

CHILI ZONING BOARD OF APPEALS  
May 20, 2008

A meeting of the Chili Zoning Board was held on May 20, 2008 at the Chili Town Hall, 3333 Chili Avenue, Rochester, New York 14624 at 7:00 p.m. The meeting was called to order by Chairperson Paul Bloser.

PRESENT: Jordon Brown, David Cross, Adam Cummings, Tracy DiFlorio, Robert Mulcahy, James Wiesner and Chairperson Paul Bloser.

ALSO PRESENT: Chris Karelus, Building Department Manager; Keith O'Toole, Assistant Town Counsel.

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

The Board reviewed the notification signs for the property on the agenda.

The Board indicated they would hear the Application 1.

The Board indicated they would hear the Application 2.

The Board indicated they would hear the Application 3.

The Board indicated they would hear the Application 4.

The Board indicated they would hear the Application 5.

PAUL BLOSER: We'll hear all of the applications this evening again in the order they appear on the agenda. We'll start with Application Number 1.

1. Application of Raymond McQueen, owner; 5 Sunderland Trail, Rochester, New York 14624 for variance to allow existing 9' x 14' utility shed to be 18' from rear lot line (55' req. abutting a street) at property located at 5 Sunderland Trail in R-1-15 zone.

Raymond McQueen was present to represent the application.

PAUL BLOSER: This shed was built ten years ago to replace an existing one.

MR. McQUEEN: Yes, over ten years ago. I was talking to my son this afternoon. He is about 19 and I believe it was when he was about 5 or 6.

PAUL BLOSER: Were you the owner at that time?

MR. McQUEEN: Yes.

PAUL BLOSER: For the record, could you please state your name and address?

MR. McQUEEN: Raymond McQueen, 5 Sunderland Trail, Rochester, New York 14624.

PAUL BLOSER: Thank you.

180-square foot. This is an aluminum shed?

MR. McQUEEN: Wood-framed. It replaced the steel shed.

PAUL BLOSER: Okay. My misunderstanding.

Is that on footers?

MR. McQUEEN: No, just sitting on block. One of the storms crushed the -- there was a pine tree that came down and crushed the steel shed. I don't think it was the 1992 storm, though. I can't think of it that far back, but it was one of those wind storms. The tree crushed the existing steel shed.

DAVID CROSS: This will be a wood-framed shed, colors to match the house?

MR. McQUEEN: They don't match the house.

DAVID CROSS: Okay. It's there? The shed is there?

MR. McQUEEN: Yes. The shed is --

DAVID CROSS: Okay.

MR. McQUEEN: Like I said, somewhere between 10 and 15 years old. It replaced the steel, the existing steel shed.

ADAM CUMMINGS: Is the shed in good shape?

MR. McQUEEN: Yes, yes. It is custom built. I built the shed.

ADAM CUMMINGS: Is it moveable?

MR. McQUEEN: No. Well, you would have to have heavy equipment to move it. And, of course, on the application I made it clear as I could that that is not the front of the house. I didn't equate a front setback to this situation because that's the rear of those three houses. That's

the backyard for those three houses, backing up to Marshall Road.

ADAM CUMMINGS: Except the road makes it a front yard.

MR. McQUEEN: I realize that now, but I didn't then. It's the backyard.

ADAM CUMMINGS: I understand. In fact, my neighbor has an inground pool with a variance in that same setback.

Putting it closer to the house, you probably have a playground or some other structure closer to the house?

MR. McQUEEN: Yes.

ADAM CUMMINGS: 55 feet may or may not be possible if you move the shed.

MR. McQUEEN: Like I said, I would have to take apart the back fence and it would take heavy equipment or a backhoe to move it.

CHRIS KARELUS: This is just an issue we're dealing with the building permit on.

#### COMMENTS OR QUESTIONS FROM THE AUDIENCE:

DOROTHY BORGUS, 31 Stuart Road

MS. BORGUS: Just two questions. Why is this coming to light now? And was there a permit for the original shed?

PAUL BLOSER: There is no record of it on my previous Board action.

MS. BORGUS: Did this gentleman put the original shed up?

MR. McQUEEN: No. The house is 30, and I have owned it 20 years.

PAUL BLOSER: Did you apply for any permits in this --

MR. McQUEEN: The shed, no.

PAUL BLOSER: Or talked to the Town?

MR. McQUEEN: The wood shed, the replacement, no. I kind of thought because it was replacing a steel shed, it was acceptable. I didn't know about the setback situation. That's all.

MS. BORGUS: Why is it coming to light now?

PAUL BLOSER: Chris (Karelus), was this an inspection, a drive-by inspection situation?

CHRIS KARELUS: Yes.

PAUL BLOSER: Code Enforcement, doing their job.

MS. BORGUS: Just picked it up?

PAUL BLOSER: Yes.

MS. BORGUS: Thank you.

JERRY BRIXNER, 14 Hartom Road

MR. BRIXNER: Has any complaint been lodged on this particular shed?

PAUL BLOSER: Chris (Karelus), can you answer that?

CHRIS KARELUS: I'm sorry, I didn't hear the question.

PAUL BLOSER: Has any complaint been lodged on the shed from neighbors?

CHRIS KARELUS: No.

MR. BRIXNER: I would support it.

CHARLES RETTIG, Coldwater Road

MR. RETTIG: Can we see the diagrams up on the board for the rest of the meeting, please?

PAUL BLOSER: So the placement of the new one basically has come in from your north lot line -- it's hard to tell for scale on this, but you're closer to the rear.

MR. McQUEEN: Correct. To increase the backyard area.

PAUL BLOSER: Approximately the same square footage also.

BEVERLY NEDER, 82 Attridge Road

MS. NEDER: I would support a variance in this case. I mean if it was 55 feet, wouldn't that just about put it in the middle of his backyard?

PAUL BLOSER: Pretty much.

MS. NEDER: That's, to me, kind of dumb.

MR. McQUEEN: Almost against the house, yes. Or close to the house.

MS. NEDER: All right. Thank you.

David Cross made a motion to close the Public Hearing portion of this application at this time, and Adam Cummings seconded the motion. All Board members were in favor of the motion.

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

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

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

DECISION: Unanimously approved by a vote of 7 yes with no conditions, and the following

finding of fact was cited:

1. Based on unique characteristics of the rear of the lot, the placement of the shed will not create an undesirable change in the character of the neighborhood or nearby properties.

Note: A building permit is required for this shed.

2. Application of Kristopher Caswell, owner; 26 Hillary Drive, Rochester, New York 14624 for variance to erect an 8' high fence in rear of property (6' allowed) at property located at 26 Hillary Drive in R-1-15 zone.

Julie Caswell was present to represent the application.

PAUL BLOSER: Are you Julie Caswell?

MS. CASWELL: Yes.

PAUL BLOSER: Driving by this, I could see that there is a drop-off in the back, as it is stated here. Are you doing any other fence on this other than the back one?

MS. CASWELL: It would just be replacing the existing one. It wouldn't come up the sides, just that southern property boundary where the existing split-rail fence is.

PAUL BLOSER: Split-rail?

MS. CASWELL: Yeah.

PAUL BLOSER: You're not coming up the side?

MS. CASWELL: No, uh-uh. The rail fence is kind of -- doesn't look so good, so we also want to do something to spruce that up.

SUPERVISOR DUNNING: What's this fence going to be made of?

MS. CASWELL: It would be a wood shadowbox fence.

PAUL BLOSER: A wooden one?

MS. CASWELL: Uh-huh.

SUPERVISOR DUNNING: Cedar or pressure-treated wood?

MS. CASWELL: Pressure-treated.

JAMES WIESNER: Do you know how much that backyard drops off?

MS. CASWELL: Approximately 4 feet.

CHRIS KARELUS: This split-rail fence will be removed and this is going to replace it?

MS. CASWELL: Yes.

PAUL BLOSER: This is going in the exact same position where the split-rail fence is?

MS. CASWELL: Probably more north.

PAUL BLOSER: Closer to the house?

MS. CASWELL: Correct. There is like a drainage ditch area, so we want to get it out of the water. All of the storm water runs that way.

PAUL BLOSER: The wooden one didn't appear to be in that now, is it? Is it sitting in water?

MS. CASWELL: During wet times, it does. Right now it's pretty dry back there, but generally, yes, it sits in water.

PAUL BLOSER: Okay.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

CHARLES RETTIG, Coldwater Road

MR. RETTIG: Is there a specific reason why we can't -- why she can't go with a 6-foot fence, otherwise going with 8 foot? If there is no specific reason, are we not setting a precedent here?

PAUL BLOSER: I understand your question. Do you have anything else?

MR. RETTIG: That was a question. I didn't get an answer.

PAUL BLOSER: We're going to discuss it during Board discussion, because that is a question I have also.

MR. RETTIG: I don't think we necessarily want to set a precedent with 8 foot, if there is no specific reason why.

IRENE BRIXNER, 14 Hartom Road

MS. BRIXNER: I see many 8 foot fences around my own area.

PAUL BLOSER: Could you state your name for the record, please?

MS. BRIXNER: Irene Brixner, 14 Hartom Road. Thank you very much for reminding me.

PAUL BLOSER: We all know you, but it's official.

Paul Bloser made a motion to close the Public Hearing portion of this application at this time, and Tracy DiFlorio seconded the motion. All Board members were in favor of the motion.

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

The Board discussed the application.

PAUL BLOSER: It's an 8-foot fence. The code is 6. We all know that. There is a decline there.

I'm assuming you're trying to shield out Chili Avenue?

MS. CASWELL: The people that back up to us, they have two-story homes. We have a ranch. So when you sit in our backyard, if we were to sit with a 6-foot fence, you would see right over because of the slope of the backyard.

PAUL BLOSER: It is a swale back there. It's not like it's going to be -- the appearance of being a prison fence. Some applications, we look at these and they become a very -- very obvious and imposing.

JORDON BROWN: I think it's a reasonable request given the circumstances.

PAUL BLOSER: Based on the depression there.

JORDON BROWN: Absolutely.

PAUL BLOSER: I don't want to say we're setting any precedent if we so move to agree with this because we try to look at each individual application, because they are unique and different. I think with the depression in the back, this is a rather unique situation. In reality, from what I saw, from the road, from both sides, southerly looking up from Chili and looking down in the back, this would be probably more of an appearance of a 4-foot fence from either road because of the elevation from the street. So that's my thought on it.

ROBERT MULCAHY: Since we already have 8-foot fences now, this is not a precedent. Would not be.

PAUL BLOSER: It is only one side. It's not surrounding the property.

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

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

Paul Bloser discussed with the applicant what the next steps would be after this approval.

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

1. Site map with fence description to be submitted to the Building Department for width/length placement and materials used.

The following finding of fact was cited:

1. Based on unique slope of the rear property line, the placement of the proposed fence will not create an undesirable change in the character of the neighborhood or nearby properties.
3. Application of Thomas Polizzi, owner; 48 East Bellaqua Estates Drive, Rochester, New York 14624 for conditional use permit to allow a business in home for cooking classes at property located at 48 East Bellaqua Estates Drive in R-1-20 zone.

Thomas Polizzi was present to represent the application.

PAUL BLOSER: You state your hours to be approximately once a month, between 6:30 and 9 o'clock; is that correct?

MR. POLIZZI: That is correct.

PAUL BLOSER: You're not planning on doing two a week or one a week?

MR. POLIZZI: No. Nope.

PAUL BLOSER: How many people would you have attending a normal class?

MR. POLIZZI: 12. 15 would be the maximum.

SUPERVISOR DUNNING: Is this something you have been doing for a while?

MR. POLIZZI: No. Well, I have done them in the past, not out of my home, for a number of years.

PAUL BLOSER: How are you advertising for this?

MR. POLIZZI: Word of mouth. I have a following. I have a website.

SUPERVISOR DUNNING: Are you looking to get a County license?

MR. POLIZZI: Yes.

PAUL BLOSER: For Health Department purposes?

MR. POLIZZI: Yep.

SUPERVISOR DUNNING: No outside employees?

MR. POLIZZI: No.

PAUL BLOSER: Helpers?

MR. POLIZZI: Just my wife or one of my daughters.

SUPERVISOR DUNNING: I know you have a three-car-wide driveway and it's a newer house with a setback. Have you had the driveway full previously with vehicles?

MR. POLIZZI: Yes.

ADAM CUMMINGS: How many fit on there?

MR. POLIZZI: You can fit 12.

ADAM CUMMINGS: Then your three in the garage?

MR. POLIZZI: I have two in the garage.

ADAM CUMMINGS: Then one outside of this? Your family has three?

MR. POLIZZI: My son's car, but he is usually not home anyway. Well, he works.

PAUL BLOSER: How much square footage of the house will actually be used in this? Kitchen area, are you setting up an area designated?

MR. POLIZZI: Kitchen area.

PAUL BLOSER: So it will be first floor?

MR. POLIZZI: Uh-huh.

DAVID CROSS: Do you have approximate square footage of this kitchen area?

MR. POLIZZI: Yes.

DAVID CROSS: 500?

PAUL BLOSER: Do you have seating for all these people, too?

MR. POLIZZI: Yes.

JAMES WIESNER: This is an existing kitchen or one that you --

MR. POLIZZI: Existing kitchen.

JAMES WIESNER: Is it your existing kitchen now, the one that you use in the house?

MR. POLIZZI: No. I have two kitchens.

TRACY DiFLORIO: So you don't envision this taking off and increasing the number of classes at any point in the future?

MR. POLIZZI: No. With my job, with the hours that my job demands, even once a month is sometimes tough. I have done them in the past over the years, and it has always just been once a month, even when I didn't do them in my own home, so...

JORDON BROWN: 15 cars seems like a lot.

MR. POLIZZI: Well, I have yet to have a class where everybody has come by themselves. I have got a family of two daughters and a mother and an aunt that all come together in one car. That's four -- they have attended every one of my classes in the past. Generally there is no more than a couple people that come by themselves.

JORDON BROWN: What would you say is the most number of cars you would end up with?

MR. POLIZZI: Maybe 11, 10. And, you know, I have got permission to park a couple of cars if I needed to so they're out of the street at one of my neighbor's house.

JORDON BROWN: Have you spoken to the neighbors about --

MR. POLIZZI: I don't have anybody on either side of me. I have a house across the street, and they have never said anything to me about it. I have never spoke to them about it. I may have mentioned it to them when they first moved in, but I haven't had anybody come up to me and approach me or anything.

JORDON BROWN: Would once a month, 11 cars be a condition that you would be willing to live by? Or are there future plans for more frequent classes and perhaps more people?

MR. POLIZZI: No, no. No more people. 15 is the way it is set up to fit. Um, I would generally anticipate not doing any more classes more than once a month. Like I said, my work schedule is pretty demanding. It is a little difficult to do more than one a month.

CHRIS KARELUS: I would just ask whatever decision the Board makes that a condition be, because of the use of the space, the Fire Marshal as well as the Building Inspector's review of the construction plan will be crucial for this type of occupation. I would guess some type of assurance, as well -- the Board can ask about that one time a month so for the Building Department there can be some check and balance in place, as well, if the Board sees it fit to grant the permit. No additional comments.

#### COMMENTS OR QUESTIONS FROM THE AUDIENCE:

BEVERLY NEDER, 82 Attridge Road

MS. NEDER: I was just wondering what the purpose of the cooking classes were. Are they to sell the lessons, the food or cookware? And if it's cookware or food, would deliveries be made there from an outside vendor?

PAUL BLOSER: I think a couple of those are reasonable questions. You are not running a catering business, are you?

MR. POLIZZI: No. It's -- it's strictly for people to learn and for me to supplement my income. That's it.

PAUL BLOSER: You're not selling cookware and all of the other?

MR. POLIZZI: No.

PAUL BLOSER: Tupperware?

MR. POLIZZI: Not at all.

CLAUDINE TEMPERALLO (PHONETIC), 39 East Bellaqua Estates

MS. TEMPERALLO: I live at 39 East Bellaqua Estates and I personally have never had an issue with the classes. He is also welcome to use our driveway as extra parking. I don't have an issue with that.

DOROTHY BORGUS, 31 Stuart Road

MS. BORGUS: The gentleman mentioned that -- that this will be the kitchen that goes with the home. But then he said he has two kitchens. These are fairly new homes. Was this home built with two kitchens?

PAUL BLOSER: I guess I will respond to that. First, is this a first-floor kitchen, main kitchen that you're using?

MR. POLIZZI: No.

PAUL BLOSER: You have a supplemental one in like a basement area?

MR. POLIZZI: Yes.

PAUL BLOSER: Was this in the planning stages when the house was built to have that put in?

MR. POLIZZI: No.

PAUL BLOSER: From the Building Department, Chris (Karelus), do you know if any permits have been issued or inspections for plumbing?

CHRIS KARELUS: No. We have a construction inspection we'll have to deal with.

MS. BORGUS: So am I understanding this correctly, the Building Department doesn't know about the second kitchen?

PAUL BLOSER: That is correct, yes.

MS. BORGUS: I take it from the conversation these classes have been conducted now or previously at that location. Where have these classes been being conducted to this point?

PAUL BLOSER: Have you been doing classes in the house?

MR. POLIZZI: I've done two, and then I stopped when this all arose and cooperated with Chris (Karelus) and Ed (Shero), and going forward with all of this before I do anything else.

MS. BORGUS: I would like to ask the same question I did a couple of applications ago. How did this come to light now?

PAUL BLOSER: Chris (Karelus), is it something turned in to the Building Department?

CHRIS KARELUS: Code Enforcement picked up on it.

MS. BORGUS: I guess from -- I don't live in his neighborhood, but if I lived in that type of a residential area, I think I would object to 15 cars. If -- if that -- there was a class of 15 maximum, you couldn't always -- this Board could not always be assured that people are going to ride together. So if you okay the proposition the way he has proposed it, you could have 15 cars. Then he has three of his own. That is 18. I think that's just too much for a residential neighborhood. I would not like it. And there is just too much about this that I think is up in the air.

We have seen things like this come before the Planning Board and the Zoning Board before and things change. And people who have these things just kind of change it along with the plan, change it along with the need and the Town is left out of the circle. I would be very, very cautious to this and if you were to approve this, I think there needs to be very clear parameters set for conditions.

Thank you.

SALLY VIVIANNI (PHONETIC), 36 Bellaqua

MS. VIVIANNI: I'm also a neighbor. I live at 36 Bellaqua. I have come home from work with a class going on. There's no cars in the driveway (sic). In fact, all of the cars are in his driveway. His cars are in the garage, and there's, you know, six cars in the driveway. He has an extra wide driveway. More cars are welcome to park in my driveway. I have a long driveway. There is never a car in the road for the two classes that he had.

JIM EHMANN, 47 Stover Road

MR. EHMANN: Mrs. Borgus commented regarding cars. We have a kid in the neighborhood. He is going to have a party. There is going to be 10, 15, 20 cars that show up and it's going to be more than once a month. Two or three times a month, especially during graduation. I have no problem with this gentleman having a few cars once a month either on the road or in his driveway.

MR. POLIZZI: May I make one comment regarding to this lady's comments?

PAUL BLOSER: If you address to it the table, yes.

MR. POLIZZI: Yes. I -- when I got started in this, I looked at it as nothing more than a dinner party once a month, and anybody who has had a dinner party or people over once a month, there is a chance there will be cars in the driveway, in the road. And I just don't see the difference between that and -- I mean I understand the conducting classes part of it, but as far as the parking situation goes, like this gentleman said, if somebody is having a party once a month, once every other month, there is going to be cars in the street. I'm doing everything I can to keep the cars out of the street, even if it means I pull my cars out of the garage and put them somewhere else so the people can pull their cars in my garage. So...

TERESA CROZIER, 21 Shrubbery Lane

MS. CROZIER: I think the fact he has two neighbors that are here speaking in favor should carry a lot of weight and there don't seem to be any neighbors opposing.

PATTY CLEMENTE, 17 Bowen Road

MS. CLEMENTE: I come from a family of six. On a daily basis we probably have more cars on the road than this gentleman can put in his driveway, and I think if he can make some money, God bless him.

CHARLES RETTIG, Coldwater Road

MR. RETTIG: I would just like to state what I think the Board should do with conditions. Number 1 would be the Department of Health permit. You mentioned that. Number 2, no signs. Number 3, the second kitchen approved by the Building Department. I assume that would follow. And Number 4, that this be stipulated as only once a month. So if that changes, then the conditional -- the conditions change, too, and they should come back for a review.

PAUL BLOSER: Thank you.

James Wiesner made a motion to close the Public Hearing portion of this application at this time, and Tracy DiFlorio seconded the motion. All Board members were in favor of the motion.

PAUL BLOSER: A couple of the comments that Chris (Karelus) made, I'm very much in favor of.

First of all, that the Building Department and Fire Marshal, because of the nature of this type of business with cooking, and deep frying, any fans that might be required, I think in this type of thing, that we should have them to make sure they have proper fire extinguishers on hand.

Evacuations. It is official business. Even being in the home, we want to make sure there is egress and how that is laid out, and that is something that you would want to think about, because they will ask you that question.

MR. POLIZZI: I do have two exits out of the basement, plus the door right at the -- the French doors at the basement, too.

PAUL BLOSER: But I would go along with Chris (Karelus)'s suggestion on that very wholeheartedly.

Pretty much will cover everything. The Building Department will walk in with their folder on the property, and if they see they have a nonconforming apparatus, the homeowner would be responsible for inspections, any inspection fees, plumbing, so forth and so on, so that it is properly coded in the Building Department. So that will be part of this inspection.

Having a business of this nature, too, he would be obligated by law to have the County health inspection that he is in the food business. He probably has already had the health code training, but that will be part of the County license since he is administering the class. So we can put that they're conforming with all of the pertinent licenses and fees to that type of business.

As far as parking goes, several comments were made from neighbors supporting it, number one, and offering their driveways for backup. One of the conditions that we always place on in-home businesses such as -- any kind of in-home business, there is no street parking allowed for the business. No additional employees, no signs, no banners. Those are all typical conditions that we put on every application.

MR. POLIZZI: I understand.

PAUL BLOSER: The other thing we -- as -- as protocol, we normally put a one-year condition on this. In one year you would have to come back and renew. Based on that, we'll look for comments from neighbors, complaints, positive, negative. I guess to take it one step farther, I would like to put a condition for the first year he submit to the Building Department his agenda for the year, and maybe at that point, they may have a Code Enforcement Officer drive by just to make sure that parking is adhered to and not blocking fire hydrants or anything else. It's not a lot different than having a family party. I agree with that. I have had probably 30 vehicles in my yard at one point for parking. But it's a fact that it happens. Because this is a business, there are other ramifications you have to be concerned with. So he sounds very cooperative and is working with Chris (Karelus) already.

ROBERT MULCAHY: Mr. Chairman, what about liability on the people that he is having in the house as people wanting to learn how to cook?

PAUL BLOSER: We wouldn't have any jurisdiction on that, because that's not enforced -- that at that point is going to become a personal thing for himself. Not only slip and falls, but preparing foods and handling it. So that would come down on him to be taking --

MR. POLIZZI: I have already discussed it with insurance, my homeowners insurance people.

PAUL BLOSER: Once they go on the private property, we have no say in that regarding the insurance.

MR. POLIZZI: I have one question regarding the Health Department issue. I'm going to look into it further, too, but it's my understanding that the people that come to the class aren't -- it's not like they're dining out and paying for a meal. They're there to learn to cook and it's up to them if they want to eat or not. I'm in the restaurant business, so I will discuss that with the Health Department also.

PAUL BLOSER: I have a real basic understanding of it myself. You are doing it as part of cooking classes, teaching proper handling and food separation, so a lot of that comes with it. The Health Department looks that you have been trained in it and they have a facility that is compliant for the standard for this type of situation. I'm sure it is not the first time it has come up with them. All we're going to say is that you're compliant with the State and County Health codes.

MR. POLIZZI: Fair enough.

DAVID CROSS: It's a definition of a customary home occupation. I would like the one-year limit especially because (inaudible).

JAMES WIESNER: There is a lot of people. It is a substantial request in a neighborhood

to have that many people in a house. Now, what does code say about the percentage of square footage in the house? Is it limited by the percentage?

KEITH O'TOOLE: 25 percent to a maximum of 500 square feet.

JAMES WIESNER: So he is right at the max.

PAUL BLOSER: I will go through the conditions one more time so we're clear on them.

Paul Bloser reviewed the proposed conditions with the Board.

MR. POLIZZI: I don't schedule the whole year, but I have a couple, three months.

PAUL BLOSER: That's fine. That's more than sufficient.

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

Jordon Brown made a motion to approve the application with the following conditions, and Tracy DiFlorio seconded the motion. The motion was approved by a vote of 6 yes to 1 no (James Wiesner).

DECISION: Approved by a vote of 6 yes to 1 no (James Wiesner) with the following conditions:

1. Building Department and Fire Marshal approvals of business operation.
2. Hours and frequency to be adhered as submitted.
3. Approved by the Zoning Board for a period of one year, and then apply for renewal.
4. For the first year, applicant will present class schedule to the Building Department.
5. No on-street parking, no on site signs or advertising as per standard home business requirements by the Town of Chili.
6. No outside employees.
7. Applicant to obtain and maintain any required state and local licenses.

The following finding of fact was cited:

1. Requested permit will not create an undesirable change in the character of the neighborhood or to nearby properties.
4. Application of Peter Makula, c/o Daniel Schum, Atty, 43 Nichols Street, Spencerport, New York 14559 for variance to allow existing deck to be 3' from rear lot line (16' variance previously approved for addition) at property located at 18 West Forest Drive in R-1-15 zone.

Daniel Schum was present to represent the application.

MR. SCHUM: My name is Daniel Schum. I'm an attorney with offices at 34 Nichols, Street, and I'm the attorney for Dr. Peter and his wife, Joanna Makula, the applicants here this evening. I did hand out a letter from Dr. Makula and he is the contract purchaser, he and his wife, of this property. Um, a condition of the contract is that the property obviously be in compliance with all codes, rules and regulations, and suffice to say, that it's not. And Dr. Makula has undertaken the obligation to apply to this Board for the variances that -- the variance that we see necessary and also to bring the property into compliance with existing codes. Um, and that's how I find myself here tonight.

Unfortunately, Dr. Makula and his wife are in the United States Army. Is he actually being discharged from the Army and this week he is moving from Maryland to here. So he regrets he could not be here this evening to support the application, but I would like to -- I think it's important that you understand Dr. Makula's words, because I -- because I have found him to be a man of his word and I would like to at least read in the record the letter, even though it would be in the record.

This is a letter to the Honorable Board members. "It is our intention to work with the Town of Chili to resolve any inadequacies that exist on the property at 18 West Forest. The aforementioned concerns involve the placement of a playground, a shed, the deck, on or near Town property by the current owner. I can assure you of our good faith to conform to the regulations and laws of our Town and State after we have completed the purchase of the property. When we attain ownership, we'll demolish the playground and shed that is located on

Town property since the transpositioning costs exceed their value.

In addition, we'll make changes to the existing deck, if necessary, to conform to the Town and State codes and regulations. As an officer of the United States Army, I can assure you of my honor and integrity in the aforementioned intentions. It is my duty to abide to any rules and regulation set up by the community hierarchy.

I look forward to closely working with the Town of Chili in resolving these issues. We are currently in the process of moving back to our home State of New York and will need accommodations for June 2008. Please excuse my absence from the Board meeting. I have a strong personal desire to be present, but there are matters of military importance that cannot be postponed and have been set up weeks in advance. My family appreciates your time and consideration. Thank you. Respectfully, Dr. Peter Makula."

Thank you for allowing me to read that into the record.

Now, the application itself, the Board can see from the map that was prepared, the existing deck on the property is 1.1 feet from the rear lot line. That's not only at variance with the Town Code, it's at variance with the State Code. Um, the existing owner did get a -- a permit to build the addition upon which the deck is attached, or to which the deck is attached. Um, but the deck is -- is clearly in violation of existing codes. I -- in talking with the Building Department, they indicated that the -- at minimum that the deck could be allowed to continue to exist on the property would be 3 feet and that's the State -- State Building Code requirement. So that is what the Doctor is asking for. He -- if granted, he would literally chop off enough of the deck to make it -- to bring it into compliance. The map itself shows other problems. There is a -- there -- the existing owner placed a playground, a large playground on Town property, a place that -- a shed, which is almost 100 feet onto Town property, and it's not just a small shed. It's a rather substantial structure. And both of which Dr. Makula and his wife have -- have indicated to me that they would -- I don't want to use the word "welcome," but they would understand a condition of granting of the variance for the deck would be that those improvements on Town property be removed and that could be done within 30 or 60 days or whatever time frame the Board felt was reasonable. The Doctor expects or hopes to be able to close on this during the month of June, if -- if this variance is granted.

We did have a code inspection of the property. There are other violations on the property. Um, the deck itself lacks sufficient footers. I'm bringing these all to your attention, because I want to be forthright in our presentation to the Board. That was actually done today, and Joyce LeBee (phonetic), the realtor, is here to attest to the inspection that was done by the Town of Chili representatives.

There was a footer inspection for the addition and that passed. There is adequate footers on the addition for which a building permit was granted.

Um, in addition the -- as Dorothy (Borgus) mentioned and was mentioned with the last applicant, um, unfortunately, the present owner also made some additions to the basement. A kitchen and a bathroom. Um, we understand that a plumbing inspection -- first of all, permits. Secondly, inspections, electrical or plumbing. And thirdly, if there is not sufficient access, the kitchen would either have to be removed or an adequate access to the building code provided.

Um, there is also a hot tub for which no permit was granted and no electrical inspection was granted. There also needs to be, from the Chili Building Department, inspection, a residential check for the heating in the addition, the actual calculations of the heat that is being used to generate -- or to -- you know, the windows and the heat loss I guess is what it amounts to.

There is a lot of problems with this property, and I guess the main impact of Dr. Makula's application is that, um, he is -- he has undertaken, and if granted, will bring the property into compliance. I can't speak for the present owner or his lack of cooperation with the Town or lack of sincerity in applying for permits and approvals, but I believe that the benefit to my client, of course, would be to allow him to purchase the home, which he and his wife really would like to buy. I don't believe there is a detriment to the health or safety of the community. Um, I looked at the property. It's hard to tell where the rear property line is because of the Town land to the rear, and the way it has been developed, I guess if you say that, um, so I don't believe -- I think it would be actually a positive if -- if the Town property was returned to the Town's rightful use and the Doctor's property line established. That would be a benefit to the Town. It really is a balancing test. There is no undesirable change that I could find in the character of the community in granting the variance.

The only alternative that can really, um, be proposed would be to rip the deck down. Um, it -- sure. It's a possibility. If the Board finds that the -- that variance -- even though it is substantial. There is no question about it. It is a substantial variance. I don't believe it has as much impact as it might have if it backed up to other residential property or property that was occupied by other residents. It does back up to the Town property. Um, it's --- the minimum the State would allow us to have is the 3 feet.

I don't believe it has any adverse impact on the environmental conditions on the property or the neighborhood. The difficulty that my client has is that the difficulty was created by the present owner. That doesn't mean that my client isn't burdened with that, but the fact that the difficulty, that is the location of the deck so close to the rear property line, even though it's self-created, it's not a reason in and of itself for the Board to deny the application.

And importantly, as you did in the last application, Section 267 B of the Town Law allows you to impose as many reasonable conditions as you believe necessary to uphold the spirit and the intent of the code while allowing some variance from the code requirements to accommodate this problem.

Um, the alternative is that my client doesn't buy the property. The property continues to be in violation of the code. That's not my problem, but surely then the Town would have to go seek to enforce it against the present owner. We have a willing, I guess, if you will, buyer who is willing to address those concerns. I would ask for the Board's consideration.

PAUL BLOSER: I thank you for your presentation. For the record, the Board received a copy of the letter Counselor Schum read dated May 15th, last week. So each of the Board members are in receipt of that and that will be attached to the file.

MR. SCHUM: Thank you.

PAUL BLOSER: Initially I will say it is nice to see somebody retiring and relocating to Rochester and Chili rather than moving out. The applicant seems very willing to accommodate whatever conditions we place on them.

It was really hard going to the site, to really see anything back there. The house sits so far back, and -- with the trees and such, with nobody living there, I didn't feel right walking back and taking a look at it. It's not our --

MR. SCHUM: It is a rather imposing, I call it jungle gym, but playground that's on Town property, and -- and a fairly good-sized shed structure, wooden structure.

PAUL BLOSER: They are in contact with the Building Department to get everything brought up properly, which I think is important.

MR. SCHUM: I would point out my initial contact with the Building Department, I did indicate that I would give my best efforts to see if we couldn't get the playground and the shed removed before tonight's meeting, but unfortunately my client doesn't own it, so we couldn't really get the owner's consent to demolish stuff that they didn't own, so it became sort of a --

PAUL BLOSER: I can appreciate that.

It is another condition or situation that we frequently see.

JORDON BROWN: Can I ask you a question?

PAUL BLOSER: Yes.

JORDON BROWN: Would there be anything wrong with tabling the variance request until some of these other issues are addressed as opposed to conditioning them with the variance request? Just a thought.

MR. SCHUM: I can -- I can address that, if I could. And -- and I'm just -- one of the problems that my client has, and it's not your Board's problem, it's just a problem, is that we have a contract, of course, with a purchase offer and a mortgage commitment, all of which expire in June, and, you know, if you were to say come back in 30 days or come back in 60 days, we couldn't come back, because our contract would expire, our mortgage commitment would expire and we just -- as my client indicated, he's undertaken in his contract to bring the property into compliance, so if he -- so if he were to be granted an approval by this Board subject to whatever conditions and time frames, if he didn't do those things, you would have -- I don't want to say him, but yes, you would have he and his wife in his new home in Chili. At that point in time, the variance would be null and void because it would not have been granted, you know, the conditions would have not have been met within the time frame. I'm sure -- as I stand here today, I'm sure you will not find the Doctor putting himself in that position, but I mean that is all I can say to you.

JAMES WIESNER: Chris (Karelus), were you out to see the deck? Are you the one that did the footer inspection?

CHRIS KARELUS: Yes. I appreciate Mr. Schum's cooperation with the Building Department. It's -- it's been welcomed. The relationship we have shared in dealing with some of these issues, the work we have done to date with him has brought a lot to light that we have to work with him, but I don't really feel it affects the variance. I would ask the Board conditions that all those things get approved expeditiously. I would recommend a 30-day time period because I think they are things that can be remedied in a short period of time and he has been cooperative with all of the gross non-compliances with the site and I'm pretty confident working with him and the Doctor that these things will be accomplished.

PAUL BLOSER: That is one thing I would put down, a condition of 30-day compliance and I would probably put that 30 days from date of closing so that he could have legal --

MR. SCHUM: I was just going to ask that, because it could be a couple more weeks before we actually close, if the variance were granted.

PAUL BLOSER: So he can't go on the property really until he owns it, so it would be 30 days from closing. We can put that as a condition.

#### COMMENTS OR QUESTIONS FROM THE AUDIENCE:

JIM EHMANN, 47 Stover Road

MR. EHMANN: The 30 days obviously would be a great idea. But I would ask you to extend that to 60 days. Dealing with the Army and the Air Force, as I have, I know that there is -- you're being discharged on the 1st, my son, and 30 days later, he is still in the Air Force or Army. Just making a comment that from the time he is discharged and closes on the property, give him 60 days, not 30.

BARBARA WALL, 28 Cutter Drive

MS. WALL: I just have a question why somebody who doesn't own the property is going to be forced to bring the property into code? Why isn't the current owner being responsible?

PAUL BLOSER: The Board can't speak to that, but they're probably going to be

conditions in the closing and sale and concessions made. That would be between --

MR. SCHUM: Yes. It was exposed by the present owner that the property was not in compliance, and, of course, protecting my client, I wanted to know every item that was not in compliance, so my client has to this point in time said he is willing to undertake those. Obviously, he can go back to the seller and say, "Hey, I would like to you contribute," or "I would like you to do this" or "like you to do that," but the bottom line is the owner is responsible, and if for some reason my client doesn't purchase the property, the violations are still there, and the Town can and probably will enforce it.

PAUL BLOSER: At that point it becomes a matter of fact for disclosure if the deal didn't go through, he would have to have it in full compliance and disclosure for any additional sale of the property. So I mean we're on the right track with it.

MS. WALL: One other comment. If we have somebody who is willing to bring something up to code, you know, willing to do everything he is willing to do to bring this up to code, I think giving him the variance would be certainly in our best interest, the Town's best interest. If he will bring the property up to code, even before he owns it, I think give him -- and being in the Armed Service, give it to him.

DOROTHY BORGUS, 31 Stuart Road.

MS. BORGUS: You know, we have heard here about "present owner" many times here. Is this the home of Dr. Robert Fallone?

MR. SCHUM: It is.

MS. BORGUS: Was he granted a permit in -- for the enclosed porch in 1995?

MR. SCHUM: He was. I was advised by the Building Department he was.

PAUL BLOSER: I had that same information here.

MS. BORGUS: Okay. Well, for once Dr. Fallone went by the law.

MR. SCHUM: Well, don't say that, Dorothy (Borgus). He got the building permit, but he didn't get the inspections.

MS. BORGUS: I know. Well, let's give him a little credit. He did get a permit.

MR. SCHUM: Yes, he did.

MS. BORGUS: Then he went ahead, as I understand it, and just built the deck, which is large, and on two sides -- two sides of the porch or the enclosed porch that he had the addition for. So I just want to figure this out. So then he went ahead and he built the deck without a permit, in violation of the boundary code. Then he went out into Town land and built a playground and a building. And he used the Town land for his own. Is that kind of the way it is?

MR. SCHUM: Absolutely.

MS. BORGUS: Well, you know, I have stood here at this spot and many times at this Board and Planning Board and have said Chili is a lawless town. I do believe that Dr. Fallone believed it, too. Because he obviously didn't believe in our laws. I think there should be some kind of a penalty for this man regardless who cleans this mess up. And I don't -- is that -- maybe the Building Department could tell us, can this man be fined for breaking so many of our laws and using Town land as his own?

KEITH O'TOOLE: If I may, this is not a court of law.

MS. BORGUS: I would -- that's a "yes" or "no."

KEITH O'TOOLE: We're not going to go there.

PAUL BLOSER: Okay.

MS. BRIXNER: We can't hear you.

MR. BRIXNER: Could you speak up, please?

KEITH O'TOOLE: Yes, I will speak up.

MS. BORGUS: I would suggest, Mr. Chairman, that one of the conditions should be that this land is properly surveyed. As Mr. Schum says, it's hard to tell anymore who owns what there. Have a proper survey done, have the survey provided for the Town and have it written into the determination of this Board that should this party buy this property, they realize they have to stay on whatever land they buy and they can no longer use the same land that Dr. Fallone used as his own.

MR. SCHUM: That --

PAUL BLOSER: I believe that is what this letter, Mrs. Borgus, does say. He wants to do everything in full compliance.

MR. SCHUM: That is a survey dated within the last two weeks and it is an instrument survey depicting all of the angles and distance. It is a current instrument survey.

MS. BORGUS: I just think in this case, with at least one of the people we're dealing with, you have to be very definite and some of these conditions -- I had occasion today to be in the Building Department and asking about a couple other situations in Town, and I -- what I heard was, well, you're right, they shouldn't have done that, but it's not in the -- the wording of the conditions that were imposed at the time they had the permits. So you can see the importance of having every comma in place and every "I" dotted because this is what you're going to be held to. So thank you.

CHARLES RETTIG, Coldwater Road

MR. RETTIG: May I ask what the size of the existing deck is that is 3-foot from the back property line?

MR. SCHUM: It's actually 1.1 feet from the property line presently, and it's a -- and the dimension of the deck is something, about 16 feet from the rear of the addition to the rear

property line, because the rear property line is 17.4 feet from the rear of the addition, and there is only 1.1 feet between the rear of the deck and the property line. So it's 24 feet by roughly 15, I would say.

MR. RETTIG: Okay. Thank you.

My next question is, with the size of the deck and what was earlier mentioned with the lack of footers, is this deck of such construction to be satisfactory safely to satisfy the Building Department?

MR. SCHUM: There was initial discussions today about what needs to be done. I mean the structure itself was built adequately. Obviously it needs to be supported, excavated, pilasters put in, concrete poured.

PAUL BLOSER: The gentleman, at the front of the conversation, Mr. Karelus did state if we were going to go through with this, and it was to be granted, he would have to go into full compliance, which means they have already done a preliminary footer inspection and it failed. At that point, to get anything to go through here, they would have to be fully compliant, full inspection by the Building Department and Code Enforcement.

MR. RETTIG: Okay. To make those -- to make the footers comply --

PAUL BLOSER: Chris (Karelus) already stated that that would be done as part of this. And Mr. Schum stated they are -- they were already out there today doing preliminary inspection on that so they know what would have to be done. So the Building Department is involved in this.

BOB WEBBER, 12 West Forest Drive

MR. WEBBER: Three houses north. I agree, he has a bum deal here, that he has to take care of previous owner's neglect. As living there for -- from 1986, I have been -- in fact, that lot was one I wanted, but anyways, that goes back a long ways. I would say the deck meets building code, fine, with the footing. It would be foolish just to rip off 3 feet of the deck or whatever to satisfy the lot line. And if the back lotting area for any of the Town property is basically turned back to wild again. It's a shame that it went that way, because even though it's Town line, you don't feel like cutting across it. The guy has grass and everything growing back there. I would say welcome to a new neighbor. But I really feel that the previous owner should be picking up the liability for a lot of this, and not the new owner. Unless he is getting a good deal on the house.

MR. SCHUM: Let me say to you, as I indicated, our contract says we'll make application for and secure all permits and approvals. That doesn't mean if the Board imposes conditions that we're not going to go back to the present owner and say, "Hey, we bargained for the deck, we bargained for the shed and we bargained for the playground, but we didn't bargain for the footers, we didn't bargain for the electrical inspection, we didn't bargain for" -- so there is some give and take, I think, that hopefully will be done.

MR. WEBBER: That is your negotiations.

MR. SCHUM: No, no, no. I'm just relaying that because I want to be straightforward with the Board, that we hope to get cooperation one way or another from the present owner.

PAUL BLOSER: That is not part of this Board.

MR. SCHUM: No, it is not.

MR. WEBBER: I have no objections to what is going on there, as long as they're brought into compliance, other than to move the deck out -- I say, if you can put a new footer under it, go for it.

TOM POLIZZI, 48 East Bellaqua Estates Drive.

MR. POLIZZI: I think if the purchaser is looking to do everything to get the permits and the variances and everything in code, I think that that is -- says a lot that he wants to go through with all of this. I wouldn't be opposed to him, you know, purchasing the house and having all that stuff done and brought up to snuff.

JACK GOODBERLET, 150 Stottle Road

MR. GOODBERLET: I'm just wondering if I understand this properly. The back of the deck will be 3-foot from Town property?

PAUL BLOSER: Yes.

MR. GOODBERLET: If somebody is 6 foot tall and falls off and hits their head on Town property, who is liable for that? How does that work?

MR. SCHUM: As the Deputy Town Attorney would tell you, when someone falls, we don't know if they're going to fall onto or from. It is a legal issue. There is no question about it. It could happen if you tripped and fell on your back lot line, not even off the deck and fell from your property onto the Town property. The question of the liability of the Town always exists when the Town owns property. They have layers and layers of insurance. I'm sure the homeowners, like you, have homeowners' insurance, as well. That would be for the insurance companies to fight it out really. I don't know if I can answer it any better.

PAUL BLOSER: It's not something that we have jurisdiction over. State Code on that is 3 foot and that is what we look at. So...

Tracy DiFlorio made a motion to close the Public Hearing portion of this application at this time, and Adam Cummings seconded the motion. All Board members were in favor of the motion.

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

PAUL BLOSER: There is a lot of technical details on this.

KEITH O'TOOLE: Mr. Chairman, on the condition of time, rather than get involved in private considerations of when the deal closes or not, would it be simpler from a code enforcement point of view to have a date certain and allowing time, since they may have to hire labor to come in and move gravel and cut off the deck and whatnot. I would suggest a date of August 31st. That should be time enough, even if there are delays in the closing.

PAUL BLOSER: All conditions imposed to be completed by August 31st, 2008.

Paul Bloser reviewed the proposed conditions with the Board.

JORDON BROWN: Mr. Chairman, a technical question on the application. Number 13, it says, "Notarized signature of property owner and applicant." The fact it hasn't been done, is that relevant here?

PAUL BLOSER: Counsel?

KEITH O'TOOLE: I have no objection. I recognize Mr. Schum personally.

PAUL BLOSER: Does that answer your question?

JORDON BROWN: Yep.

PAUL BLOSER: I look at his letter of intentions and taking it at good faith for what it is. The fact the Building Department is involved with the realtor and the attorney, I'm comfortable with that.

TRACY DiFLORIO: It just seems like it is in the best interest of the Town.

ADAM CUMMINGS: I agree. It's pretty well stated that full compliance will be achieved -- well, pursued and eventually achieved.

JORDON BROWN: I think the Town's interest is to get all these issues resolved.

ROBERT MULCAHY: The house will be put to good use.

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

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

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

1. All conditions imposed to be completed by August 31, 2008.
2. All code violations to be addressed by the Town Building and Town Codes.
3. All physical structures to be removed from flanking and set within legal setbacks or file for variance.
4. Zoning variance is granted only upon condition of sale of property to applicant.

The following finding of fact was cited:

1. Reconfiguration of deck will not create an undesirable change in the character of the neighborhood or nearby properties.

PAUL BLOSER: Please welcome the Doctor to our Town.

MR. SCHUM: We hope so. Thank you very much.

5. Application of Indus Real Estate, 1170 Pittsford Victor Road, Pittsford, New York 14534 for variance to erect a hotel to be 39'10" high (35' allowed), variance to allow front parking for 40 vehicles, variance to create a lot with 30' road frontage (40' req.), variance to erect a 7'1" x 11'6" single-faced freestanding sign to be 81 sq. ft. (32 sq. ft. allowed) at property located at 3260 Chili Avenue in G.B. zone.

Kip Finley, Darryl Martin, Tammy Murphy and Darryl Harvel were present to represent the application.

PAUL BLOSER: Before we get started on this, a couple of things I would like to cover. The Board is in receipt of a petition. The first one is, "The undersigned wish to express their enthusiasm and unequivocal support for the development proposal currently before the Town of Chili for the construction of a Microtel facility and respectfully request that said proposal and accompanying applications before the Honorable Board receive expeditious approval."

And I have 105 signatures on that one.

The second one to come in, um, I'm not going to read the whole entire one, but it is a protest for the application. And I have a third one that's also a protest for the application to be tabled. I would like to comment on both of those. First of all, going to the agenda this evening, this Board is in receipt of a change of design. Not so much design of the building, but of placement to the property lines, so officially we have not had much time to review this portion of this. I just got it before the meeting.

ADAM CUMMINGS: Mr. Chairman, it looks like the old plan is the one that is up there.

JORDON BROWN: Yes.

MR. FINLEY: I will walk you through that.

PAUL BLOSER: The other thing I would like to say on this one, based on some of the changes on here, I want to say that -- I guess since I have been on this Board a little over a year now, we have started having very good communication with the Planning Board so that we're in sync with what each of the Boards is doing and procedurally handling the applications to the best need of both the applicant and to the Town. A couple of the items on here tonight, because of some of the design changes coming through, um, I would like to recommend to the Board we table. The ones I would like to table would be the variance to allow front parking for 40 vehicles. The lot frontage of 30 foot, and the sign issues.

I think the most important one before us now is the height of the building being proposed and being applied for. Without this, we really can't put a plan before the Planning Board to realistically look at a design and placement. The repositioning of the building 90 degrees based on the layout and the elevations probably are not going to have much of an impact on the height whatsoever.

Mr. Finley, would you comment on that?

MR. FINLEY: Sure. As soon as I digest all of that. For the audience, I'm Kip Finley with Avery Engineering. We also do have the architect here tonight, Darryl Martin, and then we have a representative from Indus Development sitting next to him, Tammy Murphy. So I believe if going to that with the height -- let me just explain a little bit about what's going on with the site.

Originally when the project came in to the Planning Board, we had a proposal where the building was directed in an east/west direction. This is Chili Ave. (indicating) for people that are in the distance. There is a bank and an oil change store here (indicating).

When we went through the very beginning of this, through conceptually, the Planning Board gave us a lot of recommendation. We have heard a lot from the community that the distance from the building to the backyards was very close. So the reason there is an updated plan is that the building is now turned 90 degrees. That triples the distance between the property line and the buildings, or the -- this diagram here (indicating) is a section, a cross-section if you were cutting through a slice of bread. The first one is when the building was parallel to Chili Avenue, and there was 40 feet between the property line and the building.

With the building turned, there can now be 95 feet between the property line and the building. I think that's probably the most important thing to recognize as the Board if you're going to be dealing with the building height tonight. As it is now, the height, or the building is further away, so I would assume less of an impact on people than if it was close to the property line.

Does that answer the question?

PAUL BLOSER: It does very clearly. With this you also submitted, which was one of my concerns, a revised layout print of your elevations and line of sights.

MR. FINLEY: Should be one of these two views.

JORDON BROWN: Yes. Former and revised.

PAUL BLOSER: We have got them.

MR. FINLEY: Which is the same diagram on the bottom right of the easel (indicating). What we were talking about, this is the former one (indicating) where the distance from -- the property line to the building was 40.7 feet. The distance from the property line to the houses on -- I'm not sure which number Shrubbery this is, was 88 to 89 feet. I think this -- I believe it's a white house. It has a deck, two-story deck on the back.

Then the new one, when we rotate the building, we can be 95 feet. I think I said three times. It's not quite three. More than double, less than three.

PAUL BLOSER: So by looking at the tree line there also it went from a 29 foot line of sight to 21, so it lowers it almost another 8 foot for line of sight.

MR. FINLEY: Correct. The project does involve a landscape plan or includes a landscape plan. It also includes extending the fence that you see now between Valvoline and the homes. There's a white board fence. Our proposal extends that fence all of the way up through the rest of the property. Before we really only had about 15 feet between the fence and the pavement for landscaping. Now we have more than like 30 feet, so that the landscape architect can put in a couple rows of evergreens and also what you just said about the line of sight, it would have taken a lot longer for the trees to reach 29 1/2 feet than it does the 21-foot.

PAUL BLOSER: What is your proposal for the tree height plantings right now?

MR. FINLEY: I do not know what they are on the landscape plan. I think they're in the 6-foot to 8-foot range. They're not -- they're not little trees. Much more than about 8 feet when you transplant them. They shock and they're -- they don't grow quite as fast. That 6-foot range to 8-foot is -- they will generally perk up and catch up pretty fast.

KEITH O'TOOLE: How many years will it take to grow to 21 feet?

MR. FINLEY: 21? I planted a 4-foot tall spruce in my yard six years ago and it's over 20 feet now. So...

KEITH O'TOOLE: Half dozen years?

MR. FINLEY: Yes. If it starts out at 8, it's almost halfway there.

If we're going to talk about building height, there are more things I can explain about that.

PAUL BLOSER: I would like this conversation really to deal on building height. Because the site plan issues really are Planning Board issues, and the layout of it for the other things that we're looking at, for variances, I really feel that we are not, as a Board, prepared to answer them without at least a preliminary site plan approval. But in order for them to proceed, Mr. Martin, Chairman of the Planning Board, and I agreed that it's critical that we have a height determination.

MR. FINLEY: That would make a difference whether the project goes ahead or doesn't go ahead at all. So that's important.

PAUL BLOSER: That's really the cornerstone of the whole project.

MR. FINLEY: Okay.

PAUL BLOSER: That's really where I want to go tonight and the rest of it I would like -- the other items I would like to table, at least for -- because those won't really be dependent on anything else. We can deal with those afterwards. The sign issues and such.

MR. FINLEY: The only thing I would say different than that is I agree front yard parking, a project could proceed one way or not with -- whether that would be approved or not approved. The same with signage, that either way the project could go on.

The one of the width of the flag lot, though, if that were something that was not approved as a variance, that one would also affect the project about the same as the building height, and that -- and that that one I would see is a topic that would apply whether this is a hotel, not a hotel, just subdividing the property. So I would suggest maybe that one be talked about.

PAUL BLOSER: Is that the 30-foot road frontage?

MR. FINLEY: Yes.

PAUL BLOSER: Okay. I would agree with that one then.

MR. FINLEY: The other two certainly can wait.

PAUL BLOSER: Why don't we handle these as two separate issues? I think the easiest one is let's get the road frontage out of the way, if you want to address that one.

MR. FINLEY: Okay. This project is an application for site plan, for subdivision and for conditional use permit for a hotel, which is permitted in this zoning with some conditions. The subdivision part is what applies to this first part about the lot width. In Chili there is a code for 40-foot wide minimum of road frontage when you subdivide a piece of land.

In this case, the bank has a piece of land that's been subdivided out. The rest of the parcel is still all one piece of property with one tax parcel number. The Valvoline is -- that area right around the building is leased to the company that runs all of the Valvoline stores, and there's a set boundary around it that they negotiated, and that's what they have a long-term lease on.

I think originally this property (indicating) was planned for retail, more in the line of a plaza, where it wouldn't be subdivided, and just like the plaza next door, it's one or two large parcels and everybody leases their space in the building, but there's one common owner for the whole property.

In this particular case, a better option came up as far as putting in a hotel, and in a case like that, the franchise owner would want their own piece of property, so we need to subdivide it off of the bigger piece so they can hold title to it.

Unfortunately, what happens is when we draw the boundary of the lease area around the Valvoline, it leaves us less than the 40 feet. We have been able to -- or the applicant's attorney is negotiating with them to squeeze their lease area a little bit so that we can have 30 feet through this throat (indicating), that they call it, of the flag lot, and then also negotiate an easement that makes it more than 40 feet of frontage.

In the case of, I believe -- the reason there is a 40-foot frontage requirement is so that you can fit a road, your sewer, your water, your electric, all of the utilities and have adequate space to space everything out and have it all be on your property. In this case, thankfully in this situation, the electric, cable, gas and telephone are all accessed off the back of the lot. There is already one water main coming in that we're going to be extending to serve the hotel, and the only utility that we have to bring in is a sewer.

The road already exists. So through having 30 feet of land that they will actually own plus a little more than 10 feet of an easement, we're effectively getting the 40 feet and we have less to cram in it. We really have just the existing road, the existing water main and a new sewer.

So this is the kind of situation where I believe variances are designed to meet, is that it is something that originally when this was divided out ten years ago or six or whenever it happened, they were planning to do something else with the property. At this point it's changed, but we can still effectively meet the goal of what the 40 feet is meant to accomplish. So that would be our case for the -- for the configuration of the way the lot is now.

PAUL BLOSER: Chris (Karelus), the legal notice states all these under one application. Are these distinctly different applications, or is it all under one header?

CHRIS KARELUS: They put it under one item. So they were all publicly noted as one. I don't find -- I don't think -- Counsel can verify it, but I don't think there is anything that stops Chairman from amending an application.

KEITH O'TOOLE: We're not amending it. You're adjourning it.

CHRIS KARELUS: Adjourning portions of it.

KEITH O'TOOLE: What you have before you, notwithstanding what is typed on the notice, is a series of requests for relief. You can hear one today and adjourn the other ones to a

future date if that is what you so desire to do.

PAUL BLOSER: If we were to do a vote on two of these tonight, could we do the vote based on both conditions or two separate votes?

KEITH O'TOOLE: You could do it either way, as a group or individually. It's the Board's preference.

PAUL BLOSER: If the Board is okay with it, then I think we'll proceed with the height and let's discuss that then, because that's the major portion of this.

MR. FINLEY: In this zoning, the maximum height for a building is 35 feet. Our application is requesting relief to go to 39, 10 or that size. The building could be built at 35 feet or less with a flat roof and a parapet. I'm sure you have seen styles like that on college campuses, other hotels in cities, in suburban areas. When we went to the very first couple of Planning meetings with Town staff to talk about this, they were suggesting that the architecture in this neighborhood really needed to be something that fit the neighborhood better than some real commercial looking building.

So they strongly suggested that we should consider doing gabled roofs or something with shingles and have it look more like the houses in the neighborhood, more like the HSBC bank and some of the other newer buildings that have gone through a review process.

So last night -- well, I guess I should finish that this is a wood frame building, three stories tall with a gabled roof (indicating). This is the side which is now the side that faces the plaza (indicating). This is the side that faces west to the homes (indicating), and this is the end that faces down the driveway (indicating).

We did go to the Architectural Review Committee last night, I guess as the guinea pigs for the new process and it did work pretty well. They did take general favor on the building and their comments to us really revolved around the detail of things, such as make the entrance a little more notable, which as you can see, it's really not that glamorous. They also talked about maybe adding dormers on the back side of it, because it is visible from the car wash area. They thought we should do some equal service on the west side as the other side.

They did talk about making some of these dormers bigger (indicating), and I pointed out if they wanted that to happen, it would change our application for tonight. We would have to amend that if we went taller, and after some discussion, they decided that if we stayed no bigger than what this one is (indicating) and upsized others, we would stay at that same height and not have to amend our application.

PAUL BLOSER: Is that still the 39 foot, 10 inches?

MR. FINLEY: We didn't change anything.

PAUL BLOSER: Again, I will go back to my first question earlier. By rotating the building 90 degrees, is that going to change the height at all?

MR. FINLEY: As far as when you factor in changing this (indicating) in our grading plan, if the building moved? I got to defer to our guy that has done the design. Finished floor is within a foot.

PAUL BLOSER: Could you state your name for the record?

MR. HARVEL: Darryl Harvel with Avery Engineering.

DAVID CROSS: What would be the elevation of the first floor?

MR. FINLEY: Now you're asking me questions I don't have on my crib notes here. In relation -- maybe it's better to talk in relationship to the houses. Does that help better than if I say 568.3?

DAVID CROSS: The way the sketch is drawn, they're about the same.

MR. FINLEY: There is actually about a 6-foot drop from here (indicating) to here (indicating). It's looking horizontal.

PAUL BLOSER: First floor, finished floor?

MR. FINLEY: From what would be their finished floor of the one house -- I think the one here (indicating) is not the one I'm picturing with two stories showing, and then finished floor here (indicating).

PAUL BLOSER: So it would be 6-foot less, lower?

MR. FINLEY: Lower. So a 5-foot tall person standing in the kitchen here would be looking at basically the second floor level of this.

In relationship, that street, I think a lot of the houses are ranch style homes or raised-ranch homes.

In contrast, if someone did a makeover on a house that was a ranch and built it two stories, the gable of the roof would only be about 9 feet lower than the gable of this hotel.

PAUL BLOSER: So 100-foot away?

MR. FINLEY: This is 129 feet away versus 30 or 40 feet to a house next door. So we think the combination of putting in truss roof and gables to make the architecture look like the neighborhood was a legitimate comment from the community to tell us to do that. So we're not really creating a hardship ourselves. It's in the interest of a better design to fit the whole community, so we would like relief from that few feet of the code to be able to do something that fits better than a dormitory style hotel.

JORDON BROWN: Right now you're stating that it's a design element that led to the actual height. Earlier you were saying without that approval of the extra height, the building is not doable.

MR. FINLEY: I think that's what I was -- I was repeating what was -- the reason to talk about height, to have a building that looks like this (indicating), the way the application (indicating) we would -- our application would look much different that this.

PAUL BLOSER: That is where you would go to a flat roof with some type of parapet around it?

MR. FINLEY: Personal preference as an engineer, I want to get the lot width out of the way, because that would kill the project versus the height. We could make it work. It wouldn't look like the Town wants it. It wouldn't look like what our franchise owner applicant would like, but technically it could still be built.

JORDON BROWN: Thank you for that clarification.

ADAM CUMMINGS: Now, it's rotated 90 degrees now. Looking at those elevations, if it's rotated 90 degrees, the stairwell window is all that the neighbors would see, that's correct, and now that you have rotated it, actually the rooms are viewing the houses; is that correct? Am I seeing that wrong?

MR. FINLEY: There are windows on this side (indicating) and windows on this side (indicating). There is definitely a trade-off here from neighbors and from guests at the hotel, but the distance -- in dealing with impacts specifically, we -- we were weighing this with others and that increasing the distance was more important than what they were looking at.

Another thing that is important, though, too, is that in our scheme of this, the building is going to have some up-lighting, decorative lighting on the front side, and the side that faces Chili Avenue. The back side is planned to be dark, so other than lights over the doorway, and then the glow if somebody leaves their shades cracked open or whatever, the glow of the light at night, the back side will be fairly dark for people to look at, so versus one light in a stairwell, versus a fairly dark back, I guess they're kind of similar.

PAUL BLOSER: Are there parking lot lights?

MR. FINLEY: The parking lot lights are kept down to 12 feet tall, in the shoe box style light so we just have the bare minimum for security. Typically we would do something more like 16-foot tall lights and have it a lot brighter back there, but given the consideration, the lighting consultants lowered everything down.

PAUL BLOSER: So it would be comparable to about a 6-foot post in their backyard?

MR. FINLEY: When you figure with the trees and the fence you mean of what -- at some point the trees in the 20-foot range are going to totally cover the building. The parking lot -- the way the grading works now, too, the parking lot in the back corner is dropped down about 3 feet below the existing ground, so you have the 3-foot of dropped down, plus a 6-foot and then also 20-foot trees, so --

PAUL BLOSER: The lights will be pretty blinded, then, too.

MR. FINLEY: You could park just about anything back there, a cube van, have the lights on and it should be pretty private. It -- actually when this is done, these backyards will be more private than they have been ever, unless this was woods or something before my time.

ADAM CUMMINGS: To throw another question out there, the architect's rendering looks pretty good and shows the slope of the roof. Is there any way to shallow up that roof, or --

DARRYL MARTIN: Darryl Martin, architect.

Right now the pitch from side to side is 4/12. And if you know anything about asphalt shingle, that's about the lowest you can get.

There was a discussion off the record.

ADAM CUMMINGS: So 4-on-12, thank you. That is what I was looking for.

JORDON BROWN: So just to clarify again the need for the variance really came about to meet the suggestions and request of the Planning Board. Without those aesthetic considerations, no height variance would be needed?

MR. FINLEY: Correct. Those would be the two things that I think are important to at least keep us moving ahead, and other items -- front yard parking, if you look at the old plan, we had 40. We had basically more parking in the front than in the back. We had split it up so that not all of the parking would be next to the resident in the back. But under the new plan, we only have three parking spots that are in front of the range line of the building, so we essentially have side yard and back parking. So that one, we're hoping that the new version, once we go through the Planning Board, would actually lessen our variance request. And then --

PAUL BLOSER: For parking spots?

MR. FINLEY: For the parking. But I could see where having -- not having the Planning Board pick one or the other, which variance do you entertain? The 3 or 40? So that made sense. And the other pylon sign item is something that we can defer and deal with at the appropriate time. I really would like the width, though -- a determination on that so we know what we're doing tomorrow.

PAUL BLOSER: Okay. With this layout -- not that it affects the roof line, but for my own information, is this going to be an improvement over the other for fire access?

MR. FINLEY: Layout wise?

PAUL BLOSER: Yes.

MR. FINLEY: Actually, we took the same travel lanes and distances and just rotated, so fire access would be unchanged.

PAUL BLOSER: Okay. I will open this up to public comment, but before I do the first one, I would like to say I would like to keep the comments to the applications. This hearing is not to decide if a hotel is right for Chili or not or what kind of structure is being built there. Those are issues that concern a different Board. I would like to hear comments strictly on the height request and the driveway request that are before us.

The sign issues, I'm going to table those. The parking variance, I'm going to table those. So if you would, please, keep the questions addressed to that because that's what we're dealing with here tonight.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

BEVERLY NEDER, 82 Attridge Road

MS. NEDER: I was just wondering what the typical client of this hotel would be insofar as do long-haul truckers use this?

PAUL BLOSER: Mrs. Neder, I will say on this one again, this becomes a Planning Board issue.

MS. NEDER: I'm asking this question, because of the width of the driveway at 30 feet, would it be able to handle a large truck?

PAUL BLOSER: Tractor-trailer parking there. Again, the parking issues I'm tabling, anything parking-related.

MS. NEDER: I understand the parking. I'm concerned about the width of the road and a tractor-trailer truck getting --

PAUL BLOSER: On the entranceway?

MS. NEDER: Yes.

PAUL BLOSER: Okay. Thank you. I'm sorry.

MR. FINLEY: We can address that?

PAUL BLOSER: If you would please address that.

MR. FINLEY: Actually, I will have the representative from Indus speak to that.

Tammy Murphy, can you come up?

MS. MURPHY: Tammy Murphy, Director of Sales and Marketing and Purchasing. Okay. The question is?

MR. FINLEY: As far as when we're talking about the width of this piece of property.

PAUL BLOSER: 30-foot versus 40-foot.

MR. FINLEY: Do you generally have truck drivers that would have to bring tractor-trailers or big vehicles in to stay?

MS. MURPHY: We do have tractor-trailers. You have semis, truck drivers passing through in need of a hotel to stay there. But the width I don't feel would be any issue, because the 30-foot wide would more than cover the standard semi width.

MS. NEDER: Turning radius?

MS. MURPHY: I don't know what the turning radius is.

MS. WALL: You won't get a tractor-trailer in there.

MR. FINLEY: Tammy (Murphy), I guess the question would be -- versus in some of the locations where you're down on I-86 and that actually is your business, in this demographic in Chili, with where we are --

MS. MURPHY: I feel that the spacing with the length is ample amount of -- of height, the width, everything. Because the tractor-trailer, you know, the front of it turns and angles and it pulls right through. I have a very slim entryway at the Olean property and the semis are able to get through there and around about.

JORDON BROWN: What is the width of the Olean -- that she is referring to?

MR. FINLEY: I don't think any of us here would know. I guess another thing with that is I think in this particular location, we're not really close to an interstate. There are other areas -- well, we have 490.

MR. EHMANN: Excuse me?

MS. WALL: I work for a trucking company less than five miles from there. Over-the-road tractor-trailers --

PAUL BLOSER: Ma'am, could you wait until you're called upon, please? Thank you.

MR. FINLEY: Technically this will bring a truck in. We have to have the hook and ladder be able to get in here. It's not really designed to really accommodate trucks. We don't have truck parking. We don't have slips for them. It won't be the type of a place where a driver will want to come in here. If they're going to stay, they are going to need to make arrangements at someplace to detach the trailer and maybe bring the tractor in, and that could be something that can be accommodated, but in general, we're not designing it to fit tractor-trailers.

PAUL BLOSER: I will make a comment, also, for the public, that any approvals on this would be subject to Fire Marshal review and approval, and they would have to agree that they can get their largest truck through to service this in an emergency. So that would be one of the conditions of approval on this.

MS. NEDER: A second part to my question was, I know a lot of the truckers, because diesel is so high now, are turning their vehicles off instead of letting them idle through the night, but in the case of a refrigerator truck, they would have to keep it running, which would create a noise problem for the residents.

PAUL BLOSER: Okay.

TERESA CROZIER, 21 Shrubbery Lane

MS. CROZIER: I have to kind of wing this, because as a resident behind this proposal, we did not get to see this site plan at the Planning Board meeting we went to, so this is all new.

PAUL BLOSER: This is new to us also. We just got it tonight.

MS. CROZIER: Then we're in the same boat. I would like to address the height issue

specifically, and I know you have criteria that you have to follow.

I want to know, in the back of this new plan, I guess my big question is, it looks like it is predominantly parking lot, and then there is a strip there between the property abutting up to it, which is residential. It appears that when you're doing your sight lines and all of that, you're including a residential backyard in your buffer zone. Why is the buffer zone not going to the property line, because people's backyards, they have to have a place where they're safe, buffered, the children can play, their pets, they can relax back there. It looks like there is a really narrow strip there between the residential property line and whatever -- how -- how wide is that strip between the parking lot and property line?

MR. FINLEY: Well, this is -- this is all things we will talk about more at the Planning Board, so come to that, too.

MS. CROZIER: Well, I'm addressing the height issue. So I -- I think that has a bearing on that.

MR. FINLEY: I'll explain in -- what I mean is I'm going to explain the site plan issues tonight to help a little --

MS. CROZIER: I guess my point I want to make, if someone is in their backyard doing gardening, kids playing, whatever, how much buffer is there between their backyard property line and the parking lot of that hotel, which is going to be large.

MR. FINLEY: In the old version it was 7 feet. In the new version, it's 25 feet.

MS. CROZIER: Is that enough? Is that code? I don't think it is. I know a side yard has to be 40 feet. I read --

MR. FINLEY: To a building. For a building setback, that's true. And that's the line that's here (indicating). And in this case, the alternative here (indicating), hearing comments, that is one of the reasons it has been changed, to be able to plant a couple rows of evergreens there, versus one row of evergreens. That is where it comes down to here (indicating), before the old alternative, there was 7 feet, maybe a row of evergreens, then the travel aisle and a building at 41 feet off of the fence line. So in the backyard a person standing here (indicating) in the backyard would have been seeing the building very noticeably, even with us having screening there.

In the new one, the person standing in the backyard is now a lot further away, and the trees are going to be more effective for it. Patching wise, the parking lot, there could be a car 25 feet from the fence. That would be -- however this property would be developed, if it was a restaurant or a plaza or whatever, that could be a similar situation. The building couldn't be closer than 40, but parking and travel aisles can be.

PAUL BLOSER: Real quick, Chris (Karelus), could I ask a question of you? On property like this, bordering up to residential, a parking lot -- what is the closest a parking lot can be by code to a residential lot line?

CHRIS KARELUS: You can get within a couple of feet, as long as the grading all falls within that limits.

PAUL BLOSER: Did you hear that --

MS. CROZIER: Not really.

PAUL BLOSER: -- the answer to that question?

I asked the Building Department how close could a parking lot actually be to a residential property line. And the correct -- the answer from the Building Department is it could be within just a couple of feet. So where we have gone from -- Mr. Finley, I think you said approximately 9 feet.

MR. FINLEY: I think it was like 7 to 25.

PAUL BLOSER: 7. We're out now to 25 feet. They could actually have it within a couple feet of the property line by code. So we're out now 25 foot, allowing, like he said, for a couple of rows of trees as a buffer.

MS. CROZIER: I guess I would make one more point about this, and that is the criteria that this is a self-created hardship, the height of this building. At the February Planning Board meeting, Mr. Mehta was asked why the Microtel now goes through with the three-story design. His reply was two-story design looks too much like a motel. So why should the Town allow a variance to make a building look more like something it really isn't, because a hotel provides lodging as well as food, entertainment, various services for its guests, maybe a concierge at the front desk, bellhops, parking service, valet. I contend this is a motel, and they're asking for a variance to try to make it look like a hotel. That's my point.

JIM EHMANN, 47 Stover Road

MR. EHMANN: You have 30 feet for your turn in off of Chili Avenue. If you have a Ford Excursion and a Cadillac, they will hit each other trying to make that turn, because they need approximately 6 feet on both sides to make the turn in.

My other question on that travel, is going around the back side of the bank, in front of the hotel, or in front of the Acropolis Restaurant, what have you, coming out to the main entrance to the shopping plaza there, how much traffic is going to be created by people bypassing the entrance way and coming through the shopping center and creating a problem for, I hate to say this, but for the kids that go to Subway and all that area down there as well as the people that are doing the banking. And if at that time you have your roadway going across there and into the side of -- what you would consider now the front of your building, are we going to do anything about the utility poles and utility lines there that are have been torn down twice in the past year by just vehicles going through? That is the question I have for the travel and traffic.

PAUL BLOSER: That's an issue that really doesn't concern this Board. I would say probably it would be part of site plan, what they're doing with that, but that is not an issue before us.

JERRY BRIXNER, 14 Hartom Road

MR. BRIXNER: Thank you, Mr. Chairman. I'm Jerry Brixner, 14 Hartom Road.

And last evening, shortly before 5 o'clock, my wife Irene and I turned in a protest to the Building Department and to the Town Board. We protest Application Number 5, quote, Application of Indus Real Estate, 1170 Pittsford Victor Road, Pittsford, New York, 14534, for variance to erect a hotel to be 39 foot, 10 inches high, 35 foot allowed; variance to allow front parking for 40 vehicles; variance to create a lot with 30 foot road frontage, 40 foot required; variance to erect a 7 foot, 1 inch by 11 foot, 6 inch single-faced freestanding sign to be 81 square feet, 32 square foot allowed at property located at 3260 Chili Avenue in GB zone."

To be discussed and acted upon at the May 20, 2008 Chili Zoning Board of Appeals meeting.

On April 8, 2008, the Chili Planning Board addressed the proposed Application Number 2. Quote, "Indus Real Estate, LLC, 1170 Pittsford Victor Road, Pittsford, New York 14534, property owner Chili Avenue Associates for conceptual approval for a two-lot subdivision on the proposed three-story 65- to 70-room hotel at property located at 3260 Chili Avenue in GB zone. Kip Finley, Jett Mehta, Darryl Martin, Darryl Harvel and Bernie Iacovangelo were present to represent the application, one quote, 'we reviewed the minutes of this application and note that Planning Board finished the discussion on this application without anything more than a general conversation. There was no public hearing on this issue that night and no proposed vote to submit the application to the Zoning Board of Appeals.'

Secondly, we cannot recall any other application of this nature over the years being submitted first to the Zoning Board of Appeals before the Planning Board of the Town of Chili has conducted such a public hearing and subsequent recommendation to the Zoning Board of Appeals. Therefore, we protest that this particular Application Number 5, small quote, "Application of Indus Real Estate, 1170 Pittsford Victor Road, Pittsford, New York, 14534, for variance to erect a hotel to be 39 foot, 10 inches high, in 35 foot allowed, variance to allow front parking for 40 vehicles; variance to create a lot with 30 foot road frontage small (40 foot required); variance to erect a 7 foot, 1 inch by 11 foot, 6 inch single-faced freestanding sign to be 81 square foot in (32 square foot allowed in) at property located at 3260 Chili Avenue in GB zone," and that was signed by Irene Brixner, and myself, Jerome F. Brixner.

Thank you, Mr. Chairman.

PAUL BLOSER: Thank you, Mr. Brixner. Just for the record, we did receive -- this is one of the letters that I stated we did receive that was dated yesterday. Um, we do have that as part of the record here.

PATTY CLEMENTE

MS. CLEMENTE: My biggest concern is the traffic. Coming out from any area of -- sports in Chili Center, Chili Scottsville where the gas station is, you can't even get out of there now, let alone you're going to have three businesses exiting from one driveway. And a gas station across the way, it's completely insane now. I hate it even without a micro hotel. So the traffic issue is unbelievable. And the height, it looks to me all they have really done is turned it so that now all of the rooms look right down on the neighbors' yards, which I think is worse than the other way.

DONNA CADY, 31 Shrubbery Lane

MS. CADY: I, unfortunately, am the person that has the deck off the second that he mentioned. Does that mean this is what I'm going to be looking at full force all day every day?

PAUL BLOSER: This is what is being proposed right now.

MS. CADY: No, no. With the car wash, Valvoline and the bank, I see more than enough now. With this height, I don't -- none of us need any more -- we need to be able to use our yards in privacy. And this height, they could put 50-foot trees up and I hope they grow better than the ones they put on the lot line now. The ones they planted along the lot line by Valvoline, I don't know how high the fence is. I don't have a clue. Five or six of them are already -- have been dead and laying there. And the others have not done a thing. Yes, they have grown, but you're going to have to go some -- and I really think -- there is one, two, three right here (indicating) that are in raised ranches, and this height is -- a three-story building has no place there. As far as I'm concerned. And if I think of anything else, I'll raise my hand.

PAUL BLOSER: Thank you.

DAVID CROZIER, 21 Shrubbery Lane

MR. CROZIER: My name is David Crozier. I live at 21 Shrubbery Lane. I'd just like to say that most of the homes on our street are raised ranches or ranches, and the height variance will let this building tower over our properties. We're not going to have any privacy anymore. I don't buy the whole screening issue. It will take the rest of our lifetime for the trees to get tall enough to screen this place. It is going to create a hugely undesirable change in the character of our neighborhood.

As far as the flag lot goes, you will have a ton of traffic in and out of that driveway there, and I'm hoping there is going to be sidewalks for the pedestrians, because they sure can't walk in

the driveway with that much traffic.

I don't know, because there is no approved site plan. Are there sidewalks there?

MR. FINLEY: (Nodded.)

MS. CADY: Where will they be? Excuse me, Dave (Crozier).

PAUL BLOSER: That will be part of the sight plan issue, and that is yet to be determined. Again, we want to look at the height of this tonight. That is before us.

MR. CROZIER: That driveway, just by its proximity is part of that intersection. Mrs. Clemente was just talking about Mr. Fred Trott at the last Planning Board meeting described it as a failing intersection. And I just can't see jamming all that into 30 feet when you're supposed to have 40. Just makes no sense to me. It's a safety issue, huge safety issue, and I think it was a self-created hardship when the lot was originally subdivided. Thank you.

BARBARA WALL, 28 Cutter Drive

MS. WALL: Barbara WALL. A question. You said you're looking for a variance. Didn't you say you also need an easement from the Valvoline and the bank?

MR. FINLEY: Do you want me to address that?

PAUL BLOSER: You can address it to the Board, yes. I'll allow it.

MR. FINLEY: We do need to have a -- or -- an easement from -- for -- we're negotiating an easement out of the lease area for the Valvoline to be able to have the existing water main remain there once the property is sold, so that is true.

MS. WALL: So we're not just talking about the 40-foot issue? You also need an easement, right? So you're talking really about more than --

MR. FINLEY: That makes it 40 feet. When you have 30 plus --

MS. WALL: I'm sorry. So you're still -- you're talking about two things that really need to happen.

Are we talking here about putting way too much in way too small a spot is what it feels like, and I think that's -- I mean the design, it's lovely, but it doesn't belong there. There is plenty of areas that have more room for this. This seems too small. I do happen to work for a trucking company. You will attract truck drivers through the nature -- I'm five miles from there. My company, I think our driveway is 70-foot wide and they take out our mailbox, six, seven times a year. You are talking about trucks turning in there. You will be taking out landscaping on a regular basis. Ask any trucking company. It's an expense they account for every year, because trucks, with tractors -- with and without trailers take out landscaping. With 40 feet of room, if anybody goes to pull in, a car is going to have to back up clear to Paul Road to get out of the way of the truck. You are just talking about too much in too small a spot.

PAUL BLOSER: Again, I want to stress, though, this is for -- the application for zoning for that opening, the 40-foot. This will still be subject to approval of Planning Board site plan, Traffic & Safety, Fire Marshal, Conservation Board. They all have to put their stamps of approval on it.

MS. WALL: But you don't put it on tonight, then it doesn't go there, right?

PAUL BLOSER: Pardon me?

MS. WALL: If you don't approve the variance tonight, it won't even get that far.

PAUL BLOSER: That's correct.

JORDON BROWN: That's speculation.

PAUL BLOSER: It's speculation, yes. But the initial -- for anything to go forward on this project to be presented to the Planning Board, these are the two crucial issues that we need to have.

Now, it's even still then subject to their approval it's going to work traffic flow, safety wise, fire wise. They have to look at those and sign off on those.

MS. WALL: The other thing you need to think about, a hotel is for people who are not in Chili, not living here. There are people in Chili not happy about this. Just think about that when you're making a vote. You have the people who live here not happy with this. You're trying to service people who visit here. I think you have to take care of us first.

PAUL BLOSER: This Board does not review what kind of business goes in there. Whether it's a donut shop, a hotel, a library, we're looking at the height issues. Now, if we were -- and I will make this just as a general comment, because I want to go back to what Mr. Finley gave in design. They could put the building up without any height variances and just put a flat roof up there, and with a parapet surrounding, but it would be a flat roof with basically no architectural value to it. What they're presenting is to go another 4-foot, 10 inches to give it some architectural value and have a buffer between a flat square roof and residential, so that there is something to offset the balance. I mean we could have -- they could do it within code and be just square and flat with no architectural flavor.

MS. WALL: Would you do that? Would your company do -- would they do it if they had to go to code? Just out of curiosity. Or would they not do it unless they can do this?

PAUL BLOSER: That would be their decision, and I can't answer that, and I don't think the people representing the outfit would need to answer that directly themselves. It's an option that they could explore, and we would have virtually -- I mean, again, it comes to site plan approval, building planning approval, but that is not the role of this Board. I'm looking at it from line of sight, and future growth, what's it going to look like. If we put in -- and again, Conservation is going to be involved to look at trees. If they put in a fast-growing tree, you're going to have the same problem that you have got now. They're shallow root, they're soft wood and a high wind is going to take them down. If they have something a little hardier, it will be a

little slower growth, but it will be more robust under the soil and wind conditions. This is a trade-off. Again, this is something you need to be expressing the opinions with the Planning Board and the Conservation Board in layout design. That is not something we do with this Board. We want to look at the line of sight. Certainly that's an issue, and that's why we're looking at it. It's 4 foot, 10 inches in the scope of the thing, and what I would rather look at is something a little nicer looking or a square with no design. And that's -- it's a tough call. That's a decision we have to make as a Board, and those are the only parameters we can look at, not what the building is used for, who is going to be staying there. That's not the position of this Board.

MS. CLEMENTE: As far as when you're talking about the site, like you had said you went out and looked at the woman who wanted to put up the 8-foot fence. Like now do you know -- can you tell me if you're on the third floor there, exactly where you're going to be looking? Because for me to go through all of those, it means nothing. Can somebody go do it? Put a bucket truck up, look down and see exactly what this height -- how it is going to affect these neighbors, because you probably don't know, do you?

PAUL BLOSER: To stand here and say no exactly, there is not enough detailed drawings here to show that.

MS. CLEMENTE: Can you people go and do that? Because how do you look at something?

JORDON BROWN: You know, I do have a question based on that question.

If the building was to be built without requiring the height variance, would that change where the third floor -- the height of the third floor window?

MR. FINLEY: No, it wouldn't.

JORDON BROWN: So the height variance is having no effect --

MR. MARTIN: Doesn't affect the floor elevations at all.

MS. CLEMENTE: I don't care if it is the third floor or second floor, wherever that is going to be. Can someone tell where -- how you're going to be looking down on someone's yard. When -- that gentleman right there has little kids playing in his yard, and now you have people -- it's not your neighbors looking at you any more. It's strangers looking at your little kids, and that scares me to death.

PAUL BLOSER: I understand that. But there's no -- until -- and Keith (O'Toole), I'm going down a road that I probably shouldn't be, but legally, there's nothing I can say because nothing has happened. There is not a law that has been broken. You can always look at preventative, but again, that is not the position of this Board.

MS. CLEMENTE: But you went and looked at the fence, how it affects things, correct?

PAUL BLOSER: Yes.

MS. CLEMENTE: So how -- we can't look at this and see how it is going to affect it.

PAUL BLOSER: A fence is looking at the front yard. Over across the front of it, it's at ground level and you have a good perspective because you can see the real dip in the road. And I agree with what you're saying. I was not three stories up in a bucket looking at it. I don't have that perception. He did present a drawing with a line of sight from the house, what it would be. I can picture it mechanically, visually based on that, but photograph in my mind, placing myself looking out the window to the house, certainly a picture is worth a thousand words.

And then if you're up in a bucket, you're still in a very wide exposure. Can you really get the right perception? A lot of it is going to come down to what you can see out your decks and out your backs. And again, those are issues that --

MS. CLEMENTE: It's a height issue.

PAUL BLOSER: It's a height issue. You could have a cold storage building there.

MS. CLEMENTE: You're right. It doesn't matter what the building is. It's in a neighborhood. It's in someone's backyard.

PAUL BLOSER: Again, but -- it is something that a lot of people don't want to hear, but that property has been zoned commercial a long time. It's been empty for that long. Now there is something that wants to go in. We're always going to have certainly opposition to it, especially by the neighbors that live there. But going into it, you know, I have to say --

MS. CLEMENTE: So the place to take these concerns is to the Planning Board?

PAUL BLOSER: Right. The Planning Board, Town Board, but mostly the Planning Board, because they're going to be looking at these issues for site plan and design. That's their job. That's not our job.

JORDON BROWN: I just want to add again, that the issues that you bring up about the windows would exist whether or not they were asking for this height variance.

PAUL BLOSER: Right. Nothing is changing there. It's what do we want to look at aesthetically on a roof.

MS. CLEMENTE: You're right. Then it needs to go to the Planning Board.

MR. EHMANN: Quick question. When is the next Planning Board meeting?

PAUL BLOSER: It is the second Tuesday of every month; is that correct? Second Tuesday of every month.

JARED CASE, 23 Shrubbery Lane

MR. CASE: My name is Jared Case from 23 Shrubbery Lane. I'm actually the larger property that goes now to the side of the hotel as it becomes turned. The first thing I want to address is just the frontage on the property. I don't think that the residents in the area should be penalized for the lack of vision for the person that subdivided it in the first place. If they knew

there was a 40-foot frontage needed for any businesses that was going to be put in there, they should have taken that into account before they asked for the subdivision, and I don't think that that is necessarily something that the Town or the residents should be taken to task for. If it's something that needs to be addressed for the business side, then they need to address that and not be given -- I have come to a couple of these now and we have always had issues of nipping something in the bud because something bad has happened in the past. I think we have the opportunity now to nip something in the bud so that we don't have to go back and see why that mistake was made.

But my real issue obviously with this hotel is going to be the privacy. I appreciate the changes that Kip (Finley) and the associates have made towards this. I actually think that sideways is better, except it does bring it closer to my property now. It used to be that the back windows were facing my property where there are no trees right now. Instead it's bringing the building closer. So when we're taking into account the sight lines that we're looking at, we're looking 8 from the back of the houses along Shrubbery Lane that do not have the longer lot. My lot actually includes the 6-foot drop, so we're going to have to adjust sight lines if we're talking about looking from my backyard.

I'm one of the newest residents, if not the newest resident in the neighborhood. We moved here from Henrietta less than two years ago knowing full well that we were going into an area where there was business, that there was these shops and the stores around. In fact, we welcomed it. One of the things we liked about Henrietta was everything was close. But when we looked at the house, we did note that there were no back windows to any of these properties. We didn't have anyone look at our backyard and this is something we took into account when we moved into the area.

So although we appreciate having the businesses around, we also appreciate the privacy we bought when we came into the area.

I appreciate again the design of the hotel. I think it does look better than something with parapets and the effort that was put into making it look like other homes in the area. Unfortunately, other homes in the neighborhood do not have three floors. That is what makes it look like nothing else that's in the neighborhood. It's that tall.

Um, what I would suggest -- well, there is one other thing here.

And this may not be directly related to this, except for the height issue. This is something -- this is General Business. It's zoned for General Business, but this would need a conditional use in order to go in here.

PAUL BLOSER: That is correct.

MR. CASE: I looked at the list of conditional uses. It is along the lines of a drive-in movie theater, other large things that also would not fit into this space. What I would like to see this Zoning Board do, and I encourage them to do, is do some balloon testing to get an idea of the impact and encourage all of the residents to take part and inform them of when this balloon testing is going to take place so they can look from their property, at different parts of their property to find out what sort of an impact this hotel will have on the privacy of the neighborhood. I would like to see how many millions of dollars of privately owned property is going to have to look at this hotel.

MS. BRIXNER: Now I understand what John Nowicki meant.

IRENE BRIXNER, 14 Hartom Road

MS. BRIXNER: I understand what John Nowicki meant when he said at the April 8th meeting, Planning Board meeting, that this is like putting ten pounds -- ten pounds of something in a five-pound area. Hearing all the complaints about this.

Um, I -- I'm not for this. I think it's ridiculous. I never saw anything like that in my life. I think we need a hotel, but not there. I think that because Mr. Iacovangelo has 2.7 acres of land and he owns a lot more, I think that you people should not have taken this on tonight. You should have waited for us to have a site plan approval and given us the normal course of everything. But as it appears to me, you're kind of showing like, oh, these people went to the Planning Board, and they talked to them, and the Planning Board was like, you know -- we don't have enough information. And finally, when -- we thought, okay, we're going to keep our eyes open and make sure we go to the next Planning Board meeting and all of a sudden we find that these people have decided to go to the Zoning Board. And we're wondering, is this the first time this has happened, Mr. Bloser? I don't know. Is this the first time that a -- you know, you skipped a site plan approval and then go right directly -- the applicant goes directly to the Zoning Board?

PAUL BLOSER: I won't say it's not the first time. We talked at length, like I mentioned earlier, Mr. Martin and myself, about what would be the most important things to get through in order to give them a good set of drawings to look at. Without knowing if this Board would approve the height, Mr. Finley and his people would come in and do something, a presentation, if it came to us, and we said flat out "no" or Planning said "no," it's up to a complete redesign. So at least we could have some concrete plans with this height variance. They would know what they have to work with. Whether it goes through or not, they would at least have something to present so that we can look at it. Again, even if we were, as a Board, to approve this decision, it still would be dependent upon Planning Board approval, Traffic, Fire, all of them have to approve it. We're giving them an initial approval, a variance based on the approvals of the others. If any of them say no, then this certainly would not go through. It still comes down to subject to final approvals.

MS. BRIXNER: Okay. Well, you know, I was looking at the Chili Center Comprehensive Plan update of June '08 and it was completed like maybe 1 1/2 years ago -- wait a minute. 2/06, I'm sorry. It was approved about 1 1/2 years ago. While the -- I want to quote something here. It states that, "While the focus of this Committee was Chili Center, residents expressed issues and concerns that impact not only Chili Center, but all areas of the Town. The Committee has included a number of recommendations that are applicable Town wide as well as to Chili Center."

And then on page one is current zoning, and I refer to paragraph two, establish minimum requirements for -- for -- for buffering for industrial and commercial districts when they abut residential uses. Prohibit interior roads, parking and structures in the buffer area. Prohibit interior roads, parking and structures in the buffer area.

Now, I know that has to do with, um, industrial and commercial districts when they are -- when they abut residential uses, but then it says consider -- oh, this is terrible. They don't give us this privilege (indicating) at the regular Town Board meetings, and now that I have got it, I'm afraid of it.

Consider a minimum buffer area along the front side and rear property lines. All nonresidential uses shall provide an on-site buffer to protect the residential zoning of adjacent properties. Referring to the Chili Corridor Study completed in 1988, Recommendation 2, Planting, Section D, for an example. Now, I have looked this up before in the past, but, um, the Chili 2006 Updated Comprehensive Master Plan has not been -- has not been approved. But you got to go back to 1988 now.

Now, listen to this: Define buffer area as a strip of land where no building or structure may be located, and which is covered with grass, vegetation, trees, embankments, berms or other landscape elements. Underground utilities, access drives or roads for ingress and egress and sidewalks may be permitted. Trails and bike paths could also be permitted in the buffer area.

Where the property abuts a right-of-way, the buffer area shall be measured from the right-of-way. A district buffer area is a buffer area that exists between zoning districts and is defined as, one, the minimum district buffer area between any proposed nonresidential or multi-family use and an adjoining single-family residential district shall be 100 feet.

Number 2, the minimum district buffer area between any proposed nonresidential or multi-family use and an adjoining single-family residential district shall be 50 feet. This would be subject to the Planning Board making a determination that buffering is warranted based on the variation in levels of intensity of use between the districts or with a district. I can't imagine a 70-room, 30-story motel, hotel on Chili Avenue with two parking lots, one on the south side and one on the north side of a hotel that oversees and abuts the backyards of a residential Neighborhood District.

This to me is really too extremely intense for the Town's people living in the Residential District. People coming in for a room, two-night stays? This is not the kind of quality hotel that can be appreciated by the Town's people. And the lady back there was right. This is our Town. This is the center of Town. We have got to look at this thing in the center of Town. I mean what are we going to do when -- you know, they wanted to preserve -- the reason why the Update Committee got together was they wanted to preserve Chili Center area for General Business because, you know, we didn't have any more business, no more space for General Business. So they want to take our Town, old Town Hall, they want to take all those buildings that belong to Town facilities over to Archer Road. They want to sacrifice us, the Town's people. We're going to pay taxes for this when there's a piece of property over here that you could use for retail.

And if -- if the hotel were special, like that lady in the back said, if it would at least include us by having a dining room, or something really particular where we would want to go there, but it's not for us. It's for Roberts Wesleyan College? Non-for-profit? Because they say, "Oh, our people are going to come into town and we back it." I don't hear everybody clambering for a hotel over there. Where is this coming from? I don't know.

Thank you for listening to me. It's just that I really feel that this is the wrong spot for something like this.

DOROTHY BORGUS, 31 Stuart Road

MS. BORGUS: I would like to talk a little bit about this roadway. How wide is the actual roadway? Not the frontage of the lot. The actual roadway.

PAUL BLOSER: Mr. Finley, can you --

MS. DiFLORIO: 30-foot road.

MR. FINLEY: Would it be 25 or 26?

TRACY DiFLORIO: 25.

PAUL BLOSER: 24 down here (indicating).

DAVID CROSS: 24 to 25. Keith (O'Toole), the plan says 24.

PAUL BLOSER: The actual on that, out to the road is 25-foot.

MS. BORGUS: 25, okay. We're looking at two separate issues here. We looking at the width of the drive -- the roadway, and we're looking at the width of the lot, the frontage of the lot.

PAUL BLOSER: Correct.

MS. BORGUS: I think this lady in the back had a very good point, and I hope it wasn't lost on the Board. You're being asked to give a variance tonight based upon, and I will quote this gentleman here (indicating), negotiations with Valvoline. You don't know those are ever going to happen, and come out to the benefit of the applicant. So how can you give a variance on something that's an if? I think it should be tabled until they can come back with a definite "yes"

or "no" as to whether they can work that out. Then you have got something solid you can base a decision on.

I do agree with the gentleman that spoke over here, one of the neighbors, when he said that this was a self-imposed hardship. It is. Nobody who owns that land, as Mr. Iacovangelo did for many, many years, I don't know how many, but many, shouldn't have sold off so much land that he didn't have enough -- enough of a distance, so that he could accomplish even this, should he want to. This is not a new requirement in Town. This has been forever that we have had this rule. He did this to himself. And now because he's got second thoughts, he's back in wanting a mea culpa here. I don't see why he should get one, Number 1.

Secondly, that road is inadequate for tractor-trailers. Again, another opinion that was expressed over here. No tractor-trailer can turn in to a 25-foot or even a 30-foot roadway, especially when there's another car or two waiting to come out. Now, the representative from Indus said that one of the other motels, that works, you know, the tractor-trailers can make the turn. Well, maybe when you're only going into a Microtel. This is a roadway that services other businesses. It's the only way -- well, the major way that you get into the bank. It's the only way you can get into Valvoline. This is not just a roadway for Microtel. And already that road is too narrow, and the proof of the pudding of that is look at the bank's front yard. They can't keep a lawn there because when you make the -- you go in off of Chili Avenue and you even try to make the turnaround to the front of the bank, the front yard is chewed up endlessly. They're forever trying to grow grass there, and I'm wondering how long before they'll give up and just pave some of that over, because even that is not enough, and not enough room. There's not enough turn.

The other thing nobody has mentioned is the very, very, very tight distance when you come out of the drive-through for the bank and you turn left. You can barely make that now on that roadway, never mind all of the traffic that's going to be coming in for a Microtel and maybe tractor-trailers. It's an impossible situation. And the bank shouldn't be penalized for this. They bought that land and they built there in good faith thinking that they had what is obvious they have today. They're not looking to be short-changed.

It's a very, very, very serious issue with that drive-through from that bank now.

This gentleman (indicating) mentioned, too, that if tractor-trailers were -- drivers were to use that, they would probably detach their trailer and only come in with the tractor. Well, I don't know where in Chili you would park trailers.

MS. CADY: They park them in the plaza.

MS. BORGUS: We don't need that either. We don't need another problem. That is terrible when you see trailers just dropped off in plazas and probably that's where they would go. If you're a tractor-trailer driver and you want to spend the night there, the temptation would be very great to do that.

And I would also like to back up another comment somebody made when we were talking about height. The trees along that lot line that exist there now, probably half of them are dead. The rest of them don't -- don't flourish. I -- I go -- I go to the bank and I -- I sit in that drive-through and I think, doesn't anybody see that most of these trees that were supposed to be such a blessing for screening are -- are -- they're dead. Nobody does anything about it. The other ones don't grow. It's an example of a good plan gone awry.

Frankly, I think if these people want -- want to build this three-story monster on this small area, then let them do whatever they have to to stay within our height requirements. I don't think the roof line is going to make much difference in the looks of this building.

And I think the balloon idea that was floated here, and that's not meant to be a pun, is a very good idea. I'm trying to envision what it would be like to drive up Chili Avenue headed west, and see this huge building in the air over the top of and dwarfing a 40-year old plaza. Now, to me that's a disaster. And we certainly don't need 40 feet. If they have to have this thing here, and they get enough pressure put on whoever to get it, let them stay within the 35 feet. That roof line isn't going to make one bit of difference, except it will be 5 feet shorter.

Thank you.

JAMES BUSHART, 28 Parkway Drive

MR. BUSHART: James Bushart, 28 Parkway Drive. My concern is the shrubbery or the trees that are being planted along the side. I put myself in the neighbors' shoes of the adjacent properties here. If I were them, I would -- I would be concerned, too. Knowing that the -- knowing that horticultural law, or the horticultural growth of these plants will take a couple years. That would -- that -- you know, whatever years for these plants to grow, they will have to swallow that many years of looking at that building and swallow that, and that -- what -- what interest -- what interest is in the Town? Is the interest for the Town -- the Township residents, or the -- or the people who are not from here? And people from Pittsford are not in this Town.

My concern is -- my perspective, from their property, and the growth of these trees, and -- I can see, you know, not -- the interest is, where is the interest for the Town? And the growth of these trees, and -- and site -- this 40-foot building.

That's all I have. Thank you.

MR. EHMANN: One last comment. You have a -- homes that are on Shrubbery Lane looking down. And you want to plant shrubs or trees along the berm that take anywhere from seven to nine years to reach full development. This gentleman's comment, he said on the back side of the hotel it would be relatively dark and there would be very few traffic areas back there, but it would be dark. Well, I'm over that age, but I'm sure that would be a very fine area for some rambunctious young children to have some fun back there. As well as their hooping and

hollering, regardless if we have security going around the neighborhood, the Town of Chili does not have its own Police Department, so they don't police out here like they should. So we could have some "fun," in quotes, back there. I'm concerned about that. Because if you have neighbors looking down, with young kids, from Shrubbery Lane, you might get the wrong impression. Something to take into consideration.

MS. BRIXNER: One more thing. We have the Memorial Park there where the kids come down from the apartments, and they play basketball and they're there all of the time. And I don't know what exposure they might get from any of this. I -- I don't know. You know, robbing places, I don't know. But he is right, we don't have a Police Department, but out in Gates, they do.

BEVERLY NEDER, 82 Attridge Road

MS. NEDER: Could you tell me who signed, or who the petition was from who was in favor of this proposal? Are they local?

PAUL BLOSER: There was 110 names on it.

MS. NEDER: Are they local people, residents of the Town?

PAUL BLOSER: Yes. Looking at the streets, yes.

MS. BRIXNER: What area of the Town are they from?

PAUL BLOSER: Chili Avenue, Beahan Road. They're all over.

MR. FINLEY: This might be a good place where we could help out with that. The representative from Indus went to all of the businesses in the plaza and up and down Chili Avenue and got the support from all of the business owners who are looking very much to have a hotel that will support their businesses, and, yes, there was some signatures from Roberts Wesleyan College, students who knew that their parents would want to come and need a place to stay, but the majority of the people on that list are the business owners in the community that want to have some more people come in to use the businesses.

MS. NEDER: How many of those business owners live in Chili?

PAUL BLOSER: I don't have that information.

MS. CADY: I know of two people in the plaza that don't know about the hotel.

STEVE ROOKER, 38 Omega Drive

MR. ROOKER: Steve Rooker, 38 Omega Drive. I like this roof line much better than a flat roof and that's the question that's before the Committee. There is no other question, really, in regard to that. That's a much better-looking roof line. And the architect went through a lot of trouble to redesign the building to give it that roof line at the request of the Town. And it looks much better.

MS. CROZIER: The roof line isn't in question. It's the height of the building. That's my comment.

PAUL BLOSER: Yes, sir.

JACK GOODBERLET, 150 Stover Road.

MR. GOODBERLET: Several things. Right from the get-go, I don't think a hotel of this nature belongs in Chili. That's just my opinion.

The roof line, 4-to-12 pitch looks just like a cheap zero building. There is no overhangs, no nothing to make that look like a halfway decent building. It looks like a little box.

As far as the looks of the building, I realize height is the issue. That roof will not make it look any better or worse, in my opinion.

I take exception to the fact that these trees are going to go with Miracle Grow or whatever. I never seen trees grow like that in my life.

I also question the presentation. Everything seems iffy. First we're talking about 40-foot and then we're talking about 30-foot right-of-way, and now when we look at the plan, it's 25-foot. Um, I happen to have a CDLA license in the pocket and the presentation by the woman in front of me, what was all that about? I don't know what her qualifications are, but if you have a 25-foot right-of-way, you only get 12 on your side and you're not going to turn a tractor-trailer truck on -- on a 12-foot, on your half.

MS. CLEMENTE: Forget tractor-trailer. Fire truck. That's more important.

MR. GOODBERLET: That's about all I have to say about your two issues, which is the right-of-way and the height. It doesn't belong in Chili. It belongs in Henrietta or Greece. It doesn't belong in Chili Center.

MS. CLEMENTE: Is there two exits to the hotel, exiting into the plaza, as well?

PAUL BLOSER: Based on this plan that I'm looking at, I see one -- two. One on Chili Avenue and one into the plaza.

Kip (Finley), is that correct?

MR. FINLEY: Yes.

MS. CLEMENTE: Is that legal to go into the plaza, for the hotel?

MR. FINLEY: I think this is a point where I can address a lot of their questions with a couple things, if you want.

PAUL BLOSER: Let's wait and get the last of the questions and then I will let you summarize.

MS. CROZIER: One other issue with the road frontage and a tractor-trailer or any large vehicle, a fire truck turning in there, there are two lanes at that point heading westbound and then there is the turning lane in the middle. Now, a tractor-trailer cannot possibly make a right-hand

turn from that right-hand lane of the two lanes. There -- it's impossible. He would have to go possibly maybe as far over as into the turning lane. Safety. Safety issues.

Thank you.

CHARLES RETTIG, Coldwater Road

MR. RETTIG: Can I ask a question that -- that hasn't come up, in regard to the permit being asked for, or the application being asked for from Chili Avenue Associates and Indus Real Estate to the Planning Board and here we only have Indus Real Estate before the Zoning Board. Is there some reason why that's -- can you clear that up?

PAUL BLOSER: All I can say is someone is here representing the application, representing both applicants for them.

MR. RETTIG: Because Chili Avenue Associates was addressed by Mr. Bernie Iacovangelo, and Mr. Jeff -- Jett Mehta addressed it for Indus Real Estate at the Planning Board, so there is no one here representing Chili Avenue Associates.

I just want to point out that this is pitting the Zoning Board against the Planning Board, no matter what you say. I don't think it is fair to the Planning Board. I don't think it is fair to the people in this community and the residents in the neighborhood that we're seeing a new site plan, and the Zoning Board now is seeing the site plan for the first time tonight. This is a change. There is no viable site plan. We heard all of the ifs tonight. We didn't hear anything firm. This plan hasn't even been discussed before this date, this 90-degree variation. In regard to the zoning, it must be addressed for a conditional use permit for a hotel; is that correct?

PAUL BLOSER: That would go before the Planning Board.

MR. RETTIG: That does not come before this Board for a variance then?

PAUL BLOSER: No.

MR. RETTIG: Okay. Thank you.

Looking at what was previously discussed in regard to the Master Plan and what was -- what had been discussed previously in regard to Paul Road, Target application and the new additions to the Master Plan, there was discussion that is already in the notes. I think Mrs. Brixner read part of it, that to have a commercial General Business, that there should be 100-foot transitional area between residential. This does not -- this does not allow it. So right there, you don't have a site plan. You don't have a plan, whether it is site plan or zoning issues.

Then we get to the 30 foot road frontage. 40 foot is the minimum per the Town Code. 40-foot is a minimum for good reason. The previous plan was reviewed by the Fire Marshal and there were problems with it. The previous plan was reviewed informally by the Planning Board, and there was no viable plan. There is no viable plan here. We have a 30-foot road frontage. We have heard enough that this is not wide enough.

Point out that this is a self-inflicted hardship. Therefore, if this Board is doing due diligence for the Town and the residents of this Town, including the people that live in this Town, not the business owners that don't live in this Town and that want the business per the petition. You have heard from the business owners tonight. You have heard from the residents tonight, that they're going to have to be looking at this building, or this building looking down on their yards, period.

I think they have due cause for concern.

My summation, getting back to your Zoning Board issues, three stories, whether you reposition it, whatever, it's a self-inflicted hardship. The answer is no. It's not been proven that there's a need for it.

And on the 30-foot road frontage, the answer is no. And I will tell you why. Because until I hear it from this Board, for a self-inflicted hardship, you have to go, according to the zoning -- the zoning issues set forth by -- by zoning committees throughout New York State, you have to go through the five criteria on self-inflicted hardship and they do not meet that standard. This should be voted no or it should be tabled properly because you, the Board, do not have all of the proper information to vote on this tonight.

MS. CROZIER: Just for my own information and the record, I would like to know who is the actual representative here tonight for the applicant Indus Real Estate?

MS. MURPHY: Tammy Murphy. I'm representing the company as the owner is out of town. We have the three representatives here, the architects, the engineer and myself. I can answer any questions concerning the hotel, inside, rooms, occupancy, anything like that.

When it comes to the construction, the architecture, these guys would definitely have to answer them questions. But when it comes to the hotel related, I can.

MS. CROZIER: What is your capacity at Indus Real Estate? Are you an employee?

MS. MURPHY: I'm Director of Sales and Marketing.

MS. CROZIER: For Indus Real Estate?

MS. MURPHY: And Microtel Hotels.

PAUL BLOSER: Just for the record, is there anybody representing --

MR. FINLEY: I'm representing both the applicant and the property owner tonight.

MS. CLEMENTE: How do we keep abreast of how the Fire Marshal's -- how this is all being checked, like the traffic flow? Just -- just for the public, how do we become informed of that? Traffic and Safety.

PAUL BLOSER: Traffic and Safety, they have their own meeting once a month. Conservation Board, for vegetation and landscaping, they have their own meeting every month.

MS. CLEMENTE: So before they get the variance for this traffic, because that was an issue, right, getting in and out, they need to approve this?

PAUL BLOSER: They would have to approve it, yes.

MS. CLEMENTE: So I would --

PAUL BLOSER: We put a condition the variance goes pending --

KEITH O'TOOLE: If I may, Traffic & Safety, Conservation Board, those are advisory Boards. They're not actually issuing the permits. They're issuing recommendations to the Planning Board. Those issues will come up in front of the Planning Board. As to the Fire Marshal, the Fire Marshal doesn't hold a public hearing. He simply reviews the plans to verify they are, in fact, adequate to get his equipment in and out of the site primarily.

PAUL BLOSER: So, again, it goes back to communication with the Planning Board.

MS. CLEMENTE: That would be at the next Planning Board meeting?

PAUL BLOSER: Yes. Kip (Finley), could you finish up then?

MR. FINLEY: I will try to keep everything in memory. As far as -- we'll do these one at a time.

As far as the height of the building, on that particular one, a three-story building or not a three-story building really is not a question. There is no code that says the number of stories. It deals with 35 feet of height. In this immediate neighborhood, the building that Perna owns on -- I think it is behind Pizza Hut, it's a green building, that's over 40 feet tall and that's three stories plus.

Then there is a house on the corner of Rose Road and Chili Avenue. That's three stories. I think there is even an apartment in the top floor. That one, well over 35 feet. That was pre-existing before we had zoning and codes.

But as far as that pitch, the client just wanted me to remind that there are other buildings, and one of them fairly new, that were put up that exceed the 35 feet. So that does happen in the neighborhood.

The other thing with the width. There were a couple of questions with access, traffic and that. There is an existing easement for cross easement between the property and the existing plaza. That was negotiated a long time ago.

In the case of the driveway, I think traffic came up for that. We did issue a letter to the Planning Board so that you would be able to look at that by requesting that from the Building Department or coming to the Planning Board meeting. For a hotel, the traffic is really much less than it is for retail. There is 67 rooms, and they operate based on an assumption of 60 percent occupancy. So they're hoping for about 40 guests a day that will check in from 3 'til midnight, any time through there. So you have 40 cars coming in over the course of nine hours. Check out in the morning, people usually are leaving anywhere from 5:30, 6 o'clock until I think the check out time might officially be 11, noon. So again, you have a course of six hours for 40 cars to leave that parking lot.

Trash collection, twice a week. Only in the summer, when it stinks, only once a week in the wintertime. They have only two deliveries a week. Since there is not a full service restaurant, they don't need a lot of deliveries. They do their own laundry. There is also, at any one given time, there is only eight to ten employees at the hotel, and they're coming at different times. They ramp up with the cleaning service so that if the people are checking out from 6 or 7, they will have a couple of the maids come in and in that time frame they have a couple come in an hour later and the rest come in by noon to clean up the rooms. Whereas if everything happened in one hour, in the morning or afternoon, there would be 50 vehicles. Compared to what we did for this was using the parking criteria for retail, we could fit a 15,000-square foot retail building. That would generate 72 trips every hour. So anybody who is interested in having this be retail, and is concerned about traffic, you're speaking in two different directions.

MS. CLEMENTE: Kip (Finley), they don't just come and park the car and leave. They're zipping here, they're going (inaudible), so that's a bad calculation.

MR. FINLEY: I'm speaking.

MS. CLEMENTE: Okay.

MR. FINLEY: This is our time to rebut and to explain things.

As far as having two access points to the property, those 50 cars that trickle in over the course of six hours or out, even if they all came in and out every hour, they're spread out over two entrances. There is a 40-foot wide driveway right here (indicating), right to Chili Avenue, no crosswalks, no people to get in the way, no kids at Subway. There is no bank teller lines crossing it. There is a very easy route to come in and out here, as well as there. I admit this is an awkward intersection (indicating). It is not a place you want to be in and out a lot.

As far as tractor-trailers and things like that, I think generally if you have a vehicle like that, you tend to go to places that are accommodating for that. There are people who maybe Google it and find it, they need to go to a hotel and they find out really we don't accommodate it. We have no parking for tractor-trailers. If they are parking somewhere else, that would really be an enforcement issue in Town. We're not gearing this to be a truck stop. It's supposed to be business, families, for people that have their kids in the colleges. Relatives. My father is coming in in a couple of weeks. It would be nice for him to have a place to stay. This is for people here as well as for businesses.

But as far as the different width that we're all jumbled around for this entrance, the goal is to have 40 feet of property to use. If we have 30 feet that we own, and 10 feet that we have rights to, if we have 40 feet of property to use, the person that is selling this property is the leaseholder for this facility, for the Valvoline. He has control over what happens with that lease and that property, and it's already been negotiated. There is going to be an easement there. There is already an existing water main there that has to have an easement to serve this building.

There is really no ambiguity about this. The existing driveway 24, 25, 26, is a full two lanes wide, and can handle between this (indicating) and this (indicating) more than handle the traffic that's going in.

So my final case is that Indus Properties is going to have control of 40 feet of land, and all they have to do is manage traffic, a water main and a sewer and all their other utilities are coming from another location.

Building height, I guess it's subjective. If people would rather have a flat roof and we aren't granted that, we can still do that. And since the hotel is a permitted use with conditions, we can still put a hotel here and have it three stories.

So that would be my case for the client, the applicant and the property owner, who are not the same. All right? Does that help?

PAUL BLOSER: Yes.

MS. CROZIER: Did Mr. Avery just say that the applicant and the property owner are not the same?

MR. FINLEY: That's true.

MS. CROZIER: Is the property owner Chili?

MR. FINLEY: To clear this up, Chili Ave. Associates, a/k/a Bernie Iacovangelo, and probably other people. I don't know. They own the property now and they are selling it to Indus.

MS. CROZIER: Why did Mr. Iacovangelo state, I believe at the April 8th Planning Board meeting, he is the co-applicant and got up and spoke as the co-applicant?

MR. FINLEY: What you have to do is when someone has a dream that they're applying to do on someone else's property, they both have to apply on the piece of paper. They both have to sign for it. So the owner of the property has to consent to letting the other person make an application. So technically they're co-applicants, but Indus is going to own the hotel, operate the hotel. It is not Chili Ave. Associates. So I don't know if that explains the difference.

MS. CROZIER: Well, no, not really, but... It sounds like an -- one of the applicants.

MS. CLEMENTE: They're applying to have a hotel.

MR. FINLEY: The property owner's interest in this is getting it approved so he can sell it and be out of it, versus the applicant who has got their -- their interest is getting the approval so they can be in it. They want the same goal, but there are two different things.

MR. EHMANN: Quick question, is Bernie Iacovangelo on any Board with Indus?

PAUL BLOSER: That is not something I can address from the Board. I'm not aware of anything, and as far as I'm concerned, it is irrelevant.

MR. EHMANN: We're not looking at a shell game here?

PAUL BLOSER: I'm not aware of one.

MS. WALL: I just have a question. So the variance, if he gets a variance for the width tonight, but they might not get a variance to -- a conditional use to be a hotel because they don't have permission from the Planning Board to actually (inaudible) conditional use permit? Am I understanding that correct? I guess the feeling is we're putting the cart before the horse, because we're giving them a permit.

PAUL BLOSER: They're trying to get an idea of what they have to work with for a structure to be able to present a final drawing to them on what it is going to look like.

MS. WALL: Wouldn't it have been more accurate to get a conditional use permit for a hotel and if they don't get approval for that, all this money is wasted for doing this? Wouldn't it have made more --

PAUL BLOSER: I understand what you're saying, and you know what, I don't have an answer for it. They have the -- the applicant has the right to put an application in to be heard before any Board. What we have tried to do is, as two Boards, communicate effectively with each other so we know what is going on between us, and I will tell you, last fall I went to a New York State Planning Board Association conference in Albany, and when we talked to other towns about it, we did that, they were appalled that we would communicate because they want to stay their own entity and their own -- they don't talk, look, or shake hands or anything together.

MS. WALL: I just wanted to make sure we're not doing something out of order. This is a fine order, it's --

PAUL BLOSER: We have a great working relationship between the Boards and communication, regularly, weekly. Okay?

MS. NEDER: If the applicant is so positive that he is going to get the easement so that they have 40 feet to use, does he still need a variance?

PAUL BLOSER: Yes.

MS. BORGUS: Why?

MS. NEDER: Why?

MR. FINLEY: Do you want me to explain it?

PAUL BLOSER: Go ahead. You know the engineering side of it.

MR. FINLEY: We could just say that we want relief from the code and just have 30 feet, and --

MS. BORGUS: That's what you're doing.

MR. FINLEY: We can do that, but there is also -- there is an existing water main that's not on the property that we need to own to serve the hotel, so we do need an easement also to control the water main. It's not that we need the easement to get a variance or not get a variance. We need the variance one way or another because it's 30 feet. We need the easement because our water main is on someone else's property.

MS. NEDER: But if you get that, that easement, you no longer need the variance.

MS. BORGUS: Because you got 40 feet.

MR. FINLEY: The easement is only permission to use that extra land. The 30 feet is own the land, versus -- it's like you can use your lot and you own your lot, but maybe you want to store something on your neighbor's land or have use of theirs, you get permission to use the extra part, but they still pay the taxes on it, they still own it and they still have total control of it, so they're doing different things.

MS. NEDER: Don't easements usually run along with the land when it's sold?

MR. FINLEY: Yes. The permission to use it, but they don't --

MS. NEDER: I guess there is a fine point I'm not getting here.

MR. FINLEY: It is, but you just have to believe -- we will own 30, and we need the other for other reasons.

MS. NEDER: I understand that.

MR. FINLEY: And then we'll control at least 40.

JORDON BROWN: It is possible you could buy the other 10?

MR. FINLEY: That was not acceptable to Valvoline, who has a negotiated, prearranged lease that they have paid for and they pay on a regular basis for. They're willing to give up the use of it a little bit so we can have our water main under it. They're not willing to give up the use on the surface because that's their parking and property they use. So they wouldn't give that up totally.

MS. NEDER: So then you don't really have 40 feet to use other than for the water. You don't have 40 feet to use as an entrance.

MR. FINLEY: Right.

MS. NEDER: Even with an easement.

MR. FINLEY: The goal -- I understand having -- I have been doing planning for 25 years. The goal of the 40 feet is to have enough room to fit all of the stuff you need to fit. Actually, there are towns where we can subdivide it across and just have an easement for access and utilities.

MS. BORGUS: This is Chili.

MR. FINLEY: I'm just using it for an example.

MS. NEDER: Now, getting back to the easement for the other section, the other driveway, why do you need two driveways? I mean if you have one that is adequate, through the plaza, then why do you need the other one off of Chili Avenue?

MR. FINLEY: Theoretically, that is true. Usually, though, when you have a -- like an address on Chili Ave., you want to have your address and people pull in, and it's just good circulation. But there -- we do have an access easement through the parking lot into this property. We could theoretically build a wall or a guardrail across, but then you also have -- the bank has the back of their parking lot and they need to get around. It's just in the purpose of planning, you want to have traffic circulation, but it's true, we don't have to have a driveway out Chili Ave.

MS. NEDER: Now, that easement across the plaza goes with -- if the plaza is sold to someone else --

PAUL BLOSER: If I can, this is all getting into Planning issues.

MS. NEDER: That easement would still exist.

JORDON BROWN: It's a great incense.

PAUL BLOSER: It is. They're things that need to be brought to Planning.

MS. BORGUS: After we have talked about this for how long, now? We're right back to the bottom line is they still have 30 feet.

PAUL BLOSER: Correct.

MS. BORGUS: Easement or no, it doesn't matter. They aren't going to own it, so it is still not a 40-foot lot.

PAUL BLOSER: That is why they're --

MS. BORGUS: And 30 feet, if they used every inch, is still not going to be enough that they can have a safe entry and exit from that piece of property. Bottom line, that's all we need to talk about. It can't be. It's not possible. So no is the only answer you can come up with.

Thank you.

PAUL BLOSER: Thank you.

MR. GOODBERLET: On the same issue, I mentioned this before, the 30-foot, or is it 24-foot? What really is the number?

PAUL BLOSER: The number is 30-foot. The roadway is 24-foot.

MR. GOODBERLET: So you're actually talking about roadway, 24-foot.

TRACY DiFLORIO: The variance is addressing the width of access to Chili Ave. not for the purpose of driving, but for the purpose of access.

MR. GOODBERLET: I understand. They could have a variance of a thousand foot, but it doesn't mean it will be a thousand foot driveway. What is the driveway going to be, 24 feet?

TRACY DiFLORIO: Even if they owned 50 feet of property onto Chili Avenue, doesn't mean they have to put a 50-foot driveway there. They could still have a 25-foot driveway there. The code isn't looking at the driveway, it is looking at the frontage.

MR. GOODBERLET: I understand. 24-foot is very narrow.

MR. RETTIG: Coming back to those two issues again, the 30-foot frontage, self-inflicted by Bernie Iacovangelo, the owner of that property as he leased that property to Valvoline, so it should be noted as such.

The -- I say the three stories, let's go with whether it should be 40 feet versus the allowed

35 feet. 35 feet, what difference does it make? But you don't need to go beyond the 35 feet to live within the Chili zoning code. Again, self-inflicted. This Board owes the residents of this Town, the taxpayers, the follow-up on the five criteria for self-inflicted problem in this area.

David Cross made a motion to close the Public Hearing portion of this application at this time, and Adam Cummings seconded the motion. All Board members were in favor of the motion.

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

JORDON BROWN: Some great comments. Terrific discussion. I have a question. Enough questions have come up about the 30-foot versus the 40-foot. Should that go back to Planning?

PAUL BLOSER: That was one of the reasons why I said at the front of the meeting that I was kind of in favor of only hearing the height tonight and put everything else, tabling pending further investigation and detail.

JORDON BROWN: There are remedies and thoughts and ideas expressed by this group that we don't have the jurisdiction to act on.

PAUL BLOSER: Correct.

ADAM CUMMINGS: The question becomes 30 feet, is it wide enough to put in what they need to put in? 25-foot road is what they're saying they need. The water main is already in. The sewer. So you need to look at the land.

JORDON BROWN: I agree, but there is also discussion about other entrance ways and other means of egress. I mean there are so many things brought up that it's a site plan discussion, as far as I'm concerned.

PAUL BLOSER: This is why I was wanting to probably table that as one of the three things at the front end of it pending further investigation so we could hear more detail as part of the site plan.

MR. FINLEY: Chairman?

PAUL BLOSER: We can still hold on that at this point.

Public comment is closed at this point.

UNIDENTIFIED SPEAKER: You closed that, so how is he going to speak?

PAUL BLOSER: Public comment is closed. It is just the Board right now speaking. He can stand there all night. We have closed it. We asked for any other input. There wasn't. I closed public comment. So as a Board now, we're going to take it to where we feel best to satisfy this.

JORDON BROWN: On the height issue, I guess it's a matter of taste, a matter of preference. I do prefer --

PAUL BLOSER: The architecture.

JORDON BROWN: -- the architectural look of this. And yes, that request from the Planning Board did cause extra height. Where the windows are located, the overall height of the rest of the structure would remain the same if that was taken off, and I think aesthetically.

PAUL BLOSER: The roof has nothing -- it will be three stories regardless.

ADAM CUMMINGS: The window sight lines actually go -- if you draw it from where a window would be on the third story, it goes through a tree, so it is the window -- it is the roof that the people will see, and I feel sympathy for residents being next to commercial. It's just a tough -- it's a tough way to live to begin with to have a residential house next to a commercial, period. I mean it's just -- as I said earlier, it's the land we need to look at. It's unfortunate that some of the people have purchased that land, but it was zoned that way before, and it's not our place to change that.

PAUL BLOSER: Right. In preliminary discussions that we had, Jett Mehta was prosing a high-quality, three-dimensional architectural type shingle, 30-year or greater, not a prefab 20-year shingle, which I'm -- will not last. So he was looking to put a quality roof on the thing for aesthetics and tie it into a higher-quality residential-type roof to give a buffer between commercial and residential.

And I think that's what really I think we're charged with here, is what do we want to look at as a group? Planning Board still has to give conditional use permit for a hotel. Um, so that is not our decision. You know, we have to say, is looking at the drawings, the renderings, um, in the end, if they were to give full approval for everything, what would we want to look at, a flat roof or architectural. Windows will not change. They will always maintain three, if they get the conditional use. I think we really have to weigh at this point the height and what we want to see. Because that really will drive what kind of design Planning Board sees, whether it be a flat roof or whatever. And strictly roof design at this point, not height.

ADAM CUMMINGS: Real quick, I would like to bring up another strange point. There is no signature on this application. Is that important? Just a question.

PAUL BLOSER: Counsel?

KEITH O'TOOLE: Just a moment. We're checking the original.

CHRIS KARELUS: There's signatures.

KEITH O'TOOLE: We're good.

JORDON BROWN: I thought you were going to say, you know, Kip (Finley) --  
(Laughter.)

JORDON BROWN: I just want to say, too, so many of the comments made by the audience, concerns and issues that were brought up are just beyond the scope of what we're

dealing with, and I think all of us, I don't want to speak for everybody, but I think all of us have similar concerns, similar points of view, but it is just beyond the scope of what we're supposed to be looking at.

PAUL BLOSER: I'm pleased to see public interest in it and the comments that are brought forward. It's just the majority of it needs to be addressed with Planning. If we maintain our focus right now, I mean I -- looking at this application, the -- of the four things that are before us right now, I would like to table the road frontage, the sign and the parking. Let's -- comments on that first.

ROBERT MULCAHY: I agree with that.

JORDON BROWN: I agree.

ADAM CUMMINGS: I agree with one exception. The 30-foot, be a stickler on that. I don't believe it sets a precedence of this Board, but we have heard a past application on a flag lot, looking to change from 40 feet to 30 feet, and I believe we went through with that one. So there is a way to put in the utilities and structures -- I still want to table it, but I want to say we have done that before.

PAUL BLOSER: We have. It was a straight run with no curves on it. It was a site-specific plan.

ADAM CUMMINGS: So is this one.

PAUL BLOSER: It was a clear run. And they virtually will never get tractor-trailer traffic in there, just because of the size of the unit back there. It would be panel vans or pick-ups.

DAVID CROSS: I agree to table everything except for the height.

JAMES WIESNER: I do, too. It's reasonable.

PAUL BLOSER: Then on those three, I'm going to -- do we have a movement to table those three?

JORDON BROWN: A movement?

PAUL BLOSER: A motion. A motion.

JAMES WIESNER: I make a motion to table the issues of the sign, the parking and the road frontage.

ADAM CUMMINGS: I second that.

The Board was unanimously in favor of the motion.

PAUL BLOSER: Those are tabled.

KEITH O'TOOLE: Until when?

PAUL BLOSER: Pending Planning Board approvals.

KEITH O'TOOLE: Very well.

PAUL BLOSER: I will put that as Planning Board preliminary approval.

Keith (O'Toole), I can leave SEQR for those three also?

KEITH O'TOOLE: You will still have to do SEQR for anything we approve tonight.

PAUL BLOSER: These three I would have to do SEQR on also? For tabling it?

KEITH O'TOOLE: Not the motion to table.

PAUL BLOSER: But to proceed with the height?

KEITH O'TOOLE: Before you approve any permit, variance or otherwise, you have to comply with SEQR.

MR. BRIXNER: Could you speak up, Mr. O'Toole?

KEITH O'TOOLE: What I indicated to Chairman was there is a requirement under the statute to comply with SEQR before any permit is issued by the Board. It doesn't have any relevance to tabling any applications because a tabling is not a final decision, so it doesn't require a SEQR determination.

MR. BRIXNER: Thank you.

PAUL BLOSER: On the application for the height, start with Jim (Wiesner). Final comments?

JAMES WIESNER: I really don't have any.

TRACY DiFLORIO: You're looking for comments at this point?

PAUL BLOSER: Yep.

TRACY DiFLORIO: I kind of agree with what Jordon (Brown) said in terms of aesthetics. And the fact that the height isn't going to change -- the granting of the variance isn't going to change the outcome of the building.

DAVID CROSS: Nothing additional.

ADAM CUMMINGS: I'd just like to point out the roof, since we have already stated three stories stays the same, parapet, it's a matter of preference, but adding the architectural addition is probably more cost and all that, and I really personally can't label that as self-created. It is something another Board has put towards then. The land itself that everybody else has stated is probably, yes, self-created hardship, but this type of variance is probably a balancing act.

JORDON BROWN: People can debate the aesthetics of it. I see it as an enhancement, and I -- I can see it's a valid point that other people may not see it as an enhancement, but I -- I don't think eliminating it would actually eliminate most of the concerns or issues that people have brought up.

PAUL BLOSER: Right.

ROBERT MULCAHY: I have no comment.

PAUL BLOSER: Okay. I guess I am also at the point where to a large part Planning and architectural have driven the design of the building and that would necessitate the need for a

taller roof to stay within what they're looking for consistency in the Town for design. But again, knowing that they still have to approve conditional use as a hotel, there is a lot that they still have to look at. This just gives them a direction where to start with their decisions. So based on that, we're ready to proceed to vote.

On the portion of the application for variance to erect a hotel to be 39'10" high (35' allowed), Paul Bloser made a motion to declare the Board lead agency as far as SEQR, and based on evidence and information presented at this meeting, determined the application to be a Type II action with no significant environmental impact, and Jordon Brown seconded the motion. The Board all voted yes on the motion.

Adam Cummings made a motion to approve the portion of the application related to the variance to erect a hotel to be 39'10" high (35' allowed) with the following conditions, and Jordon Brown seconded the motion. All Board members were in favor of the motion.

Paul Bloser reviewed the proposed conditions with the Board.

DECISION: Unanimously approved the variance to erect a hotel to be 39'10" high (35' allowed) with the following condition:

1. Height variance approval is subject to Planning Board design approvals at the maximum or below the requested variance.

Unanimously tabled the variance to allow front parking for 40 vehicles; variance to create a lot with 30' road frontage (40' req.); variance to erect a 7'1" x 11'6" single-faced freestanding sign to be 81 sq. ft. (32 sq. ft. allowed) all at property located at 3260 Chili Avenue for the following reason:

1. Variance requests for front parking, lot width, and sign are tabled pending further investigation and Planning Board preliminary approval.

The following finding of fact was cited:

1. Based on the proposed application, the height will look closer to that of the residential neighbors and is not a self-created hardship.

The 4/22/08 Zoning Board meeting minutes were approved.

The meeting ended at 10:40 a.m.