

A meeting of the Chili Zoning Board of Appeals was held on March 23, 2004 at the Chili Town Hall, 3333 Chili Avenue, Rochester, New York 14624 at 7:00 p.m. The meeting was called to order by Chairperson Beverly Griebel.

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

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

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

BEVERLY GRIEBEL: Before we get into the agenda, we'll start with signs. On Application 1, Mark's Pizzeria, I didn't have any problem with that; did anybody?

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

GERRY HENDRICKSON: I found all of the signs up.

BEVERLY GRIEBEL: Number 2, Nancy Premo, Shrubbery Lane?

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

BEVERLY GRIEBEL: Application 3, Thomas Eichele, Sheffer Road?

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

BEVERLY GRIEBEL: Application 4, Muirfield Development, 3313, for the duplexes?

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

BEVERLY GRIEBEL: Application 5, any problems with that sign?

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

BEVERLY GRIEBEL: Any problems for Application Number 6, Benderson Development, the Tim Horton's?

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

BEVERLY GRIEBEL: This is a first time.

DAN MELVILLE: CVS still has their sign up.

RICHARD PERRY: I talked to the manager three or four times. They don't seem to want to take it down.

BEVERLY GRIEBEL: First it wouldn't stay up and now it won't come down.

RICHARD PERRY: Now you can't read them because I think every dog in the neighborhood has used it.

Can we do something to remind them more forcibly to take it down?

DANIEL KRESS: I can work on it.

RICHARD PERRY: That has been since November?

DANIEL KRESS: It has been several months.

DAN MELVILLE: They proved they can keep them up.

BEVERLY GRIEBEL: Maybe it is cemented this time, I don't know.

That was a good job by everybody.

1. Application of Mark's Pizzeria, 246 East 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.

Michael Drew was present to represent the application.

MR. DREW: I think the reason we're asking for this is probably very clear. The store itself, for anybody who is familiar with the plaza, is totally hidden from the road. It is not visible at all.

BEVERLY GRIEBEL: Could we have your name?

MR. DREW: I'm sorry. Michael Drew, D-r-e-w, representing Mark's Pizzeria.

The store has no visibility whatsoever to the road. The small sign allowed by the code would probably be illegible that far back from the road on the location where we could place it, so that is why we're asking for this variance.

BEVERLY GRIEBEL: Now, when will you be adding your sign to the pedestal sign by the road?

MR. DREW: At the same time so we don't have to pay the sign company twice to come from Buffalo. That is the only reason that has not been done.

BEVERLY GRIEBEL: Now, if that is indicated on the pedestal sign, what about a smaller sign over the -- I guess the alley way that goes back -- you're back in the alley way?

MR. DREW: Exactly, we're in the alley way. The problem is people still need to know where in the plaza we are. We would like them to be able to read it from the front of the plaza. People come in and say, "We didn't know you were here." Given if we were a larger store, I think we would be allowed to have a larger sign. The problem is we're such a small store, what we're allowed to have is hardly legible from the middle of the plaza, let alone the road. The pedestal sign would tell them we are in the plaza. We wouldn't want them driving around in there for any length of time.

BEVERLY GRIEBEL: 16 by 4, that is about the size of two plywood sheets, right?

MR. DREW: That is the sign container. The letters would not be that large. That is the oversize of the box.

BEVERLY GRIEBEL: Could you put up the sign so the audience can see it?

DENNIS SCHULMERICH: I will be happy to do that.

BEVERLY GRIEBEL: This shows the Mark's Pizzeria emblem and Mark's Pizzeria on the other.

Can you tell us the size on Dollar and General? Do you know what the dimensions are, all through the plaza?

DANIEL KRESS: I didn't bring the exact dimensions of that sign with me tonight. It is somewhat comparable in size. It is not exactly the same.

BEVERLY GRIEBEL: For their whole sign or one row of it?

DANIEL KRESS: One row. One row.

BEVERLY GRIEBEL: Either Dollar or General. Okay.

DAN MELVILLE: I assume it will be illuminated at night?

MR. DREW: Yes. It is softly illuminated. It is just soft fluorescent tubes inside.

DAN MELVILLE: Same thing with the pedestal sign?

MR. DREW: Yes, exactly.

DAN MELVILLE: That is all I have right now.

RICHARD PERRY: Whatever it is, it is going to be smaller than Bill Gray's and not as verbal as Bill Gray's.

PETER WIDENER: I have a question on the building facade that you're going to put the sign on. Is that solely your advertisement?

MR. DREW: No. We won't be taking up a large percentage of it. We're --

PETER WIDENER: So the people also back with you could ask for a sign to be put there, too?

MR. DREW: That is the intent, actually.

PETER WIDENER: Kind of like a shared space then?

MR. DREW: Yes.

PETER WIDENER: That is the only question I had. Thank you.

GERRY HENDRICKSON: The only question I have, is it going to be lit all of the time?

MR. DREW: No. It will go off when we close.

BEVERLY GRIEBEL: Now, if this Board decided that a smaller size would suffice, how would you feel about that?

MR. DREW: Well, if it were a little smaller, I would feel we could probably work around that, because, as I have said, if the box is what you're looking at, the dimension -- really all we care about is the size of the letters. On the other hand, if the Board were to say closer to the size we're allowed, I would feel we have a hardship in we have no visibility whatsoever to the street.

BEVERLY GRIEBEL: But if you were on the pedestal sign --

MR. DREW: We intend to be on the pedestal sign.

BEVERLY GRIEBEL: That would direct people that it is in the plaza, and it is not like a humongous place like Southtown or Marketplace Mall where you would have to keep driving around to find it.

MR. DREW: People have driven around the plaza and haven't been able to find us. We get these comments every week. People have driven in the plaza, have gone in other businesses looking for us. Some people have gone home and called us and said they weren't able to find us. I would tell you they probably didn't drive around the plaza too much because there are potholes on our side that are terrible, so I think people's frustration and patience runs a little thin driving around in there, to tell you the truth.

BEVERLY GRIEBEL: But you don't have any sign over that -- what is the -- the marquee right now? Your banner sign is out by the --

MR. DREW: Our banner sign is on the pedestal sign really, the base of the pedestal sign. It tells people we're in the plaza, but they still have trouble finding us.

BEVERLY GRIEBEL: If it were a smaller sign over the area where you are, they should be able to find you.

MR. DREW: I would hope so. I mean honestly, if we're a little smaller than the drawing we're presenting, it wouldn't be a problem. But the 22 square feet that was allowed is very small. And that would be lost up there, to tell you the truth.

#### COMMENTS OR QUESTIONS FROM THE AUDIENCE:

DOROTHY BORGUS, 31 Stuart Road

MS. BORGUS: I guess I have a little problem with people coming in wanting a variance when they have rented a store that is out of sight. It seems to me that is something you think about when you rent. Number one.

Two, the conditions of the plaza is probably a problem for this gentleman, but there again, I wouldn't rent where I wasn't happy with the parking lot.

BEVERLY GRIEBEL: It has gotten worse this winter.

MS. BORGUS: It is terrible. The whole plaza is terrible. But my biggest objection I guess to the sign, especially if this gentleman wants to have such a large variance on size, is that so much of his sign is taken with an emblem versus print. I don't have so much of a problem if he needs a bigger sign and he had just the name of the establishment, but I can see where if there are going to be more signs added to this framework on the roof -- on the front of the roof, that this could get very busy and unattractive very quickly. So I would suggest, my opinion would be that he should do away with the emblem, that isn't necessary to identify him, and preferably go for something smaller. The 22 feet may be too small, but there again, knowing where he was renting, I mean you know you're not going to be easy to find when you rent a store in such a hidden spot. So I think the request is a little bit extravagant.

BEVERLY GRIEBEL: This is a clipping from a magazine or paper, something, which lists 25

different Mark's Pizzerias around town in various areas of the vicinity, and I guess one of the indicators of the pizza place is your logo; is that correct?

MR. DREW: Yes, it is.

BEVERLY GRIEBEL: Has everyone seen this? So I think the logo, I guess, in your estimation, is important. That would draw people as much as --

MR. DREW: Yes, exactly. It is important to us.

BEVERLY GRIEBEL: It is not a generic pizza.

CHARLES RETTIG, Coldwater Road

MR. RETTIG: What you have shown up there on the two pieces of paper? Can you explain or can you ask the applicant to explain -- I assume the lower one is the one that is to be on the walkway; is that correct?

BEVERLY GRIEBEL: Yes. That would be the one that he is requesting to go on the marquee over the walkway.

MR. RETTIG: Has he presented anything that is going on the stanchion?

BEVERLY GRIEBEL: No. That is not presented in this packet. I don't know that that has to come here, because I think the landlord or the owner got that and -- for changeable signs.

DAN MELVILLE: We approved that sign.

MR. RETTIG: I just wanted clarification. Thank you. Okay. For that particular sign, as you have it boxed in, is that writing and the emblem 4 feet by 16 feet, is that what --

BEVERLY GRIEBEL: Yes. That is the outside dimension.

MR. RETTIG: Outside dimension. Okay. Thank you.

My comment is, the front sign post for the plaza certainly is sufficient for knowledge that he is in the plaza. However, I understand his need for a sign for his specific location, and I would recommend a smaller size in keeping with other signs in that plaza and in other plazas in town.

BEVERLY GRIEBEL: I think if we went with anything smaller, I think that is something we should determine at this point --

DAN MELVILLE: Before we close the public hearing?

BEVERLY GRIEBEL: Yes.

MICHAEL MARTIN: I have no problems with it.

RICHARD PERRY: Maybe some smaller, but there are certain others that are larger.

DAN MELVILLE: The Dollar sign is comparable to that.

BEVERLY GRIEBEL: That didn't come to this Board. I guess that just went to the Planning Board and apparently was approved there.

MICHAEL MARTIN: Plus there will be new construction.

BEVERLY GRIEBEL: So we don't need to discuss it any further.

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

Okay. We'll close the public hearing on this and then deliberate and reach a decision on it.

Dennis Schulmerich made a motion to amend the application for variance to erect a 3.5' x 14' wall sign to be 49 sq. ft., and Gerry Hendrickson seconded the motion. All Board members were in favor of the motion to amend.

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 condition, and Peter Widener seconded the motion. All Board members were in favor of the motion.

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

1. Wall sign reduced to 3.5' x 14' and not to exceed 49 sq. ft.

The following finding of fact was cited:

1. Signage needed to advertise and located a new business in the area.

Note: A sign permit is required prior to the placement of this sign.

2. Application of Nancy Premo, owner; 52 Shrubbery Lane, Rochester, New York 14624 for variance to erect a 22' x 22' attached garage to be 19' from side lot line (60' req. on corner lot) at property located at 52 Shrubbery Lane in R-1-15 zone.

Nancy Premo and Robert Percy were present to represent the application.

MS. PREMO: Hi.

BEVERLY GRIEBEL: Now, your application says that the original garage was removed and made into an additional room in the house.

MS. PREMO: That's right.

BEVERLY GRIEBEL: So this leaves your cars outside, making it difficult for the driveway and everything else.

In driving by your house, there is really no other suitable spot to put the garage.

MS. PREMO: Yes. Not unless we move a tree.

BEVERLY GRIEBEL: It would be pretty hard on the other side. There are not a lot of other places where you could put it. Do you have anything to add to that?

MS. PREMO: I don't. My contractor is with me tonight, Mr. Robert Percy. If you have any questions, he is the person who can answer better than I.

BEVERLY GRIEBEL: If anyone in the audience wants to take a look at the diagram, they can do that.

GERRY HENDRICKSON: No questions. I have seen the application, and the place, and everything is okay.

PETER WIDENER: I just needed to know the measurement again from Deb Allen Road to the front of the garage. Is that where we're asking for the variance?

MR. PERCY: 19.3 feet.

PETER WIDENER: Okay. I have no other questions.

MICHAEL MARTIN: Construction of the garage is to match the exterior of the house?

MR. PERCY: Yes. Pitch of the roof, residing the whole house.

BEVERLY GRIEBEL: This would have been a good winter to have a garage.

MS. PREMO: Oh, yes.

DENNIS SCHULMERICH: Based on the 19.3, if you're requesting 19 foot and you have 19.3, are you leaving yourself enough buffer so that we don't have an overrun and you come in at 18.5 and have to come in for another variance? Is that enough of a buffer for you?

MR. PERCY: I would assume so. This was measured and done by an architect. So I would assume that this is pretty close to the exact measurements. I know for a fact they took the measurements off the tape map of the house, so as long as the original tape map on the house is correct.

DAN MELVILLE: Tape map or instrument survey?

MR. PERCY: Original tape map.

BEVERLY GRIEBEL: We have the instrument survey in here.

MR. PERCY: I'm sorry. It was the survey.

BEVERLY GRIEBEL: Tape maps are iffy.

MR. PERCY: Okay.

COMMENTS OR QUESTIONS FROM THE AUDIENCE: None.

BEVERLY GRIEBEL: We will close the public hearing.

Beverly Griebel made a motion to declare the Board lead agency for SEQR, made a determination of no significant environmental impact, based on the testimony and the material presented at this hearing,

and Gerry Hendrickson seconded the motion. The Board all voted yes on the motion.

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

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

1. This is the only practical location on the property for a garage.

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

3. Application of Thomas Eichele, owner; 214 Sheffer Road, Scottsville, New York 14546 for variance to allow the total square footage of garage area, including a new 60' x 48' detached garage to be 10,336 sq. ft. (900 sq. ft. allowed) at property located at 214 Sheffer Road in A.C. zone.

Thomas Eichele was present to represent the application.

DAN MELVILLE: That's my kind of garage.

MR. EICHELE: Good evening.

BEVERLY GRIEBEL: Now, this property is 5 acres?

MR. EICHELE: It is actually a total of 10.8 acres.

BEVERLY GRIEBEL: How many?

MR. EICHELE: 10.8.

BEVERLY GRIEBEL: Oh. That was on this new -- okay, what are you going to put in the garage, or is that a silly question on agricultural property?

MR. EICHELE: Cars, tractors and boats I want to store in there, my personal stuff.

BEVERLY GRIEBEL: What kind of floor will it have?

MR. EICHELE: Concrete floor.

DAN MELVILLE: You're not going to run any kind of a repair shop or anything out of there?

MR. EICHELE: No. Just a lot of my old stuff, my original cars from when I was 16 years old, toys and stuff that takes up space.

RICHARD PERRY: Will you have it heated?

MR. EICHELE: No. Just for storage.

RICHARD PERRY: But it will have electricity?

MR. EICHELE: No, not at this time, electricity. No. Just trying to keep things out of the weather.

PETER WIDENER: I had a question about the story -- how high it will be.

MR. EICHELE: 14 foot.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

DOROTHY BORGUS, 31 Stuart Road

MS. BORGUS: A question. How do we arrive at 10,336 square feet?

BEVERLY GRIEBEL: There is a garage with the house?

MR. EICHELE: Yes. There is a pole barn there existing already.

BEVERLY GRIEBEL: I remember when that pole barn came in, because at the time I was wondering why you couldn't put it somewhere else on this big lot, and that's when I found out you can't build over the septic system. I don't know if you remember that.

MR. EICHELE: Yes, I do remember that.

BEVERLY GRIEBEL: I remember it, too. I was learning.

You have to add up all of the garages.

MS. BORGUS: So he has a pole barn and a garage and he still needs this huge other garage?

BEVERLY GRIEBEL: Yes. That is what he is saying. He has other tractors and boats.

MR. EICHELE: Tractors, boats, cars.

MS. BORGUS: Could I ask how big the pole barn is?

MR. EICHELE: 40 by 40.

MS. BORGUS: That is going to remain?

MR. EICHELE: Yes.

MS. BORGUS: This gentleman is not going to be renting boat storage or --

MR. EICHELE: No, I'm not.

MS. BORGUS: Well, I guess it is up to the Board, but that seems like an awful lot of storage space for somebody who is just --

MR. EICHELE: I have 13 cars.

BEVERLY GRIEBEL: You collect cars?

MR. EICHELE: Yes.

BEVERLY GRIEBEL: Antiques and semi-antiques?

MR. EICHELE: '57 Chevys.

MS. BORGUS: Is this new building going to have a second floor?

MR. EICHELE: No.

MS. BORGUS: Or a loft?

MR. EICHELE: No, it's not.

BEVERLY GRIEBEL: We will close the public hearing.

There was a letter that came in from a neighbor nearby, Herbert Machado on 108 Chili Wheatland Town Line Road that has no objection. Gay Robbins, 27 Reed Road, has no problem with the building. Barbara Kiser, 212 Sheffer Road, no problem with the building. So the neighbors are aware of that.

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 no conditions, and Beverly Griebel seconded the motion. The motion was approved by a vote of 6 yes to 1 no (Dennis Schulmerich).

DECISION: Unanimously approved by a vote of 6 yes to 1 no (Dennis Schulmerich) with no conditions, and the following findings of facts were cited:

1. Applicant explained the need for oversize garage space to get vehicle collection under cover.
2. The large rural lot (10 acres) will not be crowded with the new garage.

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

4. Application of Muirfield Development, 3313 Chili Avenue, Rochester, New York 14624, property owner: Joseph Klee; for approval to erect two duplexes on two lots with the following variances: Lot #1 to allow proposed duplex to be 29' from front lot line (60' req.), 16' from side lot line (40' req.) with a lot depth of 125.19' (250' req.); Lot #2 to allow proposed duplex to be 60' from front lot line (75' req.), 16' from rear lot line (40' req.) with a lot depth of 131.96' (250' req.) at property located at 2948 Chili Avenue in N.B. zone.

Bill Howard and Brian Donnell were present to represent the application.

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

MR. DONNELL: Hello, good evening. My name is Brian Donnell with Passero Associates,

and with me tonight is Bill Howard from Muirfield Development.

We're here asking for what seems like quite a few variances for this property located at 2948 Chili Avenue. What I would like to do is, I guess, just briefly talk about the site itself, the history to the site, which most of this Board probably is aware of, and then after that, I will try and walk through the variances and show exactly what they are and why we feel that they're justified.

The site itself is on the east side of Fenton Road. About two years ago Bill Howard had it zoned Neighborhood Business from Residential. It went from Residential zoning to Neighborhood Business zoning. It is a three-quarter-acre parcel, and what he is proposing to do is subdivide it into two parcels; each one will be just over a third of an acre.

Originally when Mr. Howard rezoned this piece, he had commercial use in mind for it. What he planned on doing was putting a carwash there. He had several neighborhood meetings, and was actually in front of the Planning Board once, but I don't think got any official approval on it, and because of heavy opposition from the neighbors, he decided not to follow through with the carwash and since then has been -- he has had the property listed as NB zoned property looking for a commercial use. There are quite a few uses that are allowed in NB. Laundromats, smaller convenience stores, things of that nature.

After two years of marketing, what he decided to take another look at -- as you know, Mr. Howard represents several builders in the area, and they decided to market it as a residential parcel and bring that to the Planning Board. He has since done that. A residential duplex home is allowed in an NB district with a special use permit. He received that use permit a few weeks ago as well as a preliminary approval from the Planning Board. There were a few conditions to that approval. One of them was to obtain his variances here tonight, and that is what he is looking to do.

With that, I will walk through the variances we're asking for. Because this piece is being subdivided, it is going from one lot to two lots -- Lot 2 here (indicating), the front of this lot is actual -- will be considered off of Chili Avenue. Even though it will be accessed from Fenton Road, the way the code needs to look at it is it fronts on Chili Avenue. Lot 1 is the opposite. Even though it is the side of the home, it will be considered Fenton Road.

First variance we need is a front setback variance for Lot 2 to Chili Avenue. The code requires 60 feet for a Town road and 75 foot from a State road. Since Chili Ave. is a State road, by code, we should have 75 feet. We have 60. There are several businesses along Chili Avenue that are closer than 60 feet now, and another hardship this has is if you look at this line here (indicating), this is Chili Avenue's right-of-way line. It doesn't necessarily follow the pavement on Chili Avenue. Typically your right-of-way line is about 10 to -- 10 feet, outside of the road, depending on what kind of road, 15 feet, but we have over 20 feet from Chili Avenue to our property line and our actual house is around 95 feet from Chili Ave. itself, so we didn't think that was a real significant variance, and the right-of-way itself, we felt that was a pretty good justification for that.

The second and third variances we're asking for are for the setbacks to the north of these lots. Lot 2, we need a rear setback variance, and Lot 1, since it fronts Fenton Road, it is considered a side setback variance. What we're asking for is 16 feet there. The NB code actually does not require a side setback except when you're adjacent to a residential parcel.

Since we are adjacent to a residential parcel, code would usually allow or usually require 40 feet.  
BEVERLY GRIEBEL: You mean the rear setback?

MR. DONNELL: Rear or side. The difference here, even though we're zoned NB, we're very much a residential use. Because of that, we didn't really feel that 40 feet was necessary. We're 15 feet from the property line, and we're actually -- the closest house is about 100 feet from our property line, give or take. And in between this parcel and the next house, there is some pretty significant vegetation. There are some evergreen trees that are clearly pretty old, and actually the house itself is probably about 10 feet higher than our site, as far as elevation goes.

So those are variances two and three.

The next variance we're asking for is for Lot 1, we're asking for a front setback variance from Fenton Road. We're asking for 29 feet. The code for NB and for residential requires a 60-foot setback.

This 29 feet sort of keeps with the character of Fenton Road. Right now if you drive up the

road, the houses are -- most of them are not set back 60 feet or anywhere near that, and it also helps out in that -- if we were to eliminate that variance, the way to do that, we would take this duplex and rotate it, and then what you would end up with is one, two, three driveways off of Fenton Road (indicating).

By having the smaller side setback, keeping the driveways on the shared private drive, we keep Fenton Road's access to one.

And the last variance we're asking for is for both lots to be less than 200 feet. The code -- we're asking for 125 and 132 feet of depth. The NB code requires 200 feet of lot depth. The same reason as before here (indicating). We're not an NB use any more. We're a residential use.

These lots more than comply with the size requirements if there were a residential use, so because of that, we don't feel that that variance is really too much to ask for.

With that, I know you said you were going to ask questions first and then go to the audience.

Bill (Howard), unless you have anything to add, I think we would be happy to answer any questions. I think Bill (Howard) -- actually I do have one more thing. I have a letter from -- from some residents in the neighborhood that Bill (Howard) obtained. They couldn't be here tonight, however, there is a letter from Colleen Stenglein to some of the neighbors on Old Ivy Terrace. These neighbors are the ones that originally opposed the original use of the project. It explains she is in support of the project and she actually got seven of them to sign a letter saying so.

BEVERLY GRIEBEL: From Old Ivy?

MR. DONNELL: Yes.

Mr. Donnell submitted the petition to the Board.

BEVERLY GRIEBEL: "Proposed construction of Chili Avenue. I support this construction of the townhomes," and it's got seven people on Old Ivy, which is quite close by.

Colleen Stenglein goes with it. She wrote to her neighbors with a summary of what the current plan was, luxury two-family townhomes with a sale price of 200 to 250,000, owner-occupied on one side, tenant on the other.

She goes on. And then she gave this to her neighbors to sign.

I don't have any questions. I know that one major concern with the carwash was the access into the big traffic area of Chili Avenue. So going out with one road on Fenton is really a plus. And I guess you would be able to work that out with a shared driveway so that is not a problem. That would be something in the deed restriction?

MR. DONNELL: That is -- his attorney is drawing up that agreement right now. That is one of the things the Planning Board wanted to see for their final approval.

BEVERLY GRIEBEL: It looks like a good solution because Fenton Road has a lot less traffic than Chili. Let's see.

DAN MELVILLE: What was the reason for subdividing that property rather than keeping it as one lot and maybe eliminating a few variances?

MR. HOWARD: We didn't want investors to buy these.

MR. DONNELL: He would like to have each home sold fee simple. The idea he is marketing into is owner-occupied.

DAN MELVILLE: You mentioned they would be owner-occupied and one side tenant. How would you guarantee that, that some day they wouldn't be just rental properties?

MR. HOWARD: These units are 230 to 250,000. The investor will not spend that type of money. There is no return. It won't cash flow. These are not duplexes that you're looking at in the city at 70, \$80,000. These are in the 230 to 250 range. There is a market. A lot of the builders I represent, we do a lot of in-laws. This is what you're really gravitating to, the in-law situation.

BEVERLY GRIEBEL: These would be two-story homes?

MR. HOWARD: One story.

RICHARD PERRY: What kind of square footage?

MR. HOWARD: 13, 14 and 1500 square feet, each side.

RICHARD PERRY: Single story?

MR. HOWARD: Ranches.

RICHARD PERRY: 200 and how much?

MR. HOWARD: 230, 250, which is only 115 a side, which you can't get anywhere in Chili for that.

BEVERLY GRIEBEL: That is with a two-car garage?

MR. HOWARD: Two-car garage, yes.

MR. DONNELL: One of the things that Mr. Widener was questioning is the garages on here. You see on this rendering (indicating), the garages are in the center of the building. On that plan, they're split apart.

Bill (Howard)'s office and our office, we have sort of been going back and forth on which way he wants to do it really. He thought he would go with the two separate driveways. He has pretty much made up his mind he wants to keep them in the middle. The footprint and variances do not change. What you see up there would just be inverted. The same size units on our plan. It doesn't affect any of the variances. This is what the building would look like?

PETER WIDENER: I had a couple questions. Off of Chili Avenue, it says asphalt parking and it is going up to your line for lot line. Who owns that land?

MR. DONNELL: The Town actually owns that land. We have no intention whatsoever of using that driveway. I think there have been some conversations between the Highway Superintendent and Bill (Howard) that the Town would actually like to remove that.

BEVERLY GRIEBEL: Is that where Fenton Road came out before, years ago?

MR. DONNELL: Years.

BEVERLY GRIEBEL: They just didn't take that part out.

MR. DONNELL: Exactly.

GERRY HENDRICKSON: No, no, no. That was for the buildings that were there. That is what that driveway was for. The cider mill and --

BEVERLY GRIEBEL: A restaurant?

GERRY HENDRICKSON: A restaurant, yes. Shorty's. That was a beer joint that caught fire.

PETER WIDENER: I guess what I'm asking, that asphalt parking, is that for the two buildings?

MR. DONNELL: No, it is not. It is out of our control because it is not on our property.

PETER WIDENER: You have already approached the Town about using their land?

MR. DONNELL: Yes.

PETER WIDENER: The only question I had, will you have to fill in the area to build these?

MR. DONNELL: Some fill will be required.

PETER WIDENER: The runoff or drainage from that, I know we have a federal wetland reserve very close to that to the east.

MR. DONNELL: It is to the east on the other side of Carpenter's.

PETER WIDENER: That is federal. I was wondering if that would be -- have influence on this?

MR. DONNELL: No. Since it is a small site, well under an acre, it doesn't meet any of the crazy new storm water regulations. There is a real well-defined swale along the property, the north property line that we would simply run off to, and it leads to that wetland. That is what the water does now, and it would continue to do so.

DENNIS SCHULMERICH: I'm looking over the five factors for granting an area variance and trying to reconcile a couple issues. The first is possible change to the neighborhood character, and based on the plan as proposed, we have not heard from the audience yet, but it is not obvious it has a negative impact on the character of the neighborhood.

Substantiality of the request has been a concern when I consider the fact if you were to put one set of duplexes on here as opposed to two, you wouldn't be requesting a 125 and 132 to 250 -- quite frankly, I don't think you would be here for any variances if it were one building over two. And that is in line with the fifth concern, is the situation self-created. As near as I can determine, had you not been pursuing the profit motive and adhering to the zoning code as it is, you would be able to put one duplex on this particular property and you wouldn't even be sitting here. So clearly, the motive is profit.

As far as the effect on physical conditions of the neighborhood, it is not obvious there are any issues here. There are two concerns I have. Substantiality of the request. I think these variances are extensive and, secondly, I think you created the situation itself and that does not preclude granting a

variance for a situation you created yourself.

MR. HOWARD: Again, when you say "self-created," this was zoned for a carwash. The money that was allocated towards this, the investor, Joe Klee that originally purchased this, invested because we did have Zoning Board approval for a carwash. After meeting with the neighborhood many times and coming into this court -- or into the Town Hall, the neighborhood was so against it, instead of pursuing on and the money that was invested, the only way to recoup that -- you're right, isn't for -- the only way it can be recouped is with these two lots. But it wasn't self-created. We did have zoning approval from the Town. Rather than going through an Article 78 or get into litigation, and the neighbors didn't want it, we chose this was the best avenue to accommodate the residential look and we had neighborhood support totally behind us except for one or two people.

DENNIS SCHULMERICH: This is a fall-back hardship plan?

MR. HOWARD: Pretty much. For lack of a better use, we have been marketing it as a commercial Neighborhood Business. As you see, Spitz Florist is out, and the accounting firm. As a matter of fact, he is in my building over here at Prudential. He is out of that and hasn't been able to sell. He has gone through two real estate companies. Until we get it, it probably won't sell. (Laughter.)

MR. HOWARD: But that -- I own the Wilson Farms. And I own the other building there, Messenger Post newspaper that rents from me now. Again, I had that approved for a pizza shop. I don't know if anybody remembers that. I had that come in. I have a use for pizza. Again, after listening to the neighborhood, they didn't want that pizzeria there. They said no. So again, I listened to the neighborhood, and I found an alternative use. This is the same approach I have come with today.

DENNIS SCHULMERICH: Business viability of one duplex as opposed to two?

MR. HOWARD: Doesn't work for what the lot was bought for and the underground infrastructure that has to go in, it doesn't work. You would have to go back to commercial use.

BEVERLY GRIEBEL: And putting fill in.

MR. HOWARD: I don't know if you need fill. These are full basements underneath them, too, so I don't know how much fill.

MR. DONNELL: Just a little to make it drain, just because of the elevation drop from Fenton Road. If you look towards the site, it drops down.

Another thing, if this were a residential zone, which it is not, but it is a residential use -- if it was a residential zone, some of those variances would also go away, so a lot of them are just making way for this residential use in an NB zoned district.

BEVERLY GRIEBEL: One of these is the corner lot problem, because you have two fronts on this Lot Number 1.

MR. DONNELL: That's true.

BEVERLY GRIEBEL: So that is one of the side variances there.

DAN MELVILLE: I think even if there was just one duplex on there, I think you would still have a variance on the front and the back. So it wouldn't eliminate the variances. It would eliminate a couple of them.

DENNIS SCHULMERICH: Okay. I will take your word at that. I was assuming that he might reorient the duplex so it was aligned with Fenton Road as opposed to facing Chili Avenue and that might give you a different situation, but I have not measured it out, so that may well be.

GERRY HENDRICKSON: No questions. I think actually from the carwash, I'd rather have this, and it will dress up that corner, because I'm tired of looking at weeds over there. It would be a lot better, and also the garden club there, with their flowers and that there, that should dress that up pretty good. It should be attractive through there.

#### COMMENTS OR QUESTIONS FROM THE AUDIENCE:

REGAN BOYCHUK, 140 Fenton Road and 57 Stover Road

MS. BOYCHUK: I guess a couple things. I agree -- I'm sorry, I can't read names. I agree there are many variances requested for, and that is troublesome to me, six different variances being asked for, especially seeing that the home you're referring to is my home that you're saying it is 100 feet from. And the houses -- it looks -- I wasn't sure if they're actual patios, the house that will be 15 feet

from our property line. I'm not real thrilled about that, as I think many of you wouldn't be either, if that was your house and you're going to have somebody else's house 15 feet from there. Yes, there are woods, but they're not that dense.

I can see through to Chili Ave. from my house, so I think I will see those -- 15 feet from my property line.

I do also think that the variances you're asking for -- I do agree the house is better than a carwash. I do think the variances you're asking for are very inconsistent with the neighborhood. I understand the address is Chili Ave. For all intents and purposes, it is Fenton Road. These homes are smaller and sit on larger parcels. Most are an acre or more. Mine is 28 acres. You're squishing two houses or four houses onto less than an acre, so I don't think that is consistent with the neighborhood. The driveway you're proposing -- we talked about this in the other meeting -- is in a terrible location, very dangerous. It is where the guardrail is, an unsafe corner.

You kept going back and forth with Residential and Business. Well, you can't be both. Or Neighborhood Business. You picked Neighborhood Business. It was residential. Maybe some of these wouldn't apply. You can't go back and forth. It is one or the other. It has been changed. If it is Neighborhood Business, we should stick to the Neighborhood Business variances expected.

As far as the neighbors on Old Ivy sending the letter, it is not their backyard or front yard. They're across the street on Chili Ave. Unless you're on the corner of Old Ivy, you won't even see it. I just don't think there is a lot of consistency with the neighborhood. You're cramming two houses on a lot that is way too small and it is purely for profit.

BEVERLY GRIEBEL: Your house is directly to the north?

MS. BOYCHUK: Yes. My house --

DENNIS SCHULMERICH: We have that property owned by Melvin Simon.

MS. BOYCHUK: No, I just got a huge assessment increase for it, so you should have it on your record.

My house is right here (indicating). House and barn. This is all my property (indicating) and my property goes all back here (indicating), all of the woods and over to Chili Ave.

BEVERLY GRIEBEL: It says on here that it is Melvin S. Simon revocable trust.

MS. BOYCHUK: That is who I bought it from. We bought it January 9th. Or 16th.

MR. DONNELL: I have a photo here where you can see where her house is.

BEVERLY GRIEBEL: That would be great.

MR. DONNELL: This is our site here. This is pretty much a drainage ditch. This is her house.

BEVERLY GRIEBEL: You're the cleared area?

MR. DONNELL: Correct. That is our -- in general that is our north property line.

MR. DONNELL: Sometimes it takes a while for the records that we subscribe to to catch up.

PETER WIDENER: I thought she may be the next one up the road.

MR. DONNELL: No. She is the neighbor to the north.

DAN MAYER, 140 Fenton Road

MR. MAYER: The property slants, leans towards our property, and I think a lot of the roof and the pavement they're putting over there is just going to make a lot more runoff onto our property. I'm concerned about what their backyard is going to consist of. Are they going to have patios that are 3 feet from our property? Is there going to be a fence dividing the two properties that is going to come like to our -- right to our property line?

BEVERLY GRIEBEL: You're on that next property to the north?

MR. MAYER: Yes.

BEVERLY GRIEBEL: But doesn't the land slope downward from yours?

MR. MAYER: And downward from theirs. It comes towards ours.

MS. BOYCHUK: Comes towards ours.

MR. DONNELL: This is a low point (indicating) between the two sites. Ours drains to the north and theirs drains to the south. There is a swale here (indicating). There is also a pipe coming across Fenton Road that drains Fenton Road and west of that that leads over behind Carpenter's to the wetland we were talking about.

If anyone were to put a deck or anything back here, I believe they would need to be back in

front of this Board.

MR. HOWARD: Well, the design lends itself so you don't need to do that. If you look at the design, the patios are already built.

BEVERLY GRIEBEL: It is indented in.

MR. HOWARD: That was thought out.

MR. DONNELL: The backyards will be sloped to drain towards that ditch. The portion of this ditch that is actually on Mr. Howard's property, the plan is to clear some of the scrubby vegetation out of there, not so much to take away buffer, but to make sure it is physically working and draining like it should be.

BEVERLY GRIEBEL: So it is going to drain.

PETER WIDENER: Have you been to the Conservation Board on the drainage and that?

MR. DONNELL: Yes, we have.

PETER WIDENER: Did they recommend anything like a dry well or cisterns out there?

MR. DONNELL: No, they did not. What we got out of the Conservation Board and added as a result of meeting with them really didn't have anything to do with drainage. Because it is such a small site, partially paved. What came out of it was the row of pines to buffer from Chili Avenue and also to block us from Carpenter's parking over there.

PETER WIDENER: They didn't seem to be too concerned about the drainage to the north?

MR. DONNELL: No.

MR. MAYER: Other concern I have is the distance from Fenton Road. Every other house on Fenton Road is set back.

BEVERLY GRIEBEL: So the houses are generally a lot further away than that distance?

MS. BOYCHUK: Yes.

MR. MAYER: Correct.

MR. DONNELL: Most of them probably aren't 60 feet. They may not be 28 feet like we are, but if you look directly across the street, at what is right across from us, Spitz Florist and whatnot, they're pretty much there.

BEVERLY GRIEBEL: And the hairdresser. I know that a couple of people have come in for front porches and needed a variance because they were too close to the front property line.

CHARLES RETTIG, Coldwater Road

MR. RETTIG: Just a question, Mr. Howard, through you, Madam Chair.

Would Mr. Howard be willing to put in a fence and landscaping, architectural landscaping trees on the north side to satisfy the north property owners?

BEVERLY GRIEBEL: Is that currently with a fence there now?

MR. HOWARD: There are trees there now.

MR. DONNELL: I can actually try to answer that. Bill (Howard), you can jump in if you like.

We thought about that, and Bill (Howard) would have no problem doing that. Just when we're out there, actually standing on the site and looking at it, we just don't think it would be effective. The other property, like I said, the grade goes up to their house. It is probably 10 feet taller. There are woods there now. There's a swale there now. If we thought a fence would help, Bill (Howard) would have no problem putting one in. We just don't feel it would.

MR. RETTIG: A question would come back as to whether or not any landscaping, trees would satisfy the north property owners.

RICHARD PERRY: 16 feet, what will you put in for trees?

MR. RETTIG: Something that will grow. I'm just asking a question.

MR. HOWARD: I have no problem putting -- we can put evergreen trees in there. If we have to put more behind the home --

DAN MELVILLE: But if the property behind that sits up --

MR. HOWARD: It will take 15, 20 years before the trees will get there -- but if it will help, absolutely.

PETER WIDENER: We have to be careful about that, because there is a 10-foot drainage easement, and we cannot constructively evict anybody off of that. Such if you put a fence on it, plant trees on it.

MR. HOWARD: That is true, too.

PETER WIDENER: I don't know if you can do that.

MR. DONNELL: It is a proposed easement. We're giving that to the Town.

MR. HOWARD: Especially if we have to keep that clear for the other Fenton Road parcels draining there. I guess you're right, you don't want trees growing in there.

BEVERLY GRIEBEL: If that other parcel slopes upwards --

MR. HOWARD: We can clean the ditch to make sure it functions.

MR. DONNELL: We have thought about it. The property to the north now faces Chili Avenue and I can't say they won't see part of Bill (Howard)'s development, when they look to the south, but they are just residential homes that could be -- there could be worse things to look at.

CHAD ROY, Bent-Oak Road

MR. ROY: I don't know if the builders thought at all about putting two-story units. That would alleviate a lot of the proximity, I guess, on all of the sides of the units.

I take objection to the traffic comment, because as the Town in general, I would think you would want to direct traffic to Chili Avenue already, which is busy, instead of Fenton Road, which is a residential neighborhood.

And also the comment about it not having material impact on the neighborhood. I don't know of any other rental properties there are on Fenton Road. Maybe there are, I just don't know of any.

Another question I had is, they will say it is 90 feet from Chili Avenue. I guess I don't understand, since there are variances on all of the sides of the properties, why they wouldn't be moved closer to Fenton Road. I think if you move them closer -- or excuse me, to Chili Avenue.

BEVERLY GRIEBEL: Well, physically what he said was the buildings are physically 95 feet from Chili Avenue, but there is a big easement there. One portion of that belongs to the Town --

MR. DONNELL: Actually the State's right-of-way itself, it is part of Chili Avenue.

BEVERLY GRIEBEL: How wide is the State right-of-way again?

MR. DONNELL: It tapers from east to west. It is about 25 feet at the smallest -- smallest point here (indicating) and then it gets wider as you move west.

BEVERLY GRIEBEL: So physically the buildings are 95 feet from the pavement.

MR. DONNELL: At the closest point, this building will be 95 feet from Chili Avenue's edge of pavement.

BEVERLY GRIEBEL: So that is one of the reasons, because the State requires a large --

MR. ROY: I guess I was thinking if you made the driveways half as long, and left everything as it is, you could actually move the properties a little closer. You would still have variances all around, but you wouldn't be as close to the north property line.

PETER WIDENER: Most of your main State roads are four-rod roads, 33 feet from the center of the road in. On a main highway like that.

KEITH O'TOOLE: If I may, since the State has a history of expanding and moving their rights-of-way over time, moving housing closer to the State highway is not a good idea. With regard to the gentleman's earlier engineering comment about Fenton Road versus Chili Avenue, the Town Engineer believes that the Fenton Road access is the safer alternative. He looked at all sight distances.

MR. ROY: That would be safer for vehicle collisions, but not necessarily for kids walking on the road.

KEITH O'TOOLE: Safer all over.

MR. ROY: I have two children under three, and when they are out playing on the road closer to Fenton Road, I would rather have the cars out to Chili Avenue. But that is just maybe me and my family.

BEVERLY GRIEBEL: This is like having four houses there. I know pulling out from Bright Oaks across the street is sometimes impossible. I just have to finally make a right-hand turn and go back --

MR. ROY: Even from Chestnut Ridge Road, turning left on Chili Avenue, it is the same thing.

My only other comment, I guess, between the two units, there is actually 30 feet. So between two units they're looking at 3 feet, but on the west, east and north side they have dimensions of 10, 16 and 29 feet to the respective properties. They're giving more consideration to the two units they're

proposing than they are the distance that they're putting between themselves and their neighbors.

BEVERLY GRIEBEL: Well, what they're asking for is to be considered as two separate lots, so when you have a lot, you need to have side setbacks.

MS. BOYCHUK: That is an additional variance then, isn't it?

PETER WIDENER: It has multiple variances here.

MS. BOYCHUK: That is additional one, if that is not the standard side variance?

MR. DONNELL: Actually, there is no side variance in an NB zone when the lots are adjacent to each other in the same use.

MR. MAYER: The building on the left, you said that would be the back variance. It had to be sideways, facing Fenton Road.

BEVERLY GRIEBEL: Pardon me?

MR. MAYER: The building on the left, I thought I heard him say before that was facing Fenton Road. That will be the front. That is there.

BEVERLY GRIEBEL: That is considered a front because it is on a street. It is like a corner lot. A corner lot you have two fronts.

MR. MAYER: Okay.

BEVERLY GRIEBEL: That is how it is defined. You have two front setbacks on a corner lot. I think what you're trying to do is have two lots and have the setbacks on the side, to have a reasonable setback between the two buildings.

MR. HOWARD: And to make it look right.

BEVERLY GRIEBEL: And yet to give you enough room towards Fenton so that you're -- it is kind of a toss up where you take land away and then you bring it in.

MR. HOWARD: It comes down to you are between Carpenter's Service Station that used to be a gas station and a used car lot. You know what goes between them?

BEVERLY GRIEBEL: It is tough.

MR. HOWARD: The best alternative I can come up with is this, and I can get it to work. All of the other neighbors loved it. I am sorry I can't appease everybody.

DOROTHY BORGUS, 31 Stuart Road

MS. BORGUS: I tend to agree with Mr. Schulmerich's comments earlier, all of them. I think he has some excellent points there.

I also notice that this applicant wants to talk about Residential sometimes and then he wants to point out it is Neighborhood Business. It seems as though he wants the benefit of both angles. It can only be one thing, and it's Neighborhood Business. I don't know why it is not being transferred back to Residential if it is going to be a residential use.

KEITH O'TOOLE: It was never Residential. It was NB with a use variance for a carwash.

MS. BORGUS: Prior to that, what was the zoning?

BEVERLY GRIEBEL: It has been NB for probably as long as the maps have been in place.

MR. HOWARD: That whole strip.

KEITH O'TOOLE: The prior use before it burned down was Commercial. It has been commercially zoned for a long, long time.

MS. BORGUS: Well, it just seems to me just because somebody paid too much for a piece of property is no reason to come in here and ask for variances to get your money back. People make bad decisions every day, unfortunately. Maybe this is one of them. I hear these people back here, and I sympathize with them. I don't know what we would put on this piece of land. I have been in here and heard all these applications, and maybe this is just a piece of land that should have nothing on it, and maybe it was a bad decision.

MS. BOYCHUK: I would buy it for its assessed value, not what you're asking for. I know what the Town has it assessed for. I looked into it when we bought our other property.

MR. HOWARD: Be careful, it went up. Be careful, it went up.

MS. BOYCHUK: We bought our property with the intent of preserving all of it because we want the trees to stay, the nature to stay. We don't want to rip it down and build it on. If I could buy it for what it is assessed for, I would buy it.

DANIEL KRESS: Madam Chairwoman, if I may, it might be appropriate in light of some of the

comments from the people to the north, if the Board were to see fit to grant these variances, to attach a condition that when this goes back to the Planning Board for final approval, that some form of screening be installed to the north and rather than trying to settle that and specify that tonight, that would allow for some time for Mr. Carr, for example, to look at just what would or would not work within the context of the drainage easement, and advise the Planning Board accordingly.

BEVERLY GRIEBEL: Okay. They have to go back for final approval there.

DENNIS SCHULMERICH: What has the Planning Board seen on this particular plan?

KEITH O'TOOLE: Pretty much this.

BEVERLY GRIEBEL: They gave preliminary approval?

MR. DONNELL: They gave preliminary approval and the use permit that was required.

RICHARD PERRY: I have one other question. You say you're a single-story home. But it looks like the roof is extremely high.

MR. HOWARD: 10-foot ceilings.

RICHARD PERRY: It still leaves a lot of room to the crest of the house, right? How much room is in the quote/unquote attic or -- attic area?

MR. HOWARD: It is not walkable. I mean they're high tresses. It is just crawlspace. It is a hip roof. It is the design.

DENNIS SCHULMERICH: So if my math is corrected, two 2600-square-foot houses with 10-foot ceilings on the structure, plus the garage.

DAN MELVILLE: Basically.

DENNIS SCHULMERICH: So you figure 600 square foot for the garage, so you're talking another 1200 square foot on top of that. Around 4,000 square feet, per duplex.

BEVERLY GRIEBEL: These will be two bedroom, three bedroom?

MR. HOWARD: Two with the flexibility of making the first bedroom a -- because you have the first floor -- they're all first floor master suites. You could make that a formal dining room instead. There is flexibility in the plan.

BEVERLY GRIEBEL: So --

DENNIS SCHULMERICH: Am I wrong? Am I adding that up wrong? I am looking at basically a 4,000-square-foot ranch.

MR. HOWARD: The garage is 22 by -- you're probably 200 square foot per garage too much in your addition. 26 per unit, plus four, 8 -- 32.

MS. BOYCHUK: How big is each unit?

MR. HOWARD: 1300. Well, two.

MS. BOYCHUK: 5200 plus the garages.

DENNIS SCHULMERICH: Each duplex unit, each building is roughly 3200 square feet and you will have two of those.

MS. BOYCHUK: 5200 square feet without the garages on three-quarters of an acre?

DENNIS SCHULMERICH: Just trying to understand the relative positioning. It is a big house.

MS. BORGUS: Just an added thought. I don't know if it is in the purview of this Board to do it, but I would feel much better about this if we had some kind of a recommendation or a stipulation that that pavement that goes from Chili Avenue back to their lot line is removed. I can just see in time people cutting -- I don't know how much a drop there is, but cutting through and using that pavement to get to Chili Avenue and coming out on that curve.

MR. HOWARD: It is just the Garden Club that is using it.

MS. BORGUS: If it can be, it should be a recommendation from this Board, it is built into this deal, that the pavement goes.

BEVERLY GRIEBEL: I heard today that people down on Dunkin' Donuts, Scottsville Road, go right across the lawn. It is not even driveway.

DENNIS SCHULMERICH: There is a motive for that, a donut.  
(Laughter.)

BEVERLY GRIEBEL: There is nothing that will stop people that want to do it. They made a whole new area at the North Chili Post Office, and it is on the lawn.

MS. BORGUS: This is an attractive substitute, and the Town should have the obligation or --

BEVERLY GRIEBEL: I think maybe if the trees are big enough, that might be a deterrent.

MS. BORGUS: I don't know. That is a --

RICHARD PERRY: Is there any reason why the pine trees were left out in front of the asphalt?

MR. DONNELL: It is actually because there are utilities that run through there.

MS. BORGUS: But if there is pavement there, it is a much more reasonable thought somebody will come across and drive out.

MR. DONNELL: We don't want the pavement there any more than anyone else.

BEVERLY GRIEBEL: But if that belongs to the Town or the State --

MR. DONNELL: It is actually part of it on the Town's land and part on the State's right-of-way.

BEVERLY GRIEBEL: That is the problem, they won't cooperate.

Can we make that recommendation?

KEITH O'TOOLE: No.

BEVERLY GRIEBEL: I didn't think we could, but thank you.

Maybe when it goes back to the Planning Board you can plead that.

DAN MELVILLE: It is something to bring up to the Town Board.

GERRY HENDRICKSON: The State probably would love that driveway to be removed.

BEVERLY GRIEBEL: Because it doesn't go anywhere.

We will close the public hearing and deliberate on this application.

You don't work for any government agency, do you?

MR. DONNELL: No, ma'am.

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 no conditions, and Gerry Hendrickson seconded the motion. The motion was approved by a vote of 5 yes to 2 no (Richard Perry, Dennis Schulmerich).

DECISION: Approved by a vote of 5 yes to 2 no (Richard Perry, Dennis Schulmerich) with no conditions, and the following finding of fact was cited:

1. Unusual lot location and orientation justify variances.
5. Application of Muirfield Development, 3313 Chili Avenue, Rochester, New York 14624, property owner: M/M Richard Sylvester; for variance to erect 16 duplexes on 16 lots to be 50' from front lot line (60' req.), variance for side setback on Lot #1 to be 50' (75' req.) abutting a major road), variance for rear setback on Lots #1, 9 & 16 to be 40' (60' req.) at property located at 3360 Chili Avenue in R-1-20 zone.

Brian Donnell and Bill Howard were present to represent the application.

BEVERLY GRIEBEL: This went to Monroe County Planning and came back as a local matter. This was at the Planning Board and got preliminary approval?

MR. DONNELL: Yes. I will go through that all again.

Brian Donnell with Passero Associates and Bill Howard with Muirfield Development again.

What we're proposing here is a 16-lot residential subdivision that Mr. Howard is proposing, actually the same buildings as the previous application, the duplexes with the two-family -- or two-car garage for each unit. This site is actually located right across from us tonight between Chili Avenue and the railroad tracks.

If I could, I will walk us through it real quick.

We're proposing about a 700-foot-long road with one access off of Chili Avenue. The road will be a dedicated Town road, cul-de-sac at the end, gutters, a sidewalk along the north side of the road for the residents of this tract. There are also a few other improvements that sort of go along with this,

that Bill (Howard) is proposing.

Right now there is quite a bit of water towards the back of the property, and the backyards. A lot of the Chili Ave. area floods. I think some of them are here tonight. Also this area (indicating), this area of the site here (indicating), we're proposing a fairly large pipe back here (indicating) and swale to help take care of that water, help alleviate everybody's water problems. There will be a concrete gutter put along Chili Avenue and also a storm water management area that is not only required by Town Code and DEC code, but it is also -- it will help from -- what water is coming off this site, it will help by eliminating that from -- just coming to our property line. Ultimately everything comes -- all of the water comes beneath Chili Avenue and drains around to behind the Town Hall.

The reason we have some variances here tonight, there are a few. One of which is sort of the odd shape of this piece here (indicating). It leaves these triangular sections like you see here (indicating) that are really not worth anything, and at the same time we end up with some larger areas along the south and west. That is a lot of open land, but again, we have laid this out probably 15 different times when we started off, and there is just no nice way to make it work.

So with that, yes, we have been to the Planning Board. We have received a preliminary approval and also a use permit to allow the duplexes in this zone. The site is zoned, I believe it is R-1-20.

BEVERLY GRIEBEL: R-1-20.

MR. DONNELL: Yes.

The variances we're asking for, the first one is a 50-foot setback from the Chili Ave. right-of-way. The same as before. A 75-foot setback is required from Chili Avenue. 50 feet here (indicating), it is similar to what is -- all of the homes here (indicating) are set back right now. It sort of keeps the thing in character here (indicating), and it also allows us to make up some of the land we lost by needing this pond and also by this sort of odd shape of Lot 16 here.

The second variance we're asking for is a front setback variance to our new dedicated road. Town Code calls for 60 feet. We're simply asking for 50 feet. I know this is actually something that the Planning Board will often do right at their meetings for single-family residential subdivisions, but since we were coming here anyway, that is something we're asking for. That helps out in a few ways. The first thing it does is it keeps the lots on the north side of our project that much further from the railroad. That will help for the sales of these homes, and the second thing it does is it -- on the south side it keeps those houses that much further from Chili Avenue and also allows room back there to put the drainage improvements that I spoke of earlier, give an easement to the Town, and on top of that, we have a row of spruce trees that are staggered and 15 foot on center that will help buffer these two projects from one another.

It is something that the Conservation Board wanted and something that the neighbors wanted also.

And the third variance we're asking for is a rear setback variance for Lot 1 here (indicating), Lot 9 here (indicating), and Lot 16 here (indicating).

These lots sort of fall victim to the shape of this parcel again.

Lot 1, we have an odd shape property line here (indicating). We're still holding a pretty significant setback here, the 50 foot, and we need the area here (indicating).

Lot 9, the layout of the cul-de-sac pushes us back, and rather than sacrifice a nicer unit there, and actually it would be a very big sacrifice, if we were to stick with the 60-foot setback here, it -- that makes Lot 9 need a setback, and Lot 16 is just a pie-shaped piece of land, and it -- it would be about three acres of unusable land. We'll already need to modify this building a bit to get it to fit here (indicating), but the screen in here I think makes up for the variance that Bill (Howard) is asking for.

There are some behind-the-scenes things working here. This area here (indicating) is probably going to be given to -- this first homeowner here on Chili Avenue.

And the owner of the veterinary clinic here is also -- Bill (Howard) and him are looking at doing something with this piece of land. Bill (Howard)'s property actually hits Chili Avenue right here (indicating). I know it is not colored in here, but it is part of the land that he owns.

So with that, again, Bill (Howard), if you want to add anything. We'll answer any questions.

BEVERLY GRIEBEL: These are the same units that you spoke of before?

MR. DONNELL: That's correct. Actually I should point out that we have shown here, one of the units on this plan is the unit with the driveways in close together that you see on this -- on Bill

(Howard)'s rendering, and front elevation. When we put this plan together, we wanted to show how it worked both ways. I know we didn't do that on the other drawing, but here it is here (indicating). I have a smaller version.

DENNIS SCHULMERICH: Similar square footages and sales prices?

MR. HOWARD: Exactly.

RICHARD PERRY: Are these all going to have the center -- one road access for each duplex, or the separate one?

MR. HOWARD: No. Center.

RICHARD PERRY: All that would change?

MR. HOWARD: Correct. We had a number of neighborhood meetings with the neighbors regarding this property, and all of the meetings went pretty well.

When we had these neighborhood meetings, this is what came out of it, rather than come and loop it or loop out and have the accesses, we thought this was the better way to go after meeting with the neighbors. I'm sure you will hear from a lot of them. They were all good meetings.

I just wanted to show you why a lot of the units are making sense. That is why I see this market, this niche, and that is what I am seeing with these in-law situations and these owner-occupied. You get into Chili right now -- I represent a lot of different builders, but most of the homes in Chili are 140 and up, and if you do the math, and downpayment with a 5 percent down, your payments are anywhere from 15 to \$1600 a month. You technically could buy one of these for the 230 or 250 range you will see. I will share this with you. Combined income has to be \$44,000. You only need \$11,800 to acquire this property, and your total payment would be 2128. So in other words, you could split that for under what it would cost to build a single-family home here, so it makes it very affordable. We have been inundated with all of these apartment complexes with Blueberry Hill, Mark IV up at Union Street, just been saturated. This is a great alternative. We can pull people paying 11, \$1200 a month out of these places with double incomes of 44,000 and mostly be affordable.

BEVERLY GRIEBEL: Buy a whole double unit?

MR. HOWARD: Correct. Owner-occupied. Again, investors will not buy these.

DENNIS SCHULMERICH: When you have the neighborhood meetings and you got feedback, what types of things did you get feedback on?

MR. HOWARD: A lot didn't want the access we have here (indicating), to come through, loop through and get more units. It was too dense to do that. That is why we had to come in for some variances to accommodate that.

These basements are wet, and I believe a lot are having problems. We wanted to correct that, put trees and the gutter to solve that.

Some of the parcels have easement problems or pavement problems that are on this property. We're here to straighten those out, to help them out with that, too. It just seemed to be a better fit after meeting with them to come up with a solution. It went real well.

DENNIS SCHULMERICH: From your perspective most of the neighborhood issues except for some of the emotional ones have been taken care of.

MR. HOWARD: I think all of them have been taken care of. I think you will hear from them today.

RICHARD PERRY: Just out of curiosity, what is the significance of the invisible fence flags that are listed on here?

MR. DONNELL: They were picked up from the topographic survey that was done and that is one of the things that Bill (Howard) is talking about, that is actually on his property, but the neighbors are using it, and it is one of the things that the neighbors have to resolve.

MICHAEL MARTIN: This little curvature around the storm water detention, is that a barrier?

MR. DONNELL: That is a concrete gutter. That area is very low and flat and that is what we had to do to accommodate a lot of runoff that comes from beyond this site and travels through it. It will dry up the neighbors' backyards quicker. It goes under Chili Avenue now.

BEVERLY GRIEBEL: Back to the wetland at the end of the parking lot there, is that where it goes to?

MR. DONNELL: Yes. Right over there.

BEVERLY GRIEBEL: Interesting.

PETER WIDENER: I have a few questions in the back of my mind when you did your feasibility study and talked to the neighbors and that. Did you also talk with the -- say the fire company about emergency vehicles getting in and out of there?

MR. DONNELL: The road is built to Town standards and the cul-de-sac, too, is.

PETER WIDENER: But did you speak with the fire company -- that could be a dangerous situation in there. They could plug up that road with their vehicles is what I am concerned about, because we ran into something similar to this in another location in the town, and we didn't do much with it. Also the traffic of school buses running in and out of there.

MR. DONNELL: We did look at the school buses, actually. It was one of the State D.O.T.'s concerns, too, as we have gone through the review process with them.

PETER WIDENER: It is a very busy road and if you're trying to pull out 16 units, two cars per unit, that adds up. If they're all trying to go to work at the same time.

MR. DONNELL: They don't usually all go at once, but part of what we did look at is some of the proposed entrances on Chili Avenue are a few feet larger than you're seeing as a result of the State comments and some new guidelines they came out. I believe November or December they were released.

I don't know if there has been a specific meeting with the Fire Marshal.

MR. HOWARD: I thought John Caruso met with them.

MR. DONNELL: He may have. I don't want to say yes and misspeak. I know that Joe Carr has seen the plan as well as the Town's engineer.

PETER WIDENER: Have they considered a traffic light there at all?

MR. DONNELL: No.

PETER WIDENER: If there is a train, if and when they do go through, that could really cause some problems as far as traffic.

Those were my concerns. The traffic in and out of that circle with that much development inside there, it is probably the best use for that land, especially with the drainage you will add to it. I agree with you there.

MR. DONNELL: Part of what makes it a tough piece of land, too, if someone were to try to do single-family there, is the railroad tracks.

PETER WIDENER: And RG&E substation, too.

MR. DONNELL: That, too.

KEITH O'TOOLE: Why is it better if you put two families there?

MR. DONNELL: Easier to sell.

BEVERLY GRIEBEL: Some people would have to move sheds and swing sets. Some sheds now will be measured off at 2.4 feet from the back property line. So --

MR. HOWARD: Nobody is going to move anything.

BEVERLY GRIEBEL: The swing set is going to stay there by the trees. The shed is right out on your property. Interesting.

MR. DONNELL: Most of those yards are much bigger right now than in reality, which is fine.

BEVERLY GRIEBEL: They expanded. They were probably surprise --

MR. DONNELL: We actually have a 10-foot buffer shown from the property line that Bill (Howard) is not even going to touch. It is hashed in there.

BEVERLY GRIEBEL: Yes. It does show in there.

KEITH O'TOOLE: The storm water management area shows a lot line between it and Lot 16. What is the plan for it? It looks like a separate lot on this map and that's a bad thing.

MR. DONNELL: The idea of that lot is that Bill (Howard) was working out with a neighbor to the west to actually acquire that.

KEITH O'TOOLE: The Hermans?

MR. DONNELL: Yes.

KEITH O'TOOLE: That is fine. As long as it goes someplace.

MR. DONNELL: I'm sorry for interrupting you.

KEITH O'TOOLE: I was going to suggest as a condition of approval that you require that they resub the storm water management area before any building permits are issued anywhere in this project.

BEVERLY GRIEBEL: So the Planning Board would have to look at that again?

KEITH O'TOOLE: That's correct. I am assuming they are going back.

MR. HOWARD: For final.

MR. DONNELL: Originally that was proposed to be part of the right-of-way, that whole area where the storm water management area is, and --

MR. HOWARD: We were approached by the homeowners.

MR. DONNELL: Bill (Howard) was approached by the homeowners to purchase that land. If for some reason that didn't happen, we -- it would be part of the right-of-way, and we spoke with Joe Carr on that.

KEITH O'TOOLE: Joe Carr has had a long-standing policy of saying no. I would like to see a letter from him on that.

MR. DONNELL: His exact words were, "I don't like it, but it's the best thing to do in this situation."

BEVERLY GRIEBEL: So right now you don't own that or you do?

MR. DONNELL: He does own it.

BEVERLY GRIEBEL: You do own it.

MR. HOWARD: You will hear from probably some of the neighbors.

KEITH O'TOOLE: I suspect the Hermans would like that so they can maintain their improvements.

This is more for the Board to consider. I kind of wonder about the house of Lot 1, 50 feet back from Chili Avenue. As I noted on the prior application, Chili Avenue has been widened over the years and we can expect that will happen here, as well. Even though there is a pattern of development further along with 50-foot setbacks as Mr. Donnell indicates, that has never kept the State from widening the road before. So the Board should consider that.

Also, Lot 9 being 40 feet away from the rear puts it that much closer to the railroad tracks.

#### COMMENTS OR QUESTIONS FROM THE AUDIENCE:

##### ROGER KUNTZ

MR. KUNTZ: Roger Kuntz, and I speak for the Partners at the animal hospital. K-u-n-t-z.

BEVERLY GRIEBEL: You speak for?

MR. KUNTZ: Partners at the animal hospital. We, in fact, attended one of their meetings. We do, in fact, believe that they have done the best use for this piece of property. This project, as we see it, what they're proposing is they put a very upscale number of residences there. And in so doing, they solve a drainage problem that everybody on that side of the street has. They're also putting an upscale neighborhood immediately surrounding the complex tonight and that is sort of the thing we should be looking at bringing in the neighborhood and the Town of Chili at large. We think this is really a no-brainer. It is a good idea. It is a good project. We believe these units will sell. We would like to see them go. These fellows should be commended for the work they have done.

BEVERLY GRIEBEL: They have helped a drainage problem there.

MR. KUNTZ: You know, I thought I would never see this piece of property sell in my lifetime. I looked at it and thought there is not anybody in his right mind that would have this piece of property by the railroad tracks under 2 feet of water in the spring and would actually try to do something with it.

RICHARD PERRY: You heard it, you're not in your right mind.

(Laughter.)

DENNIS SCHULMERICH: Did we hear earlier the animal hospital would be benefactor of additional land because of this?

MR. KUNTZ: You did, indeed.

BEVERLY GRIEBEL: Maybe parking or something.

##### SCOTT SPEAR, Silverknoll Drive

MR. SPEAR: It's hard to tell from that map, but how close do the duplexes come to the homes on Silverknoll Drive?

BEVERLY GRIEBEL: I don't know if that shows.

MR. SPEAR: I think all of a sudden I will find a duplex sitting in my backyard.

BEVERLY GRIEBEL: I don't have it on my map.

MS. RAGUE: Is Silverknoll the development to the west?

MR. SPEAR: The Pride Mark development.

DENNIS SCHULMERICH: That is on the south side.

MS. RAGUE: I live in the house next to the animal hospital.

MR. HOWARD: She is a buffer.

DENNIS SCHULMERICH: Scott (Spear), my closest guess, it is probably an eighth to a quarter mile between the property we're talking about here and where Silverknoll backs up to it. I could be off by a little bit, but it is not a couple feet.

MR. HOWARD: How many acres do you own?

MS. RAGUE: About nine acres. There's 9 acres of buffer between us and them.

MIKE GODARD, 27 Silverknoll Drive

MR. GODARD: Bill (Howard), it seems you have a nice history of making sure the neighbors and everybody are heard at least, but I -- being on Silverknoll, I was not aware of any of this going on until I happened to catch the notice on the sign there.

I do have a concern because I think that back corner is adjacent to the last couple lots on Silverknoll. So I think the front is -- where you're talking that you have some buffer there --

MS. RAGUE: My property -- is just to the west of this.

BEVERLY GRIEBEL: Well, we can't hear. Please don't have a conversation among yourselves.

MR. GODARD: My concern is twofold. Number one, the distance from the Silverknoll backyards and things like that to the property line. Here you will have a real high density of population in here than what you traditionally look at in a neighborhood of single-family dwellings. You just doubled the number of people there. So I do have a concern from that standpoint, and I have a concern about the impact of property values on the Silverknoll area and the Pride Mark area. If we're looking at bringing in an income level around the 44K kind of mark, that is certainly going to have a difference of some property value stuff on our side, I would think.

BEVERLY GRIEBEL: Dennis (Schulmerich) now has a Town map, and he is looking to see how close it is.

MR. DONNELL: I believe the Chili Animal Care owns the land between the subdivision and the Silverknoll Subdivision. I have a tax map I pulled out of my file that shows that.

MR. KUNTZ: We don't.

MS. RAGUE: That is not right. I own it.

MR. HOWARD: She owns it.

MR. DONNELL: This is our property here (indicating). This is Silverknoll (indicating).

BEVERLY GRIEBEL: There is another property there. You are not adjacent to it.

So the thing to watch is if anything develops on that vacant piece of property.

MR. GODARD: Maybe Bill (Howard) will buy it as a buffer for us.

The applicant discussed the tax map with Mr. Godard and Mr. Spear.

DENNIS SCHULMERICH: The other point to make, for the folks on Silverknoll, the property depth of the house on the back corner is 316 feet, so that is probably a good 200 and 225 feet between the house and their back lot line.

MR. SPEAR: The other concern would be that we already have drainage problems in our backyard, too. I would like to make sure this water is not being pushed our way either. I can't get in the way back of my backyard until June every year.

DENNIS SCHULMERICH: Common problem, isn't it?

MICHAEL MARTIN: It's Chili.

BEVERLY GRIEBEL: It's Chili, yeah. I don't know the slope of the land, because I don't have any elevations on here. So that might be something for you to take up when it goes back to the Planning Board, that issue.

MR. DONNELL: The site actually drains from the northwest. Water drains through our property and underneath Chili Avenue.

BEVERLY GRIEBEL: That storm water management area, that is the low point.

MR. DONNELL: If anything, Silverknoll water comes towards us.

DENNIS SCHULMERICH: So you will help Silverknoll?

MR. DONNELL: I'm not saying that.

MICHAEL MARTIN: They won't negatively impact.

RIE RAGUE, 3390 Chili Avenue

MS. RAGUE: Just this last exchange here, I was told at the meeting that my property out in the back would become dryer. I hope that is true. You are just telling them that you can't -- you can't depend on it that, their -- you know, their subdivision over there would be dryer. I would assume it is the same water that is on Silverknoll and my property. So how do you feel about that? Is it indeed going to take the water from that area and bring it over in the pipe that you're going to put --

MR. DONNELL: Yes. That is correct. It will -- I don't know if Silverknoll will be helped by our project, but your land, being directly to the west, it will be helped by our project.

MS. RAGUE: My property butts up to Silverknoll, so I don't want to think it would be wetter. That is my main thing.

MR. DONNELL: No possible way the property would be wetter.

BEVERLY GRIEBEL: Is there presently a pipe that goes from that proposed storm water management area under Chili Avenue or is that something you're going to be putting in?

MR. DONNELL: There is presently a pipe under Chili Avenue. That is not the problem. The problem is the south portion of Mr. Howard's property is extremely flat, and the water takes its time getting to the pipe on Chili Avenue. But adding our concrete gutter and drainage improvements, that will help move that along.

BEVERLY GRIEBEL: Got you.

MS. RAGUE: One other comment, too. I don't know your name.

KEITH O'TOOLE: Mr. O'Toole.

MS. RAGUE: I do question the narrow setback of that first condo. The side of it will be 50 feet, and is that from the center of the road or the side of the road?

BEVERLY GRIEBEL: Well, neither. It is from the property line, their property line.

What would be the dimension from the actual location of Chili Avenue now? How many feet from the roadway?

KEITH O'TOOLE: The pavement or the roadway?

BEVERLY GRIEBEL: The pavement.

MR. DONNELL: From the pavement without a scale to it, it is probably about 65 feet.

MS. RAGUE: 65 feet from the side of the road?

BEVERLY GRIEBEL: From the pavement area. Then there is the right-of-way that belongs to the highway before you get to the new property that Mr. Howard owns.

MS. RAGUE: It will not be back as -- or will it be back as far as the houses that are just beyond it?

MR. DONNELL: It will be about the same.

MS. RAGUE: In a similar fashion?

MR. DONNELL: Yes.

MS. RAGUE: Thank you.

CHARLES RETTIG, Coldwater Road

MR. RETTIG: With the variances and the dimensions proposed, are there any housing setback requirements from a federal railroad right-of-way?

PETER WIDENER: It is not New York Central.

MR. DONNELL: The ownership of the railroad is sort of a funny thing. I believe it is -- somehow the West Shore Railroad owns it, but CSX has a very long-term lease on it. So they might as well own it, is what they have told me. I have worked with them on other projects. I don't know of any federal regulation. I'm not saying there is not one, but the property goes about 65 feet on our side, just from the tracks to their south property line, and then on top of that --

PETER WIDENER: You have an electric right-of-way there, too.

BEVERLY GRIEBEL: 69 feet from the railway to the electric corporation, and then you have -- what is that, at least 40 feet of electric corporation right-of-way?

KEITH O'TOOLE: I'm told, however, you can actually hear the trains on the other side of Chili Avenue. It is just a rumor.

(Laughter.)

PETER WIDENER: I heard one tonight.

DENNIS SCHULMERICH: Personal opinion or legal opinion?

KEITH O'TOOLE: Rumor. Just rumor.

(Laughter.)

RICHARD PERRY: Depends how the wind blows and how cold it is.

BEVERLY GRIEBEL: Does anyone know of a regulation?

DAN MELVILLE: There is none that I know. I have seen houses that back right up to railroads.

RICHARD PERRY: None that anybody in this group is aware of.

MR. DONNELL: We're over 100 feet from --

BEVERLY GRIEBEL: Yes. So the actual building units, most of them would be 100 feet from the railroad? A couple of them would be a little closer.

Sometimes people don't mind being near the railroad. I know over on Archer Road when that development was put in, the first ones to sell were the ones by the railroad.

MR. HOWARD: King Forest Estates.

DAN MELVILLE: Some people like that.

BEVERLY GRIEBEL: Out on King Road, that development, that is near the railroad and they sold like wildfire.

MR. DONNELL: The closest house would be Lot 9, which would be about 165 feet.

MR. RETTIG: I just ask the question, if they can bring that information and ask if there is a regulation, to bring that to a Planning Board meeting on the follow-up. That would be number one.

BEVERLY GRIEBEL: Because you will be there asking.

MR. RETTIG: That is all I am asking.

Number two --

MR. RETTIG: I mean someone should know. If it is 85 feet, or if it is 40 feet. I'm not talking about the lot line. I'm talking about the house.

BEVERLY GRIEBEL: The house.

MR. RETTIG: That is different from what you're saying with the lot line being close to a railroad.

My second question: Could it not be or should it not be a condition assuming that this is a dedicated road with a cul-de-sac at the end per Town standards as stated, a condition of approval should be, in my opinion, to get the approval of the Fire Chief as a condition of this approval.

BEVERLY GRIEBEL: Well, that would be a Planning Board approval.

MR. RETTIG: Okay.

BEVERLY GRIEBEL: That would come up there.

GERRY HENDRICKSON: They already set --

BEVERLY GRIEBEL: Most of the times they run these plans by the Fire Marshal.

MR. DONNELL: The Fire Marshal's approval is on the plans. There is a signature line for him to sign there. That is already a condition.

BEVERLY GRIEBEL: We will close the public hearing.

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

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

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

1. Resubdivision of the storm water management area to allocate to another lot or alternately added to the right-of-way subject to the Highway Superintendent's written approval.

The following finding of fact was cited:

1. Project is consistent with the pattern of development in the neighborhood.

There was a recess in the proceedings.

6. Application of Benderson Development, owner; 570 Delaware Avenue, Buffalo, New York 14202 for variance to erect proposed Tim Horton's restaurant to be 68' from front lot line (75' req.), variance to allow a total 460 parking spaces in plaza (471 spaces previously approved) at property located at 800-810 & 822 Paul Road in G.B. zone.

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

MR. BEBOUT: Good evening. My name is Randy Bebout and I'm with FRA Engineering. As this Board will recall, we were in front of this Board on February 24th. At that time, this Board granted variances to allow parking in the front setback and total number of spaces of 471.

Since that time, the plan has been re-worked and we have appeared in front of the Planning Board, which we have received preliminary approval. I will just walk over and explain the changes to the plan.

These changes were done to address the concerns of the Planning Board in regards to traffic circulation and landscaping.

The first thing we did was we added landscaped islands north of the proposed Tim Horton's building. The landscaped islands are about 9 to 10 feet wide. We have added landscaped islands within the Tim Horton's area. One here (indicating) and one here (indicating). We have added -- actually increased the size of this island north of the Tim Horton's drive-through. This used to be just a 2-foot-wide concrete island. Now it is about a 6-foot-wide landscaped island. We have added the two landscaped islands in this vicinity, and those are also about 9 feet wide. We have also added a little hook on the end of the existing island to keep people when they're coming into the plaza, to keep them to the right side of the median. In doing so, to do all of this, we had to push the building forward to minimize the parking loss to K Mart. The building was pushed forward a total of 13 feet from where it sat previously. It was at 81 feet. Now we're at 68 so we're asking a 7-foot relief on the front setback variance, and when we were in front of the Board previously, as I mentioned, we were at 471 spaces.

In doing this, we lost a total of 11 spaces, and out of those 11 spaces, 8 of those actually were lost in the Tim Horton's area. Four of them in front of the building, two on the east side, and then one here (indicating) on the south and one on the west.

And the remaining three would be up in this area. So the loss to K Mart was very minimal. We still exceed what would be required of Tim Horton's if it was a stand-alone building, and the last thing I would just like to note is we did not change the parking setback. It is still at 11.8 feet as it was presented previously.

I can answer any questions you might have.

BEVERLY GRIEBEL: So it is 471 spaces down to 460?

MR. BEBOUT: That's correct.

BEVERLY GRIEBEL: So out of the whole scheme of things, that parking lot, that is not much.

MR. BEBOUT: That's correct.

BEVERLY GRIEBEL: Some of these things were done for safety and accessibility around there?

MR. BEBOUT: To improve the traffic circulation, to better define the drive aisle north of the Tim

Horton's as you traverse east and west. The island on the end was to improve the circulation around the existing island and in doing that, we have added a fair amount of green area and landscaping.

MICHAEL MARTIN: These are all recommendations from the Planning Board?

MR. BEBOUT: That's correct. Planning Board and Town staff.

BEVERLY GRIEBEL: So you're 2 feet too close to Chili Avenue?

MR. BEBOUT: 7 feet. 75 feet is required.

BEVERLY GRIEBEL: Oh, 75.

MR. BEBOUT: We're at 68 feet.

BEVERLY GRIEBEL: 75. 68 feet. Okay.

Yet you're quite a distance from the actual physical roadway?

MR. BEBOUT: That's correct.

DENNIS SCHULMERICH: There is still a fair amount of green space with Paul Road Square there?

MR. BEBOUT: Yes. The church is in there, and there is some parking in there, but then there is some yard, lawn area between Chili and the actual front property line of this plaza. Again, the building was shifted forward to minimize the loss to -- parking loss to K Mart.

RICHARD PERRY: I don't think they would notice the difference.

BEVERLY GRIEBEL: It is really insignificant. I have never seen that lot full really.

DENNIS SCHULMERICH: The answer is probably yes, but I want to make sure I'm interpreting this correctly. 13 feet closer?

MR. BEBOUT: Than what it was previously.

DENNIS SCHULMERICH: 13 feet closer to the church, as well?

MR. BEBOUT: That's correct.

DENNIS SCHULMERICH: I really like what you're doing in the entrance way to try to keep people to the right. It is a dangerous roadway the way it is set up now.

MR. BEBOUT: Plus we're adding additional striping, stop bars and the two curbed islands on the east side which helps better define the whole intersection area.

DENNIS SCHULMERICH: Nicely done.

#### COMMENTS OR QUESTIONS FROM THE AUDIENCE:

CHARLES RETTIG, Coldwater Road

MR. RETTIG: I have a question. I realize this may be a Planning Board issue, but it was something on the main sign at the road -- could you just show where that location was proposed?

MR. BEBOUT: The proposed pylon sign?

MR. RETTIG: Yes.

MR. BEBOUT: It will be in this proximity right here (indicating). It is actually not on this plan, but it is right in this vicinity.

MR. RETTIG: Thank you. Then a comment in regard to striping, curbing and the layout as was proposed to the Planning Board versus what he is proposing to the Zoning Board now, that is much improved and they're to be commended for a good job in that regard. For traffic flow and just a better layout.

BEVERLY GRIEBEL: Thank you. We will close the public hearing.

Beverly Griebel made a motion to declare the Board lead agency for SEQ, 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 no conditions, and Gerry Hendrickson seconded the motion. All Board members were in favor of the motion.

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

1. Minimum variances.
2. Change in the plans address safety issues.

The meeting ended at 9:47 p.m.