

A meeting of the Chili Zoning Board of Appeals was held on May 18, 2004 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 Beverly Griebel.

PRESENT: Dan Melville, Gerry Hendrickson, Michael Martin, Peter Widener, and
Chairperson Beverly Griebel.

ALSO PRESENT: Daniel Kress, Director of Planning, Zoning & Development.

Chairperson Beverly Griebel declared this to be a legally constituted meeting of the Chili Zoning Board of Appeals. She explained the meeting's procedures and introduced the Board and front table. She announced the fire safety exits. The Pledge of Allegiance was cited.

BEVERLY GRIEBEL: Before we get into the agenda, we'll start with signs.
On Number 1, Joseph Spano, Alecia Mazzo, I was okay on that. Any problem?

The Board indicated they had no problem with the notification sign.

BEVERLY GRIEBEL: Number 2, Wayne Vossler?

The Board indicated they had no problem with the notification sign.

BEVERLY GRIEBEL: Number 3 was Fallone Enterprises?

The Board indicated they had no problem with the notification sign.

AUDIENCE: We can't hear you.

BEVERLY GRIEBEL: Right now we're just reviewing the signs were properly posted on all of the properties. We had a problem last time with the microphones echoing because they were too loud. Can you hear now?

AUDIENCE: That is better now, thank you.

BEVERLY GRIEBEL: There are more spaces in the front. You might hear better in the front if anyone wants to come forward.

Number 4, Stephen Haupt?

The Board indicated they had no problem with the notification sign.

BEVERLY GRIEBEL: Number 5, David Higgins?

The Board indicated they had no problem with the notification sign.

BEVERLY GRIEBEL: Number 6, Karen Pitoni.

The Board indicated they had no problem with the notification sign.

BEVERLY GRIEBEL: Number 7, I was out on Saturday, the 8th, in the afternoon, and that one, Joseph Dunn, West Forest Drive --

GERRY HENDRICKSON: There was no sign.

BEVERLY GRIEBEL: -- did not have a sign.

In that case, when the sign has not been posted properly, we have to table that application until the next meeting, and the next meeting is June 22nd at 7 o'clock.

Motion to that effect?

PETER WIDENER: So moved.

GERRY HENDRICKSON: Second.

The Board all voted yes on the motion to table.

BEVERLY GRIEBEL: If anyone is here to speak to that application, we will not hear anything on it tonight. It will be heard the next meeting on the 22nd.

That sign must be posted by June 11th. Posted and maintained.

Number 8, Beth Shepard, any problem with that?

The Board indicated they had no problem with the notification sign.

BEVERLY GRIEBEL: Number 9, Excel Development?

The Board indicated they had no problem with the notification sign.

BEVERLY GRIEBEL: And Number 10, Bradley Mitchell, is that okay?

The Board indicated they had no problem with the notification sign.

BEVERLY GRIEBEL: Everybody else did a good job.

1. Application of Joseph Spano & Alecia Mazzo, owner; 34 Trestle Trail, North Chili, New York 14514 for variance to allow existing utility shed to be 4.3' from rear lot line (8' req.) and 5.8' from side lot line (8' req.) at property located at 34 Trestle Trail in PRD & FPO zone.

Joseph Spano and Alecia Mazzo were present to represent the application.

BEVERLY GRIEBEL: Do you work for any government agency?

MS. MAZZO: We both do.

BEVERLY GRIEBEL: You both do.

And because -- that question wasn't answered on the application. Mr. Kress, was that answered on her master copy?

DANIEL KRESS: No. It was not filled in.

BEVERLY GRIEBEL: Okay.

PETER WIDENER: A yes statement needs a qualification.

BEVERLY GRIEBEL: Right. Who do you work for?

MS. MAZZO: I work for the County Attorney's Office.

BEVERLY GRIEBEL: Okay. And, sir, you work for?

MR. SPANO: I work for the Sheriff's Department.

BEVERLY GRIEBEL: Because it says if you answer "yes," under separate sheet indicate the name, address and extent of interest in the application. That doesn't sound like that would be a conflict.

Your application notes that the shed was built by the former owners of the home, and you purchased the property in January of this year, and you would prefer not to move the shed.

MS. MAZZO: That's correct.

BEVERLY GRIEBEL: I guess you bought it with the provision that you would get the variance after the fact?

MS. MAZZO: No. We bought it without any knowledge of the need for the permit, or, in fact, that one did not exist. We found out when we received a letter from the Town. Then we called the attorney and said where is our permit? He is still trying to find that out. Well, there isn't one. So that is the answer.

BEVERLY GRIEBEL: Sometimes that kind of thing will delay a sale, which gets to be very

involved.

DAN MELVILLE: I'm surprised your attorney didn't catch that before closing.

MR. SPANO: So are we.

MS. MAZZO: He should have. That is our concern.

BEVERLY GRIEBEL: What is stored in the shed?

MR. SPANO: Stuff for the pool. The tractor for the lawn.

BEVERLY GRIEBEL: Lawn equipment?

MR. SPANO: Yes.

BEVERLY GRIEBEL: The usual?

MR. SPANO: Yes.

DANIEL KRESS: If the Board sees fit to grant the variance, given that according to the survey map the shed is actually in a flood zone, you might want to attach a condition that all of the applicable requirements would apply, which would mainly just be an issue of being it is properly anchored so if the water came up, it didn't float right away.

MS. MAZZO: We have talked to someone about that. That should not be a problem to do if we need to.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

DOROTHY BORGUS, 31 Stuart Road

MS. BORGUS: It is not necessarily in favor or against this application, but I'm wondering since these are repetitive things before this Board, what can be done in the Building Department or in educating the public as to what they can and can't do about just building a shed. It seems to me the Building Department should take some steps in this direction to educate the public.

BEVERLY GRIEBEL: Well, I hear you, and this does come up often and people put up a shed and don't realize there are size dimensions and setback dimensions, and there is information on the website for a lot of these things, but people don't realize you need to check things out before you do one.

MS. BORGUS: Right. There has got to be an answer to this.

BEVERLY GRIEBEL: They put up pools and sheds and all kinds of things.

MS. BORGUS: Exactly.

BEVERLY GRIEBEL: Then they find out there is a problem. Fences. Garages.

MS. BORGUS: Right. Maybe a column occasionally in the local paper on the part of the Building Department would refresh people's memories we have a zoning process and some things are allowed and some things have to be put where the zoning law says.

BEVERLY GRIEBEL: There are a lot of laws on the books. One that definitely affects us in looking around at properties, house numbers.

MS. BORGUS: Not enforced.

BEVERLY GRIEBEL: Very hard sometimes to find the house. You're trying to find a number nearby and you count back and forth trying to find the right property.

MS. BORGUS: A column in the local paper could be put to good use in these cases.

GERRY HENDRICKSON: But some can't read.

(Laughter.)

BEVERLY GRIEBEL: It is a problem, I have to agree.

Beverly Griebel made a motion to declare the Board lead agency as far as SEQR, made a determination of no significant environmental impact, and Gerry Hendrickson seconded the motion. All Board members were in favor of the motion.

Michael Martin made a motion to approve the application with the following condition, and Gerry Hendrickson seconded the motion. All Board members were in favor of the motion.

DECISION: Unanimously approved by a vote of 5 yes with the following condition:

1. Applicable requirements apply to a building in the flood zone. Check with the Building Department for details.

The following finding of fact was cited:

1. Shed was pre-existing on the lot when purchased.

Note: A building permit is required for this shed.

2. Application of Wayne Vossler, owner; c/o Stephen Thompson, 8 Cranston Road, Pittsford, New York 14534 for variance to erect a 10' x 20' open porch to be 54' from front lot line (60' req.) at property located at 22 Sesqui Drive in R-1-20 zone.

Stephen Thompson, Wayne and Betty Vossler were present to represent the application.

BEVERLY GRIEBEL: This went to Monroe County Planning and came back as a local matter. This was also tabled from our last meeting as the prior one for signs not being posted properly.

Now, if anyone in the audience wants to go look at that, you can just take a walk over and look at the blueprints there.

MR. THOMPSON: Good evening Stephen Thompson on behalf of Wayne and Betty Vossler presenting this application to the Zoning Board. Mr. and Mrs. Vossler are here this evening to answer any questions, as well.

This application is to erect a new porch along the front of their residence which would encroach on the required 60-foot setback. This porch is wider than the existing porch that is there, and so, therefore, we would only have 54 feet to the setback line.

BEVERLY GRIEBEL: Open porch. Is there going to be a roof on it?

MR. THOMPSON: Yes.

BEVERLY GRIEBEL: Who will be doing the work?

MR. THOMPSON: They're in the process now of procuring bids from contractors to do this work.

BEVERLY GRIEBEL: Some homeowners are very handy and do it themselves.

PETER WIDENER: Does this porch go all around the house?

MR. THOMPSON: No. Just across the front of the house. There is some additional work that they will be doing that does go around the house. That is an addition to the house.

PETER WIDENER: Will that be a liveable addition or a deck?

MR. THOMPSON: No. A liveable addition.

PETER WIDENER: Also attached?

MR. THOMPSON: Yes.

BEVERLY GRIEBEL: That is part of this project, or will be --

MR. THOMPSON: Yes. That is part of this project, but that particular part of the project is not requiring any variances.

DAN MELVILLE: Did you say you were replacing a porch that was there or is that a new porch?

MR. THOMPSON: There is an existing porch there that will come off that is smaller. This porch will be much longer and wider.

DAN MELVILLE: How much wider than the original porch?

MR. THOMPSON: The existing is 4 feet wide. This will be 8 feet wide. They want some chairs out --

DAN MELVILLE: They want to double the size of it and make it a little more usable?

MR. THOMPSON: Right.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

JERRY BRIXNER, 14 Hartom Road

MR. BRIXNER: I just wanted to see where the house was on Sesqui. If I interpret the map correctly, it borders Chi-Mar. But the facility itself, that you're planning on building, will be to the other direction? It will be -- you have a home right next door; am I correct?

MR. THOMPSON: That's correct.

MR. BRIXNER: In my opinion, it sounds good, but I think a lot of it would depend on how the neighbor next door might feel. Thank you. I would support it otherwise.

MR. THOMPSON: I have discussed this with the neighbors and they're in favor of it. Thank you.

Beverly Griebel made a motion to declare the Board lead agency as far as SEQR, made a determination of no significant environmental impact, and Gerry Hendrickson seconded the motion. All Board members were in favor of the motion.

Michael Martin made a motion to approve the application with no conditions, and Peter Widener seconded the motion. All Board members were in favor of the motion.

DECISION: Unanimously approved by a vote of 5 yes with no conditions, and the following finding of fact was cited:

1. No impact on neighboring properties.

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

BEVERLY GRIEBEL: Mr. Kress, do you know where Mr. O'Toole is tonight?

DANIEL KRESS: I do not. I certainly understood he was going to be here.

BEVERLY GRIEBEL: I haven't gotten any word he wouldn't be here.

DAN MELVILLE: I bet he forgot it is a week early.

BEVERLY GRIEBEL: The agendas come in the mail.

DAN MELVILLE: He is an attorney.

(Laughter.)

BEVERLY GRIEBEL: Whatever. We'll proceed and hope he comes in. If we have any questions, we'll have to reserve them.

DAN MELVILLE: If anything comes up, we'll just have to reserve decision until next month.

BEVERLY GRIEBEL: Or reserve it until later in the meeting.

DAN MELVILLE: Or if he shows up.

BEVERLY GRIEBEL: He probably got tied up with something.

3. Application of Fallone Enterprises, 3173 Chili Avenue, Rochester, New York 14624 to appeal interpretation of February 3, 2004 from the Director of Planning, Zoning & Development regarding the PNOD zoning regulations regarding property located at 741 Paul Road.

Jerry Goldman was present to represent the application.

MR. GOLDMAN: Good evening, Madam Chairman, members of the Board. My name is Jerry Goldman. Dare I say I'm an attorney, for Fallone Enterprises, here this evening to help discuss the interpretation question which is before the Board this evening.

I would say "with me tonight is," but no one is here yet, unfortunately, so that is the way it goes. Our engineer did get tied up on the way back from New York City and Dr. Fallone, one of the principals from Fallone Enterprises, will be coming shortly.

We're here on an interpretation on the Planned Neighborhood Overlay provisions. Venture to say, this is probably the first time you have seen a question with regard to the PNOD district because, in fact, this is the first property which has been zoned for PNOD zoning in the entire Town of Chili. It is probably going to be pretty unusual for there to be PNOD zoning, because you need 30-acre sites, at least 15 are contiguous, and there a lot of requirements that go along with it. Fallone Enterprises decided very early on they wanted to do something creative on the property. They were encouraged to come in and to utilize PNOD and utilize the Planned Overlay District characteristics in order to do that. They put together a site plan, which is not the site plan which we see here tonight, because when it came through the first time, the Planning Board did not want to see some refinements of the site plan. And, in fact, this site plan has gone through three, four, probably five revisions relative to the site plan itself, and we have come up with a plan that the Planning Board characterized at their last meeting as something they could be enthusiastic about in terms of the development.

There is an issue which we have, relative to the interpretation of the code, however, and it is not unusual for the first time around when you have a 16-page statute that says how you define something that there may be some questions. It is a pretty thick one, relative to it. And we had -- the question had been asked at the Planning Board relative to dealing with the issue of apartments, and apartments under the code are not a permitted use. However, there is a provision in the code that defines senior citizen dwelling units and complexes as a permitted use. There is a clear code definition with regard to senior citizen development -- senior citizen dwelling units, but no definition of senior citizen complexes and as Dan (Kress) pointed out in his interpretation, there is no definition in place in the code. To that point Dan (Kress) and I are in full agreement. We kind of go a little variant after that point.

And the point is this: We believe that the code does set forth senior citizen dwelling units and senior citizen complexes and believe that those are separately defined, enumerated uses within the district. Dan (Kress)'s interpretation says that he believes that senior citizen dwelling units did -- or senior citizen complexes must be comprised of senior citizen units, however, the code itself specifically has a definition for senior dwelling units which talks about them being handicapped adaptable or handicapped accessible and the construction standards for handicapped accessible or adaptable must be applied. Not all of the units we're talking about here would be handicapped

accessible or handicapped adaptable.

As we know, under the Federal Fair Housing Act, the definition of what is senior housing is housing which is occupied by people 55 years and older. I didn't realize I was that close to being a senior citizen, but I'm getting there. And not all of those people need to have handicapped accessible or handicapped adaptable units, so it is not illogical to say that you can have senior citizen units which are not handicapped accessible or handicapped adaptable. It is a -- as a matter of fact, on many of our buildings within the site, it is designed to be two-story units, and now the people have had an opportunity to take a look at it, I will wander over and kind of explain to the Board what the overall plan looks like.

The Planned Neighborhood Overlay District is supposed to be a mixed use district and, in fact, we do have a mixed use district here. This is the overall site (indicating), this is Paul Road (indicating). Wegmans is up here (indicating). What is being proposed along the frontage are patio homes, 16 patio homes along the Paul Road frontage.

Behind that are proposed to be 20 townhouse units on this concept plan which is shown here (indicating).

There is a desire to have a mix of commercial uses as well as residential uses in the PNOD. So in this area, first this building, and then along the border of the property, immediately adjacent to Wegmans, there is proposed to be upwards of 44,000 square feet of commercial space in small buildings throughout the site.

In addition, there are loft apartments which are being proposed on the second floor of some of these units, which is also encouraged in the PNOD code.

Where we have our issue, as we get further back on the site. The preponderance of the development in this area is for apartment-type units, specifically senior-apartment-type units. A percentage of those will be senior citizen dwelling units as the code defines them. The balance will be units which will be rented to senior citizens, but not necessarily qualify for the definition of senior citizen dwelling unit because they will not be handicapped accessible or handicapped adaptable second story units, for example, on some of these apartments.

The intention, and this is more a Planning Board issue, but as long as I dragged the Board here, I have to put them out -- is to have this style of units which we think will be a credit to the neighborhood.

BEVERLY GRIEBEL: Do you want to show the --

MR. GOLDMAN: Sure. For those at the Planning Board meeting, these are the same boards we had at that meeting, so these should be familiar. That (indicating) is a look at residential elevation.

We have another look of a residential elevation picture right here (indicating).

There is a creative approach being used for the commercial areas, in dealing with the wetlands, and this is a concept done by an architect who has done these before. Along the wetland area we have essentially foot bridges over the existing stream so that the people who live in the residential areas along here are able to traverse and come across the wetland through a foot path and be able to get to the mixed use buildings, which will include a health and wellness center that is being proposed as well.

This is an elevation (indicating), basically showing a cross-section of what is -- of what people will be looking at from the existing Paul -- from the existing residential, to Paul Road, to a buffer area which is right in the front over here (indicating), to the patio homes, the access road, townhouses and you get to the existing wetland, so this takes us in an elevation view, cutting across, looking in this direction (indicating), up to about this area right here (indicating). That is -- basically what it shows, there aren't any large or high buildings which visually impact the neighborhood itself.

And finally what we have is a cross-section which looks across the wetland area, and also then goes and takes a look at the mixed use building and parking. So there is a creative use. You can see as part of this building there is a walk-out that allows people to look out onto the water in conjunction with those commercial and residential units which are right in this area (indicating) along the water.

A lot of effort has gone into designing this plan. There are been substantial market studies done to indicate there is a market, a need for senior citizen housing in our area, and the concept and idea is to provide and answer that particular need. For that reason, there is a proposal -- the proposal is before you to bring in a percentage of these senior citizen units which exceed the percentage of the senior citizen dwelling units. Right now 16 patio homes are planned, 20 townhomes, 126 apartments in total in the back area, and about 20 loft apartments. Now, that is probably -- that percentage and that mix is

probably going to change as we go through the Planning Board process. I would anticipate that the Planning Board will probably whittle that down a little bit in a lot of numbers as it gets further developed.

As I said, the office space

being proposed is about 44,000 square feet in total for the overall site. So what it does is it really addresses the needs which have been defined by the market studies and the needs of the community, and it also meets the intent of the PNOD ordinance, and that is to provide a mix of residential housing types, a mix of commercial interspersed within that area.

So what we are looking for is an interpretation from this Board to draw that distinction we think is pretty clear under the code in terms of senior citizen dwelling units as opposed to complexes.

You will probably wait for Keith (O'Toole) to come on board before you finalize any thoughts relative to it, but I did put together a letter that I assume the Board had an opportunity to look at, and the simple legal principle that goes along with this is zoning restrictions are meant to be strictly construed. That is that there is a question of interpretation. They are meant to be resolved in favor of the property owner. They are meant to restrict people's use of the property, but the same time, the fail safe is if it is not clear it is a restriction, it should not be interpreted broadly as a restriction. That is what we're here for tonight, to address that particular issue.

I know it is a meaty thing. 19 pages of code, three pages of my letter, a lot of talking on my part so I will stop now and answer any questions the Board may have and be available to answer any questions that the Board may have as a result of the public portion of the presentation as well.

BEVERLY GRIEBEL: Now, the senior dwelling units would be handicapped accessible or handicapped adaptable, 35 percent of requirement. Is that the number of them -- there is 126 planned, but the total senior units --

MR. GOLDMAN: Right.

BEVERLY GRIEBEL: -- the handicapped accessible or adaptable, what percentage would that be?

MR. GOLDMAN: We would be proposing to be in conformance with that 35 percent requirement. I have not done the math, but we have not fully developed the plans to the extent to be able to identify which ones. I have been told we're not intending at least at this point to come back for any variance relief from that 35 percent requirement.

BEVERLY GRIEBEL: There is a lot in this -- didn't bring my book in, but now -- I don't know if everyone in the audience knows that the code book is on the Chili website, and you can print it out and -- I don't have to carry that heavy book around.

MR. GOLDMAN: I bought one and put it in my little notebook here.

BEVERLY GRIEBEL: For this tonight I did carry it in.

DAN MELVILLE: As far as that property now, is that in keeping with our master plan?

MR. GOLDMAN: It is, in fact, still zoned for the underlying zoning. The underlying zoning for it is Restricted Business. The PNOD overlay is an overlay. So basically the Restricted Business zoning still exists, but the PNOD exists over the top of that. I don't know the comprehensive plan specifically addresses the overlay districts and where overlay districts would be appropriate in dealing with the comprehensive plan and the code because it is meant to be a flexible tool to where it makes sense to apply it, we should be able to utilize this tool to apply it.

DAN MELVILLE: Does this property come up to the border of the Wegmans property?

MR. GOLDMAN: Yes, it does. Immediately adjacent to the Wegmans property. I'm trying to get my bearings and directions because it is off the top of the map.

DAN MELVILLE: Another question, too. As far as like some of the units that are not going to be handicapped accessible or handicapped adaptable, why not make them adaptable?

MR. GOLDMAN: Primarily because that is what the code seems to do. They want to provide a mix of the types of units we have here. And I think the objective was not to have a homogenous total apartment type thing under the PNOD zoning. So they're saying, yes, you can have 60 percent of what is conforming use, 20 percent of conditional use and 20 percent of open space, and then it goes further and says among the senior units, only 35 percent of all of the dwelling units should be of this handicapped accessible or adaptable. I think the intention pretty much was to say we want a variety. I think that is exactly what we're trying to provide here.

DAN MELVILLE: Some of the space back there is more of a commercial use like the office.

Will there be any retail?

MR. GOLDMAN: There would be retail. I think there has been interest on the part of banks. I don't know that there have -- at least there have been discussions with what I understand with regard to restaurants, although I'm not sure how that would go. It is commercial and retail, what it is allowed to be.

MICHAEL MARTIN: Earlier in your presentation you alluded to points that you and Mr. Kress agree upon with the code and then you went into a quick explanation of the whole -- what your proposal is. Can you kind of summarize, I guess, the points that you disagree on that we're actually looking at with this?

MR. GOLDMAN: The point that -- let me take the point we agree. At the point where we agree is that the code says, as permitted use, senior citizen dwelling units and complexes. That is what it says in b(1)(a). We agree that there is a definition of senior citizen dwelling units and we agree there is no definition of senior citizen complex. But Dan (Kress)'s view, if I can speak for him, is that he does not see them as being distinct elements. He thinks that senior citizen dwelling units by definition must be part of complexes. Senior citizen complexes is comprised of these senior citizen dwelling units that are handicapped accessible and adaptable. Our view is that those really are two distinct categories, one of which is senior citizen dwelling units in that category and a second being senior citizen complexes, which is complexes which rent by federal law to people who are 55 and older.

BEVERLY GRIEBEL: One thing to add to Dan (Kress)'s, I think you said these senior units are all two-story?

MR. GOLDMAN: I didn't say that. Some are ranch, some are not. There is a mixture in variation of the types that we have. I would say certainly second floor units not serviced by elevator will not be handicapped accessible, and that's the thing. There will be some units which are clearly not going to be under any circumstances handicapped accessible or adaptable and there will be some units that will be.

BEVERLY GRIEBEL: So that, too, is a mixture?

MR. GOLDMAN: That's correct.

PETER WIDENER: I think I would like to hold any of my questions until we hear legal counsel, before I even dare to make amendment or addendum to a code in my Town.

MR. GOLDMAN: We aren't necessarily amending or addending.

PETER WIDENER: You're asking me to make a decision on senior citizen complexes or dwellings, and I want to make sure I know what I'm doing first, so I will wait for opinion from legal counsel.

GERRY HENDRICKSON: I agree with the same.

DANIEL KRESS: I have nothing to add at this time beyond what I have put into my February 3rd memo.

MR. GOLDMAN: I didn't misrepresent it?

DANIEL KRESS: No.

MR. GOLDMAN: Thank you.

BEVERLY GRIEBEL: The code does say, "Part B, permitted uses, senior citizen dwelling units and complexes." I guess that is the stickler, that word "and."

MR. GOLDMAN: That is the question, whether that creates two separate categories or if it is one single category all mashed together.

BEVERLY GRIEBEL: Is it this and that?

MR. GOLDMAN: We say this and that.

Dan (Kress) says this.

BEVERLY GRIEBEL: Next, in Part D, sub letter c, "The maximum number attached senior citizen dwelling units shall not exceed 18 units per acre."

MR. GOLDMAN: We are under that.

BEVERLY GRIEBEL: ^^Total number of senior citizen dwelling units shall not exceed 35 percent of the total dwelling units within the PNOD. Purpose of this section shall handicapped adaptable or accessible. And the construction standards for handicapped accessible arrest da /-PD is those in Americans with codes and I will get this and New York State building code for the handicapped in effect time of construction."

GAIL LYLE, 736 Paul Road

MS. LYLE: Gail Lyle. I have a drawing I want to show before I tell you my feelings. Is that all right? I will show you why I am concerned about this.

This is a map of the Chili area (indicating). Right here is where I live (indicating). The wetlands in this development are in the yellow with the wetlands starting up in here (indicating), running down through here (indicating) and I'm not sure from here to where they connect, but they do connect. So this wet land is a contributory to the Black Creek.

BEVERLY GRIEBEL: Ma'am, we're discussing the wetlands.

MS. LYLE: I'm trying to show you where I live, and -- in response to what they're trying to do here, especially with the wetlands.

Last Friday, in 15 minutes, this is my backyard (indicating). On Friday. In 15 minutes. These pictures were taken by a neighbor.

BEVERLY GRIEBEL: We're not discussing the wetlands tonight.

MS. LYLE: No, but it is still -- what they're trying to do here is going to affect that and what your rule is going to affect it.

DAN MELVILLE: That is a Planning Board issue.

MS. LYLE: Let me then tell you --

BEVERLY GRIEBEL: We're discussing the interpretation of the Building Inspector tonight.

MS. LYLE: Okay. I have spent time reviewing the zoning rules regarding the PNOD requirements for 741 Paul Road, and for once I am in agreement with the Town. I agree with Dan Kress, Director of the Planning, Zoning and Development. The code for PNOD development is clear. The purpose is to provide flexible land use and design regulations that promote unified and orderly development of neighborhoods within the Town of Chili. He is 100 percent right on this. The following are permitted uses: ^^^ A, senior citizen dwelling units and complexes, single-family detached units. C, Restricted Business permitted and conditionally permitted uses and, D, Neighborhood Business and conditionally permitted uses. E, park and recreational areas. F, public buildings and grounds." Conditional uses, and the same section includes residential dwelling units not on the ground floor of a building, and when the ground floor is part of a building, it is a permitted nonresidential use. Loft apartments is one of the retail suggested over the fitness center.

Now look at permitted uses. A senior citizen dwelling. Well, what is this? According to Webster's dictionary, a dwelling is a place used for residence, a home, a house. A complex is not residential. A complex can be a meeting place, a physical therapy center, a recreation center, but not where someone lives. A complex is nonresidential.

The code also states the maximum number of attached senior citizen dwellings shall not exceed 18 units per acre. The total number of senior citizen dwelling units shall not exceed 35 percent of the total number of dwelling units within the PNOD for purposes of this section.

Senior citizen dwelling unit shall mean a unit which is handicapped adaptable or accessible as those are defined in the Americans With Disabilities Act Code and New York State Building Code for the physically handicapped.

In fact, that would be in effect at the time of construction.

This code, as Dan (Kress) says, allows for three types of residential uses, senior citizen attached; single-family detached; three, additional dwelling units not on the ground floor, but over a permitted nonresidential use. The only permitted attached dwelling units would have to fall into the first or third category.

Back on October 5, 1999, the Planning Board minutes, Mr. Brand stated, "They do not have to have all of them, but they do have to have a mixture of them." In other words, they couldn't come in here and use this overlay approach to build senior citizen dwellings and complexes on the entire parcel.

Dr. Fallone has retained Jerry Goldman to appeal an interpretation. His opening paragraph is very interesting. He tells us that the name of this development is no longer Chili Meadows. It is now Chili Villas. He states the PNOD development is designed to be flexible and special. In all of the meetings since last August 2003 we have been told the units would be four and then they increased some of the units to maybe 8 units. Now according to the letter from their attorney they're saying some

will have two units, but they may go as high as 12 to unit. That doesn't matter. The PNOD code is specific. Only 35 percent of the total number of dwellings are for seniors.

I don't understand how you can give approval on anything until they determine how many acres that they have usable for this code. The code says 30 contiguous acres of the land, but the Army Corps who has jurisdiction over the wetlands has not received a permit for this development.

Apparently Mr. Goldman understands the interpretation. He doesn't need clarification. On page 3 of his letter, he says there are "two distinct elements. Senior citizen dwelling units, and senior citizen complexes." A complex by all definition is not a dwelling place; therefore, it is nonresidential.

On page 4 Mr. Goldman says, "The need for a critical mass of senior residences on this site is supported by a market study." From whom do we have this counter-made study? I, however, have a profile of general demographics, geographic area Town of Chili, County of Monroe, the State of New York. The total population is about 27,000 people for the Town of Chili. The total ages 65 and over is only 12.1 percent. Householders of 65 and older are 7.5 percent.

These homeowners have worked hard all their lives. They are not going to want to leave their homes and they plan to stay in them as long as possible and not go into a subdivision such as this.

Therefore, that what we have here is a builder who uses seniors for excuses to get PNODs tailor made for him. If you build what he wants, the PNOD code doesn't mean anything. He will build his project, rent it at top dollar and seniors will not be able to afford or want to live there. He most likely will make good money and let it fall into disrepair. Take a look at the plaza in North Chili, what a mess that is. He wants to maximize the area to his advantage and then get out.

The project will no longer be special or unique. If you grant any variation from the PNOD concept, it will open the door for other builders to use this as a vehicle for what they want in the other PNOD areas in the Town. Right now in Chili Center to Chili Scottsville Road, there are hundreds of acres up for sale. There is almost a thousand acres in one square area that is either under development already or is up for sale. Maybe this is a good time for us to step back and look at what we are doing and allowing to happen. And stop. Thank you.

IRENE BRIXNER, 14 Hartom Road

MS. BRIXNER: Thank you very much for this opportunity. My name is Irene Brixner, 14 Hartom Road. I'm a friend of Gail Lyle's. I was shocked Friday when I was visiting her how the water came across, but --

BEVERLY GRIEBEL: We're not discussing the water.

MS. BRIXNER: I know that.

BEVERLY GRIEBEL: Please don't bring it up.

MS. BRIXNER: I just want to tell you, I appreciate the opportunity to speak to this project, because we have not been able to speak at a Planning Board meeting about it. So I am loaded. So forgive me. And I will proceed with what you're saying.

I have a problem -- first of all, I want to thank Mr. Kress for explaining what PNOD is all about. And I have took some time really thinking it out. I have a problem with the idea that this Chili Villa development is their response -- another problem I have of the Villa development is their response regarding the American With Disabilities Act. Are they going to abide by ADA certification of State and local accessibility requirements?

BEVERLY GRIEBEL: Now you're getting into issues again that are for the Planning Board.

MS. BRIXNER: Which is for the Planning Board, the ADA?

BEVERLY GRIEBEL: When they get into the plans.

MS. BRIXNER: If I buy a house on this property, when it is all put up and I'm handicapped and they have a physical therapy building, okay, a complex for all people to meet there, can I go there if it is not readily handicapped accessible? I mean, Mr. Goldman, I wish you would explain to me, if you're in the room, isn't this supposed to be for the whole community? Or is it just for those people who can walk and -- straight and go into a building easily? What does Mr. Carpenter mean when he talks about building for people 40 years old to 55? I don't quite understand this. But --

BEVERLY GRIEBEL: We're talking tonight about the interpretation of the Building Inspector. Whether or not this Board agrees with it or not.

MS. BRIXNER: Yes. I just hope we have a chance at the Planning Board to speak. Regarding

a letter from Dan Kress, our Director of Planning and Zoning Development of February 3rd, 2004, I thank you for explaining clearly the rules for development of the PNOD. He writes regarding PNOD, "In the October 5, 1999 Planning Board minutes, in answer to a question about what mixture of uses would be required, the answer is given: 'Mr. Brand stated they do not have to have all of them, but they do have to have a mixture of them. He stated, in other words, they couldn't come in and use this overlay approach to build senior citizen dwellings and complexes on the entire parcel.'"

In my opinion, this is where the direct -- "In the next paragraph," he writes "in response to a question about a maximum amount of land use for any one proposed use, the answer is given: 'There are standards in there for the various types of uses so they don't end up with an extensive commercial area and not the residential support for it.' Clearly, the intention was to provide for a mixture of uses with no one type of use predominating."

He continues as he writes, "Based on the language of the zoning regulations and the public hearing minutes, I can find no basis for the proposed interpretation that 'senior citizen complexes' are somehow a separate permitted use in addition to 'senior citizen dwelling units.' Even if they were, they would still clearly contain individual senior citizen dwelling units and so would still be subject to the 35 percent limitation. Additional dwelling units that do not meet the definition of 'senior citizen dwelling unit' would be permitted only if they are detached."

Mr. Kress continues, "It seems clear that a mixture of several residential and nonresidential uses was the desired end result, and more importantly, I cannot find an adequate basis in the zoning text to suggest anything else."

I believe the Zoning Board of Appeals -- this is my opinion -- should acknowledge the opinion of our Chili Director of Planning, Zoning and Development. If this PNOD is changed from what Mr. Ron Brand said, the proposed requirements resulting in a mixture of uses and not a homogeneous development -- he stated he couldn't come in and use this, the person who came in couldn't use it, this overlay approach, to build senior citizen dwellings and complexes on the entire parcel. If this Zoning Board agrees to the developer's interpretation, the Board will be starting a precedent and all other developers will expect the same privilege. The Board will also destroy the original idea of PNOD as Mr. Ronald Brand designed it to be. The Zoning Board will also be in opposition to what the Chili Town Master Plan included in its final design.

I really think that when you talk about complexes, we have a complex presently in the Town of Chili, and it is Blueberry Hill. And the complaint is not only with ADA people, it is throughout the building. So think about it before you make a decision. And I do think that the lawyer should have been here. Imagine, the lawyer isn't here for an interpretation.

DOROTHY BORGUS, 31 Stuart Road

MS. BORGUS: I wonder if we could have some clarification on a couple of numbers. How many dwellings are in this project as it now stands? Total?

BEVERLY GRIEBEL: Mr. Goldman, how many total dwellings as the plans sit right now?

MR. GOLDMAN: Total number of dwellings under the current concept plan is 182.

BEVERLY GRIEBEL: 182.

MS. BORGUS: Total. And 126 would be senior housing; am I right?

BEVERLY GRIEBEL: Right. As he has defined it in two different types.

MR. GOLDMAN: Not senior citizen dwelling units exclusively, but housing for seniors.

MS. BORGUS: Out of 182, 126 would fall in that latter category. I don't understand how the 35 percent works out.

BEVERLY GRIEBEL: Well, the 35 I think he said -- I did ask him the question, and 35 percent of those would be handicapped accessible or handicapped adaptable out of the total of 182.

MS. BORGUS: As somebody who is a senior themselves, I would not rent an apartment and not have it handicapped accessible or adaptable and I can't imagine many seniors would. We don't want to be moving, we don't want to keep changing our residence just because our health changes. I can't imagine that these will end up as senior dwellings at all if they are not handicapped accessible or handicapped adaptable. Especially two-story units.

I agree wholeheartedly with Mr. Kress in his interpretation of the issue. I don't know how many of you or how many people in the audience were here when this PNOD was developed, but as

somebody who regularly attends these meetings and has for many, many years, I don't believe there was a public issue that was discussed on this that I was not here for. I can tell you what they have planned there with these complexes, two stories, apartments which Mr. Goldman called them apartments himself, that was never the intent of PNOD. I can tell you that. And I hope it is reflected in the minutes, because what they're trying to do here and what they're trying to get you to put your blessing on, was never the intention of PNOD. It was never the intention of the people who sat through all of the hearings, all of the discussion, who took the time to investigate it and come talk about it, and I think that if you allow this PNOD to be watered down at this point, this law is nothing more than a sham, another tool for developers to do whatever they please here. This is not the intent. It was never the intent of the public or any of the Town officials or representatives who designed it. Thank you.

PAUL DOBELSTEIN, 32 Parkway Drive

MR. DOBELSTEIN: In the matter for the sake of expediency I would ask to address you from back here.

BEVERLY GRIEBEL: Yes, that is fine.

MR. DOBELSTEIN: I also have a concern, a basic overall concern about the differences in PNOD as a development tool to benefit the community by giving us a proper mix of development and quite possibly buffers, appropriate buffers between commercial and residential properties.

I think those are excellent uses.

However, if PNOD is to be used as an escape mechanism of unbridled development by specific request by developers, then I think we have to do some very strong soul searching as to what the intent of PNOD was as well as how it is worded. I thank Mr. Goldman for his thorough explanation of what he and his client believe PNOD to be.

Everything I heard from Mr. Goldman agrees exactly with all of the information I have gleaned from the Town Hall and from the website. However, having said that, Mr. Goldman is quite accurate in what he states the client's wishes are, we have some very basic problems with Mr. Goldman's letter to the Town.

If you will refer to the letter, you will see that Mr. Goldman's client apparently did not know when he went under PNOD, he did not know what an interpretation of PNOD was.

That is included in Mr. Goldman's letter, that statement.

Once Mr. Goldman and his office found out what it is, he applied to Mr. Kress for an interpretation. Well, I'm sorry, but that is not the responsibility of the citizens of this Town or their Board members to interpret it for the applicant unless the applicant comes forward. We're being asked to possibly give variance already to a PNOD, simply based on the client's supposition of what PNOD meant. Mr. Goldman may be misled by the fact that the code, as I have read it, is written in quite clear, every day common English. I sometimes wonder if attorneys just don't understand common every day English, or if the legalese that goes into many agreements is put there just to do this kind of maneuvering that we're seeing on this project.

I also share the concern about the future of PNOD. I heard in Mr. Goldman's remarks that the issue of PNOD is unlikely to come up very frequently. That is not true. I think you all must realize that. I would remind you, if you have not thought about it, of the thousand of acres that are developable in towns such as Chili and everybody wants their hands on them. PNOD is going to come up again and again and again.

With that in mind, I think it is important that none of us in -- as citizens or as governmental bodies in Chili, allow our objective to be diluted in the interpretation of the law.

^^^ I view in those three types of permitted uses, I personally use ^** the A permitted use as being one distinct and contiguous usage of property, that is residential development for senior citizens. I don't care if you call them complexes. I don't care if you call them individual dwellings. What are complexes but individual dwellings? And the code quite clearly states that the total number of senior dwellings shall not exceed 35 percent of that particular development. I think to split them, we leave the issue wide open as to how many of the other types that Mr. Goldman is asking for his client, how many of those other types are going to be permitted, and let's remember something. I may be completely corrected in this, but I'm going to say, I'm going to venture, that if I bring up the issue of who will live in

these buildings, you will tell me rightly so that that is a Planning issue. When we allow the escape from the provisions of the PNOD, without knowing who is -- actually developing and organizing and managing these properties, we're opening ourselves up to something that was accomplished quite "niftily" for the developer in Union Square in Chili where we found we had a lot of subsidized housing being put in Chili, ostensibly for the benefit of needed Chili residences which turned out not to be needed for Chili at all and turned out to cost this Town a lot of money when a \$64,000 fee in lieu of taxes was accepted on 640 units of development. 640 units of residential housing.

I urge this Board to think very strongly about what PNOD is supposed to mean and how relieving any developer, any developer of the full intent of PNOD as stated in every day language, how that might affect the future of this entire Town. Being a citizen of this Town, since 1991, I have seen a -- enormous growth, based on percentages. It is accelerating. It is going almost in geometric progression, what we have here, and incidentally in that regard, I don't -- with all respect to the Board, I don't really think that Board members should be asking an attorney for an applicant, does this fit into our Master Plan. I believe the Board should take it upon themselves to find out if it fits into the Master Plan.

And as far as Mr. O'Toole not being here tonight, I can't say for what reason, other than to possibly get this whole thing tabled.

BEVERLY GRIEBEL: Well, I don't know either. I didn't receive any word on that. I got no phone call.

MR. DOBELSTEIN: It just seems a little too convenient knowing the wind is up about this particular issue, about the relieving of the PNOD requirement, that all of a sudden Mr. O'Toole does not show up. And I will put -- I will try -- I may not get another opportunity -- I will try to put an addenda to this extent on my comments.

I read Mr. Goldman's letter thoroughly. And one of the last paragraphs in that letter cites three citations which seem to support Mr. Goldman's claim that the property usage always seems to go in favor of the property owner when there is a conflict. That is not so, Mr. Goldman, and that has never been so, and we need only to look at some of the decisions made under eminent domain to find out that the Town has a lot of control over property owner's rights. If that were not the case, then when Brian Austin opted to ride motorcycles on his 54 acres and was almost sued out of business and his own property by actions of the Town Board, if that -- that never would have happened if a property owner really had the rights to the usage of his property that Mr. Goldman claims. It is just patently not true, and I would expect that if you read the last paragraph in which Mr. Goldman cites three citations to support his view, you might, if you understand the legal aspect of these cases, you might view, as I have viewed, that this is a veiled threat to sue this Town over the issue of PNOD.

And -- Chairwoman Griebel, I would strongly urge you to put Mr. O'Toole, when he decides to appear, and Mr. -- not only Mr. O'Toole, but Mr. Stowe as well, on notice that what they should be doing right now is preparing their own opinion in the form of a precursory brief to this whole thing to avoid a lot of time and effort and expense to this Town. And I thank you very much for your listening to my comments.

BEVERLY GRIEBEL: Now, I don't know why Mr. O'Toole is not here tonight. We generally meet the fourth Tuesday of the month. In May the fourth Tuesday is tax grievance day. So we move it ahead to the third Tuesday, but -- I don't know. I got no phone calls.

MR. DOBELSTEIN: I'm not faulting Mr. O'Toole personally at this point. I'm simply saying that all of us who are here tonight found out through public notice and public indication. I'm sure Mr. O'Toole knew that this was going to be taken up tonight.

BEVERLY GRIEBEL: I know all of the Board members and I believe the attorney receives a copy of the notice in the mail from the Building Department.

MR. DOBELSTEIN: I'm sure it was no secret to Mr. O'Toole. So if he has been delayed in some consequence of other action, we can all understand that. But it should not escape the notice of this Board that there are certain things being asked for here in language that is couched to coerce the Board into a decision to undermine the PNOD provision, which seems quite clear in every day language. Thank you.

BEVERLY GRIEBEL: I myself am concerned that the attorney is not here. He has been here other evenings without any problems, so I don't know what happened. I can't speak for him.

JERRY BRIXNER, 14 Hartom Road

MR. BRIXNER: Good evening, Chairperson Griebel. My name is Jerry Brixner, 14 Hartom Road. Members of the Zoning Board of Appeals, I have some thoughts on this matter.

Is this a property that was once known as Chili Meadows?

BEVERLY GRIEBEL: I don't have any idea.

MR. BRIXNER: It has never come before your Board as --

DAN MELVILLE: This is the first.

BEVERLY GRIEBEL: This is the first time it has come. This is an open-ended question. Having seen it before -- this is the first plans I'm seeing. We did not get the plans with our packet.

MR. BRIXNER: I saw Chili Villas and I'm looking around and I didn't see where Paul Road was, but I kind of assumed that it was an issue that was --

MICHAEL MARTIN: It is on the right edge of the map.

BEVERLY GRIEBEL: Right margin of it.

MR. GOLDMAN: Right here (indicating).

MR. BRIXNER: In indelible ink, I think.

MR. GOLDMAN: It is kind of cut off.

MR. BRIXNER: In the middle it is cut off. Half of Paul Road. The very top is Paul. I can tell.

BEVERLY GRIEBEL: At the top of the diagram, is Wegmans property, that large white strip.

MR. BRIXNER: That is not identified, either, Madam Chairwoman, if you would look.

I, too, wonder where the Zoning Board attorney is. This is a very crucial issue, crucial to the community, crucial to the developer, crucial to the Board if you folks want to do a good job. I think there is no excuse for him not being here. He should have known or if he couldn't have made it, his boss should have made it, who is Mr. Stowe.

BEVERLY GRIEBEL: I don't disagree with any of those people who have said that.

MR. BRIXNER: Thank you.

Perhaps members of the audience heard you, Chairperson Griebel, invite members of the audience to come forth to look at the maps as placed on the easel by Mr. Goldman. I certainly felt that was very appropriate of you to do so.

The map only went up a few moments prior to the discussion, and obviously, members of the audience up there who were going to look at a map, which was put for their benefit, would have to go up, but perhaps you saw then that one of the Chili Town Board members, Mary Sperr, Councilwoman Mary Sperr go and say something to Mrs. Lyle, who was one of the four persons up by the Board. I think that is interference. I think it is interference, because she, in my opinion, is interfering.

BEVERLY GRIEBEL: That is not an issue. I didn't see it. I was listening to Mr. Goldman, so I can't really comment on that.

MR. BRIXNER: Yes, I understand that.

I wanted to make sure that -- I'm not sure that all of the maps were put up sufficiently in time for neighbors, and apparently there are a goodly number of neighbors here tonight to look over the various maps.

The wetlands appear to be poorly designed. I know that is not your issue tonight, but I'm just very critical of the proposal for not having a more clear map for the audience to review and your Board to review.

Thank you very much.

MICHAEL MARTIN: I think it is important for everybody to remember that this is all conceptual at this point, that there has been no proposal actually made to any Board in the Town of Chili yet. Part of the reason this is taking so long is because this is the first time we have dealt with a Planned Neighborhood Overlay District and there are a lot of questions about it, which is why the developer has come to the Planning Board in informal discussions a few times to try to get a feel for how everything works and now they're coming to us to get a feel for what we believe the interpretation is made by Mr. Kress. That is what we're here discussing tonight, the interpretation of our development director, not actually any part of the proposal because there is no proposal yet. It is all conceptual at this point.

BEVERLY GRIEBEL: All subject to change.

MICHAEL MARTIN: Yes.

BERNICE WILCOX, Stuart Road

MS. WILCOX: Bernice Wilcox, Stuart Road. I would like to go on record as agreeing with the other members of the audience who spoke against this proposal, and I would like to see it go back to its original ideas.

I think it is a shame when the Town agencies do not take up the best interest of the Chili community and the residents have to resort to going to State and Federal agencies to get things done in the Town. And it may come to that if this is not straightened out at this level. Thank you.

THERESA BARNWELL-RILEY, 16 Dallas Drive

MS. BARNWELL-RILEY: I am in support of Mr. Kress' interpretation of the clause about the units versus complex, and as a handicapped person myself, I am insulted that a developer would use that as a loophole in order to develop something that is not handicapped accessible for his own use or to save money on development, whatever the reason is. But to me a handicapped unit and handicapped complex or handicapped accessible -- and that's what they're supposed to be -- it is one thing. It is one concept. Thank you.

BEVERLY GRIEBEL: Actually, the wording in the code is senior citizen dwelling units and complexes.

DAN MELVILLE: I think we better table this at least until the end of the meeting in case the attorney comes in. If not, we'll have to reserve decision until maybe next month. You won't be here.

BEVERLY GRIEBEL: I won't be here, and the other people who didn't hear the discussion --

DAN MELVILLE: And the other people won't be able to vote.

Well, let's hold this until the end and see if Mr. O'Toole comes in.

BEVERLY GRIEBEL: Mr. Kress, have you been able to reach him by phone?

DANIEL KRESS: I have already left a phone message.

DAN MELVILLE: You might want to let the attorney rebut.

BEVERLY GRIEBEL: Do you have some more comments?

MR. GOLDMAN: Yes, not in the form of a rebuttal, but more hopefully by way of clarification.

DAN MELVILLE: More information.

MR. GOLDMAN: Hopefully. Rough night for attorneys, I guess.

Just to make a couple of comments. I think many of the speakers spoke to -- the first speaker spoke to whether a complex is residential, and I think many of the others have referred to it. We do know that many -- there are many residential complexes out there and Blueberry Hill being one of them which segues segways ^^ into my next comment. We're not going to be in violation of ADA for anything. Okay?

DAN MELVILLE: Everything has to comply.

MR. GOLDMAN: It will be fully ADA compliant. It is a question whether it is handicapped accessible and handicapped adaptable under ADA and other requirements. We'll be fully ADA compliant.

DAN MELVILLE: As far as the building like a recreation building, everything will be ADA compliant.

MR. GOLDMAN: Thank you.

Another point I would like to make, I was kind of pleased, and this is another area where I have no disagreement with Mr. Kress in his including the language from Ron Brand relative to the mix of units. We point out again that we have in addition to the residential units, we're not solely senior citizens. And in terms of the residential units, that is not the entire complex here. The entire site includes 44,000 square feet proposed for commercial as well, so there is a mixture of unit types, you have all sorts of residential as well as commercial. So we're talking about a substantial mix throughout the entire site. We're not looking to escape PNOD. That is something that has been thrown around quite a bit. In fact, we're just looking for clarification. As pointed out, the language of these codes are sometimes difficult. They may be thought to have been written in plain English, but they are quite challenging sometimes and we're not looking for relief from this Board. We're looking for an interpretation, and your view.

With regard to the legal citations, there is a reference to eminent domain. That is the taking for compensation. No one here is looking for money. We're just looking for an appropriate interpretation under the code. So with that, we have nothing further to offer, and I know it has been a long evening so far and you have a lot of other applications, so I will stop now.

BEVERLY GRIEBEL: I will make one comment that I was thinking about as I reviewed the information at home. There are some senior developments in Chili, College Greene in North Chili, that's a senior development. At least one of the owners has to be 55.

MR. GOLDMAN: That's correct.

BEVERLY GRIEBEL: So there is nothing in that code about handicapped accessibility or anything. It is just senior.

MR. GOLDMAN: That's correct.

BEVERLY GRIEBEL: Just throwing that out.

MR. GOLDMAN: Great. Thank you.

BEVERLY GRIEBEL: We will not close the hearing on this. We'll see if the attorney does come tonight. If he doesn't, we're going to have to table it until next month. I will be off for a couple months anyway, and it will have to be brought up with --

DAN MELVILLE: There will be just four of us able to vote, requiring a unanimous vote.

MR. GOLDMAN: A little tough. If it is a question --

DAN MELVILLE: We could hold it off to August, if you could wait that long.

MR. GOLDMAN: That's a long time. It is a situation where we have been working for a long period of time in development on this. We would like to try to, if at all possible, certainly indulging the Board's schedule, to proceed. I don't know if the Board would consider, if you're seeking advice from counsel, if counsel is not here, perhaps having a short special meeting somewhere before your next meeting.

BEVERLY GRIEBEL: Well, that is a possibility. You know, we have had a special meeting at times. I will be off at least two months.

MR. GOLDMAN: Starting? Hopefully not tomorrow.

BEVERLY GRIEBEL: No. June 15th.

MR. GOLDMAN: Okay. So if, in fact, it is just a question of there having been a mischedule for the attorney, and you can get that, and if the Board is willing to get together, for a short period of time, with counsel, to discuss and decide --

BEVERLY GRIEBEL: That would be a possibility.

MR. GOLDMAN: That would be good.

BEVERLY GRIEBEL: It is kind of tough when you're down to four people. It must be a unanimous vote.

DAN MELVILLE: We could meet during the day -- he works days.

BEVERLY GRIEBEL: I work up until the 15th. So...

DAN MELVILLE: A lot of us are available during the day.

BEVERLY GRIEBEL: Probably would be the evening.

MR. BRIXNER: Are you considering a closed meeting? Or will you openly announce?

BEVERLY GRIEBEL: We would never have a closed meeting.

DAN MELVILLE: Never.

MR. BRIXNER: I want that clear.

DAN MELVILLE: It will be advertised and open.

MR. GOLDMAN: I don't want it either.

BEVERLY GRIEBEL: We do not do that. No. We have more than three of us together, we don't discuss Board business.

MR. BRIXNER: Thank you.

CAROL CONFER, 10 Westway

MS. CONFER: Is this going to be subsidized housing?

BEVERLY GRIEBEL: I don't know. That was not mentioned.

MS. CONFER: I think that is an important issue.

DAN MELVILLE: That would be a Planning Board issue.

BEVERLY GRIEBEL: Right now it is a concept with the blocks here and there.

MS. CONFER: I know out at College Greene it is subsidized housing in the senior citizen apartments.

BEVERLY GRIEBEL: Could we have your name, ma'am?

Well, College Greene has apartments and houses? What is your name?

MS. CONFER: But the apartments are subsidized to the point where you cannot live there if you have an income over a certain level.

BEVERLY GRIEBEL: What is your name?

MS. CONFER: My name, Carol Confer, C-o-n-f-e-r.

BEVERLY GRIEBEL: Thank you.

Your address is?

MS. CONFER: 10 Westway.

BEVERLY GRIEBEL: Thank you. We'll hold this until we see if the attorney comes in.

4. Application of Stephen Haupt, owner; 3027 Chili Avenue, Rochester, New York 14624 for variance to erect a 10' x 16' utility shed to be 29' from front lot line (55' req.) at property located at 3027 Chili Avenue in R-1-15 zone.

Stephen Haupt was present to represent the application.

BEVERLY GRIEBEL: This went to Monroe County Planning and came back as a local matter.

MR. HAUPT: Good evening. I'm Steve Haupt from 3027 Chili Avenue. My application is not half as sexy as that. I just want to build a shed. I have no drawing.

MR. GOLDMAN: Sorry.

MR. HAUPT: That is all right. I think the intent of this code was to prevent people from building sheds out in front of their homes. Mine is one of the older homes across from St. Pius that is 27 feet from the front lot line. I'm replacing an existing shed that was damaged by the ice storm. I tore it down. It is partially obscured by a fence which we just also recently replaced, and it is 10 by 16, fairly simple. We're in compliance in every other setback regulation except for the front setback regulation. I have plenty of land out back. I could put it in the back rear property line. It would be a convenience factor and inefficient use of the land. I have a deck that protrudes out and this will fit nicely by the deck and the fenced area and otherwise would ruin basically a nice backyard.

BEVERLY GRIEBEL: You want it in the site where the old shed was?

MR. HAUPT: Yes. The old shed was smaller.

BEVERLY GRIEBEL: The house is sitting 27.8 feet from the property line, and this is further back.

MR. HAUPT: 2 feet further back.

BEVERLY GRIEBEL: Because it is too close according to the code. They probably widened the street at some point in time.

MR. HAUPT: They did. The State widened the street by 10 feet in the past, as well.

PETER WIDENER: We may correct that. The instrument location map says 37.8 feet.

MR. HAUPT: You're correct. That was an old instrument survey map.

PETER WIDENER: You lost 10 feet.

MR. HAUPT: Yes. Now, the curb is still there, where the old one is from the curb, it is still the same.

BEVERLY GRIEBEL: That one is 27.

PETER WIDENER: That is a sketch. This is an instrument survey.

MR. HAUPT: That was done before the State took that 10 foot right-of-way.

PETER WIDENER: State acquisition.

MR. HAUPT: I subtracted that out.

PETER WIDENER: Thank you.

DAN MELVILLE: You said you're putting that in the same spot as the other shed?

MR. HAUPT: Yes.

DAN MELVILLE: How much bigger?

MR. HAUPT: The other was 8 by 10. This is 10 by 16. Double the size.

DAN MELVILLE: All of the questions I have.

BEVERLY GRIEBEL: Never have enough shed room.

MR. HAUPT: That's correct.

PETER WIDENER: Height on the shed?

MR. HAUPT: 9 foot at center. I have an actual photograph. I brought a picture, if you would like to see it.

MR. HAUPT: From that plan, the sketch you have, I would just reverse these, if I could do so. Here are the copies. I just changed the direction, but we're still in compliance for both side setback.

BEVERLY GRIEBEL: You moved the sidewalks.

MR. HAUPT: Instead of parallel to the house, I made it perpendicular to the house. There is a picture of the shed on the back of it. It will be sided to match the house and it will be roofed to match the house, as well.

PETER WIDENER: Utilities?

MR. HAUPT: I may put electric in it. I have not decided. I will have it inspected and get an electrical inspector in there. It would be professionally done if I do that. What I am thinking about is lighting and a power strip. That is just kind of it.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

CARL MULLANEY, 3025 Chili Avenue

MR. MULLANEY: Steve's neighbor. I totally agree with his application, and the only thing I did want to mention is if you had been to the site, you will notice that we have deep lots, but they run downhill. I have a shed that I built 15 years ago that I can't get at until about June because of the water flow. So it is kind of tough to build a shed in the back that you can't use for anything heavy. But the shed was there before. It is existing. He is putting an existing shed where one existed before. He takes fine care of his property, and I recommend that the Board agree with his application.

MR. HAUPT: Thank you, Carl.

PAUL DOBELSTEIN, 32 Parkway Drive

MR. DOBELSTEIN: Not a neighbor, but observation generally, if that is allowed at this point.

BEVERLY GRIEBEL: Sure.

MR. DOBELSTEIN: Yes. I certainly encourage Mr. Haupt for wanting to improve his property, and one thing that Mr. Haupt did not mention about his case, is that there does -- due to what this gentleman just said -- there does seem to be a hardship issue here involved with the lack of ability to use his land efficiently simply because of a possible water problem. I would encourage Mr. Haupt to realize, however, if he doesn't, that generally in -- and Mr. Kress might comment on this if he chooses, but generally I know this happened to me when I lived in Palmyra, I had to rehabilitate an old stable that had been made into a garage simply because if I destroyed it, and built a new one, my setbacks would not be grandfathered in through a situation. And that is something -- I'm not talking in Mr. Haupt's case, because there does seem to be a legitimate hardship here, but I would like the Board to consider how many times we have variances requested and we're all for that, all want to build our communities in cohesion and goodwill toward our neighbors. I think it is wonderful this gentleman came to testify for Mr. Haupt. But I do believe that the Town Planning and Zoning bodies should be encouraged that there be limits set on variances. I'm seeing consistently in this Town that variances are sometimes chopping setbacks completely in half. That goes beyond commodious decisions on the part of the Board. That becomes an abandonment of neighborhood principle, and the only reason I'm mentioning this, in Mr. Haupt's case there are others on this same agenda that are asking for setbacks to be cut in half to do the things they want to do.

I put a pretty extensive addition on 32 Parkway Drive. I didn't come to this Board because I finagled my development to fit what I had to work with, because I respected the law and wanted to stay in compliance for the sake of my neighbors. In Mr. Haupt's case, his neighbors are in favor of what he is going to do, and it sounds like he will do a wonderful job there so I have no complaint, but this was an appropriate time, I thought, to bring up my concern on a couple of -- this

and other agenda items where we're really whacking these setbacks in half and I'm wondering what that does to the general character of neighborhoods after a while when variances are consistently given out that are so far at variance with the code, that it perhaps does not become nice for the general development in the neighborhood.

In my home in Palmyra, because it was such a narrow lot, I wanted to put up a nice little wooden picket fence in the front and I wouldn't be in violation of anything. When my father came to help me paint the place, he said, "Son, walk up and down the street. There is nobody on this street that has a fence. You're going to stick out like a sore thumb." I didn't put up the fence. My father was right. May he rest in peace. And I would like the Board to consider those issues as we go through. I think Mr. Haupt's plan sounds like a great one, but please start considering what the reasons are for these setback changes. Thank you very much.

MR. MULLANEY: I just reiterate. I can understand this gentleman's situation, but Steve bought a house that belonged to Mr. Spence. The residence -- he is 29, I think, feet from the road. Mr. Spence used to talk to me. He remembers when there was 4 cars and 50 horse buggies on Chili Avenue. You can't expect the man to move his house -- I mean -- he has a special case where he needs a variance. The house exists where it is. He can't move it.

BEVERLY GRIEBEL: I understand.

MR. MULLANEY: Each case should be dealt with independently. I used to sit on this Board. We have a lot of variances. But each case has to be treated independently.

BEVERLY GRIEBEL: He doesn't want to build it in a pond in the back.

MR. MULLANEY: If I had to do it again, I wouldn't do mine in the back, to tell you the truth.

BEVERLY GRIEBEL: There was a letter that came in from Dr. Mort Miller on Bellmawr and he is in favor of this. He lives quite nearby and has no problem with your application.

MR. HAUPT: Thank you.

Beverly Griebel made a motion to declare the Board lead agency as far as SEQR, made a determination of no significant environmental impact, and Gerry Hendrickson seconded the motion. All Board members were in favor of the motion.

Michael Martin made a motion to approve the application with no conditions, and Gerry Hendrickson seconded the motion. All Board members were in favor of the motion.

DECISION: Unanimously approved by a vote of 5 yes with no conditions, and the following findings of fact were cited:

1. Replaces a shed lost in the ice storm.
2. A dry yard area is needed for shed placement.

Note: A building permit is required prior to construction of this shed.

5. Application of David Higgins, owner; 102 Parkway, North Chili, New York 14514 for variance to erect a 10' x 14' utility shed to be 41' from front lot line (55' req.) at property located at 102 Parkway in R-1-15 zone.

David Higgins was present to represent the application.

BEVERLY GRIEBEL: Do you work for any government agency?

MR. HIGGINS: No, I don't.

BEVERLY GRIEBEL: This is going to go behind the house?

MR. HIGGINS: Right. See, I live on a corner lot. What I am looking at is for a variance from the side road so I can put the shed in line with the existing house that is there now. I have a hot tub which I had a permit for, and in putting the shed, that will also give us a little privacy from the traffic that comes around the corner. In the future we would like to put a swimming pool in, and due to

the fact that -- I have a lot of land, but I'm not allowed to use it for anything because of easements and setback rules -- I would be very limited where I could put the pool and probably end up having to move the shed when I did that, so I would just as soon put the shed in now. What I am going to do now is put a 10 by 10 shed in. When I was down there applying for the variance, I -- if I do put the pool in, I want to add 4 feet to the shed as a changing room for the pool, and that is why I asked for the 10 by 14. The shed I am putting in right now is a 10 by 10 kit that will be painted to match the house and nicely roofed and well taken care of.

BEVERLY GRIEBEL: You want to put an addition on when you put the pool?

MR. HIGGINS: Yes. It will be included all in one building if I put the pool -- get the variance now so I don't have to go through this again.

BEVERLY GRIEBEL: It is going to go straight back from where you have the hot tub?

MR. HIGGINS: Right.

BEVERLY GRIEBEL: In line with the side of the house?

MR. HIGGINS: In line with the side of the house, yes.

BEVERLY GRIEBEL: Which is really a front because you're on the corner?

MR. HIGGINS: Right.

PETER WIDENER: Were you going to build this shed?

MR. HIGGINS: Yes, I --

PETER WIDENER: It would be easy for you to make the 4-foot addition on later on?

MR. HIGGINS: Yes. I bought the kit, a complete kit for the 10 by 10, and then I would just add to it.

PETER WIDENER: Utilities in there?

MR. HIGGINS: Possibly electric, but all inspected. Just for a light.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

JIM KLEIN, 32 Mapleton Drive

MR. KLEIN: My front and side yard borders on Dave (Higgin)'s backyard. And we have talked about it, and as long as he keeps it neat, no clutter, I really can't object to it. He has also promised that I won't be able to see him hop in and out of the hot tub. You can strike that last comment.

(Laughter.)

Beverly Griebel made a motion to declare the Board lead agency as far as SEQR, made a determination of no significant environmental impact, and Peter Widener seconded the motion. All Board members were in favor of the motion.

Michael Martin made a motion to approve the application with no conditions, and Gerry Hendrickson seconded the motion. All Board members were in favor of the motion.

DECISION: Unanimously approved by a vote of 5 yes with no conditions, and the following findings of fact were cited:

1. Corner lot setback problem.
2. Shed would not extend further into the setback than the existing house/garage and the hot tub.

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

6. Application of Karen Pitoni, owner; 20 Benedict Drive, Rochester, New York 14624 for renewal of conditional use permit to allow an office in home to make and sell jewelry at property located at 20 Benedict Drive in R-1-12 zone.

Karen Pitoni was present to represent the application.

MS. PITONI: I'm Karen Pitoni. I just want to renew my conditional use permit to continue doing my in-home jewelry business.

BEVERLY GRIEBEL: This was the original application one year ago. You want to renew it at this time. Has anything changed?

MS. PITONI: The only thing that has changed is I did expect to have some deliveries at home, which I have ceased doing. They all go to my workplace now because that was a pain. I didn't get my packages, so...

BEVERLY GRIEBEL: By UPS?

MS. PITONI: Just easier to have them delivered at work where I could sign for them and not have to pick them up or not get them at all.

DAN MELVILLE: Any problems?

DANIEL KRESS: No record of any complaints, no, sir.

COMMENTS OR QUESTIONS FROM THE AUDIENCE: None.

Beverly Griebel made a motion to declare the Board lead agency as far as SEQR, made a determination of no significant environmental impact, and Peter Widener seconded the motion. All Board members were in favor of the motion.

Gerry Hendrickson made a motion to approve the application with the following conditions, and Michael Martin seconded the motion. All Board members were in favor of the motion.

DECISION: Unanimously approved by a vote of 5 yes with the following conditions:

1. Granted for a period of five years.
2. No on-premises advertising.
3. No on-street parking pertaining to the business.
4. Hours of operation as per application.
5. No outside employees.

The following finding of fact was cited:

1. The home office is a customary home occupation.
7. Application of Joseph Dunn, owner; 107 West Forest Drive, Rochester, New York 14624 for variance to erect an above-ground swimming pool to be 25' from side lot line (55' req. abutting a street) at property located at 107 West Forest Drive in R-1-15 zone.

BEVERLY GRIEBEL: Number 7 was tabled. Anyone here for that? I should have asked again. Joseph Dunn, Forest Drive. That is tabled until next month due to sign not being posted properly.

DECISION: Unanimously tabled by a vote of 5 yes to table until June 22, 2004 at 7:00 p.m. with the following reason/finding of fact having been cited:

1. Applicant failed to properly post the required public hearing notice sign.

Note: Applicant to obtain new sign(s) at the Building Department to post and

maintain as per Town regulations.

Applicant must be present for the public hearing.

8. Application of Beth Shepard, owner; 40 Foxe Commons, Rochester, New York 14624 for variance to erect an 8' x 13 1/2" addition to deck to be 29' from rear lot line (35' req.) at property located at 40 Foxe Commons in PRD zone.

Tim Whelehan was present to represent the application.

BEVERLY GRIEBEL: Now, it is Beth Shepard, and signed by Beth Whelehan.

MR. WHELEHAN: Beth and I have been married -- it is a name change issue, I guess.

BEVERLY GRIEBEL: Since the application was --

MR. WHELEHAN: No. No. Since she purchased the property.

BEVERLY GRIEBEL: Oh. So it is not Beth Shepard, owner. It is Beth --

MR. WHELEHAN: I believe the -- I believe your records would still show her name as Beth Shepard, owner of the property.

BEVERLY GRIEBEL: But she has changed it?

MR. WHELEHAN: We're in the process of changing her name officially.

BEVERLY GRIEBEL: Okay. Is she here?

MR. WHELEHAN: I'm her -- Tim W-h-e-l-e-h-a-n. I'm her husband.

BEVERLY GRIEBEL: Your first name again?

MR. WHELEHAN: Tim. I apologize for any confusion as a result of getting married.

BEVERLY GRIEBEL: It says, "Signature of the applicant and notarized signature of the property owner if the applicant is not here."

MR. WHELEHAN: She is ill this evening. She had planned on attending.

BEVERLY GRIEBEL: Does she work for a government agency?

MR. WHELEHAN: No, she doesn't. She is a nurse.

BEVERLY GRIEBEL: You're not supposed to get sick. That is what I am, too.

Generally we have the applicant here. That would be a question for our attorney.

PETER WIDENER: It is the husband.

DAN MELVILLE: Are you owner of the property, too?

MR. WHELEHAN: Not legally as of yet.

DAN MELVILLE: You got a problem.

BEVERLY GRIEBEL: Yeah.

DAN MELVILLE: We need a notarized statement saying you can represent the application.

BEVERLY GRIEBEL: Some kind of letter, just to be on the legal side.

Notarized signature of the property owner or applicant. He is the applicant, but she is sick tonight.

MR. WHELEHAN: I can call home and request she come down if it is necessary.

BEVERLY GRIEBEL: Technically, she should be here.

DAN MELVILLE: We can hold this up. We have a couple more applications.

BEVERLY GRIEBEL: Let's put it at the end and see if she can come or we can hold it off until next time.

MR. WHELEHAN: I'm certain if it is this urgent, she can attend.

DAN MELVILLE: At least if she comes in and says you can go ahead and speak, that is all we need.

MR. WHELEHAN: Okay. If you would allow me to do that, I will go out and call her.

BEVERLY GRIEBEL: We'll put it at the bottom of the pile.

9. Application of Excel Development; P.O. Box 220, Spencerport, New York 14559, property owner: Gates-Chili Central School District; for variance to allow proposed subdivision to have a 50' front setback (60' req.), variance for Lots 17 & 18 to have 15' road frontage (40' req.) at property located at 30 Dallas Drive in R-1-15 zone.

Rob Fitzgerald was present to represent the application.

BEVERLY GRIEBEL: Again, if anyone in the audience wants to go up and look at the property, please feel free. It is a pretty good diagram that shows well from here.

MR. FITZGERALD: Thank you.

BEVERLY GRIEBEL: It shows it good.

Now, this is a new project that has been to the Planning Board or has not?

MR. FITZGERALD: This has not been to the Planning Board as of yet. What we're requesting, as you stated -- I'm Rob Fitzgerald from Avery Engineering.

What we're proposing is a 50-foot front setback to the right-of-way line instead of the 60 required. We're trying to do that to put the houses into our proposed road, if you will. This property is completely surrounded by residences. What we want to do is leave a buffer, at least a 20-foot buffer in the rear of the yard, but at the same time we want to give these new homeowners a decent backyard for pools or whatever, whatnot. We think that the 50 feet plus the 20 feet of grass would be more than enough, 70 feet. I know some of the other subdivisions around do have a 40-foot front setback, Wellington, Chestnut. 50 feet is more than those. This is for the mutual benefit of both the surrounding neighbors as well as hopefully the future residents of this -- our proposed development, as well. So we can allow for that buffer as well as give them a little more of a backyard.

BEVERLY GRIEBEL: So it is 20, 50-foot front setback from the front property line which would make it even more feet from the road?

MR. FITZGERALD: To the edge of the gutter. Approximately 20 feet more. 17 1/2.

BEVERLY GRIEBEL: 17 or so more feet to the gutter.

MR. FITZGERALD: Right. Actually, maybe I should point out, too, this is only going to be for the lots that are on the straight road, if you will. It won't pertain to the flag lots, because we want to have the required width, if it did.

The second variance we're asking for tonight is to have a flag width of 15 feet, which I believe was Town Code a couple years back. I believe that was recently changed. What we're proposing is the two flags butted up together with the common driveway, so we would have, of course, utilities and common trenches on either side.

DAN MELVILLE: Is that a common driveway or two driveways?

MR. FITZGERALD: We've proposed a shared driveway.

DAN MELVILLE: It looks like two driveways from here.

MR. FITZGERALD: The little line is the property line, if you will.

BEVERLY GRIEBEL: It is all one slab of asphalt?

MR. FITZGERALD: Yes. Centered on the property line, so there would be ingress and egress easement, cross access. I don't want to say it is real common, but it is relatively common. I actually live on one myself, same situation. The alternative way would be to have the required 40 feet, shift some of the lots around and we could have -- because there is quite a bit of space in there, if you will, dead space, we could have a proposed drive off from Meetinghouse Drive to service one of these homes, but this is more of a tight knit community, especially with like the new development, it would be weird to have one new home off an existing stub.

BEVERLY GRIEBEL: It loses a sense of neighborhood right there. We had a number of letters that came in. A letter was faxed in from Tom Shaffer at 80 Daunton Drive, opposed to this. It would result on a -- a house on Lot 18, directly behind his house.

MR. FITZGERALD: That's right here (indicating).

BEVERLY GRIEBEL: Okay. And I would like -- "I would not like to have this happen, if possible. If it does happen, keeping the house as far from the property line and hopefully leaving some existing woods would be great. So if denying the variance can prevent this building, then I'd like to be against it. On the other hand, if it can't be avoided, it seems like the variance would keep the house further from my property line. With this proposed development of 25 houses, I am also concerned with displacing wildlife and traffic flow. With 25 families, there would likely be 50 plus cars added to traffic in the area. The Knights Trail dead end and the intersection with Daunton Drive currently serve about six cars. This would be quite a drastic change. Has this been considered?"

BEVERLY GRIEBEL: I think that was the only one. I guess that was the only one.

DANIEL KRESS: With regard to the request for a variance for the front setback, no. With regard to the request for the variance from the road frontage, that is nothing that has been recently changed. That has been in effect since 1981, so it is hardly a new requirement. Flag lots almost invariably create problems with regard to sighting, relative to neighbors in the front, so if the Board were to look favorably on that, I would like to suggest as a condition some amount of screening at the front of the rear lots so that, for example, when cars pull down the driveways, their headlights are not shining on the back of the houses in front.

BEVERLY GRIEBEL: That would become like a Planning Board issue.

DANIEL KRESS: I would agree that would be something, the type of configuration of which would have to be settled at Planning Board. I would like some recommendation or mention of it in the Zoning Board decision to be helpful.

MR. FITZGERALD: If I could address that comment, like I said, I recently just last summer built a house and I'm in the same situation. I am on the flag lot, and Dan (Kress) is absolutely right. Our biggest concern is that we have some trees in our front yard, but we can still see the backyard, as well as they're looking into our front yard. We have done just that, provided a screening.

What we have in green here is illustrating the trees we want to leave, as well as this area here (indicating). There are some decent sized mature trees here (indicating). The grading has been done on the plan so as not to disturb these areas. That was a big concern of my client as well as Mike Hetting, the contractor. He is -- Rob (Fitzgerald), if we're doing these flag lots, we're going to screen them in.

BEVERLY GRIEBEL: And leave some of the trees that are already present?

MR. FITZGERALD: Yes. Which increases the salability of the lot, if you will. We have full intentions of leaving a nice buffer there.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

PAT NORTHRUP, 82 Daunton

MS. NORTHRUP: I'm next door to Mr. Shaffer at 80 Daunton. We were here last night and they presented a wonderful program for preserving this buffer zone between our lots and the woods behind us, and the understanding was that they were going to try to leave some more of that buffer zone on the end of the new lots coming through so we would have about 20, 30 feet between each lot; am I right?

MR. FITZGERALD: Correct.

MS. NORTHRUP: If they have that, that is all you need. They would still have the woods in the back and it will still look nice.

JERRY BRIXNER, 14 Hartom Road

MR. BRIXNER: Is this the same proposal that is being presented to the voters of the Gates-Chili School District today for this property which is indicated as being owner Gates-Chili Central School District?

MR. FITZGERALD: Actually, I don't believe so, no. Mike Hetting has an accepted purchase offer on this property.

MR. BRIXNER: But my question is, there is an issue dealing with property that appeared on the ballot of the Gates-Chili School District.

MR. FITZGERALD: There is some discussion for fields and whatnot.

MR. BRIXNER: My question would be, has it been determined that -- by the voters that this particular property, if it is the same issue, has been appropriately sold to your group?

MS. NORTHRUP: Doesn't have to be.

BEVERLY GRIEBEL: Well, there is a letter that is here.

Beverly Griebel read a letter that indicated the Gates-Chili Central School District is the owner of the property located at 30 Dallas Drive and is under contract with Excel Development Corporation regarding the development of the property, pending Town approvals. The letter is on file in the Chili Building Department.

DAN MELVILLE: So the purchase offer is contingent on getting the approvals from the Zoning Board?

MR. FITZGERALD: Certainly.

BEVERLY GRIEBEL: I guess from that, it is an issue that didn't have to go before the voters.

DAN MELVILLE: That is already -- already had been sold off I would imagine then.

BEVERLY GRIEBEL: Maybe it is --

DAN MELVILLE: I don't believe it is up for tonight.

MR. BRIXNER: How many pieces of Gates-Chili School District property are in that vicinity?

BEVERLY GRIEBEL: I have no idea.

MS. NORTHRUP: You mean in that property there? That property was deeded by Benedict as builder and that was supposed to be for an elementary school back 40 years ago, but they never had to use it, and that property has just sat there.

MR. BRIXNER: Now as -- you mentioned there was a meeting last night. Was that an informational meeting for the neighbors?

MR. FITZGERALD: That's exactly what that was, yes. What we decided to do -- us as engineers, surveyors as well as our builder, we decided to hold a meeting. We tried to invite all of the surrounding neighbors as an informational meeting so it could help to get the best project possible. Yes.

BEVERLY GRIEBEL: Jerry (Brixner), too, to expand on your question, I used to back up to what is now Wellington. That was Gates-Chili School System property and there was no vote on that when that was sold. There was no public vote on that. They just determined it was access property and they didn't need it for a school and they sold it. It didn't come before a vote.

We're not discussing that here tonight. That is another issue that --

DAN MELVILLE: We're basically discussing the setbacks and flag lots.

BEVERLY GRIEBEL: That is like an extraneous issue. Do you have any other questions?

MR. BRIXNER: Please give me a moment.

I'm confused because I thought it was on the ballot for tonight and I couldn't understand. I couldn't understand about it coming here.

Am I wrong when you change properties this would be the Board you come to and not the Planning Board?

BEVERLY GRIEBEL: Well, both boards. They can choose where they come first. They're here for front setbacks and for the flag lot.

MR. BRIXNER: So it is appropriate for the people to come here?

BEVERLY GRIEBEL: Yes.

MR. BRIXNER: Thank you very much.

BEVERLY GRIEBEL: It is not specified which order they have to come. Sometimes we have seen an application, and we will table it until we get more information back from the Planning Board. That has happened.

DOROTHY BORGUS, 31 Stuart Road

MS. BORGUS: I think this application fits in with Mr. Dobelstein's comments earlier. Some of these setback variances are given, and it seems harmless and it is a single issue, and then it is a precedent. And then we hear, well, it is done here and done there and pretty soon we have no law. We have a 60-foot setback for a reason. And now we're getting almost every builder in here looking to be the exception to the rule.

BEVERLY GRIEBEL: Well, they're doing that to try to keep the houses further away from the other homes that they're backing up to, which is what those people want.

DOROTHY BORGUS: But look at those lots. Are all those people on those lots where you have shortened up these lots, and you have -- you know, made exceptions to our setbacks, they will all be in here one by one sooner or later because they want to put a deck on.

DAN MELVILLE: That is why they pushed them closer to the street.

MS. BORGUS: Or a front porch on. You will just see variance after variance here. Because if the lot is not big enough, then it is not big enough. The bottom line is, every one of these developers wants to crowd in more houses than he really has room for to do it right. Bottom line. I think it is time

to stop this. Have a few less lots, and we wouldn't have all these variances. If this is an awkward piece of land, so be it. As far as flag lots go, I hate flag lots. They do not do anything but create problems, and I can't imagine anybody wanting to buy a house behind somebody else's. So when they go to the Planning Board, and I go there, too, they're going to say, "Well, the Zoning Board said it was all right." You know, I mean he just -- the Boards, these developers work one Board against the other. When you go to both of them, you see it. I think it is time to say if it doesn't fit, don't do it.

BEVERLY GRIEBEL: I know the front setback was in the Perna development over off Red Bud, to give more backyard room. Push it forward and give the backyard, which is what you're doing here.

DAN MELVILLE: It was also to help give a little better buffer to the people behind them, which one of the ladies here now is in favor of, that lives in the subdivision.

MR. FITZGERALD: To clarify one matter, the lot depths do meet Town codes. I just want to make that clear.

BEVERLY GRIEBEL: You're just pushing it forward to give more room?

MR. FITZGERALD: That's what we're doing.

BEVERLY GRIEBEL: Does the applicant work for a government agency?

MR. FITZGERALD: The school district?

BEVERLY GRIEBEL: Any government agency.

PETER WIDENER: The applicant.

BEVERLY GRIEBEL: Excel Development.

MR. FITZGERALD: No.

Beverly Griebel made a motion to declare the Board lead agency as far as SEQR, made a determination of no significant environmental impact, and Peter Widener seconded the motion. All Board members were in favor of the motion.

Michael Martin made a motion to approve the application with no conditions, and Gerry Hendrickson seconded the motion. All Board members were in favor of the motion.

DECISION: Unanimously approved by a vote of 5 yes with no conditions, and the following findings of fact were cited:

1. Setbacks are consistent with other developments in the Town.
2. Adjacent neighbors seem to be in favor of deeper backyards.

Recommendation to the Planning Board:

1. Screening or vegetation in front of the flag lots to give privacy to both the flag lots and regular lots on the frontage.

BEVERLY GRIEBEL: We go back to the one that we held back. Beth Shepard, did she come in?

Beth Shepard was also present to represent Application 8.

BEVERLY GRIEBEL: It is just a legality. We need your approval he can speak for you. So if you want to do that and have a seat, I hate to drag you out.

MS. SHEPARD: My name is Beth Shepard.

MR. WHELEHAN: They didn't think I was Beth Shepard.

BEVERLY GRIEBEL: If you wanted to indicate he can speak for you.

MS. SHEPARD: Yes.

BEVERLY GRIEBEL: You want a deck -- behind the house, it is a pretty deep lot, so you're going to be quite a big distance from your nearest neighbor in the backyard. It goes back to some kind

of wild area.

MR. WHELEHAN: A common area.

BEVERLY GRIEBEL: So it is quite a distance to the next house in the backyards, pretty far.

MR. WHELEHAN: That's correct.

BEVERLY GRIEBEL: I know we had somebody else that was in. I think a couple people have come in, wanting a larger backyard deck.

MR. WHELEHAN: Existing deck, we purchased a table and four chairs last year and that is about all you can get on it. We hope to enjoy some friends there, as well.

BEVERLY GRIEBEL: Maybe they can sit on the grass. It is kind of tough. Come over, but bring your blanket for the grass.

(Laughter.)

PETER WIDENER: This is behind the house?

MR. WHELEHAN: Yes.

COMMENTS OR QUESTIONS FROM THE AUDIENCE: None.

MR. WHELEHAN: I appreciate your patience.

BEVERLY GRIEBEL: We didn't want to drag you back in next month.

MS. SHEPARD: Thank you.

Beverly Griebel made a motion to declare the Board lead agency as far as SEQR, made a determination of no significant environmental impact, and Peter Widener seconded the motion. All Board members were in favor of the motion.

Michael Martin made a motion to approve the application with no conditions, and Gerry Hendrickson seconded the motion. All Board members were in favor of the motion.

DECISION: Unanimously approved by a vote of 5 yes with no conditions, and the following finding of fact was cited:

1. No impact on neighboring properties to the rear.

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

10. Application of Bradley Mitchell, owner; 51 Hillary Drive, Rochester, New York 14624 for variance to erect a 6' high stockade fence in front setback area per plan submitted (4' allowed) at property located at 51 Hillary Drive in R-1-15 zone.

Bradley Mitchell was present to represent the application.

BEVERLY GRIEBEL: Are you a new owner there?

MR. MITCHELL: Yes, I am.

BEVERLY GRIEBEL: I have a question for Mr. Kress. How many other variances have been sought and approved on this property?

DANIEL KRESS: I don't know.

BEVERLY GRIEBEL: In your records?

DANIEL KRESS: I don't have that information in front of me. I can find that out if you need to know that.

BEVERLY GRIEBEL: I know this has been before us in the past. A couple of times maybe. He will check that out for us.

You want to place a 6-foot privacy fence in either -- something, pressure treated spruce or something in the backyard?

MR. MITCHELL: It looks like it will end up being white vinyl.

BEVERLY GRIEBEL: Which will require it to run parallel to Hillary Drive for about 100 feet.

Now, this is another property that has a corner lot problem.

MR. MITCHELL: Yes.

BEVERLY GRIEBEL: And in your backyard, you have a pool and a deck. And you have two children who need to be safe and secure in the backyard.

MR. MITCHELL: That's correct. My daughter's swing set is 24 feet from the road. I'm not -- I measured it yesterday so I knew.

BEVERLY GRIEBEL: You don't have a lot of options because there are other plantings and other things back there.

MR. MITCHELL: Exactly. I have a row of arborvitaes across the back of the lot and halfway up the side of the one fence. I would place the fence inside of those arborvitaes so really only about half the fence will be exposed.

BEVERLY GRIEBEL: You want the kids in the backyard.

MR. MITCHELL: Yes, and I don't want any people to see my kids in the backyard.

DANIEL MELVILLE: Won't a 4-foot fence be sufficient?

MR. MITCHELL: I personally don't think so. I don't want anybody to see my children back there. Like I said, I work in a -- I meet a lot of bad people, so I really don't want anybody to see whether my children are out in the backyard or anyone being able to reach over the fence, for that matter.

BEVERLY GRIEBEL: What kind of work do you do?

MR. MITCHELL: I work for the Department of Treasury, a Special Agent.

BEVERLY GRIEBEL: So you have a safety concern?

MR. MITCHELL: Exactly.

DANIEL MELVILLE: You checked "no" on the government.

MR. MITCHELL: I believe that was State or local.

BEVERLY GRIEBEL: State, County or Town.

MR. MITCHELL: Yep.

DAN MELVILLE: Federal doesn't count.

BEVERLY GRIEBEL: Now, since that would be in the backyard, that wouldn't really affect the sight distance around the corner.

MR. MITCHELL: No. I stood at the corner where it would meet and head back toward the back corner of the house and you can't see because of the front corner of the house. It wouldn't be a traffic issue at all.

BEVERLY GRIEBEL: Right, if anything, the front yard could affect the line of sight, but in your backyard it wouldn't really affect around that corner.

MR. MITCHELL: Not at all.

BEVERLY GRIEBEL: It is a strange shape lot, almost teardrop shaped.

MR. MITCHELL: Yes, it's beautiful.

(Laughter.)

BEVERLY GRIEBEL: Mr. Kress, did you find any variances?

DANIEL KRESS: No.

DAN MELVILLE: Have you thought about putting any more arborvitaes along that front to cover the rest of the fence up?

MR. MITCHELL: I -- no, I haven't. They're just as expensive as fencing, so. It is -- arborvitaes people can get through. I have --

DAN MELVILLE: I mean in addition to the fencing, I mean, so it covers the fence up in the front.

MR. MITCHELL: That is doubling the cost. I would, but if I did that, I would just probably put a stockade fence in. I figure the white vinyl is a pretty attractive looking fence. That is why I was going with the white vinyl.

BEVERLY GRIEBEL: It is carefree, too.

MR. MITCHELL: Exactly.

BEVERLY GRIEBEL: You can go through that. It would take a while before they gained enough height to match the rest of them.

MR. MITCHELL: Exactly.

COMMENTS OR QUESTIONS FROM THE AUDIENCE: None.

BEVERLY GRIEBEL: We don't know about other variance. I don't know if it would affect that. It may have been a variance for the setback or the pool.

PETER WIDENER: Or setback on the corner with the neighbors.

BEVERLY GRIEBEL: No, it wasn't that. It was something in the backyard. But -- whatever it was was granted back a few years ago.

MR. MITCHELL: I know they -- the fence between mine and my neighbor's house is like 10 feet tall because when you stand on my deck, you can see directly down in their yard without the fence. I don't know if that would be it or if that would be my neighbor's fence.

PETER WIDENER: Is it their fence, though?

MR. MITCHELL: I believe it is my neighbor's.

PETER WIDENER: That wouldn't be on this property. It is a good point.

BEVERLY GRIEBEL: Something about the pool or the deck, but anyway...

DANIEL KRESS: My guess is the pool is less than 55 feet from the street.

BEVERLY GRIEBEL: I think that may have been it. Maybe the pool and the deck both.

DANIEL KRESS: There is no way to make a pool 10 feet from the property line on the other side and --

BEVERLY GRIEBEL: It would be in the neighbor's yard.

DANIEL KRESS: You ran out of room one way or another there.

MR. MITCHELL: When do I find out?

BEVERLY GRIEBEL: We'll be going through the applications. We have to determine on that one we put aside --

DAN MELVILLE: We can keep that public hearing open. You can have a seat. We'll decide tonight or you can call tomorrow to the Building Department if you want. We'll be deciding tonight, but if you don't want to stay, you can find out tomorrow.

The Board discussed the procedure with Mr. Mitchell.

Beverly Griebel made a motion to declare the Board lead agency as far as SEQR, made a determination of no significant environmental impact, and Michael Martin seconded the motion. All Board members were in favor of the motion.

Michael Martin made a motion to approve the application with no conditions, and Gerry Hendrickson seconded the motion. The vote on the motion was 4 yes to 1 no (Peter Widener).

DECISION: Approved by a vote of 4 yes to 1 no (Peter Widener) with no conditions, and the following findings of fact were cited:

1. Corner lot setback problem.
2. Applicant described need for privacy and security for his children.
3. No interference with line of sight for traffic.

BEVERLY GRIEBEL: We'll keep the Fallone matter open until the end of the meeting.

There was a recess in the meeting.

DAN MELVILLE: Motion to table pending further input from our Assistant Town Counsel.

BEVERLY GRIEBEL: Pending -- not further, but pending input.

DAN MELVILLE: Pending input. Yeah. He would have to be here to give us further input. If the applicant wants to request a special meeting, they can do that.

BEVERLY GRIEBEL: If we decide to go that route, what nights are good or bad?

The Board discussed possible nights for a special meeting.

MR. GOLDMAN: It doesn't require the same notice that a public hearing would require to have a special meeting of the Board.

BEVERLY GRIEBEL: Well, public hearing is continued.

MR. GOLDMAN: But even though you -- if you have notice of the hearing, it doesn't necessarily have to have the same.

BEVERLY GRIEBEL: It has to go in the paper, which takes about ten days lead time to get notice in the paper.

MR. GOLDMAN: Typically, if they work the same way other Messenger Wolf papers work, if you get it to them on Friday, at noon, usually they can publish Wednesday or Thursday following. That is their normal regimen. Friday noon is their time. You can tell I have worked on a deadline or two.

BEVERLY GRIEBEL: But we have to have notification to the public. They have to be able to see that. There are several things we will have to check on to see if we can get it in before then. Or else it would be tabled until June 22nd with only the possibility of four of these people being there.

MR. GOLDMAN: That would be less desirable for us. If it can work for the Board, if somehow we can get together a date by Friday, we publish next week, which would be the 26th, which would get us into the first week of June.

BEVERLY GRIEBEL: We have to have a date when the attorney is available, or one of them. Either Keith (O'Toole) or Rich Stowe.

MR. GOLDMAN: It can be a 6 o'clock type of thing. It doesn't have to be a set time if it is better for people.

BEVERLY GRIEBEL: Depends what -- if I'm on road to Wellsville or Olean, I'm not available to barely 7 o'clock. Table it pending all these issues; table it until a date yet to be determined.

MICHAEL MARTIN: I make the motion to table.

PETER WIDENER: I second that motion.

The Board was unanimously in favor of the motion to table.

DECISION: Unanimously tabled by a vote of 5 yes until June 22, 2004 at 7:00 p.m. with the following reason/finding of fact having been cited:

1. Public hearing tabled pending input from the Assistant Town Counsel.

Note: Applicant to obtain new sign(s) at the Building Department to post and maintain as per Town regulations.

Applicant must be present for the public hearing.

The meeting ended at 9:53 p.m.