

CHILI ZONING BOARD OF APPEALS
May 15, 2007

A meeting of the Chili Zoning Board was held on May 15, 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 David Cross.

PRESENT: Paul Bloser, Jordon Brown, James Wiesner and Temporary Chairperson David Cross.

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

JORDON BROWN: I move David Cross be our Acting Chair for this meeting.

PAUL BLOSER: I will second it.

DAVID CROSS: We'll go over the signs for the meeting. Number 1, everyone see it?

The Board indicated they would hear the application.

DAVID CROSS: Number 3.

The Board indicated they would hear the application.

DAVID CROSS: Number 4.

The Board indicated they would hear the application.

DAVID CROSS: 5.

The Board indicated they would hear the application.

DAVID CROSS: And the last one, 6.

The Board indicated they would hear the application.

DAVID CROSS: So we'll hear all of the applications tonight. We'll start with the first agenda item.

1. Application of Kevin Sands, owner; 4298 Union Street, North Chili, New York 14514 for variance to erect a 4' x 2 1/2' double-faced freestanding sign at property located at 4298 Union Street in A.C. zone.

Kevin Sands was present to represent the application.

MR. SANDS: Good evening. How are you.

DAVID CROSS: Good. Just want to describe your application?

MR. SANDS: Yes. You guys have a picture of the sign, the way it is going to look.

JORDON BROWN: Yes. I have one up there for the audience.

MR. SANDS: Looking to erect a sign for the property for some of my customers and suppliers to be able to better find me, see me. And the way it was described with my Land Use Variance now, I'm allowed a sign on my building, which I don't want to do. I don't want to deface the looks of the building. I would rather have something off the building, a little bit more attractive to the area out there. That is pretty much where I am at.

DAVID CROSS: You work with a Conditional Use to conduct the business --

MR. SANDS: It was a Land Use Variance.

DAVID CROSS: How old is the building and the house?

MR. SANDS: The building is about two years old.

PAUL BLOSER: Already?

MR. SANDS: Yes. We have been in the house about nine months now.

PAUL BLOSER: I have been by the property two or three times a week. You have done a nice job with the landscaping and the building. It looks very neat around there. There is nothing sitting outside, which is nice to see for a business.

MR. SANDS: We're trying to keep it neat and trying to get some grass to grow.

DAVID CROSS: Colors to be determined?

MR. SANDS: We have not decided. We're trying to do something to fit in with the building appearance, the house. Everything is kind of uniformed. We haven't sat down with that to find out what colors he has to fit in. It will not be florescent orange or green or something stupid. It will fit in with the surroundings.

DAVID CROSS: Will the sign be lighted?

MR. SANDS: It will not at this time.

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COMMENTS OR QUESTIONS FROM THE AUDIENCE:

DOROTHY BORGUS, 31 Stuart Road

MS. BORGUS: Has the Board read the minutes of the last appearance of this gentleman before the ZBA on February 22nd, 2005?

DAVID CROSS: I have not, no.

JORDON BROWN: I don't have a copy of that.

MS. BORGUS: Well, that is a sad thing, then.

PAUL BLOSSER: I don't believe any of us were on the Board at that time.

MS. BORGUS: No, but there is history to all of these things, and when you're on the Board a little longer, you have more history and this will be easier for you, but I -- but I was here. I have the minutes.

At the time they were in, they were represented by an attorney and they wanted this Land Use Variance. That is a very extraordinary thing to grant in Chili because, whether we like it or not, eventually these things come back to bite you. We have evidence of that right now down on Ballantyne Road.

The Board at the time, in my opinion, and in the opinion of many other people who were there that night okayed spot zoning. It is all Agricultural out there, and they allowed this man to put a home occupation in there with a Land Use Variance.

His lawyer, in the minutes, it is clearly defined as a home occupation. It was not supposed to be a full-time job for this man. Um, he supposedly wanted the building to store four antique cars. Two-thirds of the building was to go to that.

And to quote his attorney, "There is no Customer Service area. There is no waiting area. There are no lavatory facilities. There are no offices. There is nothing of a business nature in this building proposed or being built."

A little further down, their attorney says, "It is not a residential business in the sense it is not a business really conducted out of a residence."

It is on page 26.

On page 27 his attorney states, "There is no physical evidence of a business on the site. There are no signs. There is no advertising. There is no customer parking."

A little further down, a couple paragraphs later he says, the attorney, again, I'm quoting, "There is zero evidence outside of the conduct of a business from this location."

A little further down. One of the things that was mentioned in an earlier application is one of the good things about a home occupation business, or something of that nature, is -- a good evidence of the fact it is a good neighbor is that no one even know it's there.

A little further down, the attorney, "There will be no undesirable change in the character of the neighborhood as a result of the proposed building. There is no evidence whatsoever that there is any business being conducted on the property."

That's on page 27.

28, Mr. Kress, who was our -- the head of our Building Department at the time, said, "It falls within the definition of a customary home occupation, and as you know, that is no outside signs."

Mr. Schum, on page 29, states again, "It has been a home occupation for this family and his -- and father for many years."

On page 30, Mr. Schum again, the attorney, "We are not applying for a sign for this property presently." And then he goes on with the misinformation or the misimpression that if -- as a home occupation business, um, he can have a sign. He is corrected later in the minutes. Also on page 30.

Mr. Schum again, "Obviously if he thought a road sign, identifying sign of the same size would be appropriate in the future, he would have to apply for that. Presently all he has is a street number."

Again, on page 30, Beverly Griebel, who was Chair, "We don't allow anyone with a customary home occupation to have a sign."

Mr. Schum again on page 32, "This building is clearly an attractive accessory building that would be an attractive benefit to preserving the agricultural nature of the neighborhood as opposed to being a distraction."

On page 33, Mr. Fleming, a neighbor at 4310 Union Street, says, "I am concerned that initially I heard no customers. Then some customers, ten percent. Initially you said no, no customers coming in." Then a little further Mr. Fleming says, "I don't understand. You're saying it's on the rate of ten percent. Some day it will be 30 percent, maybe 50. I'm -- I'm just saying maybe. The business might grow. I have a concern about that."

A little further on he says, "I still object to businesses being started in that area when there really has been none."

I think that is ample evidence these people said originally they did not want a sign. It was going to be a business on the side, small time, wasn't a full-fledged business. Right after they stated that, within a couple of months they had a sign out at the road, and that sign remains there yet today. It's been there for probably 16, 17 months, probably more, in violation of our law. They also have a sign on the mailbox which states it is a business, which is also illegal, but they have it up irregardless. These two signs have flaunted the law. They came in here, wanted one thing. They got it. We won't talk about any more about how they got, if they got it, why they got it, but they did. Now they're in here chipping away at our laws.

Now, that is a very nice-looking sign. It is a very nice-looking house. It's a very nice-

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looking building. I never thought it would be anything other than that, but the point is it is an Ag District and clearly the lawyer and the applicant have said from the beginning they didn't want a sign. Now why are we adding insult to injury even considering a sign, especially in view of the fact they have ignored our law from almost the time they went in there -- from putting an A-frame sign out at the road.

MR. SANDS: It is not an A frame. It's a portable sign.

MS. BORGUS: It's a sign. Frankly, I never stopped -- it looked like an A frame. Maybe it is not. I won't argue the point. The point is it is an Agricultural District. It is a business that probably another Board would not have allowed to have there, but that particular Board did and we have to live with that. But I don't think we need signs six-foot high down there advertising a business that wasn't supposed to be. It's a -- it's a home business, and it should not have a sign. Thank you.

STEVE GINOVSKY, 19 Hubbard Drive

MR. GINOVSKY: First of all, with the Town of Chili sign that is there for this public hearing, I would like to go on record that it is put on a power pole. First of all, there is supposed to be no attachments period to power poles of the RGE or whoever it was, Niagara Mohawk or whatever. As far as I'm concerned, that is an illegal posting of the sign on there. You can't even put a posted sign on, and it doesn't even apply when it is as posted for hunting and such.

With that said, I think you need to look at that real close.

Um, as Ms. Borgus was saying, on page 30, it says here, from the past Chair of this Zoning Board, "We don't allow anyone with a customary home occupation to have a sign."

Period. That was from our past -- Bev Griebel, our past Chair, and it is very explicit. That was a condition. Period. It is not even up for discussion. And if you don't have a copy of the minutes, I would be glad to loan you this one that you can make a copy. If you would please return this to me, I would appreciate it. Here it is, on paper, word for word. Would you like it --

DAVID CROSS: No, thank you.

MR. GINOVSKY: -- to review?

And our Town sign ordinance is very explicit in what was said by the Zoning Board in the past. The sign law was put into effect. Everyone has to live with it, and I think we have to go by the letter. No deviation.

As far as I'm concerned, I don't believe it is in the right character of this Town.

CHARLES RETTIG, Coldwater Road.

MR. RETTIG: Let it be noted that the minutes were handed to the Chair, the Acting Chair, but the past minutes of the Zoning Board of Appeals was dated 2/22/05. It is on record. It is so noted that those minutes are approved minutes that are within the Town minutes file in the Clerk's Office.

I would also -- first like to note that the sign for this particular application from the Building Department was posted on a utility pole. That's illegal, improper and that alone should be reason for this being tabled based upon the fact that it -- the sign was not properly posted. Period.

To go further, there is presently a sign in front of the property within the right-of-way, which is at the mailbox, in the ground, that is approximately 24 inches by 18, which is 2 feet by 1 1/2 feet, a sign out there prior to this meeting, prior to approval, is illegal.

On the mailbox, there is a nice 5 inch by 24 approximately cast iron horizontal sign, which I believe, even according to the Zoning Board of Appeals minutes of 2/22/05, is legal prior to -- due to the fact that that -- the resident did have that sign at the previous residence before moving and it was grandfathered and it's legal.

But, the sign that is presently on the ground near the mailbox is illegal. Nothing has been approved yet, and yet there is defiance of the homeowner putting that sign up even before approval, any approvals for signs.

I note that on page 30 of the Zoning Board of Appeals minutes of 2/22/05, Mr. Schum, attorney for the applicant here, "We are not applying for a sign for this property presently. It allows a small sign." "No bigger than a breadbox" is what Mr. Schum stated, quote -- I quote right from the minutes apparently what he was going to apply for.

Mr. Kress, next statement -- who was our past knowledgeable Building Inspector, states the following: "I believe what Mr. Schum is referring to is Section 115.34-6(B)(1) which refers to permitted signs in residential uses."

I reference the Code 115.34-C -- 115.34.6(B)(1), which lists the following: I quote it exactly. "Unless otherwise specified in this chapter, permitted" -- and I will read this slowly, "nonresidential and legal nonconforming nonresidential uses. This is a use variance." I'm interjecting this is a use variance approved on this property -- I will read that again. "Permitted, nonresidential, and legal, nonconforming, nonresidential uses. May display no more than one sign of no more than 16 square feet in area secured directly to the face of the building."

And the statement in that paragraph is, "Freestanding signs shall not be permitted." It is right there in our code. I'm hoping that we can't -- we don't have to continue to call Chili a lawless town. I hope that this Board will follow the code and follow the law.

Thank you.

HEATH MILLER, 69 Bellmawr Drive

MR. MILLER: I just have a couple of comments.

I noticed that there are no -- that colors are yet to be determined, and I would just remind the Board and the applicant that signs are limited to a maximum of four colors and if there are any plans to have more than four colors, a variance would be needed.

I'm looking over the criteria that is used when granting area variances, and it's basically a balancing test that you -- that you use between the benefits to the applicant versus the potential detriments that the surrounding neighborhood might experience.

Um, some of the considerations include whether an undesirable change will be produced in the character of the neighborhood, or detriment to nearby properties will be created by granting the area variance.

Another consideration is whether the benefits sought by the applicant can be achieved by some method feasible for the applicant to pursue other than an area variance.

The applicant, Mr. Sands, mentioned that the -- one of the purposes for the sign was to let customers and his vendors know where his property is located.

And I just wonder if he could achieve that by perhaps making sure that the numbers to his address appear very visibly on his mailbox, on the side of his mailbox perhaps.

Um, another consideration is whether the requested area variance is substantial. Another consideration is whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. This is an Agricultural Conservation District. We normally don't think of having commercial signs in an AC District.

And another consideration is whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Zoning Board of Appeals, but shall not necessarily preclude the granting of the area variance.

So I think that you need to weigh those considerations in making your determination whether to grant this area variance.

Thank you.

MR. SANDS: First off, um, for all of the people that have spoke, none of them are actually neighbors within three or four miles.

I don't see any of my neighbors here complaining about this.

I do have some actual pictures within a half mile of my residence, two signs, if you would like to see them. Or possibly another method of displaying a business is to buy a couple junk vehicles, letter them up, license them and park them on my property. Maybe some people would rather see that than something that is attractive, that actually looks like it is supposed to be there.

MR. WIESNER: Has the business always been located at the bottom of the hill? I want to say one time it was at the top of the hill.

MR. SANDS: It was at the top of the hill and was at my residence prior to that. It is still a part-time business.

PAUL BLOSER: The Jack Greco, there is --

MR. SANDS: Actually two vehicles sitting on that property. One of them, which that one is, is not licensed at this time.

PAUL BLOSER: This is quite a distance from your property.

MR. SANDS: Yes. But it is another option of placing a sign on my property with the -- with, I guess, going around the Board and doing it the wrong way. And the sign that is at my property now is no different than a roofer coming in or a remodeling or carpenter on your property placing a sign there, showing he is there working. It is a portable sign. And it is moved.

MR. RETTIG: Just have a quick comment. As to whether or not anyone lives close to the sign or close to the business is certainly not the point. The point is, we don't need another Henrietta as far as signs.

The act of defiance is already by the fact that a sign is out there. If this particular individual puts junk vehicles out there, that is an apparent threat to this Board as to how he wants to operate or chooses to operate.

However, I don't -- I still don't think and state specifically that this individual, for what he and his attorney have stated in the previous public hearing on record, and for what he is applying for here based upon the law, I think it's the job of this Board to follow the Chili Town Code and law.

Thank you.

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

Paul Bloser questioned the sign colors.

MR. SANDS: Maximum four colors. It will match the house, the building that is there now at the present time.

A comment was made in relation to mention being made about posting a sign on a power pole.

MR. SANDS: That pole was purchased by me. It is on my property to get power to my house.

David Cross 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 Jordon Brown seconded the motion. The

Board all voted yes on the motion.

Jordon Brown made a motion to approve the application with the following condition, and James Wiesner seconded the motion. All Board members were in favor of the motion.

DECISION: Unanimously approved by a vote of 4 yes with the following condition:

- 1. Sign to have a maximum of four colors.

The following finding of fact was cited:

- 1. Keeping in character of the neighborhood.

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

- 2. Application of Mr. & Mrs. Charles Davis, owner; 219 Humphrey Road, Scottsville, New York 14546 for variance to allow the total square footage of garage area, including a new 30' x 48' detached garage to be a total of 2,662 sq. ft. (900 sq. ft. allowed) at property located at 219 Humphrey Road in RA-1 zone.

Mr. and Mrs. Charles Davis were present to represent the application.

MR. DAVIS: We want to put up a pole barn to store our lawn tractor and golf carts that we have for the kids, some dirt bikes, basically --

MRS. DAVIS: Recreational.

MR. DAVIS: Our boat sits out in the sun. We would like to get it out in the shade, so we would like to construct a pole barn to do that.

DAVID CROSS: There is one other shed on the property in the very rear?

MR. DAVIS: A small -- yeah. A small 10 by 8 shed.

DAVID CROSS: The size of the property?

MR. DAVIS: 6.2 acres.

MRS. DAVIS: 6.1 actually.

DAVID CROSS: So the other shed is 1100 feet off the right-of-way. It is on the very back property line.

MRS. DAVIS: Yes. On this it showed it was on the farm because it was before we built it, but it is in the back. When we -- they did their inspection, we moved it to the back.

MR. DAVIS: That shed is moveable. It is not nailed down.

PAUL BLOSER: Is it necessary with the pole barn?

MR. DAVIS: It wouldn't be, no.

DAVID CROSS: Steel siding on the pole barn?

MRS. DAVIS: It would match the house. The house currently is cream siding with burgundy shutters; so probably a two-tone to match the house.

PAUL BLOSER: Vinyl or steel?

MRS. DAVIS: Steel.

DAVID CROSS: Would be overhead -- I guess overhead door on the street side of the pole barn?

MRS. DAVIS: Yeah.

DAVID CROSS: This wouldn't be any higher than the height of the house?

MR. DAVIS: The finished floor of the barn should be about 4 1/2 feet lower than the finished floor of the house.

DAVID CROSS: How much higher than --

MR. DAVIS: It is lower than.

DAVID CROSS: How much higher is the face?

MR. DAVIS: A foot in the front and two-foot in the back.

DAVID CROSS: It is pretty low.

MR. DAVIS: Yes. It is pretty wet. We have had water problems. We're hoping this will help correct it by getting in there and leveling it off a little. Redoing the swale along the property line.

MRS. DAVIS: This is one of reasons why we bought six acres, knowing we could have some land. We have three kids. We've just outgrown it. We only have a 24-foot wide garage and there is not enough room to put the cars in.

MR. DAVIS: And toys.

JORDON BROWN: And golf carts.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

DOROTHY BORGUS, 31 Stuart Road

MS. BORGUS: Could somebody explain to me how we got to 2,662 square feet?

DAVID CROSS: The first floor of the pole barn is 1440. The upstairs -- there is upstairs storage of 546.

MS. BORGUS: How much?

DAVID CROSS: 546. Then the existing garage, so they all add up to that grand sum.

MS. BORGUS: How many car garage is there presently there?

MR. DAVIS: Two.

MRS. DAVIS: Two.

MS. BORGUS: Is that porch or that overhang, is that included in the square feet?

MR. DAVIS: Shouldn't be. It is not enclosed.

MS. BORGUS: No.

DAVID CROSS: No.

PAUL BLOSER: Just an overhang.

MS. BORGUS: The only problem that I see, and we have an example of it right here on Chili Avenue, is somebody who has a large barn. It's an older barn. It's not a new one. The idea was they were going -- it was storage. Well, let me tell you, they're running a business out of there and the business gets bigger every season. It is getting very noticeable. So where these people may use it for storage, if they were to sell this place, when we encourage or allow these huge -- and this is big -- this huge outbuilding, we just look for problems down the line. Now, I realize that is not the -- maybe the absolute concern of the Board at the moment, but you have to bear in mind when you have these big buildings, you could be looking at a lot of businesses where they don't belong down the line.

Um, these people mentioned dirt bikes. I'm assuming they know they're illegal in Chili to be driven within a certain number -- a large number of feet from other homes. Golf carts I would think are the same thing. They are motorized, as well. So, you know, if they're building this to house dirt bikes and other motorized vehicles, that is an illegal use, so that should be borne in mind, too. If they need storage, that's one thing, but I don't see where this Board should accommodate people to house things that are illegal in Chili.

Thank you.

STEVE GINOVSKY 19 Hubbard Drive

MR. GINOVSKY: First of all, I don't see a problem with the 30 by 48 pole barn. The only thing is -- as Ms. Borgus did mention, um, businesses at a later date or somebody -- as the kids get older, they may need a place to stay and I would hate to see that turn into an in-law apartment or whatever you want to call it. There should be some type of attachment done to the deed or whatever you want to do through the variance on this as a condition for the Town of Chili.

Also, is there going to be water out there? Electric? As such, that needs to be addressed.

Um, also, again, Chili has an ordinance on dirt bikes and such. And I hate to see these people hauled in -- in the -- into trouble, into this Town when we have enough of it. So kind of keep it down to a dull roar might be in order.

But as storage, I see no problem. It's over six acres. And if -- and I hope it never gets subdivided out at a later date and nobody ends up living there. I know you do get angry at children. Occasionally you need to say go to your corner or your room. I don't want them to think this pole barn is their room.

Thank you.

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

David Cross 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 Jordon Brown seconded the motion. The Board all voted yes on the motion.

Jordon Brown made a motion to approve the application with the following condition, and Paul Bloser seconded the motion. All Board members were in favor of the motion.

DECISION: Unanimously approved by a vote of 4 yes with the following condition:

- 1. Shed to be removed within thirty days of inspection of the garage.

The following finding of fact was cited:

- 1. Keeping in character of the neighborhood.
- 3. Application of Timothy Gaffney, owner; 2034 Westside Drive, Rochester, New York 14624 for variance to erect a 10' x 18' utility shed to be 30' from side lot line (55' req. abutting a street) at property located at 2043 Westside Drive in R-1-15 zone.

Timothy Gaffney was present to represent the application.

MR. GAFFNEY: I'm Tim Gaffney. Basically I just want to build the shed, because right now my kids are getting old enough that the motorized toys and everything, the gators and stuff, they just don't fit in the shed I have now. And my in-laws just moved and now I have a riding lawn mower to put in an 8 by 10 shed plus all my son's toys. And if you go back by my house, my whole deck is full of stuff they have given me to basically have, inherit basically because they're moving from a four-car garage in Churchville to Blueberry Hill. I just don't have the room in that little shed right now to store anything.

That shed is coming down, and I will incorporate as much of it in the new shed. Basically, I am -- the square footage I'm all right with. It is just my lot is only 70-foot wide and the setbacks are so huge, no matter what I do on my lot I have to have a variance.

DAVID CROSS: Corner lots are difficult.

PAUL BLOSER: Prefab unit?

MR. GAFFNEY: No. I will make it. I will build it.

PAUL BLOSER: Could you do it more square to pull the lines in?

MR. GAFFNEY: I could. I just thought if it was rectangle, it would fit more back at the back end instead of being so square and big. Because that back part is -- when it rains pretty good, it gets pretty wet, so I can't really use it for almost a week after it rains hard.

DAVID CROSS: The house currently sits approximately 30 feet from the right-of-way line.

MR. GAFFNEY: Right.

DAVID CROSS: You're proposing 30 feet.

MR. GAFFNEY: Yeah. It is basically going to be in line with the house. It is going to have a door on the Baylor side end and one facing the house.

DAVID CROSS: Hopefully we'll get in drawings.

MR. GAFFNEY: I asked her and she told me I didn't need any. I have one here, basically what it is, it is just a rectangle like that (indicating). I asked her when I made the copies of that, and she said no, you don't need that.

That is the Baylor side. That is what the roof is going to look like. That is pretty much it. I will incorporate the doors on the existing shed and the floor.

Mr. Gaffney conferred with the Board at the dias.

MR. GAFFNEY: Right now I barely get through and hit the doors. I didn't want to waste all that --

DAVID CROSS: What materials are you proposing to build this out of?

MR. GAFFNEY: 2 by 4s, T-111 for the siding.

DAVID CROSS: With a building permit?

MR. GAFFNEY: Yes. Actually I already applied for it. Because when I first applied for it, they said I didn't need a variance. But a week later they said yes because it was a corner lot.

JORDON BROWN: The Building Department.

MR. GAFFNEY: Yes. I was quite surprised when she called me that I needed a variance because it is a corner lot.

DAVID CROSS: Taking 3 or 4 feet off would help this side.

MR. GAFFNEY: I think I can shift -- I can shift it over some. Because I have to have it 8 foot from this lot. That shed was there when I first moved in, so that is coming down. They said I have to be 8 foot within that lot and that shed itself is 8 foot wide. It is 8' 2", I think. So if I move it all of the way over, I can do that.

DAVID CROSS: Okay. Thank you.

MR. GAFFNEY: Can move it right over, basically touching the corner.

I apologize. She told me I didn't need any copies like that, just the variance application copies.

I'm moving it -- I'm taking the floor out and using it for the new shed basically to save money and not waste all of that. It is still a good shed. I want to use as much of the wood as I can. I will use the walls and stuff for shelves inside the shed. And the doors I can use on one end.

DAVID CROSS: Your proposed color?

MR. GAFFNEY: Probably beige, to match the color of the house. It is a yellowish beige. Right now the one that is back there is a beige.

Basically I could move it over to the corner of the shed that is there now. Basically I just put that on there -- it is 8 or 10 from the side lot.

DAVID CROSS: You're proposing 10?

MR. GAFFNEY: I can shove it over. I think the bearings or whatever is 8.

DAVID CROSS: Would you be amenable to 32 foot?

MR. GAFFNEY: Okay. I will just shove it all of the way over to the front corner of the shed now, which is fine.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

CHARLES RETTIG, Coldwater Road

MR. RETTIG: Just a point of clarification. Is this a corner lot?

MR. GAFFNEY: Yes. Baylor and Westside.

MR. RETTIG: Thank you.

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

David Cross 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 Jordon Brown seconded the motion. The Board all voted yes on the motion.

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Paul Bloser made a motion to approve the application with the following condition, and Jordon Brown seconded the motion. All Board members were in favor of the motion.

DECISION: Unanimously approved by a vote of 4 yes with the following condition:

1. Shed to be no closer than 32' from the right of way.

The following finding of fact was cited:

1. Applicant proved a hardship.

Note: A building permit is required before the shed is erected.

4. Application of FRA Engineering, 530 Summit Point Drive, Henrietta, New York 14467, property owner: North Chili Community Church; for variance to erect an apartment development to have units 25' from proposed interior roads (40' req.) at property located at 3355 Union Street in RM zone.

Rick Ayling was present to represent the application.

MR. AYLING: My name is Rick Ayling, an engineer with FRA Engineering with offices located at 530 Summit Point Drive, Henrietta, New York.

We're here tonight on behalf of our client, Brickwood Homes, to seek an area variance to allow a setback of 25 feet to proposed apartment buildings from interior roadways on the site where 40 feet is required by code.

The intent of the project is to construct a 60-unit apartment facility on the 8.6-acre site, which is currently undeveloped.

The proposed luxury style apartment development is a permitted use within the zone.

Our office appeared before the Planning Board for conceptual review of this project on two occasions prior to this evening. Originally, we made application with the plan on the left, which is compliant with all of the current zoning, all of the buildings on that plan are indicated at 40 feet from the interior roadway.

Feedback that we received from the Planning Board suggested that we consider alternative layouts to improve the aesthetics of the project and not make it look so boxy or military barracks I believe were some of the comments that were stated.

Subsequently, our second appearance before the Planning Board was on March 13th, 2007, at which time we presented the plan on the right which changes the configuration of the buildings to be somewhat more random and what we feel to be more aesthetically pleasing.

In order to make the layout in that manner, we had to decrease the setback from interior roadways to 25 feet. Given the configuration and the angles and curvature of the roadways, 25 feet is approximately the maximum setback that we can accommodate with this type of layout.

In summary, we are seeking this area variance in accordance with recommendation that we received from the Planning Board to make a more aesthetically pleasing project.

The current proposal of the 25-foot setback, this plan has approximately 25 percent less asphalt than the previously approved plan, increasing the amount of green space on the site. So we believe that this project is consistent with the neighborhood permitted use and will not propose a detriment, and again, it is -- it -- the variance is intended to improve the aesthetics of the project.

I would be happy to answer any questions.

PAUL BLOSER: What is the purpose of the proposed gravel drive going over to the church?

MR. AYLING: The gravel drive is in response to comments we received from our prior reviews to provide a second route of emergency access to the development. That is a -- that is proposed as a sub-drain gravel lawn. It will appear to be lawn area. It will be reinforced underneath to accommodate heavy emergency vehicles.

DAVID CROSS: Are these apartments or townhomes?

MR. AYLING: Luxury-style apartments.

DAVID CROSS: With garages kind of underneath. Is that right? Are there garages associated --

MR. AYLING: I'm not certain of the architectural detail of whether these units have a garage. The length of the driveways is approximately 25 feet and will accommodate two cars to each unit, but I am not certain whether or not a garage will be proposed with these units.

JORDON BROWN: Explain to me again what we're -- would be the problem of moving further back.

MR. AYLING: If you move further away from the road, the interior roadway, to attempt to accommodate the variance, we would be encroaching on the rear of the buildings in the same fashion.

The corners of some of the buildings, the rear corners are opposite the roadway that connects to each unit, is within 25 feet of another roadway in this plan. So we have tried to maximize the setback as best we can.

JORDON BROWN: And cutting down on the scale of the project wouldn't be an

acceptable solution to not need the variance?

MR. AYLING: We believe that the intensity of the project is appropriate. It is consistent with what is allowed currently under the zoning. This is a 8.6-acre site and it will support under the current zoning 68 units or -- where 60 are proposed.

PAUL BLOSER: Are sidewalks going in here?

MR. AYLING: I don't believe sidewalks are proposed at this time.

PAUL BLOSER: Streetlighting?

MR. AYLING: Um, I don't know if we're going to have any lighting or not. I believe it will be building-mounted lighting only, but I'm uncertain.

JORDON BROWN: Do we have sidewalk issues?

PAUL BLOSER: No. Just curious.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

DAVID DUNNING, 2 Wheat Hill

MR. DUNNING: Is there a safety concern in the way this is laid out with this 25-foot setback? I notice a lot of curvy roads in there and with no sidewalks and with the potential of children being in this area and the size of some of the vehicles today. If you put two vehicles end to end in one driveway, the line of sight would be impaired at best.

It appears to me that this setback would not provide an adequate safety measure to prevent accidents or anything happening to children or any other pedestrians in the area when pedestrians will have to use the roadway to move from building to building. I don't think this 25-foot setback is adequate and it needs to be increased.

Thank you.

MR. AYLING: This is more of a shared driveway to access the units. It is -- we expect with the number of driveways accessing, the speeds will be low and it will be limited to the people in the development.

DAVID CROSS: Any speed bumps proposed?

MR. AYLING: I don't believe any speed bumps are proposed. The geometry of the roadways, I believe, will help control the speed of the vehicles. They will be unable to obtain excessive speed in straight distances available.

MR. DUNNING: If I may, once again, David Dunning, 2 Wheat Hill. You said this will be pretty much limited to the residents. I'm assuming there will be refuse collection, recycling collection, perhaps even school buses or municipal vehicles that will have to get in and out of the projects from time to time. Those would also have to be considered in the safety issue with people moving around that property. Thank you.

CHARLES RETTIG, Coldwater Road

MR. RETTIG: Question for the applicant. Is this proposed as a future dedicated road?

MR. AYLING: Currently this is proposed as a private road.

MR. RETTIG: Thank you.

I think you stated 6 acres or 6.8 acres and 60 units. Is that correct?

MR. AYLING: Um, the number of units proposed is 60. The size of the site is 8.6 acres. Allowed under the current zoning is 8 units per acre, which yields 68 units.

MR. RETTIG: That is with the proposed 25-foot setback; is that correct?

MR. AYLING: The computation for maximum lot yield under the current zoning is separate from the issue of setback.

MR. RETTIG: Let me ask a different question.

With the specific acreage that you're building on, what is the difference in number of units for the 25-foot setback versus the 40?

MR. AYLING: We're proposing the same number of units in both phasing. The plan on the left was our original proposal, which features 60 units compliant with setbacks and all other aspects of zoning code. The plan on the right is also 60 units.

MR. RETTIG: Thank you.

Then what is the percentage of green space and open land between the two proposals?

MR. AYLING: Um, the amount of building area in both proposals is the same. The same amount of building area in the current proposal, with the random layout we're reducing the amount of asphalt by 24 percent, which is approximately half an acre.

MR. RETTIG: Thank you.

DOROTHY BORGUS, 31 Stuart Road

MS. BORGUS: I would just like to clarify a point. I thought I heard this gentleman say that this application was in -- was in agreement or in compliance with or has a hope to comply with Planning Board prev -- previous Planning Board approval. Did you say that?

MR. AYLING: Um, may I direct?

DAVID CROSS: Yes.

MR. AYLING: It was a suggestion made by the Planning Board that we consider a more aesthetically pleasing layout.

MS. BORGUS: Right. I was there.

MR. AYLING: It was a comment, I believe.

MS. BORGUS: But I didn't want the conception to stand, if it was said that way, and I might be wrong, but I didn't want that to stand that the -- the conception on the part of the Board

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that this has been approved by the Planning Board. It has not. They have been there for informal only. So there is no approval by the Planning Board that you need to, you know, comply with or to worry about as far as granting this, because it is really a moot point at this point. There is nothing to get a variance for. It has gone nowhere yet. I just wanted to be sure that the Board understands that.

STEVE GINOVSKY, 19 Hubbard Drive

MR. GINOVSKY: Okay. Was made mention that this here is a private road. Who is going to end up snowplowing it? You folks? And snow removal

MR. AYLING: The owner of the property, Brickwood Homes, would maintain the property, including snow removal and lawn area -- general maintenance.

MR. GINOVSKY: Okay. Also with the roadway kind of intertwining there, God forbid you need the Fire Department to get in there. And they have got some pretty large vehicles. Has that been considered also?

MR. AYLING: I believe that the width of the roadways and radius of curvature is compliant with Town standards to accommodate such a vehicle.

MR. GINOVSKY: Including -- excuse me. Including vehicles parked in the front of these structures? I have a concern, because I have seen over at Meadowbrook we have had in the past some fires there, and they get equipment in there to take care of that matter, I hate to see something intertwined like -- as such to attack whatever you have to do. You know, the Fire Department going in there. It is a big concern.

Because time is valuable and someone is going to lose their life if they're not careful. And the width and everything else, and vehicles parked in there, and since this is just a concept idea, and Planning Board hasn't approved anything, I think we're a little bit premature on that, and that issue needs to be looked at. I don't see where it should be here at Zoning for the approval at this point.

Thank you.

HEATH MILLER, 69 Bellmawr Drive

MR. MILLER: The only concern I have is if this variance is granted, what is to prevent the applicant from then coming before the Planning Board with a proposal which then maybe has 68 units on the site, the maximum allowed? That might be something that they could do. If they get the variance for the 25 feet as opposed to the 40, um, possibly you could put more. You could fit more apartment units on the site. Just something to think about.

Thank you.

DAVID CROSS: Would you like to address that?

MR. AYLING: Um, with -- in response to the question regarding safety, the second proposal, our current proposal features one loop which has two separate entrances to each of the homes on -- on the loop. There's two alternative routes to access it, in that case. So it offers some redundancy.

And number of units and cars parked will be the same in each case.

MS. BORGUS: Could I just make one more comment? I think it is always a worry for this Board and for people that are regulars at these meetings to sit here and watch applicants come before the Zoning Board before they have been to Planning. It's kind of -- it's legal, I'm sure, but it is just kind of the -- the cart and the horse aren't in the right order here. It puts you people in a bad spot. Where do you go with something that isn't approved and you're giving a variance?

Thank you.

JORDON BROWN: I did want to ask Counsel a question similar to that.

Did any approval that we make be contingent upon this current plan, and if this does change through Planning Board review, does it need to be brought back to us?

KEITH O'TOOLE: I suppose you could. I guess I would be more concerned with what your concern is. Perhaps we can refine that a bit.

Typically during Planning Board review process, the project evolves some, and often that evolution is a very good thing. We can reconfigure the site, provide better drainage and traffic management and the like. So locking them into what is, in essence, a conceptual plan, I don't think is practical.

If there is a concern about the maximum number of units, well, I suppose they could come back in and re-orient the site and theoretically provide more units, but then under the current zoning code, they're allowed to have more units.

The Planning Board's concern primarily when they first came in on concept review was that they came in with a grid-like layout that was reminiscent of 1955 and the Planning Board thought they could do better, and with respect to the applicant, they made the effort. You may or may not like the outcome, but they certainly did a redesign and they may have to do another redesign depending on what the subsequent comments from the Planning Board dictate.

MR. RETTIG: Just as a further comment, I think it would be reasonable, since the applicant stated himself at this public hearing that for both applications or for both schemes, that he stated 60 and no more units. Therefore, I take him at his word, and if you, the Board, put a condition of approving this variance with a condition of no more than 60 units, no matter how they're laid out, I think you're within your rights to do so.

KEITH O'TOOLE: Does the applicant have a problem with that condition?

MR. AYLING: Um, currently the proposal is 60. I'm unaware of any intention of increasing that at this point. However, I'm reluctant to exclude the possibility.

KEITH O'TOOLE: So the gentleman is not authorized by his client at this point.

PAUL BLOSER: In looking at this, a comment I make in general, I certainly do like this layout over the grid-style layout.

My biggest concern is safety. Um, I don't think in good faith I could say yes on this without seeing the traffic flow, the Highway Department or if the Fire Department has looked at it to see if they have adequate clearances. Lighting on something like this I think will be a big issue when you're really constraining things for backing out of driveways.

I guess I would like to see more detail and have more eyes on it before we make an approval on something like that. I would like to see a Planning Board approval on a design, and this is not a stamped drawing yet. So to issue a variance without an approved drawing from Planning Board, I -- that is where I stand with it.

JORDON BROWN: Keith (O'Toole), it looked like you were going to say something.

KEITH O'TOOLE: If the concern is whether the Fire Marshal will approve the design, the Fire Marshal's approval will be a condition of the Planning Board approval.

Certainly you have to keep in mind there are basically two sets of eyes looking at this plan, and -- the Zoning Board and the Planning Board. If the Board grants them the 25-foot variance, Planning Board can certainly be of a mind that that is not a safe setback and they can say thank you for your variance and ignore it because the Planning Board can impose greater conditions of approval if they believe it appropriate.

In reverse, you can also say that based upon your opinion, I think safety is a legitimate concern. If you're of a mind that you don't believe 25 feet is safe, you can certainly deny the approval on that basis.

But you also have to understand, you also create something of a catch-22 for this or any other applicant. How do you spend tens of thousands of dollars on engineering until you know what your outer limits are in terms of variances? That is oftentimes why you will see an applicant come to the Zoning Board first, for better or worse.

PAUL BLOSER: The 25-foot I don't have a problem with. I have a problem with safety and traffic flow and adequate lighting and fire truck manipulation within the property. Those are my issues. 25-foot, I don't have a problem with that, for that. It's more the safety and the fire. The 25, I don't have a problem with that portion of it.

KEITH O'TOOLE: If you're good with the 25-foot setback, what you can also do, either individually or as a Board, is you can send out a letter of recommendation to the Planning Board of issues that you have concern about. While those would not necessarily be conditions, the courtesy will be that they have that.

PAUL BLOSER: I like the layout. It's nice. I think it would be attractive, based on what is going behind there, too, there is a lot of curves and rolls. Rather than the barrack style.

The safety is my biggest thing. The 25 is not an issue with me.

MR. BRINKWART: George Brinkwart, also from FRA Engineering. We share everyone's concern with safety on this. I think I can speak a little bit with regard to the client's desires on the development. I think we can reasonably assure you we won't have more than 60 units on this thing. All of the interior roads were laid out, developed by the ASHTO highway guidelines. In particular, using the templates for the fire truck size we have here in Chili. So as far as internal access and turning movements for those vehicles, this design does meet those requirements.

If the Planning Board chooses, we can provide -- we'll definitely provide those templates to demonstrate those vehicles can make those turning movements.

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

David Cross 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 Jordon Brown 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.

DECISION: Unanimously approved by a vote of 4 yes with no conditions, and the following findings of fact were cited:

1. Hardship proved.
2. Does not affect neighbors.
5. Application of Edward VanGrol, owner; 573 Stottle Road, Scottsville, New York 14546 for variance to erect a 12' x 16' utility shed to be 192 sq. ft. (160 sq. ft. allowed) at property located 573 Stottle Road in A.C. zone.

Edward VanGrol was present to represent the application.

MR. VanGROL: The particular utility shed that I was planning on doing is one of the Amish ones you see here on Union Street.

The reason being, I have a two-car garage that I haven't been able to walk through in the past couple of years. I don't have any children, but I do have a lawn tractor, utility cart, lawn sweep and snowplower and everything else and we would just love to be able to park the car in there for one year.

The idea of building a shed or buying one, it's a little bit -- I would like to have one twice the size, to tell you the truth, but neither can I afford it, nor do I think you would give me the variance for it. But the square footage is just a little bit over what the allowance is. I don't think it is exorbitant by any means. Where I am planning on placing it, it is totally out of sight. It is behind the house. I have a row of pines behind the house. I have a row on the side. It will be in the corner lot where the pines come together.

DAVID CROSS: You're buying it from the Amish --

MR. VanGROL: Yes. The color would be blue, and it is a white roof.

DAVID CROSS: Matches the house?

MR. VanGROL: Yes. Pretty much. I have blue shutters and the house is white.

I took a picture today of where it would be sitting. I don't know if you want to see it or not.

COMMENTS OR QUESTIONS FROM THE AUDIENCE: None.

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

David Cross 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 Jordon Brown 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.

DECISION: Unanimously approved by a vote of 4 yes with no conditions, and the following finding of fact was cited:

1. Does not affect the neighborhood.

Note: A building permit is required before the shed is erected.

6. Application of David Meyer, owner; 26 Pleasant View Drive, North Chili, New York 14514 for variance to erect a deck to be 25' from rear lot line (40' req.) at property located at 26 Pleasant View Drive in R-1-15 zone.

David Meyer was present to represent the application.

MR. MEYER: Basically the deck is coming off the house from a sliding glass door. It is coming out on one level and then goes up to another level around the pool. And it is -- the property line is only -- the deck is only going to be 25 feet from the property line, rather than the 40 feet, which my understanding is that is what the code is, and so we had to apply for a variance for it. You should have a copy of the diagram there.

DAVID CROSS: The pool is existing?

MR. MEYER: The pool is existing already, yes.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

STEVE GINOVSKY 19 Hubbard Drive

MR. GINOVSKY: I know Pleasant View Drive very well. That was one of Mr. Glidden's original subdivisions, and I know the lots are not real deep and you don't have much choice in it. I personally don't see any problem with this, doing the deck like this.

Thank you.

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

David Cross 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 Jordon Brown seconded the motion. The Board all voted yes on the motion.

James Wiesner made a motion to approve the application with ^^ conditions, and Jordon Brown seconded the motion. All Board members were in favor of the motion.

DECISION: Unanimously approved by a vote of 4 yes with no conditions, and the following finding of fact was cited:

1. Applicant proved hardship.

Note: A building permit is required prior to construction of the deck.

The April 24, 2007 Zoning Board meeting minutes were approved.

The meeting ended at 8:30 p.m.