

CHILI ZONING BOARD OF APPEALS
March 27, 2012

A meeting of the Chili Zoning Board was held on March 27, 2012 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: Adam Cummings, Robert Mulcahy, Michael Nyhan, Fred Trott, James Wiesner and Chairperson Paul Bloser. Robert Springer was excused.

ALSO PRESENT: Michael Jones, Assistant Town Counsel; Ed Shero, Building & Plumbing Inspector

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

PAUL BLOSER: Signs? I didn't have a problem with anything.

FRED TROTT: I didn't -- I didn't see one over -- at 9 --

ADAM CUMMINGS: 997 Beahan Road.

PAUL BLOSER: Beahan Road. That was there. I saw it.

JAMES WIESNER: What day? I was over there on Sunday and it flopped down.

FRED TROTT: I was over there on Sunday and saw the sandwich sign.

PAUL BLOSER: I saw it on Sunday and went by again today and saw it there. I'm okay with it at this point.

1. Application of Christopher Mozrall, owner; 2674 Chili Avenue, Rochester, New York 14624 for Land Use Variance to allow a professional business office with apartment on second floor (previous Land Use Variance granted for dental office only with apartment on second floor) at property located at 2674 Chili Avenue in R-1-20 zone.

Christopher Mozrall was present to represent the application.

PAUL BLOSER: For the record, please identify yourself, name and address.

MR. MOZRALL: My name is Chris Mozrall. My home address is 4 Trotters Field Run, Pittsford, New York. The office I own right now is at 2674 Chili Avenue.

I'm in front of the Board today to try to have a change in the Land Use Variance. As of right now, I am moving my dental practice into Chili Center, and I'm trying to sell that building and that property.

Now, the variance at this point is just for a dental office and an apartment on the second floor, and that makes it difficult to sell, because it -- if I can get the variance to change to make it a little more broad spectrum as in having business or other professional use, I will have more people to -- to potentially sell it to. It's been on the market since last August and we only had one dentist come through and that dentist was not interested in purchasing.

PAUL BLOSER: Are you -- do you have a sale pending now, or are you just looking to change the use to entice the sale?

MR. MOZRALL: Well, I don't have a sale pending. I have someone interested, but there is a contingency on the change in this use variance for that to go through.

JAMES WIESNER: How long have you actually -- have you owned this property all along or --

MR. MOZRALL: Eight years.

JAMES WIESNER: Eight years. Have you tried to sell it as a residential property instead to see if there is any interest in it that way?

MR. MOZRALL: Right now it is listed under residential and business. And again, anyone who has come through, you know, they -- we have to inform them of the variance, so anyone who might want to make an upstairs -- you know, upper/lower apartment, or any other office such as a lawyer, optician, anyone else, they can't do it at this point because of the variance restriction.

JAMES WIESNER: But it could be returned back to a residential house again, too.

MR. MOZRALL: Oh, possibly.

She was just also mentioning that the banks won't give a loan for residential, because of the variance. So yes, I mean to answer your question, yes. If the -- if the use variance is changed, then absolutely.

PAUL BLOSER: Were you trying to sell it as -- to convert it back into residential, or as a business?

MR. MOZRALL: It's whoever comes in. I mean I -- I don't have -- you know, either -- either way.

PAUL BLOSER: Do you have any documentation to support a financial evidence as far as what -- that you can't support it or it has to change to -- in order to be profitable there, or --

MR. MOZRALL: Well, I mean I don't have any studies that would show that. I would have to own -- I mean I'm -- I'm moving, so I'm going to be leasing other space. I would have to be leasing and I would still be taking care of this property. You know, financially I would have to convert it over again to something else. But I can't do that -- you know, I couldn't convert it into an apartment, an upstairs and downstairs apartment at this point either.

PAUL BLOSER: So one of the criteria that you have to show is -- I will read it, how it is written through the State. The applicant cannot realize a reasonable return on his or her investment, the evidence shall be substantial and compelling as shown by competent financial evidence. It's one of the criteria we have to say --

MR. MOZRALL: Would it count that I'm selling it, trying to sell it at a loss and I'm still not having much luck as people are coming through and looking at the property? Is that one -- I mean, would that count?

PAUL BLOSER: If we see numbers. Just a verbal whatever is not --

MR. MOZRALL: The problem with that is, if nobody is making an offer, I -- I can't show you, you know, numbers. I can tell you, well, this is what somebody offered me, but until they actually come through and I make a sale, I won't have the documentation. You know what I am saying?

PAUL BLOSER: Well, I -- I understand that. But with a use variance, there's four criteria, and we have to meet all four of them as a "yes" or a "no." It's not like an okay, they're good on one, but not on another. It's they all have to be met. That's going to be probably the toughest one on this. You know, to show us we -- you have had it for so long. You paid this. It's worth this amount now. You have had it listed for a year with no movement. You have had to reduce the price or take a loss. Something to show us that there's a financial hardship here, that -- to change this. That it is causing you -- you can't unload it because.

Understand that this is -- we haven't taken a vote. This is just general comments right now. We still have to open up for public opinion, but this is smack dab in a residential neighborhood. To change this to a General Business, to allow any kind of business in there, it -- you will run into the same problem as what you're having now. You're trying to sell it because the variance says, "Dental office," period, no other conditions, just dental office.

If I open this up and say, any similar business, well, what is similar? Maybe another dentist. Maybe a doctor. But it could be a tattoo parlor because they're using needles. Do I want that next to -- in between two residential houses? We don't want to change the character of this neighborhood. And that's --

MR. MOZRALL: Now, there is a business office across the road. There is a hair salon directly across from me also.

PAUL BLOSER: I understand it's across. I'm looking at driveway to driveway, next door.

MR. MOZRALL: Okay.

PAUL BLOSER: Those are things that we look at. I would not want to see the character of that house change. We had one a little bit east of you that started out as just a business and it turned into a larger business and then a second business within, and the whole front of the building is plastered with signs. It's -- no longer even resembles a house.

MR. MOZRALL: Correct.

PAUL BLOSER: That was done in one of these uses. So we're pretty -- this Town, fussy about -- to protect our neighbors. You know, the people next door to you. Is the value of their house going to suffer due to a change? It's still a residential neighborhood. I'm one voice, but you know, we want to open the Public Hearing. I want the rest of the Board to discuss it. And these are the things that we look at.

Did you get -- on the application, you know, what you have to show as far as conditions, or -- or requirements of a use variance?

MR. MOZRALL: Um, I'm sure I did. But I thought I filled out the application as appropriately as I should. I wasn't told differently.

The other question I have is if -- even if I made it into residential apartments, we would still have to change the use variance, correct?

PAUL BLOSER: No, that's not correct.

MR. MOZRALL: The first floor I could change from a dental office to an apartment?

MICHAEL JONES: It's in a residential zone, so the rest of the underlying zoning so far. Although the use variance that was granted back in '85 runs specific to the land specific to the terms of the approval, but it is still in a Residential District, so it would be -- underlying Residential zoning can be implemented.

I think what Chairman Bloser is saying is in order to have a use variance granted, you need to show competent financial dollars and sense proof that you can't achieve a reasonable rate of return with the current underlying zoning or as the current use variance permits.

PAUL BLOSER: That's not really covered on your -- on your application. That's kind of why I bring it up right up front. Because that is something that we would, you know, look firmly at.

FRED TROTT: A couple of questions to you. It's showing that the house was assessed for 166 and he has it on sale now for 142?

MR. MOZRALL: Yes.

FRED TROTT: Does that show as a loss? I mean, is that -- I mean do -- can you look at that as an aspect of it and he doesn't have an offer in on it? I'm just trying to understand.

And also, is this Innovative Recruiting Situations, are they -- do they have an intent to -- are they interested in the place, if I understand this right?

MR. MOZRALL: Yes, correct. And you know, we -- she doesn't have the financing as of yet, and the offer that we're working on is actually 135. So it's not even -- I'm not even getting my asking price.

FRED TROTT: I mean, does that show his -- a hardship? Financial hardship? I don't know. I'm just asking the questions.

JAMES WIESNER: Another way to look at when you own a business, it's depreciating over the years as you buy and actually coming down in value because you're using that as part of your business expense every year, too. So to say that that -- you know, there is some value, it's already taken away from depreciation, I imagine. It's a business. You have probably been depreciating it all along.

FRED TROTT: In the same respect, they're -- they're assessing this place for 166.

JAMES WIESNER: I understand that.

FRED TROTT: So you usually try --

JAMES WIESNER: I say he has already taken some money out of this by treating it as a business. So I don't see where that is a problem.

ADAM CUMMINGS: Based on these numbers, he is looking to get a profit of 7,000 right now. The assessed value is for taxes, and that's just estimated off of that. But the estimated market value, as Jim (Wiesner) was saying, depreciated right now, is 135. \$135,000. The last statement in income expense sheet, the bottom of it says January 2012, a listing price of 142,000, so that is still a return, positive return.

JAMES WIESNER: So if you depreciated even 10,000 per year, it's still -- still would be able to make money when you get done.

ADAM CUMMINGS: I hope it is not sitting there for another year.

FRED TROTT: That's my other concern, is I don't want a vacant house.

PAUL BLOSER: None of us want that. But we don't want to leave this open-ended. I mean, if we knew that he had a purchase offer in hand, and we wrote it that this company, and very clearly defined them and then put conditions around that per their hours of operation, signage and everything else, that's one thing. To just change the use to a General Business or similar business to be allowed in there, I --

FRED TROTT: I mean, I agree with you on that. Usually we get people that come in and say, "We're interested in purchasing this property to do this with it, and can we do this?"

ADAM CUMMINGS: I think if we model towards a specific business, we would be in the same problem we're in right now as he modeled it straight toward the dentist.

PAUL BLOSER: If this company takes it and they grow the business and five years they want to move into a large professional building or location, they would have the same issue.

That's the problem with allowing a business into a residential house, is after you have grown it, what do we do from there?

So you know, this is not picking on anybody. This is being cautious about what we do, because once you carve it out in stone, it's there. It carries with the property. So --

JAMES WIESNER: This is a much broader brush stroke than a dentist office.

PAUL BLOSER: Yes.

JAMES WIESNER: Like you said, it could be a tattoo parlor.

PAUL BLOSER: Could be anything. In fairness, it could be anything. I don't want to pick on any one type of business. That's not -- but you just can't write it for anything.

Counsel? Any comments at this point?

MICHAEL JONES: Um, there is a couple of comments. I tried to circulate an e-mail to the Board earlier today. One of the other approaches here would be to convert the application to ask the Board to interpret what the original Land Use Variance intended back in 1985.

I have heard members say that this is modeled specifically to a dental office so that you're going to have the same problem in the future as new businesses come in.

So you could get away from the four factors if the applicant converted this to an interpretation and asked for an amendment to the existing use variance to balance a broad enough to have a certain type of business against having enough control on it so it stays neighborhoodish in appearance and effect. That is another way to tackle the issue. Because we already have a use variance on the property that runs with the land.

So as I looked at this, it doesn't -- it doesn't make a whole lot of sense to have another use variance application on top of an existing use variance.

What he is really trying to do is amend or modify the existing one. So we could -- we could treat this a little bit differently and get away from the four factors because those four factors have already been found by a previous ZBA, so we don't necessarily have to do that all over again.

We could treat this as an interpretation of what the original variance was intended to do, and see if the proposed use fits with the intent of the original use application. And in doing that, this Board could, of course, impose all necessary and appropriate conditions that it finds appropriate, if it was so inclined. But I -- but I hear Chairman's concern that we don't really have a specific use before the Board right now. We have an interested party but not a contingent offer, so you're lacking a little bit of information on that, as well.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

MS. BORGUS, 31 Stuart Road

MS. BORGUS: I have been coming to these Zoning Board meetings for more years than I

care to remember, and every time I believe without fail that this Town has granted a Land Use Variance it has come back to bite the Town. These are dangerous things to give out. This man has one. I -- I can't imagine that this Board wants to risk what might come into that building in the future, by just granting a blanket Land Use Variance change.

I have heard \$166,000 mentioned. I was in the Building Department and looked the paperwork over and that is just the assessed valuation. That has got nothing to do with what that property would bring on the market. Now, technically it should be the same, but all it tells me is that this man as a businessman did not contest an assessed valuation that obviously from his sale offers is too high. But it has got nothing to do with whether he is going to lose money because it's not real money. That assessed valuation isn't real money that you can talk about.

And I think Mr. Cummings made the point. He is not -- his offer for the 135 or his estimated market value by his own admission now is not that far off from the 142 that it was worth supposedly on the 1st of the year.

So also I noticed on the financial papers that he put in, which were rather, um, generic, um, that he has -- that the apartment isn't rented. Now I can understand that if you're trying to sell a building, you're not going to rent an apartment out, especially for a long-term lease, but that profit from the apartment is not figured in as a possible income on the -- on the plus side of that financial record. I don't know if the Board noticed that, but there is no place there where it shows the potential of the apartment. It only shows the expenses with the apartment empty. That isn't a very fair appraisal of the financial status there as far as whether you can make or lose on a piece of property. You have to put all of the numbers in.

Also on that same -- on that same page, I see where his yard and ground care he lists at being \$4,000 a year. I have done property management that is an extremely high dollar price, dollar number to be putting on one lot.

MR. MOZRALL: Um, that includes snow removal and ice removal.

MS. BORGUS: Even then. That's a lot of money. Anyway.

I also want to know, going forward, if you were to change the use of that building, how many parking spaces are there? If you don't know what is going in there, then you can hardly decide whether there is enough parking there, because it's an unknown. A single dentist -- I'm assuming on my part that it was a single dentist -- would -- wouldn't have that many patients at one time, but you could have some businesses in there with multiple employees, you know, each employees waiting on, servicing, selling to any number of customers. You know, the parking situation could -- could just blow up here. You have too many unknowns here.

Um, it was interesting in looking back at the minutes from the Zoning Board in 1985 when Mr. Iacovangelo brought these same premises before the Board at that time. He said he couldn't sell it the way it was. He needed a Land Use Variance. He had hardships and I thought, you know, this is many, many years ago, but it is still the same story today.

I think Mr. Bloser makes a very good point that this building could be housing anything in the future if you give a blanket Land Use Variance here. I haven't heard it mentioned whether this gentleman has spoken to the neighbors at all about this. I think that might be a question the Board should ask.

That is -- you know, it isn't a requirement for this, but it is assumed that that would be done on any of these variances, that you do check and see how much it is going to bother your neighbors. Do they want just anything in that house?

And I'm wondering how many variances are on this property now? Maybe the Building Department could tell us.

ADAM CUMMINGS: Total variances?

MS. BORGUS: How many variances have been given on that property over time? I think you're going to find quite a few.

PAUL BLOSER: On my sheet here, Ms. Borgus, I have three different variances that have been applied for.

MS. BORGUS: There again, this is an indication that this probably wasn't a very good fit from long before now.

The other thing I questioned in looking over the paperwork, I read that that had been on the market, the property had been on the market since October. Now we're saying August? There was a comment made that it was now -- it had been on the market since August.

PAUL BLOSER: Could have been through a different realtor or for private advertising, too, so for a couple of months.

MS. BORGUS: If we're talking hardship, though, August, October, that is not the same -- that is not the same date.

I would also like to bring out to the Board with the type of traffic that may be coming out Chili Avenue in the future, that you are really, really gambling if you just give a -- broaden this Land Use Variance to anything, because it's just -- that neighborhood could change dramatically in the future and you could have anything in there. And since this runs with the property, you're -- you're giving away a lot of rights here that the Town should have and the neighbors should have to protect the neighborhood.

Thank you.

PAUL BLOSER: The neighbors were notified of the hearing, so if any of them are here and wish to speak, they have that opportunity. To ask the applicant, you know, about neighbors, it -- I would want to hear from neighbors directly on the application.

CATHY DESIDERIO

MS. DESIDERIO: I'm Cathy Desiderio. I'm the realtor that is helping Chris (Mozrall) find a buyer for the property. And also the wife of the dentist who got the first variance back in 1984. To my knowledge, that was the only variance that ever was asked for on that property, but I could be wrong.

The hardship that is happening, you mentioned turning this property back to a residential property. Well, in -- right now, if we had a buyer who wants to do this, the banks are -- will only look at that variance and they put this house under the category of commercial. Because one of the buyers wanted to do that and could not secure a loan because it's to them a piece of commercial property. Which is putting a big hardship on anyone who wants to buy this.

To get a business, and we're talking about professional type business, I understood that you have a category for businesses as business professional. We're not talking about tattoo parlors or pizza places. We're talking about a limited amount of people that can occupy the building and office because that's only 1,000 square feet and you have 11 parking spaces. So you can't have more employees for parking spaces.

So that property has so many restrictions on it that first of all, to turn it back to residential, Chris (Mozrall) has to conform with -- has to draw up plans, get someone in there to construct a house and then come back to the Board and make sure that he could turn it back into a property, which is going to cost thousands and thousands of dollars. And then only to hope that you can find a buyer. You're certainly not going to find a buyer for 140. That house then would go back to residential then somewhere between 80 and \$90,000 if you put it back. It doesn't have a garage. And the land would have to be configured to be a residential. So that hardship means you have to put more money in to get less money, to go back to residential.

But as it stands now, he just can't find a buyer to buy it because the bank won't give them the money. We have tried that.

And the neighbors, he is next to an apartment complex that is very busy, very active, people coming and going all of the time. He really only has one neighbor to the -- to the right. You have a big dental complex. You have a hair salon. You have a two-family. You know in that area you have a CDS -- CVS drugstore. So it's not that it is -- it is kind of on the tail end of the residence.

But if you have some type of ad, amendment where he can bring in another business partner -- we have someone that is interested in it, but they're not going to do -- they can't get any type of financing until we know that they can even put their business there. So we're limited because it just says, "Dental office."

If there was some type of amendment that said, "Professional business," something like that, to help us present this property in an acceptable way. You will not find a dentist. This was done back in '84. Medical professionals have changed drastically. Nobody just goes and finds a little office any more. They want groups; they want bigger buildings. So that hardship to find another dentist, we have been unsuccessful.

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 to close the Public Hearing.

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

MICHAEL NYHAN: Looking at the statement of income and expense, there is a lot of items down here for expense, but it's just not a complete document, in my full opinion. I don't feel like I have a full financial picture of this piece of property and all of its possibilities.

PAUL BLOSER: That is kind of what I was saying at the front end. It's not very complete to base a good decision.

MICHAEL NYHAN: Right.

ADAM CUMMINGS: Even though we can't base our decision -- I understand what he needs, but that is not part of our decision. This is a self-created hardship, bar none. Automatically it's in there. It's unfortunate, but it -- but it -- it's going to be a troublesome endeavor each way, either way.

MICHAEL NYHAN: I guess the other thing I would like to know is what are the other options that are available? You know we have received a letter that there are some other options available, but what are the other options that are available for this piece of property, without just saying it could be any professional business.

ADAM CUMMINGS: Right now it can be a dentist or it can be a residential.

PAUL BLOSER: That's the way it is done right now.

ADAM CUMMINGS: Right.

PAUL BLOSER: I have tried looking back, and what I have for records, we have -- I haven't done anything like this in the seven years I have been here. So it's -- I just -- to give any kind of -- you can't move broad spectrum. It's just going to -- it will come back to bite us down the line.

ROBERT MULCAHY: Anything to do with spot zoning?

PAUL BLOSER: We wouldn't do spot zoning here anyway.

ROBERT MULCAHY: Okay.

PAUL BLOSER: That would go before the Board, Town Board. And we're not doing any spot zoning.

ROBERT MULCAHY: I understand.

PAUL BLOSER: Counsel, I guess I'm going to look to you for a little bit of advice on this as far as verbiage. In your experience, have you done anything like this? I mean, you understand what the sentiment of the Board -- to just open it up to any business, um, and how well you can define it without really knowing what is going in there is -- again, we said if he had an application or a --

ROBERT MULCAHY: Purchase offer.

PAUL BLOSER: -- purchase offer --

MICHAEL JONES: Let me offer some suggestions if I may, then. The application before the Board is for a use variance, and they are remarkably hard to achieve because of the financial requirement of the four prongs. It is the dollars and cents proof that you can't receive a reasonable return because of the existing zoning. That it's just -- doesn't make sense to be zoned a certain way, and you just can't achieve a reasonable rate of return.

The issue with the loan, the bank not providing mortgages is simply because the property owner hasn't sought a C of O. You could go get a C of O from the Town for a residential use and the bank would loan.

Now that may cost money. I don't know what the issue would be for getting a C of O for residential use, but that is the reason, as I understand with work I do with banks, is not getting the ability for a bank to do a loan.

What I am suggesting, though, it might be an entirely different approach. If the applicant were to withdraw his application and not ask this Board to grant a use variance, but instead, ask this Board to -- under its interpretation authority to interpret what the original use variance was intended to allow, and -- and ask this Board to amend it to allow perhaps a broader spectrum without opening the flood gates to allow tattoo parlors or the like, um, you know, may just work by this way of analogy. I don't -- as much as people dislike lawyers, I don't imagine this Board would have the problem if the applicant was selling this building to a lawyer who wanted to replace the dental practice with a law office. This is traditionally home occupations, what we're used to. If this applicant wanted to sell to an architect, I don't imagine this Board would have a problem with that, a similar kind of thing.

However, the original approval in 1985 was very, very specific to a dental office. And that is unusual for use variances to be that specific. But the use variance is, at its essence, is a rezoning. It really is a rezoning that is done by the Board of Appeals because the legislative zoning doesn't make sense. Or the Town Board missed something and kept a piece of property zoned that didn't make sense. This Board is a pressure release valve to fix that little problem. By imposing or varying from the legislative zoning to a zoning that works. But you have to go through these four factors to do that.

Now this Board did that back in 1985 and found that an office use was appropriate for a dentist. What I would suggest is that the applicant isn't really looking for a use variance because he already has one. What he is really asking this Board to do is interpret what that original use variance was intended to convey, and whether or not it is broad enough to include a certain type of business. The problem I have is I don't know what that business would be that he has coming into it. And, of course, when the applicant makes such a request of this Board, you have complete authority to impose all of the conditions that you think are necessary to preserve the character of the neighborhood.

So it seems to me that we're sort of not talking the same language between the applicant and what the Board actually has in front of it. You guys have a use variance request. I don't think that is really what he is asking for. He already has a use variance. Sounds to me he is asking for you guys to tell him what that use variance allows him to do. So that may be -- to be technically legal that may require withdrawing the application or amending it or changing it to an interpretation. But that is just my gut. Right now you have a use variance in front of you and you don't have the financial component that a use variance is supposed to have. So that's my take on this application. Obviously it is yours to decide.

PAUL BLOSER: Thank you.

My original thought process on this one, when was looking at or reading it was kind of the same, could we modify the existing variance nomenclature to allow some type of change. On the original variance that we granted, there were no conditions of approval. There was nothing stated for hours of business. There was nothing stated for maximum number of employees. And this is something I think maybe if we rounded out our conditions of approval on what is allowed and what is not, I -- I think it would define a lot of what could and could not go into there.

I wouldn't want any kind of manufacturing in there, you know, or assembly of any type. As Counsel said, a doctor or dentist, an attorney, an architect, something of that status.

But I would want to exclude something like a nail studio or a tattoo parlor, because they could say that they're professional. They do have to have a -- licenses for Health Department and State. Tattoo parlors have to have -- a lot of licenses because they're cleaning and sterilizing needles. So technically if they wanted to fight something, they have to sterilize it just like a dentist does. They're sterilizing their medical tools, their instruments of their profession.

So I'm leery of this. So I would really want to have conditions, write this in that would protect the homeowner, the property owner at this point, so he could sell it, but the neighbors and the Town in the long run -- and that's where we have to be creative on this thing to do it justice.

ADAM CUMMINGS: Well, I guess the question right now is if the applicant wants to withdraw it or not, and then the secondary question would be if he withdraws it, do we want to amend it, and maybe not even tonight. Maybe tabling it to another meeting.

PAUL BLOSER: I would be more comfortable, I think, myself in having it withdrawn.

Here it is another month under the new -- you know, we want to have an amendment to it. And I would be willing to say, you know, we'll table this until next month. If he -- if he requests a withdrawal of this land use -- yes, correct?

FRED TROTT: Can I ask a question? Let's say for example that this recruiting situation -- recruiting company is interested in the process, and -- in buying this property. How do we write it for them?

PAUL BLOSER: Well, I think that's where, as a Board, we would have to do our homework and sit and put some ideas together so that when we meet next time, we could have something to -- without killing --

FRED TROTT: Because you look at the general use. It says barber shop and stuff like that and it actually clearly defines some businesses. So how do you clearly define --

PAUL BLOSER: That is what your conditions of approval are for, what we could and could not allow. It could be a lengthy list, but, you know, give him six or eight options. Saying this is what we'll allow. Anything else is no.

FRED TROTT: No, and I agree with you, you know.

PAUL BLOSER: At least it gives you some latitude in the sale of the property, and maybe even sit with you, some ideas, your realtor, what, if anybody has looked at it, what type of businesses have maybe possibly looked at it. And that could be considered. But I think I would rather modify and really tighten up the conditions than I would another use, because if -- in reality this use here doesn't go away. It stays. The dentist office.

So I think to amend that with conditions would be the right way to go.

JAMES WIESNER: Now we had another one down Ballantyne Road, remember where the old Monroe Tree was and they wanted a trucking business? I mean, at what point would a person come in and ask for a modification of that use variance? Would it be, you know, the person that wants to buy it to come in and say, can -- you know, will you give me a use variance for this? Does it have to be the owner? That's what I'm wondering. You know, what? That makes it more specific and we're not trying to -- to narrow it down, but we're looking at a specific application.

PAUL BLOSER: Well, we do want to narrow it down.

FRED TROTT: I think we have seen that in the past where people were interested in the property to -- but we would like it zoned this way. And we have done it that way, where we knew what was coming in there.

PAUL BLOSER: And I guess I would say that if -- if there -- if we give them -- I'm just going to throw a number, but if we were to give six types of a business, and all of a sudden, there is a seventh type that wants to come in, it wasn't part of the condition. I would say that would be an additional application regardless of the cost to do that.

I just think we would have to walk with this one at that point. So I -- I -- so I would rather narrow it down, give him some reasonable latitude on conditions and if it goes beyond that, it's a whole new application for a different type of business, basically what he is doing right now. Instead of doing another -- another land use variance.

ADAM CUMMINGS: Do we want to throw that question to him?

PAUL BLOSER: Do you understand what we have said so far?

MR. MOZRALL: Yes. I'm kind of following. I am assuming you want me to withdraw then.

I guess the question I have -- I would like to meet with somebody and make sure I'm following the correct procedure as to what you need then. Do I need to reapply, you know, all that sort?

PAUL BLOSER: They can help you in the Building Office. As far as the application, instead of a land use, you're going to do an area variance, like you were applying for a sign or --

ADAM CUMMINGS: Why would he be doing an area?

JAMES WIESNER: No. Interpretation. Like if we had -- like for a Building Inspector interpretation.

MICHAEL JONES: That's correct.

PAUL BLOSER: Ed (Shero), when we -- when we throw everything back to the Building Office, they will know what they have to give you to --

MR. MOZRALL: Okay.

PAUL BLOSER: -- to come back with. And yes, we could meet. I can't have the whole Board meet with you because then that becomes public, but if it is a one-on-one just to -- you can throw ideas at me and I can take notes. I can't advise you off line on what way to go, but like I said, between you and the realtor, if you have some ideas of businesses that we can define out, that I can work on some ideas to put conditions on those to allow that within the scope.

MR. MOZRALL: Fair enough.

CATHY DESIDERIO: When we applied for this, when Chris (Mozrall) went there, this is what they told us we had to do to get any type of business. It was just restricted to a dentist and we would have to have a General Business variance, to change it. I mean, we were guided by the building -- by Kathy Reed that this is what we had to do.

PAUL BLOSER: I understand that. Kathy (Reed) is very, very knowledgeable with these things. I have a lot of respect for her, but we posed our questions tonight to Counsel for advice, and when it comes down to something like this, that's what we look at. This is defining the law. The Building Department can't define legal law. That's why we retain Counsel.

MICHAEL JONES: Let me take some responsibility for that, too. I'm new with the Town. I have only been here for about a month. I think when you sought guidance from the Town, this

was before my time. If I was asked, I would have probably given my advice I am talking about now. You were given advice the best they could come up with at the time. I wasn't here. I apologize for that and I will take some responsibility for the fact because the advice you were given was prior to my viewing the application.

ADAM CUMMINGS: I would also -- the advice you were given is still valid. You can still move forward with that.

PAUL BLOSER: Still good advice.

ADAM CUMMINGS: But it is still our vote on that specific Land Use Variance that you're applying for.

CATHY DESIDERIO: If he has some contract and this goes with this company, then we have to come back to make sure that -- because this company wants to buy this property unless he has some change, so we -- it's going to take another month then?

PAUL BLOSER: If we had a better idea what this company does, more defined so that I can put, or the Board can put a better condition of approval on this, it just tells us what we can and cannot have on property. I want that to be much clearer.

ADAM CUMMINGS: And this application still needs to provide the dollars and cents proof.

MR. MOZRALL: Okay.

ADAM CUMMINGS: I think that was pretty clear in the Board discussion that this application did not provide that.

MR. MOZRALL: Okay. Fair enough.

PAUL BLOSER: But if we move with conditions to modify or amend, then we're not reviewing the financial side of it, because that was already done previously.

MR. MOZRALL: Okay.

PAUL BLOSER: So it makes what you have to present to us a little bit easier. But it helps us, too, that we can better protect the neighborhood.

MR. MOZRALL: Correct. No. I understand.

PAUL BLOSER: That's our primary right now, is keeping it as a whole.

MR. MOZRALL: So basically I'm withdrawing this application at this point.

PAUL BLOSER: Okay. I will see you next month.

MR. MOZRALL: Okay. Thank you.

PAUL BLOSER: Thank you. You can get a hold of me through the Building Office, leave a message with them if you need to throw a question at us. Okay?

DECISION: Application withdrawn by applicant.

2. Application of AutoCrafting, c/o Keith Larwood, 997 Beahan Road, Rochester, New York 14624, property owner, Curts Properties LLC; for variance to erect a 6' high fence in front setback area per plan submitted (4' allowed) at property located at 997 Beahan Road in LI zone.

Keith Larwood was present to represent the application.

MR. LARWOOD: Hi. My name Keith Larwood. My home address is 28 Lost Mountain Trail in Rochester. I'm here about 997 Beahan Road in Rochester. I'm looking for a variance in front of a setback area to have a 6 foot fence instead of a 4 foot fence.

PAUL BLOSER: Just a comment to the Board, I did get in my mailbox this evening, we got a signed copy back from Monroe County, and they have referred it back to us. So we did get their response back.

JAMES WIESNER: This is because it's in the Airport District or just because it's --

PAUL BLOSER: Um, yes.

MICHAEL NYHAN: They had no comment. They just referred it back.

PAUL BLOSER: They just referred it back to us. No comment.

You have been in there what now, almost two years?

MR. LARWOOD: This November will be a year --

PAUL BLOSER: This coming November?

MR. LARWOOD: Actually the past November was two years, yep.

PAUL BLOSER: This fence, on the original site plan, was this shown as a 6 foot at that time?

MR. LARWOOD: I don't believe that original section of fence that was there was on there at all. When we bought the property, there was a piece -- if you're entering the property on the right-hand side of the driveway, there was about 20 to 25 feet of 6 foot fence there already across the yard. What we have done is added to the fence and around the outside of the property.

PAUL BLOSER: I remember the fence going up to and across the driveway there. You were talking about the spaces out in front, to park the display vehicles or whatever.

MR. LARWOOD: Uh-huh.

PAUL BLOSER: I do remember that.

What is the length of this section?

MR. LARWOOD: The new section that's in, you're probably talking 35 to 40 feet, and then it goes behind the setback, which is -- part of the issue is that once it -- it -- the piece of property goes up into a hill and then down in a ravine. When it goes down to the ravine, that 4 foot section you could almost walk over the top of the fence and enter the property. It almost

defeats the purpose of having the fence there because of how the ravine is, and how we had to go through putting the fence up.

PAUL BLOSER: I don't really have any questions. I -- on this one.

MICHAEL NYHAN: Is the fence as it is currently constructed in its entirety, or is there something additional that would go on that?

MR. LARWOOD: It's done. It's completed.

PAUL BLOSER: One note before I go to side table. If I look at the neighboring businesses, you have 6 foot fence all of the way up and down. The airport across the road has got --

MR. LARWOOD: Which I was --

PAUL BLOSER: -- barbed wires, so it's -- it's consistent with the neighborhood. It's -- you know, it's a good-looking fence.

ED SHERO: Just one quick. I actually went by today. You had an A-frame out front. That's a violation. So I will condition this that the A-frame be removed.

FRED TROTT: The wood sign still there?

MR. LARWOOD: No. It's gone. It said, "free wood."

FRED TROTT: Said "free wood."

ED SHERO: Didn't see that one.

FRED TROTT: That was a nice one, nicely painted, spray painted.

JAMES WIESNER: That is where the hearing notice sign was, it had rolled down.

FRED TROTT: Dual purpose.

JAMES WIESNER: Didn't say free wood all week.

ED SHERO: Tomorrow the A-frame is gone?

MR. LARWOOD: Yes. And the Town Board sign. That was hanging on the A-frame.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

MS. BORGUS, 31 Stuart Road

MS. BORGUS: Again, am I hearing that we have a fence that was put up without permission and without a permit? Am I hearing that again in this Town? What is -- does anybody read the code? How do you think you can just do what you want in a Town that has zoning? And all towns have zoning now. I am so tired of coming to this meeting and hearing over and over that people do what they want. Forget the law. Forget the Town. The big "I." It's "what I want and I do it."

You know, they get caught and -- and then they are in here. I'm sick of it. And now A-frame signs? Is that -- am I hearing that, that we had an -- A-frame signs are also forbidden. Does anybody know the code? Does anybody care? People -- I get disgusted. These business people. You don't do what you want.

You do what the code allows you to do or you go through channels and you do it right.

Now I read the paperwork on this today and I saw a mention of the Ford Motor Company. What has the Ford Motor Company got to do with this fence? As far as I know, that was the business that was approved to modify, customize vans. I didn't know we had a car dealership going down there. What is -- I would like an answer.

PAUL BLOSER: It's not a Ford dealership there. They do work for dealers. When Ford, GM, many of these companies, if you're going to do work for them, you have to have certain insurance standards. You have to have certain building sizes. They -- you do what they want in order to get the contract. It's part of the contract. Ford doesn't own them.

Correct?

MR. LARWOOD: Correct.

PAUL BLOSER: It's part of a contract. You have to do things according to -- if they're going to store vehicles that haven't transferred ownership yet, they're being set up. Ford owns them. Once they're completely set up with the accessories and options that are technically -- it's kind of a gray area to me, but it's -- it's a Ford-installed option, but it's not a dealer-installed option, so you get licensing from Ford to put them in. They back the warranties on it as opposed to a dealership warranty. Becomes a Ford Motor Company warranty. But to do that, you have to have a certified shop to maintain their contracts.

MS. BORGUS: How many other businesses would that affect in Chili, for instance? That a Ford Motor Company or GM or whoever is going to tell us what -- what we're going to do. Just so somebody can do business in our Town.

PAUL BLOSER: Any tool and die shop, um, anybody that does any kind of manufacturing, if they have a Ford or GM contract or any other automotive, Nissan, anybody, the -- the contracts say, "You will build to our standards. You will insure to these standards. You will do these" -- this -- it's a condition of contract. Period.

MS. BORGUS: Maybe before we approve any more of these things, we better have it understood that the Town of Chili does not cow-tow to Ford or GM or any of the rest of them. We can't have companies, however big, coming in -- in here and demanding that we change our codes to suit people that they want to do business in our Town. This -- there is something wrong with that. It's undemocratic. This is not the way this should be.

PAUL BLOSER: Well, it's a condition of contract.

MS. BORGUS: Well, then we better -- before we approve any more of these businesses like we did two years ago November, we better make sure we aren't being forced to do things in this Town we don't want. We better get this all clear.

PAUL BLOSER: These were -- these are issues that were covered in Planning Board on site plan approvals.

MS. BORGUS: That we -- that we would have to go by Ford Motor Company rules?

PAUL BLOSER: I don't think it was specifically called Ford Motor Company rules, but it was -- the applicant at the time -- and I was at those meetings -- the applicant made it very clear that they were doing accessory -- installing factory-installed accessories onto vehicles for companies here in Rochester. So they would become an extension of Ford.

MS. BORGUS: I was here for that meeting, too, but I did not take that from the conversation that we were going to have Ford Motor Company telling us in this Town what code we had to -- we had to --

PAUL BLOSER: Ford is not telling us.

MS. BORGUS: That's the way I read that paper. It's a Ford -- Ford Motor Company requirement that this be done and this is why he needs it done. He is the pass-through for Ford Motor Company. That's the way I read it.

PAUL BLOSER: It's a requirement to do business with Ford based on their contract.

MS. BORGUS: All right. So we're saying the same thing different ways. It's still Ford Motor Company telling us in Chili that we have got to relax our codes to suit them.

MR. LARWOOD: They're telling us that. If we want to do business with them, we have to have this. It's not Ford telling the Town. They're telling me that. If I can't do it, then I can't do business with Ford. If I can't do business with Ford, then I'm not in the Town of Chili at the end of the day.

MS. BORGUS: It's still pressure.

ADAM CUMMINGS: If you don't mind me interrupting real quick. To show the entire context, the question was, "Is the requested variance substantial?" And the applicant's answer was, "It's a requirement for us to do business with Ford."

That, Mr. -- Miss Borgus is correct, that is the exact statement, where it is saying it's a requirement of Ford.

The recommendation for future ones for this applicant, I would recommend you are actually looking at more of the substantiality of the variance and maybe saying this is an insubstantial variance request in that 200 -- for instance, 250 feet of fence is currently on the property and we are adding 35 feet. Just to clear up what is going on with the Ford Motor Company, because I feel it's getting a little out of touch that everyone is starting to jump in against Ford Motor Company --

MR. LARWOOD: Has nothing to do with Ford.

ADAM CUMMINGS: And this really has nothing to do with Ford. It is really the safety of -- the safety of the people in the surroundings. They have heavy equipment there, and the protection of all their equipment that's on this property since it is an industrial zone.

MR. LARWOOD: And there has been a theft issue there, as well.

MS. BORGUS: It is still -- the fence -- it remains to be the fact that the fence was put up without the proper approval.

PAUL BLOSER: That's correct. And that's why they're here.

MS. BORGUS: And we have an A-frame sign. It would be my recommendation to the Building Department that a ticket be issued for A-frame signs. People in this Town that have been in business for two or three years know certainly by now that we don't allow A-frame signs, and a few tickets would bring people up short and you would cut down the number of violations. A-frame signs are out.

Thank you.

PAUL BLOSER: That's the only thing, Dorothy (Borgus), I will say with that, too, is Ed (Shero) said that he was out doing rounds today and he saw the sign. He is making the comment that the Town has identified that sign. It's improperly placed and it needs to be removed.

MS. BORGUS: Right.

PAUL BLOSER: So they are doing their job over there.

MS. BORGUS: The Building Department is, yes. But the people in this Town are not. The business people think they can continue and they will violate the law until the Building Department goes and makes them stop. That's not the way the code is supposed to work. You're supposed to honor the codes of the Town that you ask to do business in.

PAUL BLOSER: I have no argument with that. I agree with you on that.

ADAM CUMMINGS: I would like to make a motion to close public comment if there are no other comments?

REGINA LAPP HARMON, 490 Shore Drive, West Henrietta

MS. HARMON: Regina Lapp Harmon, 490 Shore Drive, West Henrietta, but I own a home at 4 Jensen Drive, Chili.

I agree with her about the arrogance of the American people. I am a true citizen. I was born in Orefield, Pennsylvania. I resent people coming from other countries to my country that my forefathers and some of my relatives died for, with shots in their back from snipers in trees. If somebody wants to come here, fine, great. Then do what my forefathers did and what my relatives did from Germany. March yourself to wherever you're supposed to go, get the papers, fill them out, pay the bucks. If you don't want to do that, you don't like it, it takes too long, it costs too much money, then you should have thought about it before you came here. And I say get out of here.

Obama's land is still where she is at and so is his drunken uncle. And I don't like smiles.

I have had too many relatives give their life for my country. They took a stand and I'm taking a stand. America is great. We share our blessings. I believe in spreading the wealth, but I also believe in people doing what they should do when they come here to this great land at the cost and the shed blood of my relatives and probably many of yours, as well. We can't just come to America and do what you want to do. There is laws of the land and the Bible, too, says obey the laws of the land.

Thank you.

MR. LARWOOD: Can I say one more thing real quick?

PAUL BLOSER: Sure.

MR. LARWOOD: I just want to point out, we did get a permit to put the fence up originally. The permit stated there was supposed to be a 4 foot section, 4 foot section. That's all I'm here for.

I'm from the United States. I'm was born here. Yada, yada, yada. That is all I was looking for, to take a 4 foot section to a 6 foot area. That's it.

PAUL BLOSER: Thank you.

No other public comments? Do I have a motion to close?

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 to close the Public Hearing.

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

Paul Bloser reviewed proposed conditions of approval with the Board.

ADAM CUMMINGS: Do we want one that it has to match the other parts of the fence, the original 6 foot? I know it does now, but this variance goes with the land, so once you say something, so he can't decide to put a white --

PAUL BLOSER: All fencing materials used must be similar in materials and colors.

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 the following conditions, and Adam Cummings seconded the motion. All Board members were in favor of the motion.

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

1. All necessary permits must be obtained through the Building Department.
2. No additional fencing or structure to be added to property without Building Department approvals.
3. Temporary A-frame signs to be removed from property. No additional signage allowed without Building Department approvals and permits.
4. All necessary inspections to be completed by Building Department.
5. All fencing materials to be used must be similar in materials and colors.

The following finding of fact was cited:

1. Proposed variance is insignificant in nature since the surrounding properties have similar fencing with heights ranging from 6 feet to 8 feet.
3. Application of Turkish Society of Rochester, owner; 677 Beahan Road, Rochester, New York Rochester, New York 14624 for variance to erect a mosque to be 27' from side lot line (50' required) at property located at 673 Beahan Road in RA-10 zone.

Patrick Labor and Mesut Vardar were present to represent the application.

MR. LABOR: Good evening. I'm Patrick Labor from Schultz Associates, and I'm also joined by members of The Turkish Society of Rochester. If there is any questions specific to their organization, we're here to answer those tonight.

I will just give you a little bit of background on the site and is what is being proposed. We have an application in to the Planning Board for -- is it okay if I walk away from the microphone?

PAUL BLOSER: As long as you speak loud enough for us to hear you.

MR. LABOR: Okay. So the proposed structure, the mosque is proposed for 673 Beahan Road where there is currently one existing house. The entire holdings -- well, the entire project

itself actually involves 675 and 677 Beahan Road. And what is proposed on 673 is an 8100 square foot mosque and some additional parking, handicapped parking for the proposed building itself. Parking, general parking for the facility will be at the adjacent parking lot and there will be cross access and parking easements over all three parcels, reciprocal easements so that, you know, it can be used by all three parcels.

The site has access to all utilities and storm water will be handled according to Town and DEC regulations. Not proposing any new accesses. We're going to use the one from 677.

As I said, this project is going before the Planning Board, I believe, on April 10th. We were asked to postpone that to that date.

PAUL BLOSER: Is 675, is that staying? That's the house in between?

MR. LABOR: Yes.

PAUL BLOSER: So that will be -- I'm assuming like offices or something that you will use that for?

MR. VARDAR: My name is Mesut Vardar. I'm the President for the Turkish Society of Rochester. Subsequently, it is basically just used as a Sunday School, and it will remain as such for now. 675. I'm sorry. Did you -- I'm sorry.

PAUL BLOSER: 675.

673 is being demolished; is that correct?

MR. VARDAR: No. 673 remains, as well. 673 is for the Sunday School. I apologize.

PAUL BLOSER: So the mosque is going between -- the Party House and --

MR. VARDAR: Correct.

PAUL BLOSER: It's going in the center.

MR. LABOR: Yes.

MR. VARDAR: Just behind 673.

MR. LABOR: 673.

MR. VARDAR: 673. So 675 remains is. 673 remains as is. The only building that is being removed is the garage, detached large truck type garage.

PAUL BLOSER: Okay.

MR. VARDAR: Which is an eyesore.

PAUL BLOSER: Just wanted to be clear what is coming and what is going.

MR. LABOR: All of the parcels will stay as they are right now. There is no resubdivision. As was stated, the variance is for a 20 foot -- a 27 foot setback to the side lot line to 677, so just so that everyone in the audience can see, it's to this lot line here (indicating) from this corner of the building.

One unique challenge that we had, which is one of reasons we're going for this variance is according to religious laws, the mosque has to be oriented in a specific direction so that it faces Mecca along a great circle around the earth, so where you would think this should be facing more southeast, it's actually following the shortest path, which is northeast in this case. It's actually the shortest route. So that's why it is oriented the way it is, looking off towards the northeast.

That basically puts the building almost at a diamond shape in a rectangle parcel, so that's making -- that's forcing the variance into a larger variance than what it would be if we could line it up with the side lot lines.

In terms of benefits sought, could it be achieved by other means feasible? We had a meeting with the Chili Building Department back in November. We looked into resubdividing the three lots into one to try to eliminate the need for a variance. What happened was 675 and 677 are General Business. The parcel we're here for the variance tonight is RA-10 Residential.

The next question was could we rezone it 673 to General Business. After reviewing the Comprehensive Plan, the future use is actually Light Industrial which wouldn't allow this use that we're proposing tonight. Basically what it boiled down to, this could possibly be a spot zoning issue with trying to get this to GB in order to merge the parcels. And the RA-10 zoning that the site currently has, under a special permit use, as a religious structure, we get that special permit, we can meet the requirements of the zoning with the exist -- with the existing zoning as is and this variance. So we did look into that.

We also looked into decreasing the size of the building, which right now is at the minimum for what they need. They don't want to get into a situation where they have to immediately expand this building in the future, so they're looking to do it right at this time. Do it right once.

Regarding whether or not the variance will produce an undesirable change to the character of the neighborhood, um, whether this building was 50 feet or 27 feet from that side lot line, um, I don't think it would change the look of the site.

It's going to look the way it looks with the proposed building, whether that 23 feet is there or it's not there. So if we're talking just the issue of the variance, I don't think it has a change. That variance itself will not change the look in the area.

Is the requested variance substantial? This is a 27 foot side setback to property that is currently owned by the applicant. We're meeting all of the other setbacks to the residential properties around us. We're well off the Little Black Creek and those properties to the west of us, so we feel that it is not substantial, since basically the variance is to us, to property that we own.

Um, will the variance have any adverse physical or environmental effects on the neighborhood or the district? The building and site improvements will all be completed to Town and all other applicable codes. Particularly, storm water, we have a full SWPPP designed, Storm Water Pollution Prevention Plan to handle the storm water. Lighting, everything else will all go

through the Planning Board and will be designed to meet the requirements or we won't get approval, so.

The physical environment should not be negatively affected by the granting of this variance.

Um, when you get into whether or not a difficulty is self-created, it's hard to prove not in a case of an area variance. I would go back to the points that I have raised earlier, regarding the way the building has to be oriented. Um, and the size of the building. It is being sufficient for the needs of the -- of The Turkish Society. We -- we have met all of the other setbacks to the neighboring properties, and, um, we're trying to propose what we feel is best for the site and for the surrounding properties with this variance by keeping everything pretty much condensed within our properties. Keeping that variance between our properties, not pushing it out closer to other landowners.

PAUL BLOSER: Okay. So really all we're looking at right now is for a 27 foot setback?

MR. LABOR: Correct.

PAUL BLOSER: We're not looking at any type of special use --

MR. LABOR: No.

PAUL BLOSER: -- or anything else. I just want to be clear on that before we go to public comment that we're just looking at a setback issue right now.

MR. LABOR: We have submitted to the Planning Board for the special use.

PAUL BLOSER: The only thing that I haven't got back yet that I haven't seen in any of the paperwork is the response back from the County.

MR. LABOR: Okay.

PAUL BLOSER: And that's a -- kind of a critical one as far as the Board moving with any kind of approvals on anything.

MR. LABOR: Okay.

PAUL BLOSER: We're -- we're just putting the cart before the horse. As of the end of business day today, there was no comment back yet.

MR. LABOR: Okay.

PAUL BLOSER: So that -- the only reluctance I have is we could be out of line legally by passing anything tonight --

MR. LABOR: Okay.

PAUL BLOSER: -- without that, because it is a process that is mandated.

MR. LABOR: From what I understand, just whether you heard this or not, it was the Airport Authority was waiting for additional information in terms of height and ponds and if they would attract wildlife to the area that could be a hazard to air traffic.

PAUL BLOSER: Apparently a lot of that is going to be geared more towards Planning Board for site plan approval anyway than it is for us.

ADAM CUMMINGS: Always a fun one. Why are they asking for a variance before they go in front of the Planning Board?

MR. LABOR: I do have an answer for this one. We were supposed to be in last month but the Planning Board Chairman wasn't available. So he asked us to volunteer to postpone it until April. So in order to keep things moving forward, we were told, "You could come in for Zoning before Planning."

PAUL BLOSER: We have done those, but we put a condition of approval that it's pending site plan approval. If they say they want to shuffle it a little bit different and staying respective of their religious law and building orientation, um, that's the only thing that -- you know, you guys have been around the barn a while. You know how to place things on the lot. You know what you had to work with and we're at the point where we need 27 feet. So I'm comfortable with that. The only thing I'm uncomfortable with is proceeding without County approvals right now. And I guess -- you know, I'm kind of in favor of tabling this until we have that.

And again, I just checked again before the meeting and there was nothing there and nothing on the fax machine. So I -- that's -- that's my big hesitation right now. I don't know how deeply that is going to impact your schedule. But it's more of a legal issue.

MR. LABOR: Right.

PAUL BLOSER: So, Counsel, do you have anything other to say on that?

MICHAEL JONES: No. That is my recommendation to the Board. I don't believe the Board can or should act without the County Comments. Back under the General Municipal Law, you're required to have those and to consider those.

We are scheduled for the Public Hearing, so I would recommend the Board continue with the Public Hearing, take the comments and then perhaps close the hearing if you find it appropriate or leave it open if you find it appropriate, but certainly you have members of the public here and they're entitled to be heard since it was noticed for the hearing.

PAUL BLOSER: Very good. That is how I am going to proceed with this.

MICHAEL NYHAN: So 673 is currently zoned Residential, correct?

MR. LABOR: Correct.

MICHAEL NYHAN: That is where this building will be placed, is on the property of 673?

MR. LABOR: Right.

MICHAEL NYHAN: And there is a 50 foot setback to the side lot line of the next residential parcel, correct?

MR. LABOR: Correct.

PAUL BLOSER: Going south.

MICHAEL NYHAN: That's north.

MR. LABOR: Well, there is a 50 foot to the residential to the north.

MICHAEL NYHAN: To the north.

MR. LABOR: And to the south, to the GB parcel, yes.

MICHAEL NYHAN: While The Turkish Society does own 675, which is the same property owner as 673, um, I do believe -- well, this is a 90 foot by 90 foot building that I think is about 64 foot high at its highest point.

MR. LABOR: 58.

MICHAEL NYHAN: It's much bigger than a residential building that would normally be on this lot. I think if this were other than a residentially zoned piece of property, a buffer would be required between the residential properties and this commercial building. So even though it may be zoned Residential, you know, I think the intent of that law is to protect the neighbors between residential and commercial, so why would we not require that same buffer even though it's zoned Residential?

PAUL BLOSER: I think that is an issue that I agree with what you're saying, and this is one, I think, should really go to Planning for site plan first.

Then they would put a -- you know, a condition on there that, you know, it's pending approval of this 27 foot, if it is okay -- but they're the ones that will have to look at that buffer.

MICHAEL NYHAN: Actually, I'm not talking about the 27 foot. I'm talking about the 50 foot.

PAUL BLOSER: Going across the road?

MICHAEL NYHAN: No. 50 foot to the north.

ADAM CUMMINGS: You're talking protecting the northern boundary?

MICHAEL NYHAN: The north corner of the building is a 50 foot setback which is a side setback to the side lot line, correct?

PAUL BLOSER: Correct.

MICHAEL NYHAN: 50 foot. It's a residential piece of property to the north.

It's a commercial building on a residential piece of property to the south. If these were two differently zoned types of land, I believe it would be required, a buffer, between these different zoning types. So even though they're both residential, we're still putting a commercial building on a residential lot. Why wouldn't we require that same buffering?

And if that is the case, then it changes this entire thing because it is 50 foot not 100 foot.

ADAM CUMMINGS: Right. Which could be a Planning Board recommendation, too, which means this entire site plan could change the next month we see it.

MICHAEL NYHAN: Correct.

ADAM CUMMINGS: That is what I mean about putting the cart before the horse.

MR. LABOR: I'm not sure if I am following. I just want to --

MICHAEL NYHAN: Correct me if I am wrong, on this, Ed (Shero), or -- if you have two different types of zoning like a residential and a commercial that abut each other, I believe you're required to have a setback with buffering between these two types of lands; is that correct?

So in other words, if 673 was a commercial piece of property, we would require buffering between the property at 673 and 669 to the north, because that is residential, correct?

JAMES WIESNER: I guess the question --

ED SHERO: I guess I don't understand what you mean by "buffering."

ADAM CUMMINGS: Similar to what we did at Microtel.

FRED TROTT: Or Microtel.

MICHAEL JONES: These are both residentially zoned, so they're not --

FRED TROTT: Yes. But what he is saying is you're putting a commercial-sized piece of building on a residential house -- residential piece of property.

MICHAEL JONES: So the Board can certainly, based on that rationale, decide to offer as a requirement of condition. That's not at all unreasonable. In fact, I think that would be an appropriate condition of approval.

I guess the question we're having is churches are allowed in residential zones, so it isn't technically a different zone. We're talking about the same zoning. I understand that the mosque or church type use is more commercial in nature, and so therefore, you might find reasonably that buffering is required. That is perfectly appropriate.

MR. LABOR: Does that require additional land to the setback, or would that be the buffer within the setback?

MICHAEL JONES: That would be up to the Board to decide. It's not a code issue. It's a condition issue, based on other aspects of the code where similar kinds of things do require buffering.

MICHAEL NYHAN: And that is my point.

MICHAEL JONES: It's a good point.

MICHAEL NYHAN: Thank you.

I guess what I would want to know is what does the Town require now, right now for that type of buffering? Is it 50 foot or 100 foot? I thought it was 100 foot.

PAUL BLOSER: They should go to Planning and let them figure out the site plan. Because they will make total site recommendations, and if they --

ED SHERO: If you're in a GB zone, you could have actually zero side setback.

MICHAEL NYHAN: To residential?

MR. LABOR: I believe that is why we have the 50 -- that's why we're here tonight, because we have GB against RA-10, so we need 50 minimum.

ED SHERO: RA-10. If it was GB, you wouldn't even be here.

MR. LABOR: Right.

ADAM CUMMINGS: But as he said earlier, they weren't going after rezoning, and even resubdividing, they didn't go that option either.

ED SHERO: Right.

MR. LABOR: And that's my understanding, is it's something that wouldn't get approved, based on my discussions with the Building Department.

ED SHERO: I don't know if we're going to find in the code book an actual buffer requirement. I think it is just -- it's on a case-by-case basis as the Planning Board feels fit.

ADAM CUMMINGS: Or Zoning Board.

FRED TROTT: What was the one for, um, Boon & Sons with the property -- there was a fire -- firemen's field, the firemen-owned property next to it. There was some kind of buffer there and people were saying they were going to use that, only a 60 foot buffer, but actually with the residence, because of the other property, it was going further.

ED SHERO: The property next to Boon & Sons is railroad tracks. Then you had the backyards of Paul Road, but Boon didn't come in, I believe, for a rezoning. He came in applying for a change of use, because it was already zoned -- it was a permitted. It was permitted for what he wanted to do. He didn't have to come for variances -- but because of the change, and it's been a while and I wasn't -- I came to the Zoning Board at the time. I think the concern was whether you had garbage trucks, you had dumpsters and people on Paul Road didn't want to see them so they wanted some type of buffer so they wouldn't all be --

FRED TROTT: But there wasn't a defined you have to have X amount of --

ED SHERO: I don't believe so. I think it is on a case-by-case basis. I have never seen or come to my mind about a defined buffer zone.

JAMES WIESNER: I remember whatever it was, it changed. It was like we were debating whether it fell under the new zoning or the old zoning. I can't remember what for.

ED SHERO: A lot of times buffering might consider like -- you know, like the Microtel. It was one story, it might not be as much -- originally that was proposed as a three-story building, and, you know, you would need a bigger -- if you wanted people in a residential area, you -- they would much rather look at a one-story building than a three-story building coming down in your backyard. So again -- I believe again, it's on a case-by-case basis, what we're doing. I don't know you can be specific.

FRED TROTT: I have a question. Is this -- because you're not -- you're not making one big lot, this the only area that is going to be considered a church? Is the Turkish Society on 675 and 6, is that considered a church property?

MR. LABOR: The --

PAUL BLOSER: All of them are.

MR. LABOR: Well, they're all under the ownership of The Turkish Society, but the proposed building is the only one that is --

MR. VARDAR: To be used as --

MR. LABOR: -- as a mosque, as a religious structure.

ADAM CUMMINGS: The other ones are zoned differently, too. This is the only residential parcel.

MR. LABOR: This is the only residential.

ED SHERO: The Turkish Society is still an ongoing. You still have parties there. The last time I was there, the bar was there still. Unless you had changed in the last year or so.

MR. VARDAR: It's the Community Center. Correct.

MR. LABOR: Don't think it is the intent to -- if --

MR. VARDAR: There is no change.

MR. LABOR: There is no change in the other two parcels use wise. I think tax status wise, it will stay the same.

ADAM CUMMINGS: On 673, you said that's a child day care right now?

MR. VARDAR: No, not a day care.

MR. LABOR: Sunday School.

ADAM CUMMINGS: Oh, okay. Never mind.

MR. VARDAR: Few hours of Sunday School.

ADAM CUMMINGS: Got you. I didn't see anything in there about special use right now.

MR. VARDAR: Just a few hours.

MR. LABOR: We were asked by the Building Department to submit for special use for the mosque and for the Sunday School, so those are both on that application.

ADAM CUMMINGS: But I think at this point we might just want to go to public comment instead of drumming this along because we don't have County Comments, so we really can't do anything tonight. We should probably open the Public Hearing and possibly close it and then table it.

PAUL BLOSER: Yeah. I want to get to everybody before we open it.

ROBERT MULCAHY: If you open it for Public Hearing, it's my understanding that -- if we close the Public Hearing, it needs to come back here for approval. If we leave Public Hearing open --

FRED TROTT: I'm trying to figure out how that would go.

ROBERT MULCAHY: One way, if we close the Public Hearing, within 60 days we don't do anything and he doesn't do anything, he has the right to go ahead and do what he wants to do. If we don't close the Public Hearing, then he has to wait like 60 or 90 days before we can do anything.

MR. LABOR: Our -- I was just going to say our schedule doesn't give us the flexibility to wait that long. I'm assuming if we're going to be at multiple Planning Board meetings, Zoning will fit in between.

FRED TROTT: As far as we could have a Public Hearing, but we could also leave it open? Leave it open and not close it. Our class that we went to last night.

ROBERT MULCAHY: That is why we know so much.

MR. LABOR: I don't have a problem with that.

FRED TROTT: See, Dorothy (Borgus), we learned something.

MR. LABOR: That's fine. I have no problems with that.

MICHAEL NYHAN: So 675 is General Business. My notes exclude 675 on the building permit?

MR. LABOR: It's General Business.

MICHAEL NYHAN: 675 is General Business.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

MS. BORGUS, 31 Stuart Road

MS. BORGUS: I have a question. The land, the lot that is immediately south of where the proposed church goes -- is to go, what is that zoned?

ADAM CUMMINGS: General Business.

MS. BORGUS: General Business. And where the church is going is General Business?

PAUL BLOSER: Residential.

DOROTHY BORGUS: It's Residential.

MS. BORGUS: The one north is?

PAUL BLOSER: Residential. The Party House included.

ADAM CUMMINGS: Those are actually two lots.

PAUL BLOSER: Three lots total.

MR. LABOR: Party House is down here (indicating) to the south. 675 where just the small house is is also a General Business.

MS. BORGUS: So then if both of those lots, the one in the middle and the one to the south are General Business, why don't we eliminate the line and they wouldn't be here for a variance?

MR. LABOR: We would have done that if that is what we could do. What we were told is that that is not something that could happen based on the Comprehensive Plan, um, and the fact that the surrounding area, the adjacent property to the north and everything to the west is Residential. It would be considered spot rezoning to change it to GB. And the Town would have no -- the Town would not have any way to enforce what goes on that property if the mosque should no longer be the use in the future. So then you would have --

MR. VARDAR: Planning Board recommendation.

MR. LABOR: You would have multiple acres of GB in the -- in a Residential neighborhood that you couldn't control what goes in there as soon as they came in with something that meets GB. The Comprehensive Plan says Light Industrial for all these parcels in this area, and that doesn't allow us to put in a religious structure according to the code. So we're working with what we have on the three parcels with the zoning that we have. This was based on a meeting with the Building Department and the Planning Board Chairman.

MS. BORGUS: Okay. Thank you.

CHRIS JUDD, 669 Beahan Road

MR. JUDD: My name is Chris Judd. I'm the owner of 669 Beahan Road, which is directly next door to where the mosque is being built. I went to a meeting with The Turkish Society, and I'm all for them building it. But I did bring up to them, and I'm not sure if this is the right meeting to discuss it or the Planning meeting, but it was stated that it wouldn't impact.

It's going to impact the privacy of my yard. I have been there for 20 some years. We talked about putting buffers and trees and things. I want to make sure those things happen because right now, it's completely wooded, natural, private. Putting this mosque up is going to drastically change it. So you need to tell me if I need to talk more at this meeting or at the Planning?

PAUL BLOSER: It would be site plan review on how they lay out their conditions. So that would be Planning Board.

MR. JUDD: That would talk about the existing house that is there now, right?

PAUL BLOSER: Yes.

MR. JUDD: Okay. Then we'll do that at the next meeting.

REGINA LAPP HARMON

MS. HARMON: Regina Lapp Harmon, and I own property at 4 Jensen Drive.

PAUL BLOSER: Ma'am, could you step up to the microphone? I can hardly hear you.

MS. LAPP HARMON: Sorry. I'm Regina Lapp Harmon, and I own property at 4 Jensen Drive in Chili. Um, I am not in favor of this mosque.

Um, I believe I could be wrong, but I believe there is minarets on mosques, at least somewhere in Israel there was. These things are loud. They're very loud. And I don't believe there is going to be any kind of barrier put up anywhere that is going to stop those vibrations.

I believe they go five times a day to call their parishioners to prayer. Um, my grandchildren cannot pray in a public school, and I don't like that President Obama had someone

swear on the Koran the Oval Office. It has been desecrated by Bill Clinton with his stunts that he performed in the Oval Office.

Maybe this is too political, but it is things that Americans need to talk about and come to grips with.

I am being invaded. I don't like that. I do not like seeing people walk around with all kinds of garb on where all I can see is their eyes. If I went to some of these other countries --

JAMES WIESNER: It's not relevant.

MS. LAPP HARMON: -- I would be booed.

Maybe this is not relevant, but the point is I do not want it here. I do not want this variance granted, and I don't want them trying to convert Christians, Americans to Allah God who has never raised anyone from the dead. I just -- I do not want it. And there is many people that don't want it. I don't know where they are. I don't know why they're not here.

It's just not a good thing. It's a lot of noise. I know. I have heard it. Once again, I said, this is America. And it was founded under Christian principles, and when you talk about rules and regulations and guidelines, that's what we should go by.

I would wonder -- how many of these people are legal? Maybe you don't want to hear it. I see you shuffling your papers, and that is okay if you don't want to hear it, but I don't want to hear their stuff either.

FRED TROTT: We're a Zoning Board and we're only discussing a 27 foot setback.

MS. LAPP HARMON: That's --

FRED TROTT: This is not a political forum.

MS. LAPP HARMON: I'm giving reasons why I don't want it and why a lot of other people would not like it --

FRED TROTT: You should only address the 27 foot setback. To -- for the 27 foot setback.

MS. LAPP HARMON: Well, I'm stating these are things to address that. Those are the reasons why I do not want that setback, because I know those things will be the outcomes of them being granted that. And then when it's granted, that's the way it's going to be.

Thank you.

MR. LABOR: There will be no external speakers with call to prayer or anything like that. Everything will be internal.

MS. LAPP HARMON: You won't have minarets?

MR. LABOR: There will be minarets. Two minarets proposed, but there will be no -- there won't be someone up in the minarets. The minarets aren't even occupiable. They're, I think, concrete with fiberglass on top of them. No way to get up to them. The Planning Board is going to tell us that we can't have any loud speakers on the outside. That is not what is being planned. The people in the area know when to come to prayer and they do it on their own accord. They are not called to prayer.

PAUL BLOSER: These are issues that will all be covered under the site plan. We do not address site plan issues, so that would be a better forum to discuss your concerns relating to the property.

MS. LAPP HARMON: Yes. How do I find --

PAUL BLOSER: They're not a political forum. They won't get into what is allowed and what is not allowed as far as religion. I'm not going to go deep into it.

I'm going to say this is America and one of our things is freedom of religion, freedom of choice. For them to come in here, they have just as much right as a Christian group to come in, and we have a lot of Christian churches that go to them and convert them to Christianity. If they want to try converting, that is what makes our country free and why people have died for that right. So, you know, we all have our opinions and I'm not going to say one is good and one is bad. That's what makes this country great; is we can express those opinions.

MS. LAPP HARMON: That's true. I agree with you.

PAUL BLOSER: So but as far as the issues relating to the site, the construction of the building, and anything with their day-to-day activities, those will be conditions that will be written into the site plan, and those issues should be addressed at the Planning Board meeting.

MS. LAPP HARMON: How do I find out about those times?

PAUL BLOSER: The second Tuesday of every month.

MS. LAPP HARMON: Okay.

MR. LABOR: I believe it is April 10th.

MS. LAPP HARMON: All right. Thank you. Thank you.

PAUL BLOSER: I'm not going to close public comment. We'll leave this open so that when we come back to address this, we can. What I am going to suggest right now is that we table this application. I'm going to table it based on we do not have County approvals back. That's as clean as I can make it. At this point, I think that is the fairest way to go to everybody, because we just can't proceed anywhere without this.

MR. VARDAR: One simple question, if I may. It is not possible to do subject to County Comments, correct?

PAUL BLOSER: No. And -- on this type of thing, no, I can't do it that way. We really have to have those before we can make any kind of official ruling.

If we could, we would. And we do that quite often on cases where we'll say, you know, we'll get this condition, but it is subject to this approval that another Board can make.

MICHAEL NYHAN: I will say that in April our meeting is early, so they meet with the Planning Board, I believe, on the 10th; is that right?

MR. LABOR: Yes.
MICHAEL NYHAN: The following week is the Zoning Board, the 17th. We're a week early, so it will be one week -- well, we have the County -- if we have the County's report back.
ADAM CUMMINGS: If we have the County and Planning Board's review and comments.
MICHAEL NYHAN: One week between the two Boards.
MR. VARDAR: Understood.
PAUL BLOSER: With that, this application is over for this evening.
JAMES WIESNER: Now, who has done SEQR on this? Has Planning Board done SEQR?
ADAM CUMMINGS: I don't think anybody has done SEQR.
PAUL BLOSER: Without the County, can't really do anything.
MR. LABOR: There is one for both actually.
MICHAEL NYHAN: Planning Board --
MR. LABOR: You should have one for zoning.
PAUL BLOSER: But again, I have -- the County --

Multiple side conversations were had by the Committee members.

MR. LABOR: Okay.
PAUL BLOSER: Thank you for your time.
I will make a motion that we table this application based on required information from County not yet received.
ROBERT MULCAHY: So moved.
MICHAEL NYHAN: Second.

DECISION: Unanimously tabled until 4/17/12 by a vote of 6 yes to table for the following reason:

1. Due to lack of Monroe County Planning Department comments.
Public hearing was not closed.

Note: Applicant to obtain new signs to post and maintain per Town Code.

ED SHERO: We have an answer to your question. Your buffer question. I will e-mail to -- you want me to e-mail it?

MICHAEL NYHAN: You can e-mail it to me. Or tell. Then we'll all know.

ED SHERO: There is a buffer when GB is -- bordering R-1 or RM District, there is a buffer to be minimum of 40 feet. At least 30 feet of which will be fully landscaped buffer. However, there is probably an RA district that will not apply.

MICHAEL NYHAN: But we can make it a condition. So it is a 40 foot buffer is required, 30 foot of which needs to be landscaped?

ED SHERO: Yes.

MICHAEL NYHAN: Thank you.

MR. LABOR: Is that in addition to the setback?

MICHAEL NYHAN: Good question. Can it be within the setback?

ADAM CUMMINGS: I think so.

MICHAEL JONES: That one I believe can.

MR. LABOR: I think that was the glaring question.

ED SHERO: The question is -- there is no setback -- it is kind of weird. The question is in GB.

ADAM CUMMINGS: I think we can determine it.

MICHAEL NYHAN: It could be good to have what our current --

ED SHERO: The GB zone, there is no side setback.

JAMES WIESNER: We're dictating what the ruling is going to be.

ADAM CUMMINGS: We're making the buffer a certain width with a certain landscape width, but since there is no technical setback, we're following the intent of the GB determination and we can go right to the property line and that will be our buffer.

So you will go 40 feet from the property line and 30 feet of it --

MICHAEL NYHAN: Has to be landscaping.

ADAM CUMMINGS: Either we landscape from the zero point or move it in 10 feet.

MR. LABOR: You mean --

MICHAEL NYHAN: Did you follow that? I'm talking -- I raised that for the neighbor, as well. My question was whether a buffer was required between the buildings, and because of the zoning, it's not required, but we could request that if -- if it were zoned the way, it would be 30 foot buffer with 30 feet of landscaping between your property and the building that is being proposed.

Is that the way I interpret that?

MICHAEL JONES: Yes.

MICHAEL NYHAN: That is something we'll be taking into consideration or the Planning Board.

JAMES WIESNER: The Planning Board.

MICHAEL NYHAN: Or should be raised with the Planning Board for consideration.

MR. LABOR: We'll be working with the landowner to make sure that everyone is satisfied.

MICHAEL NYHAN: Thank you.

4. Application of Mr. and Mrs. John Harmon, owner; 4 Jensen Drive, Rochester, New York 14624 for variance to allow existing dwelling to be 5.1' from side lot line (7' previously approved) at property located at 4 Jensen Drive in R-1-12 zone.

John Harmon and Regina Lapp Harmon were present to represent the application.

MR. HARMON: In essence, we would like to remain just exactly as it is now. It is now, I understand, 5'1" from the side lot line.

MICHAEL NYHAN: Is this a deck or the structure? All I saw was the house itself. I didn't see anything beyond the edge of the house.

MR. HARMON: There is a deck on the rear of the house.

MS. LAPP HARMON: I believe it is the garage.

MR. HARMON: This deals with the -- with the garage is the part of the structure that is presently 5'1" from the side lot line. We just like it to remain as is.

MICHAEL NYHAN: Okay. So it's an existing garage that is 5'1" from the side setback; is that correct?

MR. HARMON: Yep.

FRED TROTT: You were approved for a 7 foot setback; am I reading this right?

ADAM CUMMINGS: On the other side.

FRED TROTT: The other side.

PAUL BLOSER: In 1966.

ROBERT MULCAHY: How long has it been like this?

MICHAEL NYHAN: That's why I am confused, because of the deck part.

So you were previously granted a setback of 7 feet, correct?

MR. HARMON: I believe that -- I'm not sure when that occurred. I haven't lived there for quite some time.

MICHAEL NYHAN: I'm sorry?

MR. HARMON: That was my house originally, but I haven't lived there for quite some time, so I'm not sure when the 7 foot came in.

MICHAEL NYHAN: I think it is in the '60s when that was granted.

ADAM CUMMINGS: Says in 1966 it was granted a 7 foot side setback for the garage side and a 7 foot side setback on the other side, so it looks like there just wasn't --

MICHAEL NYHAN: So the garage was added in '66 with a 7 foot setback, and as it turns out, it is 5'1".

ADAM CUMMINGS: They constructed it 2 feet wider.

MICHAEL NYHAN: The deck threw me off. That is why I was confused.

JAMES WIESNER: Or the lot line moved. We have saw that happen before, too.

PAUL BLOSER: Some of the lots over there, too, had the -- two different surveyors doing a lot over there, and they said they both came up with different readings. They were about 2 foot from each other.

And just based on where the old markers were and ground shift over the years, and that is how they kind of got laid out. It was close and everybody agreed on it.

ROBERT MULCAHY: Do we know who put the garage up?

PAUL BLOSER: Not personally.

ROBERT MULCAHY: No, I mean in the notes that you have read?

PAUL BLOSER: No.

ROBERT MULCAHY: Did you put the garage up? Did you build the garage?

MR. HARMON: No, I didn't build it. We had a contractor build it. I forgot his name.

ROBERT MULCAHY: But you were in the house when he built it?

MR. HARMON: I believe so, yes.

FRED TROTT: What is this part about repair deck according to Chili space -- specs? I guess that is all -- I'm confused, too.

MICHAEL NYHAN: I think --

FRED TROTT: Item 7 of your application, it says, "Brief description of the project. Include current or proposed use." It says, "Repair deck according to Chili's specs."

What does that have to do with the setback?

MR. HARMON: Nothing. Two separate issues.

MS. LAPP HARMON: When -- you say "repair deck"?

FRED TROTT: Says here on your application, Number 7, "Brief description of the project. Repair deck according to Chili specs."

MR. HARMON: We're talking two different things.

MS. LAPP HARMON: I don't know what that is about. We're only married five years, and we just bought the property back from the lady. We had closings last -- the end of November, around Thanksgiving. She had some repair work done on the deck, steps and spouting, downspout gutter stuff, so it's possible that that is what that is referring to. I don't know. I never lived in the house. His previous wife is deceased. My previous husband is deceased.

PAUL BLOSER: Is this something that there is an open permit?

ED SHERO: They used to own the house. Mr. Harmon owned the house, sold the house, and bought the house back. While the house was sold, the deck was built without a permit. They have since rectified that, recognized and closed out the permit. The deck is good. I don't know why it is on there, but it has no bearing on this.

And the other thing I wanted to add is that in -- and another note on this also we have a front setback issue. A variance in 1965 or so, when it was given, was for 50 foot, and you can see it is now 48.4. I guess instruments just have gotten better. I don't know what the answer is. But if you would, if you -- you know, let's try to catch this all at once.

PAUL BLOSER: Yes. No, I would prefer to do that. Everything is done off satellite now.

ADAM CUMMINGS: It's because the earth shifted.

ED SHERO: Some has shrunk and some has grown. Some person got a bigger lot than what they bought. I don't know.

PAUL BLOSER: I don't have any other questions.

MICHAEL NYHAN: We're looking for a side setback and front setback; is that correct?

PAUL BLOSER: Yes.

ADAM CUMMINGS: I have a quick question. Sorry. This survey that was handed in, I take it, this is recent, the -- it is tough to read the date but the survey was done on 9/28/2011. The surveyor didn't date his seal -- never mind.

October 2nd, 2011. Now I found it. So it is a recent survey.

MR. HARMON: Evidently.

ADAM CUMMINGS: Thank goodness. Can we frame this? This is one of the first ones we had come in with a current survey instead of hand sketched.

FRED TROTT: My only question is should we round off the numbers so if they're not within an inch, they don't have to come back? According to this survey.

MR. HARMON: Please round it off to the easiest number.

ED SHERO: How about 50 foot and 48? That sounds good to me.

MICHAEL NYHAN: Side setback is 5 foot, the front setback is 48?

ED SHERO: Yes.

ROBERT MULCAHY: That's fine.

FRED TROTT: Somebody adjusted something at some point. 2 feet is pretty big.

PAUL BLOSER: Ed (Shero), what did you want for the side?

ED SHERO: 5 foot.

MICHAEL NYHAN: 5 for the side.

ED SHERO: That's the State minimum, too.

PAUL BLOSER: And 48 from the front.

MICHAEL NYHAN: Did you open to this public comment?

ADAM CUMMINGS: Not yet.

COMMENTS OR QUESTIONS FROM THE AUDIENCE: None.

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

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

Paul Bloser reviewed the proposed conditions of approval 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 Michael Nyhan seconded the motion. The Board all voted yes on the motion.

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

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

1. Setbacks for south side to be amended to 5 feet. Setback for front to be amended to 48 feet.

The following finding of fact was cited:

1. Proposed variance will not have any adverse physical or environmental impacts since the granted setbacks meet the minimum State requirements for setbacks and the structure has been standing in this position for over 45 years and has not impacted any of the surrounding properties.

The 2/28/12 Zoning Board minutes were approved as submitted.

The meeting ended at 9:04 p.m.