

CHILI ZONING BOARD OF APPEALS
July 28, 2009

A meeting of the Chili Zoning Board was held on July 28, 2009 at the Chili Town Hall, 3333 Chili Avenue, Rochester, New York 14624 at 7:00 p.m. The meeting was called to order by Chairperson Paul Bloser.

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

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

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

PAUL BLOSER: I will start with signs. Application 1 is a carry-over from last month. It was tabled to this month. Is there anybody here representing Application 1, Christopher Holley?

No one responded.

PAUL BLOSER: Second month. There was not a sign posted on this one.

FRED TROTT: I didn't see a sign either.

JAMES WIESNER: Make a motion to remove it?

PAUL BLOSER: That is, I guess, my question. Counsel, having not shown up or heard from the applicant in two meetings, procedurally, do we remove it or table it a third time?

KEITH O'TOOLE: Deny it without prejudice.

PAUL BLOSER: Very good. Do we do that at the front end of the meeting here?

KEITH O'TOOLE: Yes.

PAUL BLOSER: Do I have a motion then to remove this application?

DAVID CROSS: So moved.

The Board was all in favor of the motion

PAUL BLOSER: This application is officially removed then. We'll send a letter --

KEITH O'TOOLE: Mr. Chairman, is that removed or denied?

DAVID CROSS: It's denied without prejudice.

PAUL BLOSER: That's -- I will clarify that again. Let's -- for the record, this is the second meeting that the applicant has not attended nor have they shown proper notification on the lawn with signage.

Do I have a motion then to deny this application without prejudice?

DAVID CROSS: So moved.

ROBERT MULCAHY: I will second.

The Board was all in favor of the motion.

PAUL BLOSER: This application is denied and we'll send a letter to the applicant stating such.

The other applications, 2, 3 and 4, I did see signs in each of these properties.

Anybody have any problem with any of them from a signage standpoint?

The Board indicated they would hear the rest of the items on the agenda.

1. Application of Christopher Holley, owner; 10 Harmon Lane, Churchville, New York 14428 for variance to erect a 12' x 24' utility shed to be 288 sq. ft. (192 sq. ft. allowed), variance for shed to be 4' from side and rear lot lines (8' req.) at property located at 10 Harmon Lane in RA-1 zone.

DECISION: Unanimously denied without prejudice by a vote of 7 yes to deny for the following reason/finding of fact having been cited:

1. Applicant failed to appear for the public hearing for two months in a row.
2. Application of Carpet Source Flooring, c/o Edward Evenski, 92 Green Road, Churchville, New York 14428 for variance to erect a 7' x 3'9" double-faced freestanding sign to be a

total of 52 1/2 sq. ft. (32 sq. ft. allowed), variance for sign to be 8' from front lot line (15' req.) at property located at 4317 Buffalo Road in N.B. zone.

Ed Evenski was present to represent the application.

MR. EVENSKI: My name is Ed Evenski. And I reside at 92 Green Road in Churchville, New York, and I am representing Carpet Source for this variance hearing.

Just a little background might be helpful. There is three partners that purchased the existing Carpet Source business approximately two years ago, and our goal was to broaden the scope of the business to include more residences of both Chili and North Chili. There is an existing sign that resides on the property, but it is relatively small and obscure, and as we attempted to expand our business base, it became very apparent that folks didn't recognize the existing sign because of its size, but furthermore, they didn't even recognize the building that houses our showroom and warehouse. If you're familiar with it, it is probably the big red building you have passed several times on Buffalo Road that is across from Pearce Memorial Church.

And the comment that we receive as we continue to try to expand this business, is, "Oh, we have driven past this building hundreds of times, but never really understood what it was."

So our goal here is to provide some signage that will illustrate what type of business we're in, and our ultimate goal is again to serve -- better serve the citizens of North Chili and Chili with their flooring needs.

The variance that we are requesting is primarily because of view obstructions. If you look at where the property is positioned, if you're heading east, there is a vacant house with very, very large shrubbery that pretty much restricts your view as you head east. If you're heading west, there is a telephone pole that also obstructs your view, and what we actually did was we placed some signs, according to the code, 15 feet in and asked some folks to drive by to see if they would recognize it, and we asked about 12 people to do that, and 10 of them came back and said, "We didn't even see the sign."

So as we moved the sign closer to the road, it became more apparent, it became more visible to folks, as they drove by and that is where we determined that the 8-foot line seemed to be the best in terms of position for recognition.

So that is why we're requesting the variance, 8 feet, and the size of the sign, again, we modeled it after the sign that currently exists at Pearce Memorial Church. This, however, is a little bit larger. This is about 6 square feet larger than Pearce, but nonetheless, that was the model that we used in terms of determining the size.

Other than that, again, our objective meeting with the Board this evening is to provide some recognizable signage that will help promote our business and serve the community for their flooring needs more effectively.

That's about it for me, if there are any questions.

PAUL BLOSER: The sign that is there now, is this -- the one that you're applying for, is this one being replaced by a new one?

MR. EVENSKI: This is being replaced by a new one. The one that currently exists is just slightly under 24 square feet. That sign will be removed upon approval.

PAUL BLOSER: Color wise, how close is it to what you're doing?

MR. EVENSKI: It's completely different. I provided you some details on the new sign. It's a redwood-type with gold lettering. It has depth to it, and the one that currently exists is basically a flat sign with the numbers and the information painted on the surface.

PAUL BLOSER: So this is going to be an actual redwood sign?

MR. EVENSKI: Correct. Etched.

PAUL BLOSER: So it is actual redwood.

MR. EVENSKI: Correct. Single grain redwood.

PAUL BLOSER: So we actually have two variances we're looking for on this. One is the size, and the other is the proximity to the road. So I would like to -- when we do vote, I would like to address them as two separate issues for clarification sake.

Forgive me, I'm going to ask. On the back, as you're driving into the driveway and looking at the back of the property, the stonewall you have there, is that all concrete wall or is that stack stone?

MR. EVENSKI: Stack stone.

PAUL BLOSER: Okay. One of the comments I will make up front is -- as a Board, as we have been reviewing signs -- well, the few years I have been on the Board, all of our applications, we're really looking very hard at signs, what they look like, their appearance. Certainly it is a value to you and a value to the Town to have them consistent in character with how they look. In North Chili when we did Roberts' sign, we insisted on monument-type signs, nothing is elevated or pole mounted. The plaza that has recently been approved going across the street, we did the same thing. Monument sign, Walgreens, Hess. And this is a characteristic that we are really striving for in the Town. Just from strictly an appearance and aesthetic value.

This is something that I think that myself I would like to see if we move forward with the square footage, whatever we look at as a sign, I would like to see a similar type of design. Now, whether you pigtail the stack stone you use in the back on its base and build the sign off from that, but instead of having the pole structure, we want some -- redwood is nice, and with the gold leaf in there, I'm not questioning that the sign is going to be not aesthetically nice. What we're looking at is a step beyond that for consistency in the Town with signage.

Do you know what I mean by monument type?

MR. EVENSKI: Is that consistent with the Glue Factory's sign?

PAUL BLOSER: Low to the ground, instead of being elevated. So instead of seeing a 4 by 4 or 6 by 6 or a metal pole that sticks up like a lollipop, you have a monument base, and the sign coming from up that. If you have stack stone on the property, I would say complement what you have instead of going for something completely different. Get a stone similar to that. Far enough away, you can get a close match. That is something as a condition of approval I would like to see if -- and I will have other Board members comment on that just to pull the property together. The property has always been nice. For a lot of years, the two, three times I went by, I always thought it was a maintenance barn for Roberts until someone said they sell carpet out of there. I'm in the majority, I didn't know what you did.

MR. EVENSKI: That's a very common comment we hear as, again, we try to expand the business.

MICHAEL NYHAN: Do you have a showroom in this location or is it for storage only and maintaining the supply of carpet that you actually --

MR. EVENSKI: Yes. We have both. There is a showroom that's dedicated towards hardwood and -- and stone tile, and then there is an adjacent room that is dedicated towards carpet. So the answer is yes, we have both a showroom and a warehouse on the same site.

MICHAEL NYHAN: Thank you.

JAMES WIESNER: Is this sign going to be lit?

MR. EVENSKI: Yes. And it will be consistent with the hours that is represented in the code.

PAUL BLOSER: So it will be on a timer?

MR. EVENSKI: Correct.

PAUL BLOSER: What is your proposed lighting? What type of lighting are you using? Up-lit, down-lit?

MR. EVENSKI: I'm afraid I can't answer that. I -- I know we're going to have it lit, but I can't be specific in terms of the type.

PAUL BLOSER: Okay. Being wood, I know it is not going to be back-lit?

MR. EVENSKI: No, it would not be back-lit.

PAUL BLOSER: There are no LED signs allowed, scrolling signs attached to that.

MR. EVENSKI: Exactly. It would just be some type of spotlight.

PAUL BLOSER: This is something you can build into your base and have a soft up-light or a gooseneck down-lighting off the top of the sign, but just so the light isn't 30 foot away and projecting a long distance. We like them soft lit.

If you have seen Roberts at night, you can see that is a rather soft lit. It is not a real -- we don't want traffic distractions, as people are coming down -- certainly you want attentions on the sign, but we don't want it to be a blazing billboard.

MR. EVENSKI: Okay.

DAVID CROSS: I do like the monument-style sign as opposed to what we see here. General comment, I think 7 foot is a lot really to ask for. It's a considerable -- I know you're trying to fit a lot of information on it, and -- but I like the look, the actual font and everything. Speed through there is what, 30 miles an hour? It's not like people are racing down there at 55, you know, hunting for this sign. So that is all I had, was just I think it is probably a little bit large, larger than I would like to see.

MICHAEL NYHAN: What are the sizes of the letter, do you know, that would make the sign so large?

MR. EVENSKI: I don't have the letter dimensions.

MICHAEL NYHAN: Okay.

PAUL BLOSER: About 7 foot wide. Is that actual sign or does that include the actual posts, outside, outside?

MR. EVENSKI: That is the sign proper, correct.

ADAM CUMMINGS: With the post design, how tall would that be? 4 by 6 redwood, posts, but it doesn't say. Is that -- how tall would they be buried in, I guess?

MR. EVENSKI: There should be an elevation dimension on there for you.

PAUL BLOSER: I did not see one.

MR. EVENSKI: Okay. The distance from the ground to the bottom of the sign, I believe, is 3 1/2 feet, at this juncture.

PAUL BLOSER: You're about 7 foot, to the top of the sign.

DAVID CROSS: About 7 foot to the top. That's big.

ROBERT MULCAHY: That's very big.

MR. EVENSKI: A comment in terms of the size because two of you have mentioned it as a concern.

There is -- again, there is some -- some obstructions that prompted us to make the sign larger. As I previously mentioned, there is a series of very overgrown hedges adjacent to the property in an abandoned house with a large, very large -- probably about 30 feet high spruce tree, and then, you know -- so if you're heading east, that is what you see. You basically see overgrown shrubs and this large spruce tree before you see our property.

Again, if you're heading west, what you have is the obstruction of the telephone pole there, and that's what facilitated us making the sign the size that we're proposing.

ROBERT MULCAHY: I don't like the wooden posts. I would rather see the monument sign, and I think the sign is too big. It should be smaller. And I think it is in the center of the lot,

which comes into effect with the houses and the bushes he is talking about. What happens if he moves it to the other side of his driveway? It takes it away from that brush and everything, the house.

DAVID CROSS: Just to clarify, it looks like the proposed sign location would be in the middle of the drive going back to the parking area?

MR. EVENSKI: Correct.

DAVID CROSS: You're probably -- you want it just off the edge of the drive? Or do you want it in the gravel?

MR. EVENSKI: It would pretty much be -- you have the driveway that enters the -- the facility, and then there is the -- basically the grassed area. We would put that approximately in the center of the grassed area. So it would be midway between -- it would actually almost be midway between the entrance and our neighbor, Mark Pellingra's property line.

PAUL BLOSER: This drawing shows the sign in the driveway.

MR. EVENSKI: May I approach?

PAUL BLOSER: Do you have a --

MR. EVENSKI: No.

The sign is right here (indicating). No, that's incorrect. That's a good catch. No, the sign would be right here (indicating).

It's a very good catch. That's an error on our part. There is the driveway entrance (indicating). The sign location would physically be right here (indicating). Thank you. It's a good point of clarification.

PAUL BLOSER: Where is it from the side lot, from the east side?

MR. EVENSKI: Well, let's see. I would have to scale that off to answer your question. I would say dimensionally it looks like it is about 33 feet. If I'm looking at this dimension here (indicating), and moving it over here (indicating), 33 to 35 feet.

MICHAEL NYHAN: So for clarification, the property, the Pellingra property, is that the vacant property that -- with the overgrown shrubs?

MR. EVENSKI: No, the Pellingra property is located here. (Indicating).

This is the vacant property here (indicating).

ROBERT MULCAHY: Where is the sign located right now?

MR. EVENSKI: Currently here (indicating).

ROBERT MULCAHY: So then you are moving it over?

MR. EVENSKI: Correct.

PAUL BLOSER: One of the questions, concerns I have, too, is a sign that size being that close to the road. Even though there are sidewalks, the sidewalks along there are right on the curbing. If a car is pulling out of your driveway for oncoming traffic, it would be a concern for line of sight, a sign that size. Just from a safety standpoint, which is why we do have that 15-foot requirement, a good line of sight clearance up and down the road. There are reasons for those setback. So the setback is a concern, with any kind of sign. Just from a safety standpoint. There is kids coming down there on a bicycle, and if that is a blind view, and you're hauling pretty good on a bike, it could be a safety concern. They do use that sidewalk a lot with bicycles. So the setback is a --

DAVID CROSS: Maybe we could make it a condition from the setback, that the placement be signed off by the Town Engineer or Building Department Manager --

PAUL BLOSER: Yes. Traffic & Safety could be reviewing that. Moving towards that, that would be something I would like them to sign off on, Traffic & Safety.

I would probably have one of the Code Officers, Code Enforcement -- we may ask that a sign be put up approximate -- a piece of plywood, just stationary on a sawhorse or something so it could be looked at and moved, if you follow what I'm saying?

MR. EVENSKI: I understand.

PAUL BLOSER: I would definitely want a sign off from Traffic & Safety and Code Compliance for that.

FRED TROTT: I agree with the monument style. I think that would probably look nicer.

And size wise, it does seem large. You know, the design of it. I mean definitely you go by it, what he has there now, you can't see it. I agree with you there.

MICHAEL NYHAN: How far off the road is the existing sign again, right now? What is the setback with it?

DAVID CROSS: I think it is 8 feet.

PAUL BLOSER: For the existing.

MICHAEL NYHAN: Same location pretty much. Okay. All right.

PAUL BLOSER: The other thing that -- I know you want -- you don't have any building signage; is that correct?

MR. EVENSKI: We do not.

PAUL BLOSER: Is that a consideration, something that you're looking at doing, is putting anything on the building?

MR. EVENSKI: Not at this juncture.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

DOROTHY BORGUS, 31 Stuart Road

MS. BORGUS: It would help if we knew what was on the sign, because there has been nothing provided for the public here.

Aren't applicants instructed to bring a copy to post for the public?

PAUL BLOSER: They have it here.

FRED TROTT: You want to see the sign?

MS. BORGUS: I do.

Oh, my heavens.

Well, it is obvious why he thinks he needs a big sign, because that is a lot of print on that sign. I wonder if all of that is necessary. I mean that is almost an ad.

My first question, I guess, would be how long has this been a retail business, because my recollection is that that carpet business was approved there as a wholesale unit, a business.

PAUL BLOSER: That is my understanding, also.

MS. BORGUS: So the proper -- is the proper paperwork in place to run a retail carpet store out of there?

PAUL BLOSER: I will see what I have with my copies.

It is in a business zone.

Chris (Karelus), do you want to comment on that?

CHRIS KARELUS: I didn't look how it was permitted, but I think the variance stands on its own. I don't know what the nature of the question really has in regards to the variance. The use is permitted on the site regardless how it got permitted in the past, in the NB District. An area variance before the Board is on the nature of the size, not the nature of the business. It is a legally operating business. How it was done in the past, I can't tell you, but in the NB District, it is (inaudible).

MS. BORGUS: I'm not bringing this up as a point about this variance. I'm bringing it up as a point that maybe it needs to be checked into. Maybe it doesn't. I am bringing it up to see if it should be looked at.

If any kind of a carpet business is allowed there, then why -- I'm trying to remember why -- why there was ever an issue of that business going onto that site. Just bears checking into. That's all I'm saying.

I agree it should be a monument sign. We -- we encourage those in Chili Center. North Chili is no different. They need to improve over there. And a monument sign would be in harmony with the other signs that are over there. The sign size to me is just too big. The gentleman has said it is bigger than Pearce -- the Pearce Church sign. That tells you that it is too big. Too big. You don't need a sign for a -- for a business that is bigger than a church sign.

When you think about it, that's pretty close to the size of a piece of plywood on one side. Think how big that is. This isn't that big a piece of property. The sign is just plain too big. And, you know, you have to remember, too, that if you let this gentleman have a sign that big, you will have sign requests all of the time and you will have a hard time saying to somebody else, no, you can't, when they point to his sign and say his sign is X feet. It just won't work. You are just starting a bad, bad practice.

As far as the 8 feet goes, there may be a time in the future when this vacant house will be -- the property will be cleaned up and that shrubbery won't be there and the bush and the trees and everything, and then you will have this sign sticking up like a billboard 8 feet from the road, you know, with the huge size it is.

So I just think it is far, far too big, and the sight distance on that sidewalk, it would be a problem if it is too close. You do have to remember if you are going to have cars and customers coming into the site, they will have to see what is coming, and crossing the sidewalk besides. The sidewalks are very close to the curbs over there. We do have to think about safety, too. Just remember if you approve a sign this big for North Chili, there will be a lot of businesses that will be in here and they will want the same dimensions. I would think you would want a sign on the building. That would be my thought. Thank you.

PAUL BLOSER: To answer your initial question, in April of '91, there was an approval by Planning Board for a retail store.

MS. BORGUS: There?

PAUL BLOSER: Yes.

MS. BORGUS: Okay. Thank you.

PAUL BLOSER: So that is an approved business.

MS. BORGUS: Thank you.

ROBERT MULCAHY: Motion to close.

FRED TROTT: Seconded.

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

MICHAEL NYHAN: The initial comments looking at this, this is a very large sign. The purpose when you look at the sign is just to identify the location of that business. You know, if you could happen to put in a sign that identified everything that business did, I guess that would be fine, but the address, 4317, and the name of the business, I think, identifies that business. People would have no problem finding it. And I'm not sure why all of that couldn't fit into the sign based on the variance and current code -- or based on the current code.

I am concerned about it being as close to the road as it is as well with the amount of pedestrian traffic and the continued growth of the North Chili area.

And we do want to keep it consistent. We have been requiring other businesses in the area to put in monument-type signs, and we have been requesting the size of that sign in the area -- to put a larger one than what we have permitted other businesses in the area, I think would just be a

mistake because we would just continue -- as each new sign came in, we would continue to grow the size, and the intent with the code to begin with was to provide the uniformity in the area.

JAMES WIESNER: I was just trying to remember what we approved for Roberts Wesleyan. We don't have any details as far as the size.

PAUL BLOSER: I don't have any in front of me.

JAMES WIESNER: That wasn't a monument size, was it? It was on posts, if I remember.

MICHAEL NYHAN: Pearce Memorial Church sign?

JAMES WIESNER: The one out front.

PAUL BLOSER: The one out front is not necessarily a monument, but it is built up, the base, with stone and gardens and gives more of an appearance of a monument style.

JAMES WIESNER: So it was closer to the ground and had some --

PAUL BLOSER: Yes.

JAMES WIESNER: -- surrounding structure?

PAUL BLOSER: Yes. That is why I made the suggestion if he did complementary block to the stack stone he has in the back retaining wall, it would be comparable to what is already on the property and appearance of a monument style instead of a lollipop.

ADAM CUMMINGS: My comments, reducing the sign definitely helps out with that, but even I would like to make the point a monument style would hinder the sight distance, because the cars would have a more difficult time seeing, as say a 2-foot base, and even if it shrinks from 45 inches height of the actual sign to 36 inches, that makes it 5 foot tall, and that is about the size of your car windows, so sight distance would be a bigger issue with a monument type.

But regardless, just the numbering, the phone number, and the address, is jumping out more than anything else on this sign, so maybe minimizing those, the address sign, just legible would be good enough.

It is nice having the address on the sign as opposed to not, but I would say some kind of condensing sign would be a good option.

ROBERT MULCAHY: I feel the same way. I think the sign should be smaller. The monument sign, I think it -- there are any number of designs you can use for a monument sign.

PAUL BLOSER: Mr. Evenski, right?

MR. EVENSKI: Correct.

PAUL BLOSER: In fairness to you, you have heard a lot of comments, public comment, what the Board is feeling on the size and style of the sign. We could take a vote on it and stand the chance of having a rejection, or I could also give you the opportunity to table this and come back with another design that might be more in favor what the Board is looking at for size.

I guess, you know, we could make some decisions now with some height restrictions on it, height and width restrictions and then come back with a final approval with a sign. I guess how would you like to proceed with this, based on what you have heard at this point?

MR. EVENSKI: I think I would welcome your recommendations, because my fear is if I come back with something smaller, you know, is it going to be another series of discussion, well, that is not small enough yet, so go back to the drawing board again and coming back a third time. So I would welcome the Board's comments.

PAUL BLOSER: Feedback now?

MR. EVENSKI: Yes. I would welcome it and see if it is appropriate for me to come back with a redesign at some future point.

I don't want to speculate in terms of what is going to be approved here.

PAUL BLOSER: Do we want to come up with some height restrictions on it?

ADAM CUMMINGS: I think if we come up with the dimensions that we think are appropriate, that would also help the setback from the right-of-way, because we may be able to extend that. Say, for instance, 8 feet where 15 is required, asking for a 50 percent, you could move it to 10 feet for a 33 percent variance.

PAUL BLOSER: I would like to come up with a sign size height from the ground, and my recommendation would be to put a piece of plywood on sawhorses and have Traffic & Safety and Code Enforcement look at it for traffic safety placement. But at least we have a set height and width of the sign to proceed with the design on. Then he could present that to the Building Department. But at least we give him a height and width and he can work with Code Enforcement for placement.

Do we want to proceed that way?

In that case, I would like to hear some suggestions. I would like to see width no more than 6, on the width.

And the height, we have been doing 5, 6 foot height maximums.

FRED TROTT: That is from the ground up?

PAUL BLOSER: Yes. Ground to top of sign. We're also looking at using a monument-style base, whether it is stack stone with some gardening underneath it, so it gives the appearance of the monument style instead of just two posts out of the ground.

You know, there are people putting some money into North Chili on this main drive right now, and if we're doing it, this is the time that we stay consistent with what our thought process is for the Town appearance.

DAVID CROSS: I think 5 foot is height. If you have 2 feet of base and 3 foot of signage. So signage 3 foot by 6 foot, and that is 18, times 2, 36 square feet is what they would be requesting, which is only 4 square feet over the code.

ADAM CUMMINGS: Still maintains their same 2 to 1 ratio they had already.

PAUL BLOSER: What is the existing sign right now? That is 40 by 36. Basically you're

looking at about the same height, just giving them some allowance for a wider sign.

FRED TROTT: I think also them moving it to the other side of your driveway, I think that is also going to help with sight. I think that --

MR. EVENSKI: Uh-huh.

Paul Bloser reviewed proposed conditions with the Board.

PAUL BLOSER: With those conditions of approval, I will move forward.

JAMES WIESNER: Should we specify something for lighting, too?

PAUL BLOSER: Lighting.

ADAM CUMMINGS: Will we do anything about putting down -- because the applicant is asking for a 8 foot setback variance.

ROBERT MULCAHY: We should have a number there.

ADAM CUMMINGS: We should put a number on it. So if we shrunk the sign 2 feet, that makes it 10 or do we want it closer to the 15?

DAVID CROSS: I think it is 8 feet subject to Traffic & Safety review. Personally, I think the 8 feet will work out well out there with it in the right spot.

Paul Bloser further reviewed the proposed conditions with the Board.

Paul Bloser rereviewed the conditions of approval with the Board.

Paul Bloser made a motion to declare the Board lead agency as far as SEQR, and based on evidence and information presented at this meeting, determined the application to be a Type II action with no significant environmental impact, and Robert Mulcahy seconded the motion. All Board members were in favor of the motion.

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

James Wiesner questioned if the Board was going to address the sign lighting. Paul Bloser suggested a proposed condition relating to lighting of the sign.

PAUL BLOSER: Mr. Evenski, any lighting that you present, I would like the light engineering detail. You know, what type of light, what type of bulb, wattage you would be putting it in it so we have it for the record, okay?

MR. EVENSKI: Uh-huh.

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

1. Sign placement (setback) to be confirmed and approved by Traffic & Safety Committee and Code Enforcement Officer.
2. Maximum height from ground to top of sign to be 5 feet.
3. Sign maximum dimensions not to exceed combined 36 square feet.
4. Setback not closer than 8 feet and subject to Traffic & Safety Committee and Code Enforcement approvals.
5. Final design to be presented to the Building Department for approval.
6. Sign lighting to be soft in nature up or down with specifications presented to Building Department for approval.

The following finding of fact was cited:

1. The requested variance will not have an undesirable impact or change to nearby properties.

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

3. Application of Susan Olson, owner; 47 Rio Grande Drive, North Chili, New York 14514 for variance to allow existing utility shed to be 3' from side lot line (8' req.) at property located at 47 Rio Grande Drive in PRD zone.

Ms. Olson was present to represent the application.

MS. OLSON: My husband Scott and I are the owners of the single family. We built in the Union Station development and we built the home in 2006. We erected the shed in the summer of 2007. At the time we, I guess, mistakenly asked the builder to mark off the lot for us, and, unfortunately, he marked it quite a bit further than what we thought. Because we had actually

changed the properties -- because they originally sold us a home they couldn't build on the lot size, we moved across the street and thought we had the same width, and so, unfortunately, we erected it closer to the side lot than what we thought our property was.

However, we did know the person that -- we were the only house there so everything around us was barren land. However, we did know the folks that were soon to build a house to which the shed is too close to. Matt and Jenn Herman, and did consult with not only them, but also all of the folks in the area just to make sure -- you know, new neighbors, you want to make sure you're not doing anything to cause hard feelings. So we showed pictures of the shed and wanted to make sure everything was okay. Everyone at the time agreed that was the best location for a few reasons. One, there is a lot of children that play in each other's yards. This gave our yard a little more foot room. And two, a lot that's kiddy corner to ours in the back, they had several puppies and they decided to keep several puppies, and the dogs would look at my animals sitting in my house and bark incessantly for hours and hours. The placement of the shed actually blocked the dogs seeing my pets, and therefore, the barking stopped. So it had a twofold improvement. A little more walk room, and two, it allowed the barking of the other dogs to cease.

I have presented, one, a picture where the shed exists now, and in respect to my home and the neighbor homes in the back. As you can see on the first page of the pictures, we originally had our lot line as the orange. Unfortunately, we found out we were less of a homeowner than we were. I also -- in looking at placement of the shed, I did do quite a bit of driving around to the homes in our subdivision and the one, Park Place, adjacent to it, just make sure it was consistent what homeowners in the area were doing, and as you find, several other instances that I provided pictures of homeowners with sheds, very similar placement. Basically everyone puts them in the back, and to the side. Keeps them away from everyone's front lot line.

My concern with moving the shed, actually the shed is closer than 3 feet at this time, as you can see from the picture. We thought we would still be close with 3 feet, even with a home being built next door, but when the fence was erected, we found it was much closer than that. The current homeowners to the side did include a letter saying they would still like the shed to stay there. My concern at this point is not actually the placement in our yard of the shed, although that is in the back of our minds, it is the actual movement of the shed, what kind of damage are we going to do to it if we actually uproot it and have to move it a few feet. We don't know until we get to that point. There may be none, but we may also destabilize the shed. That is our primary concern at this point.

So I open it to any questions you may have.

PAUL BLOSER: Is this on footers or just on block base right now?

MS. OLSON: No. Right now it is on the manufacturer-recommended base of -- I apologize. They're 2 by 6's, and crushed stone, so there is a packed base with the treated wood and then there is a crushed stone underneath.

PAUL BLOSER: Was this a kit shed or was it built complete?

MS. OLSON: It was a kit shed. It was purchased from Lowe's.

PAUL BLOSER: The photograph here, you have here now, doesn't show that the fence.

MS. OLSON: Yes. They actually just finished putting the fence up after several arguments with the fence folks. The fence was just finished and changed, and I apologize, I only have one copy, because I --

PAUL BLOSER: Could you put it up?

MS. OLSON: Yes. It is very similar -- in fact, almost identical to the first picture. It is pretty dark.

PAUL BLOSER: We can see it.

MS. OLSON: It is very similar to the first picture I included. It is almost identical to the fence next to the shed, which is right around the corner.

PAUL BLOSER: This looks like you're about a foot from the fence.

MS. OLSON: Exactly. That is pretty much what it is. One of the reasons they did like it that close, because as they were erecting the fence, what we did is we made the land in between that maintenance-free. We put several layers -- we dug everything out, put several layers of weed block on there, secured it down completely and then also, um, we waited -- we were going to select the color stone. They had to do some changes to the fence. We have wood blocked it to the side, so it will be maintenance-free. Although we can get in there to do anything we need. My husband is pretty small.

PAUL BLOSER: Do you know how far back the house is? You don't show a placement on survey map.

MS. OLSON: I'm sorry. It is 8 1/2 feet.

PAUL BLOSER: Behind the house?

MS. OLSON: Oh, behind the house. I apologize. It is 8 1/2 feet from the rear lot.

PAUL BLOSER: The rear lot line?

MS. OLSON: The rear lot line.

PAUL BLOSER: You don't have a pool or anything back there now?

MS. OLSON: We have nothing. No. My husband doesn't want a pool. That is one of the reasons our children is always playing. In fact, the people with the fence, they have four small children eight and under and my daughter baby-sits them, so the older children come into our yard to play the bigger games and the younger ones go in there. If you can see, according to the picture I have up here, this house kiddy corner is the one we were originally blocking. If that shed -- well, the fence is now there as well so it helps. We have a morning room there. My

animals like to sun themselves. They sit and, unfortunately, the dogs go nuts from morning to night.

PAUL BLOSER: Does that fence go all of the way to the back of the property line?

MS. OLSON: Yes. It is property line all of the way around. Obviously on three sides, the property line. The two sides in the back. The front meets the back of their home.

DAVID CROSS: I will go back, what is the hardship? Why can't you put it 8 feet? Why does it have to be so close?

MS. OLSON: It would really take a lot out of the yard. Where it was placed in there, it would take quite a bit of room out of -- again, unfortunately, this is not where we were going to build this home. The builder actually had the -- actually had submitted the plan, we had a mortgage approved and they found out they couldn't build the house they sold us, so we ended up having to -- going to a different lot. There were some things they could not do to our home. One of them, we had an expansion to the garage. They could not do the expansion that they wanted. They could not do some other things because supposedly we were too close. By taking that out and moving it further into the yard -- it is, unfortunately, quite a small backyard. A bigger house on a smaller lot. The lot that we wanted, um, we were unable to clear trees that we wanted that would actually make our back lot bigger, instead of smaller. With small children we wanted that.

DAVID CROSS: What are the dimensions of the shed?

MS. OLSON: It's 7 feet 8 inches by 10. It is actually 9.

PAUL BLOSER: 10 deep?

MS. OLSON: Yes. It is just actually under 10. It is like 9, 10. They sold us a 10-foot fit, but we're 2 inches short.

PAUL BLOSER: So roughly 8 by 10?

MS. OLSON: Yes.

ROBERT MULCAHY: Your backyard is 80 foot wide?

MS. OLSON: Yes. Is that -- I apologize.

KEITH O'TOOLE: That's what the survey says.

MS. OLSON: I should know that by now with all of the dimensions I have gone through. Yes. It is 80 foot wide. I apologize.

FRED TROTT: I have gone by there. That is really close to that fence. I definitely see, in my opinion, I think it needs to be moved.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

DOROTHY BORGUS, 31 Stuart Road

MS. BORGUS: Again, I would like to comment about the fact that the public isn't given any information here. No maps, no nothing. That's not the way this is supposed to be done.

I haven't heard a hardship. I agree with the gentleman up here who said that. You buy a small lot, you got a problem. When you buy it, you knew you had one. A foot from the property is just -- it is really just too much. This is what happens when people buy lots and they want to put something on it and everything around it is vacant. It doesn't seem to matter to anybody.

But, you know, nobody fails to look long-term that every one of those lots will be sold and it does matter to somebody that comes in there later.

Frankly, I don't know, that is an awfully small lot, but I didn't buy it either. So frankly, I mean if you want to -- a bigger house, you got to buy the land to put it on to put these things up. So I agree with Mr. Trott. I think this is one that should be moved.

MS. OLSON: Can I answer the question? I understand there is the question at hand to move or not to move. I want to make sure that the 3-foot variance is obviously given -- because that is what was originally asked for and I know that has been granted. I have been following the movements of those. So my request is, I'm not going to have a shed if I have to move it. I really want to make sure that you understand it. Moving it 8 foot would definitely dig in, but we would do our very, very best to make sure it was 3 foot, and I know that that is the old variance that had been granted in the recent past. I believe even last month there was one.

DAVID CROSS: Just to clarify, the variance requested is 3 foot?

MS. OLSON: I originally requested for the variance for what it was on and after I did that, I received a call at my home a week later saying, "No, you can't have that. You can have 3 foot." So my request is for 3 foot, which I'm still -- we're still going to have to really play with it to make sure we can move it without ruining it, but I understand that is a standard variance that has been granted with obviously the right investigation and the circumstances, and obviously the neighbors in the area have -- the closest one has even written a letter saying that is absolutely fine.

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

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

PAUL BLOSER: As it stands, there is just not clearance for the fence. There is not room for a person hardly to go through, so it is not a safe situation from that standpoint. The State minimum is 3. We have tried to, my recollection, stay minimum 4 on smaller lots, but there is no pools or other obstructions back here, so we have to look at -- it's not a big shed either. Not a big

lot. Not a big shed. But it is close. So, we need to look at it and put either a condition of approval on here, or we have to vote on it. Do we want a condition of approval with a minimum side -- maintaining the 8 foot rear as it is? Or just establish a side that it has to be moved and approved by Code Enforcement, verified, or how do we want to do it?

MICHAEL NYHAN: The variance goes with the property and not the shed or the homeowners, correct? So looking down the road, neighbors that are there now may not disapprove of it, but we don't know who is going to be living there a year or two.

PAUL BLOSER: And eye -- eyesight in any direction. This carries with the land. It appears by some of these photographs we'll be busy over the next few months.

MS. OLSON: I didn't mean to throw my other homeowners under the bus, but I thought I was just setting a standard --

PAUL BLOSER: That is why I want to be very definitive. We're looking at this application and not the others. What has been done in the past or what is being done in the future, we're looking at this lot and how it carries, because it is final. So with that, do we want to establish a side setback as a condition of approval? Or vote on it where it is at, and stay with the code?

DAVID CROSS: I would like to see something closer to a 5 foot setback. 8 foot, I start -- I can --

PAUL BLOSER: Kills your backyard?

MS. OLSON: Yes. It sits it almost in the middle of the property.

DAVID CROSS: 5 is more reasonable to get a lawn mower in there.

PAUL BLOSER: We'll have to move the extra -- it out a -- so a foot or more is not that much.

I'd also like to see 4 foot minimum clearance, especially with a fence that high. If there was a fire and the Fire Department needs to get in for anything, the vinyl fence would melt down pretty quickly, but you still have to be able to safely move in there for a lot of reasons.

MICHAEL NYHAN: This is also a very dense neighborhood. Houses are close together. There is a lot going on in there, and, you know, the code of 8 foot was put there for a reason.

Again, the hardship, if you are going to move it 4 feet versus 5 feet, you know, I just don't see the difference in the hardship there, moving it 5 feet versus 8 feet.

ADAM CUMMINGS: I like all those pictures.

MS. OLSON: I know it is not up to me, but the way the backyard is graded, too, there is limited level spot there for the type of base. I'm sure probably some of the other homeowners had the same issue. That is probably why they chose those locations.

MICHAEL NYHAN: I do have one other question. With the orange and the black lines -- would you put the photo up there of the orange and the black lines for the public to see?

MS. OLSON: Yes.

MICHAEL NYHAN: Explain the meaning of the orange photo and what you --

MS. OLSON: These were the original stakes.

MICHAEL NYHAN: When your house was built?

MS. OLSON: Yes. We asked them to make sure they were staked and that is what was seeded and that is what we maintained for two years as our property.

ADAM CUMMINGS: The builder did it, not a licensed surveyor?

MS. OLSON: The builder did it. We asked -- part of the problem was, again, they sold us a house and came back after submitting the plans saying, "Ut-oh. We sold you a house we can't build for you."

So everything was kind of at the last moment stripped apart and we weren't sure what our lot lines were.

PAUL BLOSER: What is based on the lot line?

MS. OLSON: 9 1/2 feet. Actually, it was clear to 10.

ADAM CUMMINGS: That stake with the orange line on it, inside the black line, is that a survey property stake?

MS. OLSON: No. The fence guys putting stakes to my house, at which point the homeowners started yelling at the guys.

MICHAEL NYHAN: When you closed on the property, you knew what your property line was at that time?

MS. OLSON: No. That's -- there were stakes put on there. That is where our property stakes were.

ADAM CUMMINGS: The one inside the black line?

MS. OLSON: The one at the orange line.

PAUL BLOSER: When you bought it, that is where they had it?

MS. OLSON: Exactly.

ADAM CUMMINGS: But you since found out where it is.

MS. OLSON: Exactly. That was -- actually, when they built their house and they started tearing up our land, and we started having an issue how much of our grass they were tearing up, we had been mowing it and fertilizing it and lawn-guying it for how long. "What are you doing?"

They said, "Oh, guess what, that is not your property."

In the meantime, we actually did, through discussions with the builder trying to purchase either of the two lots, in particular this was a flatter grade, so we did attempt to try to purchase an extra lot because the bigger lot that we wanted wasn't available. It was wider, but very short because there were trees behind it, and it was a very steep, steep grade and we were afraid of

water. It was actually in a flood zone. You had to carry extra insurance on it. And we couldn't build the house that we wanted on it.

MICHAEL NYHAN: So the shed was built after all that occurred, correct?

MS. OLSON: The shed was actually -- no. The shed was built and we still had the stakes on it, and they had graded -- I mean they -- the lawn came with the home. So they had graded everything and seeded everything and done everything on it. And --

MICHAEL NYHAN: So when did you build the shed?

MS. OLSON: August of 2007. So the other homes didn't appear. These people just moved in December of this past year.

MICHAEL NYHAN: So you built a shed. When did you close on the house?

MS. OLSON: We closed the day before Thanksgiving of 2006. So we --

PAUL BLOSER: Following summer?

MS. OLSON: Following summer. We went through the winter and very next summer we had the shed.

MICHAEL NYHAN: When did you find out that was not your property?

MS. OLSON: When they started digging for this house in -- actually when they started, um, digging and reseeding everything in like January of this year. We closed in December with all of the grass thawed -- or the snow thawed and we went through the detail.

PAUL BLOSER: This just came up this year?

MS. OLSON: Just came up, and we actually still thought we were correct because their house is much farther from the lot line. Even at that point we thought it was half and half because that is where kind of the drainage goes, and it wasn't until the gentleman actually came to get the survey done because they were going to do their fence and they said, "Oh, we have more than we thought."

And I said, "Oh, we have less than we thought."

And like I said, either way we had asked pretty much everyone involved.

PAUL BLOSER: Did you approach the builder on absorbing the cost of moving the shed?

KEITH O'TOOLE: Let's not go there.

MS. OLSON: Good luck is all I can say. No, it was -- nice try. To be honest with you, I probably wouldn't even go there. They're in the middle of replacing the floor as we speak.

PAUL BLOSER: I'm being facetious with this one.

JAMES WIESNER: What precipitated this being an application? Did you just come into the Building Department and apply for it?

MS. OLSON: We did because our original hope was that -- especially looking at all of the other sheds in the area, I don't know what other variances have been approved. You know, I don't know anything from that. So I figured, well, everybody that wanted to be closer than that has gone through that process and said, "Here is where my shed wants to be," and going through the process and getting the approval, so I basically went through the -- all of the properties again and noted how close they all were and said, oh, okay, obviously this is a standard and, you know, there is a -- you know, background for our appeal to be approved and either keep it there or only move it a short ways. I guess if I move it a short ways, it is a lot better than moving it the 8 feet out.

PAUL BLOSER: Thank you. You can be seated.

ADAM CUMMINGS: 3 foot needs to be moved at least 2 feet to get the State variance. I don't think you want to go anywhere near that one. At that point, we're already moving it 2 feet.

PAUL BLOSER: That is what I said.

ADAM CUMMINGS: Comes up what Mike (Nyhan) said.

PAUL BLOSER: Where do you want to put it to stay within the code?

JAMES WIESNER: It will open the floodgates.

PAUL BLOSER: Yes, it will. And this carries with the property.

DAVID CROSS: We'll vote on the application as is.

PAUL BLOSER: The application is to allow 3 foot from the side lot line. That is the application.

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

Michael Nyhan made a motion to approve the application, and Robert Mulcahy seconded the motion. The Board unanimously denied the motion to approve the application.

PAUL BLOSER: On the application to move the shed to the 3 foot as requested, that request has been denied.

MS. OLSON: So do I reapply for a 5 foot or something else?

PAUL BLOSER: You discuss with the Building Department your options on it right now, but right now, the code has to be enforced on what the setbacks by code are, which is 8 foot from the rear and 8 from the side.

MS. OLSON: So all of the other people that were approved, that doesn't matter?

ADAM CUMMINGS: They may not have been approved. We have no idea. We don't have that information with us.

PAUL BLOSER: We had two last month that were for minimum setbacks and they were

both -- we went right to code, to a foot in.

KEITH O'TOOLE: Mr. Chairman, is the Board of a mind to grant a lesser variance? I guess I was following some of the interplay between the Board and it kind of surprised me. I thought I heard 5 feet is the magic number.

PAUL BLOSER: I heard that also, and then the Board asked to move forward with the application as presented. That is what I asked, all in favor as presented.

KEITH O'TOOLE: Which is certainly your privilege, but you also have the power, if somebody so choses to offer a motion, to grant a lesser variance. That is what I am saying.

PAUL BLOSER: 5 foot?

KEITH O'TOOLE: Or whatever number you think is appropriate.

DAVID CROSS: I will, but can I do that at this point?

PAUL BLOSER: I would be open to that.

DAVID CROSS: I will make a motion to grant the lesser variance of 5 feet to the side lot line as opposed to 3.

ROBERT MULCAHY: I will second that.

PAUL BLOSER: Keith (O'Toole), do we have to have unanimous vote to do it this way?

KEITH O'TOOLE: No. This is still part of the same hearing.

PAUL BLOSER: I will put down then on a condition of approval, shed can be relocated to a minimum 5 foot side setback and maintained to code required, 8 foot rear, which is where it is at right now, the rear setback.

With that condition of approval, I will go through a revote. I already did SEQR.

Motion to adopt a revised application.

DAVID CROSS: So moved.

ROBERT MULCAHY: Second.

MICHAEL NYHAN: Excuse me, can I ask a question before you do that? You mentioned earlier they had been approved for a 5-foot setback, as a standard? Is that what you said?

PAUL BLOSER: Not as a standard. For this application.

MICHAEL NYHAN: Okay.

PAUL BLOSER: Just for this application.

MICHAEL NYHAN: Okay. All right.

FRED TROTT: Do we have discussion time?

PAUL BLOSER: Yes.

FRED TROTT: I think this is what Mike (Nyhan) is getting to. As we -- as far as other people coming, even in this subdivision, wanting relief from the 8 foot, have we been doing 5 foot? Being true to the 4, or is that kind of like where you -- is that acceptable, a/k/a standard, I guess, for going --

PAUL BLOSER: We have presented, based on evidence given from a hardship standpoint, from drainage issues, swales, trees, vegetation, there are things that we consider based on is there a hardship here. Why can't it be, or are there other things that can be considered. Are there other options. They have numerous options. We may hold to the code. They're landlocked based on we're going to have to cut some trees down or there is a natural drainage issue here or they're close to a septic bed or there are other things that come into play. Yes, we have granted lesser, but it is based on the information that is presented and the hardship, from looking at a hardship on this --

DAVID CROSS: It is important that each application stands on its own.

FRED TROTT: Yes. I realize that. I guess I'm more or less putting it out here, we have a whole bunch in this neighborhood that are out of code. Are we -- they are going to be coming up saying, I got it at 5 foot, why can't I have mine at 5 foot? You know what I mean?

ADAM CUMMINGS: They can't plead that case. They have to show other information.

FRED TROTT: Okay. I'm still new to this.

PAUL BLOSER: That's okay. This is the venue for it.

David Cross made a motion to approve the application as revised, and Robert Mulcahy seconded the motion. The motion was approved by a vote of 5 yes to 2 no (James Wiesner, Michael Nyhan).

DECISION: Approved, as revised, by a vote of 5 yes to 2 no (James Wiesner, Michael Nyhan) with the following condition:

1. Shed can be relocated to a minimum 5' side setback and maintain the code required 8' rear setback.

The following finding of fact was cited:

1. The requested variance will not have an undesirable impact or change to nearby properties.
4. Application of Rodney Jones, owner: 122 Old Scottsville Chili Road, Churchville, New York 14428 for Land Use Variance to convert lower level of single-family dwelling to a rental apartment (previous approval granted for in-law use only) at property located at 122 Old Scottsville Chili Road in R-1-20 zone.

Rodney Jones was present to represent the application.

KEITH O'TOOLE: Mr. Chairman, before we get into this, I have had an opportunity to discuss this matter with the Code Enforcement Officer, and we were reviewing the code, and the application materials that were presented by the applicant.

It appears to me that even though this matter is advertised as a use variance application, what the applicant is really applying for is a special use permit. And, in fact, if you look at the application materials, the applicant indicates just that, repeatedly uses the term, "special use permit," or "special permit" as he calls it. The Land Use Variance questions are not answered because he deems them to be not applicable, so it appears that he views it as a special permit, even though there are other materials that are submitted seeming consistent with that. I believe there is a petition signed by the neighbors that indicates he is not applying for a two-family. But be that as it may, if he is applying for a special permit, the Zoning Board of Appeals does not have jurisdiction over special permits of this type, only the Planning Board does.

There is another issue that the applicant should be aware of, and I believe he may already be aware of it inasmuch as it has been his house all of the time. In 1983, there was an in-law apartment permitted by the Planning Board, and, in fact, it was subject to the condition that it be for in-laws only.

So it would appear to me that going back to the Planning Board is the place where this applicant should be and that this Board has no jurisdiction, and even if it had jurisdiction, couldn't hear this application tonight because it wasn't properly noticed for a special permit anyway. So I would deny this application as being outside the Board's jurisdiction. Thank you. And incomplete, on top of that.

PAUL BLOSER: Thank you, Counsel. Based on that information, that was one of the questions in the back of my mind in reviewing the previous Board actions. In 1983, and in 1996, all done by Planning Board for special use permits. Based on Counsel's information, I'm going to make the recommendation to this Board that we refer this back to Planning for review, and subject to their approval for any changes or modifications to their action.

ROBERT MULCAHY: I make a motion that we refer it to the Planning Board.

ADAM CUMMINGS: I will second that.

The Board unanimously approved the motion.

PAUL BLOSER: Mr. Jones, we're moving this back to Planning Board for special use permit review. Okay?

DAVID CROSS: Procedurally, do we have to deny this application in order for that to occur?

KEITH O'TOOLE: That's point one, yes. I would appreciate it if you would do it just to clear the record for that.

And two, we're not so much referring, as we are indicating to the applicant that he has to make an application to the Planning Board. What he has made is an application to the Zoning Board of Appeals. I think he is going to have to start over.

DAVID CROSS: I make a motion to deny this application based on the fact it is outside the jurisdiction of the Zoning Board.

MICHAEL NYHAN: Second.

The Board unanimously approved the motion to deny the application.

PAUL BLOSER: I would like to proceed with a findings of fact statement right now. We can read that and the Board will vote based on the findings of fact.

KEITH O'TOOLE: I think there are a couple of issues.

PAUL BLOSER: Do you have proper terminology, I guess?

KEITH O'TOOLE: I think it is an incomplete application for a use variance, because the gentleman has failed to answer the relevant questions. And I think that is sufficient right there.

And I believe the gentleman has indicated in his application materials that he is actually applying for a special permit, not a use variance, so it is clear why he didn't answer those questions, because he thought they were irrelevant to what he believed his true application to be. So there -- I don't think there is a need for any findings beyond what we just discussed.

PAUL BLOSER: We don't need to proceed with SEQR then?

KEITH O'TOOLE: That's correct. You have no jurisdiction, so, therefore, SEQR doesn't apply.

PAUL BLOSER: Based on not having jurisdiction over special use permits, I'm going to move forward with a vote on this application as we don't have sufficient jurisdiction over this.

JAMES WIESNER: We're voting to deny?

PAUL BLOSER: Yes. Well, we're voting on approval of this. It would be a "yes" or a "no."

JAMES WIESNER: That is what you want to be sure.

KEITH O'TOOLE: May I suggest a motion?

PAUL BLOSER: Yes. We want this to be clear, yes.

KEITH O'TOOLE: Resolved that this application be denied for lack of jurisdiction and for being incomplete.

Does anyone want to make that motion?

DAVID CROSS: So moved.
ROBERT MULCAHY: Second. All in favor.

The Board unanimously approved the motion to deny the application.

DECISION: Unanimously denied by a vote of 7 yes to deny for the following reason/finding of fact having been cited:

1. This application is incomplete proposed as a Land Use Variance, and applicant is applying for a special use permit which is out of the jurisdiction of this Board. It is, therefore, resolved that this application is denied by a unanimous vote of 7 due to special use application and not a Land Use Variance application.

The meeting ended at 8:28 p.m.