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CHILI ZONING BOARD OF APPEALS
April 24, 2007

A meeting of the Chili Zoning Board was held on April 24, 2007 at the Chili Town Hall, 3333 Chili Avenue, Rochester, New York 14624 at 7:00 p.m. The meeting was called to order by Temporary Chairperson Michael Martin.

PRESENT: Paul Bloser, Jordon Brown, David Cross, Richard Perry James Wiesner and Temporary Chairperson Michael Martin.

ALSO PRESENT: Keith O'Toole, Assistant Counsel for the Town; Dennis Scibetta, Building & Plumbing Inspector.

Councilman Schulmerich, Town Board Liaison, was also present.

MICHAEL MARTIN: Before we get to the first item, we'll go over the signs for each of the item to make sure they were all advertised properly.

On the first sign, any issues?

RICHARD PERRY: No problems.

The Board indicated they would hear the application.

MICHAEL MARTIN: Number 2.

PAUL BLOSER: I did not see one.

MICHAEL MARTIN: Which one?

PAUL BLOSER: First one I did not see one.

JAMES WIESNER: When I stopped by Saturday night, the bottom portion of the sign was missing. It was ripped or torn.

MICHAEL MARTIN: They made a diligent effort to put the signs up because they had several signs stolen.

JAMES WIESNER: Looked like it might have been defaced, like someone ripped the bottom off.

RICHARD PERRY: I saw it.

MICHAEL MARTIN: I saw it. No problems hearing it.

Second one, any problems?

The Board indicated they would hear the application.

MICHAEL MARTIN: Number 3.

RICHARD PERRY: No problem.

The Board indicated they would hear the application.

MICHAEL MARTIN: 4, no problems.

The Board indicated they would hear the application.

MICHAEL MARTIN: 5 was the same location as 4.

The Board indicated they would hear the application.

MICHAEL MARTIN: 6, any problems?

The Board indicated they would hear the application.

MICHAEL MARTIN: 7.

The Board indicated they would hear the application.

MICHAEL MARTIN: 8.

RICHARD PERRY: Likewise.

PAUL BLOSER: I did see the one there.

RICHARD PERRY: It was there this past Saturday and Sunday.

MICHAEL MARTIN: It was there. I was out over the weekend. I did see it. Everyone saw it. Does the Board have a problem hearing that one?

The Board indicated they would hear the application.

MICHAEL MARTIN: Okay. We'll go right to the top of the agenda, and before I call --

JORDON BROWN: I need to recuse myself.

1. Application of Lifetime Health Medical Group, 800 Carter Street, Rochester, New York. 14621, property owner: Village Park Associates; for variance to allow a temporary. 2' x 3' "A" frame freestanding sign, variance for sign to be 1' from front lot line (15' req.) at property located at 849 Paul Road in G.B. zone

MICHAEL MARTIN: For anybody in the audience interested, there is a posting on the bulletin board of all of the pertinent material for the application.

Please introduce yourself.

MR. BECDECUH: My name is Peter Becdecuh, B-E-C-D-E-C-U-H. I represent Lifetime Health Medical Group. We are a pediatrics group located within 1849 Paul Road. The practice has been there for about three years. The issue that we're having is that when we try to acquire any new families to join the practice, they have issues trying to find the practice within that area.

MICHAEL MARTIN: Okay.

MR. BECDECUH: We're asking a 2-foot by 3-foot A-frame sign to be placed on the property next to the Village Park Associates sign just to show patients where the practice is.

MICHAEL MARTIN: You have in the application for a temporary sign. How long are you planning to have it?

MR. BECDECUH: We're trying to request just six months.

MICHAEL MARTIN: Until you establish the practice and the patients become familiar with the location?

MR. BECDECUH: Yes.

MICHAEL MARTIN: Questions from the Board?

DAVID CROSS: 1 foot off the lot line. Is there a reason why it can't be 15-foot back? Is there sight distance?

MR. BECDECUH: We wanted to be placed near the road on Paul Road, next to the Village Parks Associates there.

MICHAEL MARTIN: Is the Village Parks Associates sign --

MR. BECDECUH: Also 1 foot, yes.

MICHAEL MARTIN: Does it interfere with line of sight of traffic in any way?

MR. BECDECUH: No.

PAUL BLOSER: Is there -- isn't there a directory sign for that building in the front by the driveway?

MR. BECDECUH: It's inside the -- there is a directory sign there, but they're very small. We did apply for a variance years ago when we put the sign, but it is not very visible.

PAUL BLOSER: Have you talked to the building owner about enlarging the sign?

MR. BECDECUH: Yes. His requirements is all of the signs remain the same size.

PAUL BLOSER: The only problem I have is we're going back to what we had on Paul Road, is multiple business signs for one building.

MICHAEL MARTIN: Right. The only difference is this is a brand new established medical facility with new patients and they're trying to bring new patients in, and it is also a temporary -- it wouldn't be there permanently.

PAUL BLOSER: This is just temporary?

MR. BECDECUH: Yes.

MICHAEL MARTIN: You say you're requesting maximum of six months for the sign?

MR. BECDECUH: Yes.

JAMES WIESNER: You said this pediatricians office is new to the complex?

MR. BECDECUH: It has been there for a couple years. It is in the lower level, in the back of 849 Paul Road. It is very difficult to see. We have requested through the owner to put signage on the doors, but that has been denied.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

DOROTHY BORGUS, 31 Stuart Road

MS. BORGUS: Did I just hear this applicant say that this office had been there three years?

MR. BECDECUH: Two to three years we have been.

MS. BORGUS: Well, it's not new then. And you already have a sign up. I agree with Mr. Bloser. Multiple signs will -- will multiply like mad in this Town if we just open the door. A-frame signs are illegal for a very good reason. They're distracting. They're -- they present clutter, and I haven't heard any reason why this business deserves an A-frame sign more than anybody else in Town who is in business. Just because people can't find your location, that implies you're in the wrong location. And that is not this Board's problem and it is not Chili's problem.

I -- one of my jobs when I worked for a hospital was to site off-site facilities. That is the one thing we looked for first off was visibility, ease of location, ease to find, but I will tell you, once we were in, our sign problems and the fact that we couldn't have signs, especially in Perinton and Pittsford, out east of the city, it was our problem. And not once when I went before boards, when we had attorneys go before boards, were we ever allowed to -- to chip away at the law. We never got a sign. But that is a site siting problem. That is not this Board's problem. If you let this applicant have this variance based on the flimsy, almost nonexistent excuses they

have offered, then every business in this Town will be up for a sign and you won't be able to hold it back. This should be turned down.

MICHAEL MARTIN: I misspoke when I said "new." I apologize for that.

MR. BECDECUH: Well, the practice is open for new patients now. Right?

MICHAEL MARTIN: Previously, it had only been existing clientele.

MR. BECDECUH: Yes. It relocated from another part of Chili over to Paul Road. And now there are two new physicians there, and the practice is open for new patients.

MICHAEL MARTIN: Okay. As the A-frame shows, it is basically saying accepting new patients?

MR. BECDECUH: Right.

CHARLES RETTIG, Coldwater Road

MR. RETTIG: You noted that the bottom of the sign was missing. Although I will also point out that the Zoning Board of Appeals sign of this meeting is on the back side of an A-frame, and on the other side of that A-frame is advertising, which is I don't think proper even for the posting of the sign.

Um, I note that last month a complaint was filed in regard to an illegal sign. This gentleman is asking for six months to extend this A -- to have this permit for a temporary sign for six months. He has already had it out there for two months without the Chili Building Inspector or Code Enforcement taking it down.

Complaint was filed March 22nd, and it was not taken down. I don't know if they're doing their job or not, but it certainly doesn't appear to me.

Also note that the application, what is listed in the agenda states the word "temporary." I don't see the word "temporary" anywhere in the applicant's application, original application, nor was it amended to state so.

Number -- another item. 1 foot versus 15 feet from the front property line is unacceptable. We have codes and laws. We have a sign law, and we should be following it. The existing sign is permanent and has the name of the company on the existing board. If Lifetime has a problem with that size, I understand that. They should see the owner. The owner happens to be Mr. Valerio. If he says all signs should remain the same, you should have that out with the owner who just happens to be the husband of Mary Valerio, our County Legislator. I think they should follow our rules as everyone else does in the Town, that we have laws, and the A-frame is not in our sign code. And if, as pointed out by Dorothy Borgus, if we go ahead, if this Board passes this particular approval, they're leaving Pandora's box open. It is a precedent no matter what you say, and you're going to have problems. So point is, this should be turned down.

HEATH MILLER, 69 Bellmawr Drive

MR. MILLER: How large is the existing sign that you have?

MR. BECDECUH: I think they're about 24 inches by 24 inches, not even -- I'm sorry. It is smaller than that. They're like 18-inch by 18-inch signs on the main post, which is not very visible.

MR. MILLER: Okay. My only concern about approving this A-frame sign is that when people drive by and they see it, other businesses might think that these signs are now okay to have up. When I drove in tonight, I came in off of Exit 4, and on the corner there of Chili Avenue and Union Street, I think there was an A-frame -- there was an A-frame style sign for, I believe, it was Ryan Homes. That's always there.

So I am just concerned that other businesses, if they see this up, may think oh, these are okay now. Or maybe we're not enforcing the code regarding these types of signs, and you may see more of these signs appearing. That's my only concern.

Thank you.

The Public Hearing was closed for this application at this time.

MICHAEL MARTIN: This item was referred to the Monroe County Planning Department and was sent back as a local matter.

Michael Martin 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 Richard Perry seconded the motion. All voting Board members voted yes on the motion.

Richard Perry made a motion to deny the application with the following findings of fact having been cited, and Paul Bloser seconded the motion. All voting Board members were in favor of the motion to deny the application.

DECISION: Denied by a vote of 5 yes with 1 abstention (Jordon Brown) for the following reason/following finding of fact having been cited:

1. There would be multiple signs at one location creating clutter and a safety hazard.
2. Application of Touch Free Car Wash, LLC, 4 Elatia Circle, Pittsford, New York 14534,

property owner: JR Realty Estate, Inc.; for variance to erect a 2nd wall sign to be 2' x 3' at property located at 4392 Buffalo Road in G.B. zone.

Robert August was present to represent the application.

MR. AUGUST: Thank you. My name is Robert August. I'm a partner with Touch Free Carwash. We opened about 90 days ago, and, quite frankly, we were a little remiss in that we didn't include a request for this 2-by-3 sign that states our hours of operation when we asked for all of the -- with the balance of our signage, which is essentially one 3-by-8 non-illuminated building sign. We are getting questions from our customers and others as to what our hours are, and that is why we are making the request. I would be happy to answer any questions.

MICHAEL MARTIN: Is this hours sign to be illuminated?

MR. AUGUST: That was the plan. It's a blue, deep blue face with white letters that really -- it is just the letters that you -- mostly the letters that you see.

MICHAEL MARTIN: It is internally --

MR. AUGUST: Yes. It is internal -- two fluorescent, low wattage. I'm not sure of the exact wattage, but it's not a bright sign. It is not neon, nothing like that, just to say we're open.

DAVID CROSS: Turns on --

MR. AUGUST: We do everything with dawn-to-dusk sensors so we don't have to keep adjusting. Just like the property, the parking lot lights and the lamps on the building.

MR. BLOSER: You currently have two banners right now, one to the southeast and one to the southwest.

MR. AUGUST: We have two now "open" banners up that have been there since the day before we were open which are scheduled to come down no later than the end of this month.

JORDON BROWN: How many other locations do you have?

MR. AUGUST: We have one more in Rochester on the -- sort of southwest side, Henrietta.

JORDON BROWN: Does it have the identical sign that you're requesting here?

MR. AUGUST: The only difference -- it is the identical sign, but we also have a freestanding sign in Henrietta. I believe it is 4 by 8. And this hangs under it. We don't have a freestanding sign. We didn't ask for one. It is sort of in front of the plaza. The plaza has a sign. We're not on the plaza sign. Um, so it is -- this one actually has 32 square feet doubled less signage than our Henrietta. Otherwise, it is identical.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

DOROTHY BORGUS, 31 Stuart Road

MS. BORGUS: Just two questions. Well, one question and a comment actually. Um, isn't this building lit when it is open?

MR. AUGUST: The answer is the, um, parking lot lights are on dawn to dusk. The building has -- they're sort of like lanterns next to each of the bays, front and rear, that are lit dawn to dusk, and there's an emergency light over each bay that is lit. I don't know that that really -- we don't think that really communicates that we're open. There is no open sign on the building, and in the summer months, the bay doors -- well, they're open until they -- they go down at 9. So when the doors are down -- and they open up at 6 in the morning. When the doors are down, there is -- a lot of people think we're closed.

MS. BORGUS: If I were to use the car wash, how would I get in if the doors are down?

MR. AUGUST: When the doors are down because of the temperature being too low, or the time, when you pay, when you pay with cash or with a credit card, the door then goes up and you're prompted to enter the wash.

MS. BORGUS: There is a light on inside?

MR. AUGUST: The in -- the inside lights, yes, are on when it's in operation.

MS. BORGUS: Okay. Um, the only other comment I would have to say -- make is that the -- the applicant has said that they have 32 square feet fewer signage than they do in Henrietta. I would hope this Board never uses Henrietta as a benchmark for what we do in Chili, especially when it comes to signs. So please, just forget that comment altogether. Thank you.

MICHAEL MARTIN: This is an automated component so you don't have staff there 24 hours?

MR. AUGUST: No. There is staff that comes in to change chemicals, to police the lot. It is pretty much morning and night every day.

MICHAEL MARTIN: So basically usually towards evening hours the bay doors would be closed?

MR. AUGUST: For vandalism purposes. Even when the temperature is warm enough we want them down. We don't need kids hanging out in there.

MICHAEL MARTIN: So no cars in the parking lot and the doors down, it would appear to be a closed building?

MR. AUGUST: Yes. I don't think it looks boarded up type, but I do think that based on phone calls here and in Henrietta, that people without that sign will question whether we're open.

The Public Hearing was closed for this application at this time.

MICHAEL MARTIN: This item was also referred to the Monroe County Department of

Planning and came back as a local matter.

Michael Martin 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 Paul Bloser seconded the motion. The Board all voted yes on the motion.

Richard Perry made a motion to approve the application with no conditions, and Jordon Brown seconded the motion. All Board members were in favor of the motion.

DECISION: Unanimously approved by a vote of 6 yes with no conditions, and the following finding of fact was cited:

1. Sign needed to advertise hours.

Note: Sign permit is required before this sign is erected.

3. Application of Philip Silvarole, owner, c/o Fix, Spindelman, Brovitz & Goldman, 295 Woodcliff Drive, Suite 200, Fairport, New York 14450 to appeal the interpretation of the Building Inspector regarding existing use variances at properties located at 104 Ballantyne Road and 16 Stallman Drive in A.C. & FPO zone.

Betsy Brugg and Phil Silvarole were present to represent the application.

MS. BRUGG: Good evening, Mr. Chairman, member of the Zoning Board of Appeals. For the record, my name is Betsy Brugg. I'm an attorney with the firm of Fix, Spindelman, Brovitz and Goldman. I submitted this application on behalf of Mr. Silvarole and I'm here tonight to represent him. He is here if there are any questions from the Board.

As the Board is aware, we have not applied for any type of variances or any type of special use permits. We're here on one issue, and we are here to appeal the determination of the Town of Chili Building Inspector concluding that Mr. Silvarole's use of the property, proposed use of the property is not permitted pursuant to existing variances for the property.

Before I start, I know many times residents come before the Board as a result of going out and doing something on their own without checking with the Town, maybe they decided that they just felt like putting on an addition, you know, people come in here for all kind of reasons. But I do want the Board to know that my client, Mr. Silvarole, is one of the good guys. He did things the right way. He tried to do things the right way. He first approached the Town back in August of last year. He explained what he was planning to do. The Building Inspector gave them the go ahead and agreed at that time that the proposed use of the property did indeed comply with an existing variance for the property. I will go through the history of the variances and the history of the property in a moment.

Acting in reliance upon that determination, he went ahead, put the time, effort, money, everything that goes into going into business at the property, went ahead. A number of months later, he was informed that the determination of the Building Inspector was reversed and he was told his use was no longer permitted.

That said, that is how we ended up here. We're appealing that interpretation. I believe when the Board looks at the applicable law and the facts and the record of the existing variances, I think you will agree that his use squarely fits within one of the existing variances.

Again, I know this Board knows your charge, and I know that this issue has had some impact on the neighborhood directly, but I think it is important that everybody remember that we're not here on a variance application. We're not here on a popularity contest. Not a judgment whether somebody likes or doesn't like this use. It is just a question whether the use that is proposed is consistent with the variance that was already granted, that was already through the process that was approved by the Zoning Board, a prior Zoning Board.

As the Board knows, the Zoning Board makes decisions on variances. Variances run with the land in perpetuity forever unless there are specific conditions or time restrictions placed upon them. In this case, although specifically through the terms of the approval we're talking about, but there are no conditions, there are no time limits and the variance is good, and it is very clearly laid out in its language.

As for the variance at hand, a variance -- well, let me start by telling you what Mr. Silvarole does. He is using the property in connection with his trucking business. What he uses the property for is essentially the storage of some six or eight large trucks and trailers. He basically uses those for his trucking business. His employees will come and take one of these trucks and appropriate trailer and they will go off to do a haul for the day or for the week or for however long that takes. The exterior of the site is used for storage of these vehicles. The building itself is essentially used for maintenance of the vehicles. They do oil changes. They fix lights, they fix tires.

Just for clarification, because I know there has been gossip here and there. He does not haul any regulated hazardous materials and his operation is completely consistent with all applicable regulations for his use. In fact, I believe the DEC was out there recently on a call from the neighbor and they gave him a clean bill health other than to tell him, I think, they ought not use hot water to wash his trucks, they had no problems with his operation at all.

MICHAEL MARTIN: The trailers are all --

MS. BRUGG: They're truck trailers, just part of the trucks.

MICHAEL MARTIN: Trailers hauling goods?

MS. BRUGG: He essentially hauls car parts and animal feed. That's essentially what he is hauling.

As far as what he is permitted to do, and I know that the Zoning Board today would have done things a little differently. You know, times change and Boards change and things do change, and we're looking back at a variance -- there are a number of variances granted for this property. I believe the most recent one, I will note back in 1965, was specifically for a landscaping business. That business had some 30 or so trucks that were described in the operation when that variance was granted. Well, that is not the variance we're really talking about. The property has clearly been used for quite a while for uses that involved trucks, so we're not talking about anything that is, you know, a shock to the neighborhood or anything different. In fact, I believe one of our neighbors, I believe, was actually employed by that landscaping business for a number of years.

Back to the variance that was first granted, and that was a variance granted in 1960, and I'm going to just read this. It is the shortest of approvals. It is a variance. I cited it in my letter to you. It was granted for use of the property as "storage area for trucks and other equipment and to construct a block building to be used for storage and maintenance shop."

That is exactly what my client uses the property for. Those letters in black and white. That is what he uses the property for. Nothing more. Nothing less.

As far as the variance itself, the only conditions on the variance were specifically pertaining to "screening with shrubs and trees of at least 10 feet in height and plantings to be at least 3 feet at the time of planting."

Again, the use of the property has changed over time. I believe when my client moved in there, it was an overgrown mess. He has attempted to restore what was originally there.

Um, in addition, there is a condition regarding the maintenance of Stallman Avenue, which really has nothing to do specifically with the use. And it was a unanimous approval. So again, I believe that my client squarely fits within the language of that variance. It's not a popularity contest. It is not an issue of judgment on this variance. It is really a question of law and looking at the language of the variance.

I did submit a letter to the Board just briefly talking about the laws -- excuse me, yes, the applicable law on construction of the language of the variance. These are, you know, principles that have -- that are well recognized and well established. The variance clearly runs with the land unless it is limited in its time. In terms of the rules of construction of the language itself, the language must be read in its plain meaning, given its plain black and white meaning. We can't embellish or interpret something that is not there. And most importantly, the language must be construed against the municipalities and in favor of the property owner. And, in fact, I think the language is black and white and clear as day. But even if there were a question of ambiguity or vagueness in the language, that ambiguity would have to be construed again in favor of the property owner.

Let's see. Um, I think those are really the most important points. Again, I don't want to get off topic. We're not here on a variance application. We don't need to meet any particular criteria or standards in that regard. And I think that the application really speaks for itself. And again, we're asking this Board to reverse the determination of the Building Inspector and recognize the 1960 variance and conclude that, indeed, Mr. Silvarole's business operation is permitted pursuant to that variance.

Any questions for me?

JORDON BROWN: I have a couple of questions for you.

MS. BRUGG: Sure.

JORDON BROWN: The landscaping business and the construction business that received the variances, what size trucks are we talking about and how does it compare to the trucks that are --

MS. BRUGG: It is really hard to say. I do know from the way the landscaping business was described, they had not only many, many trucks of all different shapes and sizes, but they had all other kinds of equipment and junk stored on the property and it was a very busy place. My client basically has a small -- smaller number of vehicles. They probably are larger. I wouldn't imagine they would have necessarily these large 18-wheel vehicles --

JORDON BROWN: Who has --

MS. BRUGG: -- for landscaping. I wouldn't imagine a landscaping business would have that. I can't say for certain.

As far as the original applicant, um, there really is nothing in the record that speaks to what the size of their trucks are. They probably had a variety of things.

JORDON BROWN: So it would be safe to assume these are probably much larger trucks?

MS. BRUGG: I think that depends. The original applicant was a construction company. But I do have to note the variance was, one, not granted specifically for any type of business use. It doesn't say it was granted for any construction company or for any limited defined type of business. It also does not limit the size or type of vehicles. And I know construction companies today that would have very large vehicles, some of the larger builders and developers could have very large -- if you're building a building, you could have some very large...

JORDON BROWN: We don't know if this construction company was building large buildings in Chili?

MS. BRUGG: I have no idea what they were doing. I don't actually -- while that is an interesting question, I don't see it as being particularly relevant because, again, there are no conditions or specifications. Certainly when a diner opens up in 1950, closes, and Pizzeria Uno moves in, you don't expect them to be operating under the same standards or conditions. Things change over time. Businesses change over time.

DAVID CROSS: What are the applicant's business hours? When does he start the vehicles up in the morning?

MS. BRUGG: These vehicles could run almost any time -- I think they may run as early as 5:00 a.m., although they don't usually start until after 6. He tries to keep them between 6 and midnight, but there are times when they have been out for a week and they happen to get back earlier. He might have one come in. He does have them try to come in kind of quietly and not back into anything. I do understand it is a relatively noisy neighborhood because they're on the entrance -- what is --

MR. SILVAROLE: Jet approach.

MS. BRUGG: The jet approach of the airport.

JORDON BROWN: You describe this in a matter as if this is a slam dunk, there really is not much to interpret here, and yet, your client did ask for an interpretation from the Town. Was there some doubt?

MS. BRUGG: No. Well, you can't open a business without coming in, and I think you need a C of O. Is that what the Town is generally requiring? You do have to come in and let the Town know somebody is here.

JORDON BROWN: He got the C of O?

MS. BRUGG: Yes. Certainly the way you wouldn't open an office in-house without seeing if you need any further approvals. He stopped -- his representatives stopped in and were told a-okay.

JORDON BROWN: Something given in writing?

MS. BRUGG: No. But Mr. Scibetta is aware of the situation and Counsel is aware of the situation. I have discussed it with them. This was a change in the Town's position for whatever reason, and I don't mean to make it sound like it is a slam dunk, but as an attorney, this is -- again, it is not a popularity question. It is not the Board's opportunity to have a second stab at granting a variance. This is where the Board has to say, you know what, another Board looked at this, another Board made a decision and now we're only here on a question of interpretation and we have to look at what is here, what the applicable law is. That's it. There are times when you don't get a second stab at it.

RICHARD PERRY: I guess I would like to find out what Mr. Scibetta and Mr. O'Toole have to say about it.

KEITH O'TOOLE: Is that an invitation, Richard (Perry)?

RICHARD PERRY: Please.

KEITH O'TOOLE: All right. A couple of things. I have submitted a letter to the Board which I would like to read into the record for the benefit of the applicant.

Attached to the letter are the minutes of the 1960 -- March 1, 1960 ZBA meeting. Minutes of the August 24th, '65 ZBA meeting, as well as a copy of survey map which we are in receipt of for 104 Ballantyne Road, which indicates that the property owner, Mr. Silvarole, purchased the property roughly in 2001 with existing improvements and existing concrete block building that is approximately 32 by 60 in dimension based on a survey map by Ron Stottle (phonetic) dated February 14th, 2001. As to my letter, for purposes of the record -- if you could bear with me a moment.

Keith O'Toole read the following document:

"I have been asked to review the permitted zoning uses on the above property in light of Zoning Board permits dated March 1, 1960 and August 25, 1965."

That applies to the 1965 variance and I would ask that the record reflect that.

Code Interpretation:

Reading the April 12, 2007 letter from the applicant's attorney, it appears that they are asking you for a pure code interpretation. In other words, they are not asking you for a permit or a variance. Instead, they are challenging the legal interpretation of the Building Inspector. Under NY State Law, they are arguing that he misinterpreted the existing permits and are asking you to state that under current law, and the existing permits, the applicant has a right to operate a trucking business on the property. It is up to you to determine whether the Building Inspector was right or wrong.

What does the law provide?

I offer my opinion, based on the attached minutes of the ZBA. I urge you to read these minutes carefully.

Executive Summary:

In addition to the uses permitted under the present zoning code, the property owner may enjoy two additional uses due to the Use Variances. These are for:

- 1) a Construction Company with storage and maintenance of its own vehicles and
- 2) a Tree Surgery and Landscaping Business with storage of its own vehicles.
- If the Property Owner's business is not a Construction Company or a Tree Surgery/Landscaping Business, then the business must comply with the current zoning.
- Maintenance of equipment/vehicles incidental to those two uses are approved. Operating a repair shop for 3rd party vehicles is not.

Analysis:

Use Variances create a new permitted use in a zoning district where that new use would otherwise be prohibited. Use Variances run with the land and continue even if the property is sold. Use Variances tend to be narrowly construed.

1) The 1960 Use Variance:

This appears to be a Use Variance for a Construction Company.

Details of the Permitted Use:

- storage area for trucks and other construction equipment.
- Maintenance shop for the construction equipment. Minor automotive repairs. (changing oil, tires etc.) Not a repair shop.
- Parking area to be screened by shrubbery. All trees to be 10' tall and must be at least 3' at time of planting.
- Stallman Avenue to be maintained to satisfaction of Highway Superintendent
- Frontage to be covered in lawn.
- Permits a 30' x 60' building with later expansion to 50' x 100'

To Quote the 1960's applicant's attorney, Jerry Greenfield Esq.:

- "Mr. Cummings is operating the Cummings Construction Co...."
- "Mr. Cummings is a construction man. There are trucks, shovels, loaders, etc.

These would be brought in out of the weather."

- "This is really a maintenance shop, not a repair shop."
- "I would like to point out that the work trucks would be there only at momentary times. They won't be there during the day to hamper children."

2) The 1965 Use Variance:

This appears to be a Use Variance for a Tree Surgery and Landscaping Business.

Details of the Permitted Use:

- Entire frontage to be shrubbed with Tree Farm
- Fencing of the parking/storage area
- Entire Frontage to be grassed and landscaped out to the street
- 40 pieces of heavy construction equipment
- Cutting and stacking of wood
- Approved 80 x 100' addition to then existing 30 x 60' building.
- Parking of equipment to be 180' from the road
- Power saws to operate 8:00 am to 4:30 pm
- All equipment to be stored in an orderly fashion
- No accumulated tires or equipment
- Hours of operation: 6:30 am to 9:00 pm

Conclusion: Like any other permit or variance, these variances were granted based on the representations contained in the record and made by the applicants in 1960 and 1965. The present applicant inherits the benefits and the burdens of those representations.

While many businesses use trucks, not all businesses which use trucks are a trucking business. The difference matters because a trucking business, by definition, is all about trucks and the impacts they cause. In contrast, the uses approved in the 1960's used trucks only incidentally.

As the representations are found in the minutes, I urge you to read the minutes and make your decision."

That's my opinion based on my reading.

Ultimately, what you're doing here today is reviewing the code interpretation of the Building Inspector. You are -- you are acting, in essence, as a referee or an umpire. You're not endorsing

the use. You're not opposing the use. You're simply reading the law, the history of the permits and trying to make a determination as to whether the Building Inspector is correct or incorrect. Nothing further.

MICHAEL MARTIN: Does that help clarify your questions?

RICHARD PERRY: Well, I guess I would like to hear from Dennis (Scibetta) what prompted him to, you know -- was it approved when they first moved in and then reversed?

KEITH O'TOOLE: If I may, Richard (Perry), we're not here to interpret what the Building Inspector said and when he said it. All we're trying to do is figure out whether this interpretation that is before you is accurate or not.

MS. BRUGG: I would like to just point out a couple of things because I did not have the opportunity to review Counsel's letter in advance.

Um, specifically, I -- and I -- hopefully, Keith (O'Toole), you will agree with me, there is discussion of the 1965 variance and those terms, but that is not specifically what -- that is kind of extra information. Those hours of operation, that -- the 1965 variance clearly says it is for a landscaping business. The 1960 variance, while the Board had every opportunity to say it was specifically for a construction company, it did not do so. And again, the language must be read in its plain meaning.

Again, the Board may not like the way this decision was written. This isn't the way this Board would do it, I'm quite sure. Especially with this attorney on board. But this is what you have to work with. This is what you have to interpret. Anything beyond the parameters of these words is embellishment.

As far as what is contained in the record, there is discussion in the record. From my experience, and I have represented many clients on many of variances, probably hundreds of variances, as the Board knows, you have the ability to put reasonable conditions related to the use on every approval. The Board did chose to put some conditions on. They talked to shrubbery and screening. They did not put any limits on the hours of operation. If there aren't any conditions, you know, I -- I would take the position that you really can't impose any further conditions than what that Board listed in the approval.

As far as the interpretation of trucks being incidental to the construction use, I think it is really important to note that there was no construction occurring on this property. The property -- the property use was for the storage of those trucks. Whether you want to call it trucks or equipment, these clearly are trucks. If you look through that record and you want to nitpick the words, we're -- you know, there is discussion of use of building for general maintenance. It is not -- there are trucks, shovels, loaders. Trucks, shovels, loader. Construction equipment generally is vehicles, for the most part. So if you want to call it equipment repair, it is basically truck repair, maybe just a different variety of trucks. Trucks are trucks. I happen to not have boys, but I do happen to know little trucks are -- have a label on them, they're called trucks. They come in different shapes and sizes.

The work done in the building is maintenance on his own trucks. He is not running a repair shop. He is not rebuilding motors. He is doing maintenance of the trucks that are used in connection with his business. Like the construction business, he is not trucking on the property. This is a storage area for those vehicles. Similar to a construction company. There was no construction -- they weren't building anything on this property. It was where they kept their construction vehicles.

So, um, I think that these uses really are very consistent and more importantly, this Board is bound by the language that a previous Board used. You may not think they did a good job. You may not like the way they wrote this. You may have done it differently if you were reviewing your own -- a new variance application, but the facts are this is what you have to work with. And there are no additional conditions that were placed on this use.

Um, what you see is what -- is what they did. So there are no conditions on hours of operation. There weren't in 1965. There weren't in 1960. I will tell you, my client really is a good guy. He did come and try to do this a good way. He is very considerate of the neighbors.

He keeps his site very clean. There is no outside storage of any kind of junk. He doesn't keep tires out there. He disposes of them properly. There is no storage of any kind of materials out there.

When trucks come in at night, he tries to keep them as quiet and as low impact as possible. He tries to keep a good relationship with the neighbors. If somebody comes in, I think, late at night, he doesn't want them backing up and accidentally running into anything, so he has them come into the most convenient, quiet location. He encourages his employees when they do come in to try to come in during the daytime, but the nature of the business is that he just can't control it sometimes. I know he himself drives a truck. He never leaves before 6, 6:30 in the morning unless he absolutely has to for some reason. Um, and again, there aren't 10s and 20s and 30s of trucks on the property. It is a relatively small piece of property that has some physical limitations.

So I -- again, I believe we're totally consistent with the variance that was granted. I think he has a very solid position, and I strongly urge the Board to recognize that -- that what he is doing is consistent with the variance that was granted. He certainly -- it is certainly to his detriment for going ahead and having -- I'm sure the Town has the right to change their position, but that is what happened. That is what brings us before the Board, and this is his business. This is his livelihood. If he is not successful here, he will have to appeal. So respectfully, I do ask that the Board look at what you have before you, and recognize that his use is consistent with the variance.

MICHAEL MARTIN: This is not a common thing that comes before this Board, interpretation of the Building Inspector. It's -- like I said, it's not anything to do with the operator or the applicant or anything like that. It is merely our interpretation of do we think that our Building Inspector made the right call on this one -- based on what was done in 1960 and 1965. And we can't go back in time and sit there and be a part of that. All we can go by is what is in the minutes.

The only thing I would point out is that I know this Board takes the use variance very seriously, and they are very narrow in scope when they are granted because they do go against the zoning of that neighborhood, usually pretty greatly. Um, and again, we can't go back and say well, they should have said this. You know, when we do a use variance, it is very specific as to what is allowed under that use variance.

From my reading of the minutes in their entirety from 1960 and 1965, um, you know, it appeared to me very clear that the applicant was applying for a construction company, to allow the construction company to operate on that site, and to have the trucks incidental to his construction business that was approved.

In 1965, it was very clear that applicant applied for a landscaping business with trucks incidental to a landscaping business, and that was approved.

I'm not sure a trucking company fits the use variance for what was granted under those two circumstances. And that's just my -- my interpretation of that.

Does the Board have any other questions before I turn it over to the audience?

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

GORDY GONYO, 130 Ballantyne Road

MR. GONYO: I would like to point out that my attorney brought to my attention that the Zoning Board of Appeals is supposed to issue a positive declaration of environmental significance and require the applicant to prepare an environmental impact statement. And one of the problems that I have with this whole deal is, being so close to Black Creek and power washing trucks and equipment, all kind of things, and there -- there is not a storm sewer, catch basin to take all of the water into the -- as far as sludge oils or whatever into the sewage treatment plant. That area is in a flood plain and contaminants go all over the place real easily every time it rains. There is a thing called thermal pollution caused by water being heated up from the gravel. And then warm water gets back to Black Creek and the plants and animals that have to deal with the creek do not like it. They have trouble living there.

Um, and there will be trailers washed there.

Um, I'm concerned about the smell of these trailers in the summertime and I'm also concerned about 104 Ballantyne hauling hazardous waste as their parent company does.

And as far as trucks operating, I know, because I live right across the street, and they come in from 11 o'clock in the evening until 6:00 a.m. And I have to go to work every day at 7:00, and I need my sleep and I'm not getting it.

Thank you.

MICHAEL LACROCK (phonetic) - 30 Stallman Drive

MR. LACROCK: Some of the trucks do -- I am under the impression that they do haul garbage. You know, it is not just limited to the auto parts and that. So I'm wondering about the smell, too, and the environmental impact. They do operate at all different hours. I do live just right around the corner myself. It does affect us all.

TOM MARTIN, 15 Stallman Drive

MR. TOM MARTIN: I think I would like to agree with Mr. Martin that the trucking company doesn't fit in that neighborhood. Not at all. It's just terrible. It's unGodly. So thank you very much for the time.

DAVE DEGRANDE: 15 Lester Street

MR. DEGRANDE: My concern is also somewhat like theirs. One concern is the animal feed. Animal feed, I'm not mistaken, will attract rats. I have children that live right next door. That is a major concern. 1960, the Greenway Trail wasn't there. It is there now.

Um, I understand -- don't misunderstand me, I understand that he wants to make it look good or he is required to make it look good, but again, this is -- with the trucks there, it is an eyesore to those that walk that trail, hike the trail, bike the trail. And the noise, because I'm so close, um -- question I had for the attorney actually. You -- you had mentioned twice that when the trucks come in, that he does everything he can to keep the trucks quiet when they come in. My question is: How do you keep a truck quiet?

MS. BRUGG: Should I wait to the end to answer all -- would you like me to wait until everybody is done?

MICHAEL MARTIN: If you want to wait to the end, you can respond.

MR. PERNA: That is it. Thank you.

MAUREEN CROZIER, 186 Ballantyne

MS. CROZIER: Can I ask for a clarification? I heard 6:30 a.m. to 9:00 p.m. I heard 8:30 a.m. to 4:30 p.m. What were the different variances allowing for different hours of operation?

MICHAEL MARTIN: The 1965 variance for the landscaping business allowed the

operation of power saws from 8:00 a.m. to 4:30 p.m. And the general operation hours of the business was 6:30 a.m. to 9:00 p.m. was the -- was the -- that was for the 1965, for the landscaping business.

MS. CROZIER: My only concern, and it doesn't necessarily have to do with the interpretation of the Building Inspector's decision. I wasn't there in '60 or '65, but I know the length of the trucks that are coming in and out of Stallman Drive right now, and I come home Ballantyne Road off of Scottsville Road at 5:30 in the evening. And you come through the beginning of Ballantyne Road. It's 35 miles an hour. You come to a rise in the road where an old railroad track was removed, and just beyond this rise is the 45-mile an hour sign. So you see the sign coming up on the rise, and you start to accelerate 45 miles an hour, and I have twice had to lock up my brakes because one of his trucks has just begun to pull out of Stallman Road. I don't believe there is a safe distance between where this -- where that rise is in the road. You can't see the building. You can't see Stallman Road, and all of a sudden there is a huge long truck that is just started to accelerate out onto Ballantyne Road, and I believe it is a safety issue.

JOE ENTRE (phonetic), 193 Ballantyne

MR. ENTRE: Exactly what she said. I drive truck. The distance between where the old railroad bed is, come wintertime, that's going to be a real hazard. A real hazard. Both ways. Because I'm just down the road. These cars are flying. It says 45. You would be lucky if anyone is doing 45.

MR. DEGRANDE: In regards to what they're talking about, the old railroad bed, that is now the Greenway Trail that I was talking about. I'm right there. I'm on Lester Street. I agree with what they're saying. Anyone that leaves my house, because of that hill, because you can't see the traffic coming from the other side, or the -- or the hazard of it, I make them go down to the end of Black Creek or Huron Street in order to hang a left onto Chili after -- or onto Ballantyne, I'm sorry. So it is a dangerous area for the trucks coming out of there at slow speed.

HEATH MILLER, 69 Bellmawr Drive

MR. MILLER: What is the exact language of the use variance that was granted in 1960?

MICHAEL MARTIN: Um, all I have is the minutes. I don't have the actual letter that was done, but the minutes read: "Decisions of the Board. Cornelius Cummings was granted a variance to use premises at 104 Ballantyne Road as storage area for trucks and other equipment and to construct a block building to be used for storage and maintenance shop with the following restrictions: Parking area to be screened by shrubbery or trees at least 10 feet in height. The plantings to be at least 3 feet in height at the time of planting. Stallman Avenue must be maintained to the satisfaction of the Highway Superintendent."

All members voted in the affirmative.

MR. MILLER: And that's it?

MICHAEL MARTIN: That's the decision of the Board. Yes.

MR. MILLER: These other concerns that are being brought up about the Greenway Belt and the trucks pulling out, is that something that can be addressed at site plan review? Does this applicant need to come in, should this use be okayed? Does the applicant have to come in for any kind of a site plan approval?

MICHAEL MARTIN: This application is only -- is an appeal of the interpretation of the Building Inspector regarding the operation of the current business based on the 1960, 1965 --

MR. MILLER: Right. I understand that.

MICHAEL MARTIN: That is all that this is.

MR. MILLER: I know. My question is then, um, if this Board were to decide -- were to disagree with the Building Inspector and say no, he is allowed to use the property in this manner, do you know if the applicant is required to come in, you know, before the Planning Board for any kind of a site plan review --

MICHAEL MARTIN: As long as they operate under the conditions of the two variances --

KEITH O'TOOLE: Mr. Chairman, if I may. I don't want to get ahead of ourselves here. I think the answer to that question somewhat depends on the answer to your question this evening. And how the applicant chooses to proceed after that. So it is theoretically possible there may be a site plan. It is possible there's not. It all depends.

MR. MILLER: Thank you.

RAY MERROW, 21 Stallman Drive

MR. MERROW: I see a lot of the neighbors here. We grew up together. I have been in the neighborhood 53 years. I lived down the street from this construction, trucking business. I was there when Cummings had their business. I was there when (inaudible) had theirs. There has always been trucks since I was a kid back in 1960 when they first built the area. It has always been trucking. I used to deliver the papers there. My kids delivered the papers there. Granted, the size of the trucks coming over that rise, it is a safety hazard, but what I understand, what we're here to discuss tonight is the upholding of that particular law in 1960, which clearly states it is designed for trucking. I mean it states right there in the minutes. It is designed for trucking. It was approved for trucking. That is what this gentleman is trying to do.

Granted, I am also concerned if he hauls something that is going to smell in the summertime. I talked to him about that already. He told us what he hauls and if there is any problem with it, we're to come to him directly. He gave me his cell phone number to call him at

any time of the night if there is a problem.

He has put lights around it so if anybody is messing around, to try to deter them. Again, you know, I'm not thrilled, you know, there are trucks up and down. My grandson goes out and rides his bike up and down the road. There are trucks there. He has to be made aware there are trucks there and stuff like that.

But it is not here for the yes, it is a good plan or no, it is a bad thing. It is here to say, according to your laws, is it applicable. And according to what is there, it is -- it -- the variance was granted for trucking. I may not agree with it. My neighbors might not agree with it, but from what I heard tonight, that is what the law states. I think you have to look at it that way.

MS. BRUGG: Sure. First, there was a question about SEQR. This is not considered an action. SEQR is not applicable. You can consider that a non-issue.

As far as smell, I think it is kind of an interesting thing to bring up smell, because in this zoning district you can have some of the smelliest uses permitted in the Town. Poultry ranching, dairies. This zoning allows some very smelly uses, and any characteristic of a use that is permitted by code is deemed part of that permitted use. So to raise smell as an issue, really doesn't fly, I think, in terms of -- we're not in an R-1 district, so I don't think smell is a valid consideration.

That said, I don't think -- my client doesn't haul anything that generates any significant odor. I understand there are all kinds of rumors about him dumping stuff and smells of things, and certainly, you know, he can respond specifically to the smells, because he is there day in and day out.

MICHAEL MARTIN: That's not part of the application, though, so I didn't --

MS. BRUGG: You know, sometimes I think, you know, things build up their own momentum and they become bigger than life as people argue and discuss them. Something that might start as, "Gee, what was that?" Becomes something bigger and something bigger and it just rolls and these things take on a life of their own. He doesn't haul anything that is hazardous or regulated.

Um, as far as traffic, I think we have already represented to the Board, he basically has about six trucks out there. He is not generating a huge amount of traffic. The prior uses of the property have generated significantly more traffic. In the minutes of the 1965 variance, that landscaping business was there for quite a while and they represent in there that they would have somewhere in the neighborhood of 30 vehicles. They had a lot more trucks. There is a lot more traffic.

Again, these considerations really are not on the table. I'm addressing them because, you know, every time a business goes out and a new business comes in, they don't have to go through the review process again. Once a use is approved, it is approved and it is approved -- as you said, these decisions are taken very seriously. They exist in perpetuity. And they need to be handled a certain way.

We are here to review an existing decision, not something new, and again, it is not a second stab at rewriting how they wrote it. This decision was written the way it was written and you are limited by what is written there, what is in the black and white language of this decision and I can read the decision. It is exactly what you said. The decision of the Board specifically for the property is the storage area for trucks and other equipment. It does not say "construction equipment." It says "equipment."

And "to construct a block building to be used for storage and maintenance shop with the following restrictions: Parking area to be screened by shrubbery or trees at least 10 feet in height. The plantings to be at least 3 feet in height at the time of planting. Stallman Avenue to be maintained to the satisfaction of the Highway Superintendent."

All members voted in the affirmative.

This is not an opportunity to read into the language or to embellish it or enhance it or give it your own twist, or to look at this as an opportunity to change the use of the property. There is an existing block building on this property. It will never be a home. It is what it is. It has been used for very intense uses for many years. We're going back to 1960, and I have to say, that's older than I am, and probably older than many people here, and many people were probably around when these variances were granted and never probably never gave a second thought at that time. But a decision was made long ago, and I ask this Board to respect the prior Zoning Board's determination to recognize that their decision is what it is. It says what it says. Not to add, embellish, recreate, attempt to reinterpret or redefine it. This is just an interpretation of what the language says, and I believe the law is on my applicant's side.

Looking to see if there were any other questions from the audience that came up that need to be addressed.

Um, there was a question about how my client tries to keep the trucks quiet. I will let him address that, because again, he does try to be a good neighbor

MICHAEL MARTIN: I didn't want to get into those because they're not germane to the application.

MS. BRUGG: I understand, but I do believe that this application is before the Board. I certainly can't speak as to why the interpretation was changed, but I do believe that --

MICHAEL MARTIN: I just don't think noise is a part of the -- part of the application for the interpretation.

MS. BRUGG: Okay. I certainly understand where you're coming from. You have certainly given -- if they have taken the time to come here and ask questions, I just thought they were deserving of some type of a response.

Um, and I certainly don't think we would be here if there wasn't a popularity issue regarding my client's business use again. Again, you have been out to the property, I'm assuming everybody has driven past there. You know it is there. There has been business going on at that site since 1960. There have been a lot more trucks. Granted, these are a little different. Um, but I strongly, strongly believe we have a very, very good case on behalf of my applicant, that he does, indeed, conform exactly with the language of the 1960 variance. Whether or not it is a popular decision, I believe that that's the decision that the Board has to reach.

He can address, I guess outside of the -- he really -- he really does try to be a good neighbor.

MICHAEL MARTIN: Sure, Mr. Silvarole?

MR. SILVAROLE: Is there -- what would you like me to address?

MICHAEL MARTIN: Um, I guess if you wanted to address the noise issue.

MR. SILVAROLE: The drivers are instructed basically to drive the trucks into the property and find the easiest spot to park and then shut them off, not to let them idle for any more than a couple minutes it takes to just drive in and shut the truck off. Keep start-up times to a minimum. Um --

MICHAEL MARTIN: What about engine checking as they're approaching the road, to turn in?

MR. SILVAROLE: I told them not to use their engine brakes on Ballantyne Road at all. Um, I don't use Stallman Drive at all. All my trucks use my own driveway so that we don't go onto the road that the rest of the neighborhood uses.

MICHAEL MARTIN: And you do not haul hazardous waste or regulated material --

MR. SILVAROLE: Right. My trucks don't haul any garbage. Now, what I think is going on here, my dad has a large trucking company in Henrietta, and people think that because he does certain things, that that is what I haul, and I have a -- I broke -- I worked for my father for a long time, and I have my own customers. I deliberately haul other things so I don't compete with my family's business.

Um, the feed that I haul is all in tanker trailers. It's all contained. It's not like it is a tarped trailer where animals and rodents can get into it. These are closed, enclosed vessels. Um, again, no chemicals. No garbage. No contaminants.

I do haul car parts. The trailers with the car parts are never open on the property. They're sealed from the manufacturing plant where they're picked up to the assembly plant where they're delivered.

MICHAEL MARTIN: So you simply have trailers and tankers and then the cabs to haul --

MR. SILVAROLE: Right. And the truck tractors, yes.

JORDON BROWN: I have a question for you. Other than storage, what other activities go on with the trucks?

MR. SILVAROLE: Um, other than --

JORDON BROWN: The storage area for the trucks.

MICHAEL MARTIN: As far as maintenance is concerned.

MR. SILVAROLE: Yes. We'll do -- we'll do oil change, grease job. We'll do tire repairs, light repairs. You know, to -- to lights, wiring, that type of thing. All very minor repairs. Any engine work goes to the cab dealer or the Peterbilt truck dealer that are both in Town.

JORDON BROWN: What about all of the talk about washing of trucks? Is there a lot of that going on, as well?

MR. SILVAROLE: Very minimal amount.

RICHARD PERRY: Where does the waste water go?

MR. SILVAROLE: It doesn't go anywhere now because I don't wash them there any more.

RICHARD PERRY: Okay. Is that your intent, to not wash them there?

MR. SILVAROLE: When I talked to the DEC, they basically said I could wash my trucks there if I had a water collection system.

RICHARD PERRY: Okay. So you are not washing any trucks there now and have no intent to do that in the future unless you --

MR. SILVAROLE: Unless I have a water collection system.

RICHARD PERRY: What about your waste oil and --

MR. SILVAROLE: Emerson Oil brings the oil and picks up my waste oil. I buy the tires from Main Tires. They bring any waste tires away.

RICHARD PERRY: When you change the waste oil, where does the waste oil go until it is picked up?

MR. SILVAROLE: It goes into a drum just like the fresh oil is delivered into.

RICHARD PERRY: 55-gallon drum?

MR. SILVAROLE: It stays inside the building on the concrete floor.

MICHAEL MARTIN: All of the repair work is done inside the building?

MR. SILVAROLE: Yes. We may change a headlight in the driveway.

MICHAEL MARTIN: Anything --

MR. SILVAROLE: Right. Any repairs where we need -- it all comes inside to be repaired.

MS. BRUGG: I will just add, we had talked about the size of the trucks and I will very, very (inaudible) a construction company today would use trucks the size of his trucks.

MR. SILVAROLE: Or bigger.

MS. BRUGG: And construction company, if you wanted -- if that is where you're leading, you're -- a construction company, um, would use trucks as large as the trucks and certainly we

would expect that some type of construction company would also fit within the definition.

PAUL BLOSER: Do you have back-up signals and beepers?

MR. SILVAROLE: I disconnected them all because of complaints that they were too loud.

RICHARD PERRY: Does that not make you illegal to be on the road?

MR. SILVAROLE: I have certain customers that want those alarms on because when trucks back up on the premises, they don't want someone getting run over. So it's --

RICHARD PERRY: That has nothing to do with the application, but just an idle question.

MR. SILVAROLE: Right.

The Public Hearing was closed for this application at this time.

RICHARD PERRY: I think the Board in 1960 and 1965 shot themselves in the foot.

MICHAEL MARTIN: It is very limiting, and you were forced to use the exact wordings of something that is 45 years old and more.

RICHARD PERRY: And was very general.

MICHAEL MARTIN: Especially compared to how we would do things today.

RICHARD PERRY: Granted that is not what we can look at. We have to look at what they did back then, and they screwed up.

JORDON BROWN: Yes. I mean -- we would come to a very different decision at this time, right now. But that is not -- we don't have that option.

MICHAEL MARTIN: That's not what we're charged with this application, no.

JAMES WIESNER: With the definition of trucks there, whether a truck, tractor-trailer, they're all different.

RICHARD PERRY: They're all considered trucks. They're certainly not cars.

JAMES WIESNER: That's true.

JORDON BROWN: The wording doesn't say storage area for really small trucks. It's terrible wording.

MICHAEL MARTIN: Counsel, when we go to vote on this, we do not do a SEQR?

KEITH O'TOOLE: No.

MICHAEL MARTIN: We have gotten a lot of the information, more so than what the application has called for this evening, but still some good information is out there.

RICHARD PERRY: And good lesson learned.

MICHAEL MARTIN: Good lesson learned. I take it, you're ready to vote?

I will just point out a "yay" vote by the member is to affirm the ruling of the Building Inspector; a "no" vote will be to overturn the interpretation of the Building Inspector before we take the vote, just so everybody understands how this works. I will take a motion on the interpretation.

RICHARD PERRY: To do what? To affirm or deny?

MICHAEL MARTIN: To vote "yes" or "no." I'm not really sure how we're saying that. I need a motion.

RICHARD PERRY: I would make a motion to find in favor of Mr. Silvarole based on the very general interpretation from 1960.

MICHAEL MARTIN: So if you make a motion that way, a "yes" vote will reverse that.

RICHARD PERRY: Unfortunately, against our Building Inspector, which I don't like doing, but...

MICHAEL MARTIN: So a "yes" vote -- with the motion.

JORDON BROWN: He is saying he thinks his use is consistent with the variance.

MICHAEL MARTIN: A "yay" vote on the way Mr. Perry moved it will overturn and a "no" vote will affirm. So everybody is clear. I need a second on that motion.

JORDON BROWN: Second.

MICHAEL MARTIN: Yes to overturn, no to affirm.

JORDON BROWN: Yes.

DAVID CROSS: Yes.

RICHARD PERRY: I will vote yes.

PAUL BLOSER: Yes.

JAMES WIESNER: Yes.

MICHAEL MARTIN: I'm going to vote no, but it still passes by five to one to overturn the ruling of the Building Inspector regarding the operation of the trucking business.

MS. BRUGG: Thank you very much, and thank you for the time and effort you put into this application. I appreciate it.

The Board discussed the findings of fact.

DECISION: The Board overturned the ruling of the Building Inspector by a vote of 5 yes to 1 no (Michael Martin) with the following finding of fact having been cited:

1. Use is consistent with decision of Board dated March 1, 1960 contained on page 5 of minutes of the Zoning Board of Appeals of that date.
4. Application of Keith Foxton, owner; 209 Humphrey Road, Scottsville, New York 14546 for variance to erect a two-story garage to be 1,840 sq. ft. (900 sq. ft. allowed), variance

for garage to be 40' from side lot line (50' req.) and 20' from front lot line (100' req.), variance to allow ridgeline of garage to be higher than ridgeline of dwelling at property located at 209 Humphrey Road in PRD zone.

Keith Foxton was present to represent the application.

MR. FOXTON: I'm trying to build a garage for my vehicles.

MICHAEL MARTIN: Why so large?

MR. FOXTON: Well, beside -- besides the three vehicles that I own, I also have my lawn mowers and other equipment that I -- the other little stuff that I have.

MICHAEL MARTIN: How tall is the proposed garage?

MR. FOXTON: I believe it was like 20 -- 24 feet, 25 feet. It might break the top of the house by 4 or 5 feet.

MICHAEL MARTIN: You have a one-story frame house?

MR. FOXTON: Yes. A ranch.

DAVID CROSS: Which way are the doors going to face? East?

MR. FOXTON: Yes. They are going to be on the end -- do you see the picture I have there?

DAVID CROSS: Yes. The doors are down here (indicating).

MR. FOXTON: No. Two doors right here (indicating). You see here is the house right here (indicating). Here is the driveway coming in here (indicating). There is no driveway here (indicating). All they had was some block there. There is not any real driveway.

This -- the two doors are going to go on the end.

MICHAEL MARTIN: It's a two-door --

MR. FOXTON: Yes. Only two-door. But that is roughly the size what the building will sort of look like, with the exception the doors won't be on the side. They will be on the end.

MICHAEL MARTIN: Is it a kit, the garage, or is it being built?

MR. FOXTON: No. It's being built. I'm not that good at construction. I don't want to attempt that.

MICHAEL MARTIN: If it is back in 1960, you could have Mr. Cummings.

MR. FOXTON: That's okay.

MICHAEL MARTIN: Does it need to be that tall? Can you change your upper --

MR. FOXTON: Well, I could -- I could put it further into the ground, but I would like to not go too far because I'm all wet down there.

MICHAEL MARTIN: Right.

MR. FOXTON: I don't want to get to where the floor will --

MICHAEL MARTIN: I was just wondering if you could -- the height.

MR. FOXTON: I'm not sure if -- if -- the way they construct it, it -- it is -- they have a certain way of constructing it, and I'm not sure if they can make that lower. If they can, I don't mind making it lower. I don't need it that high.

MICHAEL MARTIN: It just seems that there is a lot of open, empty space with the truss for the roof there, which is pushing you higher than your dwelling.

MR. FOXTON: Right.

MICHAEL MARTIN: This Board does not like anything taller than the primary structure.

MR. FOXTON: Right.

MICHAEL MARTIN: Which is the house.

MR. FOXTON: Right. I understand.

MICHAEL MARTIN: I mean that's clearly against the code, and we -- I don't think we have ever granted anything taller than the primary structure.

RICHARD PERRY: Only when there was a huge variance --

MICHAEL MARTIN: Right. I mean -- the height -- but not the actual eye level was always lower.

RICHARD PERRY: What were you planning to store on the second floor of this building?

MR. FOXTON: My wife does weddings and she does a lot of flowers. It is not a business. We do it -- we do it for free for friends. She will do anywhere from two to three weddings a year for friends at the church and friends we know. And she has a lot of flowers that we just -- flower vases, all that type of stuff.

RICHARD PERRY: It mentions the second floor.

MR. FOXTON: I believe from the -- from the floor it would be roughly 10 feet. To -- to the peak.

RICHARD PERRY: Not concerned about that. I'm concerned about the square footage, the dimensions of that second story.

MR. FOXTON: It's almost -- it's almost the same size, the 30 by 40. The only thing you're losing is, it doesn't have a normal truss that you --

RICHARD PERRY: Understood. Usable portion of it.

MR. FOXTON: Right.

RICHARD PERRY: Apparently is what, about -- 30 -- about?

MR. FOXTON: That is -- that schematic is wrong.

MICHAEL MARTIN: This is wrong?

MR. FOXTON: Yes. Just -- just take your -- take the two sides that make it and just cut those out and it goes straight -- just like the roof line. Take the roof line, and that's the way the top looks. There are no trusses.

MICHAEL MARTIN: Walls are straight up?

MR. FOXTON: They're not straight. It is the roof line. That's why I don't lose any square footage up there.

RICHARD PERRY: It looks like these are -- about 16 feet by --

MR. FOXTON: 40, right.

RICHARD PERRY: I understand that. That is what I am trying to get at. How much room do you need for storage of the flowers and such?

MR. FOXTON: Well, I couldn't see putting up a building and losing 5 or 600 square feet with putting the sides on it.

MICHAEL MARTIN: I understand that.

MR. FOXTON: Do you see what I am saying?

You have to understand that nobody can really see this building at all. Because I have trees all around. And I'm about 100 feet off the -- off of the -- off of Humphrey.

MICHAEL MARTIN: I'm trying to see the elevation of the property, if it tends to be flat, from like the front to before your house.

MR. FOXTON: Well, the house is the only thing that stands above the elevation of the -- the -- the basement is just below the ground -- just below ground level. And then you have got the 8, 7 feet to the floor of the house, and then you have the house that sits above it. Everything else is a roughly 4 to 4 1/2 feet.

MICHAEL MARTIN: Yes, my biggest sticking point is the overall height of your proposed garage being taller than the incidental structure. Um, I don't know if there is any way they can bring it down a foot or two.

MR. FOXTON: Well, you tell me what -- what I can go to, and that's -- I will tell them that is what I have to go to. If I can't do it that way, then I won't. I will either come back and try to get the variance that I need, or go with that. I mean, I know it is going to have to be at least a couple feet above, because there is not much room there with the house. I mean, we're not talking about a two-story house. If it was a two-story house, I wouldn't have any problem.

MICHAEL MARTIN: Right.

PAUL BLOSER: Are you planning on getting rid of either of those sheds that you got?

MR. FOXTON: If I need to. If I don't need to, I won't.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

HEATH MILLER, 69 Bellmawr Drive

MR. MILLER: Does the applicant have an attached garage already on his home?

MICHAEL MARTIN: Yes.

MR. FOXTON: Yes. There is an attached garage there that is right now just for storage. Eventually we're going to take and make that a living room.

MR. MILLER: Okay. And how big was that?

MR. FOXTON: I believe that was like 16 by 30. It's the end of the house.

MR. MILLER: Okay. So about 480 square feet then?

MR. FOXTON: Roughly.

MR. MILLER: And this new garage, is that going to be detached?

MR. FOXTON: Yes.

MR. MILLER: And I know this -- you have another application here for the two existing utility sheds. Can I ask at this point what the sheds are used for storage for --

MR. FOXTON: Well, my lawn mowers and my gas -- gas cans and a few gazebo-type tents, you know, that we have and different -- a few different tools, you know, leaf blower. Those -- those type of things.

MR. MILLER: Okay. So if you were to be granted this garage for this size, would you be able to fit all of these other things that are currently in your sheds into this?

MR. FOXTON: Yes.

MR. MILLER: Yes. Okay. Nothing further. Thank you.

DOROTHY BORGUS, 31 Stuart Road

MS. BORGUS: Does Mr. Foxtan operate a business from home? I noticed a large truck, big panel truck.

MR. FOXTON: Yes.

MS. BORGUS: In the yard?

MR. FOXTON: Yes. I don't operate from -- I do have an office in my house for tax purposes, but other than that, I don't -- that is just where I park my truck.

MS. BORGUS: Do you have a variance for a home occupation?

MR. FOXTON: I have -- no, not that I know of.

MS. BORGUS: Well, in Chili you need one.

MR. FOXTON: Well, it is just -- it is just -- I'm writing it off for taxes. I'm not actually -- it's -- it's not a big thing that I use --

MS. BORGUS: Well, it may not be a big thing, but in Chili you can't operate a business out of your home without a variance.

MR. FOXTON: Okay.

MS. BORGUS: I hope the Building Department is listening. Hello?

MICHAEL MARTIN: Yes, they are.

MS. BORGUS: I hope so.

MR. FOXTON: Can just take that off my tax rolls if I need to.

MICHAEL MARTIN: It can be a conditional use permit to operate a business from --

MR. FOXTON: Well, I don't really operate a business there. All I do is -- it is tax purposes. You know, you can take off 10 percent of your -- whatever you're paying for taxes on your house, and -- if you -- I'm self-employed, so I can take -- it is not a --

MICHAEL MARTIN: You don't maintain an office or anything --

MR. FOXTON: No.

MICHAEL MARTIN: -- to do record keeping?

MR. FOXTON: I mean, I do record keeping, but it is not anything that --

MICHAEL MARTIN: That would all fall under the conditional use --

MR. FOXTON: Okay.

MICHAEL MARTIN: -- of home office.

MR. FOXTON: All right.

MICHAEL MARTIN: Even if it is just a computer and a fax machine, that would be considered a home office.

MR. FOXTON: Okay. I do have a computer and a fax machine.

MICHAEL MARTIN: It would require a conditional use.

MR. FOXTON: All right. I can get that.

MS. BORGUS: Um, now, this lot is fairly deep. I see by the map that you have approximately 1.5 acres.

MR. FOXTON: Yes.

MS. BORGUS: Is there any reason that this shed, if you need it, couldn't go back further on the lot?

MR. FOXTON: The shed or the barn?

MS. BORGUS: Barn.

MR. FOXTON: The only problem going back further on the property there, just past my house, all of that is wet. I do keep it mowed, but it is all wet. I have like -- when it rains, I have a river that goes through the -- the backyard.

MS. BORGUS: Um, now you say you -- the applicant has a garage. I have to address the Board.

MR. FOXTON: That's okay.

MS. BORGUS: The applicant has a garage. That is in addition to the two sheds and the oversized barn he wants; is that right?

MR. FOXTON: Yes.

MICHAEL MARTIN: That is what the application says, yes.

RICHARD PERRY: The intent is if they get the barn to convert --

MS. BORGUS: I heard. But what I am saying, this appears to be in a way a self-imposed hardship. If you have a garage, and I just want to get away from the garage and use it for something else and then you come in for a variance to build an oversized garage, barn, whatever, it seems to me he is creating his own problem, partly.

Um, I -- how many square feet is this gentleman's house, the home?

MR. FOXTON: I believe if you -- if you count the garage, it is 30 by 60, so that would be roughly 1800 square feet.

MS. BORGUS: Well, by my figures, if these variances are granted for the existing sheds and the barn he wants, his storage will exceed the size of his house. Now there is something wrong with this equation here.

Never mind the height. I mean I -- I can't imagine wanting so much storage that it exceeds the size of your home, never mind the height. The size. This is really way out in left field. And -- was it his intention, was it in the application, was it his intention to put this truck from his business in this barn?

MICHAEL MARTIN: We did not ask that.

MS. BORGUS: Maybe that would be a good question.

MR. FOXTON: No. Won't fit.

MS. BORGUS: Are there any other situations in Town where this thing has -- this kind of a misfit between a house size and a barn has been allowed?

MICHAEL MARTIN: Um, I don't know every structure in the Town.

MS. BORGUS: To your knowledge.

MICHAEL MARTIN: To my knowledge --

KEITH O'TOOLE: Mr. Chairman, we're not here to answer these sorts of questions.

MS. BORGUS: Excuse me. This is a public hearing.

KEITH O'TOOLE: It is the applicant's application and it is up to the applicant to bring whatever proof, if anything, he has to bear.

MS. BORGUS: There again, this is a precedent, if you allow it. This is too much storage for the size of the property. The area that he would want to build that in is very low in itself. I am sure that the Board has gone over and looked at this. Where he proposes to put this barn is very low, so I think the Board should ask him if he intends to fill, because that requires a fill permit. You know, it looks to me like this isn't even a workable site to place the barn. So I think this is another one that is just too much.

Thank you.

The Public Hearing was closed for this application at this time.

Michael Martin 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 David Cross seconded the motion. The Board all voted yes on the motion.

David Cross made a motion to approve the application with the following conditions, and Jordon Brown seconded the motion. All Board members were in favor of the motion.

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

- 1. Garage is not to be taller than the house.
- 2. All permits are to be obtained.

The following finding of fact was cited:

- 1. Applicant showed need for additional garage storage.

After the vote, the Board made a determination it would have to redo the SEQR vote.

Michael Martin 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 an unlisted action with no significant environmental impact, and Jordon Brown seconded the motion. The Board all voted yes on the motion.

- 5. Application of Keith Foxton, owner; 209 Humphrey Road, Scottsville, New York 14546 for variance to allow two existing utility sheds to be a total of 244 sq. ft. (180 sq. ft. allowed) at property located at 209 Humphrey Road in PRD zone.

Keith Foxton was present to represent the application.

MICHAEL MARTIN: Please join us again.

Now, with the sheds, um, you indicate relocating both of them, or just one of them?

MR. FOXTON: Just the one.

MICHAEL MARTIN: Just the one.

MR. FOXTON: The one that would be next to the garage I would relocate.

MICHAEL MARTIN: Okay. Would you have need for both sheds with the larger garage?

MR. FOXTON: No, I don't.

MICHAEL MARTIN: Would you --

MR. FOXTON: I would like -- I would like to keep them, but I'm not adverse to -- if you don't feel it is necessary.

MICHAEL MARTIN: What is the square footage -- the one that you're going to move, you --

MR. FOXTON: 10 x 10.

MICHAEL MARTIN: If you eliminated that shed upon the construction of the garage, you would be down to 144 square feet?

MR. FOXTON: Right.

MICHAEL MARTIN: Which is within code, and you wouldn't need any further action.

MR. FOXTON: No. That would be fine with me.

MICHAEL MARTIN: Counsel, if the applicant states that he is willing to get rid of the one shed upon the construction of the garage, which would put him under the 180 square feet, can he just withdraw this application or would we be better off denying it?

KEITH O'TOOLE: If he is withdrawing the application, then he is withdrawing it.

MICHAEL MARTIN: He hasn't offered that, but he has stated he would be willing to get rid one of -- the one shed instead of -- removing it upon construction of the garage because the storage would be adequate in the garage. Apparently the two sheds are existing at 144, but down to one he would be under 180.

KEITH O'TOOLE: So it sounds like the applicant is asking for a temporary variance, so you just impose a condition that is based on that trigger.

MICHAEL MARTIN: Okay. Thank you.

MR. FOXTON: Somewhere in there can you give me a time limit as to --

MICHAEL MARTIN: Upon the completion of the construction.

MR. FOXTON: Within a month after it is done?

PAUL BLOSER: 30 days.

MICHAEL MARTIN: 30 days.

PAUL BLOSER: 30 days after C of O of the garage, final inspection.

Is it going to be in the way during construction process?

MR. FOXTON: I will probably end up moving it and getting rid of it before that, but just in case.

MS. BORGUS: Would these sheds have required building permits and if so, did they -- were they gotten?

MR. FOXTON: No. They were there when I moved in.
MICHAEL MARTIN: They were there when he moved in.
A shed in itself does not require a building permit. Only the square footage.
MS. BORGUS: Okay. Thank you.

JERRY BRIXNER, 14 Hartom Road

MR. BRIXNER: Could you tell me where you are on Humphrey Road?
MR. FOXTON: I'm -- do you know where Mr. Bell's house is, the one with the big pond?
MR. BRIXNER: On the west side of Humphrey Road and -- north of --
MR. FOXTON: You know where Humphrey has a curve right there?
RICHARD PERRY: Just west of Bell, right on the --
MR. BRIXNER: On the curve?
MR. FOXTON: Yes.
MR. BRIXNER: Thank you very much.

The Public Hearing was closed for this application at this time.

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

1. Temporarily allow 244 sq. ft. of shed area. To be removed within 30 days of completion of garage construction.

The following finding of fact was cited:

1. Applicant showed need for storage.
6. Application of Mr. & Mrs. Peter Skrotzki, owner; 5 Gateway Circle, Rochester, New York 14624 for variance to erect an addition to house to be 35' from rear lot line (40' req.) at property located at 5 Gateway Circle in R-1-15 zone.

Pete Skrotzki was present to represent the application.

MR. SKROTZKI: I'm here to ask the Board for variance of 5 feet for an in-law apartment that I have already received an approval from the Planning Board, a contingent use approval for. As you can see here on my diagram, um, the actual usage of that 5-foot slice is very small. It's the corner of my in-law's bathroom. I do have a blueprint. I can show you that if you would like. The question has been raised before, could we adjust the dwelling to not exceed the 40-foot setback. Our key here is that my in-laws are aging, well into their seventies. Our goal for them is, A, to keep them in the community that they have lived for the past 50 plus years, and offer them a fully handicap-accessible environment. So because of this, we do need to move the bathroom wall out, which will come over the lot line somewhere -- or the setback rather in between the 3 1/2 to 5-foot zone. Not sure if the eave of the house plays -- that is where you see 3 1/2 feet here and 5 feet on the application. I would rather go extra than find out I'm two inches over and have to come back.

MICHAEL MARTIN: Are either of the in-laws currently in a wheelchair?

MR. SKROTZKI: My mother-in-law does use a wheelchair from time to time, but she is not stricken to the wheelchair at this point. Time will only tell. I do expect in the three to four years, she will be pretty stuck.

MICHAEL MARTIN: Your intention is make the addition completely handicapped accessible with the extra width and the --

MR. SKROTZKI: That is the intent, yes. The Planning Board conditional use permit also has that on it, as well. The doorways be at least 36 inches and those items. So yes, that is fully the intent. I know the Planning Board, you know, raised the issue of rental space. I can tell you as a former landlord in my 20s, I did that once. I am not looking to ever do that again.

PAUL BLOSER: Is there a kitchen in this addition?

MR. SKROTZKI: Yes, there is. This addition will show -- I wish I could make this a little smaller for you. All right. The existing garage is right at the bottom of the frame, right here (indicating). Mud room, kitchen, 9 by 10 (indicating). Bathroom, and the line here (indicating) which is roughly about the 40-foot setback, their own bathroom and living room space.

In addition with that, there is their own entrance with a ramp to the front door for handicapped accessibility.

RICHARD PERRY: Is that a common laundry room?

MR. SKROTZKI: It is designed as a common laundry room. Our laundry is currently in the basement of our house. We're not actually looking to move that up. I want to offer my in-laws -- as much as I love them, I don't want to live with them. I want to offer as much as I can to keep their independence with them. We have kind of earmarked that laundry room space as their room, but, yes, it is a commonly shared room with the door to the side will open to our kitchen.

PAUL BLOSER: Will you have separate utilities?

MR. SKROTZKI: No. It is all one utility underneath the Planning Board guidance.

MICHAEL MARTIN: Which also would make it harder to rent?

MR. SKROTZKI: Exactly. One water main, one gas main, same electric.

MICHAEL MARTIN: One meter?

MR. SKROTZKI: Yes.

MICHAEL MARTIN: Any other questions from the Board?

DENNIS SCIBETTA: I just wanted to say Mr. Skrotzki has appeared before and had all of the variances before the plan, and I vouch for his intention on -- to the Board to take it to this level and to ask for that. So.

JERRY BRIXNER, 14 Hartom Road

MR. BRIXNER: Mr. Martin, this is a pleasure to see the video used by Mr. Skrotzki.

MICHAEL MARTIN: The first time it has happened in our --

MR. BRIXNER: I applaud you, sir, for coming in with that innovation.

MR. SKROTZKI: Well, thank you.

MICHAEL MARTIN: That is actually the Town's innovation. It is the first time it has been used at our Board.

MR. BRIXNER: First time I have seen it used.

MICHAEL MARTIN: Yes. It is neat, too.

The Public Hearing was closed for this application at this time.

Michael Martin 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 an unlisted action with no significant environmental impact, and Paul Bloser seconded the motion. The Board all voted yes on the motion.

Jordon Brown made a motion to approve the application with no conditions, and David Cross seconded the motion. All Board members were in favor of the motion.

DECISION: Unanimously approved by a vote of 6 yes with no conditions, and the following findings of fact were cited:

1. Setback variance is minimum to obtain benefit.
2. Five feet is not substantial.

Note: A building permit is required.

7. Application of Marc Blume, owner; 25 Hartom Road, Rochester, New York 14624 for variance to allow the square footage of utility shed area, including a new 12' x 12' utility shed, to be a total of 256 sq. ft. (180 sq. ft. allowed) at property located at 25 Hartom Road in R-1-12 zone.

Marc Blume was present to represent the application.

MR. BLUME: Hi. Marc Blume, 25 Hartom Road. I'm looking to build a 12 by 12 utility shed to store my garden tractors and lawn equipment. Apparently according -- right now I have what they call a shed. It is basically a pool house cabana, which is inside a fenced area at the end of my in-ground pool.

MICHAEL MARTIN: That's within the fenced area of the pool?

MR. BLUME: Yes.

MICHAEL MARTIN: Pool equipment, towels?

MR. BLUME: Changing room, yes.

MICHAEL MARTIN: And the shed you said was to store lawn and garden equipment, tools?

MR. BLUME: Correct.

MICHAEL MARTIN: No vehicles, no?

MR. BLUME: No.

MICHAEL MARTIN: No businesses being operated out of it?

MR. BLUME: No.

MICHAEL MARTIN: And the 12 by 12 -- I mean the shed square footage is 144?

MR. BLUME: Correct.

MICHAEL MARTIN: And this is because you have the pool room, it is considered --

MR. BLUME: Well, the pool house is also 6-foot wide, 3-foot door. You couldn't get a lawn mower in there if you wanted to. It has doors on the other end. One end door is 3 feet from the fence.

MICHAEL MARTIN: Plus it is within the fence and if you went the wrong way, you could end up in the pool.

MR. BLUME: Right.

DENNIS SCIBETTA: You realize it is an accessory building even though we call it a shed?

MICHAEL MARTIN: Right.

DENNIS SCIBETTA: Thank you.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

JERRY BRIXNER, 14 Hartom Road
MR. BLUME: Hi, Jerry (Brixner).
MR. BRIXNER: Wish you well.
MR. BLUME: Thank you.

The Public Hearing was closed for this application at this time.

Michael Martin 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 Richard Perry seconded the motion. The Board all voted yes on the motion.

Paul Bloser made a motion to approve the application with no conditions, and Jordon Brown seconded the motion. All Board members were in favor of the motion.

MICHAEL MARTIN: That matter was referred to the Monroe County Planning Department and came back as a local matter and also received airport approval.

DECISION: Unanimously approved by a vote of 6 yes with no conditions, and the following finding of fact was cited:

1. Applicant showed need for additional storage.

Note: A building permit is required for the new shed.

8. Application of Joseph Karpinski, owner; 3183 Chili Avenue, Rochester, New York 14624 for variance to erect a 4'6" x 5'10" double-faced freestanding sign to be a total of 53 sq. ft. (32 sq. ft. allowed), variance for sign to be 4.8' from front lot line (15' req.) at property located at 3183 Chili Avenue in G.B. zone.

Joseph and Leslie Karpinski were present to represent the application.

MR. KARPINSKI: Good evening. We're Joseph and Leslie Karpinski, owners of 3183 Chili Avenue and we're here this evening to request the variance for the size of the sign and also the location of the sign. Um, if you're familiar with the property, with the papers in front of you, you know that we're at a real hardship with where the sign can be placed.

MICHAEL MARTIN: Yes. It is kind of a difficult area as far as frontage goes. There is not a whole lot. It is kind of curvy in there.

MRS. KARPINSKI: If we placed the sign where the requirement is, it would be in the reception room.

RICHARD PERRY: The reception area or on your neighbor's property.

MRS. KARPINSKI: Either way, yes. So you can see exactly where the sign -- the bend right here, this is a new retaining wall that was just put in (indicating). And the sidewalk goes down along the side of the building. We -- the only option we truly have is exactly where it is.

MICHAEL MARTIN: It is buffered by the landscaping on -- basically, well, it fits right in the little center of the curvature of the landscaping there.

MRS. KARPINSKI: Yes. That is a landscaping bed.

MICHAEL MARTIN: It does not in any way hinder line of sight on the roadway for traffic?

MRS. KARPINSKI: No.

JORDON BROWN: It will be illuminated.

MRS. KARPINSKI: We do have request to have it illuminated from 6 to 11:00 p.m.

MICHAEL MARTIN: I see that the address is on the sign.

MRS. KARPINSKI: Yes, sir.

MICHAEL MARTIN: That is required -- a requirement of the Town.

RICHARD PERRY: I would like to say I have passed by there so many times over the years, and frankly I haven't paid a lot of attention until I was looking for the sign out there and was quite surprised to see what a nice job you have done with the place.

MRS. KARPINSKI: Thank you.

RICHARD PERRY: It looks very nice.

PAUL BLOSER: That walkway is really nice along the side.

MRS. KARPINSKI: Thank you.

JORDON BROWN: It looks great.

MRS. KARPINSKI: Thank you. We're glad the Board is pleased. Thank you very much.

MICHAEL MARTIN: I also think the sign is tastefully done and actually fits with the -- the way it is landscaped. I don't know who picked it out or designed it.

MRS. KARPINSKI: We did. That was our hope, that everything would coordinate and certainly anything we did would be an improvement to the site, but we wanted to keep it all classic and uniform.

DENNIS SCIBETTA: I would like to thank them for the nice job they did do on the

building and complying with everything we have asked them to. Great job. It is a nice change from what was there.

MRS. KARPINSKI: Thank you. You're welcome.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

DOROTHY BORGUS, 31 Stuart Road

MS. BORGUS: If this sign is approved, will the two signs that are on the house advertising the Hair Court be taken down?

MRS. KARPINSKI: I'm sure the Board noticed those, one on the north and the east. There are already two signs on the house advertising the Hair Court right now.

MRS. KARPINSKI: May I answer? The sign that is on the front is only there until a permanent sign can be placed in front, so the one in front will be coming down. Um, the one on the side, I can't speak for because it is not my sign.

MS. BORGUS: Well, that's the Board's concern, though.

DENNIS SCIBETTA: It was a permitted sign before for that application for that business, I believe is the correct answer.

MRS. KARPINSKI: That is the correct answer. She did have a permit.

MICHAEL MARTIN: Thank you, Mr. Scibetta.

MS. BORGUS: That sign was permitted, though, because there was no sign in the front.

MRS. KARPINSKI: There were signs on the building in the front and the side for the Hair Court previously.

MS. BORGUS: Then I'm assuming if the sign is approved, then we'll have no more. A-frames, which are illegal. We'll have no more little signs stuck in the lawn advertising the Hair Court. Those will all go.

MRS. KARPINSKI: They have been there because there has been a lack of signage for her business.

MS. BORGUS: They're still illegal without a permit.

Now I would like to address the -- and I would like that as a condition, that all of the other signs go, except the one.

RICHARD PERRY: You would like that?

MS. BORGUS: If that is illegal, the one, then the rest should go, because it is very close to the road and that much signage isn't necessary.

PAUL BLOSER: The lawn signs you're speaking of?

MS. BORGUS: The lawn signs, the A-frame and the Hair Court sign that faces Chili Avenue. They're saying the one on the one side is legal, is a permitted sign. They're on a right angle. There is one on the side facing Wegmans, an identical one on the front facing Chili Avenue. They're new.

MRS. KARPINSKI: Also the one on the front will come down.

MS. BORGUS: So that is noted.

MICHAEL MARTIN: That is part of the record as stated by the applicant.

MS. BORGUS: And I would be a little concerned about the illumination that close to the road. It is very close to the road.

MICHAEL MARTIN: What kind of illumination are you envisioning for this site? Ground spots?

MRS. KARPINSKI: Yes, right at the sign.

MICHAEL MARTIN: Only at the sign?

MRS. KARPINSKI: Just so you can see it when you're driving by.

MS. BORGUS: It is very close to the road. They have made this an issue, why they need the variance. So it is very close to the road.

MICHAEL MARTIN: Right.

MS. BORGUS: I would have a problem with an illuminated sign that close to the highway.

MICHAEL MARTIN: A spot like that is very, um -- with things, and the way it is, it is very directional, only pointing at the sign. It does not cause --

MS. BORGUS: But not that close to the road. There is the point. There is the rub. Thank you.

HEATH MILLER, 69 Bellmawr Drive

MR. MILLER: I would like to also compliment you guys on the remodel you have done to the outside of the structure. It looks really great.

MRS. KARPINSKI: Thank you.

MR. MILLER: With regard to the one sign on the building, you are allowed one sign on the building in a GB zone, so certainly the side -- the sign on the side of the building could stay up if they're planning to take the sign on the front of the building down.

Um, I just had a couple of questions about the sign. How high is the sign?

MRS. KARPINSKI: It is 70 inches from the ground to the top of the sign.

MR. MILLER: Okay. And the colors of the sign, is it -- could you just --

MRS. KARPINSKI: The outer border will be in burgundy. The inner border will be in 23 karat gold leaf. The background will be a dark green to match the trim on the building and the letter will be in 23 karat gold. The posts will be in the same dark green to match the building trim and the top will be gold, the balls will be gold.

MR. MILLER: Okay. Thank you.

The Public Hearing was closed for this application at this time.

MICHAEL MARTIN: This matter was also referred to the Monroe County Planning Department and came back as a local matter.

Michael Martin 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 an unlisted action with no significant environmental impact, and Jordon Brown seconded the motion. The Board all voted yes on the motion.

Jordon Brown made a motion to approve the application with no conditions, and David Cross seconded the motion. All Board members were in favor of the motion.

DECISION: Unanimously approved by a vote of 6 yes with no conditions, and the following finding of fact was cited:

1. Applicant showed need for sign to advertise.

Note: A sign permit is required before the sign is erected.

The 3/27/07 Zoning Board of Appeals minutes were approved as submitted.

The meeting ended at 9:20 a.m.