

A meeting of the Chili Zoning Board of Appeals was held on June 22, 2004 at the Chili Town Hall, 3333 Chili Avenue, Rochester, New York 14624 at 7:00 p.m. The meeting was called to order by Vice-Chairperson Dan Melville.

PRESENT: Gerry Hendrickson, Richard Perry, Michael Martin, Peter Widener,
Dennis Schulmerich and Vice-Chairperson Dan Melville.

ALSO PRESENT: Daniel Kress, Director of Planning, Zoning & Development;
Keith O'Toole, Assistant Counsel for the Town.

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

DAN MELVILLE: Let's discuss signage tonight. Number 1? Everybody see a sign on that one?

PETER WIDENER: No sign.

GERRY HENDRICKSON: No sign.

DAN MELVILLE: Will not be heard. Motion?

DENNIS SCHULMERICH: So moved.

GERRY HENDRICKSON: Second.

MICHAEL MARTIN: This is the second month with no sign for the application.

DAN MELVILLE: We'll deny without prejudice.

MICHAEL MARTIN: I'll make motion to deny without prejudice.

The Board was all in favor of the motion to deny without prejudice.

DAN MELVILLE: If there is anybody here for that application tonight, it will not be heard. They will have to make a new application to the Building Department if they want to proceed with that project.

How about Number 2? Okay?

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

DAN MELVILLE: 3?

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

DAN MELVILLE: 4?

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

DAN MELVILLE: 5?

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

DAN MELVILLE: 6?

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

DAN MELVILLE: 7?

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

DAN MELVILLE: 8?

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

DAN MELVILLE: 9?

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

DAN MELVILLE: 10?

GERRY HENDRICKSON: 10 wasn't up. It was laying on the ground. That was on 6/15.

DAN MELVILLE: That one was up when I went out. It was laying on the ground? You the only one that saw it? Anybody see it laying on the ground?

It is not properly posted. What do you want to do?

MICHAEL MARTIN: Posted and maintained for full ten days.

DAN MELVILLE: Motion?

MICHAEL MARTIN: I would make a motion to table it until the next meeting, until July -- what is the date of our next meeting -- July 27th.

DENNIS SCHULMERICH: Second.

DAN MELVILLE: All in favor?

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

DAN MELVILLE: That is Number 10.

Number 11?

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

DAN MELVILLE: Number 12?

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

RICHARD PERRY: I only saw one sign, and that is over 1,000 feet. It is a requirement for two signs, and technically three, because it is a -- over 1,000 feet, but I think two would have covered it.

DAN MELVILLE: I did notice that it only had one sign up on one side of the real estate sign. I was there. Can we have a directive from our legal counsel on this?

KEITH O'TOOLE: Based on a reading of the minutes from the last hearing, it would appear there was intention to continue the public hearing. Since the code doesn't require specifically a reposting, I would suggest that you hear the application.

RICHARD PERRY: Well, there was no, you know -- the meeting technically was continued to this month which would require the sign be up until after the meeting, or the hearing.

KEITH O'TOOLE: My take on the code is there is a ten-day posting requirement. There is no posting requirement subsequent to that.

RICHARD PERRY: What about people who, you know, are not aware that this is a continuing subject and don't have the opportunity to see it because the signs were not maintained?

KEITH O'TOOLE: Certainly the interested parties are -- already received notice and were here at the last meeting. There was a legal notice out in the paper and posting on the Town bulletin board, so there are multiple avenues for them to take.

RICHARD PERRY: All right.

DAN MELVILLE: Okay. We'll hear that one.

1. Application of Joseph Dunn, owner; 107 West Forest Drive, Rochester, New York 14624 for variance to erect an above-ground swimming pool to be 25' from side lot line (55' req.

abutting a street) at property located at 107 West Forest Drive in R-1-15 zone.

DECISION: Unanimously denied by a vote of 6 no with the following findings of fact having been cited:

1. Required sign was not posted for second month in a row.
 2. Applicant failed to appear at public hearing.
2. Application of Byrne Dairy, 240 Oneida Street, Syracuse, New York 13202, property owner: McCabe Family Development; for variance to erect a 6'1" x 11'7" double-faced freestanding sign to be a total of 140 sq. ft. (32 sq. ft. allowed), variance for sign to be 10' from front lot line (15' req.) at property located at 3771 Chili Avenue in G.B. zone.

Rich Williams was present to represent the application.

MR. WILLIAMS: Rich Williams, I work for Byrne Dairy, 240 Oneida Street, Syracuse.

We're here tonight for the variance for the sign. 5 foot variance and setback is requested due to the shape of the lot being irregular. It is not a square lot intersection there.

DAN MELVILLE: Okay. First of all, on your application, the disclosure, are you any kind of a government employee or anything?

MR. WILLIAMS: No. Retired Navy, but I don't know if that counts for anything. Hopefully, it does.

DAN MELVILLE: Okay. For the record, this went to Monroe County Department of Planning and came back as a matter for local determination.

RICHARD PERRY: Rich (Williams), I guess I'm trying to remember what the square footage of the sign across the street was. They wanted to have it enlarged.

MR. WILLIAMS: That is 71 on each side, total of 142.

DAN MELVILLE: I don't remember now with that one. We just had it -- probably in our minutes, too.

RICHARD PERRY: I couldn't find, it --

DENNIS SCHULMERICH: We did reduce it. We reduced it.

DANIEL KRESS: If I may, I checked on it and they're literally within a foot.

RICHARD PERRY: This would be within a foot.

DANIEL KRESS: Yes. I didn't bring the numbers, but it is virtually identical.

RICHARD PERRY: I'm assuming that that is a lighted sign?

MR. WILLIAMS: Yes, sir, that's correct.

RICHARD PERRY: And you are aware that we do ask all applicants to make sure that they put the street address on their --

MR. WILLIAMS: Yes.

RICHARD PERRY: For -- for emergency purposes?

MR. WILLIAMS: Yes. We agreed to that previously. Additionally, we agreed to a berm there. There were concerns of people sliding down the intersection. We agreed to put in a berm. It is approximately 50 actually from the corner where the sign would be located. There is also a large traffic light there that would slow somebody down before they got to us.

RICHARD PERRY: Hopefully.

MR. WILLIAMS: God bless if they don't.

PETER WIDENER: I'm curious of the total height and feet.

MR. WILLIAMS: Total 20 feet high. That is per your code.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

DOROTHY BORGUS - 31 Stuart Road

MS. BORGUS: Could we please see a copy of the sign?

DAN MELVILLE: I'm sorry. I should have asked ahead of time. I forgot all about it. I'm a

rookie here. You have to excuse me.

MR. WILLIAMS: Here you go.

MS. BORGUS: Could I ask the -- Mr. Kress, is this the height of the one at Arrow Mart, as well?

DAN MELVILLE: I have the sign here, but I'm trying to see where the height is. It doesn't show the height.

This is the one, but I don't have the height on it. I think it is about 20 feet.

MS. BORGUS: Does this 20 feet include this peak on the sign?

MR. WILLIAMS: Yes, it does.

MS. BORGUS: Could I see where this is going to be located on the property?

MR. WILLIAMS: Sure.

It is kind of hard to see actually.

MS. BORGUS: My next question would be are they planning on asking for any other sign variances?

MR. WILLIAMS: No. Honestly we had just gotten Krispy Kreme Donuts approved at the store. That is why we had to come back. We feel it is part of the permanent package. It is not a paper sign and we know Chili is strict about that. We would rather have something permanent.

MS. BORGUS: No signs then over the gas pumps?

MR. WILLIAMS: Just prices.

MS. BORGUS: I noticed.

DAN MELVILLE: Direct your questions here.

MS. BORGUS: Some of the other stations have the cow or something on the -- those --

DAN MELVILLE: Like Mobil has their Pegasus?

MR. WILLIAMS: Yes, we would. The cow is on there. That was part of the original sign package approved.

MS. BORGUS: That is already approved?

DAN MELVILLE: Yes.

MS. BORGUS: Well, it is large, but if Arrow Mart got the same package, I guess we can't do much about it.

DAN MELVILLE: It is a big improvement to that corner, I think, too.

MS. BORGUS: We'll see. In two years, we'll see.

Dan Melville made a motion to declare the Board lead agency for SEQR, made a determination of no significant environmental impact, based on the testimony and the material presented at this hearing, and Gerry Hendrickson seconded the motion. The Board all voted yes on the motion.

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

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

1. In keeping with neighboring businesses.

Note: A sign permit is required prior to installation of this sign.

3. Application of Mr./Mrs. Robert Dent, owner; 14 Watch Hill Drive, Rochester, New York 14624 for variance to allow existing front porch to be 56' from front lot line (60' req.) at property located at 14 Watch Hill Drive in R-1-15 zone.

Robert Dent was present to represent the application.

MR. DENT: At the time of the application we were the owners of 14 Watch Hill Drive. We have now moved to 54 Foxtail Lane, but when the survey was done for the sale of the house, the --

DAN MELVILLE: They caught it.

MR. DENT: The buyer's attorney noticed it doesn't meet the setback requirement.

KEITH O'TOOLE: For the record, Chairman, I am that attorney so I won't be offering any legal advice on this application.

DAN MELVILLE: So noted.

MR. DENT: We are the original owners of the house, and the porch was built when the house was built. Nothing has been added.

DAN MELVILLE: How old is the house?

MR. DENT: Built in '67, so it is 37 years old. There are seven houses identical to it on the same street with the same porch. This is the first time I have seen any problems with this, but I understand.

DAN MELVILLE: Did the house close?

MR. DENT: The house is closed.

DANIEL KRESS: If I understand correctly, no new construction is actually proposed here?

MR. DENT: That's correct.

DANIEL KRESS: It is a question of utilizing what is there?

MR. DENT: Yes.

DAN MELVILLE: Does that predate the code?

DANIEL KRESS: It predates our current rules. It doesn't mean it predates our zoning requirements.

DAN MELVILLE: So it was a preexisting, non-conforming?

DANIEL KRESS: My guess is Mrs. Reed went back to the prior version of the zoning and discovered it was a comparable setback requirement. But I just wanted to clarify for the record, we're not talking about any new construction here.

DAN MELVILLE: No. It has been there for a long time.

COMMENTS OR QUESTIONS FROM THE AUDIENCE: None.

Dan Melville made a motion to declare the Board lead agency for SEQR, made a determination of no significant environmental impact, based on the testimony and the material presented at this hearing, and Peter Widener seconded the motion. The Board all voted yes on the motion.

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

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

1. Consistent with the neighborhood.

Note: A building permit is required for this porch.

4. Application of Mr./Mrs. Michael Zampatori, owner; 18 Leah Lane, North Chili, New York 14514 for renewal of conditional use permit to allow a nail salon business in home at property located at 18 Leah Lane in R-1-15 zone.

Fran Zampatori was present to represent the application.

DAN MELVILLE: Would you like to tell us what you're doing there and how things are going?

MS. ZAMPATORI: Nothing has changed. I had the nail salon -- had it for a year. Still the same, one car in the driveway, no noise, no signs, pretty much going smooth.

DAN MELVILLE: Same conditions are okay as the last time?

MS. ZAMPATORI: Yes.

DAN MELVILLE: No on-premises advertising, no on-street parking pertaining to the business, customers by appointment, no more than two customers at one time, no outside employees, hours of operation as per application and applicant to maintain required State and local licenses.

MS. ZAMPATORI: Everything is the same.

DAN MELVILLE: Side table, any complaints?

DANIEL KRESS: No, sir.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

JERRY BRIXNER - 14 Hartom Road

MR. BRIXNER: General question. Are there any term conditions on this particular application?

DAN MELVILLE: Yes. The ones I just read.

MR. BRIXNER: I don't mean that. I mean time.

MICHAEL MARTIN: It was granted for one year, a year ago.

DAN MELVILLE: But we'll discuss extending that.

MR. BRIXNER: If there has been no problems, I would offer from the audience that it be extended.

DAN MELVILLE: We usually do after the second one as long as we know they're going okay with no problems.

Dan Melville made a motion to declare the Board lead agency for SEQR, made a determination of no significant environmental impact, based on the testimony and the material presented at this hearing, and Gerry Hendrickson seconded the motion. The Board all voted yes on the motion.

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

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

1. Granted for a period of five (5) years.
2. No on-premises advertising.
3. No on-street parking pertaining to the business.
4. Customers by appointment.
5. No more than two (2) customers at one time.
6. No outside employees.
7. Hours of operation as per application.
8. Applicant to maintain required State and local licenses.

The following finding of fact was cited:

1. Customary Home Occupation.
5. Application of Brenda Covill, owner; 2 Cornflower Drive, North Chili, New York 14514 for approval to amend conditional use permit granted on 1/27/04 for an office in home. Applicant is requesting to allow two outside employees (one outside employee approved) at property located at 2 Cornflower Drive in RM zone.

Brenda Covill was present to represent the application.

MS. COVILL: Good evening. My name is Brenda Covill. I live at 2 Cornflower Drive. The premise of me being here this evening is to obtain permission for a second person to work with me who

is not a relative.

DAN MELVILLE: How come the change from the last time?

MS. COVILL: There wasn't a change last time. That particular time I petitioned and asked for two people, but the question came up of the concern about one not being a relative, and I was told at that time I should wait a while and then come back again and petition.

DAN MELVILLE: Who told you that?

MS. COVILL: The Board.

DENNIS SCHULMERICH: I don't recall that discussion.

DAN MELVILLE: I don't either.

DENNIS SCHULMERICH: Can we pull the meeting minutes for that meeting?

DANIEL KRESS: I would be happy to do that, but I could save some time. The gist of the discussion was that the business did not actually meet the definition of a customary home occupation due to the fact that there were non-related employees on the premises, so at the time the applicant was advised that in addition to needing a conditional use permit for the customary home business, that a variance due to the number of non-related employees was also in order.

DENNIS SCHULMERICH: I believe there was hesitancy at the last meeting about having outside non-family members and employees, and one of the concerns was how long it would take for them to come back and request it. And it didn't take very long.

DAN MELVILLE: No. Do you have anything else to say before we open it up to questions?

MS. COVILL: No.

DENNIS SCHULMERICH: So what convinces us that there won't be a request in six months for a third person?

MS. COVILL: Because I don't need a third person.

DENNIS SCHULMERICH: I thought that is what we heard in February.

RICHARD PERRY: No, no. We did definitely hear that they needed a second and it was creating a hardship because we only approved one.

DENNIS SCHULMERICH: I guess I'm having a problem with the residential area becoming businesses with outside employees, irrespective what the rationale may be.

PETER WIDENER: Yes. I have a question about the place of businesses on the Cornflower. Do you do business in any other places?

MS. COVILL: Um, I -- I work for a company in North Chili.

PETER WIDENER: Does that relate to this business on Cornflower?

MS. COVILL: Yes. I'm employed by them. I work -- excuse me. I work at home mainly because of my husband's illness. My --

PETER WIDENER: But we're looking at the Cornflower address right now?

MS. COVILL: Yes.

PETER WIDENER: This business is also run off Buffalo Road, too.

DAN MELVILLE: That is where she is employed by.

PETER WIDENER: So there are two locations in my mind. There should only be one.

MS. COVILL: It has nothing to do with the other location in that sense.

PETER WIDENER: I'm confused.

MS. COVILL: The other location is in -- it is behind the post office there. It is an established business and it is in a business location.

PETER WIDENER: Okay. It has nothing to do with what you're doing at this property?

MS. COVILL: I keep the financial records for the company, so I am not in contact with that office except by the phone.

PETER WIDENER: All right. I can understand that now. Thank you.

MICHAEL MARTIN: I was just reading the letter from your -- is it your daughter?

MS. COVILL: Yes. She is here.

MICHAEL MARTIN: The two outside employees would come in one vehicle from the office?

MS. COVILL: Yes. They car pool. They go to the main office behind the Chili Post Office and they get into the work car and come over to my house.

MICHAEL MARTIN: All you're doing is just the bookkeeping?

MR. COVILL: Yes.

MICHAEL MARTIN: From the home office.

DAN MELVILLE: I have a question. Why do they need to go to your home to do the bookkeeping?

MS. COVILL: Because they need -- I'm in charge of the -- I'm the Treasurer of the company.

DAN MELVILLE: You can't communicate back and forth by phone?

MS. COVILL: No. There are questions all of the time, and I have to be there to answer the questions and give directions so we have to work together. It's -- it's a thing that we need to be together.

DAN MELVILLE: You really belong at the office.

RICHARD PERRY: Well, trying not to be hard-hearted, this is a situation caused by your husband's health, and you have to have the two people there. Now, unless I misunderstood, you have just admitted to us that the two people have been coming to your house for the last several months?

MS. COVILL: Well, because that is what I applied for when I first came here.

RICHARD PERRY: But you were only approved for one person, but you had the two people coming all this time.

MS. COVILL: It was my understanding it would be all right until we came to the next meeting.

RICHARD PERRY: That part I certainly don't recall. Okay. I'm trying to be very understanding of the situation, but I think it was made very clear at the time that one, and only one, employee would be allowed, and that you have been having two people coming.

MS. COVILL: I must have misunderstood because I thought the situation would be that way until it was -- all right to be that way until I came again.

DENNIS SCHULMERICH: In light of the confusion, I would like to see copies of the meeting minutes from that meeting so I could review what was said and not said. I am confused what we agreed to versus what the lady believes we agreed to.

DAN MELVILLE: You don't remember what month that was in?

MS. COVILL: February, I believe.

DAN MELVILLE: I believe I have my minutes with me.

DANIEL KRESS: It was February this year?

DAN MELVILLE: Do you have the minutes?

DANIEL KRESS: I have the decision letter, which is dated February -- excuse me. It was the January meeting. Decision letter went --

DAN MELVILLE: Do you have the February minutes?

I have my February minutes if you want to go through them.

RICHARD PERRY: This would not be a permanent situation; am I correct in assuming that?

MS. COVILL: Well, I have no control over that. I don't know how long my husband's illness will be.

RICHARD PERRY: Understood. I'm certainly not trying to tread on difficult waters here, but this is not something that you would be looking for permanently, I would assume?

MS. COVILL: Um, I would think not. I don't know.

DAN MELVILLE: Didn't we put a time limit on this one when we approved it the last time?

DANIEL KRESS: Granted for a period of one year. Conditional use was granted for a period of one year at the January 27th meeting.

DAN MELVILLE: January 27th, so don't bother.

RICHARD PERRY: What else does it say? Does it say anything about --

DANIEL KRESS: "Application granted upon following conditions, granted for one year, no on-premises advertising, no on-street parking pertaining to the business, hours of operation as per Application 5, one outside employee."

RICHARD PERRY: Okay. And you did receive a copy of that, did you not?

MS. COVILL: Yes, I did.

DAN MELVILLE: Okay. No other questions from the Board? Side table, any other comments?

KEITH O'TOOLE: Briefly. If you have more than one employee, you're not meeting the definition of a customary home occupation, and, therefore, the use really does not qualify. It may be more appropriate to deem this as a use variance rather than an area variance.

DAN MELVILLE: Which would require --

MS. COVILL: I thought that is what we were here for today to -- for a variance.

DAN MELVILLE: You're here to amend your conditional use permit, it says here.

KEITH O'TOOLE: I believe the issue -- the notice was given it was a variance. In terms of the proof, however, we have to look at it from the point of view as a use variance.

DAN MELVILLE: Now, if this is a variance and not an amendment to that conditional use, that means there is no time limit on if we grant a variance?

KEITH O'TOOLE: You can pose a time limit if there is a reason for it.

DENNIS SCHULMERICH: I'm confused. Are we here for variance or conditional use permit?

DAN MELVILLE: Our paperwork says amendment to the conditional use permit.

I wasn't prepared to vote on a variance.

KEITH O'TOOLE: It could be properly characterized as a use variance, that's correct.

DENNIS SCHULMERICH: The question wasn't answered. It may appropriately -- may more appropriately be defined as a use variance, but what we have been informed we are voting on about based on the paperwork in front of me is a conditional use permit. What am I voting on?

KEITH O'TOOLE: My take would be use variance.

DENNIS SCHULMERICH: So unless we specify a sunset term in the use variance, it will be in perpetuity?

KEITH O'TOOLE: That's correct.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

JENNY COVILL

MS. JENNY COVILL: Jenny Covill, I'm Brenda's mother, and I have the company that is referenced, and the company is called Dawn Breaker, and we employ 37 people and we're on Union Street. My mother has worked for the company for 14 years, and a few years ago, when things became a hardship at home, my mom, who has -- does wonderful work for me because we do -- it is government accounting -- asked if she could work from home. How this began was they had some refinements done downstairs and the Building Inspector had come over and had noted that my mother had two employees there. It is not that we had hired any. We didn't know it was appropriate to ask for permission. So we had two employees there and were told we needed to come.

My mom came in January and explained the situation. And at that time they said we should come back. And as has been noted, customers don't go there. There is just one car in the driveway. All they're doing is bookkeeping. It is not a situation that would increase. It was a situation that was preexisting that we didn't recognize that we needed to come, and so that is why we came. And then we felt we would come back and ask for -- I'm not sure.

DAN MELVILLE: You were granted one when you were approved, but kept two working.

MS. JENNY COVILL: We had two and mentioned it at the time. I was asked, is it --

DAN MELVILLE: I think it was -- if it was mentioned to me, I would have voted no.

MS. JENNY COVILL: It was mentioned, and we weren't told to fire anybody.

DENNIS SCHULMERICH: But the meeting notes do not indicate there was a discussion of permission to allow two employees, even though we approved one. You left here with an understanding --

MS. JENNY COVILL: I'm not saying there was permission.

DAN MELVILLE: Just because the Board doesn't tell you to fire someone doesn't mean you can continue to have two employees there. We don't do that.

DENNIS SCHULMERICH: There appears to be a wanton disregard for what the approval was in January.

MS. COVILL: But it wasn't disregard. It may have been a misunderstanding, but it wasn't disregard. Absolutely not. We came back as soon as we could to do -- what was the appropriate thing.

DENNIS SCHULMERICH: What brought you back this month? A complaint?

MS. JENNY COVILL: We were told in January to come back as soon as possible. We waited a number of months and come back.

MS. COVILL: They told us to wait.

DENNIS SCHULMERICH: Who told you to wait and come back? That is what is confusing. I don't believe this Board told you that. I'm trying to figure out where you heard it.

MS. COVILL: We heard it here. I can't tell you.

DENNIS SCHULMERICH: Here, in the building?

MS. JENNY COVILL: It was recommended by the two gentlemen over here. The Zoning Board or Assistant Counsel.

DENNIS SCHULMERICH: We may want to wait for him to come back -- shouldn't speak for our attorney, but I suspect he wouldn't provide that advice.

KEITH O'TOOLE: I don't recall providing that advice, certainly not six months later. If she was in compliance I would -- may have suggested they come back for the proper permit.

MS. COVILL: When we came back for the paperwork, it was my understanding they would give us the correct paperwork. If they gave us the wrong thing, I have no idea how the Town works. So if I have presented the wrong paperwork, that is simply from not being counseled at the desk as to what I should get.

DENNIS SCHULMERICH: I'm significantly hesitant about amending a conditional use permit. I'm completely against a use variance.

DAN MELVILLE: One question. When you filled out the application, did one of you fill it out?

MS. JENNY COVILL: Yes, I did.

DAN MELVILLE: Because you did check conditional use permit and then wrote "amended" next to it.

MS. COVILL: I thought that is what we needed.

MS. JENNY COVILL: I apologize, we don't necessarily know the names of the different things, but apparently we didn't. I mean we didn't know at the time we had any employees there initially that we needed to come to the Town for. We're trying to do things -- what we should do, but it appears that we misunderstood something.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

DOROTHY BORGUS - 31 Stuart Road

MS. BORGUS: No questions. I have comments. I distinctly remember this discussion back in January that went on for quite some time. You had the same problem then that you have now. And these people insisted that they had to have two employees. You turned them down. You told them one. And I cannot certainly agree with any kind of a use variance. I agree with Mr. Schulmerich. This is not a situation that called for that. And where I appreciate that these people are trying to make do and work around health problems for a family member -- I have all kinds of sympathy for that, but this is -- this is not a conditional use permit. It isn't the right kind of business. It just doesn't fit. And if -- I know that you say you decide each case on its own merit, and you don't look at other decisions; however, on Application 2, with Byrne Dairy, you could see the situation. One was allowed across the street. Now we have to allow the one on the opposite side. I apply the same situation to this. If you allow this, what are you starting? I think this is something that should be turned down. Thank you.

DAN MELVILLE: Thank you, Dorothy (Borgus).

KEITH O'TOOLE: Perhaps the best thing to do, if this is -- is adjourn the matter to next month, allow the applicants the opportunity to refile with the proper use variance application materials. This way, preserving their application fee. I mean, after all, they did come back. Did they come back as promptly as we prefer, no. But they did come back. So...

DENNIS SCHULMERICH: The problem I'm having is, they have come back to ask the same question that was asked in January. And that was to have two employees, and we made it clear in January that we would not approve two employees. It is not obvious to me what has changed in that time frame that would preserve the -- or modify the integrity of the decision such that we would have to agree.

MS. COVILL: Excuse me, that was not my understanding. My understanding was we were to come back to ask for the second person.

DENNIS SCHULMERICH: Who told you that?

MS. COVILL: Why would we be here if we weren't --

DENNIS SCHULMERICH: All I'm asking is who told you this?

MS. JENNY COVILL: I don't know which individual on the Board, but that was very clearly

our understanding. And I mean there was a joke about you maybe should adopt the other person so you would have the other family member there, and I don't know who said -- on the Board said that, but it was said.

DENNIS SCHULMERICH: I believe Sandy does a good job of capturing of the comments made during the meeting notes so if we could adjourn for a few minutes, I would like to see the meeting minutes.

DAN MELVILLE: We can close this and hold this decision to the end. We'll make our decision at the end of the meeting on this.

6. Application of Doug Stacey, owner; 932 Howard Road, Rochester, New York 14624 for variance to erect two double-faced freestanding signs: Sign #1 to be a total of 64 sq. ft. (32 sq. ft. allowed) and to be placed on front lot line (15' req.), Sign #2 to be a total of 8 sq. ft., variance to erect two wall signs totaling 44.5 sq. ft. at property located at 1415 Scottsville Road in G.I. zone.

Doug Stacey and Mike Mammano were present to represent the application.

MR. STACEY: We're presently adding a Valvoline Express Care to the business and rearranging the present Rent-A-Wreck business there. We have a sign package Valvoline wants up and Rent-A-Wreck signs to redirect traffic in the parking lot basically.

DAN MELVILLE: I assume the sign will be eliminated?

MR. STACEY: Correct.

DAN MELVILLE: Why does it have to go on the property line?

MR. STACEY: Because the base and everything is there. The existing sign is coming out. The base is already there. The electric is already there.

DAN MELVILLE: You're replacing --

MR. STACEY: The existing red pole with Rent-A-Wreck and Stacey Camper Rental will be going down and Valvoline will be going up.

RICHARD PERRY: The same location as the current Rent-A-Wreck sign?

MR. STACEY: Correct.

RICHARD PERRY: You have a variance for it?

MR. STACEY: Yes.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

DOROTHY BORGUS - 31 Stuart Road

MS. BORGUS: That looks awful. Look at that top picture. We made a lot of improvements on Scottsville Road. This is a huge step backward. It looks awful. Is this bigger than the sign that exists there now?

MR. STACEY: This sign is coming down. This sign will be put in place of it. (indicating). We wouldn't have two signs. This is all gone, pole, lights, sign and everything.

MS. BORGUS: But it will be higher; am I right?

MR. STACEY: 6 foot higher.

DAN MELVILLE: It will be higher than the original.

MR. STACEY: But brand new, freshly illuminated sign. Yes, that does look awful. It is coming down. That is the reason we're taking it down.

MS. BORGUS: How many square footage is in the existing sign?

MR. STACEY: 32 square feet -- or wait a minute. I'm not sure.

DAN MELVILLE: The existing one?

MR. STACEY: I'm not sure, to be honest with you. The sign company was supposed to be here tonight.

MR. MAMMANO: Mike Mammano from Clinton Signs. We'll be the ones working with the store to try to take the old signage up with the new signage. The old signage does come down. Off the top of my head, a 4 x 6 is anywhere between 24 and 32 square feet approximately by the looks of it. The new sign is slightly higher with a different configuration. Internally illuminated with a less translucent

type finish, where the old was a white acrylic with graphic on it. The old sign is older style with fluorescent bubbles. Kind of the older style, where the new sign has more of a variated translucent color to the panels. There is less illumination through the panel. The illumination comes mostly through the copy sections, the word "Express," the word "Valvoline." So the whole sign won't emanate as much light as the old sign did.

MS. BORGUS: Is this applicant still going to be in the Rent-A-Wreck business?

MR. STACEY: Yes. It has been moved to the rear of the building. Before the Planning Board we agreed to clear all of the cars out in the front and use rear parking for the Rent-A-Wreck. We have done that since the 1st of June. The only thing in the front space is the one or two trailers.

MS. BORGUS: Mr. Chairman, what provision is he making for Rent-A-Wreck signs?

MR. STACEY: One small sign on the building next to the bay doors and one across by the pine trees. Rent-A-Wreck doesn't need a lot of signage. We found over the years everybody doing this is out of the phone book and internet. You give them a landmark, they find you.

DENNIS SCHULMERICH: Rent-A-Wreck on the light pole?

MR. STACEY: Coming off.

DAN MELVILLE: On the building?

MR. STACEY: To the right side of the garage doors, that will say "Rent-A-Wreck in the rear" with a sidewalk for them to walk around back.

MS. BORGUS: I'm confused by sign two. To be a total of 8 square feet, variance to erect two wall signs totaling 44.5 square feet. I don't equate that.

MR. STACEY: New Valvoline sign will be here (indicating). The smaller Rent-A-Wreck sign will be over here (indicating). The freestanding Rent-A-Wreck sign will look like this, and it will sit over here in the lawn (indicating). Just a traffic direction. Good 20 feet off the road. Just when somebody pulls in the lot, they know to drive around back.

MS. BORGUS: According to this -- to your application, what is the reference to a total of 8 square feet?

DAN MELVILLE: Which one is that 8 square feet? Is that the Rent-A-Wreck?

MR. MAMMANO: Building --

MR. STACEY: I don't know. That was done by Avery's.

MS. BORGUS: So we're actually looking at four signs; is that correct?

MR. STACEY: Replacing two existing signs.

MS. BORGUS: And then two more. So we're looking at four signs?

MR. STACEY: But we're taking down two. There is Rent-A-Wreck sign on the front of the building also coming down.

DAN MELVILLE: You have no idea what that sign two is, the 8 square feet? If not, we're going to take it out.

MICHAEL MARTIN: What is going up? What are you proposing to install? The Valvoline sign?

MR. STACEY: Street sign is out; Valvoline sign on the building and one Rent-A-Wreck on the building and one freestanding Rent-A-Wreck.

DAN MELVILLE: Three signs?

MR. STACEY: Four.

MR. MAMMANO: The Rent-A-Wreck signs are basically directional signs, not advertising. It is a way to guide the public to access of the store. However, the Board views it -- it is just directional signage. It is Rent-A-Wreck with an arrow on it. That is an 8-square-foot sign, the one in the lawn with an arrow on it.

MR. STACEY: They're referring to the directional Rent-A-Wreck sign.

DAN MELVILLE: Is that really needed?

MR. STACEY: We believe so to keep the traffic flow -- keep the Rent-A-Wreck driving around back.

MS. BORGUS: Mr. Chairman, if you add those up, it is 116.5 square feet of signage. That is just totally out of the character, I think, with what we're trying to establish on Scottsville Road. Some huge improvements have been made down there. Many more need to be made, but this certainly would be a step in the wrong direction. It's too much. Thank you.

Dan Melville made a motion to declare the Board lead agency for SEQR, made a determination of no significant environmental impact, based on the testimony and the material presented at this hearing, and Michael Martin seconded the motion. The Board all voted yes on the motion.

Michael Martin made a motion to approve the application with no conditions, and Gerry Hendrickson seconded the motion. The vote on the motion was 4 yes to 2 no (Dennis Schulmerich, Dan Melville).

DECISION: Approved by a vote of 4 yes to 2 no (Dennis Schulmerich, Dan Melville) with no conditions, and the following findings of fact were cited:

1. Consistent with other businesses in the area.
2. Signage is an improvement over existing signs.
3. Directional signs will help customers find the business in the rear of building.

Note: A sign permit is required prior to installation of these signs.

7. Application of Richard Judd, owner; 36 Pine Knoll Drive, Rochester, New York 14624 for variance to erect an addition to garage to be 54' from front lot line (60' req.) at property located at 36 Pine Knoll Drive in R-1-12 zone.

Richard Judd was present to represent the application.

MR. JUDD: I would like to extend the front of my garage only 6 foot. As you mentioned, that would reduce the setback from 60 foot to 54 feet. We have had an opportunity to examine the front of the premises, and in my application, I have noted that there would be significant problems in attempting to expand the garage to the rear, and I have an architectural sketch here I would like you to see. You will note, first of all, that the property elevation drops off 6 1/2 feet toward the back, so that would be very, very difficult to build a wall, fill it.

It would be very difficult to build the super structure to extend the garage to the rear. There is a raised deck out there, and it would take 40 percent of the raised deck away, eliminate a French door, which is an important part of the house aesthetics. Those are the reasons that I would like to extend it to the front rather than the rear.

I would like to add a note that there are numerous mature pine trees, dogwood trees, rhododendrons, et cetera, in the front yard, so that this extension of the garage out 6 foot would be difficult to see by adjacent neighbors or actually across the street, or from the street itself.

And I guess that's all I have to add.

DAN MELVILLE: Do you know if there are any other garages on your street that extend that far into the setbacks?

MR. JUDD: Some of the architecture has the garages extending out, but I have no idea what the setback is.

DAN MELVILLE: What do you need the extension for?

MR. JUDD: For years we have had Vegas -- let's say small cars. I'm an auto hobbyist and I would like to buy for nostalgia purposes a '63 Chevrolet, which was the first new car I ever owned, and it is about 2 1/2 foot longer than the shorter cars that I have owned for various reasons.

DAN MELVILLE: And it won't fit in the garage currently?

MR. JUDD: Your needs for space in a garage over years increase, and it won't fit in right now.

DENNIS SCHULMERICH: You must really want that Chevrolet to modify your house.

MR. JUDD: I do. We're pretty concerned about the way the house looks and the way the neighborhood looks and it be done right. And I am hoping it is going to happen.

PETER WIDENER: Will you be doing the proposed extension of the garage, or will it --

MR. JUDD: It will be done by a professional contractor.

PETER WIDENER: You won't build it?

MR. JUDD: I will not. As far as the neighborhood disruption is concerned, it will be done in less

than two weeks. In and out, period, so it will not be an extended eyesore to the community.

MICHAEL MARTIN: The addition will match the existing garage?

MR. JUDD: The front is cedar clapboard and that will be matched and it will have -- on the back of it is a view of what it would look like from the south elevation. But yes, it will be totally matched.

RICHARD PERRY: Do I need to recuse myself because I sell Chevrolets?
(Laughter.)

COMMENTS OR QUESTIONS FROM THE AUDIENCE: None.

Dan Melville made a motion to declare the Board lead agency for SEQR, made a determination of no significant environmental impact, based on the testimony and the material presented at this hearing, and Dennis Schulmerich seconded the motion. The Board all voted yes on the motion.

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

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

1. Demonstrated need for additional space.
2. Consistent with neighborhood.

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

8. Application of Richard Sloan, Jr., owner; 11 Ruth Terrace, Rochester, New York 14624 for variance to erect a 14' x 24' utility shed to be 336 sq. ft. (180 sq. ft. allowed), variance for shed to be 6'4" from side lot line (8' req.) at property located at 11 Ruth Terrace in R-1-12 zone.

Richard Sloan was present to represent the application.

MR. SLOAN: I'm Richard Sloan, Jr., residing at 11 Ruth Terrace. I desire to build a shed on the property.

DAN MELVILLE: Before you go any further, are you a government agent or anything?

MR. SLOAN: No.

DAN MELVILLE: You didn't check that off. Go ahead.

MR. SLOAN: I desire to build a shed on the property, 6 foot 4 from the side property line, 60 feet from the rear, over 60 feet from the property. At this time, there is no existing shed or there is a metal shed on the property right now. It is a very small shed, very beat up. It is an eyesore. I would like to get rid of that. There is no garage on the property. I just have a cluttered yard. I need to be able to put toys and the bicycles and the lawn mowers and stuff like that, so that is what I am proposing.

DAN MELVILLE: Is there a reason why you can't put it that little bit extra so it is 8 feet?

MR. JUDD: Actually there is. The house has a driveway that actually at one time extended all of the way back. It must have had a garage way in the back years ago. That has been gone and taken away, but the driveway existed. I removed about 12 feet of the driveway because it went back too far, it was extending into the backyard. I removed that. But the shed would sit nicely on it, from there and over. You know what I am saying? The driveway is actually 6 feet 4 inches from that side lot line. That is also backing up to -- there is the -- my neighbors have a garage there, so it is not like it is blocking a view or anything like that. It is going to be shorter than theirs is, you know. It is just where it is -- I'm hoping I can set it, you know.

RICHARD PERRY: Will you have any electricity to it?

MR. JUDD: Not at this time.

RICHARD PERRY: How tall will the shed be?

MR. JUDD: Minimal of 12 feet.

RICHARD PERRY: I don't have any other questions.

PETER WIDENER: What type of floor is going in there?

MR. JUDD: It wouldn't have a flooring. It would be asphalt flooring.

DAN MELVILLE: It is going over the driveway in the back.

DENNIS SCHULMERICH: Looks like the existing metal shed is coming out also 6 foot 4 from the lot line?

MR. SLOAN: That's correct.

DAN MELVILLE: Did that have an existing variance on it?

MR. SLOAN: I don't believe so. I'm not too familiar with it.

DAN MELVILLE: It looks like it has been there for a while.

MR. SLOAN: Yes. And the yard, as you can see, is pretty beat up. I have nowhere to put anything.

COMMENTS OR QUESTIONS FROM THE AUDIENCE: None.

Dan Melville made a motion to declare the Board lead agency for SEQR, made a determination of no significant environmental impact, based on the testimony and the material presented at this hearing, and Gerry Hendrickson seconded the motion. The Board all voted yes on the motion.

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

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

1. Improvement to the property.
2. Existing driveway in rear of property makes a good place to place the shed.
3. Removal of old metal shed and replacing with new shed in same place.

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

9. Application of Martin Storke, owner; 2535 Scottsville Road, Scottsville, New York 14546 for variance to allow the total square footage of garage area, including a new 48' x 80' detached garage to be 4700 sq. ft. (900 sq. ft. allowed) at property located at 2535 Scottsville Road in A.C. zone.

Martin Storke was present to represent the application.

DAN MELVILLE: This did come back from Monroe County Department of Planning as a matter for local determination and also was approved by the Airport Review Committee.

MR. STORKE: We're going to build a pole barn, 48 by 80. But when I went to -- well, it is on the print, that was approved when we did the house. When I went to get the building permit, the enforcement officer told me that if you're going to keep anything else in there besides agricultural equipment, like a horse trailer, motor home, ice boat, anything of that, you have to change the name from a barn to a garage. So here I am.

DAN MELVILLE: And what are you going to be storing in there?

MR. STORKE: Just about that. The horses and all of the stuff that is related will --

DAN MELVILLE: Motor vehicles?

MR. STORKE: And on our end, I have six kids. Three snowmobiles, ice boat, motor home.

DAN MELVILLE: Concrete floor in there?

MR. STORKE: No. Just in one like -- well, he said those have to be kept on a noncombustible floor, so like 20 by -- 20 by 20 in front of the one door to keep them on.

DAN MELVILLE: So you will put concrete in part of it?

MR. STORKE: Yes. Whatever section. He said it has to be noncombustible where you park the motor vehicles. I would say it will take -- the shortest bay across is 48. As you are going in front of the door, you pour that direction, so 20 by 48.

DAN MELVILLE: Dan (Kress), can you do just part of it like that?

DANIEL KRESS: To be honest, I haven't looked into that question. It is -- certainly at a minimum, part has to be done, if not the entire thing.

DAN MELVILLE: You will look into it before you issue a file permit on it?

DANIEL KRESS: Yes.

MR. STORKE: The rest would be number two crushed stone with like aughts and dust or something on top of it. The horse barn will have the regular clay and the old boards.

DENNIS SCHULMERICH: Any commercial intent for the building?

MR. STORKE: No.

PETER WIDENER: What is the acreage you have in there?

MR. STORKE: We had -- 14. I sold off the part by the -- 14 something, 14 and three-quarters or something.

PETER WIDENER: I'm trying to locate this on the map where that building is.

MR. STORKE: The one marked "barn" there at the end of the driveway. See how the driveway loops around and around behind the house and back up in the corner?

PETER WIDENER: Where is the house?

MR. STORKE: Right there (indicating). This is the street here (indicating). This is Scottsville Road (indicating).

DAN MELVILLE: How far back does that set back from the road, do you know? Just out of curiosity. There is a pretty good distance?

MR. STORKE: Yes. Almost 1160, probably like 9, 9 something. 980, give or take.

RICHARD PERRY: This area behind the house and the barn, what is that next property?

MR. STORKE: The Greenway Trail.

RICHARD PERRY: What is back here?

MR. STORKE: The narrow piece, 86 feet is the Greenway Trail, and the other piece is Krenzer's corn lot.

RICHARD PERRY: So there are no homes within any kind of distance?

MR. STORKE: One up on the hill is about 3800, 14,000 feet, something like that.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

DOROTHY BORGUS - 31 Stuart Road

MS. BORGUS: I had a question on the square footage, because 48 times 80 is 3,840. Not 4700. So...

DAN MELVILLE: That includes garage, too.

MR. STORKE: When the Town does it, they do a total calculation.

DAN MELVILLE: The garage for the house is counted.

RICHARD PERRY: They add that in, too.

DAN MELVILLE: It is total.

MS. BORGUS: How big is this parcel?

RICHARD PERRY: 14 acres.

MR. STORKE: 14 3/4 acres.

RICHARD PERRY: Did I understand you to say that part of this will be -- the building will be used for horses?

MR. STORKE: Yes.

RICHARD PERRY: What are you going to use to separate them from the vehicles? Let's say there is a gasoline spill or something of that nature.

MR. STORKE: I was just going to run a stud wall in cross and turn the steel the other way. Turn it the right side in and put my oak boards on the back side for the horses.

RICHARD PERRY: So you will basically subdivide the garage?

MR. STORKE: And to the extreme because the horses go on the side facing the city. And the

paddocks are only 12 by 14, so -- and then clear to the other side because that is the spot where I will put the door to be able to pour the slab. That will be separated by 7 feet or something. I was figuring on taking the bright steel and turning the white side towards the motorized vehicles, just for separation.

Dan Melville made a motion to declare the Board lead agency for SEQR, made a determination of no significant environmental impact, based on the testimony and the material presented at this hearing, and Dennis Schulmerich seconded the motion. The Board all voted yes on the motion.

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

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

1. Consistent with the area.
2. Enough acreage to support a large building.

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

10. Application of Jeff Lange, owner; 140 Morgan Road, Scottsville, New York 14546 for variance to erect a porch and deck to be 22' from side lot line (30' previously granted) at property located at 140 Morgan Road in A.C. zone.

Jeff Lange was present to represent the application.

MR. LANGE: If I may, Jeff Lange. Regarding the signage issue on the 15th, um, I -- when I came home that day, I had found the wind and rain knocked it down. I immediately put it up.

DAN MELVILLE: It is tabled, though. Sorry. Somebody apparently went by it and it wasn't there or was lying down.

DECISION: Unanimously tabled until July 27th at 7:00 p.m. by a vote of 6 yes to table for the following reason/finding of fact having been cited:

1. Applicant failed to post the required signs for the required time period.

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

Applicant must be present for the public hearing.

11. Application of Mr./Mrs. Jason VanBlargan, owner; 71 Kaye Park Terrace, Rochester, New York 14624 for variance to allow the total square footage of attached garage to be 1,186 sq. ft. (900 sq. ft. allowed) at property located at 358 Humphrey Road in A.C. zone.

Jason Van Blargan was present to represent the application.

MR. VAN BLARGAN: My wife and I own 20 acres at 358 Humphrey Road. We are building a new house that is roughly 3146 square feet. The garage is sized proportionately accurate to the house. It has been professionally architected.

The garage incorporates a stairway down to the basement as well as outdoor mud room which accounts for the additional square footage. The garage is a three-car garage. It is a side load, so it is aesthetically pleasing from the road and the setback of the house is 185 feet to the right-of-way.

DAN MELVILLE: You said it was a three-car garage; is that correct?

MR. VAN BLARGAN: That's correct.

DAN MELVILLE: That size of a house, I don't see a problem with that.

PETER WIDENER: Do you work for the government?

MR. VAN BLARGAN: I do not.

PETER WIDENER: 20 acres of land?

MR. VAN BLARGAN: That's correct.

Dan Melville made a motion to declare the Board lead agency for SEQR, made a determination of no significant environmental impact, based on the testimony and the material presented at this hearing, and Gerry Hendrickson seconded the motion. The Board all voted yes on the motion.

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

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

1. Garage is in proportion to the size of house and property.

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

There was a recess in the meeting.

DAN MELVILLE: Let's go back to Application Number 5. Application of Brenda Covill. Have all of the questions been answered?

DENNIS SCHULMERICH: I'm fine with the information I have seen in the meeting notes.

Thank you.

DAN MELVILLE: That answered your question?

DENNIS SCHULMERICH: Yes.

MICHAEL MARTIN: As a question of procedure, what would be the proper way to deal with this?

DAN MELVILLE: Well, we could deal with it, I guess, one of two ways. We could vote on it as is, or we could change it to a use variance.

What is your pleasure?

MICHAEL MARTIN: Would you ask counsel, what is the proper way to do this? Change it to a use variance instead of amending the conditional use and then --

KEITH O'TOOLE: I think it is more properly deemed a use variance too. As matter of code interpretation, you can state it is a use variance. Public was given notice as to what intent is here, to add one more employee on top of an existing permit. What in essence you're doing is you're creating a new zoning use that is identical to customary home occupation, but for the fact that it has two employees from the outside as opposed to the one.

DAN MELVILLE: So this no longer falls under customary home occupation then; is that correct?

KEITH O'TOOLE: Call it customary home occupation plus one.

DENNIS SCHULMERICH: Left unamended a use variance is in perpetuity.

KEITH O'TOOLE: That's correct. You have the power to impose conditions on your approval, including a time condition if that is what you want to do, so long as there is some reason for that time condition.

DENNIS SCHULMERICH: Can that condition be placed upon the movement at this point in time, or does it need to wait for passage? In other words, we vote on it and put the conditions on after?

DAN MELVILLE: We can discuss the conditions.

KEITH O'TOOLE: Attach the condition as part of your motion of approval.

DENNIS SCHULMERICH: If we proceed with it as a use variance, I would prefer to see a term on it of five years or less. And my understanding in making that motion is that completion of the five years, it is not simply renewed. You have to come back in for another variance as though you were applying --

DAN MELVILLE: Does the Board want to go five years or one year?

MICHAEL MARTIN: I think we should treat it as a new business.

RICHARD PERRY: It has been a year on the conditional use permit, so I think we have to go with the one year.

DAN MELVILLE: They have not --

DENNIS SCHULMERICH: I spit out a number of five years. Let's say X years.

RICHARD PERRY: We can treat it the same, but we look at it for the one year, you know, we want to make it January, or if we want to extend that.

DAN MELVILLE: One year from today.

DENNIS SCHULMERICH: When you have a conditional use permit and come back before the Zoning Board and ask for a renewal of the conditional use permit, in this particular case we're converting from conditional use permit to what I understand to be a use variance, which is a variance that is in perpetuity. If we put a term on it, at the end of that term, do they simply come back in and apply for a renewal, or does -- at the end of that term, does the variance terminate and if they wanted a variance, they have to come in and reapply from scratch?

KEITH O'TOOLE: In answer to your second question first, they would have to reapply. The permit expires. What you are doing is you're creating a new use classification just for this property. And the use classification that they're asking for is essentially the same as customary home occupation, but for the employee number. So you're not -- you're not dealing with a conditional use.

DENNIS SCHULMERICH: It would be a singular incident in the Town of Chili to have such a variance at this point?

KEITH O'TOOLE: I believe the applicant's argument is there is an extraordinary situation involving the health of her husband. And in the dozen or so years I have had the pleasure of being here, I don't recall this issue ever coming up before.

DAN MELVILLE: No, it hasn't. It kind of worries me a little bit, because we may start getting a lot of other ones, too.

DENNIS SCHULMERICH: It is precedent-setting.

KEITH O'TOOLE: It may be appropriate in the future, and may go to the quantum of proof, that if someone is to make this representation in the future, that you ask for some sort of proof, perhaps something from a doctor, for example.

DAN MELVILLE: You're probably correct on that. You should probably make that a practice, when any of these come in, claiming a medical hardship. How do we know?

KEITH O'TOOLE: Since it is a use variance, this is by definition an extraordinary situation. If we're going to be in the position of creating a standing practice how to treat such things, what we're really doing is asking the Town Board to create a new use classification, and I'm not sure that is what we're here to do today.

RICHARD PERRY: Since this has existed and gone on for at least sometime, have there been any inquiries, complaints, any more about it?

DANIEL KRESS: There was one phone call about a year ago inquiring as to number of vehicles parking on and off the street at the corner of Cornflower there. Since the applicants appeared in front of the Board in January, no, nothing further in the way of calls.

DENNIS SCHULMERICH: Did the applicants come before the Board as a result of their understanding what a home occupation means, or did they come before the Board as a result of the complaint?

DANIEL KRESS: As I recall, they came before the Board because we had to make inspection of some work inside the property, and it was fairly self-evident some sort of commercial type operation was going on and I mentioned something to the effect of, "Do you realize you need a zoning approval for this?" And so they began the application for approval.

DENNIS SCHULMERICH: My comment on precedent setting, I know it doesn't occur on every case and has to stand to itself, but we see increasing number of cases with significant commonality and it is pretty hard to explain to the community how you differentiate one case from the other. One you turn down and the other gets accepted. We need to be cautious about that.

RICHARD PERRY: I agree wholeheartedly, but by the same token, we also want to be a community that people are happy living in, fun to live in, and I think it calls for discretion and some flexibility for certain situations.

DENNIS SCHULMERICH: So I'm sitting here thinking, okay, we had a request for one in January. We have a request for two in June. I'm just hoping that we aren't having a similar discussion in December, because the workload has picked up at this business and now there is enough work being transferred to the house --

RICHARD PERRY: Dan (Melville), it was for two in January also.

DAN MELVILLE: We only approved one.

RICHARD PERRY: Understood.

DAN MELVILLE: I don't know. I guess, you know, my problem is, in this day and age of computers and everything, why can't they communicate with the office back and forth through the internet or whatever, that they have to have all of the employees there. To me it doesn't make sense. A lot of people work from home and communicate back and forth no problem. I mean that is my take on it. So that is my two cents worth.

DENNIS SCHULMERICH: What are we voting on?

DAN MELVILLE: Approving a use variance, I assume. With a term of one year, two employees.

RICHARD PERRY: Nothing changes from the original application as far as --

DAN MELVILLE: Other conditions, no on-street parking, no advertising signs, all that good stuff that I read in the beginning.

Dan Melville made a motion to declare the Board lead agency for SEQR, made a determination of no significant environmental impact, based on the testimony and the material presented at this hearing, and Gerry Hendrickson seconded the motion. The Board all voted yes on the motion.

Michael Martin made a motion to approve the application with the following conditions, and Richard Perry seconded the motion. The vote on the motion was 4 yes to 2 no (Dennis Schulmerich, Dan Melville.)

DECISION: Approved by a vote of 4 yes, as amended to Land Use Variance, to 2 no with the following conditions:

1. Granted for one (1) year; then applicant must make a new application.
2. No on premises advertising.
3. No on-street parking pertaining to the business.
4. Hours of operation as per application.
5. Two outside employees.
6. Applicant to obtain and maintain any required State and local licenses.

The following findings of fact were cited:

1. A use variance was granted for a customary home occupation plus one extra employee.
 2. Extra employee needed so homeowner can work at home and take care of an ill husband.
12. Application of Fallone Enterprises, 3173 Chili Avenue, Rochester, New York 14624 to appeal interpretation of February 3, 2004 from the Director of Planning, Zoning & Development regarding the PNOD zoning regulations regarding property located at 741 Paul Road.

Karl Essler and Dr. Fallone were present to represent the application.

DAN MELVILLE: 12 was held over. We opened it and heard it.

As I stated in the beginning, we did hear this application. Did you get all of the transcript from the last meeting? Everybody has it. Read it over?

The Board indicated they did.

DAN MELVILLE: Especially those that weren't here. We'll ask the applicant -- if you want to come up and kind of brief us a little bit.

I just want to state for everybody that was here last time, too, we have the transcript. Those who spoke are on record yet from last month so we still have it, but if you have anything new, you're welcome to stand up and speak.

MR. ESSLER: I'm an attorney with Fix, Spindelman, Brovitz & Goldman, actually filling in for Jerry Goldman who found time to take a vacation for once.

DAN MELVILLE: That is not allowed.

MR. ESSLER: I will tell him. That he will appreciate.

I'm here for the applicant Fallone Enterprises, and Dr. Fallone is with me here tonight also. I know the Board is aware of the details of the request to appeal the interpretation regarding the language in the code about the 35 percent limitation on the senior citizen dwelling units, being those handicapped accessible use versus in our use a broader category also mentioned senior citizen complexes.

The only thing we have to add to the record, I would like to submit for the Board's consideration some Town Board minutes. As I think you know, this property was actually rezoned to the PNOD by the Town Board back in December of last year, and as part of that process, the Town Board held a public hearing. And I have got the minutes of that meeting that has the public hearing in it, and I would like to submit those to the Board, if I might.

DAN MELVILLE: You can submit them. We won't read them now. I wish we had them before.

MR. ESSLER: I will just point out a couple highlighted provisions I have included so hopefully we won't make you read any big volume. I took the liberty. You will see some blue tabs. There are only three pages that I have tabbed and I have highlighted some information in there. In essence, the highlighted information indicates that at that public hearing, the applicant at this time had and presented to the Town Board a plan for this particular property. It is not the identical plan to the one the Planning Board has worked so hard at, but it was pretty close, the same general concept.

It is clear in the minutes of that October 15, 2000 -- 14, 2003 public hearing applicant made -- the plan envisioned 140 at that time senior citizen apartment units. And that number is somewhat reduced, but in general concept that was discussed very clearly in the plans before the Board. One of the Board members, I think the third tabbed page, Councilwoman Sperr actually went on to make the comment publicly that the one use that this PNOD zoning would allow on this particular property that would not have been previously allowed in the RB District, which the property was zoned at the time, was apartments. It was very clear the Town Board was focusing on the apartment aspect of this plan. There is no indication anywhere in these minutes, and I have read them through in some detail, where anyone suggests that that plan the Town Board had in front of it would violate this 35 percent restriction that this Board now has in front of it to interpret. And I would submit that that to my mind is pretty compelling evidence the Town Board, who was the original author of the PNOD provisions, did not envision the very limited reading of that 35 percent restriction that Mr. Kress, with all due respect, has implied here. That the Town Board, obviously looking at 140 apartment units and not having a problem with that, obviously envisioned there was this broader category of senior citizen apartment complexes that was not limited by the 35 percent rule on the handicapped accessible senior units. I submit that you have the Town Board's basic thoughts on this in front of me. I would submit that that is pretty strong evidence. The only thing I would just add is to reemphasize, as Mr. Goldman did in the original application letter, if you find there is ambiguity, and at minimum when you have a definition that talks about senior -- senior citizen dwelling units and complexes and then goes on to define one of those phrases leaving the other

one undefined, there is ambiguity what the second phrase means, and Mr. Goldman supplied some case law indicating that this Board should resolve all those ambiguities in favor of the property owner. We think that using that standard and this information that the Town Board had in front of it, we think that the --

this Board should reverse the interpretation of Mr. Kress.

Any questions from the Board?

DAN MELVILLE: Yes. The question I have -- and let's start it off. The 35 percent, the limit, that is on the senior citizen dwellings, is that?

MR. ESSLER: "Dwelling units" is the term in the ordinance.

DAN MELVILLE: How many units would that be on 35 percent?

MR. ESSLER: 35 percent of the total number of residential units in the development, which would encompass the single-family housing, as well. Under the current plan I believe that is in front of the Board: 16 patio homes, 20 townhouse units, and 126 apartments, that is 162, if I am correct.

DAN MELVILLE: That is the complex?

MR. ESSLER: Right. But within that, we would have then been allowed 35 percent of the 162, as the handicapped-accessible senior citizen dwelling units.

DAN MELVILLE: Now, the other question I have, the other units that are called senior citizen, are they dwellings, or complexes? Are they not going to be handicapped accessibility?

MR. ESSLER: They're apartments.

DAN MELVILLE: But they're considered senior citizen apartments?

MR. ESSLER: They --

DAN MELVILLE: Don't they have to conform to ADA or anything like that?

MR. ESSLER: No, you don't.

DAN MELVILLE: Even though you're calling them senior citizens?

MR. ESSLER: Correct. There are -- I think, frankly, now that I have passed the age of 50, I think AARP has been sending me a lot of stuff.

DAN MELVILLE: That's because you're a senior at 50.

MR. ESSLER: So there are many senior citizens which do not require or need that sort of accessibility. Having the 35 percent ensures that you have an adequate supply handicapped accessible.

DAN MELVILLE: Why do you want to call them senior apartments? Why not just apartments?

MR. ESSLER: Because frankly, if the Board is aware, there was a market study that was presented to the Town Board as part of the PNOD process which made it very clear that there was a very viable economic market in this community and a need in this community for residences for what we considered to be the people approaching the retirement age, so that they would be senior in that sense. But not typical market rate with kids and everything else. The intention of -- I know the developer here wants to have that type of housing, and to fulfill that market need, and through the process with the Planning Board, the restrictions can be put in place and approvals that would require us to rent to that type of population.

DAN MELVILLE: I just want to ask our legal counsel. With those apartments, the apartments that he is talking about, that are senior apartments, but not handicapped accessible or adaptable, is that allowed under the current ADA regulations?

KEITH O'TOOLE: It would depend on how the units are constructed. Single-family -- perhaps Mr. Kress can correct me on this, but I believe single-family dwellings are exempt from ADA, so everything not single-family is ADA compliant in that respect.

DAN MELVILLE: But the senior apartment complex?

KEITH O'TOOLE: I'm sorry?

DAN MELVILLE: I'm talking about the senior apartment complex. It is just -- it is labeled as senior, but it will not be handicapped accessible or adaptable.

KEITH O'TOOLE: There are certainly ADA requirements for any apartment building, so I am not sure I want to go down that road and make the distinction. I think -- I think the underlying problem here is what we're doing is we're trying to dissect or actually split in half what is one zoning use. To call one, you know -- to split the difference. There is no point in doing that. Whether you call them dwelling units or complexes, one is part of the whole.

DAN MELVILLE: So are you saying then there is more than 35 percent senior --

KEITH O'TOOLE: What I am saying --

DAN MELVILLE: -- housing?

KEITH O'TOOLE: Maybe I'm getting ahead of myself here, but when I participated in the committee, the Town officials that got together to draft the PNOD regulations with our consultant, the concern was expressed that we have an integrated diverse community with any -- within any PNOD project. They didn't want an all senior apartment complex. We already have zoning districts that allow for that sort of thing. You can do that in various places. You can do that in the RM. You can do it in the PRD. And you can actually have certain housing options I believe in an Institutional District.

What they wanted was an essentially a -- a village environment, integrated residential and commercial, but a mixture of people at various stages in life. There are certainly people, I think Dan (Melville), you know this from the real estate business, there is a demand for seniors in age restricted housing complexes, but there are also seniors who don't want to live in those complexes. They want to be around young children and young families. Perhaps they want to act as caregivers to those families. So when we got together with our late Chairman of the Planning Board, the idea was to put in a cap of 35 percent so we would have a mix. Good to have 35 -- up to 35 percent, but not over that, otherwise we lose the mix. Based on the developer's argument, if we were to say that there are, in fact, two senior uses, which is not Mr. Kress' opinion, then, in effect, you can ignore the 35 percent cap, and I guess my question is, why would we have the cap at all on one and not the other, if, in fact, they're somehow different? But they're not. It is the difference, as I indicated in my June 8th letter, a copy of which I believe I have provided to the Board as well as to the developer's counsel, it is the difference between the single and plural.

MR. ESSLER: Can I respond to that? Because I think I do have an answer to Keith (O'Toole's) comment.

I think there is a pretty understandable -- I think the question was why would the Town Board want to restrict the handicapped accessible portion to 35 percent as opposed to other types of senior housing. I think fairly clearly, that kind of housing, and that type of populous, the type that needs the handicapped accessible needs a different array of services and presents a different type of living environment that, frankly, if the entire area were to be those types of units, the handicapped accessible and that type of population, you do lose the village environment because you have a less active population that will not be using, frankly, much of the other development that forms a part of the PNOD. The more active senior housing that is not handicapped accessible fits very nicely in the concept of the village environment.

KEITH O'TOOLE: Let me just add the comment, if I may. If you build an Italian restaurant, you will get customers who like Italian food. If you build housing units which are designed expressly for senior needs, don't be surprised when you get senior tenants and senior buyers. So the adaptability issue and the ADA issue plays into that.

There was a concern to contain that -- to obtain that diversity, and so that is why the code was drafted as it is. Thank you.

RICHARD PERRY: As is proposed, you're looking at the single-family dwellings. That is a separate issue because that doesn't have to comply. All right. But the apartments would have to comply with the 35 percent rules, correct?

MR. ESSLER: Only those that are -- in our view, only those that are built to the handicapped accessible standard that the definition of senior citizen dwelling unit encompasses.

RICHARD PERRY: I guess I find this a little bit confusing. I will pass for now and come back.

DENNIS SCHULMERICH: In having looked over the meeting notes and the documentation, I just want to verify what I think I understand, so just a couple questions. What I understand is 126 out of the 182 units would be intended as some type of senior residence, whether it is a senior dwelling unit or senior complex?

MR. ESSLER: Correct.

DENNIS SCHULMERICH: So 69.2 percent of the occupancy, in fact, would be senior related?

MR. ESSLER: Correct.

DENNIS SCHULMERICH: So in my simple way, because I'm not a lawyer, what I have interpreted is we're looking for an opportunity to capitalize on two 35-percent options. One considered senior housing complex, and senior housing unit. You're approximating 70 percent --

MR. ESSLER: Frankly --

DENNIS SCHULMERICH: -- of the occupancy is, in fact, seniors. Is that fair?

MR. ESSLER: It is fair that that is the number. I will tell you the thought process was not one of taking a 35 percent here and adding another 35 percent here. It was just a concept, we think this is a good mix in terms of what the market will deal with, and also with comments from the Planning Board as to what they thought would be a good and acceptable situation in that area. A lot of this was done with input from the Planning Board.

DENNIS SCHULMERICH: What I have interpreted from this point is the debate is around the word "and." Whether it is a subset of a complex or if dwelling unit and a complex are mutually exclusive of the other.

MR. ESSLER: That is a fair analysis of the issue.

DENNIS SCHULMERICH: So one of the elements that I am confused about is, the intended purpose of PNOD, and the concept of it being a mixed and blended environment. And how does the builder describe an environment with 70 percent of the population of seniors as being a blended community environment.

MR. ESSLER: You could still have the other 30 percent that is not senior and single-family housing, plus you have your office and the commercial. PNOD itself doesn't lay out specific percentages of anything other than the one related to the handicapped-accessible senior dwelling units, leaving the rest of that balance more or less to be figured out in the process by the Town Board and Planning Board as they go through.

DENNIS SCHULMERICH: What are the real consequences to the builder if, in fact, the Director of Planning's position is upheld? What does that mean to the builder?

MR. ESSLER: Frankly, it means going back to completely square one of the drawing board and having spent a lot of time with the Planning Board to develop what they felt was a really good plan, we would be throwing that out the window, have to go back to square one.

DAN MELVILLE: When they were going to the Planning Board, didn't they know the interpretation of the Director of Planning and Zoning?

MR. ESSLER: In all fairness, the later elements of the Planning Board meetings came after his interpretation.

DAN MELVILLE: He sits in on those meetings.

MR. ESSLER: There is no question the later portions of those discussions. We had a lot of dialogue before that as well that got us in a general sense to where the plan was, even when the Town Board looked at it last fall.

DENNIS SCHULMERICH: So there are 64 units in question in my mind that make up that roughly 35 percent that is -- with the "and" question.

DENNIS SCHULMERICH: Help me understand, what prevents those apartment -- that apartment complex not being a senior apartment -- what has to change, not the terminology, senior complex?

MR. ESSLER: The PNOD would seem to indicate any apartments have to be senior because they -- the permitted uses include only senior citizen dwelling units and complexes, in addition to single-family residences, so you can't have non-senior apartments in a PNOD by definition. So we would have to scrap those apartments.

DAN MELVILLE: So you're basically assigning a word to it as senior, when really --

MR. ESSLER: Absolutely our intention is to do that. The market study -- I don't know if the Board got a copy of the market study, but it was submitted to the Town Board. That is the market that this project is aimed at.

DAN MELVILLE: And, of course, if he can't rent them all out to seniors, what will happen?

MR. ESSLER: If there is a restriction that says he has to, he has to.

RICHARD PERRY: Does this mean that all of these will be handicapped convertible?

MR. ESSLER: No. Only the required percentage.

RICHARD PERRY: What if somebody moves in with the intention of staying there for a long time, suddenly needs to have the handicapped facilities?

MR. ESSLER: It is like any other housing that those types of people might live in. If they have needs that can't be accommodated by their dwelling unit, they will have to find other accommodations.

RICHARD PERRY: They would have to get out just because they're handicapped?

MR. ESSLER: Well, because the unit that they're in doesn't meet the needs they have.

RICHARD PERRY: But it is supposed to be senior.

DAN MELVILLE: That is where --

RICHARD PERRY: Which means that if you're second level, what are the plans? Will there be any elevators?

MR. ESSLER: No, there would not be elevators on those units, no.

DAN MELVILLE: So there will be single-family homes?

MR. ESSLER: Yes.

DAN MELVILLE: How many was that?

MR. ESSLER: 16 patio homes and 20 townhouse units.

DAN MELVILLE: Now, why couldn't you -- under the provisions of PNOD, couldn't you make those, quote, senior apartments into townhomes, or patio homes --

MR. ESSLER: Um --

DAN MELVILLE: -- and then avoid all of this?

MR. ESSLER: In theory you could, but we don't think that is where the market is right now. And if the market doesn't bear it, the project --

DAN MELVILLE: Do you have any studies that show us where the market will support this type of senior housing?

MR. ESSLER: I can submit this. Again, this was the market study that the Town Board had in front of it at the time they rezoned this to PNOD.

DENNIS SCHULMERICH: I'm not trying to be dense, I'm just trying to understand. I got the senior dwelling units. I understand ADA compliance. I understand the handicapped accessibility. What I am confused about is what distinguishes the senior complex from any other normal part of it? Is it the age restriction?

MR. ESSLER: Correct.

DENNIS SCHULMERICH: Only thing?

MR. ESSLER: No.

DENNIS SCHULMERICH: And what is driving this question to come to us is a result of the market study indicating that that is where the market is for you?

MR. ESSLER: Correct.

DENNIS SCHULMERICH: There are no other issues around population density or number of units or the way the units can be comprised within the plan itself?

MR. ESSLER: I hesitate, just because -- developing a plan for something like this that is a mixed use development is -- not just somebody who has a formula and makes it work. I think that the original intent was you need to largely service the senior population where we saw a need, but again, given that the PNOD is by definition a mixed development and incorporates other things, and because of the need in this particular location to provide some single family that provides buffering and do all those things that make sense for this site, it -- again, this went through probably 20 different iterations of different units. What I am struggling to say is there is no magic number. This number has some tremendous significance, but this general balance of units from our standpoint to make this an economically viable project makes a difference.

DENNIS SCHULMERICH: What happens to the viability of the project as a result of taking the term "senior housing" off the complexes that are in question? You still have the same number of units. You still have the same number of square footage. What --

MR. ESSLER: No, no. Except then at that point, all those -- all of the non-handicapped accessible apartments that we propose could no longer be apartments. They would have to be single-family dwellings.

DENNIS SCHULMERICH: That is what I --

MR. ESSLER: And that is the distinguishing element for us. It takes a huge bunch of units and puts them in different configuration.

DENNIS SCHULMERICH: Placement and how they aggregate into the plan?

MR. ESSLER: Yes.

DAN MELVILLE: There is too much to go through there. I glanced through it. There is a need for senior housing that is handicapped accessible. I question the need for the senior housing that is not. I mean I -- I'm in the real estate business, and I don't get too many people who move out of homes that are 50 years old into apartments. They stay in their homes until they're retired. And longer, if they

could. I just don't see it as far as that part. I do agree with the other senior housing, there is a tremendous need for that, and a lot of people need a little bit more assistance as far as with the handicapped accessible. I definitely agree with that. We need more of it. There will be more of us getting up there.

MR. ESSLER: I cautiously say this. I appreciate the Board's concern about those kinds of issues about what the needs are, but I guess I would like to keep us focused on we have language in front of us that requires interpretation that may or may not fit with what we all ultimately think the needs are in the market. But again, I do appreciate the understanding and concern.

DAN MELVILLE: Anybody else on the Board? Rick (Perry), do you have anything else?

RICHARD PERRY: No. Dan (Kress) did a nice job asking the things I was interested in -- or Dennis (Schulmerich).

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

MICHELLE OLYER

MS. OLYER: I work for the Regional Center for Independent Living. It is a disability services office. And I guess my concern is the interpretation of the PNOD seems to be -- should be going further than what this gentleman had mentioned. In fact, some of what I have heard tonight is somewhat inaccurate, and I would like to sort of clear up a couple of discrepancies I have heard.

First of all, the Americans with Disabilities Act does not cover residential housing, so the references that have been made to it are probably not the best references. You may be wanting to look more at the Fair Housing Act because that, in fact, specifically addresses housing. The Americans with Disabilities Act only addresses housing in the respect of we're -- where there is a public accommodation. For example, when you have a hotel or motel, how dwelling units in that manner are covered, because there are -- because they're considered a public accommodation. Private housing is not covered by the Americans with Disabilities Act. In addition, I brought along the Americans with Disability Act standards for -- it is called ADAAG, Americans with Disabilities Act Accessibility Guidelines, if anybody wanted to review them.

DAN MELVILLE: No. I think we're clear on that. Our legal counsel explained it to us.

MS. OLYER: I have documents that I'm happy to share. Unfortunately I didn't know how many people were going to be here, so I only brought one extra set.

The second thing is that the definition in -- as it reads in the PNOD, the copy that I have, says that the total number of senior citizen dwelling units shall not exceed 35 percent of the total number of dwelling units within the PNOD. For purposes of this section, "senior citizen dwelling unit" shall mean a unit which is handicapped adaptable or handicapped accessible and the construction standards for handicapped accessible or handicapped adaptable are those defined in the Americans with Disabilities Act Codes and the New York State Building Codes.

As I said, ADA doesn't seem to be the best place to look for that information. However, the word "adaptable" is very significant in this sentence because we're not looking at accessible. We're looking at adaptable or accessible in this sentence. Adaptable means something very, very different than accessible.

DAN MELVILLE: It means it can be converted.

MS. OLYER: It means it can basically be converted. New York State Building Code does require adaptable units. So that the fact that the PNOD limits that number to 35 percent is almost irrelevant, because the building code is going to tell you how many adaptable units are required already.

And I will give you an example of what I mean by that. The loft apartments, as I understand, are supposed to be served with an elevator. As such, that makes the first -- that level required to have type B units. That is adaptable units. Therefore, the entire loft units are now by this definition considered senior units. This definition does not have anything to do with seniors. In fact, if it did, the Fair Housing Act regulates what senior apartments are. Senior apartments -- under the Fair Housing Act, the definition is senior housing must have one person who is 55 years of age and older living in at least 80 percent of its occupied units. It also requires that senior housing publish and follow policies and procedures that demonstrate an intent to be housing for persons 55 and older. So not only is there a requirement that they have to gear it towards people who are 55 and older, and again, notice it did not define senior housing as adaptable or accessible -- it requires monitoring and a publishing of a document

that -- procedures that ensure that that -- in order to preserve its, um, senior classification, that they do that.

If, however, they do not do that, and let's say they go to 70 percent instead of 80 percent, at least 55 and older, that means that the Fair Housing Act also requires that you cannot discriminate against children. And that terminology is familial status. Therefore, should the development, after it has been all said and done, decide okay, we have -- we can't quite mark-up, we missed our -- that market study, nice, but didn't work, we don't have 126 seniors dying to get into these apartments, what are we going to do. Their natural response is let's market to another population. And they would be well within their right to do so, and, in fact, the Town would have limited ability to enforce their own code because the Fair Housing Act is a federal law, and to be honest with you, the federal law supersedes.

So I think you're -- I think that in this situation, you may do your -- it is my opinion that you may want to take a look at revising the way that you have worded your PNOD description in order to avoid these kinds of situations in the future.

DAN MELVILLE: We'll take that under advisement.

MS. OLYER: Lastly, if you have any concerns or would like to see more information, the applicable section for the New York State Building Code, for accessibility, where type B housing units are described, is in --

DAN MELVILLE: Is there a website we can get that information like that?

MS. OLYER: I don't know the website. This is New York State Building Code. I don't believe you can just pick it up off a website, but we had to purchase a document, so --

DAN MELVILLE: I tried to find some information and I couldn't.

MS. OLYER: It is tough to find. I'm sure the Building Department will probably have a copy of the New York State Building Code, and Chapter 11 is accessibility. It describes what an accessible unit it is, and it describes the type A versus type B unit, and I think that is part of the confusion, that you're talking about type A, type B. Type A being accessible. Type B, being adaptable. So I think that is very significant when you're looking at your numbers, and when the proposal was originally presented, um, it may have been evaluated based on just those senior units rather than the adaptability units, including the loft apartments.

Any questions?

DAN MELVILLE: Thank you.

MS. OLYER: Thank you.

GAIL LYLE

MS. LYLE: I have something very interesting to present to you tonight. In order to be before the Zoning Board of Appeals there has to be a denial first. I have a copy before me of the denial from the Town of Chili. On the denial, the applicant Fallone Enterprises, first line, has been altered. There are no initials to say who altered it. Under owner it says Phil Buttarazzi. Under the assessment inquiry I have, it lists both Philamena (phonetic) Buttarazzi and Generoso Buttarazzi as owners, yet his name is not listed on the denial form.

On Number 5, a brief description of the project also has been altered with no initials.

On Number 6, "an approval for the above project has been denied by the Town of Chili Director of Planning Zoning and Development on this day, date." And it has N/A which means not applicable is written. This document has not been appropriately executed.

What is even more interesting, according to the New York State Department of State in Albany, the Local Government Planning and Zoning Law Guide, it is the administrative official charged with code enforcement that can sign the denial. Daniel Kress cannot sign this denial. Refer to 267A Board of Appeals procedure. "The administrative official charged with the enforcement of any ordinance or local law adopted pursuant to this article." The Town of Chili letterhead states the code enforcement officials are Sherry Thrash and John Castellani. I came up to the Building Department and asked Sherry Thrash who goes out and enforces code. She said John Castellani. I saw John (Castellani) in the Building Department a week ago. He wears a uniform, white long-sleeved shirt, dark pants. He has a badge on his left breast. He should have signed the denial.

Even though Dan Kress is a certified municipal code enforcement official, he is not the designated Town of Chili code enforcement officer. We do not find any Town Code or document that

states otherwise.

Finally, Number 13, notarized signature of the property owner or owners if application has not been signed or notarized. Therefore, this appeal, according to the Department of State, is not the proper procedure and it should not be heard tonight.

DAN MELVILLE: Okay. Thank you.

Do you want to make any comments?

KEITH O'TOOLE: There -- if I may, there doesn't have to be a denial on a code interpretation.

Second part, it is my understanding that Mr. Kress is, in fact, the Director of Planning and Zoning Development and has the authority to do what he did.

DAN MELVILLE: Okay. For the record.

JERRY BRIXNER - 14 Hartom Road

MR. BRIXNER: Thank you, Mr. Chairman, members of the Zoning Board of Appeals. My name is Jerry Brixner, 14 Hartom Road. I did speak at the last meeting in May.

DAN MELVILLE: We have the transcript.

MR. BRIXNER: And I wish to note, however, Mr. Chairman, that the Town -- the Zoning Board attorney was not present at that particular meeting, and in my opinion, sir, that would open up a different approach to this particular issue, because the people who were there are not here tonight, and that type of a thing. So I would suggest that if individuals want to make some other comments, that they should be allowed to do it.

DAN MELVILLE: That is what I said in the beginning. They can make comments. But we already have the comments in front of us here from the last meeting. And we have all read them several times.

MR. BRIXNER: In due respect to the applicant's attorney, as he tries to convey the, quote, intent of the 2003 Chili Town Board to allow what his client wishes to incorporate now in this application, I question how this Board could accept this type of argument because, in my opinion, the applicant here tonight had not proposed the plan he has -- is providing tonight before that Board at this time. In addition, this issue is not being heard before the 2003 Chili Town Board. It is being heard before the 2004 Zoning Board of Appeals. I support the decision of Mr. Kress on this particular issue. Thank you.

DAN MELVILLE: Thank you, Jerry (Brixner).

HEATH MILLER - 69 Bellmawr Drive

MR. MILLER: The immediate issue about which we are talking is the interpretation of the phrase "senior citizen dwelling unit and complexes." As noted in the code for the Town of Chili, Section 115-19.1, the Planned Neighborhood Overlay District or PNOD, Subsection D(1)(c) states, "'Senior citizen dwelling unit' shall mean a unit which is handicapped adaptable or handicapped accessible and the construction standards for handicapped accessible or handicapped adaptable are those defined in the Americans with Disabilities Act Codes and the New York State Building Codes for the physically handicapped in effect at the time of construction."

Such subsection also mentions attached senior citizen dwelling units. Unfortunately, a definition involving the word "complex" is absent in the PNOD ordinance. Is a senior citizen complex two or more attached senior citizen dwelling units? Or is there a different definition? Dr. Robert Fallone believes that senior citizen complexes can include senior citizen dwelling units as well as apartments for senior citizens which are not handicapped accessible and/or handicapped adaptable. Tonight I hope to convince this Zoning Board of Appeals that Dr. Fallone's interpretation not only runs contrary to the original intentions of the PNOD ordinance, but more seriously, is also in direct violation of federal law.

According to the aforementioned subsection in the PNOD, the total number of senior citizen dwelling units shall not exceed 35 percent of the total number of dwelling units within the PNOD. No constraint is placed on the number of senior citizen complexes other than to state the maximum number of attached senior citizen dwelling units shall not exceed 18 units per acre. There is no limit placed on the number of apartments for seniors which are not handicapped adaptable and/or handicapped accessible.

In a letter dated April 21st, 2004, from Dr. Fallone's attorney, Mr. Jerry Goldman, to the

Zoning Board of Appeals, the plan as currently proposed for the property at 741 Paul Road is as follows: One, 16 patio homes to be located directly across the street from the single-family residences on Paul Road. Number two, 20 townhouse units located south of the patio homes and north of the wetland which traverses the property. A side note, this is not the issue that we're talking about tonight, but I do not believe townhouses are even permitted under PNOD. A townhouse is defined by the operation of real property services website, which makes the assessors manual which our assessor uses.

DAN MELVILLE: We'll decipher that in the Building Department. We're discussing interpretation.

MR. MILLER: 3400 square feet of office retail commercial space located along the westerly edge of the property adjacent to Wegmans and 20 second-story loft apartments above some of the commercial buildings. Number four, a total of 126 senior apartments located in 22 buildings containing two, four, eight or twelve apartment units. And Number five, amenities for the overall community. There is no mention of any senior citizen dwelling units in this plan. I interpret the 126 senior apartments to be the -- I quote, "Apartments which are designed for seniors and are not handicapped accessible and/or adaptable and, therefore, not senior citizen dwelling units."

As described in the aforementioned letter from Mr. Goldman to this Zoning Board of Appeals, the 126 senior apartments account for almost 70 percent of the total number of dwelling units. That is twice the maximum percentage of senior citizen dwelling units allowed.

In a memo dated February 3rd, 2004, from Mr. Daniel Kress, Director of Planning, Zoning and Development to Mr. Goldman, Mr. Kress states the following: "A consistent concern expressed in the minutes of the several public hearings held prior to the adoption of this local law, the PNOD, is that the proposed requirements result in a mixture of uses, and not a homogeneous development. In the October 5th, 1999 Planning Board minutes in answer to a question about what mixture of uses would be required, the answer is given. Mr. Brand stated, "They do not have to have all of them, but they do have to have a mixture of them." In other words, they couldn't come in here and use this overlay approach to build senior citizen dwellings and complexes on the entire parcel"..."Clearly, the intention was to provide for a mixture of uses with no one type of use predominating."

I agree with Mr. Kress' statements. By allowing an interpretation of complex to include apartments for seniors which are not handicapped adaptable and/or handicapped accessible, the constraint placed on the total number of units built for senior citizens is circumvented because now a unit for a senior citizen can be either one that is handicapped adaptable or handicapped accessible, hence a senior citizen dwelling unit, or one that is not handicapped adaptable and/or handicapped accessible, hence a senior apartment.

As illustrated by Dr. Fallone's own proposal, no senior citizen dwelling units need to be built, but an overwhelming majority of senior apartments can. Dr. Fallone's interpretation of complex seems, at best, inconsistent with the original intentions of the PNOD ordinance.

In a letter -- in the April 21st, 2004 letter from Mr. Goldman to the Zoning Board of Appeals, Mr. Goldman also mentions the following: "We appeal to the Zoning Board of Appeals on the basis we believe such a narrow interpretation of the PNOD ordinance is not authorized by law. It is important to acknowledge in that regard a basic legal principle. Land use and zoning enactments such as the PNOD ordinance favor the property owners' rights. Since the code specifically refers to senior citizen complexes as well as senior citizen dwelling units, it can be inferred that something more than the tightly defined senior citizen dwelling units are allowed. At the very least the code is ambiguous in this regard, and such ambiguity must be legally resolved in the applicant's favor." The "for sale" sign is still standing on the property at 741 Paul Road.

DAN MELVILLE: That is not an issue tonight. The "for sale" sign.

MR. BRIXNER: He is just commenting.

MR. MILLER: I'm not making an issue. What I am saying is that, unless I'm mistaken, 741 Paul Road is owned by Philamena (phonetic) Buttarazzi, not Dr. Fallone. The legal principle that Mr. Goldman cites isn't applicable in this situation because Dr. Fallone isn't the property owner. The second and more serious concern I have with Dr. Fallone's interpretation is that I believe it to be in direct violation of federal law.

Federal law is supreme in this country. States, counties, towns and villages all must abide by the laws of the federal government. The Fair Housing Act and Fair Housing Amendments Act are

designed to provide within constitutional limitations fair housing throughout the United States and to protect people against discriminatory housing practices.

The Fair Housing Act Section 804, Subsection F(3)(c), states, "For the purposes of this subsection, discrimination includes in connection with the design and construction of covered multi-family dwellings for the first occupancy after the date that is 30 months after the date of enactment of the Fair Housing Amendments Act of 1988, a failure to design and construct those dwellings in such a manner that, number one, the public use and common use portions of such dwellings are readily accessible to and usable by handicapped persons. Number two, all of the doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by handicapped persons in wheelchairs. And number three, all premises -- all premises within such dwellings contain the following features of adaptive design. An accessible route into and through the dwelling, light switches, electrical outlets, thermostats and other environmental controls in accessible locations. Reinforcements in bathroom walls to allow later installation of grab bars and usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space."

As noted in Subsection F(7), as used in this subsection, the term "covered multi-family dwellings" means buildings consisting of four or more units if such buildings have one or more elevators, and ground floor units and other buildings consisting of four or more units. By defining complex as including apartments for seniors that are not handicapped accessible and/or handicapped adaptable, discrimination based on handicapped, in my opinion, is being written into the PNOD ordinance. Such aforementioned apartments for seniors would not be able to be lived in by a handicapped senior citizen because by definition these apartments for seniors are not handicapped adaptable and/or handicapped accessible. This is in direct violation of the aforementioned subsection of the federal Fair Housing Act.

A federal lawsuit was brought against the owner of the luxury Blueberry Hill Apartment complexes and two firms associated in its construction because the federal government determined that the buildings weren't fully accessible to the handicapped. An estimated two to three million dollars will be spent fixing the common use areas and retrofitting the apartments with the majority of that expense falling upon the owner, Blueberry Hill Associates. Whom does this Zoning Board of Appeals think will be liable for retrofitting these senior apartments when it is discovered that they are not in compliance with the federal Fair Housing Act? Fallon Enterprises? I don't think so. Dr. Fallon will have secured the approval for everything he has done by the Town of Chili. The interpretation of complex will be the violation, and as such, the onus will be on the Town of Chili for bringing these senior apartments into compliance with federal standards. If the Zoning Board of Appeals agrees with Dr. Fallon's interpretation of complex, it is my firm belief that the Town of Chili will be putting itself at grave financial risk. With such interpretation, it is my opinion that Dr. Fallon's proposal is a multi-million-dollar lawsuit waiting to happen. I think the only difference between this and Blueberry Hill is simply that the Town of Chili will be responsible for retrofitting the senior apartments, not the owner of this apartment complex. Thank you.

DOROTHY BORGUS - 31 Stuart Road

MS. BORGUS: I will make my comments brief. Very short.

DAN MELVILLE: Appreciate it.

MS. BORGUS: I don't know how many other people in this room were present at all of the discussions when this PNOD law was being proposed and discussed and formulated, but I was, and I know that this plan was not -- is not the idea that the people who drew this up had in mind. This not a village environment. This is not the idea at all. And I agree with the speaker before me. I think the Town will leave themselves open to who knows what in the line of financial hardship. If the Town takes a part in this, then it holds them accountable to the law.

And I think that Mr. Kress has been very astute in the way he has interpreted the law, and I believe it should stand. Thank you.

DAN MELVILLE: Thank you, Dorothy (Borgus).

IRENE BRIXNER - 14 Hartom Road

MS. BRIXNER: I have the Zoning Board minutes, and I just want to say that I think I can see where Mr. Fallon is going. It's wonderful that, you know, he is thinking about people who need

apartments and it's a great thing, but I don't see what it has to do with the PNOD. I don't get -- I don't know where he is going. But he did mention, Mr. Goldman did mention that as -- and I want to quote him, "As we know, under the federal Fair Housing Act, the definition of what is senior housing is housing which is occupied by people 55 years and older." And someplace in here, too, he -- he remarks that they -- he might go to the Planning Board for a variance with the additional three -- with the 35 percent accessible and adaptable, and lower it. He says something -- he suggests something like that. And as I looked at this, I kept thinking, oh, he wants to stay within the 80 percent where you have to have an elder in each unit, 80 percent, and I -- I'm kind of disappointed. You know, I thought this PNOD was a great thing, but I don't know where it is going any more, and I just caught that in his notes, in the minutes.

BERNICE WILCOX - Stuart Road

MS. WILCOX: I don't have very much to say because everyone else has said it very well. I think that the Town should do what is in the best interest of the Town. The developers are certainly only concerned with profits and their own interest. That is something that I have observed at many meetings in this Town Board and Planning Board and Zoning Board. And I think you people are appointed to represent the people of the Town by our elected officials. Thank you.

DAN MELVILLE: Thank you, Bea (Wilcox).

MR. ESSLER: Thank you, Mr. Chairman. Frankly, no, other than to point out that I think we disagree with Mr. Miller's interpretation of the Fair Housing Act. Indeed, I think from Mrs. Olyer, I think I actually heard information that would contradict him in terms of what the Fair Housing Act means, but I think the Board has a grasp of the issues and I ask for your fair vote and consideration.

DENNIS SCHULMERICH: Certainly I can't digest the entire market study in the amount of time we had here, but there were two points that I thought I would at least like to make the Board aware of. The first is from page 78, which is part of the demand analysis for the market study. It references the senior market. I would just like to read a couple paragraphs here so you get the gist of the tone of the demand analysis.

"Based on the nature of the intended housing development, it is felt that the most significant contribution to the project will come from existing homeowners who chose to make a change in their life style. It is anticipated that they would consider the subject development because of the following factors. First, quality of the units to be developed; second, privacy of townhomes in similarity to owner-occupied housing. No townhomes. Desire for residency in an adult-only community where certain concerns will not be an issue." And the fourth point was availability of attractive amenities and -- availability of attractive amenities and community. Two key points here. Privacy of townhomes in similarity to owner-occupied houses, and second, residency in an adult-only community.

Next paragraph goes on, "It is a use highly attractive to empty-nesters even though it will be a rental situation. When considering applications of real estate taxes, general repairs and maintenance, security issues and other factors, it is felt seniors will choose the subject housing. This is proven to be true in other rental areas where seniors make up a large part of the plexes. Homeowners' contribution for the subject development is also supported based on the following. One, conversations with senior specific developments of an upscale nature or townhouses where seniors sell their homes to move into the project, and two, of note, desires with seniors to be in senior-specific complexes for the above-mentioned reasons."

I find the reference in significance of townhomes and adult-only community as part of the demand analysis to be significant.

And then finally a couple points on the recommendations conclusions, page 83, GIR Associates document. The developer intends to construct and build up to 150 townhomes for rent. The market study was based on townhomes. Now we're hearing tonight we have 126 senior dwellings which are basically apartments, 20 townhomes and 16 patio homes. The units will be well designed and conceived and create an attractive environment for senior households.

It goes on to speak about the enhanced features which include a one-car attached garage, a porch or patio, closet space with walk-in closet in master bedroom. Two full baths with shower off master, a fireplace and separate dining room, laundry with washer/dryer storage space, adequate storage and closet space, updated appliances, basic cable -- sounds like an advertisement to me, not unlike any of the apartments I have been in. So I'm -- I have -- I am confident that the results in this

market study represent something, but it is not obvious to me it represents --

DAN MELVILLE: It doesn't sound like it.

DENNIS SCHULMERICH: That is my point.

DAN MELVILLE: Again, that study was done for a certain purpose, too. As all studies are.

DENNIS SCHULMERICH: Sure. It appears to be well-found. It would be nice to spend more time with it.

DAN MELVILLE: That is a lot there. I thumbed through it, but I can't thumb through it and run a meeting at the same time.

DENNIS SCHULMERICH: Dated September 2003.

KEITH O'TOOLE: Briefly, keep in mind you're doing a code interpretation, what does the law mean. We're not here to try this project, whether it is a good project or bad project, whether they have conformed with the marketing study or whether the Town Board likes the project or not. The issue is what does the code say.

DAN MELVILLE: Do we agree with what Dan (Kress) interpreted or don't we?

KEITH O'TOOLE: Is his interpretation correct? Nothing further. Closed.

DAN MELVILLE: This is a Type II action?

KEITH O'TOOLE: That's correct. Resolved Type II action. "I can find no basis for the proposed interpretation that 'senior citizen complexes' are somehow a separate permitted use in addition to 'senior citizen dwelling units.'"

DAN MELVILLE: Do I have a motion to agree with the interpretation of Daniel J. Kress dated February 3rd, 2004? We base this upon the analysis of the interpretation contained within the February 3rd, 2004 letter, the analysis of the Assistant Town Counsel and the contents of the record and above all, a reading of the PNOD regulations. Is there a second?

MICHAEL MARTIN: Second it.

The Board was all in favor of the motion.

DAN MELVILLE: It is approved for SEQR.

I make a motion to agree with the interpretation of the Building Inspector.

DENNIS SCHULMERICH: Second.

KEITH O'TOOLE: Just for clarification purposes, so we're all on the same page here, if this is a Type II action for SEQR, you're done.

DAN MELVILLE: We don't have --

KEITH O'TOOLE: If you classify this as a -- I don't think you have to do that, but if you classify this as Type II action, that terminates SEQR. I believe the information you just read was the proposed resolution that I had drafted and was up to you to agree or disagree, but that doesn't relate to SEQR. That relates to the application.

DAN MELVILLE: It was all on one page.

KEITH O'TOOLE: My apologies. I just wanted to clarify it.

DAN MELVILLE: So --

DENNIS SCHULMERICH: We did. It might be appropriate for purposes of the record to reaffirm the vote.

DAN MELVILLE: Right.

So again, we agree with the interpretation of Daniel J. Kress dated February 3rd, 2004. "I can find no basis for the proposed interpretation that 'senior citizen complexes' are somehow a separate permitted use in addition to 'senior citizen dwelling units.'"

The Board all voted yes to reaffirm the motion.

DECISION: The Chili Zoning Board of Appeals voted unanimously, 6 yes to 0 no, to uphold the code interpretation of Dan Kress in his letter of February 3, 2004 which stated as follows:

"I can find no basis for the proposed interpretation that 'senior citizen complexes' are somehow a separate permitted use in addition to 'senior citizen dwelling units.'"

(Letter of February 3, 2004 of Daniel Kress regarding PNOD regulations.)

This is based on the following findings:

1. Not in keeping with the intent of the PNOD ordinance.
2. The analysis of the interpretation contained within his February 3, 2004 letter, the analysis of the Assistant Town Counsel, the contents of the record and above all, a reading of the PNOD regulations.

The meeting ended at 9:50 p.m.