1. Submit letter of authorization that son-in-law could speak at public hearing on property owner's behalf.

The following finding of fact was cited:

1. No change in the character of the neighborhood.
3. Application of Mark's Pizzeria, 246 E. Main Street, Palmyra, New York 14522, property owner: Towne Plaza, LLC; for variance to erect a 16' x 4' wall sign to be 64 sq. ft. (22 sq. ft. allowed) at property located at 4390 Buffalo Road in G.B. zone.

DECISION: Unanimously tabled by a vote of 5 yes for the following reason/findings of fact having been cited:

1. Applicant failed to properly post the 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.

4. Application of Benderson Development Corp., owner; 570 Delaware Avenue, Buffalo, New York 14202 for variance to allow additional front parking for 28 vehicles, variance to allow a total of 471 parking spaces at property located at 800-810 and 822 Paul Road in G.B. zone.

BEVERLY GRIEBEL: This did go to Monroe County Planning and came back with no comments. They didn't say anything. I guess it is up to the Town.

Randy Bebout and Bob Trybulski were present to represent the application.

MR. BEBOUT: Randy Bebout with FRA Engineering at 530 Summit Point Drive, Henrietta, 14467. I'm here tonight on behalf of Benderson Development and Tim Horton's. With me is Bob Trybulski. We're here tonight requesting two variances as you mentioned.

Just to update you on where we're at in the planning process, we appeared in front of the Planning Board on February 10th for informal discussion. We received some positive feedback, and we are scheduled on the agenda for the March 9th meeting for formal site plan approval.

The variances we're requesting tonight, the first variance is the variance to allow parking in the front setback where 75 feet is required. Couple reasons of why we're requesting this. The first reason is the building operation of Tim Horton's. The main doors to the Tim Horton's are on the east side and the south side of the building which requires parking in those immediate vicinities for easy ingress into the building and to minimize walking distance for customers. The other reason that the parking is located in the front portion of the parcel is to minimize the existing parking loss to the K Mart store. And a couple of notes that I want to bring up in regards to the parking in the front setback, we are proposing 11.8 feet to the right-of-way line. The parking is consistent with the existing plaza, so we're not changing the nature of the plaza because there is existing parking within that front setback to the east of the proposed Tim Horton's. It should also be noted that the majority of the proposed parking area is currently existing pavement area, and has some parking areas striped in that area. A small portion of it is the existing detention facility which we're relocating. And also I think unique to this parcel is the fact that it does sit back further from Chili Avenue than most of the businesses along this. It is separated by, I believe, the church parcel to the south and west.

The second variance that we're requesting is to allow for a reduced number of spaces. We were informed by the Building Department that in July of '99 there was a variance granted allowing 470 spaces for this site. Currently there are 484 spaces on the site. With the proposed Tim Horton's, we're proposing 471 spaces which equates to a loss of 13 spaces. It is our opinion that this will not create any traffic parking problems mainly due to the fact that the Tim Horton's peak hours is between 7 and 9. The bank opens up at 9. K Mart does open up

at 7, but their peak business I'm guessing is later in the day. It is not at 7 in the morning, and I would guess it is later in the day and early evening.

And in regards to the parking, as you can see from the plan, the site is fairly maximized in regards to the locations to add parking, so that -- we have maximized that to the best of our ability. And just in the vicinity of the Tim Horton's there is sufficient number of spaces in excess of what would be required by the code if this was a stand alone to serve Tim Horton's, so there was not a concern that Tim Horton's doesn't have enough parking. As it was mentioned and discussed at the Planning Board, K Mart generally does not fill the plaza. It does not need all of the parking there which is required by code.

And I will entertain any questions the Board may have.

BEVERLY GRIEBEL: Now, you said that 470 spaces were required for the site. There are 480 now. Is that correct?

MR. BEBOUT: 484 spaces on the site today according to the survey. There was a variance granted for the site in July of '99 allowing 470 spaces.

BEVERLY GRIEBEL: Okay.

MR. BEBOUT: I don't know the history of that, what that was associated with.

BEVERLY GRIEBEL: I don't recall either. I don't remember that far back.

So you are one up from that variance that was granted back then?

MR. BEBOUT: Correct.

BEVERLY GRIEBEL: You have gained some spaces because you're relocating the pond and making it a little smaller?

MR. BEBOUT: Yes. The pond is being modified. The actual size of the pond is going to remain unchanged. It is basically we shifted parking around. We took it in some spaces and added others and that change was a loss of 13 spaces.

PETER WIDENER: But the size of the pond will remain the same?

MR. BEBOUT: Correct. We have submitted a storm drainage report to the Town Engineer. He reviewed it and essentially has given the verbal he is okay with what is proposed.

BEVERLY GRIEBEL: So you will really be keeping the whole lot parking above that variance request, so that doesn't sound too bad.

DAN MELVILLE: It certainly won't be a problem for K Mart. No.

BEVERLY GRIEBEL: The front parking is quite common.

MICHAEL MARTIN: They have no other choice.

DAN MELVILLE: It is already front parking anyway.

BEVERLY GRIEBEL: The whole thing is front parking. It is like Wegmans, all front parking.

BEVERLY GRIEBEL: I know that there are some site issues that you will probably be addressing to the Planning Board, you know, the traffic flow around the building.

MR. BEBOUT: That's correct. We're aware of those, and we'll be addressing those.

PETER WIDENER: This is only for the parking variance we're looking at now?

BEVERLY GRIEBEL: Yes. Number 4. This is -- we're taking one at a time. Because Number 5 is for signage. We'll take the first parking here.

KEITH O'TOOLE: Do you want to hear the sign application concurrently?

BEVERLY GRIEBEL: No, I think we'll hear them separately.

KEITH O'TOOLE: Nothing further.

BEVERLY GRIEBEL: I think there are two separate issues. We'll handle the parking separate from the signs.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

MARK BALLARD

MR. BALLARD: Mark Ballard, First Baptist Church in Chili Pastor. I'm not speaking against it as trying to get clarification.

The parking spaces on the south side of that house, how close are those to the property line?

MR. BEBOUT: 11.8 feet.

MR. BALLARD: And you're moving or redoing the pond area?

MR. BEBOUT: Correct.

MR. BALLARD: Moving?

MR. BEBOUT: To the north.

MR. BALLARD: I have no objection.

CHARLES RETTIG, Coldwater Road

MR. RETTIG: I just have a couple of questions. You're, of course, looking at parking. I realize that. This has been brought to the attention of the Planning Board in an informal session. However, in approving the parking, if that is so approved, and you require a different traffic flow, you may or may not lose parking spaces; is that correct?

MR. BEBOUT: That's correct.

BEVERLY GRIEBEL: That could change, I guess, if they make some changes, which would mean they might have to come back here. Is that a possibility?

MR. BEBOUT: Well, I was informed at the Planning Board meeting that the Planning Board has some flexibility in allowing a reduced number of parking spaces.

BEVERLY GRIEBEL: Hmm.

DON FASO: That is correct, on the number only.

MR. BEBOUT: On the number only.

MICHAEL MARTIN: If we allow 471 and they end up with 468, it doesn't break variance. That is still okay, correct?

KEITH O'TOOLE: They're here not just for the number but the front parking as well, which is something that the Planning Board can't waive.

BEVERLY GRIEBEL: I got you.

MR. BEBOUT: To give you the background there, we were not aware that the Planning Board had that ability and that was the reason that we requested the variance from the Zoning Board.

BEVERLY GRIEBEL: I guess if you do some different things and you lose 50 places, that might be reason to come back here.

MR. RETTIG: For the clarification of those of us in the audience here, could you please -- I realize we're not talking about planning directly, but indirectly we are with parking. Could you explain the traffic flow, please?

MR. BEBOUT: Particularly for the Tim Horton's?

MR. RETTIG: Yes.

MR. BEBOUT: Everything you see from here over (indicating), and here on up remains unchanged (indicating).

Traffic would come in, and you would -- to get into the Tim Horton's, you will take a left here (indicating). When we get into the sign package, I can talk about locations of signage, but there will be signage around all perimeters of the building.

People would come in here (indicating). They could park here, here or here (indicating). This is a two-way 24-foot driveway aisle around all four sides of the building, so patrons can come in and park in any desired location. If they're heading to the drive-through, they can come in here and they will pull to the drive-through here (indicating). The order boards will be located in here (indicating). They will continue through the drive-through lane to the pickup window and exit back out here (indicating) or can exit back out here (indicating).

Someone coming from Paul Road Square will come in this way (indicating). There will be signage directing them to the Tim Horton's, taking a right here (indicating). They can take a right here (indicating). If they want to get into the drive-through, they will have to circulate around the building and come through this way (indicating) or come through here (indicating) and select a desired parking space.

MR. RETTIG: Okay. Can you show me where the existing north/south barrier island is on your drawing as to where it is presently?

BEVERLY GRIEBEL: The entrance?

MR. RETTIG: That is the --

MR. BEBOUT: Yes. This is remaining unchanged. Nothing is being changed there.

MR. RETTIG: Right now there is traffic flow from K Mart parking on the west side of that barrier to the south, to the roadway exit; is that correct?

MR. BEBOUT: That's correct. This is actually striped to be one way. There are traffic arrows painted on the pavement, one way on the east side heading north and one way on the west side heading south.

MR. RETTIG: That is continued to be two-way traffic through on the west side of that barrier, which continues as it is today then?

MR. BEBOUT: I will restate that. This is actually striped -- I went out there and physically seen this myself. This is painted with traffic arrows to be one way heading south on the west side of this island. And the same on the other side. It is striped --

MR. RETTIG: On the other side of the island?

MR. BEBOUT: East side is striped one way heading in a north direction. We're not proposing any changes to that at this time.

MR. RETTIG: The reason why I ask that question is because right now if you're parking on the east side of that island for K Mart, and exiting that K Mart parking lot, you're heading south to Chili Avenue, and that will be crossing the Tim Horton's traffic, and there will be Tim Horton's traffic coming north -- that is right, going south --

MR. BEBOUT: South here (indicating)?

MR. RETTIG: Or if you're over to the east a couple aisles, to the east. East. One more.

So your traffic is coming south and going out onto Chili Avenue. Then you're crossing Tim Horton's.

BEVERLY GRIEBEL: I think he has pointed out the general traffic, and I think any of the other issues you might have on that might be Planning Board issues.

MR. RETTIG: My comment is, I think you have got a traffic problem there, and, of course, that may go to the Planning Board.

Has this been reviewed by Traffic & Safety Committee to date?

BEVERLY GRIEBEL: Well, this is the parking issue. So that is not --

MR. RETTIG: But still, getting to the parking involves driving to that parking space, so, therefore, it does become a problem as to how you get there.

BEVERLY GRIEBEL: That is the Planning Board that handles the traffic study.

DAN MELVILLE: We're just considering granting front parking and a number of spaces.

BEVERLY GRIEBEL: That is all that is on this application.

DAN MELVILLE: They will worry about the traffic pattern. They will have to go to Traffic & Safety I'm sure.

BEVERLY GRIEBEL: Okay. If they need other information at Planning Board, they will have to get that.

MR. RETTIG: What I am pointing out is, it forces traffic through that narrow traffic aisle through the nature of the location where Tim Horton's is located.

DAN MELVILLE: That's something they will consider.

BEVERLY GRIEBEL: That will be up to the Planning Board to look at that. They may require some changes. I have no idea, because they don't have a formal plan there for some kind of approval.

DENNIS SCHULMERICH: If the front parking caused -- was the sole concern of that, it would be worthy to talk about that here. I think the general placement of the building is what is causing the question you're raising, and to me that is more pertinent to the Planning Board.

MR. RETTIG: Not totally. Not completely. What is outlined there in the gray is the footprint for Tim Horton's property; is that correct?

MR. BEBOUT: The brown here --

MR. RETTIG: That is the building? I am talking about the overall gray.

MR. BEBOUT: The gray is just the shaded area that represents both Tim Horton's parking and K Mart parking.

BEVERLY GRIEBEL: You're not being sole owner?

MR. RETTIG: Both?

MR. BEBOUT: Yes.

MR. RETTIG: You're just leasing the building property, not all that parking? Technically is what you have shown there just Tim Horton's or --

MR. BEBOUT: It's both.

DAN MELVILLE: The entire parcel is owned by Benderson.

MR. TRYBULSKI: There are two parcels.

MR. RETTIG: I don't know it if you don't explain it.

MR. TRYBULSKI: It's just a graphic representation to show the parking, the area of the new development.

BEVERLY GRIEBEL: Charles (Rettig), do you have any more questions about the front parking or the number of spaces?

MR. RETTIG: Yes. What is the outline of the footprint of the entire Tim Horton's layout, including parking?

MR. BEBOUT: There is no -- it is going to be leased. There is not a lease line or subdivision -- currently -- I don't know if you can see this, but there is a light blue line here (indicating). This is two parcels. This is being subdivided into one parcel and will be owned by Benderson, and I will let Bob (Trybulski) speak on -- I don't know the lease deal.

MR. TRYBULSKI: What they don't do is there is no define line that says this is Tim Horton's and this is K Mart. What they will just do is say obviously these spaces would be used by a Tim Horton's patron, but there is nothing that would say you cannot park here.

BEVERLY GRIEBEL: If they park there, it doesn't mean that they can't shop at K Mart.

MR. TRYBULSKI: Tim Horton's would have a --

MR. RETTIG: I appreciate the clarification. Thank you.

TAMMY MARSHALL, 836 Paul Road Square

MS. MARSHALL: Just for the sake of clarity, explain to me on the holding pond, the difference in what it is now, and exactly what it is you're going to make it into. You said you're going to change it somewhat or a little. I don't know what that is.

BEVERLY GRIEBEL: That is another Planning Board issue.

MS. MARSHALL: Oh. Sorry.

BEVERLY GRIEBEL: We're only dealing with the parking spaces, front parking and the number of spaces.

MS. MARSHALL: Doesn't -- I thought this had to be changed because of the parking.

BEVERLY GRIEBEL: But the change is something that would have to go through the Planning Board, and be approved there. Is that right, Don (Faso)?

DON FASO: Correct.

MS. MARSHALL: Are we notified of those meetings also?

MR. BEBOUT: Yes.

DON FASO: Correct.

MS. MARSHALL: See you there.

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 Dennis Schulmerich 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 Dennis Schulmerich seconded the motion. All Board members were in favor of the motion.

DECISION: Unanimously approved by a vote of 5 yes with no conditions, and the following finding of fact was cited:

1. No significant change from prior parking space variance.
5. Application of Benderson Development Corp., owner; 570 Delaware Avenue, Buffalo, New York 14202 for variance to erect an 8' x 10' double-faced freestanding plaza sign to be a total of 160 sq. ft. (60 sq. ft. allowed), variance to erect the following signs for the proposed Tim Horton's: 2 wall signs totaling 134 sq. ft. (100 sq. ft. allowed), 6 directional/advertising signs to be a total of 37 sq. ft., 3 freestanding signs totaling 60 sq. ft. at property located at

800-810 and 822 Paul Road in G.B. zone.

BEVERLY GRIEBEL: This says David Mavis, agent, Cedar Key Robinson Associates. That is what is on the application, yet this is written up as Benderson.

MR. BEBOUT: David Mavis is an employee of Benderson. It was done as two different applicants because Benderson was handling the signage and FRA Engineering was handling the site design, parking.

BEVERLY GRIEBEL: So Mr. Mavis -- is he an employee of any government agency?

MR. BEBOUT: He is an employee of Benderson Development Company.

BEVERLY GRIEBEL: He didn't check this off. Is he employed by any government agency?

MR. TRYBULSKI: No, he is not.

BEVERLY GRIEBEL: Double-faced freestanding plaza sign.

DAN MELVILLE: Any drawings for the Board?

MR. BEBOUT: I don't, but I can point out the locations of the signs.

DAN MELVILLE: We have ours.

DENNIS SCHULMERICH: I will put this up.

BEVERLY GRIEBEL: The plaza signs, now I have a problem with that.

First we're going to talk about this one, the freestanding plaza sign. I have a problem with that. I know that when K Mart was changed to Big K Mart, they wanted this very large logo on the building, large oversize. I don't remember the dimensions. But the discussion at that time was they want it large because they wanted to be able to see it from the road. So now here is somebody asking to put another large double-phased sign at the road. I don't get it.

MR. BEBOUT: It is my understanding that K Mart actually had approval for a pylon sign previously, not this one in particular. Again, I don't know the history of that, but that is my understanding.

The reason for the sign is just again to increase exposure for not only the K Mart, but also the Tim Horton's and I want to say I believe the bank is on there also.

BEVERLY GRIEBEL: The bank has been there for quite a while. It can be found. It is on the corner.

I vividly remember the large Big K Mart logo that was put on the K Mart building. They wanted it very large to be seen from the road. So now there is a request for the Big K Mart sign at the street, which I'm not in favor of at all.

BEVERLY GRIEBEL: That is my personal opinion.

MR. BEBOUT: I don't know the history of the Town of Chili and other plazas, whether this is inconsistent with other development in the area.

BEVERLY GRIEBEL: Well, it is a change from that original request. Are you taking down that Big K Mart logo on the building?

MR. BEBOUT: No. Your concern with the signage is it is just too big? You don't like the pylon sign in general?

BEVERLY GRIEBEL: Well, I don't see the need for it to advertise Big K Mart at the street. I can see there might be some need to advertise Tim Horton's at some point here. The bank has not previously requested a pylon sign.

MR. BEBOUT: I think in general it is just to bring the plaza signage together in one location. Again, as I mentioned on the parking, the Tim Horton's does set back from Chili Avenue, and the way that the streets are configured, it allows for people on Chili Center, Coldwater Road, you know, the visibility of the signage, and even though -- you know, the way the site even sits down in, it is just to increase exposure and help the business.

DAN MELVILLE: The total footage or the total of that sign is what, 8 by 10?

MR. BEBOUT: That's correct.

DAN MELVILLE: Which portion of it is the K Mart sign? Those are like three separate signs?

PETER WIDENER: I think it is 6 foot for K Mart, two for Tim Horton's and two for Charter One.

DAN MELVILLE: Are those like separate signs or all one sign?

MR. TRYBULSKI: It is all in the same -- what they refer to as sign band. They're on top of

each other.

What is happening is the plaza is becoming more diverse. You have Tim Horton's and you do have a bank in there, and, you know, who is to say down the road. So as you get more tenants, I can see before where you just -- pretty much it was K Mart, a bank. But now, now that we have Tim Horton's, it is a question of diversity, and like I said, if it -- you know, I believe it is in line with what other plazas have in the area.

BEVERLY GRIEBEL: Well, we're just talking about this plaza. The bank has not made a request for a sign.

DAN MELVILLE: Did they request to go on this sign?

MR. TRYBULSKI: I honestly don't know the answer to that, but typically any tenant that is in a plaza is usually clamoring to get on the pylon sign. But I don't know the answer of that.

BEVERLY GRIEBEL: This is the first that it has come up that I recall.

Some of these other signs, now -- this is the sign that would go on the building?

MR. BEBOUT: That's correct. There is a sign on the east face of the building and on the south face, up on the roof. Or on the fascia of the --

BEVERLY GRIEBEL: The top part.

MR. BEBOUT: Which is shown on --

DAN MELVILLE: Which is pretty standard for all your units?

MR. BEBOUT: Yes.

DAN MELVILLE: The same as the one in Gates?

MR. BEBOUT: Yes. Standard size for Tim Horton's.

BEVERLY GRIEBEL: What would be the visibility of that from the road?

MR. BEBOUT: I think it would be fairly good. I mean I don't -- they definitely -- one reason they wouldn't want to go smaller is because it does set back, but you would be able to see the south sign -- actually be able to see both signs as you're traversing down Chili Avenue, heading west. If you're coming east, you know, you would just be able see the one southern sign.

BEVERLY GRIEBEL: How tall is the building?

MR. BEBOUT: I don't know that -- I don't know that I know that number right off the top of my head. Typically these buildings are --

MR. BEBOUT: 17, 18 foot range.

BEVERLY GRIEBEL: This is a sign that is 52 inches tall and 20 feet 10 inches long. So it is almost 21 feet. So it is going to take the top quarter of the building?

MR. BEBOUT: The building is just under 17 feet, and the actual sign panel to the bottom of the overhang is 9 foot 2, so I will say the bottom of the sign is approximately 10 feet plus or minus. I'm looking at this building elevation enclosed in the application.

BEVERLY GRIEBEL: Now, let's see. Here is one that is 90 square feet. 20 feet 10 by 52 inches tall, and then we have the next page is 14 feet 5 1/4 inches by 36 inches.

MR. BEBOUT: The 14-foot long sign is on the east face. The larger 20-foot long sign is on the south face.

BEVERLY GRIEBEL: Okay. The other one is the south face. Okay. They will not stick up from the top of the building?

MR. BEBOUT: No. It will be flush with the fascia.

BEVERLY GRIEBEL: So that will be pretty visible from Chili Avenue?

MR. BEBOUT: Correct.

BEVERLY GRIEBEL: Now, this is the menu. The menu panels that are right by the drive-up window, they're on the north side of the building, so they would face the parking lot?

MR. BEBOUT: That's correct. There is -- the order -- speaker board, which has a -- the little 1 foot 10 by 1 foot 5 panel, and what they do is they slide in like advertised specials. It is just like a cardboard slide-in or plexiglass slide-in. They have the large menu board sign with two panels on the upper portion that will flip open, and again, they can put specials or regular --

BEVERLY GRIEBEL: Changeable?

MR. BEBOUT: Changeable. And then the one, the tall 7 foot 5 by 2 foot 10, that is like a presale board. Same thing. You can open it up and change it out.

BEVERLY GRIEBEL: Those are the menu boards. Now we have the directional -- directing

people to the drive-through. There --

MR. BEBOUT: There is a total of six of those signs.

DENNIS SCHULMERICH: With the information they're conveying, is it all the same information?

MR. BEBOUT: There are a couple of them that say drive-through. The one at the south end of the drive-through lane says "thank you" as you're exiting, and it says "do not enter" on the opposite side.

And then there is a "do not enter" on the east/west island just north of the drive-through. A "do not enter" on the west end of the island. The remainder of them just say "drive-through" with a directional arrow.

BEVERLY GRIEBEL: So there are six of those directional signs?

MR. BEBOUT: Correct.

BEVERLY GRIEBEL: So there is essentially one on each corner of the building parking lot area, and then one --

MR. BEBOUT: One north of the dumpster and --

BEVERLY GRIEBEL: The other side of the pond?

MR. BEBOUT: To the west, the other side of the pond. The majority of those signs are one-sided. There is one that is two-sided, and that's -- the one that is two-sided.

BEVERLY GRIEBEL: It says "thank you" and "do not enter" on the other side?

MR. BEBOUT: Yes. Also a two-sided drive-through, which I believe is the one located on the southeast corner as you enter into the Tim Horton's area.

BEVERLY GRIEBEL: These are all on one pole there. 31 inches across, and 21 and a 1/2 inches high. They're on a pole that is 5 foot total. Almost 5 foot. They look like they're all the same dimension.

MR. BEBOUT: That's correct.

BEVERLY GRIEBEL: There are so many here in the pictures that I had to get it clear.

MR. BEBOUT: Takes a little while to sort it out.

BEVERLY GRIEBEL: So it is two signs there, the top of the building. The menu boards. There are three of those, and then the next six drive-through signs?

MR. BEBOUT: That's correct. Those are all part of their standard sign package. You know, I don't think it is in excess of anything they would normally ask.

DAN MELVILLE: Now, these directional, are these illuminated?

MR. BEBOUT: Yes. I say yes because I see electrical conduits running to them.

DAN MELVILLE: Yes. I guess that would mean it would be.

DENNIS SCHULMERICH: I visit Tim Horton's frequently. They are illuminated.

DAN MELVILLE: I don't visit them at night.

BEVERLY GRIEBEL: Any internal illumination?

MR. BEBOUT: I believe so.

DENNIS SCHULMERICH: I do not work for Benderson, but...

BEVERLY GRIEBEL: You're a good customer.

DAN MELVILLE: How about the freestanding sign? I'm assuming that is illuminated, too, right?

MR. BEBOUT: I would assume it would be.

MR. TRYBULSKI: Typically they are.

MICHAEL MARTIN: My only question would be to the side table. Are you aware of any variance in existence for a freestanding pylon sign for this property? There was an indication that there may be an existing authorization for variance to have a --

MR. BEBOUT: I don't think a variance. My understanding was they had an approval to construct a pylon sign. I don't know the dimensions of it, but that was my understanding.

DANIEL KRESS: I'm not aware of that.

KEITH O'TOOLE: I'm not a -- I have never heard of anything. And we're viewing a particular sign of a particular configuration. Certainly I -- the code doesn't permit two freestanding signs in any event, and the sign code has changed I believe in the last two years or so, so I don't know that that permit would be valid. And, in fact, they obviously haven't constructed the sign, so I question its continuing validity.

PETER WIDENER: I have a question about the six directional signs. In consideration of the

people on Paul Road Square, I believe that first drive-through sign could be eliminated because that is entering the plaza, and that is just another candle of oasis that is going to light up towards the Pumpkin Hill and the people on Paul Road Square.

MR. BEBOUT: The one west of the detention?

PETER WIDENER: Correct. That is the one. Exactly.

BEVERLY GRIEBEL: Kind of extraneous --

PETER WIDENER: I really don't see a need for that one way out there.

MR. BEBOUT: I don't think that -- as you mentioned, they're lit. I don't think the lighting on these is going to give off a whole lot of light that would be a concern to the neighbors. It does provide -- just to minimize any confusion or congestion, it would improve traffic circulation.

BEVERLY GRIEBEL: What would that say, just "drive-through ahead" or something?

MR. BEBOUT: "Drive-through" with an arrow pointing to the right.

BEVERLY GRIEBEL: And how about the one near the dumpsters?

MR. BEBOUT: The exact same sign pointing to the right.

PETER WIDENER: But the snow removal, a lot of it is piled right there.

MR. BEBOUT: Well, that is something --

PETER WIDENER: It is just a concern I have. I don't think we need six of those signs.

BEVERLY GRIEBEL: I don't think they need more than four.

PETER WIDENER: Some of them are traffic location and that, but I agree -- that one just caught my eye. I thought that might be a little bit too much. Just a thought.

DENNIS SCHULMERICH: You could put one out on Paul Road, too.

(Laughter.)

BEVERLY GRIEBEL: This has come up before, once people find their way to a place, you pretty much know where to go without having to follow signs every time. Those two might be able to be removed.

PETER WIDENER: I have no other questions, no.

MR. BEBOUT: I would just -- you said that two could be removed. The one -- the one in particular next to the north of the dumpster, I think that one is important, because the dumpster kind of hides the area a little bit, and the idea is to have people that want to get into the drive-through to head south there and not circulate straight and then have to try to make the 180 degree turning movement.

BEVERLY GRIEBEL: So that says --

MR. BEBOUT: It is a drive-through sign, pointing to the right. I think that one has some good benefit.

PETER WIDENER: Dumpster removal would be no problem there?

MR. BEBOUT: No.

PETER WIDENER: Enough swing?

MR. BEBOUT: Yes.

PETER WIDENER: That sign was not a concern to me, but the other one was.

DENNIS SCHULMERICH: A question I have here -- it didn't pertain to signage, but in terms of visibility, the fencing that is adjacent to the retention pond, is that a stockade fence?

MR. BEBOUT: Chain-link fence that will be replaced with a new chain-link fence.

DENNIS SCHULMERICH: No visibility issues in terms of stockade?

MR. BEBOUT: Correct.

DENNIS SCHULMERICH: I'm fine and I have no other questions.

BEVERLY GRIEBEL: The pylon sign, I definitely have a concern. I don't vote for it.

DENNIS SCHULMERICH: You're voting?

BEVERLY GRIEBEL: No, we're not voting at this point.

I don't know how the rest of the Board feels. Now, with this large 90-square-foot sign facing south onto Chili Avenue, I don't think there are any other signs that are needed to direct people into the plaza and finding Tim Horton's.

DENNIS SCHULMERICH: You made a comment I wanted to understand and that was the perspective that K Mart got as large a sign as they did with an understanding, probably nothing in writing, that they didn't need a pylon sign.

BEVERLY GRIEBEL: They got it because they wanted it to be seen from Chili Avenue. I was

on the Board and it is a vivid recollection of mine.

DENNIS SCHULMERICH: And was there any discussion of a pylon sign?

BEVERLY GRIEBEL: No.

DENNIS SCHULMERICH: Just the signage?

BEVERLY GRIEBEL: Big sign on the building to see it. And this would be on the south and then slightly smaller one on the east side --

DAN MELVILLE: I guess if you look at that pylon sign, the K Mart portion of it is not that big. What was it, 9 or 8 by 10 or something? The K Mart portion was not that big.

DENNIS SCHULMERICH: With all of the Tim Horton's signage, they better not change their name.

MR. BEBOUT: They won't be for a long time.

BEVERLY GRIEBEL: Let's go to the side table.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

MR. BALLARD: Mark Ballard, Pastor First Baptist Church in Chili. I recall, as you do, Madam Chairwoman, personally that when the application for the sign on K Mart was put up, it was with the understanding there would be no freestanding sign, and we did not oppose the current sign at that time, and with the size of the signs on the front and side of the proposed building, we would be -- or at least personally I would be opposed to the freestanding pylon sign.

CHARLES RETTIG, Coldwater Road

MR. RETTIG: Can you go over to the diagram, please, and show us exactly where each of the six signs are proposed, please?

BEVERLY GRIEBEL: The directional signs?

MR. RETTIG: Yes.

MR. BEBOUT: One here that says drive-through (indicating).

MR. RETTIG: That is going to be right on the corner of the building?

MR. BEBOUT: Right here (indicating) in this island right here (indicating).

MR. RETTIG: That is an island? Okay.

MR. BEBOUT: One here in this large green island right here (indicating), to the northeast corner of the building.

There will be one here (indicating) on the south end of this landscaped island that says "thank you" on the north side and "do not enter" on the south side.

There will be one here (indicating) in this raised island (indicating) that says "do not enter" on the west side. There will be one here (indicating) north of the dumpster that says "drive-through" with an arrow pointing to the right, and proposing one here (indicating) that says "drive-through" with an arrow pointing to the right also.

MR. RETTIG: The one that you have proposed at the north end of the drive-through -- no, north end of the -- right there (indicating), that is to prevent driving through from what direction?

MR. BEBOUT: It is a "do not enter" sign so people do not make this movement (indicating).

MR. RETTIG: So could they make a right-hand turn from the west to go into the drive-through?

MR. BEBOUT: No, because the order boards are back here (indicating).

MR. RETTIG: What you're doing is forcing people from the north to come around and run a U-turn --

MR. BEBOUT: To circulate around the building.

MR. RETTIG: Okay. All right.

MR. RETTIG: My comment is kind of agreeing with the Board, as they have reviewed it, that I can see a need for four signs, but I'm not sure you need two signs to the west.

Next question is, where are you specifically proposing the pylon sign?

MR. BEBOUT: The pylon sign is proposed to be right here (indicating). In the corner of the existing parking area right here (indicating).

MR. RETTIG: And my comment holds true there. That we don't really need a large pylon sign because of the larger sign on the building, nor do we need a large pylon sign in that plaza to add more

clutter, if you will, especially just before the church.

TAMMY MARSHALL, 836 Paul Road Square

MS. MARSHALL: I guess I would just express my concern over having so many more signs. Do we really need them on the west end? I'm just simply concerned about that.

BEVERLY GRIEBEL: The directional sign?

MS. MARSHALL: The directional signs coming in from Paul Road Square. I agree it's not only clutter personally that we deal with, but for the church, and the pylon sign, is that another lighted sign? Will that be lit another 24/7?

MR. BEBOUT: Back lit. I don't --

MR. TRYBULSKI: It is back lit. Those signs are back lit.

MS. MARSHALL: Shut down during the night a few hours?

MR. TRYBULSKI: There are time clocks on them.

MS. MARSHALL: So they will shut down with the parking lot lights now at 10 p.m. on Sunday and --

MR. TRYBULSKI: They shut down with the --

MS. MARSHALL: Not to 2 or 3 a.m. with everything else during the week?

MR. TRYBULSKI: Yes.

MS. MARSHALL: I don't know if we need any more light in Chili on that parking lot. That would be my concern.

ABBY BERRELL, Sleepy Hollow

MS. BERRELL: I'm concerned about the directional signs as well and the amount of light that they would produce in that parking lot area, because right now that parking lot area does produce a lot of light at night, and as one of the neighbors to it, it is just a concern at night.

BEVERLY GRIEBEL: I think this would be like a minimal. They're about 5 foot tall with some internal illumination.

MR. TRYBULSKI: Correct.

MR. BEBOUT: Typically any back-lit sign is a very low level and will not be noticeable over the existing parking lot lighting that is there.

BEVERLY GRIEBEL: Because that is up high and floods the whole area.

MR. BEBOUT: That's correct.

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 Dennis Schulmerich 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 Dennis Schulmerich seconded the motion. The vote on the motion was 4 yes to 1 no (Beverly Griebel voted no.)

DECISION: Approved by a vote of 4 yes to 1 (Beverly Griebel) with the following conditions:

1. Menu sign - approved as submitted.
2. Directional signs - 6 requested, 5 approved (eliminate westernmost sign).
3. Pylon sign - approved as submitted.
4. Wall signs - approved as submitted.

The following findings of fact were cited:

1. Consistent with other commercial retail property.

2. Directional signs needed to direct traffic flow to drive-up lane.
3. Menu signs needed for information at the drive-up area.

Note: A sign permit is required prior to erection of these signs.

The meeting ended at 9:00 p.m.