

CHILI ZONING BOARD OF APPEALS

August 22, 2006

A meeting of the Chili Zoning Board of Appeals was held on August 22, 2006 at the Chili Town Hall, 3333 Chili Avenue, Rochester, New York 14624 at 7:00 p.m. The meeting was called to order by Chairperson Beverly Griebel.

PRESENT: George Brinkwart, Michael Martin, Dan Melville, Jeffery Perkins, Richard Perry, Peter Widener and Chairperson Beverly Griebel.

ALSO PRESENT: Dennis Scibetta, Building & Code Compliance Inspector; Keith O'Toole, Assistant Counsel for the Town; Jeron Rogers, Director of Planning & Engineering.

Councilman Schulmerich, Zoning Board Liaison, was also in attendance.

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

BEVERLY GRIEBEL: Number 1, Romeo?

The Board indicated they would hear the application.

BEVERLY GRIEBEL: Okay. Number 2, Open Door Baptist Church?

The Board indicated they would hear the application.

BEVERLY GRIEBEL: Okay. Number 3, Chris Costanza? Any problem with that?

The Board indicated they would hear the application.

BEVERLY GRIEBEL: Okay. They did better this month.
Number 4, Shawn Shonk?

The Board indicated they would hear the application.

BEVERLY GRIEBEL: Number 5, Anthony Cerretto?

The Board indicated they would hear the application.

BEVERLY GRIEBEL: Number 6, Timothy Cowie?

The Board indicated they would hear the application.

BEVERLY GRIEBEL: Number 7, John Overfield?

RICHARD PERRY: It was there.

The Board indicated they would hear the application.

BEVERLY GRIEBEL: We are on a roll.

And Number 8, Kevin Collins?

RICHARD PERRY: No problem.

The Board indicated they would hear the application.

RICHARD PERRY: Number 4 was so high I had to get out of my mini to see it.

BEVERLY GRIEBEL: Good job, everyone, tonight.

1. Application of Peter Romeo, 309 Canterbury Road, Rochester, New York 14607, property owner: Upstate Properties of Chili; for variance to create a lot with a depth of 219.68' (250' req.) variance to allow front parking for 10 vehicles at property located at 3313 Chili Avenue in G.B. zone.

Peter Romeo and Jett Mehta were present to represent the application.

BEVERLY GRIEBEL: Okay. Do you want to step over to the microphone?

MR. ROMEO: Sure.

My name is Peter Romeo. First identified as the person having made out the application.

I am here with Mr. Jett, J-e-t-t, Mehta with Office Industrial Real Estate, my client.

Essentially what we are proposing is the development of the northeast corner of the existing plaza just west of the McDonald's, on the south side of Chili Avenue.

The drawing that is mounted on the tack board shows the position of the proposed one-story Dunkin' Donuts with its relatively small adjunct leased space.

The area that you see bounded in green, the north edge of it essentially is the right-of-way line, the south right-of-way line of Chili Avenue.

East edge of the green strip that is to the east, which abuts McDonald's, is also green area.

And there is a little hook around the south side that is proposed to be landscaped currently. It is all blacktopped. Currently, the north perimeter is black-topped right to the right-of-way line, and there is some smaller areas of landscaping directly north of the north wall of the building and south of the south wall of the building.

I am here before you to seek relief from the zoning ordinance, specifically two area variances. One being the minimum lot depth.

The Town ordinance requires, I believe, a minimum of 250 feet. The existing east leg of the existing property is less than that. It is 219.66 feet.

The second point of relief that we are seeking is to allow the parking of ten cars within the front yard setback. There are no building setback variances triggered by this proposal. I believe that part of your submission package included an overall coordinated parking layout, if you will, for the entire plaza, including this proposed site.

That analysis was provided by Avery Engineering and Land Surveying Associates. And the report includes that based on the existing tenancies and the existing plaza, plus the anticipated parking demand for the Dunkin' Donuts and its adjunct, there are required 87 parking spaces, and Avery's parking survey graphically depicts 87 parking spaces.

What we envision is a building that is a traditional design, traditional envelope. In other terms, it will not be the prototypical synthetic plaster box. What we propose is a building envelope with gable main roof with cross gables and dormers, a brick veneer skirt or band from grade to the windowsill line which will be capped with precast concrete sills, and clapboard siding.

So it is not in the contemporary vein. It is more in the traditional vein.

There are no new proposed curb cuts proposed. There are no new curb cuts proposed on Chili Avenue. What is proposed, the common access and egress easement be developed along with mutual use of parking areas based on an easement to be executed between the current owner of the plaza and the proposed owner of the Dunkin' Donuts. It is being proposed that the Dunkin' Donuts' site actually be resubdivided to create its own tax account number.

By comparison with the adjacent properties, I would like to talk a little bit about this relative to the parking in the front yard. Currently, the entire site is paved along Chili Avenue to the south right-of-way line. We propose providing a 15-foot landscaping buffer abutting the south right-of-way line. The paving condition on the west side of the existing curb cut will remain the same. We will be removing some of the base of the grassy slope that is at the east edge of the existing pavement. And we will be adding some landscape area along the south leg of the -- what would be the newly created parcel south property line.

I believe that Avery Engineering's drawing shows acceptable traffic flows. We would accommodate -- we would need a requirement for the fire lane abutting the canopy along the east side of the existing plaza.

By way of comparison, also, the northernmost parking space along the McDonald's is about 35 feet back from the right-of-way line, south right-of-way line. Um, we don't -- we do not intend to install any kind of a -- what do you call it, an explosive visual element such as the playground that exists in their front yard.

Also, one of the things to be aware of is that this site is a -- situated lower than the McDonald's site, and it is my belief that the -- what do you call it, the visibility of the front end of the cars will not be as evident as it is at the McDonald's lot. There is probably, oh, 3 feet of differential from -- from the curb line due north of the proposed building footprint to the building finish floor. Those of you who have been on the site, I believe, are aware of the fact that the site slopes relatively generally from north to south. Also, I have done the calculation relative to our site specific. We are in, in fact, diminishing the impervious surface that now exists on that site. So the storm water runoff should be -- which now runs north to south would continue to run north to south, but with slightly diminished flow.

If anybody has any questions on behalf of the Board, I would be pleased to try to answer.

BEVERLY GRIEBEL: Has this been to the Planning Board?

MR. ROMEO: Yes. We went to the Planning Board for discussion only, and essentially we reviewed the same elements. They expressed a concern for the architectural style of the building.

BEVERLY GRIEBEL: Do you have to go back to the Planning Board?

MR. ROMEO: Yes, we do.

BEVERLY GRIEBEL: So they will be taking care of all of those details?

MR. ROMEO: That's correct. We would still have to complete a grading plan, and a planting plan. The Town has a requirement that the planting plan be executed by a licensed landscape architect. We are aware of that. And we would -- in all likelihood we would have a site lighting plan. It is our intent that the west side of the proposed building be illuminated by the existing plaza pole lighting. There is one pole light that is close to the west wall of the proposed building that would have to be relocated to the west. We would coordinate it with the parking scheme that Avery Engineering provided so that we don't lose any parking spaces or lose more than one parking space.

The illumination along the east side of the building would be done with wall sconces. Our main concern is to provide adequacy of the lighting for the drive-thru traffic, which is truly localized. And we would probably put a low post light in the -- there is an outdoor patio area just abutting the north wall of the building for some outdoor seating, and the north fringe of that is shown in green. It is proposed that that would be landscaped also, so that the cars make -- backing out of the ten spots would not infringe on the patio, but it also has a softening effect within the pavement area.

Do you have any other questions I may answer?

RICHARD PERRY: The area that you designate here as lease area, what would you be trying to attract to that? Anything in particular?

MR. ROMEO: I think the best source for that response would be Mr. Mehta, who is the developer. Interestingly enough, the Planning Board, even though it was a discussion matter, posed the same question. I will let him respond.

MR. MEHTA: My name is Jett Mehta. I am the applicant along with Peter Romeo.

We would primarily be looking for another small retail user, perhaps hair salon or tanning. Maybe a small restaurant use. Satellite dry cleaning type operation. Small retail.

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

GEORGE BRINKWART: I just noticed that you didn't mention the setback of the sign that have you there. Is it your intention to meet the requirement of the code for the --

MR. ROMEO: Absolutely.

GEORGE BRINKWART: No further questions.

MR. ROMEO: We do not intend to apply for a separate variance relative to the signage.

PETER WIDENER: The only concerns I have are the two things that we are looking at tonight, is the depth of the lot and the parking of the vehicles. We are not looking at the dumpster. We are not looking at the signs or anything else.

MR. ROMEO: Right.

PETER WIDENER: So my focus is on the depth of the lot and the variance of the vehicles. And I have no questions on them right now.

MR. ROMEO: Relative to the location of the dumpster, we placed it in what we believe to be --

BEVERLY GRIEBEL: That will be a Planning Board issue.

MR. ROMEO: Thanks.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

CHARLES RETTIG, Coldwater Road

MR. RETTIG: General question, if I may, please, just for clarification. I know you presented a report to the Planning Board, but how are you mitigating for your elevation differences on the east side of the building?

MR. ROMEO: Um, I had no intention of bluffing my way through that question. I developed a preliminary grading plan. Those of you who are very familiar with the slope along the west side of McDonald's should be aware of the fact that it is relatively gentle along the south right-of-way line of the -- of Chili Avenue. Then as you proceed to the south down slope, the slope gets steeper predominantly because of the fact that the finished grade of the parking area along what would be our southeast corner is lower. So I worked out a preliminary grading plan that requires some regrading along the southeast, the southern portion of our parcel, but it can all be done without construction of a guard wall or retaining walls.

The finished floor in the building would not be continuous elevation. I think there is something a little less than 2 feet differential from the finished proposed Dunkin' Donuts to the proposed finished floor of the adjunct. That can be accommodated with a slope along the 6 foot wide walkway on the west side of the building. It can be accommodated without -- without creating a handicapped ramp condition. In other words, it can be done with a slope of less than 5 percent.

So we realize that it is not a problem. It is a challenge that can be dealt with.

The Public Hearing was closed for this application at this time.

Beverly Griebel 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 Jeffery Perkins seconded the motion. The Board all voted yes on the motion.

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

BEVERLY GRIEBEL: This did go to Monroe County Planning for approval and came back as a local matter.

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

1. Street numbers to be on any sign approved by the Planning Board.

The following finding of fact was cited:

1. In keeping with other properties in the area.
2. Application of Open Door Baptist Church, owner; c/o Steve Thompson, Bergmann Associates, 200 First Federal Plaza, Rochester, New York 14614 for variance to erect an addition to church to be 40' from side lot line (50' req.) at property located at 350 Chili Scottsville Road in PRD & FPO zone.

Joe Lima was present to represent the application.

MR. LIMA: Joe Lima, L-i-m-a, Business Manager, Open Door. Steve Thompson with

Bergmann was unable to be here tonight.

Our application tonight is for a variance on our southeast corner of the new addition. This gray area here (indicating) is the new addition to our existing building, which is here, (indicating), and the requirement for the side setback on this most southeast corner is 50 feet, and we need to request a 40-foot for that rear-most corner.

Chili Scottsville Road is out here (indicating). This is a down slope all of the way to the back of the building (indicating). You can't even see this from the road (indicating).

We have talked to our neighbor who is on the south side adjacent to us, a Mr. James Simora (phonetic) at 380 Chili Scottsville Road, and he has written a letter just stating that he has no problem with this request, and I have a copy for the Board if you would like it.

BEVERLY GRIEBEL: Yes. We can put that in the file. Thank you.

MR. LIMA: The adjacent property, which we are looking for the 40-foot, is all boarded by heavily wooded area.

BEVERLY GRIEBEL: Okay. This has been to the Planning Board?

MR. LIMA: Yes. It has already been approved.

BEVERLY GRIEBEL: It is approved there. Just waiting for this variance?

MR. LIMA: Yes.

BEVERLY GRIEBEL: So you can get started?

MR. LIMA: Correct.

BEVERLY GRIEBEL: The addition to the church, what will be in that, office area?

MR. LIMA: Classroom space. It is 12,000 square feet of classroom space, two-story, 6,000 up and 6,000 down.

PETER WIDENER: What type of classroom there?

MR. LIMA: Educational space for our --

PETER WIDENER: Education related to the church, not home schooling or anything like that?

MR. LIMA: No. Just when we have our services.

PETER WIDENER: Good. Thank you.

COMMENTS OR QUESTIONS FROM THE AUDIENCE: None.

The Public Hearing was closed for this application at this time.

Beverly Griebel 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 Jeffery Perkins 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 7 yes with no conditions, and the following findings of fact were cited:

1. No objections from neighboring homeowners.
2. No change in the character of the neighborhood.
3. Application of Chris Costanza, 18 Portsmouth Terrace Apt. 1, Rochester, New York 14607, property owner: Nicholas Costanza; for variance to create four undersized lots approximately 1 acre each (5 acres req.) with lot widths ranging from 105.82' to 135' (275' req.), variance for Lot #6 to have no road frontage (40' req.), variance to allow existing dwelling on Lot #2 to be 40.5' from proposed south side lot line (50' req.), variance to allow existing dwelling on Lot #3 to be 38.6' from proposed north side lot line (50' req.), variance to allow existing garage on Lot #4 to be 6.5' from proposed south side lot line (50' req.), variance to allow existing dwelling on Lot #5 to be 34.8' from proposed north side lot line (50' req.) all as per plan submitted at properties located

at 2113 and 2117 Scottsville road in A.C. & FPO zone.

Nicholas Costanza was present to represent the application.

BEVERLY GRIEBEL: This was in last month with slightly different characteristics, and you have revised it, and thank you for getting that in on time.

It looks like some of the lots that were -- one that was half an acre, now they're all -- all of the small ones are an acre.

MR. NICHOLAS COSTANZA: Yes. Good evening, everyone. The last time I was here, there were several issues that were brought up, which hopefully I have --

BEVERLY GRIEBEL: Are you Nicholas?

MR. NICHOLAS COSTANZA: Yes. I'm the owner.

-- you're current.

The lots were all made into minimum of one-acre lots. The 30-foot right-of-way was increased to 40 feet. I had the surveyor show two lots in the rear portion of the property, which incidentally both are slightly over 5 acres.

You also asked for the surveyor to show the flood plains, which he has added in there.

BEVERLY GRIEBEL: You have got a 100-year flood and a 500-year flood that is outlined here?

MR. NICHOLAS COSTANZA: Yes. And I believe those were the -- the issues that were brought up at the last meeting.

BEVERLY GRIEBEL: Right. To make the lots near an acre, and 40-foot right-of-way to the back lots. You changed that. It looks pretty good.

DAN MELVILLE: Just basically commenting, it looks like everything we addressed last month is in this plan. I think it looks a lot better now.

RICHARD PERRY: I was trying to determine what easements we have here.

MR. NICHOLAS COSTANZA: Well, there is a sewer easement. 20-foot wide sewer easement that kind of goes down the --

RICHARD PERRY: I see that on here. I think that answers my questions.

BEVERLY GRIEBEL: Now, for the benefit of the audience that wasn't here, this was all one large piece of property that you purchased in December, and the houses, the four houses on part of this area have been there since the '20s to the '40s?

MR. NICHOLAS COSTANZA: Yes.

BEVERLY GRIEBEL: You're trying at this point to make four lots that you can sell to the people?

MR. NICHOLAS COSTANZA: That's correct. The property, as I bought it, was actually two different tax parcels. One was the large parcel with the vacant land, which was roughly 12 acres. And the four existing houses, all four of them, were on a total of 2.7 acres. And that is how it has been since the -- well, the last 80 years or so.

BEVERLY GRIEBEL: A long time. It is part of the old horse barn.

MR. NICHOLAS COSTANZA: That's correct.

BEVERLY GRIEBEL: You have some tenants that may be interested in buying a house with a

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MR. NICHOLAS COSTANZA: That's correct.

BEVERLY GRIEBEL: -- with a lot.

MR. NICHOLAS COSTANZA: That's correct.

BEVERLY GRIEBEL: They were all lots that ended at this fence, with the -- the entryway to the back lots was too narrow, so -- plus, he has divided those, that large area into two lots.

GEORGE BRINKWART: Are any of these homes currently vacant, or are they all occupied?

MR. NICHOLAS COSTANZA: Three are occupied.

GEORGE BRINKWART: Do you remember which ones they are?

PETER WIDENER: I think Lot 5 is boarded?

BEVERLY GRIEBEL: The southernmost one.

MR. NICHOLAS COSTANZA: Hang on a second. It is 2117 and 2113. and 2121 that would be the house addresses, and 2125 is vacant.

BEVERLY GRIEBEL: That is the southernmost one?

MR. NICHOLAS COSTANZA: Correct.

GEORGE BRINKWART: I missed which one was the other one? You said three were occupied.

MR. NICHOLAS COSTANZA: The three occupied are starting from the -- starting from the northerly portion, um, 21.

DAN MELVILLE: Lot numbers, because we don't have the addresses.

MR. NICHOLAS COSTANZA: Lot 2.

GEORGE BRINKWART: Got it.

MR. NICHOLAS COSTANZA: Hold on a second. Mine doesn't have a -- let me just go over here.

DAN MELVILLE: We figured it out. It is okay.

MR. NICHOLAS COSTANZA: I'm still confused on those house numbers.

PETER WIDENER: The puzzle looks a lot better today.

MR. NICHOLAS COSTANZA: Thank you.

BEVERLY GRIEBEL: Our questions are answered on the flood plain and what these dotted lines were through the property.

MR. NICHOLAS COSTANZA: That took some effort by me from the surveyor, and he couldn't figure out why. I said, "Listen, they want it. Do whatever you have to do."

BEVERLY GRIEBEL: Well, he did it. He did it for you. It got in on time.

DAN MELVILLE: Should have been on there anyway.

BEVERLY GRIEBEL: Shouldn't have been a mystery to you.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

DOROTHY BORGUS, 31 Stuart Road

MS. BORGUS: Just a comment. This is a big improvement from when this gentleman was present before.

BEVERLY GRIEBEL: And he got it in very promptly. He had just a few days to do it so he could get it on the agenda. He did a good job.

CHARLES RETTIG, Coldwater Road

MR. RETTIG: Do these houses have basements, any of them?

MR. NICHOLAS COSTANZA: Um, three -- three out of four do. And the fourth one has a crawlspace of about 3 feet. There is an access door on the main level that is there. Three are in the flood plain. Three out of the four are in the flood plain? 100-year flood plain; is that correct?

MR. NICHOLAS COSTANZA: I think two are. I didn't really look at that that closely. As far as the insurance company is concerned, there is only one that I have to have -- actually pay for flood insurance.

MR. RETTIG: Flood insurance is required.

DAN MELVILLE: Just on one of them. Lot Number 4. I would be willing to bet.

MICHAEL MARTIN: Three.

MR. NICHOLAS COSTANZA: Well, it is -- again, it is the northerly-most house.

MR. RETTIG: That is based on that being the lowest elevation?

DAN MELVILLE: Yes.

MR. RETTIG: Just a question as to why you didn't go any further, any larger with these specific existing lots because the area is 5 acres required. You're doing approximately 1 acre required with these four existing houses. Why didn't you go, say -- if you divided the land, as I understand it, 14 acres roughly? Then you would have roughly 3 acres per 4 houses still being under the minimum required by the Master Plan code or Town code; is that correct?

MR. NICHOLAS COSTANZA: The answer to your question is, number one, these houses are all on public sewers and public water mains. So with the exception -- if they were on septic systems, yes, then it would be a 5-acre requirement.

MR. RETTIG: So there is an exemption because you have Town sewer not requiring the 5 acres; is that correct, Beverly (Griebel)?

BEVERLY GRIEBEL: I don't think so. Were you here at our last month's meeting?

MR. RETTIG: Yes.

BEVERLY GRIEBEL: We discussed a lot of these issues. These houses all predate many of the codes.

MR. RETTIG: Yes.

BEVERLY GRIEBEL: And I think you were trying to leave two larger lots that would be saleable for some other use?

MR. NICHOLAS COSTANZA: Correct.

BEVERLY GRIEBEL: Farmland or whatever?

MR. NICHOLAS COSTANZA: Correct.

BEVERLY GRIEBEL: Because these people don't want a larger lot to farm; is that correct?

MR. NICHOLAS COSTANZA: That's part of it, yes. Part of it being obviously more costly, as well.

RICHARD PERRY: It leaves two 5-acre lots. If you gave any more land to either of these four, it would bring those two additional lots down below.

MR. RETTIG: I understand. Of course these four existing lots are predating the code, so I understand that. Thank you.

MR. NICHOLAS COSTANZA: I was just going to say that the preexisting was basically 4 houses on 2.7 acres. This new plan shows a 1-acre piece or a total of 4 acres now.

MR. RETTIG: Based on what I hear and have heard from the past Zoning Board meeting where you were previously tabled and based on what you have presently, the plan is much improved and you have done a good job with what you have there to work with. So on those circumstances, I --

MR. NICHOLAS COSTANZA: Well, thank you.

MR. RETTIG: -- don't have any objection.

MR. NICHOLAS COSTANZA: Appreciate the comment.

BEVERLY GRIEBEL: Expanding the properties to the rear of the houses does get rid of some of the rear setback problems that they have. You still have the side setbacks. They're on fairly narrow lots. It is hard to divide them up.

MR. NICHOLAS COSTANZA: The property on the north side, you couldn't go too much further because there is a drainage ditch that goes right into the river, and that is about 6 foot deep and maybe 10 foot across. On the southern -- southerly side -- I wasn't aware -- the next house, the -- next to that lot is probably 3 or 400 feet down the road, which I think was the main Wehle house, if I am correct.

MR. NICHOLAS COSTANZA: Again, this was back in the 1920s and '30s. There were 37 houses on -- 37 houses and barns on 1800 acres.

BEVERLY GRIEBEL: It was all little houses for the people that worked on the horse farm.

MR. NICHOLAS COSTANZA: He had a huge horse farm as well as raising some special antelope and deer and God knows what else. But it was definitely a working farm and this was the last parcel.

Do I still have to go through the planning commission, as well? Originally that is how it was set up.

BEVERLY GRIEBEL: The Planning Board?

KEITH O'TOOLE: Yes.

BEVERLY GRIEBEL: Yes. They're saying yes, from the side table. So I guess, give them a call in the next couple of days and see what you have to do next. I'm not quite sure about that.

The Public Hearing was closed for this application at this time.

Beverly Griebel 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 Richard Perry seconded the motion. The Board all voted yes on the motion.

Michael Martin made a motion to approve the application with no conditions, and Richard Perry seconded the motion. The motion was approved by a vote of 6 yes to 1 no (George Brinkwart).

DECISION: Approved by a vote of 6 yes to 1 no (George Brinkwart) with no conditions, and the following findings of fact were cited:

1. Creates four saleable one acre lots with pre-existing houses and leaves two five-acre saleable lots.
2. No impact on neighboring properties as houses have been there many years (1920s to 1940s).
4. Application of Shawn Shonk, owner; 146 King Road, Churchville, New York 14428 for conditional use permit to allow an office in home for an internet web site business at property located at 146 King Road in R-1-15 zone.

No one was present to represent the application.

UNIDENTIFIED WOMAN: I am here for that because I wanted to find out more details of that.

BEVERLY GRIEBEL: The applicant is not here. We'll have to hold it over and call it again at the end. I don't know if something happened.

Did the Building Department get any call about this?

DENNIS SCIBETTA: Not that I'm aware of.

DAN MELVILLE: Call it at the end. He might have stepped out.

BEVERLY GRIEBEL: We'll call it at the end.

The sign was up. Sometimes there is an emergency and that happens.

5. Application of Anthony Cerretto, owner; 535 Westside Drive, Rochester, New York 14624 for valiance to allow the total square footage of garage area, including a new 30' x 50' detached garage to be 1,800 sq. ft. (900 sq. ft. allowed) at property located at 535 Westside Drive in R-1-20 zone.

Anthony Cerretto was present to represent the application.

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

MR. CERRETTO: I wanted to build a garage in place of the existing garage I have, just a little bigger, to store stuff.

BEVERLY GRIEBEL: How big is your existing garage?

MR. CERRETTO: Um, I would say it is about 20 by 20 maybe.

BEVERLY GRIEBEL: 20 by 20?

MR. CERRETTO: Maybe 20 by 20.

BEVERLY GRIEBEL: That is attached to the house?

MR. CERRETTO: No. It is detached in the middle of the lot. I have a lot of land in the middle of my backyard. It is detached. The garage attached to the house is a real small one. Very small. It is an 1800s house. The one -- I can't even get a lawn tractor in the one garage. That is about it.

BEVERLY GRIEBEL: Why do you need a larger garage?

MR. CERRETTO: Just want to have it because it is on the lot.

DAN MELVILLE: What was that again?

MR. CERRETTO: I have a few things and I have a big lot and I don't know what to do with the land. I thought maybe put a garage on. My neighbor next-door has an old barn next-door to him, and I thought it would fit in.

BEVERLY GRIEBEL: What will you put in the garage?

MR. CERRETTO: Just stuff, equipment and stuff.

BEVERLY GRIEBEL: What kind of equipment?

MR. CERRETTO: I have vehicles, cars, pickup trucks.

DAN MELVILLE: Will it have a concrete floor?

MR. CERRETTO: Probably concrete floor, yeah.

DAN MELVILLE: It will have to if you put any vehicles in it.

MR. CERRETTO: Yep.

DAN MELVILLE: Are you running a business or anything out of it?

MR. CERRETTO: I have a small business.

DAN MELVILLE: What kind of business?

MR. CERRETTO: I'm in the landscaping business.

DAN MELVILLE: Will you run that business out of your home?

MR. CERRETTO: Yes. I have a dump truck there. I am getting rid of it by the end of the year. I have a little dump truck in my yard that I am getting rid of it. Downsizing and getting rid of some stuff so I won't have anything on my property any more.

BEVERLY GRIEBEL: Now you have a business there?

MR. CERRETTO: Yes.

BEVERLY GRIEBEL: So the things you want to put in the garage are associated with the business?

MR. CERRETTO: Not totally, no. No.

BEVERLY GRIEBEL: Not totally, but any of it?

MR. CERRETTO: Well, I have like a van. I have a -- an ATV. My stepson has a van and an ATV. Um, pickup truck. I have two pickup trucks. My wife's car. You know, the age of our house, we have no garage. There is no garage there. It is just a small little garage.

BEVERLY GRIEBEL: So --

MR. CERRETTO: It doesn't have to be that big.

BEVERLY GRIEBEL: What do you have relative to your business that you want to put in the garage?

MR. CERRETTO: Relative to my business that I want to put in the garage? I just explained it to you. I have a car. You know, I have a car, vehicle, van. My stepson's van. I have a tractor. I have a pickup truck. Stuff like that. We have no -- no garage. Our garage is just a little garage there.

BEVERLY GRIEBEL: Well, you have one out in -- in the field now you said, behind the house.

MR. CERRETTO: Yes. We have an -- we have like an old -- it is like a little shed. It's like a shed. We have an acre of land over there. My next-door neighbor has a big old barn in there. You know, so we thought maybe it would be a good idea to put it parallel next to him. You know, I have a dump truck, but I am getting rid of the dump truck so we'll no longer have that eyesore in the yard.

I am just asking, I guess -- it is up to you to advise me "yes" or "no." That is all.

BEVERLY GRIEBEL: I am just going by what you're saying. You're saying you want to put things in from your business, but you have a pickup and a van, and your -- you know, your cousin's van, are -- what is relevance to the business?

MR. CERRETTO: What is relative to the business? My business stuff right now is in the yard. I have a dump truck in the yard. I have a tractor, trailer. I have a pickup truck. I have a small little hydro seeder. Um...

BEVERLY GRIEBEL: What does that consist of, a tank?

MR. CERRETTO: Just a tank. A plastic tank. Um, that is all.

BEVERLY GRIEBEL: Well, that --

RICHARD PERRY: What about mowing equipment?

MR. CERRETTO: No mowing equipment. No mowing equipment. Most of the stuff I am getting ready to get rid of. It has been old, been around for a long time.

BEVERLY GRIEBEL: Because most of that stuff that you mentioned doesn't belong in a residential area.

MR. CERRETTO: That is why I am telling you I am getting rid of it.

BEVERLY GRIEBEL: So if some of this is used in the business, that can't be on a residential area. So then you -- so then you don't --

MR. CERRETTO: Does that go for all of the other businesses around my neighborhood?

BEVERLY GRIEBEL: We are just talking about this application.

MR. CERRETTO: Does that go for the rest of the businesses? What is good for me is good for them, ain't it?

BEVERLY GRIEBEL: Well, if you have a question about somebody doing something at their property, then you can speak with the Building Department. Tonight we are talking about your

application.

MR. CERRETTO: You're a funny lady. I remember last time I was here. You let me borrow all that money and you can't even give me a common answer. You know that?

BEVERLY GRIEBEL: Are you going to continue answering questions about your application?

MR. CERRETTO: No. I don't even want to talk to you, lady.

You guys are assholes.

Mr. Cerretto left the meeting room.

DAN MELVILLE: I make a motion to close this hearing.

RICHARD PERRY: Yep.

BEVERLY GRIEBEL: Counsel, does that mean he has withdrawn?

KEITH O'TOOLE: That is unclear. I would open up the public hearing.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

CHARLES RETTIG, Coldwater Road

MR. RETTIG: This gentleman has applied for an application before. He has been turned down by this Board, and I think rightly under the circumstances that it is an R-1 Zone.

He has a dump truck and still has a dump truck in the yard, which is against the code right now. He is asking for this garage. My comment is, first, you should take care of the illegal things for the conditional use permit to properly apply if he intended to do so. Therefore, my comment would be -- my suggestion to this Board, based upon the above, would be definitely to table, if not reject.

DANIEL AND SANDRA MINCHEN, 4 Sesqui Drive

MR. MINCHEN: Daniel Minchen and my wife Sandra Minchen, M-i-n-c-h-e-m. We live at 4 Sesqui Drive, which is property adjacent to Mr. Cerretto's property. We live to the western side.

BEVERLY GRIEBEL: You have a letter --

MR. MINCHEN: Can I read this into the record?

BEVERLY GRIEBEL: Yes.

MR. MINCHEN: I wonder if it is worth it after --

BEVERLY GRIEBEL: It will be part of the record.

MR. MINCHEN: I will read it into the record, if you don't mind, and then I will also give you a copy.

Ms. Chairwoman and Board members, thank you for taking the time to hear this.

Sandra and I strongly oppose the application of Anthony Cerretto, 535 Westside Drive, as you know, in his application for a zoning variance at that property to allow a garage of 1800 square feet to be constructed within almost view of our house.

We believe such a structure is out of character in the neighborhood. It would increase unacceptable vehicle noise and pollution. I will comment on that in a minute. And also, what we would -- it would be a detriment to property values and the fine quality of life we have enjoyed for quite a length of time in the Town of Chili.

You should note the request of Mr. Cerretto is to build a heavy vehicle structure that is actually larger than the house that we live in.

In the past we have been witnesses to the fact that there are large, noisy trucks. They have been parked there overnight. They have been started up early in the morning causing unacceptable engine noise and interfering with our sleep.

I am a college professor. I often study at home. It is very difficult under that environment to have a dump truck idling for 25 minutes, diesel smoke and so on right outside your back window when it should not be there.

Earlier this summer, reacting to this, my wife placed a call to the Town of Chili to make a complaint and asked them to investigate. We were told to fill out an application on the Town of Chili website, which we did. And we submitted that, but at the time the inspector went, apparently the trucks had been moved. As Mr. Cerretto testified, he moved them out in the morning, but they come back at night.

The fact that we have experienced these difficulties caused by these vehicles -- and it is not just the dump truck. There is also a back loader going in there and other earth moving equipment, which I'm not sure what the name of it is.

It is a certain indicator of future problems if a garage, more than twice the size of what exists on there today, were to be built.

Furthermore, we don't understand the height of the garage either. So it could be quite an enormous structure.

We further object to the use of this property for the commercial purposes. We do feel this property is being used for commercial purposes.

And also, our home, it just so happens, that's a backyard that is very small. We bought it because there was a treed area between us and Mr. Cerretto and we are very grateful he has kept that treed area there, but we are just 33 feet from his property line. If you put something larger than the house in which we raised our three kids off just a little bit from our backyard, we have a very strong feeling it would be bring irreparable harm to our quality of life and cause emotional stress starting with me, and I'm sure transferring to her (indicating), and it would seriously devalue our property.

I respectfully ask that you not postpone this, but deny this request for yet a second time, and I also want to say for the record that we are a supporter of entrepreneurial business, which I believe Mr. Cerretto is in, and we hope -- we wish him well. We wish he exceeds beyond his dreams.

BEVERLY GRIEBEL: But do it in the right spot.

MR. MINCHEN: Please do it in a place where our enjoyment, if you will, is not hurt.

GEORGE BRINKWART: Where are you located in relation to the application?

MR. MINCHEN: 4 Sesqui. Second house in on Sequi Drive. And we are adjacent to his property.

MRS. MINCHEN: The second out from West Side.

BEVERLY GRIEBEL: If you want to just drop that letter over, it will be part of the file. Thank you for reading it.

AL SCHMIDT, 8 Chi-Mar Drive

MR. SCHMIDT: I'm directly behind Mr. Cerretto, and I second exactly what this gentleman, the couple has said. We have been down this road before. This is the -- has been denied. He has been arrested. He has been served with a warrant on. He -- the judge has told him to remove those trucks, which he has not done so. He is in violation of the Town Code. I need to address it to the Town probably. They're not enforcing their code. They're aware of it and they ignore it. How do we get the Town to go do something with it?

Personally, the man should be arrested. He spits at your Town laws, which -- what you're telling me is, come to Chili, do whatever you want. Because nobody is going to enforce the law.

If you have that power, you should be able to do that. This gentleman just ignores you. His language. His disrespect for this committee. He could care less. He is not supposed to have this -- he is running a business out of his home. It's in the phone book. It is illegal. It's not zoned for that. Yet, we permit that. Why?

Should I be addressing it here (indicating), to the Town Attorney(indicating)?

BEVERLY GRIEBEL: They're hearing, it too.

MR. SCHMIDT: We have been here before.

BEVERLY GRIEBEL: A couple years ago, he did come in to get approval for a home office, which consists of a phone and a filing cabinet. Answering machine.

MR. SCHMIDT: I think he wanted the garage then.

BEVERLY GRIEBEL: He wanted the garage and we found out about the business, so he applied, but he didn't have the signs posted correctly, and it was carried over. It was tabled, and then he never came back.

MR. SCHMIDT: And he --

BEVERLY GRIEBEL: So he never carried through with that, even for the approval for the home office.

MR. SCHMIDT: And it is not zoned for that. Yet, nobody enforces his continuance of this business.

DAN MELVILLE: Well, he has been arrested. So the Town has tried to enforce it.

MR. SCHMIDT: They have not followed up on it. If you --

DAN MELVILLE: Once it is in the courts, it is up to the courts.

MR. SCHMIDT: That is my next question. Does the Court need to be aware he is in violation of their edict? Or --

BEVERLY GRIEBEL: I'm not sure. I don't know. I am not sure if the side table is aware.

MR. SCHMIDT: Is there an attorney that could check this out and find out? He just ignores this. He just continues down this road of ignoring your edict, or your decision.

BEVERLY GRIEBEL: A home office, even if he had approval, would allow a phone and a file cabinet.

MR. SCHMIDT: Right.

BEVERLY GRIEBEL: It would not allow dump trucks and backhoes and all that stuff.

MR. SCHMIDT: They're there every day. They're there every day. They're running stuff. They're dumping stuff back there. I don't know what he is dumping, but he is dumping stuff. I don't know if it is chemicals, dirt, or what. They should check it out. I don't know environmentally if they should check what he is doing. Obviously, he has no respect.

BEVERLY GRIEBEL: He certainly did not want to answer any questions.

MR. SCHMIDT: Well, my concern is what the Town is doing. Obviously this has been going on for two years. The Town, they have heard this, yet they choose to ignore it. It is in violation. They have lodged a complaint. Have they answered his complaint? My wife lodged a complaint and has not heard back. This is a year ago -- two years. If you continue to do this, you're just sending a message I can ignore them and do whatever I want.

BEVERLY GRIEBEL: This will be part of the official record, the comments from tonight. So -- some of them are here, and are hearing about it. It is very frustrating.

MR. SCHMIDT: Extremely frustrating. I don't want to come back every year for this guy -- it is a ruse. "I am just going to put stuff in the garage."

It is a business. It is in the phone book. That should tell you right now he is in violation of the law. His address and phone number is listed as a business. It is not zoned for business. What recourse do we have?

DAN MELVILLE: He did have the variance approved for the home office?

BEVERLY GRIEBEL: No, he didn't.

MR. SCHMIDT: No. You rejected it.

BEVERLY GRIEBEL: It was tabled and he never came back.

DAN MELVILLE: That is right.

MR. SCHMIDT: And you put up a sign to say about this meeting today. He took the sign down. One day it is up, two days, and then it is gone.

BEVERLY GRIEBEL: Oh. I saw it several times. I guess the whole Board saw it.

DAN MELVILLE: I saw it.

MR. SCHMIDT: Well, it wasn't there today or yesterday.

BEVERLY GRIEBEL: Okay. I didn't --

MR. SCHMIDT: I think he is required to have it there for ten days.

RICHARD PERRY: We don't go by every day for ten days.

MR. SCHMIDT: I do. Just like I said, he just flaunts it. He doesn't care. We need your help.

DOROTHY BORGUS, 31 Stuart Road

MS. BORGUS: I feel sorry for these people that have had to put up with this situation. Seems they have done everything that they were supposed to do to correct it, and it hasn't happened. I have said it once, I will say it again, I will put it in the paper if I have to, this is a lawless Town. And a lot of the grief and the problems that the people of this town, similar to these people, have to put up, is due to the very, very, very lax Building Department and lack of legal follow up to the problems of this Town that should have been dealt with promptly. This goes on and on and on. And lately, if it is any interest to the Board or the people that sit in this audience, I have recently been -- been compiling complaints and getting them date-stamped in the Town Clerk's Office and hand-carrying them over to the Building Department. There are many. And we have had two follow-up meetings with Mr. Jeron Rodgers and the Code Enforcement Officers,

and believe it or not, with all we have gone through, many of them still, after literally months, are still not taken care of.

It is time the people of this Town realize, as Mr. Schmidt has said, we have to put some heat on here. We got to get our Building Department, Code Enforcement Officers and our legal staff up to speed to make this the kind of a town we want to live in. Thank you.

MR. SCHMIDT: My concern right here is these gentlemen (indicating) are laughing and smiling at this comment like it is a joke. Do your job. Do your job.

BEVERLY GRIEBEL: This will all be part of the record.

KEITH O'TOOLE: I would like to comment, if I may, Madam.

As Ms. Borgus knows, all so well, many of the things that we investigate on her behalf are a waste of Town resources and time because many of her complaints are frankly frivolous. They're unsubstantiated and irresponsible.

As far as Mr. Cerretto is concerned -- as far as Mr. Cerretto is concerned, the Town has prosecuted Mr. Cerretto. We have expended a great deal of Town resources. And we have had to lean on the Sheriff's Department to get Mr. Cerretto brought before us. It has been an unhappy situation.

We have made the efforts and, as Ms. Borgus knows very well, this is the Zoning Board of Appeals. This is not the Town code prosecution forum. If the neighbors have a complaint, they can file it with the Building Department. I'm happy to prosecute it. We need witnesses, not merely generalized complaints about what is lawless and what isn't lawless. Thank you.

STEVE GINOVSKY, 19 Hubbard Drive

STEVE GINOVSKY: Good evening, Madam Chairwoman. First of all, in regard to this property, it is an R-1-20 zone. That means Residential 1. The size of this garage, barn, whatever you want to call it, in a residential area, for a business which was told to the Board right here this evening that there is a business there, and from what I understand, which I just heard, that there is no home business allowed there, has not applied for that application, and it should be rejected as a total.

Next part on this is, we do have a prosecutor in this Town, which we do have on retainer to handle no matter what the resources of the -- this Town happens to be. And the -- it needs to be enforced. And we also have the Building Inspector right here present in our forum, and I think it would be a good idea possibly for this Board to direct, possibly through the Town Board or our individuals here present, to enforce our Town law and zoning as a whole. Because it has been for a select few, and whatever means is necessary.

To enforce this law, it needs to be done. And to reject this as a total. We did have an admission that there is a home business there running out of an R-1 area without permission from this great Board here.

So those are my suggestions, and I think it should be directed in a letter sent possibly to the Building Department and also for our prosecutor to do his duty as he took the oath to do. Thank you very much.

KEITH O'TOOLE: For the record, Chairwoman, I have personally prosecuted Mr. Ginovsky successfully in Town courts on repeated occasions, so if there is one gentleman in this room who knows that we do our job, it is Mr. Ginovsky. Thank you.

BEVERLY GRIEBEL: Okay. Do we have anyone else new? Anything new, lady with the white blouse.

LINDA KAVANAGH, 10 Chi-Mar Drive

MS. KAVANAGH: Linda Kavanagh, 10 Chi-Mar Drive, right next-door to Mr. and Mrs. Schmidt. I'm not quite sure what is going on here. I thought -- evidence you want, in the phone book, Mr. Schmidt said it is listed as a business. I thought they're being on retainer, the thing -- oh, hearsay, isn't it. You have to go back and look. You're retained by us.

KEITH O'TOOLE: May I explain this for a moment? There are two things going on in this room. Just to clarify this.

First, we have a group of people here who make it their hobby to complain about what the Town does and --

MS. KAVANAGH: I don't care about that.

KEITH O'TOOLE: Well, you asked and I am trying to explain it. I will get to your point, if you will allow me.

There is a group of people here who like to complain about what the Town allegedly isn't doing, and so we waste a lot of time responding to their frivolous complaints.

Now, as to your complaint -- and I'm not saying your complaint is frivolous -- I have dealt with Mr. Cerretto. I know Mr. Cerretto, and I have a rather strong negative opinion of Mr. Cerretto, and I would be happy to prosecute Mr. Cerretto, but in order to prosecute Mr. Cerretto, we need a complaint. A mere -- hold on. I'm getting there. A mere listing in the phone book by itself doesn't really prove anything. All it could prove is a mail drop for his business. I personally believe Mr. Cerretto has an illegal business there. But in order to bring that complaint successfully before a judge, I need witnesses. I -- you would be an ideal witness since you're a neighbor.

MS. KAVANAGH: I drove by last Sunday and saw the truck there.

MR. SCHMIDT: How can we --

KEITH O'TOOLE: Quite easily.

MR. MINCHEN: What is the process?

KEITH O'TOOLE: The process is to fill out a supporting deposition, which is essentially a glorified affidavit. In the affidavit you state that on a certain date and time that you saw Mr. Cerretto operating his business, and you show how you know he was operating his business. For example, the dump truck, the loader, all these other things that were coming and going. Perhaps he had employees coming and going. You cover all these things in the affidavit. Hand it to Mr. Scibetta, or Mr. Rodgers, and their staff, and they will put it together in what is known as Criminal Information. They will provide that to me. They will provide that to the judge, and Mr. Cerretto will be brought in front of the judge.

My experience with Mr. Cerretto is that he will not appear. He won't appear until the judge issues a warrant. And getting that warrant served on a matter which is not of primary crime, as far as the Sheriff's Department is concerned -- and they're right. They focus on violent crimes more than they do on code violations -- it may take some time to get it served. That was our experience with Mr. Cerretto before.

Again, there is a process. We are happy to go forward on it, but you have to follow through on it. And unfortunately if some people want to make speeches about it, that is not going to get it done.

MR. MINCHEN: My wife filled out the complaint on the web page. That is not what you're talking about?

KEITH O'TOOLE: No. It is more than that. That provides basic information. Sometimes we can investigate a complaint and sometimes it is self-evident. There are other types of complaints that are not quite so evident. And Mr. Cerretto, for all of that, his obvious abrasiveness, is not a fool.

MR. MINCHEN: Where is the complaint form?

BEVERLY GRIEBEL: Well, now, Keith (O'Toole), would these people who might be interested in -- do an official affidavit?

KEITH O'TOOLE: Yes.

BEVERLY GRIEBEL: Should they contact you or the Building Department or what should they do?

KEITH O'TOOLE: They should contact the Building Department directly. If they have problems making arrangements with the Building Department, I would be happy to talk to any of the neighbors who want to follow through in the process.

MRS. SCHMIDT, 8 Chi-Mar Drive

MRS. SCHMIDT: I called the Building Department and I was told -- Schmidt, 8 Chi-Mar Drive.

When I called the Building Department on a couple of occasions, I was told to fill out the form on the website, which I did. And you were told the same thing. So I think maybe what we are talking about here is a lack of proper communication of process.

We don't want to be annoyances to anyone. We have a legitimate concern, and we -- we are trying to pursue that and get it resolved so we are not going to take up the Zoning Board's time or anyone else's time by Mr. Cerretto continually reapplying for applications, put on a scenario like we saw today, and taking up the Town's time and resources when maybe we could just put this to rest. We all have busy schedules, things we would rather do in our lives. And you have more important

things to deal with, too. So I think what we would like to do is address this and bring it to some final conclusion so we can all get on with our lives and jobs.

BEVERLY GRIEBEL: The written affidavit might be the solution, as Mr. O'Toole as suggested.

MR. MINCHEN: So Ms. Chairwoman, to start the process, Mr. O'Toole, you're recommending we contact Mr. Scibetta, who has an application that is not on the web, nothing that we have seen before to date?

KEITH O'TOOLE: It is not on the web. It is not appropriate to have that sort of thing on the web. It is not -- it is not just -- it is not a do-it-yourself kind of thing.

DAN MELVILLE: Does it have to be signed by a notary?

KEITH O'TOOLE: Acknowledged by a notary, and typically we like to clean them up to make them factual, because they tend to be a mixture of things that won't get the job done.

BEVERLY GRIEBEL: So does that help some of the neighbors that might be willing to do that, to contact the Building Department?

MR. SCHMIDT: That is fine. But again, I just want to reiterate. He has already been found in -- well, I think he is in contempt of court, because they told him to remove the vehicles and he has not done it. He has more. What is the recourse for the Court? If you say he is in contempt of the court --

KEITH O'TOOLE: I don't know he is in contempt of court. I'm not familiar with the current status of that. What we can do, and -- and this is part of the challenge of these things, is that State Law gives certain narrow parameters within which to work. If someone commits a violent felony, you throw them in prison, that is easy, they're gone. With these sorts of code violations what it is all about are fines. We can keep pounding them with fines, and if the first one doesn't take, the second one, a half dozen later and it can take quite some time to get it done. Most rational people eventually get the message. But even then, not all of them do.

MR. SCHMIDT: You know, what is -- once the Court enters a decision, is there any follow-up from the Court to see if they did what they were supposed to do?

KEITH O'TOOLE: Yes. Typically --

BEVERLY GRIEBEL: This gets into other areas that I don't --

KEITH O'TOOLE: Well, we have been off track here for quite some time.

Typically, what the judge will do is something called a conditional discharge, which is not a dismissal. It is an adjudication. Usually there are conditions within that, payment of a fine being an obvious one. Sometimes it is removal of a vehicle as indicated in this circumstance. If he doesn't comply with the conditional discharge, the judge doesn't always know. If the fine is not paid, that he knows. That is easy, because he collects the fines.

If it is something outside of that, that has to be brought to the Town's attention and then we can file for a hearing in front of the judge for violating what is, in essence, his court order, and most judges don't take that too kindly.

MR. MINCHEN: Has our discussion here tonight prompted the Town to take any action other than telling us to file --

BEVERLY GRIEBEL: Well, I think it --

MR. MINCHEN: -- what Mr. O'Toole recommended?

BEVERLY GRIEBEL: He gave you some ideas how you can get more information to them.

DAN MELVILLE: You have to take the first step so they can react.

MR. MINCHEN: There is no step in process or motion now that will be put into motion by the Court? We have to take the next step, is that what you are saying?

DAN MELVILLE: I believe that is correct.

KEITH O'TOOLE: That is the way the process works.

BEVERLY GRIEBEL: With specific information.

DAN MELVILLE: Because everything really said here is hearsay.

KEITH O'TOOLE: Well, that is right.

MS. KAVANAGH: Didn't he just admit --

MR. SCHMIDT: He just admitted. It is not hearsay. He admitted. It is in your minutes.

DAN MELVILLE: People admit to crimes and then take it back later.

MR. SCHMIDT: Well, enough witnesses --

DAN MELVILLE: We need the witnesses.

MR. SCHMIDT: Are we -- you're not going to table this motion here?

RICHARD PERRY: We'll vote on it.

MICHAEL MARTIN: We are trying to get to it.

MR. SCHMIDT: We'll see him (indicating).

MRS. SCHMIDT: If we contact your office tomorrow –

DENNIS SCIBETTA: I understand that this is very difficult. We get complaints. We have had maybe four or five complaints this year that I am aware. We have gone out and investigated it and the truck is not there. It is that simple. I can't take a picture of a truck that is not there.

MR. SCHMIDT: I can take it.

DENNIS SCIBETTA: I am not saying -- you can. You can.

MR. SCHMIDT: Can I take it?

DENNIS SCIBETTA: You can if you come in and fill out the proper papers. Yes, you can take the picture. You can date it. You can give it to us and bring it in to us so we can bring the case forward. We need your help. I don't think -- for you, sir, before -- it had nothing to do with the matter that was at hand. It was something else.

MR. SCHMIDT: I understand where that was going.

DENNIS SCIBETTA: I want you to know we do take this very seriously. You have to understand that we need the help to get this to follow through. It has been in the courts and if we allow -- but it is not just a filing of a complaint that when we follow up, it is not there. I'm not saying that you're wrong and you're not seeing anything, because we know -- obviously we know that the situation is happening, but we can't be there all of the time. We can't be there 24 hours a day to do that.

MR. SCHMIDT: You see, we are -- we filed a complaint, but we never get the follow-up. We have no idea what the court -- I didn't know until today that the man was convicted.

DENNIS SCIBETTA: I can only speak to the situation since anybody -- since January. I do know several complaints have come in. We have followed up on them, and as far as any of the follow-up that went back to you, I don't know where that is, and I --

MICHAEL MARTIN: As a suggestion, be as specific as you can. As you stated, that you're -- you're up in the morning, you're awoken by an idling tractor for 25 minutes. Write down the date, the time it began, how long it lasted. You know, things -- be as specific -- specific information as you can to help them build a better case.

MR. MINCHEN: Thank you.

MR. SCHMIDT: We just needed to know what the process was, and I think you have informed us what the process is.

MR. MINCHEN: We got it.

MRS. SCHMIDT: Thank you very much.

MR. RETTIG: Couple additional comments to clarify some things that have already been said and asked. This is a public hearing. Therefore, it is recorded and it is on record. The minutes of this meeting are, thus, public information which can be used in a court of law.

My hearing a comment that -- from Mr. O'Toole that Dorothy Borgus' comments are frivolous are -- her complaints have been frivolous, and that the residents allegedly -- I do this as a complaint hobby. Just a comment. These people are not here as a complaint hobby. I can see that. And the rest of us are here to better this Town also.

I will also point out, that the people that are here this evening that have this problem, which has been somewhat addressed as to how they can follow up, that to make the following comments, that -- this evening, we have here, to your left, Mr. Dennis Schulmerich, who is liaison to the Town Board that you can talk to after the meeting.

Mr. O'Toole, that you can talk to, in -- the prosecutor -- who becomes the prosecutor in these cases.

And Mr. Dennis Scibetta, who is the Building Department zone enforcement over there at the side table that you can talk to also to follow up on the Building Department after dates.

Because what we need is better enforcement. And this brings out exactly what was discussed last night at the Town Board's workshop meeting in this room in regard to a need for better code enforcement. Thank you.

The Public Hearing was closed for this application at this time.

Beverly Griebel 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 Richard Perry seconded the motion. The Board all voted yes on the motion.

Michael Martin made a motion to deny the application, and Richard Perry seconded the motion. All Board members were in favor of the motion.

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

1. Applicant failed to answer questions about the need for an oversize garage as he abruptly left the public hearing.
 2. Applicant used derogatory remarks to the Zoning Board of Appeals members.
 3. Applicant admits to having an illegal business and business equipment on his residential property.
 4. Neighbors clearly disapprove of the business activity on the property as noted by comments at the public hearing.
6. Application of Timothy Cowie, owner; P.O. Box 2197, 518 N. Main Street, Davidson, NC 28036 for variance to create a lot with a depth of 124.68' (250' req.) at property located at 4323 Buffalo Road in G.B. and R-1-15 zone.

Kip Finley was present to represent the application.

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

MR. FINLEY: Good evening, everyone. I'm Kip Finley with Avery Engineering here on behalf of Timothy Cowie, who is the owner of the property. He is a resident of North Carolina and not here tonight. I will try to answer as many questions as I can.

What he is asking us to come before the Board is to ask for a relief regarding the yard depth and basically, from what I was briefed on, is to turn back time to what it was before essentially.

This is the map that you all have, but it is a little too small to read, so I colored up something from a previous subdivision map. This is Springbrook Drive (indicating), Orchard Street (indicating). Buffalo Road (indicating). These are identical maps colored differently. Right now, the parcel is a -- consists of a lot in the front and a lot -- and frontage on the Springbrook Drive.

In the past, they were two separate lots. At one time, they were combined. Right now, this part on Springbrook Drive is vacant and there is a residence and garage on Buffalo Road that is currently a rental.

We didn't get a whole lot of information on why it was combined, but we believe it was because it was less of a tax burden to have it as one piece of property than to have a separate lot in an approved subdivision.

Right now -- well, I guess that worked for him for a number of years, but the zoning is business zoning on Buffalo Road. It is residential zoning in Springbrook, in the subdivision. So what he would like to do is to split the lots back close to what they were in the past, although the configuration of this little triangle would be different.

The zoning line is this pink line, and in the past, the lot line was parallel with the rest of the lots that come around on Springbrook. He would like to subdivide it parallel with the zoning line so that all of this lot (indicating) would be in the business zoning and all of this lot would be in the residential, in the subdivision (indicating).

And then he has told us that what he would like to do then is get this (indicating) prepared with site plan to sell it as a lot, as a building lot, the way it was really intended to be when the subdivision was

built.

I don't really have any other background on it, but we are here to get the permission or variance for the non-standard lot depth, and really, there are about ten lots along Buffalo Road that are all that same lot depth, as they were once subdivided, and we are basically asking to go back, turn the clock back.

BEVERLY GRIEBEL: So these go back quite a number of years, would have been shallower lots like that?

MR. FINLEY: I believe that the frontage lots, they pre-dated the subdivision. Back in -- I'm trying to find the year. 1948 is when the subdivision was done, and these lots along Buffalo Road pre-existed that.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

THOMAS DUNN, 41 Springbrook Drive

MR. DUNN: I live in the parcel immediately to the west of the subject property.

MR. FINLEY: Corner?

MR. DUNN: Yes. Actually we bought our house from Tim (Cowie). Just so I am clear, are you asking -- is Tim (Cowie) asking to make the residential lot bigger and the commercial lot smaller? Is that correct?

MR. FINLEY: No. There is actually -- there are not two lots right now. It appears that there are two lots. There is a vacant lot in the subdivision and what appears to be a developed lot on Buffalo Road, but they're all one piece of property. What he wants to do is split it back closely to what it was, so that he has his rental -- rental property in the business area, and then he wants to develop this as a site for a house at basically the size it was previously.

MR. DUNN: So can you point out where the lot line would be between the commercial lot and the residential lot for me?

MR. FINLEY: It's right -- well, right here (indicating). It is the extension of your backyard, going through.

MR. DUNN: Okay. Thank you.

MICHAEL MARTIN: The subdivision follows the existing zoning, so one half of it is zoned Residential and the other is General, so it follows that zoning line.

MR. FINLEY: I guess, if anything, that would be the hardship, is when he didn't care to develop it, it really didn't matter that there was split zoning on the site and now that he would like to do something with the vacant piece of land, he is kind of stuck with a piece of property in two zones.

ANN CROSTON, 51 Springbrook Drive

MS. CROSTON: When we bought our house at 51 Springbrook, we were told that when -- I can't remember the lady's name -- Hazel Hutchinson sold -- before she sold the property to Tim (Cowie), she lived in the rental property.

MR. FINLEY: Okay.

MS. CROSTON: And she told us that when the subdivision was built, and she owned all of that land, that the people we bought the house from and the people they bought the house from got together and purchased a slice of that lot so that it really isn't the way it was when it was -- when the subdivision was built. Just so you know. It is not as big as it was, because we have a little bit and they have a little bit. It is the way you have it, but it is not the original.

MR. FINLEY: Are you to the east of this lot? Because the way the subdivision map shows, is that this -- what was once Lot 6, there -- there was Lot 6, Lot 7 and Lot 8, and it -- the way this looks, is if you have Lot 8 and there was purchased half of Lot 7, and then Tim Cowie or whoever owned it before purchased the other half of Lot 7 to make Lot 6 bigger, so Lot 6 is actually about 30 percent bigger than it was when it was originally subdivided.

MS. CROSTON: I have to take your word for it.

MR. FINLEY: It sounds like the right story, but going with the map, I think the parcel is actually bigger than it was originally designed to be.

DENISE DUNN, 41 Springbrook Drive

MS. DUNN: Denise Dunn, 41 Springbrook.

Is Tim Cowie changing the use of the apartment house? Will he be changing that?

MR. FINLEY: Not that I know of.

BEVERLY GRIEBEL: That is a residence. That will still stay a rental property, I would imagine?

MR. FINLEY: As far as I know. The purpose he is splitting us -- that he is telling us, he wants us to do a site plan for this lot (indicating).

BEVERLY GRIEBEL: He wants to sell the vacant property?

MR. FINLEY: Yes. He didn't say anything about changing the house.

DENNIS SCIBETTA: Just for a point, was this -- was any of this probably called out under the Master Plan?

BEVERLY GRIEBEL: I don't know.

DENNIS SCIBETTA: In the actual, where they were rezoning the --

BEVERLY GRIEBEL: I think just the front lots on Buffalo.

DENNIS SCIBETTA: Those are the ones I was inquiring about. If you could check that out possibly.

BEVERLY GRIEBEL: I don't have the Master Plan in front of me. I don't know.

It was just the frontage on Buffalo Road. I can't remember telling us this is still residential in the back part, the southern part.

MR. FINLEY: Yeah, the zoning line is here (indicating). The frontage lots are business zoning. Whether they're houses or not. And then the subdivision is all residential. I guess I was just curious to know if -- in the case that the Master Plan called Buffalo Road a particular corridor and they wanted deeper lots or something, I just didn't know where the question was going.

BEVERLY GRIEBEL: No, I am not sure. But -- what your applicant wants to do is to keep it even with the other adjacent lots in the area; is that correct?

MR. FINLEY: Yes. The lots to the east are deeper and there are other uses. Then there are apartments -- not apartments, but the senior housing at College Greene. To the west I think there are about ten lots that are the same smaller lots, like they would have been at the -- the older time when North Chili was just all of the small lots.

BEVERLY GRIEBEL: Does that help, Dennis (Scibetta)?

DENNIS SCIBETTA: I seem to recall some things about the College Greene Subdivision also. The number of lots they originally applied for and what was left over in some of the lands, and they had to sell those off for some reason. I would like to look into that, but I don't think it has anything to do with this. I just wanted to know if the Master Plan had called out a use for the Buffalo Road for zoning change or anything, if that had an impact on these at all.

MR. FINLEY: I think, if I could respond, the lot is so small, that if someone did want to develop something -- I mean if the Master Plan called for some unique kinds of business or something, they would have to assemble a bunch of parcels to do anything.

BEVERLY GRIEBEL: You couldn't do much on that one where the house presently sits.

MR. FINLEY: Right. Or if they wanted small commercial, you don't want the drive-thru or something coming through the subdivision. They would probably still want this as residential use, I would guess (indicating).

BEVERLY GRIEBEL: That would make sense, rather than -- you would be trying to use the whole thing for a business and have an exit out on Springbrook. That wouldn't be in keeping with the residential area.

MR. FINLEY: That would be my guess from a planning background. All these lots are too small to do much of anything with.

BEVERLY GRIEBEL: Singly, yes.

Does that help, Dennis (Scibetta), or should we do anything else?

DENNIS SCIBETTA: It does. I think it is far enough away from the parcel I was concerned with, so I think it answered part of it. It is not part of the leftover from College Greene, where the emergency exit and crash gates got located.

BEVERLY GRIEBEL: That is further along.

MR. FINLEY: I think that is about another three lots down.

MR. DUNN: I'm not sure who to direct this to, but I am just curious, is the residential lot a buildable lot as it sits right now according to current zoning requirements? Could a house be built on it

now?

BEVERLY GRIEBEL: I think so. It is 175 feet deep.

DAN MELVILLE: I don't see why not.

BEVERLY GRIEBEL: 35,000 square feet.

MR. FINLEY: I would say the lot size conforms, but since he has been -- he has asked us to do a site plan and since the subdivision was approved so long ago, there is still another step to get it approved to build on, but it is -- but it is a buildable lot, lot size wise.

DAN MELVILLE: Almost three-quarters of an acre.

BEVERLY GRIEBEL: And with the additional, from taking half of Lot 7, that makes it --

MR. FINLEY: Bigger than most of the lots in the subdivision.

BEVERLY GRIEBEL: I don't see why it couldn't be used. Unless there is some strange reason.

MR. FINLEY: Well, that was a good question, though. I don't think we are creating a non-standard lot here (indicating). But then we are asking for a variance to create a non-standard dimension on this lot (indicating).

BEVERLY GRIEBEL: Substantial size.

The Public Hearing was closed for this application at this time.

Beverly Griebel 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 Jeffery Perkins seconded the motion. The Board all voted yes on the motion.

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

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

1. Each new lot will be in the proper zoning district.
 2. Should not impact neighboring residential property.
7. Application of John Overfield, owner; 13 Stillmeadow Drive, Rochester, New York 14624 for variance to erect a 22' x 7' open porch to be 53' from front lot line (60' req.), variance to allow existing garage to be 4.7' from side lot line (5' previously granted in 1974) at property located at 13 Stillmeadow Drive in R-1-15 zone.

John Overfield was present to represent the application.

MR. OVERFIELD: Good morning – or evening.

RICHARD PERRY: It only feels that way.

MR. OVERFIELD: Close to morning.

I'm just asking for a variance to put a porch, open porch roof, and then when I was down to the Building Department, they informed me that I didn't -- I had a variance for the side lot line that was wrong from when they originally built a garage there. That was back in '74. I don't know if the way they did the surveys back then wasn't as accurate as now.

BEVERLY GRIEBEL: Well, they used tape maps, and stretchy tape and who knows what.

MR. OVERFIELD: I need that to be taken care of in case I ever sell.

BEVERLY GRIEBEL: The garage has been there for a while?

MR. OVERFIELD: Since '74.

RICHARD PERRY: Maybe an earthquake moved it.

BEVERLY GRIEBEL: The wood swelled in the garage.

You want the open porch.

MR. OVERFIELD: It will be 7-foot. The roof will be 7 foot from the house. So it will be 53-foot. Right now it is 60.

BEVERLY GRIEBEL: It was 60.2 feet before, so -- the only way to put anything in the front is with a variance because the house was right on the edge there.

MR. OVERFIELD: Right. But it will be an open porch. I'm not -- I'm never going to enclose it. It -- so --

BEVERLY GRIEBEL: We find this gets contagious. When somebody starts dressing up the front of the house, other people in the neighborhood tend to do the same thing.

MR. OVERFIELD: It should dress the house up a little bit.

Actually, let me -- we have it for a 22-foot wide by 7. Actually, it will be about 23 ½.

RICHARD PERRY: How much further out from the current steps?

MR. OVERFIELD: I don't have current steps. My -- my -- I'm on a slab where I will put this porch, so it comes right out ground level.

RICHARD PERRY: Nothing out the front of it, no step, no nothing?

MR. OVERFIELD: No.

RICHARD PERRY: No problem.

BEVERLY GRIEBEL: So the 23 ½ feet, that wouldn't matter.

MR. OVERFIELD: That would be the width.

BEVERLY GRIEBEL: The 7 feet will not change.

MR. OVERFIELD: No.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

The Public Hearing was closed for this application at this time.

Beverly Griebel 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 Jeffery Perkins seconded the motion. All Board members were in favor of the motion.

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

1. The only spot to add a front porch.
2. Minimal impact regarding garage as it corrects an error from 1974.

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

8. Application of Kevin Collins, owner; 48 Bowen Road, Churchville, New York 14428 for variance to erect a 26'5" x 8' open porch to be 67.8' from front lot line (100' req.) at property located at 48 Bowen Road in PRD zone.

Kevin Collins was present to represent the application.

BEVERLY GRIEBEL: The house was indicating 75 feet -- how far --

MR. COLLINS: 75 on one corner and -- and 76 on the other corner.

BEVERLY GRIEBEL: So the house was not meeting the 100-foot anyway.

MR. COLLINS: Right.

BEVERLY GRIEBEL: As with the prior application, it is the only place to put a front porch. You got to put it in the front.

DENNIS SCIBETTA: Sir, have you applied for the permit already? Do you have an application on file?

MR. COLLINS: I have not applied for the permit yet.

DENNIS SCIBETTA: You have to apply for it.

BEVERLY GRIEBEL: Your letter that you get will say that. You must apply for the permit for it.

COMMENTS OR QUESTIONS FROM THE AUDIENCE: None.

The Public Hearing was closed for this application at this time.

Beverly Griebel 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 Jeffery Perkins 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 7 yes with no conditions, and the following findings of fact were cited:

1. House itself doesn't meet the 100 ft. setback.
2. No change in the character of the neighborhood.

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

BEVERLY GRIEBEL: Did Shawn (Shonk) return?

UNIDENTIFIED WOMAN: I don't see him. I'm wondering if they thought they didn't have to come here.

BEVERLY GRIEBEL: No. The application clearly says they must be present for the public hearing.

UNIDENTIFIED WOMAN: They must have forgot about it.

MICHAEL MARTIN: What were your general questions?

UNIDENTIFIED WOMAN: It says he was applying for computer a --

MICHAEL MARTIN: Home office.

UNIDENTIFIED WOMAN: Our question was what kind of business was it going to be? Like would there be deliveries?

MICHAEL MARTIN: His application is for a website selling hunting, fishing, camping supplies with a drop ship to the house.

DAN MELVILLE: We can't really answer that without the applicant.

MICHAEL MARTIN: That is what the application reads. Basically from reading the application, he would be like a middle person where he would have a site where he could order stuff and it would be shipped.

UNIDENTIFIED WOMAN: To their home?

MICHAEL MARTIN: No. No, the buyer.

RICHARD PERRY: Drop ship warehouse.

UNIDENTIFIED WOMAN: It didn't really explain anything.

RICHARD PERRY: Probably not -- probably never know it was there.

MICHAEL MARTIN: Basically a computer and a desk.

UNIDENTIFIED WOMAN: Well, you don't know. They didn't give us any information.

BEVERLY GRIEBEL: Right. That is the purpose of the public hearing, too, to ask the questions of the applicant, what he intends to do, and when -- it has been a computer kind of thing, and then as Mike (Martin) just said, people might order things and they are shipped from somewhere else to the buyer.

RICHARD PERRY: That is the way it reads.

MICHAEL MARTIN: We'll table it to next month.

RICHARD PERRY: That doesn't necessarily mean that is exactly the same way. It doesn't sound like that. That's -- the only sure thing is to come back.

Michael Martin made a motion to table the application, and Peter Widener seconded the motion. All Board members were in favor of the motion to table the application.

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

1. Applicant failed to appear for the public hearing.

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

Applicant must be present for the public hearing.

The 7/25/06 minutes were approved as submitted.

The meeting ended at 9 o'clock p.m.