

CHILI ZONING BOARD OF APPEALS  
March 24, 2009

A meeting of the Chili Zoning Board was held on March 24, 2009 at the Chili Town Hall, 3333 Chili Avenue, Rochester, New York 14624 at 7:00 p.m. The meeting was called to order by Chairperson Paul Bloser.

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

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

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

PAUL BLOSER: We'll hear each application not necessarily in the order on the agenda. There are a couple of changes.

First of all, the Application Number 3, Great Lakes Restaurant, they have requested the application be removed from tonight's agenda, so that will not be heard tonight, and that was for the Kentucky Fried Chicken restaurant on Chili Avenue, so that will not be heard tonight.

The Walgreens Application Number 4, they called a little while ago. There was a family emergency and they're running a little late this evening so they requested they be put on last tonight, so we'll be hearing their application last.

Otherwise we'll follow the order in which they appear. At the conclusion of each Public Hearing, the Board will discuss and vote on the application. The applicant will receive a letter within a week or two of the Board's decision.

Paul Bloser announced the fire safety exits.

The Board discussed the notification signs for the applications, and the Board indicated they would hear all applications on the agenda.

1. Application of Keith Gordon-Smith, owner; 2021 Scottsville Road, Rochester, New York 14623 for variance to allow existing 11.3' x 12.5' utility shed with a 4.7' x 11.3' overhang to be a total of 194.36 sq. ft. (192 sq. ft. allowed) at property located at 2021 Scottsville Road in A.C. & FPO zone.

MR. CALABRESE: Good morning -- or good evening, gentlemen.

My name is Richard Calabrese. I represent Mr. and Mrs. Gordon-Smith. They built this small shed, garden house next to their house. Unfortunately, they didn't figure on the porch that extends out from the house as part of the square footage. And thus, as you read, they're over about 14.36 square feet on this house.

I submitted, and I hope you have it in front of you, to give you an idea of the size of this property, this is quite a large property. This shed sits 237 feet from the road, and is 157 feet from the easterly boundary line, which is the closest line. It is a relatively small shed.

Mr. and Mrs. Gordon-Smith could cut off the porch, I suppose, but it's very well built. It's decorative. There are some pictures. Unfortunately, we didn't have any, but the -- but the Zoning Enforcement Officer had some pictures. I don't know if you have them in your file. They give you an idea, this is a very well made, very architecturally suitable type of a garden shed. And all we're asking for is a variance to allow it to exist as it does.

PAUL BLOSER: Anything else you would like to add at this point?

MR. CALABRESE: No.

PAUL BLOSER: Upon visiting the site, I did see the shed. It is visible from the road. I don't have any questions on the construction of it. The color blends very well with what the house is.

My big concerns are he's a contractor. He has built this thing and put it on the lot without any permits.

MR. GORDON-SMITH: I didn't build it. I bought it.

PAUL BLOSER: Was placed there without Town knowledge. So now we're looking for a variance for it.

MR. CALABRESE: That's true. He -- I had forgotten exactly.

MR. GORDON-SMITH: I took the measurements on the inside.

PAUL BLOSER: Could you stand and state your name?

MR. GORDON-SMITH: I'm sorry. I'm Keith Gordon-Smith. I thought the measurements from the inside would be the 180 square feet, and that is what I thought was legal, and that's why I did it like that. It wasn't to be -- to just do it because I felt like doing it. I looked at the zoning and it says it has to be less than 180 square feet. That's what I thought it was, because I

measured inside, which is less than 180 square feet. I didn't know the porch would be included in that. That's the only reason why -- you know, I wouldn't have added it on there. I wouldn't have had the guy put the porch on if that was the case. Because without the porch, then I wouldn't have to ask permission to put it on there because it would be less than 180 square feet. I put the porch on for my wife's -- for her.

DAVID CROSS: Just one. Back in July of 2007 we granted a variance for a 5,880 square foot --

MR. GORDON-SMITH: Barn.

DAVID CROSS: -- barn.

I guess what is the need to have an additional garden shed out there that you couldn't store this stuff in that --

MR. GORDON-SMITH: She is using it for a gardening shed. She is putting a garden out in the front of there, herbs and vegetables. She is building a garden there. That is where she puts all her stuff.

DAVID CROSS: The proximity?.

MR. GORDON-SMITH: Yes. We're beginning a big garden in the front of herbs and vegetables and stuff like that.

MR. CALABRESE: This is not like a garage. This is just a small garden house.

MR. GORDON-SMITH: Little roto tiller, shovels and her gardening stuff.

CHRIS KARELUS: I would just ask the Board, the -- the structure itself doesn't matter what it houses. The intent is to be a storage building, so, you know, building code doesn't really speak to what is stored in the building. It's part of a structure. And just to rehash, I know some of the Board members weren't here, but when the substantial Board was asked by Mr. Keith Gordon-Smith if he could use part of the property, one of the conditions, or one of the actual portions of our review of this application was removal of another shed he had on his property. So we tried to, I guess, in the past application, um, remove all of the excess of storage areas on this site when they did walk through that approval process in July of 2007.

PAUL BLOSER: I do have a copy of, um, the conditions. I was Acting Chair at that time, also. They were conditions that we put on it.

MR. GORDON-SMITH: That was a trailer. That wasn't a garage. That wasn't a carport. That was a trailer that was on the property. That was left there.

PAUL BLOSER: But you did comply at that time.

MR. GORDON-SMITH: Absolutely.

PAUL BLOSER: Removing other structures.

MR. GORDON-SMITH: Absolutely.

PAUL BLOSER: That's recognized.

One of the conditions we did have, also, that we applied is that all motor vehicles and trailers not used in day-to-day transportation would be stored only within the enclosed structure, not under any awning portion of the barn or elsewhere on the property. And in reviewing the site yesterday when I went by there, you have a pontoon boat located on just one side.

MR. GORDON-SMITH: I just took it out. It's going in the river.

PAUL BLOSER: And there is a backhoe on the other side of the barn. And there is a roll-off dumpster for construction purposes, I'm assuming, by the house.

MR. GORDON-SMITH: No. I'm cleaning out my garage, the other part of the garage.

PAUL BLOSER: I have the same intentions. But we have got two motorized vehicles that are stored not inside like we had requested as conditions of that previous granting. So at this point, Chris (Karelus), do you have any other comments?

CHRIS KARELUS: Also bring to the Board's attention one of the other conditions on that approval was the inspection process on the shed. Our intent going on the site that afternoon, um, was to request Mr. Gordon-Smith for access to the barn. We were not gaining access that afternoon, but we noticed the violation of the unpermitted structure. This is what the Court's, the Town -- I just want to make the Board aware this decision this evening is one of the issues that the Court is holding on. So just kind of an FYI.

MR. CALABRESE: Was that a condition -- I met Mr. Sheridan, Mr. Pat Sheridan. I met with him. He wanted to see what was being stored in the property.

CHRIS KARELUS: It's regarding the barn. I'm bring --

MR. CALABRESE: That's what I'm talking about, the barn.

CHRIS KARELUS: I'm bringing to their attention the intent was to have the Town gain access to the barn to review how they utilize the shed, and when we had asked to gain access, Mr. Smith told us it was open. We went to the rear of the property and it was clearly locked and no one in the house let us gain access initially.

MR. CALABRESE: When was this?

CHRIS KARELUS: Keith (Gordon-Smith), I met you out there this week.

MR. GORDON-SMITH: I opened the barn.

MR. CALABRESE: We met with Mr. Sheridan out there. I met with him myself.

CHRIS KARELUS: I understand.

MR. GORDON-SMITH: I don't leave my barn open 24/7.

CHRIS KARELUS: I know, Keith (Gordon-Smith). I'm trying to explain to the Board what brought us here.

MR. GORDON-SMITH: Oh, okay.

CHRIS KARELUS: And I make them aware this has also been in the Town's court system, and I believe they're anticipating this Board's decision on this application before they can

move forward.

PAUL BLOSER: The condition Number 2 on that previous variance was that applicant has given written consent to the Building Department to periodically inspect the site and garage content to insure that no business is being performed on site such as construction business storage or vehicle repairs.

MR. GORDON-SMITH: Correct.

MR. CALABRESE: Correct.

MR. GORDON-SMITH: Absolutely.

PAUL BLOSER: So that is what the Board -- or excuse me, the Code Enforcement Department was trying to achieve.

MR. GORDON-SMITH: Oh, yeah.

PAUL BLOSER: For clarification. That was a condition that you approved.

MR. GORDON-SMITH: Yes, absolutely.

MR. CALABRESE: And when we submitted this application, Mr. Sheridan called me and I met him there, and we -- we were in the building.

MR. GORDON-SMITH: I had to actually put a plate down for the gutter for a splash box.

PAUL BLOSER: On the new construction.

MR. GORDON-SMITH: Yes.

PAUL BLOSER: I was aware of that.

CHRIS KARELUS: If the Board makes a decision in favor of it, I would ask they condition it pending a building permit from the Town's Building Department.

MR. CALABRESE: We have made that application.

PAUL BLOSER: That is standard practice.

MICHAEL NYHAN: Excuse me. Could I ask a question of Chris (Karelus)?

Chris (Karelus), I just want to make sure I understand it is clear, you requested access and were granted access to inspect the barn?

CHRIS KARELUS: Initially when we requested access, we were told to go back; it's unlocked. And we found it locked.

Then we -- as we're walking away, trying to look at the rest of the conditions that were placed on the project, we noticed that the shed that was asked in the July of 2007 variance application to be removed had been removed, and we noticed the new structure that had been constructed.

MICHAEL NYHAN: So has the applicant complied with any other requests to inspect the property that you have made?

CHRIS KARELUS: To my knowledge as they attested to, Mr. Sheridan has been through to take a look at what was stored within.

MICHAEL NYHAN: Okay. Thank you.

PAUL BLOSER: And you're at this point sure that there is no other business activities being stored there?

CHRIS KARELUS: Again, as -- we have noticed that there has been --

MR. GORDON-SMITH: You're welcome to come any time.

CHRIS KARELUS: We just noticed there is equipment outside the building where the Town has asked it be stored inside the enclosure.

COMMENTS OR QUESTIONS FROM THE AUDIENCE: None.

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

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

PAUL BLOSER: These are the tough ones. I'm looking at this, and we did grant almost a 5900 square foot building, and the conditions were that everything else on the property would be stored inside there. My site inspection yesterday, two-pieces of motorized equipment were being stored outside. I don't know how long they were there. It's just -- that was my drive-by.

He did remove the structures as we requested in the previous application for the barn, but he has now put structures on that haven't been approved, so it's more square footage again.

Our intent was to try to get everything contained in one building so we didn't have multiple structures on the property.

Any other comments anybody would like to cover on this?

ADAM CUMMINGS: How big is this property?

MR. CALABRESE: Six acres. This is a large parcel, agricultural.

ADAM CUMMINGS: I see the agriculture. I just never saw an acreage.

FRED TROTT: I can see the point for the garden shed. It's a long walk from here.

DAVID CROSS: About 400 feet from the shed to the barn. Myself, I wouldn't want -- I don't want to see much more square footage of storage space on site, but I almost do see some -- you know -- it's --

ROBERT MULCAHY: How many more buildings will be put up this size?

JAMES WIESNER: The original intent was to minimize the structures on the site due to the substantial nature of the request that was granted originally. That is why we surveyed what was on the map and we took out the carport, asked him to remove that. I almost think there was another shed on the map at that time that had already been gone but we were -- requested that

also.

PAUL BLOSER: Mr. Smith, a question for you. We have a real reduced print here, so it is hard to read some of the measurements. And from looking at the house, you're built in the hill and it is hard to see a lot of the stuff, which is kind of nice. You have a lot of nice private area by way of design. There are garages built into the house.

MR. GORDON-SMITH: It's like a garage. There is no way you can ever -- even when we moved in there, there was a -- giant trees in front of the garage doors, so you could never have drove in any way. So I don't know what the intent of the first owner was, but I mean -- and we had to close out several permits that were taken out 20 years ago. I had to literally go in and have an electrician, everybody go in there and close out permits that had been open for 20 years. We haven't even done any fixing any of the house up whatsoever in the house. All we have done is cosmetic stuff outside because there is so much.

PAUL BLOSER: How many square foot is the house?

MR. GORDON-SMITH: I believe it is 5,000, plus the garage.

PAUL BLOSER: Is it a walk-out basement? You're built into a hill.

MR. GORDON-SMITH: No, not a walk-out basement.

PAUL BLOSER: It's hard to tell.

MR. GORDON-SMITH: No, no. There -- like I said, there is still tons of cosmetic work that needs to be done. We haven't done anything on the inside.

PAUL BLOSER: Okay. Thank you.

DAVID CROSS: Maybe we make a condition there be no more structures, storage areas be put on the site. We have to draw the line somewhere. We're up to the point where we have more square footage of storage space than we do residential house. We'll probably have to draw the line if we do act on this.

MR. CALABRESE: If I could just make one more comment, Mr. Chairman. I think if -- if you look at this property, it's a six-acre parcel. There's nothing around it. It's not -- next door there are some condominiums which are quite a distance and the other side, I believe, there is a school.

PAUL BLOSER: Correct.

MR. CALABRESE: There is hardly anything in the back, and the front -- this is not going to change the residential nature of the area at all. It's not really a residential type area. It's an agricultural area. This little building is so far removed from that large barn, which is way in the back. It's a beautifully architectural building. It's -- it goes well with the house. It certainly doesn't take away from anything. He is not trying to build a lot of buildings on the site. He is not trying to use it for business. I don't know if any of the Board members were here, but when he bought the house, that house was a disaster.

PAUL BLOSER: The lot, everything was overgrown.

MR. CALABRESE: It was awful. The work he has done there is unbelievable.

PAUL BLOSER: He has done a lot of excavation.

MR. CALABRESE: He has done a lot of work. He doesn't want to offend any of the neighbors. He is trying -- just trying -- he is just trying to have a nice peaceful spot for himself, with the barn there so he can store his equipment.

As he said, he's a fisherman. The pontoon boat he just took out. He has a backhoe there. It's not for business purposes. He has a yard for his business. It's not there. So he doesn't store any of his equipment. He's a contractor. He has a lot of equipment. He is not there at all. He rents a large storage area in a building for all of his equipment, and he doesn't see where this changes the -- this is a very minor building. Basically it's for his wife because it is right next to the house. So that is all I would ask you to take into consideration. He is not trying to put several buildings or storage buildings. If you see this building, you couldn't store much in it in any event. It's like a little play house. So I just ask you to take that into consideration.

The other thing is, there is a matter pending before the justice court which was the failure to get a permit. We have applied for that permit. And this is one of the things that actually they suggested at justice court, to resolve the whole issue. Come in, get a variance and it's not a use variance, and try to resolve the -- the matter.

For -- for the few feet that was involved, it doesn't make any difference, why would he do it. You know, it is not something he is trying to get away with or -- or flaunt the zoning laws.

I just ask you to take that into consideration.

PAUL BLOSER: Any other conditions the Board members would like to see if this were to go through, get approved?

Paul Bloser reviewed some proposed conditions. The Board discussed whether they could restrict any future structures on the house.

PAUL BLOSER: Do you want anything in here about pavilions or gazebos? Because that is a structure. It is additional square footage that could be added to the site.

DAVID CROSS: I would leave that off. I wouldn't include that, restrict that.

KEITH O'TOOLE: Are we talking about structures or buildings?

PAUL BLOSER: Structures, because it all encompasses the square footage on the property.

KEITH O'TOOLE: Because if I put a swing set up, that is a structure.

DAVID CROSS: Structures with the intent for storage.

Paul Bloser reviewed the proposed conditions with the Board.

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

Adam Cummings made a motion to approve the application with the following conditions, and Davis Cross seconded the motion. The motion was approved by a vote of 4 yes to 3 no (James Wiesner, Robert Mulcahy, Paul Bloser).

DECISION: Approved by a vote of 4 yes to 3 no (James Wiesner, Robert Mulcahy, Paul Bloser) with the following conditions:

1. All Building Department codes, permits and procedures be adhered to.
2. No other structures to be built anywhere on the property (structures for the intent of storage).

The following finding of fact was cited:

1. The requested variance will not create an undesirable change.
2. Application of George Rice Service, Inc. owner; 3152 Chili Avenue, Rochester, New York 14624 for variance to allow existing 47 sq. ft. single-faced freestanding sign (drive thru menu board) at property located at 3152 Chili Avenue in G.B. zone.

Kip Finley was present to represent the application.

MR. FINLEY: Hello, everybody. I'm Kip Finley with Avery Engineering. We're here tonight on behalf of George Rice who owns the property, the Mobil station just down the street, and the applicant is -- or tenant, Indus Companies, who operates the Dunkin' Donuts that we put in about a year or maybe two years ago there.

We were made aware of the need to have a variance for the menu board when the owner went in to apply for some other minor work on the property, we weren't able to have that done or get a permit for that until we take care of this.

When we went through the site plan process, I was the Project Manager on that, and I guess it escaped me and it escaped everyone else that the menu board was to be interpreted as a freestanding sign as you would something outside at the front of the street like a pylon sign or a business sign.

I will step up to the projector so you can see where it is, and you can hear me.

Are you seeing it on your screens?

Okay. This is what was the existing Mobil store, gas station (indicating). We put the Dunkin' Donuts in. This is the car wash next door (indicating). The -- when we did this project, we installed these parking spaces (indicating), and we installed the drive-thru that comes to the window in the back of the building.

Some background on it. This is a General Business zoning. The site north of it, I believe, is General Business zoning. The site to the east is a residence. It's a couple 100 feet away from this.

The menu board is that (indicating). It's 47 square feet, if you count all of the appendages on it and the sign face part of it. And it's facing basically into the car wash. It's on this side of the building (indicating). It faces out. It faces towards the car wash area.

And in a case like this, we apologize it wasn't taken care of, but we do need permission to legitimize the situation. I guess if I would go back to what the criteria would have been that I would have used before, it is virtually impossible to operate this type of business without a pre -- without a menu board preentering the window so they would have a chance to create your order while one pulls up.

It's also generally -- the closest property line is adjoining another General Business District, and it's not visible from the street. There is no neighbor so close that the noise from the speaker is a problem. It's not illuminated very much. It's not a blazing, bright, sign.

So my rationale then, and still now, is it is not posing a problem in the neighborhood and is necessary to operate the business.

That would be it. Unless there are questions.

PAUL BLOSER: It is complete and in working order.

MR. FINLEY: Yes. I think it's been in over a year. Probably more like 18 months.

DAVID CROSS: I have used it a few times.

MR. FINLEY: I go inside. I like the face-to-face.

JAMES WIESNER: Looks like there has been a full accounting of signs now on the site, with everything that has been listed here.

MR. FINLEY: I think that was -- as this project evolved, a gas station, a car wash, then a Dunkin' Donuts, it kind of lost track of what the total square footage of the signs was. Now I'm

pretty sure the Building Department has a pretty good handle on it.

MICHAEL NYHAN: Chris (Karelus), is there any history in our department for any complaints for that sign or the noise as a result of it?

CHRIS KARELUS: Good question, Mike (Nyhan). What I can't tell you, I have researched the complaints, but I believe there were some. For the most part, there is multiple uses on the site. Previous approval they have kind of granted the ability to have the car wash, the Dunkin' Donuts, the Rice Mobil service station itself. So it is somewhat unique. But the complaints have been all minor in nature. Transient signs, kind of not permitted signs that show up here and there. We have asked for Mr. Rice to take them down, and he's been -- he is -- pretty much responded to that, as well.

MICHAEL NYHAN: Thank you.

ADAM CUMMINGS: Any idea how much that would cost to tear that down?

MR. FINLEY: No. Didn't give it any thought because I really didn't think there was any realistic --

ADAM CUMMINGS: But excessive?

MR. FINLEY: The cost to tear it down, I mean it -- it cost probably several thousand dollars to put it up and to cap off the electrical, and the business loss from not being able to run the business, it's pretty expensive.

ADAM CUMMINGS: Okay.

#### COMMENTS OR QUESTIONS FROM THE AUDIENCE:

CHARLES RETTIG, Coldwater Road

MR. RETTIG: Kip (Finley), if you could put that back up to see the layout of the -- one question I have, specifically, Kip (Finley), where is the sign -- or to the Chair, if the applicant can show the exact location, point out the exact location of the sign.

MR. FINLEY: Right there (indicating).

MR. RETTIG: So it's on a cant at that location?

MR. FINLEY: In this picture, you can see the curve around, going -- the curve kind of goes around, up to the building (indicating).

MR. RETTIG: The next question, you stated 47 square feet. What is the -- what are the physical dimensions of the sign?

MR. FINLEY: If you can see them from there, it's --

MR. RETTIG: I can't.

MR. FINLEY: 9 1/2, out to out, and a little over 7 feet from top to ground.

MR. RETTIG: Thank you.

TERESA CROZIER, 21 Shrubbery Lane

MS. CROZIER: I'm just wondering if this sign was on the original site plan and was approved?

MR. FINLEY: This is the site plan. I just highlighted it.

MS. CROZIER: Just overlooked as part of the signage.

MR. FINLEY: Uh-huh.

MS. CROZIER: Thank you.

MR. FINLEY: I think the gist of it was we weren't really thinking of it as a free-standing sign. We think of the one out front that says "Mobil" as a freestanding. I guess this is.

PAUL BLOSER: And we do look at the variances on those for how that was going to be laid out, the sign and the size of them, in the front, and that was just never taken into consideration, when the sign package was going through.

MR. RETTIG: Just another quick comment. Mr. Rice has, to my thinking, done a good job of keeping the property looking nice and I think this doesn't cause any specific problems.

PAUL BLOSER: Thank you.

MR. FINLEY: Thank you.

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

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

JAMES WIESNER: Is this a 24-hour drive-thru? The building is opened 24 hours, right?

MR. FINLEY: Dave (Cross)? I really don't know the answer to that question. I really don't know.

JAMES WIESNER: I'm just wondering if this is going to be open and people speaking to it 24 hours.

DAVID CROSS: I don't believe it is, but --

JAMES WIESNER: Isn't the building open 24 hours, Dunkin' Donuts?

MR. FINLEY: I really need some help on that. I don't live right in Chili Center so past about 10 o'clock, I don't -- I never stopped there for gas or anything much later than ten.

FRED TROTT: I think it is open 24 hours.

JAMES WIESNER: I wouldn't want someone speaking to that thing in the middle of the night when I'm trying to speak.

FRED TROTT: The one thing is, though, you do have the car wash directly across from

where that sign board is. You know, I don't -- it's not like the McDonald's where you have a house that close to it.

MR. FINLEY: I guess that would come back to the question from Michael (Nyhan), have there been complaints. I think if it was a really noisy one, it would be fresh on top of the mind from the Building Department that we always get calls for that. And aside from me not knowing the hours, I guess you would have to go with that. If there have been complaints about freestanding signs and probably promotional things that they take down, but not anything to do with the noise of the speaker.

JAMES WIESNER: I don't know if we -- you put some sort of limit on the hours of operation, or -- or not.

MR. FINLEY: I don't know. I think that that would be difficult at this time since it has been operating for over a year.

PAUL BLOSER: The Planning Board, in part of the site plan approval, looked at hours of operation and would have approved it based on --

MR. FINLEY: The Planning Board -- I mean I represented it before the Planning Board. They knew there was a message -- a menu board. They knew it had voice, they knew where it was. They knew everything about it and probably hours of operation got discussed. I don't remember them. But they knew all about it. It just wasn't technically applied for a variance to put it up there.

FRED TROTT: I can't say for sure that is 24 hours, but I have been there at four in morning and I have been there at midnight, so I know --

MICHAEL NYHAN: Service station is 24 hours, so I'm sure the Dunkin' Donuts --

ADAM CUMMINGS: The -- but the variance is just for the sign, so.

MR. FINLEY: Don't generally think that Dunkin' Donuts is a 24-hour. I mean we have done a few of them around the state, and I -- I'm not thinking they're 24-hour.

ROBERT MULCAHY: They are. There are spots -- where they make the donuts, they're open 24 hours.

MR. FINLEY: Okay. Where the kitchens are. This isn't a kitchen site.

ROBERT MULCAHY: They don't make them at this site.

MR. FINLEY: This is just a retail site.

ROBERT MULCAHY: About 10 o'clock, those donuts would be stale.

MR. FINLEY: I can't help you with that.

PAUL BLOSER: Mr. Nyhan, you were a police officer. You would have a better perspective on this than anyone.  
(Laughter.)

ADAM CUMMINGS: First night.

ROBERT MULCAHY: Congratulations.

MR. FINLEY: In representing the applicant, anything that deals with the hours of the operation or the business itself, this probably not the right place to take care of it.

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

Adam Cummings made a motion to approve the application with no following conditions, and Robert Mulcahy 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. The requested variance has no adverse physical or environmental impact on surrounding neighbors.
2. Sign request is similar to unique characteristic of other "Drive Thru" operations in the area.

Note: A sign permit is required.

3. Application of Great Lakes Restaurants, 4200 S. Quail Creek, Springfield, MO 65738, property owner: Upstate Properties of Chili LLC; for variance to allow lot depth to be 218.58' (219.68' previously approved), variance to erect a restaurant to be 60' from front lot line (75' req.) at property located at 3305 Chili Avenue in G.B. zone.

Application was not heard at the applicant's request.

Application #4 was heard at the end of the agenda this evening.

5. Application of Titan Rock, LLC, owner; 20 Ambush Lane, Churchville, New York 14428 for variance to allow front parking per plan submitted, variance to allow a total of 87 parking spaces (117 req.) for proposed retail/office building at property located at 4348 & 4354 Buffalo Road in G.B. zone.

Patrick Laber was present to represent the application.

MR. LABER: Good evening. I'm Patrick Laber from Schultz Associates representing Titan Rock tonight. As Chairman mentioned, there are two variances that we're going for for this project. Just quick overview, the project is 4348 and 4354 Buffalo Road. We be resubing the two parcels together and proposed is a mixed use building with office, professional office upstairs and retail at the bottom floor. All on 1.7 acres.

Has access to all utilities, storm water will be underground. The site does have some fairly significant grades that because we have to level out the site, um, do become somewhat more severe and retaining walls are necessary.

But getting to the variances themselves, um, the first one I believe that was stated was the front yard parking. I want to speak to that one quickly. We don't feel that that -- having front yard parking will produce an undesirable change to the character of the neighborhood. There is similar types of projects that have gone in in the past few years, Walgreens, the Rite Aid, um, Tim Horton's, I believe they all have front yard parking, and this is similar to those.

There really isn't any other way to reconfigure the parking and get the maximum amount of parking that we need for the site on the site. We shift everything to the rear, then we start running into problems with the grades on the east and the north side.

As I mentioned, we have some significant retaining walls around the northeast corner, and those are there to protect some existing trees along the cemetery line and also to allow us to put in the required 30-foot buffer along the north line. So this parking configuration I think gives us the maximum amount of parking, and we would really not like to change that.

One other big consideration for the developer is if there is no parking in the front, that pretty much shoots down his idea of the front retail. He wants to have his parking by the retail, to have people parking to the side and the rear and then having to come back around, um, isn't a good thing for that type of development.

I don't believe that that is substantial considering the other developments that have been mentioned that had a similar variance. Um, really there wouldn't be any negative change to the environmental conditions of the area, whether the parking is in the front or the back. It's pretty much the same thing that we're looking at. Um, and and really, the whole -- the whole reason for this basically is for the retail, you know, to make sure that the parking is in proximity to the building, the retail itself. I don't know if you want to take these one at a time or you would like me to move right onto the second one.

PAUL BLOSER: Why don't you go ahead and proceed?

MR. LABER: Second variance is for 87 spaces where code requires 117. Um, we don't have any specific uses for this site yet name wise, but this will be retail on the bottom floor, professional office such as medical, doctor, that type of thing in the upstairs. There is a possibility of a bank. With drive-thru, that could also be possibly a small fast food restaurant.

So this was some of the difficulty we had in determining the parking requirements for this, for code. Basically what we boiled it down to was 8,852 square feet, gross square feet of retail on the first floor, 2500 square foot of bank, that required approximately 56.7 spaces.

Second floor, professional offices, as I stated. One for every 200-square foot of gross floor area, eliminating hallways and stairwells, that required another 55.7 spaces, and then we added in an additional five spaces for ten employees. Whether it's a bank or a non-professional office upstairs, we wanted to add a little extra to account for that as is required by code. That is where we came up with 117.

The developer is very confident that the 87 spaces we have shown here are enough for the site. He has been involved with several other developments in the area, and -- he is putting a big investment in this site, and it wouldn't be to his benefit to put in parking that is inadequate. It really -- the biggest risk for allowing this variance is to him in possible loss of a tenant because they don't feel there is enough parking.

One of the justifications for this is that having the retail on the first floor and the office on the second floor, um, studies that we have looked at have shown that this parking can almost be shared because the peaks fall -- the peak use of the parking falls at different times. Um, we took a look at this, and pretty much what it boils down to -- I have a handout if you would like to see that.

The second space is just the breakdown I explained how we came to the parking itself.

PAUL BLOSER: Do you have one you could put on the overhead?

MR. LABER: Yes.

PAUL BLOSER: I will ask you to stand there and speak kind of loud so that the audience can also hear your explanation, and point if you have to.

MR. LABER: So as I was saying, retail and office is what we're looking at in this building. If you take a look at the first chart, um, the study shows that banks and offices pretty much have their peak parking requirements on the weekday, where what they're calling shops and malls, we're referring to as retail, peak on the weekend. So what we did was we took the uses that I explained earlier. This is just a breakdown of how we figured out our parking requirements. Number of spaces for each requirement.

We figured out the peak, retail being the weekend daytime, bank being weekday daytime and all of the office being weekday daytime, and then put it into the second chart down on the first change, and if you apply those -- apply some percentages to them that they looked at in an EPA study, you end up with basically coming in with a maximum of peak right around where our

parking is proposed. You -- you have your 100 percent peak for office and bank at the daytime from about 9 to 4. Retail is not at its peak at this time because people are working obviously.

Then as you start getting into the evening of the weekday, then the retail picks up drastically, almost to 100 percent, where the office and the bank fall down because people are going home. Similarly in the weekend, just the opposite. Um, they say about ten percent for daytime, somebody is just in the office.

Bank we left up around 70 percent because a lot of banks have Saturday hours that people frequent, and then the retail goes up to its maximum of 44.

Then as you start getting into the evening hours, they all start falling down. Then obviously in the overnight hours, you know, they just leave a small allowance for somebody being in the building working late, setting something up for the next morning. Obviously these numbers would change again -- if you swapped the bank for say a restaurant, the peaks then would shift towards the evening on the weekday. Either way, we think, and I know the developer feels that this -- this helps justify what he thinks 87 spaces will be enough for the site itself.

I will just briefly run down what the zoning calls for again as I did for the first one. Again, with character of the neighborhood, we do have residential properties to the rear of us, but from the road, and along this commercial strip, we don't feel that there will be a significant change in the neighborhood if you see 87 spaces or you see 117, or whatever, you know, the Board feels that we need here.

Really there is no other way to get more parking on this site without, you know, a purchase of additional land. The one way that we could do it obviously is to shrink the building size, but the developer has the numbers figured out and the economy the way it is these days, he is adamant that we try to leave the building size as is so he can make the numbers work.

The need to save the trees on the east side do limit our development potential on the site somewhat.

Is this substantial? We're saying no. A similar variance was granted for Walgreens, not to the number that we're requesting now, but it was a reduction in the parking itself.

Really, the environmental conditions 117 spaces, 87 spaces, it will be taken care of at least storm water wise with the storm water detention system that we have put in place.

DAVID CROSS: Underground detention?

MR. LABER: Underground retention, some bioretention for quality and also a hydrodynamic system.

MR. LABER: Again, just of a couple of few points. There could be some changes in this. Code allows for institutional uses that require less parking than what we have here. That is one per every 400 square foot. Nothing to say that maybe Roberts Wesleyan will come in here and has maybe some part of this.

The office uses and the retail both -- there is different regulations, but they do allow for storage areas of a certain size or not office use to be removed from the parking calculations and that will obviously, you know, decrease the number of actual parking that is required, once this is broken up into each unit in the building. We just don't have that right now. And also, it assumes that the building is 100 percent leased. We obviously would love to have that, 100 percent leased would be great, but it may not be the norm.

Again, I would just like to reiterate this is a large investment being made by a local company in the Town of Chili, and we really want to make it work, but the numbers have to work, too. Decreasing the building would be a hardship.

I would be happy to answer any questions.

DAVID CROSS: I'm having a hard time envisioning what sort of retail might go into a building like this.

Do you have any examples?

MR. LABER: Like I mentioned, a bank. There might be some discussions with a coffee shop. Um, other retail, I'm not sure. It would be broken up into -- the way the architect has the building broken up right now, there's basically room for six or eight retail spaces on the bottom. Some of them may go all of the way through to the rear to the doors in the back, but other than that, basically we're just -- we're looking at what is allowed by code. I'm not sure specifically what they would be. I don't know if a Radio Shack or something would be want to be in a building like this.

I know he has talked -- I believe he has talked with Roberts Wesleyan, and again, the offices upstairs, really looking for professional, medical, dentist, that type of use.

PAUL BLOSER: How many first-floor businesses are projected at this point?

MR. LABER: I would say six at most. Probably they're going to go -- the larger ones will go all of the way through to the north. Obviously there is not a whole lot of marketing potential on the north. I would say six at most, but probably closer to three.

ADAM CUMMINGS: Is drive-thru, um, necessary for this, or is there a possibility of putting parking on that west side?

MR. LABER: I think at most we get some land-banked parking over there. He is trying to maximize, you know, what he can offer to a perspective tenant by having drive-thru on there. He would like to keep that obviously, if possible. He just has it in the proposal now. If it does come through that somebody needs it, we wouldn't have to come back. I think the most you would gain over there is maybe let's say five land-banked spaces that honestly probably wouldn't be built because they would be in an odd configuration.

DAVID CROSS: You did get preliminary site plan approval back in March?

MR. LABER: Yes. Correct.

PAUL BLOSER: I will say this has come a long way from last year when we were looking at approving the apartment and the next video store in the back of another multiple apartment house. It has come a long way from there.

ADAM CUMMINGS: That's for sure.

ROBERT MULCAHY: What about traffic flow on this?

MR. LABER: Yes. We have two-way traffic all of the way around. As for access to the State highway, that has already been studied by SRF Associates and submitted to the DOT for review and they concur with the layout that we have there with the one access, two turn lanes out, one turn lane in.

The Fire Marshal also looked at it. We have the 26-foot wide driveway like he requested and also the radius to get the truck around. So that's all been looked at.

ADAM CUMMINGS: I'm just curious if maybe the parking spaces might still be decreased from the 87, because if you look at the first couple of spots as far as entering -- well, it's not site plan. I'm just looking at the site plan. Those could be pretty close for an oncoming car if someone is backing out of that space.

ROBERT MULCAHY: Absolutely.

ADAM CUMMINGS: Maybe the parking variance might be less than 87.

PAUL BLOSER: One of the concerns I have on this, too, is I'm looking at the layout. They put in some nice green space with some islands. By eliminating them, the front, you will pick up three to six spots.

KEITH O'TOOLE: If I may, Mr. Chairman, they're required to have that green space in there.

PAUL BLOSER: No. I understand that.

KEITH O'TOOLE: It's not a gift.

PAUL BLOSER: I understand that.

But by eliminating them -- they happen to have them, but having them, it adds character to them. I wouldn't want to see them gone. They're not applying for that. They have done a nice job of laying that out. Even in the back, around the sides. We have some nice green space. They have done a nice job on the layout.

MR. LABER: We lost -- we had a landscape architect prepare plans for this also extensive planting. We would like to keep those. Obviously we're trying to avoid another variance request. We think the parking works regardless, so.

ADAM CUMMINGS: The Planning Board's final approval, if they come in and decrease the amount of parking spaces, will we come in for more variances for additional parking spaces to be decreased?

MR. LABER: I have been working with the Town Engineer and the Highway Superintendent on this. From a drainage standpoint, we have it worked out where we're not going to lose anything else.

They have all looked at that entrance, and that hasn't come up as a problem.

PAUL BLOSER: Is there Fire Marshal approval on that yet, on the entrances on the drawings?

MR. LABER: We had comments that basically just said what we were requested to do, we have done. So I believe that's what he stated in his letter. It's a little premature, but what I would put down here for a condition of approval, to move forward, would be no parking spots would be allowed to be taken up by snowplows for piling.

JAMES WIESNER: It's actually in their conditions.

MR. LABER: They had a condition of three parking spots, and the developer agreed to truck out pretty much any amount of snow. He has the means to do that. He has --

PAUL BLOSER: He does. So I would recommend we put that as a condition, that no spaces be piled up with snow storage.

Is there a dumpster spot on this?

MR. LABER: Northeast corner.

JAMES WIESNER: Some of the other sites that you reference that had less spaces in the code, they actually went down to, I think, a 9 foot parking space. Was that considered at all?

MR. LABER: Yes. We brought that in under concept, and it was -- it was stated that it isn't the preferred way to go. That is something more that should be done for a preexisting condition that needs the parking. Not something that you should just come in and immediately try to use.

ADAM CUMMINGS: How big are the spaces?

MR. LABER: 9 1/2 by 19.

FRED TROTT: Would it be possible for somebody to park on the Walgreens and walk over?

MR. LABER: It would be, but I doubt I could get that agreement from Walgreens.

FRED TROTT: I know I saw the retaining wall, and I didn't know how high it was.

MR. LABER: The retaining wall on that side, on the west side is only 3 feet at its maximum, 2, 3 feet. Um, I think more the problem is there is some grade on the Walgreens side. I think they're -- I'm thinking about the site right now. I know their transformer has a retaining wall around it, so I don't think anyone is going up that. If they wanted to do that, they would obviously have to go down the sidewalk. We do have a sidewalk just like Walgreens has connecting to the State highway sidewalk. So there is pedestrian access.

KEITH O'TOOLE: This study, this is a legislative argument. We have parking regs on the

books. One of the reasons we have the standards is that the uses of buildings change over time. You know, developers have these great plans, and if they can't rent it out to office, they rent to retail. If they can't rent to retail, they go to office or something else entirely. So I don't -- if you want to approve the variance, do it for whatever reason you want to do it, but I would urge you not to do it for this reason (indicating).

Nothing further.

CHRIS KARELUS: I would just let the Board know we have worked with the applicant to work on the overall parking count. There is a clause in our code, based on retail use, and because they currently just have an open-floor design, which means all their tenant spaces will come into basically open spaces and they will script those spaces to work for their business, there is a clause in our code that with a retail use, storage space associated with that use can actually get parking credit. So you can get some spaces reduced from your overall parking count.

So they have not included that as part of their application. So as the people identify the use of each retail space, our code allows them to deduct the storage space from the overall parking requirements. We haven't done that. We are looking at this conservatively as if all of the spaces were occupied by a use, which would drive up the parking count.

MR. LABER: I would just submit that -- I would ask the Board not to just dismiss this information. I think it does have some merit.

ADAM CUMMINGS: Pat (Laber), do you have any idea how much the credit is per square foot of storage space?

MR. LABER: If he is speaking of the retail, I believe the code reads that any space over 100 -- 100 square feet can be deducted, but it can't be a closet. You can't add up every small little space to get to 100. It has to be blocks of 100 or more. Since we don't know that right now, we can't make an argument to reduce it, so.

#### COMMENTS OR QUESTIONS FROM THE AUDIENCE:

CHARLES RETTIG, Coldwater Road

MR. RETTIG: What was the total acreage of the two lots?

MR. LABER: 1.7 total.

MR. RETTIG: And you stated the parking lot -- the parking size was 9 1/2 by 19?

MR. LABER: Correct.

MR. RETTIG: I want to point out to the Board that the Planning Board did come up with a condition, you are probably aware of it, but I just wanted to point it out, if two parking spots are blocked by snow and the snow had a 6 foot maximum height, then the owner, property owner had to remove the snow. And I just thought that a condition -- that this Board in following up on the parking spots and the snow removal, um, should include a condition that that snow be removed specifically because of the number of parking spots here, and the tight number of parking spots, that that snow be removed as a condition -- be removed within 48 hours. So it gives them time to remove the snow, but any snow that is blocking parking spots becomes a potential problem with the number of spots here.

So if the -- just to reiterate, two parking spots 6 foot high max, snow removal, if this Board would set a condition, within 48 hours, I think that would be reasonable for this application.

Thank you.

MR. LABER: I think that was the intent of the Board, that they want it removed as soon as possible.

PAUL BLOSER: Thank you. That was something we did mention for a condition of approval.

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

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

PAUL BLOSER: There are some unknowns here, but based on what we're seeing, the potential -- it is fairly well documented by the Building Department and also with -- the preliminary site plan approvals are at this point for the Building Department. They have a nice layout. This would be a very nice addition to the Town as what I am seeing right now, proposed.

Any other comments?

DAVID CROSS: I think it is a substantial request for the number of parking spaces. Not the parking in the front. But when you look at the size of the building proposed, it seems to fit the scale of the site. And also looking at building coverage, they're still well under what is allowed, 19 versus 30 percent, so.

That's all.

ADAM CUMMINGS: Front parking is reasonable because the neighbor has it. I'm still hung up on the count, because it is preliminary and we don't real any know what is the count is, so how can we grant a variance for something that is still in limbo.

And I, for one, don't want to see a reapplication for another variance for another decrease in parking spaces. I'm still hung up on that. I don't think 87 -- we're still talking about credits for storage, so to me the number could go down, which means a second variance. I don't -- I don't really like seeing the same variance just reduced. I would rather nip it in the bud now.

FRED TROTT: Why would he reduce it more? I mean it's not like he is going to make the

footprint bigger, right?

MR. LABER: No. It's not going to get any bigger. We have actually reduced it twice so far.

PAUL BLOSER: The size of the building?

MR. LABER: Yes. Again, mostly because of the trees on the east side, making sure that we don't disturb the roots and have those falling over.

PAUL BLOSER: Counsel, can we put a condition in here no other reductions of parking spaces will be heard or accepted? Would that carry with the land?

KEITH O'TOOLE: It is implied already. You're giving them a variance. You're reducing them down as low as they're permitted. If they go below that, then they're acting without Town approval.

PAUL BLOSER: What I'm saying is can we put in a condition now that no other application will be heard for additional variance for space reduction?

KEITH O'TOOLE: I don't -- no.

MR. LABER: It's our intent to stay at that 87 and make that work with whatever we have to do.

JAMES WIESNER: This is preliminary site approval? So final site approval is yet to be granted?

MR. LABER: Right.

ROBERT MULCAHY: I have a real problem with the parking along the east side. It looks to be a lot of fender-benders there.

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

Adam Cummings made a motion to approve the application with the following condition, and Robert Mulcahy 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. No parking spaces to be taken up by snow piles from plowing will be allowed.

The following finding of fact was cited:

1. The requested variance will have no physical or environmental impact to nearby properties.

PAUL BLOSER: Is there anybody here representing Walgreens?

KEITH O'TOOLE: Mr. Chairman, since the requested variance is so minor, I think it would be appropriate to hear the application even without the applicant.

PAUL BLOSER: Okay.

DAVID CROSS: I move to hear the application.

ADAM CUMMINGS: I second.

PAUL BLOSER: We'll go ahead move forward with this application.

CHRIS KARELUS: To preview it for the Zoning Board and the public (indicating).

PAUL BLOSER: Chris (Karelus), would you like to -- I will read the application, but would you like to comment on it for us? A little history, a little background.

4. Application of Chili Avenue/Paul Road Development LLC, owner; 753 James Street, Suite B-1, Syracuse, New York 13203 for variance to allow existing retail store to be 71.33' from northwest front lot line and 70.91' from southwest front lot line (75' req.) at property located at 3127 Chili Avenue in G.B. zone.

PAUL BLOSER: This is the new Walgreens. Right now the final C of O is pending approval of this application.

CHRIS KARELUS: For the purpose of the audience, I can just kind of do a preview of the site. The Walgreens application went through a number of renditions. They modified the site, modified the building.

What the Building Department found -- as they were closing out their project, they present us a survey map to close out the site. Um, they had shown on their site plan their setbacks to the building foundation, so it was from this corner of the building (indicating), as well as that corner of the building (indicating) as shown in plan, that the Town went through their review and approval for site plan. So as we went through and got the survey map back from Walgreens, we actually have to tie in the overhangs.

So if you see these squares, they're actually structural columns that are tying in the building to certain overhangs. Those need to be included as part of the setback, and those fall within the required 75 feet. I guess I can -- I can only tell you that they're a good development company to work with. This is kind of an as-built situation but something that we caught at the close-out session with them in their permitting process.

With that, I will leave it so that the application stands on its merit. They had submitted a complete application to the ZBA.

PAUL BLOSER: Chris (Karelus), just for clarification, they did not increase the square footage of the building?

CHRIS KARELUS: No. It was --

PAUL BLOSER: It was built to the prints.

CHRIS KARELUS: It was built to plan, but again to reiterate, the setback -- the plans were shown to foundation. We actually have to tie the buildings in, because the columns that support the overhangs are part of the structure, which fall within the required front setbacks.

PAUL BLOSER: Pretty straightforward. It is minor.

**COMMENTS OR QUESTIONS FROM THE AUDIENCE:**

TERESA CROZIER, 21 Shrubbery Lane

MS. CROZIER: I just want to say it's a great-looking building. It's beautiful. It looks great. Good job.

UNIDENTIFIED SPEAKER: We agree. Right in our backyard.

CHARLES RETTIG, Coldwater Road.

MR. RETTIG: Even with these discrepancies which are minor, I think the facility is well suited for the site and there should be no problem with this Board approving it.

PAUL BLOSER: Thank you.

Paul Bloser made a motion to close the Public Hearing portion of the application, and Fred Trott seconded the motion. All Board members were in favor of the motion.

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

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

Robert Mulcahy made a motion to approve the application with no conditions, and Adam Cummings 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. The requested variance will have no physical or adverse environmental impact on nearby properties.

The 2/24/09 Zoning Board of Appeals minutes were approved as submitted.

The meeting was adjourned at 8:26 p.m.