

CHILI ZONING BOARD OF APPEALS  
May 17, 2011

A meeting of the Chili Zoning Board was held on May 17, 2011 at the Chili Town Hall, 3333 Chili Avenue, Rochester, New York 14624 at 7:00 p.m. The meeting was called to order by Chairperson Paul Bloser.

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

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

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

PAUL BLOSER: We'll start by going over the signs, the applications. I saw them all. I didn't see one for the full duration on Morgan Road. Once I went by, I didn't see it, and twice I went by and I saw it.

FRED TROTT: I didn't see it that Saturday. But I went by Monday and it was up.

ROBERT MULCAHY: I saw it.

ADAM CUMMINGS: I saw it, but I wasn't there. Wasn't looking last weekend. It was -- I went by just this past Sunday. It was there, but that was at the end of the cycle.

MS. NEWTON: During the rainy storm it blew off the trees. We put up it later that day, so, you know, four hours later.

MICHAEL NYHAN: How long was it down for?

MS. NEWTON: 4 or 5 hours. We didn't actually see it. It was halfway across the lawn. We went outside.

PAUL BLOSER: Good. Does the Board want to proceed with this?

The Board indicated they would hear the application.

1. Application of James Newton, owner; 37 Cheviot Lane, Rochester, New York 14624 for variance to erect an enclosed porch to be 7.5 feet from existing in-ground swimming pool (15 feet req.) at property located at 37 Cheviot Lane in R-1-15 zone.

James Newton and Cheryl Newton were present to represent the application.

MR. NEWTON: My name is James Newton. I live at 37 Cheviot Lane, Rochester, New York 14624.

PAUL BLOSER: Okay. I will say ahead of time you supplied a nice packet of information. How will they be constructed? What kind of materials and -- can you go into a little more detail on that?

MR. NEWTON: I have the blueprints. I'm not a construction person. I don't know what kind of information you're looking for.

PAUL BLOSER: Is this prefab or is it constructed otherwise?

MR. NEWTON: Constructed otherwise.

PAUL BLOSER: Okay. Is this being done by a contractor?

MR. NEWTON: Yes.

PAUL BLOSER: Basically a three-season room?

MR. NEWTON: Correct.

PAUL BLOSER: Is it going to be heated?

MR. NEWTON: No.

PAUL BLOSER: Fireplace of any type in there?

MR. NEWTON: No.

JAMES WIESNER: It would appear that the pool kind of meanders in and out of the border of it, the outline of it, so the 7 1/2 feet is just to the closest approach to the structure?

MR. NEWTON: Correct.

MICHAEL NYHAN: Will there be steps from this sun room that lead down to that deck and pool, or is there 7 1/2 feet -- or will it exit from the sides?

MR. NEWTON: Exits to the side.

MICHAEL NYHAN: Either side or one side?

MR. NEWTON: To both sides if you're on -- if you're facing the house from the back, there is going to be -- still going to be remaining, the sliding glass door with no deck to the steps. On the opposite side of the north is going to be a platform with steps going down towards an elevated patio, and then we'll have to walk down the steps to get to it around. You can't -- there

is like a 4 foot drop there, the same way we have it now.

MICHAEL NYHAN: So the new structure will mimic the footprint of the current wood deck, relative to the retaining wall that faces the pool?

MR. NEWTON: Exactly.

MICHAEL NYHAN: The front of that will be all glass with no doors to exit?

MR. NEWTON: It will be all glass.

MICHAEL NYHAN: No doors to exit?

MR. NEWTON: No doors.

PAUL BLOSER: Can I see the blueprint, please?

MICHAEL NYHAN: So as you're looking at the colored area, you colored in where the existing wood deck will be the sun room, and then to the left of that there is still a wood deck that will remain there?

MR. NEWTON: Correct.

MICHAEL NYHAN: That is where the glass doors will exit to that piece of the deck?

MR. NEWTON: One glass door exits to the deck, and there is another glass door that exits to the steps that go to the deck.

MICHAEL NYHAN: Okay. Thank you.

FRED TROTT: Two questions. Is the pool up to code?

ED SHERO: The pool?

FRED TROTT: Yes.

ED SHERO: Yes.

FRED TROTT: I don't have any questions.

ROBERT MULCAHY: Is the structure on the deck itself going to be replaced?

MR. NEWTON: Um, I believe they're using -- says on the blueprints, but they're using the existing supports.

PAUL BLOSER: Using the existing structure and building off of it.

Pretty much it is all glass. There is no siding really on this other than the trim work around the glass, as I see on the prints?

MR. NEWTON: I found a pretty close replication if you want to see what it looks like, what my intentions are.

PAUL BLOSER: I can see pretty clearly on here what -- if you're going by these drawings, it is very clear.

#### COMMENTS OR QUESTIONS FROM THE AUDIENCE:

DOROTHY BORGUS, 31 Stuart Road

MS. BORGUS: Having an in-ground pool -- and I'm assuming this is in-ground? Is this an in-ground pool?

MICHAEL NYHAN: Yes.

PAUL BLOSER: Yes.

DOROTHY BORGUS: Where is the fence? The whole yard.

MR. NEWTON: The whole backyard is fenced?

DOROTHY BORGUS: The whole backyard is fenced?

MR. NEWTON: Yeah.

DOROTHY BORGUS: Has the Board asked whether this was planned this way when the pool was put in, or has this kind of evolved?

PAUL BLOSER: I guess you can answer that.

MR. NEWTON: Can you clarify? I don't understand what you're saying.

DOROTHY BORGUS: That pool is awfully close to the house. And having an in-ground pool myself, I know you plan on getting it away from the structure in case you want to do something else, and it -- it appears that this is either, you know, kind of pieced together as you went or you -- you intended to have everything kind of squeezed up together.

MR. NEWTON: I mean that -- that, where the pool is, is hand drawn in. The back part of my property is wooded, and, you know, it's wooded and low. It's a low point. I live on a hill.

Does that answer your question?

DOROTHY BORGUS: Yes. It's awfully close. Having an in-ground pool, that's awfully close to a building. I know.

Thank you.

MS. NEWTON: I'm Cheryl Newton, Jim (Newton)'s wife. The way that the pool is set up, it's further down than the actual house. You have to walk through the sun room, down the stairs and down the other set of stairs to actually get to the pool. And there is no way to get to the pool through the glass doors of the sun room. There's no doors accessing it. There is another way around it. It is on -- higher up, and there is a retaining wall that you have to go down five stairs before you even get to the pool area. And everything around it is concrete. So there --

PAUL BLOSER: From the road I could see the elevation drop from where the -- where the existing deck is to where the surface of the pool is, is -- what I could see from the road.

MS. NEWTON: Yes. So it is not that you could just walk out and --

PAUL BLOSER: It's there.

MS. NEWTON: Exactly.

PAUL BLOSER: It is quite recessed down the hill.

Robert Mulcahy made a motion to close the Public Hearing portion of this application and Fred

Trott seconded the motion. All Board members were in favor of the motion to close the Public Hearing.

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

PAUL BLOSER: Again, when I drove by it looking at it, it is quite recessed from the surface of the deck, the back of the house sits down in the yard. It is close, but it is quite unique. If it were level with the back of the house, with a level sidewalk there, I think I would be a little more concerned -- the fact that it is solid glass across the back of the addition with no sliding doors -- if the doors were where you could jump off and -- and sail into the pool.

Looking at the blue print, it is a nice design. The only thing I would do is on the conditions of approval, that the roofing match what is existing to the house and any trim work fascias and aluminum trim match what is on the house also in colors.

Other comments?

MICHAEL NYHAN: One of the concerns that I -- with only being 7 1/2 feet from the structure is people that don't know there is a pool there in the wintertime, it is covered by snow, it is an in-ground pool, um, you know, they're expecting distance between the house or the structure and the pool. 7 1/2 feet is not a lot of area. If firefighters are back there for some reason or law enforcement or just somebody walking back there, is there some way to put protection up to notify people there is an in-ground pool there? Just because it is so close to the structure, if you're walking around the outside of the structure, you're going to be right at the edge of the pool.

KEITH O'TOOLE: Is that a load-bearing cover?

MR. NEWTON: Load-bearing?

KEITH O'TOOLE: Pool cover.

MR. NEWTON: They advertise an elephant can walk on it.

KEITH O'TOOLE: Thank you.

MICHAEL NYHAN: So maybe a condition would be that it has to have a load-bearing cover for the pool. Right now it does, but if it is replaced. That was just my concern with the closeness to the house. That and the door. The means of egress from the back deck -- or back sun room.

PAUL BLOSER: Do you have any -- on the fence, as you approach either side of the house, do you have a sign indicating that there is a pool?

MR. NEWTON: Currently, no.

PAUL BLOSER: The purpose of the fence is to -- they complied with code as far as what the pool is now. It's there. They're in compliance.

The deck, when it was put up, it was in compliance. So there is no violations on the property. Simply right now they're closing in the deck and making it a three-season room. Dimensionally not much has changed, other than being closed in.

So conditions aren't changing from what it is right now.

MICHAEL NYHAN: Well, there is a structure where there once was a deck. People might walk across to get into the house, where there was a roof of the house would have to be beyond that deck or that now structure to do that. You only have 7 1/2 feet to work in before they're standing in the pool. If it is a load-bearing cover, I guess that is not an issue, but if it isn't, it could be.

JAMES WIESNER: I think it's typical for an in-ground pool to have a cover that can support someone just because of the fact you can walk across it, from what I have seen of them.

PAUL BLOSER: The addition on this, the deck isn't growing any. The -- the floor space, is it?

MR. NEWTON: In the -- there is actually two existing decks right now. One is 14 by 14, and if you look at the picture, the other one is -- to your -- I guess to your right is 10 by 10. What we're doing is taking 3 feet of the 10 by 10 section and bring that out --

PAUL BLOSER: Expanding it out a little.

MR. NEWTON: Yes, just --

PAUL BLOSER: I guess what I am saying is the edge of the deck and the railing where it is right now is not moving closer to the pool?

MR. NEWTON: No.

PAUL BLOSER: That is going to be where the outside wall is?

MR. NEWTON: Correct.

PAUL BLOSER: Okay. That is what I was looking at.

Paul Bloser reviewed the proposed conditions of approval with the Board.

MICHAEL NYHAN: Do you want to require a cover on that pool that can support...

PAUL BLOSER: Do you have motion sensor lights out there?

MR. NEWTON: I do, yeah.

PAUL BLOSER: So that is a benefit also.

The other condition I'm putting on there, the cover of the pool during off season should be able to support the weight of a person.

Paul Bloser made a motion to declare the Board lead agency as far as SEQR, and based on evidence and information presented at this meeting, determined the application to be a Type II

action with no significant environmental impact, and Adam Cummings seconded the motion. The Board all voted yes on the motion.

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

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

1. Roofing, siding, gutters, downspouts and trim materials must match the main house.
2. Pool cover used during off season shall be load-bearing to support the weight of persons walking across.

The following finding of fact was cited:

1. The proposed variance will not result in a significant change to the neighborhood.

Note: A building permit is required before commencing construction.

2. Application of Marcia Vandebush, owner; c/o James Brasley, 10 Cambridge Court, Fairport, New York 14450 for variance to erect an addition to house to be 9 feet from west side lot line (50 feet required.) at property located at 280 Morgan Road in AC zone.

Jim Brasley and Marcia Vandebush were present to represent the application.

MR. BRASLEY: Good evening.

I'm Jim Brasley, B-R-A-S-L-E-Y. My office is at 10 Cambridge Court in Fairport, and I'm joined tonight by Marcia Vandebush, the owner and resident of 280 Morgan Road.

We're requesting a variance for a side setback to be 9 feet instead of the required 50 feet. This is an existing house. It's a three-bedroom split-level house. It was built in the 1970s. It is approximately 0.9 acres.

Mrs. Vandebush bought the house in 1999. She and her husband John have three small children and since it is only a three-bedroom house, they need a bigger kitchen and dining area and a fourth bedroom. So they want to extend the kitchen and dining area out 8 feet on the first floor in the rear, which is to the north, and then add a new second story over both the existing first floor and the first floor addition.

The whole left end of the house.

As you can see by the diagram up on the screen or in front of you, the lot is not rectangular. It is more like a parallelogram, so the farther back on the lot you go, the narrower the side of the house comes to the property line. This is an AC Agricultural Conservation zone. This zone requires a 55 foot setback. Since the lot is only 100 feet wide, if we applied all of the setbacks, there would be zero land available for development. The existing house has an existing side setback of about 14.3 feet on the front left corner of the bottom of the drawing and about 10.5 feet on the rear left corner, a little bit higher up the drawing. So adding an 8 foot deep addition onto the rear of the house will drop the proposed side setback down to 9 feet. My calculations show I believe it is 9.23 feet, but that seems a little too precise. We're asking for 9 feet just in case something didn't get built exactly right.

So we're actually only proposing to change what is existing from 10.5 rear setback back down to 9 feet, even though 50 feet is required.

We believe we meet the five criteria for granting an area variance. Number 1, whether there is any other way to achieve the owner's goals, any other feasible means. They want to add onto the kitchen and living area on the back of the house, and that is where that area is. There is nowhere else to add. They don't want to add onto the side and they don't want to add onto the front.

It will not produce an undesirable change in the neighborhood. It will barely be visible from the road. Maybe a little bit from the west. As you go west from their property, it does slope uphill very dramatically. There is also -- the next-door neighbor, it is at least several hundred feet to the next house and he has a much larger lot, so they're close to their west lot line. There is plenty of room for the neighbor on the east. We don't believe this is substantial since we're at 10.51 feet now and we're only asking to down to 9 feet.

We don't believe there will be any adverse impact on the environment. It is a sloped lot, but the owner reports she has no drainage problems right now and we're not making any changes to any existing drainage patterns.

Whether or not this difficulty is self-created -- I suppose it could be since the owner wants to put an addition on the house, but this is the way the house was and the lot was when she purchased the house in 1999.

Therefore, we believe we meet all of the criteria for the variance.

Um, the addition, um, all of the existing exterior building materials and details, the facia, the eaves, the siding, the roofing will all match the existing finishes. The goal, of course, is to have the addition look like it has always been part of the house. I do have some proposed

architectural building elevations if you're interested in them.

PAUL BLOSER: I will look at them.

MR. BRASLEY: As you can see, there are two drawings there. The top one is the existing on each one, and the lower drawing is the proposed. I have some more in case anyone wants one.

MICHAEL NYHAN: Can you put it on the projector there in case anyone wants to see it?

MR. BRASLEY: The top drawing is the existing and the bottom drawing is the proposed. That is the front facing south, facing Morgan Road. Here is the left side where we're adding the addition. That hashed lines.

Once again, we'll match all of the eaves, fascia, all of the construction materials. It will look like it has always been there.

That's all I have. Does anyone have any questions?

JAMES WIESNER: No, I don't have any questions.

ED SHERO: Conditions, any outstanding violations be corrected prior to the issuance of a variance.

MR. BRASLEY: When we spoke to Town staff to get ready for this application, we found out there are -- part of the deck in the backyard and a shed in the backyard which were there when Ms. Vandebush bought the house in 1998 or 9 didn't have any permits. She didn't know that until just now, but we're more than willing to make sure those are in compliance. If you want to make that prior to approval, if we have to get permits or approvals, we'll do whatever it takes. For both the deck in the backyard and the accessory outbuilding, the shed that is farther back, both of those are shown on the site plan that was submitted to you.

COMMENTS OR QUESTIONS FROM THE AUDIENCE: None.

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

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

Paul Bloser reviewed the proposed conditions of approval with the Board.

PAUL BLOSER: Do you understand those conditions of approval?

MR. BRASLEY: Yes, those are all acceptable. What do we do to straighten out the violations? Come into the Building Department during business hours?

PAUL BLOSER: Everything goes through the Building Department. Right now you have a deck, hot tub and a shed. They all need permits and inspections.

MR. BRASLEY: Understood.

PAUL BLOSER: Once they have been completed, this takes affect and you can apply for your building permit. Okay?

MR. BRASLEY: That is acceptable, yes.

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

James Wiesner made a motion to approve the application with the following conditions, and Robert Mulcahy seconded the motion. All Board members were in favor of the motion.

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

1. All exterior materials used on the addition shall match existing house.
2. Variance will be in effect once all outstanding property violations have been cleared through the Building Department.
3. Building Permit for this application will not be issued until all outstanding violations have been corrected.

The following finding of fact was cited:

1. The proposed variance will not have any adverse physical or environmental effects on the neighborhood or district.
3. Application of Choice One Development-Unity II LLC, owner; c/o Charles Berends, 323 Thornell Road, Pittsford, New York 14534 for variance to erect an 8' x 3' double-faced monument sign to be a total of 48 sq. ft. (32 sq. ft. allowed), variance for sign to be 5' 4" high (5' allowed) at property located at 3379 Chili Avenue in RB zone.

Charles Berends was present to represent the application.

MR. BERENDS: Good evening. My name is Charles Berends. I reside at 423 Thornell Road, Pittsford, New York 14534. I'm representing Choice One Development, and we are in the process of constructing a facility just about half a block from this building.

Unfortunately, the GC went forward and when the weather got good, started to erect the sign, and the Building Department was good enough to come over and say we forgot to get the building permit for the sign itself, the sign permit. And upon further review and application for that sign, Ed (Shero) told us that we exceeded the Town Code.

When it was originally presented to the Architectural Review Board and Planning Board and approved, um, if had we gone ahead and grabbed that permit right then, we would have been good with the sign. The size as it is, the Town Code has changed and caused that 4-inch variance in height.

All of the building materials for the sign match those that are on the building. The -- the brick with the accent brick, the masonry panel that looks like sandstone and the cap stones match what is on the building right now.

PAUL BLOSER: You have been through Architectural Review on this already?

MR. BERENDS: Yes.

PAUL BLOSER: This will be uplit?

MR. BERENDS: Yes.

PAUL BLOSER: Did you get plantings through Conservation?

MR. BERENDS: Yes, we did.

PAUL BLOSER: Did they review that?

MR. BERENDS: Yes, they did.

FRED TROTT: Why did you pick that side of the driveway for the sign?

MR. BERENDS: Because of the berm that the Town required us to put on the west end of the driveway. There is actually a berm there with trees, and I think that would have obstructed the view of the sign, so we have it further away. And we have low shrubs that will be planted around the sign but not high trees. On the berm that blocks the building we have a series of conifers.

PAUL BLOSER: You didn't bring the landscaping plan with you?

MR. BERENDS: I'm not certain.

No, I don't have them with me.

ADAM CUMMINGS: Let's just cut 4 inches off the post. (Laughter.)

MR. BERENDS: I just have the site plans.

COMMENTS OR QUESTIONS FROM THE AUDIENCE: None.

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

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

PAUL BLOSER: I don't have any questions. Straightforward. Nice looking building that is going up. It blends in and is consistent with what we're doing in Town here with monument signs. So -- very, very close to the Church's next door, so.

I don't see any reason to put any conditions of approval on here. We have already got the conditions on the plan, site plan, vegetation and everything, they have taken care of all of that.

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

Adam Cummings made a motion to approve the application with no conditions, and Robert Mulcahy seconded the motion. All Board members were in favor of the motion.

DECISION: Unanimously approved by a vote of 7 yes with no conditions.

The following finding of fact was cited:

1. The proposed variance is not substantial in nature.

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

4. Application of Holt Road Storage LP, owner; c/o Thomas Solomon, Atty., 400 West Metro Park, Rochester, New York 14623 for variance to allow existing under size lot to be approximately 31,400 sq. ft. (50,000 sq. ft. req.), variance to allow lot width of 124.39' (200' req.) at property located at 1615 Scottsville Road in GI and FPO zone.

Thomas Solomon and Mr. D'Angelo were present to represent the application.

MR. SOLOMON: Good evening. I'm Tom Solomon. I'm the lawyer for the owner, Holt Road Storage. Mr. D'Angelo, who actually owns the company, is actually here with me tonight.

This property has somewhat of a tortured history. Number of years ago, the owner, who has since deceased, evidently cut this parcel out for his friend, and I -- as you can see here on the chair, the subdivision map that was -- I guess was submitted and then was withdrawn. So through an error, my client put a mortgage on it, and unfortunately had to foreclose, so he now owns it.

Come to find out that the -- without the subdivision, it's not a legal lot. So our only recourse would be -- first went to the Planning Board last month to get an idea what they would do in terms of subdivision, and they seemed receptive. However, they said, "You can't start with them," we have to start right here because we need the variance.

And as you know, the -- the ordinance requires 50,000 square feet, and this lot -- I don't have the very exact measurement, but it's a little over 30,000. It requires a width of 200 feet, and as you know, we have 124.39.

So we come here asking for an area variance, and as you know, in an area variance, you have to balance the five criteria. Essentially, you could not have -- you could miss on four of them but prevail on one, and at your discretion, the one you prevail on on balance would allow you to grant the variance. But the -- but the critical thing, as I see it from an area variance is what is the impact on the neighborhood. And this neighborhood, I drove by it the other day, seems fairly isolated and not much going on other than what you see here on the -- on the map.

You got the river on one side. You have a -- railroad tracks on the other. This property is fairly large, and it's fairly dense and it's not flat.

And as far as I can see, there is -- nobody lives within a stone's throw away that will be impacted by anything you do -- we do here.

I think one of the advantages we get is we're not asking for any change. What you have there is what you will have there. Nobody is moving anything or doing anything to it.

So from my perspective, there is zero impact on the neighborhood. And I think that is significant when you -- when you consider that we have to -- that -- that, you know, there is no secret here, this is a substantial variance.

But as I say, you get the -- you get the balance here, and in my own opinion, doing this for a number of years, the critical thing is what impact are you going to have on the surrounding area, and as I say -- I don't see any. Perhaps some of you are more familiar and we'll present one, but I drove around and I don't see it.

In terms of the -- well, I guess we should go down the criteria. Number 1, is it an undesirable change in the character of the neighborhood. There will be no change. What you have here is what is there.

Whether we can -- whether my client can get relief in any other way -- the only way we can get relief is through a purchase of the land to the side of the back, and, you know, for -- over the last years we have been in some on and off negotiations. It's a fairly contentious group there that owns it that -- I believe it's, um, a couple of brothers and a sister, and they don't -- the father died and the Public Administrator -- Frank Iacovangelo was the Administrator of their estate. There is a lot of give-and-take, so it has been very difficult to come to any agreement with them. Although we have had a lot of discussions with them.

And if you noticed on the map, there is a jog there. It goes around the front building, and there is -- there is a lot of interest on the owner there to straighten that line out and -- in return for some additional land. But, you know, in the business world, conversation only takes us so far. Someone has to put it -- someone has to sign a contract and so we don't have that. So -- so we're going to -- we have to -- we have to legalize this lot. If we don't legalize it, it just exists and it is kind of like the Flying Dutchman in the opera; it just keeps going and going and going and never lands any place.

On the third criteria, yeah, the variance is substantial when you look at the number, and there is two ways to look at substantiality. One is the number. I don't have the exact -- what, 60 percent here, that is a large number.

But if you -- when you read the cases, a number of cases say, yeah, if you have a high number, you loose. But many, many cases now say it's not the number, it is the affect of the number, which I think is actually more important. Because in some respects, you know, you could have a high number, but not really mean anything, which is what I think the case is here.

So I think instead of getting tied up with just the actual -- the math number of the variance, is to try to see that it really has no -- no impact. We're not building anything there. The house is there or -- or house, building. It's commercial, so -- I guess it was a TV repair shop. Again, nothing changes.

Again, and Number 4, whether the proposed variance will have an adverse affect on the impact on the physical environmental condition of the neighborhood. Again, I -- I don't see it. I see -- these gentlemen are more familiar with it. Again, nothing changes, so whatever is there, it's -- it's what will still be there.

The self-created situation is -- unfortunately, we have to admit that when we did this -- been a lawyer 43 years. I have never run into this. I think this lot was in 2002, and it has been transferred, so when I got the abstract and the tax account number, it doesn't occur to me that this was not a valid lot. And so -- I say we did put a mortgage on it. Unfortunately, the gentleman who had the TV repair shop went broke and couldn't pay, and so we -- so we have it now.

So in that respect, you could say, yes, we -- we purchased the -- we purchased our hardship -- or we self-created it, although we didn't intend to do it. It wasn't on purpose. But I

think you could say that. And that's unfortunate.

As I say again on balance, on the five criteria, I think we make a good case for -- for the variance. We don't do it, as I say, nothing changes anyway. Can't do anything with the lot. You know, it just -- it just hangs there. So I'm hoping that you all look favorably upon this request and grant us the variance.

PAUL BLOSER: Question for you. This was done last month at the Planning Board for a preliminary hearing, informational only. One of the questions that came up was on the condition of the utilities, if it was a common utility, if they were broken apart, shared utility.

Did you -- were you able to get any information on that?

MR. SOLOMON: I do. It has a septic -- its own septic. It shares a waterline.

Mr. D'Angelo will put in a separate one, and it has its own power. They changed it. It has its own power line.

PAUL BLOSER: Septic, is it two systems or one?

MR. SOLOMON: Do you know?

MR. D'ANGELO: We don't know. But there is only a single bowl up there, single toilet basically and a wash sink.

MR. SOLOMON: For the record, Mr. D'Angelo is a highly successful building contractor, building very large projects, so he is capable of going in and making all of the changes that are necessary.

FRED TROTT: What is the intent of the property?

MR. SOLOMON: To try to sell it or rent it if somebody wants to use the building. I don't think anyone will want to live there, but it's commercial. The use that they had seemed excellent, TV repair. Unfortunately, the gentleman was evidently not a good businessman and he couldn't make it. Let's put it this way, there is no competition, whatever you're going to do there. But on the other hand, you can't put out a big sign. It's not like a big box realty.

But if you need an office in the area, as I say, if you go down a ways, you have RIT, it's not very far, so I think there is potential there.

PAUL BLOSER: Mr. O'Toole, this Board certainly, in the years I have been on it, I haven't seen anything like this. Can you advise us of any long-term situations that we may encounter later as a Town with this that we need to be concerned with at this point?

KEITH O'TOOLE: No. I -- I don't see this setting a precedent, if that is your question.

PAUL BLOSER: Okay.

KEITH O'TOOLE: Mr. Chairman, I actually do have a comment outside of that question.

I notice the property owner hasn't signed the application and since he is present this evening --

MR. SOLOMON: He did. We sent it in.

KEITH O'TOOLE: Well, if he has, I'm not aware of it.

MR. SOLOMON: We can do it again. He is here.

KEITH O'TOOLE: Excuse me, I stand corrected. We do have a more updated version. Thank you.

MR. SOLOMON: That's how we wound up buying it. (Laughter.)

KEITH O'TOOLE: Comment withdrawn.

MR. SOLOMON: I think you would have a different case if it was a vacant lot and we wanted to build something on it. On that point, you might, you know, be more skeptical.

JAMES WIESNER: When did the actual -- when did this parcel actually transfer to the person with the TV shop, that they took this illegal parcel, I guess?

MR. SOLOMON: It wasn't him. He bought it -- he was a second person that was -- it was 2002, I believe, is when it was -- my understanding from talking to the lawyer who -- Pietropaoli, who is one of your Town Judges here, represented the people. The father evidently transferred that -- cut that parcel out for a friend, and then -- Mr. Torcello (phonetic) bought it from him. He needed to refinance and he came to us.

PAUL BLOSER: That was in 1986?

MR. SOLOMON: Was that --

PAUL BLOSER: That is when it was split.

MR. SOLOMON: I thought it was 2002.

JAMES WIESNER: One of the interesting things is they were obviously settling the estate a year or so ago when they came in here for the variances for the property.

MR. SOLOMON: I didn't know they came in for a variance.

JAMES WIESNER: Why didn't they solve it at that point?

PAUL BLOSER: It was on the other piece -- the other parcel.

JAMES WIESNER: It was on the one on the right and we're looking at the parcel on the left?

PAUL BLOSER: Yep.

JAMES WIESNER: This is all very strange. That's all I got to say.

MR. SOLOMON: I agree with you. I have been talking to the lady who was -- who was -- very nice lady, very patient with me who answered all my questions about -- I always say, "This is your favorite property."

And she has been telling me about the history, and you know -- you know, eventually you have to just start. You have to do something. You just can't sit there with it.

JAMES WIESNER: I remember it being brought up at the hearing it was an illegal subdivision, but we were talking about the parcel on the right.

PAUL BLOSER: Yes.

MICHAEL NYHAN: 1611.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

DOROTHY BORGUS, 31 Stuart Road

DOROTHY BORGUS: I'm confused. What is the shaded in area on that map? What does that represent?

ROBERT MULCAHY: Blacktop.

DOROTHY BORGUS: That's blacktop. So where are the -- I see the front line, the 124.39, but where are the other lines?

ADAM CUMMINGS: There isn't --

MR. SOLOMON: It goes over and down (indicating). Then this side is up (indicating). The property line was -- so this building was part of it (indicating). So it goes like that (indicating).

DOROTHY BORGUS: So the property line goes around the building?

MR. SOLOMON: Well, the front building.

DOROTHY BORGUS: Front building.

MR. SOLOMON: The actual building, main building is here (indicating). What is this, a garage?

MR. D'ANGELO: Garage, I guess. They used to fix TVs there.

DOROTHY BORGUS: I see.

PAUL BLOSER: Like Adam (Cummings) just pointed out, it was never really officially subdivided, so the line doesn't exist yet.

ADAM CUMMINGS: Right.

DOROTHY BORGUS: But that is the line these people would like?

PAUL BLOSER: That is -- that is what is being proposed now to split it.

DOROTHY BORGUS: Is the piece on the right straight now? Is that settled? That would be my worry, is that you're going to do something and the other part isn't completed.

PAUL BLOSER: I don't have the answer for that, Mrs. Borgus. You know, this whole thing is very unique.

DOROTHY BORGUS: I guess to say the least.

PAUL BLOSER: And what we're trying to do right now is establish an undersized lot so they can process the proper paperwork with the County and the Town to make these lines official as they were bought and sold several years ago and never documented at that time.

DOROTHY BORGUS: But these lines would be in agreement to the people who owned the right-hand parcel?

PAUL BLOSER: Yes.

DOROTHY BORGUS: Everybody -- this whole piece, on the whole piece, the owners then would all agree?

PAUL BLOSER: They all agree that this is where the line is right now.

DOROTHY BORGUS: Is going to be, should be?

PAUL BLOSER: Right. Now, it is just a matter of making official what was done many years ago.

DOROTHY BORGUS: Right. Thank you.

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

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

PAUL BLOSER: Appears this has been a mess for a long time. And there is nothing else pending on this. There is no open violations on it. And Counsel is not concerned about any long-term favor of this. Moving forward with SEQR on this.

I will take a vote. Any other comments from the Board, questions?

MICHAEL NYHAN: This will go through subdivision approval once they get this variance, correct?

PAUL BLOSER: Yep.

MICHAEL NYHAN: Thought so.

FRED TROTT: Just wonder what we're getting ourselves into.

ROBERT MULCAHY: Or trying to get out.

FRED TROTT: Yes, I got a bad feeling about this.

PAUL BLOSER: Keith (O'Toole), is this still going back to Planning Board? Because that was on preliminary with them, but I think it was more informational.

ED SHERO: I think if I look at my comments one was --

MR. SOLOMON: It was informational only.

ED SHERO: Variance is approved condition -- it hasn't been a subdivision because there can't be a subdivision because there is no variance.

PAUL BLOSER: So this will still then go back to Planning Board for a subdivision?

KEITH O'TOOLE: Yes.

ED SHERO: That's correct.

PAUL BLOSER: Keith (O'Toole), should I put a condition of approval that this variance is subject to site plan approval also?

KEITH O'TOOLE: I wouldn't. I would just leave it.

PAUL BLOSER: Just leave it as it stands?

KEITH O'TOOLE: Yes.

PAUL BLOSER: Very good.

ED SHERO: I would imagine somebody has to make a map of the entire property, or both properties, however you want to look at it.

PAUL BLOSER: Well, that will be presented to the Planning Board at that point, because they will have the right maps and the drawings to look at. That will be part of that process.

JAMES WIESNER: Why did it go before the Planning Board? Subdivisions can be done without Planning Board approval.

PAUL BLOSER: I think because of the uniqueness of this one.

KEITH O'TOOLE: It's commercial real estate, and so they -- they actually have to go to the Planning Board on this one.

PAUL BLOSER: Okay.

FRED TROTT: If they change the use on this property, does it have to go before the Planning Board?

KEITH O'TOOLE: We do have administrative subdivision or minor subdivision in the Town that basically says if a few residential lots have the same zoning, you can alter the lot line without going in front of the Planning Board. Just go in front of our Town staff. But once a subdivision is in place, it's in place. It doesn't change because the zoning changes.

MICHAEL NYHAN: How will this affect any setbacks with the property lines being official from the buildings that are currently existing?

PAUL BLOSER: They're grandfathered at this point.

MICHAEL NYHAN: Okay. Do we know what those setbacks are?

ADAM CUMMINGS: They're on the property card.

MICHAEL NYHAN: There is a 40 foot one -- are they on the property card?

ADAM CUMMINGS: 22.7 for the front, 9 1/2 for the -- and 35. Two sides.

MICHAEL NYHAN: Front building? To the side lot line is 1611 Scottsville Road. Does it have a dimension on that? That is the -- that one and the rear setback to the rear asphalt are the two that appear to be --

ADAM CUMMINGS: Back in 2010 we approved variances for those. As if there was really a property line.

MICHAEL NYHAN: Okay. So that is what this variance --

JAMES WIESNER: So I don't understand how this could not have been sold back then, if the opportunity was there.

ADAM CUMMINGS: Misfiling. They drew it. They just never filed it.

MICHAEL NYHAN: 22.7 from the front line and .5 from the side. So that's the dimension from the 1611 to the building at 1615 in the front, right?

ADAM CUMMINGS: Yes.

MICHAEL NYHAN: Okay.

PAUL BLOSER: I do have one other question for you, Counselor.

MR. SOLOMON: Yes.

PAUL BLOSER: When the last variances were given, that was on January 26th of last year. That was the variance to allow additional front parking on the proposed Lot 1. We have put conditions of approval on there that included both parcels. All parcels need to be cleaned up with debris, garbage, unregistered vehicles, trailers, televisions and any other code violations.

MR. D'ANGELO: I can answer that question for --

MR. SOLOMON: That's been clear, isn't it?

MR. D'ANGELO: I can answer that question for you.

We took out 6 40-yard dumpsters out of there so far. When you clear the basement -- was full up to the joists, and the first floor was full to the joists. So like I said, we had 6 40-yard dumpsters.

PAUL BLOSER: What about the outside of the building?

MR. D'ANGELO: The outside, I don't care -- I give them enough time to get rid of the tank.

There was no car parked in the back and that's gone. There was a trailer parked on the side, and that's gone. Because I said if they didn't remove it, I would remove it for them. So that is gone.

PAUL BLOSER: So other than what is left in the buildings --

MR. D'ANGELO: There is nothing in the building right now. It is completely out, empty. And there is nothing outside except maybe two, three, garbage bags, and I -- and I will get this done and then we'll go in there and sweep it up and clean it up and get rid of whatever else is there. But we do put in new service. We put new RG&E service. Because the old one was not turned on, I guess, for some years or so there was no power. So we took care of all that. The only thing we have to do is put a waterline in.

PAUL BLOSER: Thank you.

Paul Bloser requested Mr. D'Angelo put his address on the record.

MR. D'ANGELO: PO Box 613, Ontario, New York 14519.

PAUL BLOSER: All right. Moving forward.

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

Robert Mulcahy made a motion to approve the application with no conditions, and Michael Nyhan seconded the motion. The vote on the motion was 6 yes to 1 no (Fred Trott).

DECISION: Approved by a vote of 6 yes to 1 no (Fred Trott) with no conditions, and the following finding of fact was cited:

1. The proposed variance will not have an adverse effect on neighboring properties.

The 4/26/11 Zoning Board meeting minutes were approved as submitted.

The meeting ended at 8:06 p.m.