

CHILI ZONING BOARD OF APPEALS  
August 27, 2013

A meeting of the Chili Zoning Board was held on August 27, 2013 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: Adam Cummings, Robert Mulcahy, Robert Springer, James Wiesner and Chairperson Paul Bloser.

ALSO PRESENT: Michael Jones, Assistant Town Counsel; Ed Shero, Building & Plumbing Inspector; Bill Steimer, Conservation Board representative.

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: First we'll go over the signs. I didn't have a problem with any of them. They were up for the duration. So we'll move forward with the agenda.

1. Application of Roberts Wesleyan College, owner; 2301 Westside Drive, Rochester, New York 14624 for variance to allow all existing signs on properties to remain as submitted under the campus signage Master Plan at properties located at 2301 and 2265 Westside Drive, 4223 Buffalo Road and 7 College Greene Drive in PID zone.

Rich Grier was present to represent the application.

MR. GRIER: Good evening. My name is Richard Grier, Director of Facilities for the Roberts Wesleyan College. My address is 2301 Westside Drive, Rochester, New York.

PAUL BLOSER: If you would explain a little bit what we're doing here and your capacity with this.

MR. GRIER: I work for the college in the Facilities Department and oversee all of the maintenance and construction, and we are working with the Town to get the entire sign package that we have in Chili into one format so that they can review it and we can get a permit that, as I understand it, has a lifelong existence unless there is a change in the sign. So we're working with the Town to comply with the new regulations.

PAUL BLOSER: Right now, as I understand this, signs are all recognized and through architectural with the exception of Sign Number 36 which is located behind the score board.

MR. GRIER: That's actually not -- there is no sign there. It is just there was a proposed sign.

PAUL BLOSER: Proposed sign.

So I want to confirm there is nothing there.

MR. GRIER: There is nothing there now but the back of the score board.

PAUL BLOSER: So this approval is to -- basically an administrative, um, item that we're converting these -- these have been the temporary ones and we're just putting them all over to the permanent ones with the exception of this 36 which has not gone through the complete approval process.

MR. GRIER: At this point we aren't pursuing that, so.

PAUL BLOSER: Okay. The only thing we have to do with this, the only thing that would be a condition of approval would be that the required sign permits be applied for and completed through the Building Office so that registration would be complete.

JAMES WIESNER: According to the one map, the Sign 34 has been removed, so that is not part of the package any more.

MR. GRIER: That's correct.

JAMES WIESNER: That's the only question I have, Paul (Bloser).

ROBERT SPRINGER: No question.

PAUL BLOSER: So Sign 34, I did not catch that one.

JAMES WIESNER: It's listed on the plot drawing.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

DOROTHY BORGUS, 31 Stuart Road

MS. BORGUS: I would like to understand about this Sign 36. That's being withdrawn?

PAUL BLOSER: There is not a sign there.

MS. BORGUS: But it would be approved if --

PAUL BLOSER: It still would have to be applied for and approved by Architectural and Zoning for additional signage. There is nothing been brought before us at this point, so it would not include that sign.

MR. GRIER: Here is what is there now. This is the back of the score board.

MS. BORGUS: Right.

I have seen the proposed sign in the Building Department, and it is horrible. It doesn't fit Roberts at all, and I would hope that they wouldn't consider anything that tacky. It's terrible.

PAUL BLOSER: That is why I am clarifying it, it is not included.

MS. BORGUS: Not included. Everything on the list is included except 36 and 34 which have been removed; am I right?

PAUL BLOSER: We'll make a note 34 is being removed.

MR. GRIER: Has been removed.

PAUL BLOSER: Has been removed and will not be replaced without a new permit and application.

MS. BORGUS: Right. And 36 is not part of the package.

PAUL BLOSER: That's correct.

MS. BORGUS: Now, going forward, what will be the process if the School wants to add signs to this existing list?

PAUL BLOSER: The standard format. They would have to apply for the permit with the Town and because of the amount of signage right now, it would become part -- a zoning application to review it. Architectural would review the design. It would go through the formal process for approvals for additional square footage to the property.

MS. BORGUS: The other question I have, several of these, at 2, 3, that I see are on -- they're on the property line. Now, the Sign 10 and 2 and 3.

Are there not -- I'm assuming that the Building Department has looked at these or the Board has? These aren't a problem being right on the property line? Number 2, Number 3 and Number 10.

PAUL BLOSER: 10, I believe, is right within the setback. As far as Signs 1 and 2, Dorothy (Borgus), without looking at the Town maps comparing for exact placement, um, I can't honestly answer that. I could put a note that they're verified for placement and a note that all signs must be maintained within. If it is a sign that was previously approved by a Board, which I'm assuming it was at some point, because there was a temporary permit issued for it, um, it would already be approved and there. If it's a sign that was never put on, or registered with the Town, that would be a different story. These have all been permitted for use at this point.

MS. BORGUS: Okay.

PAUL BLOSER: So someplace along the line, somebody had approved the placement of them before and after.

MS. BORGUS: Thank you.

MICHAEL JONES: Mr. Chairman, just to be clear, what is before the Board, this is an inventory of the signs and the placement, so variances that are required for the placement of any of these signs would be granted with an approval today. So a zero setback would be approved if the Board were to do that.

PAUL BLOSER: But these were all temporary permits for -- were they not, Ed (Shero)?

ED SHERO: Not necessarily. We have a lot of signs. That is why they're doing the sign inventory.

PAUL BLOSER: I thought a lot had been issued permits but they had end dates on them.

ED SHERO: Some did not.

PAUL BLOSER: Then I stand corrected, Mrs. Borgus.

MS. BORGUS: Thank you.

PAUL BLOSER: Most of these have been up for a long time. I guess if we had had traffic issues or blockage or interruption of line of sights, that would have been brought to the Town's attention and complaints registered, but at this point we have a pattern and there is no complaints on file, so I am going to let it stand as presented. They're all registered at this point. It just needs the approval.

CHARLES RETTIG, Coldwater Road

MR. RETTIG: I just ask a question for information. Sign Number 36, which would -- which we're leaving out of this package, um, what was the proposal that --

MR. GRIER: Here is a picture. I can put it up here.

PAUL BLOSER: I'm going to say it's not relevant because it's not before the Board. It has not been officially proposed, so.

MR. GRIER: (Indicating).

MR. RETTIG: I object to that comment just based on the fact that he showed it to Miss Borgus, and thank you, sir, for putting it up for display.

Thank you.

PAUL BLOSER: It's not part of this application. It was -- the application very clearly states that it is excepted from this application.

MR. RETTIG: I understand. Thank you.

Sign Number 34, which has been removed from this inventory, just for information, can you tell me what the sign was and where, please?

MR. GRIER: You want me to address that? That -- that was at 65 Orchard Street and it was a sign that was directly in focus to the Office of Religion and Humanities.

Robert Mulcahy made a motion to close the Public Hearing portion of this application and Robert Springer 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 read proposed conditions of approval with the Board.

PAUL BLOSER: Mr. Grier, do you have any other questions for us?

MR. GRIER: No, I do not.

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. The Board all voted yes on the motion.

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

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

1. Sign permits for all existing signs must be obtained as required from the Chili Building Department.
2. Sign 34 has been removed and is not part of this approval.
3. Sign 36 is not part of this approval.
4. Any additional signage must be applied for through the Building Department.

The following finding of fact was cited:

1. The signs affected are all in place, and are part of the Town of Chili program to inventory all signs within the town. The signs have no negative impact on environment or neighboring properties.
2. Application of Ken Glazer, 259 Alexander Street, Rochester, New York 14607; property owner: 1350 SR, LLC; for variance to allow existing 8' high fence per plan submitted (6' high allowed) at property located at 1350 Scottsville Road (American Tire Warehouse) in G1 zone.

John LeFrois was present to represent the application.

MR. LEFROIS: I'm John LeFrois with Russel P. LeFrois Builders 1020 Lehigh Station Road, Henrietta, New York. I'm here on behalf of Ken Glazer and Buckingham Properties for a review of the fence that was installed at 1350 Scottsville Road. Throughout the process of construction, the tenant, American Tire, had come to us and asked us for, um, a higher fence for security purposes and, um, that got installed to appease the tenant. Kind of an oversight that it was a 6 foot allowable fence.

Being that is an 8 foot fence, we would like to keep it. It's installed. The -- the uses that are around this building also have fences that are above 6 foot. RG&E directly to the north of the property has a fence in the back for their, you know, store -- outside storage that is 7 foot to the top of their barbed wire.

Comfort Windows which is directly to the south has a wood fence that is -- I didn't get a measurement on it, but it is definitely higher than 6 feet.

The Airport National Guard, 84 Lumber, Metalico all have fences and gates that are above 6 and they're all very adjacent to this property.

I can -- Ken (Glazer) called me the last minute, I have to be honest, because he had something come up last minute. I did take some pictures on my phone. I did not have the time to print them out to show the adjacent properties and their fences.

PAUL BLOSER: I guess the one that I'm most concerned with, and for the Board to look at, is, um, the one going across the front of the building, across the driveway. To me, that's the most pertinent one.

It's closest to the front; it's the most visible to the public. I understand the security requirement there. So I think that is more of the issue than anything on this one. I think that it is an industrial -- surrounded by industrial commercial, so I would rather see a taller fence than I would barbed wire like RG&E has. It just -- to me, it looks too much like a prison, so that's my personal -- but -- if I had the choice. But -- you know, it's up to the Board.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

CHARLES RETTIG, Coldwater Road

MR. RETTIG: Just a question for verification. Can you show us just by --

MR. LeFROIS: Sure.  
MR. RETTIG: -- where the fence is and where it is 8 feet.  
MR. LeFROIS: This is Scottsville Road here (indicating). This is actually the gate of the fence here (indicating). It goes down the property line to a dumpster enclosure in the back which is also fenced by wood back to the -- the RG&E fence we're talking about is at this location over here (indicating).  
Comfort Windows' fence, which is the wood fence, is right about here (indicating).  
MR. RETTIG: I couldn't see the RG&E --  
MR. LeFROIS: (Indicating).  
MR. RETTIG: Okay. Is that at the south or east fence?  
MR. LeFROIS: That would be east.  
MR. RETTIG: Can you point that out again?  
MR. LeFROIS: Here. RGE's fence is right in this area here (indicating), and Comfort Windows is right up in this area here (indicating).  
MR. RETTIG: Since that is an adjoining fence with RG&E, um, you do not have any fencing at that point is that --  
MR. LeFROIS: We don't have any fence directly to the east side of the building.  
MR. RETTIG: Very good. Thank you.  
PAUL BLOSER: Their fence basically is containing the parking lot, loading dock, doors and parked trailers that are loading and unloading inventory, correct?  
MR. LeFROIS: Correct.  
MR. RETTIG: The fencing on the north side, is that --  
PAUL BLOSER: RG&E's.  
MR. RETTIG: RG&E's also?  
MR. LeFROIS: RG&E's.  
MR. RETTIG: Thank you.

DOROTHY BORGUS, 31 Stuart Road

MS. BORGUS: I hear the names of RG&E and Comfort Windows and a few of these bandied around, but obviously they're comparing apples and oranges because those fences are obviously on the back side of their properties and this one is on the front. So there is really not a comparison to make when you want to talk about adjoining properties.

This is very different. And it's very annoying, I guess, to me to hear that it is evidently more important to appease the tenant than it is to comply with the Town codes that the builder agreed to with the Town.

It doesn't seem as though you can duck out of a deal just because a tenant stamps their foot and has a hissy fit. I'm sorry. That's no way to operate. And I know being at these meetings, as I am, it is very much easier to come in here and ask for forgiveness than it is for permission.

But Mr. Glazer is not a novice at building and he should have known that if the tenant wanted something different than the plan agreed to, he should have come back here.

How many feet are we talking about across the front?

MR. LeFROIS: Roughly 125 feet across the front.

PAUL BLOSER: The whole property or just the fence?

MR. LeFROIS: Across the front face of the property is 125 feet.

PAUL BLOSER: We're talking -- I believe she is talking about just the length of the fence across the front, correct?

DOROTHY BORGUS: Right. That's correct.

MR. LeFROIS: 125 feet.

MS. BORGUS: Is there a gate in that fence that trucks have to use to enter from Scottsville Road?

MR. LeFROIS: There is.

MS. BORGUS: That gate would be open during the hours --

PAUL BLOSER: Business hours.

MR. LeFROIS: Business hours, yes.

MS. BORGUS: Well, I don't see any reason that they can't comply with the 6 -- with the 6 foot fence. I -- leave the -- leave the rest. If everybody else has a 8 foot fence on the sides and back and wherever, but we have worked -- this Town has worked very diligently for many years to try to improve the appearance of Scottsville Road. It is vastly different than it used to be and it's much better, but when we start allowing 8 foot fences on a -- on the front of a brand new building, we certainly are shooting ourselves in the foot and taking a big step backwards.

If the Board would like to agree to let him have the 8 foot fence on the other sides, I guess -- it's not all right, but I guess since they had just gone ahead and done it of their own volition, it probably would be acceptable if it stayed, but on the front, I would like to see that 125 foot fence brought down to code. I cannot believe that 2 feet on the -- on the -- on the street side of the property is going to be a -- any edge to anybody who wants to break in. I don't think they're going to come from Scottsville Road if they're going to break in. They will come from the other sides and they're protected there with the 8 foot fence anyway.

So I would like to see the 125 feet reduced to comply with code and drop down to a 6 foot height.

Thank you.

MR. LeFROIS: Just to respond, I can offer up that National Guard, which is right across the street, to the top of their barbed wire is 7 foot on the front side of the property. It's a lot

closer to Scottsville Road than ours is. 84 Lumber and Metalico's, I would also say, are closer to Scottsville Road than our fence would be.

And, you know, who knows who -- you know, who knows how robbers would try to access a property, but, you know, from a logistic standpoint, if they wanted to pull in and cut the fence, then they're in the parking lot area. That is why, you know, the front side is actually, you know, of most concern to us, as well.

MR. RETTIG: Just a point of clarification. National Guard, if their fence is 7 feet high, it is a government facility and they're not under jurisdiction, but just for clarification.

PAUL BLOSER: Right.

MS. BORGUS: Just to take up this last point that this gentleman has brought up, if that was such an issue when it was so important -- if it is so important now for that extra 2 feet, it should have been that important when the plans were drawn up and everybody was supposedly on the same page.

You can't change your priorities just because a tenant doesn't like what the plan looked like. I'm sorry. That's not fair. It's not fair to everybody else who comes in here with an appeal. You can't come in here and change your mind. If it was that important now, it should have been that important then and they should have asked for the 8 foot fence at the time.

Robert Mulcahy made a motion to close the Public Hearing portion of this application and Robert Springer 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.

ADAM CUMMINGS: It's a security fence. The added benefit of barbed wire makes it more of a secured fence so someone scaling over really doesn't have an incentive or has a deterrent to get them over. 2 feet to me, if somebody is scaling over a fence, doesn't make a difference. They will scale it either way.

And cutting a fence, once again, it could be 6, 8, 4 feet; they're going to cut the same amount to get through it. And actually an 8 foot fence would give them more leeway to cut it and enter it in as opposed to a 6 foot that has the guide bar on the top that would keep it a little more secure on the spire -- or on the opening that they would cut.

So it's tough to buy the added security of an 8 foot other than the preference of the client wanting 8 feet.

JAMES WIESNER: It seems like a reasonable compromise to do the front in 6 feet where you can see it.

ADAM CUMMINGS: That is only fronting Scottsville Road. We still have the fronting on Widener. I know it's not as busy of a street right now, but it is technically the front facing a street.

JAMES WIESNER: But there is very little traffic on that street.

ADAM CUMMINGS: Right now. Not to say it will develop to something different, but it is still a road frontage.

PAUL BLOSER: I would kind of -- I'm kind of on the fence. (Laughter.)

I -- I think that -- I agree with some comments that were made, that the site plan was completed not that long ago and the site plan was very clear on the Planning Board's recommendations and approvals. The fact it is 8 foot on the whole thing, you know, for whatever reason, it's 8 foot on the whole thing. I kind of agree with the comment that was made, that compromise, leaving three sides, the rear, which is also a frontage, but the rear of it and the south side. So the east side and south side, leave them as they are installed. And make an adjustment to the frontage.

ROBERT MULCAHY: I would go along with that.

PAUL BLOSER: How wide are the gates, the opening? When they're open during the day, what is the width there?

MR. LeFROIS: I don't remember.

ADAM CUMMINGS: I don't have a gate detail.

MR. LeFROIS: I want to say, doing this from memory, it's quite a big opening because you want to get two trucks through there. So with that in mind, I would say it's roughly larger than 20 feet.

PAUL BLOSER: Well, one of the things I'm looking at -- not to interrupt you, if you have sliding gates on that thing, you will have poles and rail devices that are higher than the 6 foot anyway. They're concealed with the 8 foot height, and we change the sliding portions, I -- I got to assume it's at least a minimum of 20 to 30 foot, because it is two side-by-side trucks going through.

MR. LeFROIS: It's probably more 30 to 40 foot.

PAUL BLOSER: If you took the sliding gate portions and made them 6 foot and the rails for guide rails and everything are buried on the back side and contained the lower side of the 8 foot, it kind of disguises them a little bit so you don't have a structure hanging up in the air. It would give you something more for those rails to hang onto. I -- I would be in favor of that compromise. Have the gate with the 6 foot. Because it would be -- even at 6 foot, you're going to be higher than 6 foot with the support poles and rails. So --

ADAM CUMMINGS: Well, we wouldn't know because there is no detail on here to show it.

PAUL BLOSER: Well, there isn't, but just with my experience with fences, they're going to be there. It's an overhead rail system rather than lower because of the snow and our climate.

ADAM CUMMINGS: One thing I would like to add is our as-builts, making a note that as-builts actually go to the Building Department showing this change.

PAUL BLOSER: Would the Board be agreeable to what I just mentioned?

ROBERT MULCAHY: I would agree.

ADAM CUMMINGS: Sure.

PAUL BLOSER: To put it as a condition?

JAMES WIESNER: Yep.

PAUL BLOSER: It's a compromise. I mean it's better than taking everything down and a lot of waste. I think you can better utilize what is there by doing it this way.

MR. LeFROIS: Okay.

PAUL BLOSER: It becomes a win/win for everybody.

I agree with the profile. To be consistent, at that 6 foot in the front, it is there for a reason. I don't know if you have security cameras up there, but you do have lighting in the evening. Being across the street from a military installation, there is a State Police compound across the street to the north a little bit, I would hope that would be a deterrent for mischievous activity anyway.

But regardless, our -- to be this far into it and just so close to a Planning approval, I hate to override what they already did 100 percent, so I think this would be a fair compromise. We still have to vote on it, but I'm going to write this as we just spoke.

Paul Bloser reviewed proposed conditions of approval with the Board.

PAUL BLOSER: That's a 6 foot panel. I'm not saying you have to be 6 foot off the pavement. You do have to have clearance for snow and ice, but the panel is no more than 6 foot.

MR. LeFROIS: Yep.

Paul Bloser further reviewed proposed 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. The Board all voted yes on the motion.

Adam Cummings made a motion to approve the application with the following conditions, and Robert Springer seconded the motion. The vote on the motion was 4 yes to 1 no (Adam Cummings).

DECISION: Approved by a vote of 4 yes to 1 no (Adam Cummings) with the following conditions:

1. Fencing on east and south sides are granted variance to be 8 feet in height.
2. West/front entrance sliding gate panels to be reduced to maximum of 6 foot height panel. Balance of entrance fence maintained at installed height to conceal lowered gate rails and hardware.
3. Final as-builts with accurate dimensions to be submitted to the Building Department upon completion.

The following finding of fact was cited:

1. Reduction in size of sliding gate panels to a 6 foot height is a Zoning Board of Appeals compromise to replacing the entire eight foot high fence with a 6 foot. This change will not have a negative impact on the environment or neighboring properties.
3. Application of Mr. and Mrs. Clark Lindsay, owner; 25 Charmaine Road, Rochester, New York 14624 for variance to erect an 8' by 12' deck 52' from front lot line (60' required) and 16' from side lot line (60' required on corner lot) at property located at 25 Charmaine Road in R-1-12 zone.

Mr. and Mrs. Clark Lindsay were present to represent the application.

MR. LINDSAY: Good evening. Clark Lindsay, 25 Charmaine Road.

PAUL BLOSER: Well, it looks like you got an area already dug out up in the front.

MR. LINDSAY: No. We just cleared it out and got the debris out of there. Got the old steps out. They were so broken you couldn't use them.

PAUL BLOSER: I thought it was a wood form that you had set up in there, just pieces of --

MR. LINDSAY: No. I just laid it out, so I could see how big it was actually going to be.

PAUL BLOSER: How high is that going to be off the ground?  
MR. LINDSAY: 17 inches.  
PAUL BLOSER: Is this something you're building yourself?  
MR. LINDSAY: Oh, yeah. Uh-huh.  
PAUL BLOSER: All out of wood?  
MR. LINDSAY: Uh-huh. Yes.  
PAUL BLOSER: Will you have railings on the outside?  
MR. LINDSAY: Yes.  
PAUL BLOSER: Will you paint it or will you leave it natural?  
MR. LINDSAY: The deck will be painted and the rest will all be capped in aluminum and PVC.  
PAUL BLOSER: So PVC railings?  
MR. LINDSAY: Uh-huh.  
PAUL BLOSER: You're not putting a roof over it, are you?  
MR. LINDSAY: No.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

CHARLES RETTIG, Coldwater Road

MR. RETTIG: Can the applicant please just point out on the detail where the two setbacks are or maybe you could do it?

PAUL BLOSER: There is one of them right there (indicating) and the other one is that line right up there (indicating). That little dotted area in the front is where the deck is. That is Charmaine up at the top going across, and that is Kuebler down the side (indicating).

Corner lot (indicating).

The garage is on the side (indicating).

Front door (indicating).

Their address is on Charmaine, but they enter in from the back side.

MR. RETTIG: Thank you.

PAUL BLOSER: This is pretty common in this neighborhood and other Chili neighborhoods that front steps wear out, deteriorate -- I think have you one right on Kuebler that did the same thing.

MR. LINDSAY: Right. And there is no way to get to the front steps.

PAUL BLOSER: Pretty straightforward as I see it.

Robert Mulcahy made a motion to close the Public Hearing portion of this application and Adam Cummings 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 reviewed proposed 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 James Wiesner seconded the motion. The Board all voted yes on the motion.

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

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

1. Building permit and inspection to be completed as required.
2. Lot map with accurate locations and final dimensions to be completed and submitted to the Building Department.
3. No additional structures, additions, or roof lines to be added without Town approvals.

The following finding of fact was cited:

1. The proposed porch is consistent and similar to requests made on other neighboring properties as front steps and landing have deteriorated over time and need to be replaced.

There will be no negative impact on the environment or neighboring properties. As this is a corner lot, the east side of the house faces a street and therefore is considered a front and is required by code to have a deeper setback than a normal house side.

4. Application of Frank Burns, owner; 530 Chili Scottsville Road, Scottsville New York 14546 for Land Use Variance to allow an auto glass repair shop in existing detached garage at property located at 530 Chili Scottsville Road in AC zone.

Frank Burns was present to represent the application.

PAUL BLOSER: Before we start this one out, I have been doing some looking into this, and discussed it with Counsel, and I'm making a proposal to the Board and to the applicant to change this to a -- an Area Variance instead of Use Variance.

I'm inclined to think based on what I understand, this business right now is more of a home-based, occupational-based business. Therefore, I could put conditions of approval and let it go for a year and reevaluate and then extend it to five years and then to whatever we deem necessary.

I would also consider putting a condition on here that if there's no business activity within six months, it would become null and certainly at the sale of the property, it would also not be carried over.

If I do a Land Use, it carries period.

Based on what I see in the application, I do have some more questions for the applicant tonight. I think this would be the best way for the Town, for neighbors and for --

JAMES WIESNER: Was this an applicant decision when it was filed?

PAUL BLOSER: Well, it's two. First of all, the applicant would have to agree with us doing this.

And secondly, I would have to have the Board agree to making this change from Land to Area, which is not as -- if you go Land, you all have a sheet in front of you, the criteria. Use Variance requires 100 percent of all of the factors being met.

On the Area Variance, it's a weight. You evaluate it and you weigh out.

The Use, I just don't think that they are in this Town practical. To me, it becomes zoning, spot zoning, rezoning and that's not something we want to do in this Town.

This would not be rezoning the lot. It maintains an AC District. I'm much more comfortable with that. Then the change is not permanent to the lot.

So I guess first I want the Board's input on changing it from Land to Area. If you're in agreement with that.

ROBERT SPRINGER: I am.

JAMES WIESNER: I would be in agreement with that.

ADAM CUMMINGS: I'm in agreement.

ROBERT MULCAHY: I'm in agreement.

PAUL BLOSER: I'm proposing that, and I will propose it to the applicant. If you're in agreement with this, then we'll move forward with addressing this as an Area Variance.

MR. BURNS: Yep.

PAUL BLOSER: Counsel, can we approve this and go forward with it?

MICHAEL JONES: It's a bit unusual, but if the application is going to be amended at the meeting, um, from a request for Use Variance to a request for an Area Variance, I would advise the Board to define the Area Variance request and then make a vote to accept the amendment of the application before you act on it.

And it would appear, if I understand you correctly, Mr. Chairman, that the Area Variance request would be under the zoning code 500-101, Customary Home Occupation, I think is what you're referring to.

PAUL BLOSER: Yes, sir.

MICHAEL JONES: Well, Customary Home Occupation defines the area of the business to be within the dwelling or the attached garage. If -- if I understand the application, the variance sought would be to allow a business to exist in a detached garage.

Is that accurate, Mr. Chairman?

PAUL BLOSER: That is correct, and that is one of the questions I wanted to get defined a little clearer with the applicant as far as percentages of business, what is being done where. I spent sometime researching this myself and just what our options are, what our latitudes are on this.

The code is very clear that, um -- an occupation or profession which is carried on wholly within the enclosed walls of the dwelling or attached garage.

First of all, I guess I'm looking at, is the garage attached to the house going to be used in any part for the business?

MR. BURNS: No.

MICHAEL JONES: So, Mr. Chairman, I understand the question, but the applicant should be made aware if the attached garage was used for the business, he would need no approvals whatsoever and he could carry on without approvals from the Town because it would be a permitted use. So he does not necessarily have to subject himself to a Town approval if the business was within the dwelling of the attached garage. Just making that point.

PAUL BLOSER: Okay.

MICHAEL JONES: Because it is a factor in the overall balancing of the Area Variance, as you are well aware.

PAUL BLOSER: I understand that.

One of the things that I guess I'm wondering, is this a situation where we can expand the area to include or remove a portion that is designated to the attached and move that portion to the

detached? Basically you're doing the same thing. Same area allocated. I'm just moving it from one to the other, still on the same property. Um, it is still classified as garage. Um, but the condition would be that the house portion, the garage, not be used for any business purposes.

Again, my initial looking at this business, and I think we have to go to the applicant and get a little better definition of this, is -- a majority of this is all field work. It's not being done on the property.

When I did go by the other day to look at signs to see they're up, I saw the overhead door open. I did pull in. I identified myself with the owner. Kind of went through the application, what he is actually doing there. I viewed the inside. It's an empty shell. Other than his personal toys, snowmobiles, ATVs, motorcycles, they're all maintained. Property maintenance items, tractor, farm implements he has there for maintaining the property. Very small portion of it is going to be used in there, but it's rack and shelving to store his glass. And cases of caulking and chemicals. It's -- there is no -- there is no patient area -- no patient area. No customer area. There is no seating chairs. There is no plumbing in there. There is not any facilities.

And my understanding from the applicant, and again, my -- I still have to go through this with him, but my initial meeting with him, all his paperwork, all his office is done in the house, phone calls, everything is there. So as I'm reading this, and studying the code and trying to find some case studies myself, as limited as my knowledge is in that, these are the reasons I feel -- I don't think a Land Use is appropriate and I would rather do it as a home occupancy.

I look at just going through the Town, how many -- I go by houses all day long and see contractors, plumbers, electricians, they have their own businesses and they work out of their house every day, and they don't have variances. I got a guy here that wants to do it the right way, and I don't want to give him a hard time on it. He is registering it.

If I do it from an Area standpoint, it's at least something we can evaluate and if there are problems, it would be within our purview with the Town to pull the plug.

MICHAEL JONES: Mr. Chairman, don't misunderstand my comments. I'm not taking a position one way or another because I'm not vested and I don't care. I just want to make sure the Board operates --

PAUL BLOSER: Within the guidelines.

MICHAEL JONES: -- within the guidelines.

PAUL BLOSER: Absolutely.

MICHAEL JONES: So I think what we need to do is hear from the applicant if he wants to amend his application from Use Variance to an Area Variance. The Area Variance requested would be as you have defined, allowing detached as opposed to attached garage in the definitional section of the code being 500-101, and if he is making that request, I would ask the Board to vote on it before going further so that you accept it as that modified application.

With those comments, I would just say to the applicant's benefit, I -- you and I spoke, Mr. Chairman, about the Use Variance application, and it is in my legal judgment inadequate to support legally a change of the zoned use. I do not think it can be supported legally.

PAUL BLOSER: Right.

MICHAEL JONES: And probably wouldn't be passed under the strict guidelines for Use Variances.

So I am just saying it for the applicant's benefit before you decide whether you want to amend your application or not.

And one other thing, when you get to conditions, I heard you mention that the variance should -- might cease upon a transfer. Even Area Variances run with the land, so I would just caution the Board I don't think that would be an appropriate condition; however, there are other conditions that could address the concern you have, which is a property concern about, um, how the -- the -- how the parcel functions in a Residential District and so forth and the time limits in the event of abandonment, that it goes away after six months and anything like that.

So when you get that point, I want to caution you about those conditions. I will have a conversation with you.

PAUL BLOSER: I will look to you for that, because I think this is the way it should be done. We -- this is an unusual application. I guess first of all, there is not many people that have come forward like this and want to do it the right way. I want to do it for what is right for the Town as much as the neighbors, as much as the applicant. So it is a difficult one. I want it done properly.

Um, and I appreciate Counsel's guidance on this. It is just something that -- from first looking at this, I didn't want to go with Use Variance, for a lot of reasons.

MICHAEL JONES: I just want to say in the Department's defense, the suggestion that they go Use is obvious. It's the right suggestion, because the use is not fitting with the zone.

I think, Mr. Chairman, you're being very creative here, and I think it is a solution. We could have started this way if maybe we had a round table and put our heads together, but the suggestion they ask for a Use Variance was a proper suggestion given by the Department given what he is requesting.

PAUL BLOSER: Absolutely. I'm not even questioning that. That was very well defined by the Building Department when the applicant came in. So I -- that -- that is not a question in my mind at all. They did what they were supposed to.

With that, let's get back to the application, identifying name and address and we'll move forward.

MR. BURNS: My name is Frank Burns, 530 Scottsville Chili Road.

PAUL BLOSER: I guess to review what we have just discussed -- should we start

discussing the application first and what his intent is?

MICHAEL JONES: I would ask for the applicant directly to request the Use Variance and it be defined.

MR. BURNS: I think I would want to amend it because I think that's the correct way to do it, and I -- I need the area in the barn to do what I'm going to do, and to park my van and stuff in there. My van will not fit in the garage part of the house, so I -- you know, I got this big building with, you know, that I can pull my van in, and keep it warm and stuff in the winter conditions and stuff.

PAUL BLOSER: Okay. Then it would be appropriate at this point to bring it to a vote to change that before we start?

MICHAEL JONES: Yes. I would recommend that. To accept it as amended.

ADAM CUMMINGS: Real quick, how much square footage are we amending this to? I know the whole detached garage is a little over 3,000 square foot. How much square footage do you actually need to operate your business, the van, supplies?

MR. BURNS: Probably a quarter of it.

ADAM CUMMINGS: Okay.

MR. BURNS: You know.

ADAM CUMMINGS: I heard there was a tractor, snowmobiles.

MR. BURNS: There is other stuff in there taking space in there already. But obviously, you know, I need to keep things warm, the glass warm. I have -- my sealants warm and stuff like that. You can't leave stuff parked out. You can't leave the vehicle parked out at night, the service vehicle, because it will just freeze up overnight.

ADAM CUMMINGS: We're just trying to find the minimum possible what you need, because as was noted, it carries on with the land. So even if your business stops and it hasn't expired, the Special Use Permit or the variance has not lapsed.

MR. BURNS: It will expire if -- if I --

ADAM CUMMINGS: Once we put the time constraint on it. But if it hadn't expired and somebody else opened a business, they could operate a business with 3,000 square feet on there. I would like to not have that happen. I would like to really hone in on how much square footage you need instead of just allowing the entire structure if you don't need it.

MR. BURNS: We'll just run a small business out of there. It is going to be mainly a mobile service. There will be occasion where there will be a vehicle that we'll probably put a windshield or whatever in there, but it's mainly going to be a mobile.

ADAM CUMMINGS: So if you want to put a number to it that you would feel comfortable, what would you put on there, or do you want it at 3,024 square feet, the entire building?

MR. BURNS: I would like that, but I don't know if I would get that. I mean --

ADAM CUMMINGS: So you're amended -- you're sticking with 3,024 square feet for your amended application?

MR. BURNS: Don't think I would use the whole building to run this business. I mean, there is just -- it's -- it's got other stuff in there. There is snowmobiles, four-wheelers, tractors, bush hogs that, you know -- lawn mowers. So I mean the whole -- to say the whole thing, I mean there is just no way I can use the whole thing with all my stuff in there.

PAUL BLOSER: That is why we're asking --

MR. BURNS: I don't want to move any stuff outside.

ADAM CUMMINGS: Right now, as was noted -- well, one of them is attached/detached. The other one is the -- the square footage is 25 percent or 500 square feet. I was just trying to put a value to that, as to how far you're exceeding the 500 square feet.

MICHAEL JONES: Let me help the applicant because when we decide variances, the minimum variance needed is what the Board would consider.

So you may want to decide the minimum necessary to conduct your business. So if you need more than 500 feet, what he is asking is how much more and keep it conservative so you're not asking for a big variance. Just so you understand what he is getting at.

MR. BURNS: I would say half of it then.

ADAM CUMMINGS: Okay. So 1500 square feet?

MR. BURNS: Yes.

ADAM CUMMINGS: I ask that, because then if in the future you come in and find out, "I need 2,000 square feet," you're right back in front of us needing another variance.

MR. BURNS: Right.

PAUL BLOSER: What I would then want to do is make a proposal that we amend this application to change the application for -- from a Land Use Variance request to an Area Use request. We have had the proper public notification of the -- of a variance being applied for. Signs have been posted for the proper duration. We're just changing from -- actually decreasing the request from Land Use to Area Use. I'm looking for Board approval now that we have the applicant's concept to make that change. I will have a vote on that.

JAMES WIESNER: You're voting right now, Paul (Bloser)?

PAUL BLOSER: Yes.

JAMES WIESNER: Do you know what section that is, the area?

MICHAEL JONES: 500-101.

JAMES WIESNER: What is that?

MICHAEL JONES: Section 500-101.

JAMES WIESNER: 500-101.

MICHAEL JONES: Yes. Definitional section, so you would look to Customary Home Occupation, which in the code book would be 500-101.

JAMES WIESNER: Yes.

ROBERT SPRINGER: Yes.

ADAM CUMMINGS: Yes.

ROBERT MULCAHY: Yes.

PAUL BLOSER: Yes.

So officially we are making this application for Area Use.

Back to the application, you run a mobile glass business, and this is going to be basically a door-to-door business. You get a call, broken windshield, cracked windshield and you're making field calls to do this, or the glass came out of a door frame or whatever, correct?

MR. BURNS: Mainly auto glass and heavy equipment commercial. I shouldn't say commercial. This type of equipment like tractors, bulldozers, backhoes and stuff, all stuff that is out in the field.

PAUL BLOSER: Per our conversation, when I was out there, you -- the logistical side of the business, paperwork, phone calls, appointments, scheduling.

MR. BURNS: All done in the house.

PAUL BLOSER: Computer record, they're --

MR. BURNS: There is nothing in the barn. There is no -- no office, no waiting room, just an open shelf, you know.

PAUL BLOSER: All right. That's what I saw, was the racking for the storage.

MR. BURNS: Right.

PAUL BLOSER: The storage and the glass racks.

Vehicle storage, um, one of the things we always look at on this is what the outside of the building looks like. And I go by the property a lot. I have seen the barn for a couple years now. I never saw anything parked outside of it. Once in a while a van or a pickup truck, but they have been unmarked vehicles.

One of the conditions we would like to see is that -- as little traffic as possible in a home. Just that we're not running a full board in and out area.

MR. BURNS: Correct.

PAUL BLOSER: So that would be a condition.

Do you have any 18-wheeler deliveries?

MR. BURNS: No. Nope. Just vans. Everything comes in a regular van.

PAUL BLOSER: Okay. Glass deliveries come in a van?

MR. BURNS: Yep.

PAUL BLOSER: I know there is a couple wholesale places that you go.

MR. BURNS: Go pick them up. There is two of them in Rochester and they're close to here. It's either pick it up or being delivered. So there might be a delivery once a day there, you know, first thing in the morning and then most likely we won't be back until quitting time any ways.

PAUL BLOSER: Okay. So as far as storage then, it's just glass and your caulking?

MR. BURNS: Yes.

PAUL BLOSER: Seaming materials, sealants?

MR. BURNS: Yep.

PAUL BLOSER: So it is heated?

MR. BURNS: Yep.

PAUL BLOSER: You have the stuff loaded in the van, so you're keeping that in --

MR. BURNS: Yes. Overnight.

PAUL BLOSER: Because of the conditions, you have to keep it in there.

The property itself, is this all you're doing under there? Are you doing any current farming out of there?

MR. BURNS: We are -- I do part-time farming on the side. I help my cousin out, so we are going to farm the land in the back of the property next year, so, um, it will be farmed next year. Hasn't been farmed in several years, but it's going to be farmed for 2014.

PAUL BLOSER: Okay.

ED SHERO: I just have a comment. You know, for the record, I do disagree totally with your logic and your procedure on this -- on this matter. It was a decision that the Use Variance was the way to go on this. If the applicant didn't agree with it or -- then you have a right to appeal my decision to the Board.

But it's not my intention to give Frank (Burns) a hard time. I think we have known each other since maybe what, the first grade, but I'm an employee of the Town and taxpayers do pay my wages and I think we should -- what you're doing is really wrong as far as procedure on this, and that's really all I got to say.

PAUL BLOSER: No. I respect that. I guess my point, Ed (Shero), is most people coming in don't know what they need, and they look for the Building Department's guidance. The -- the -- the purpose of this --

ED SHERO: That's what we do. Give them the guidance. That's what we're there for.

PAUL BLOSER: So I'm not arguing, as I said before, what you did.

ED SHERO: Well, you are -- you changed it. So you -- so you do disagree with me.

PAUL BLOSER: I don't like Land Use.

ED SHERO: Because you don't like it you -- well, we do what we want to do, right?

PAUL BLOSER: No. This is the Zoning Board of Appeals. That is our purpose, is to

review things.

ED SHERO: If you didn't agree with my decision, you had a right to appeal my decision.

PAUL BLOSER: Okay.

ED SHERO: My interpretation. It's not your interpretation.

PAUL BLOSER: I understand.

ED SHERO: All right.

PAUL BLOSER: That is why I sought Counsel on it and have been trying to read it, too.

MICHAEL JONES: The only comments I have, Mr. Chairman, is that the Board -- since the Board has amended the application, the applicant has not commented on any of the five factors, so any decision will have to have a specific rendition --

PAUL BLOSER: I haven't got to that point yet.

MICHAEL JONES: I understand. I am only reminding the Board, because typically the application speaks for itself, the part where we have gone through that analysis just by virtue of the application that you have accepted. We don't have that here, so you have to do it a little differently. I'm just offering that.

PAUL BLOSER: Right. The criteria that we discussed or that Counsel mentioned on an Area is five points. In the application itself, when you filled it out, you addressed those points.

I guess I would like to go through it and have you -- you -- have you discuss them with us before I open the public comment.

As far as the first one is, property in question cannot yield a reasonable return.

MICHAEL JONES: I will interrupt you. I'm sorry. So those factors that were filled out by the applicant relate to Use Variance factors.

PAUL BLOSER: That's how they're laid out.

MICHAEL JONES: So the difference would be Area Variance factors is: Whether the benefit can be achieved otherwise; whether or not it creates an undesirable change in the neighborhood; whether or not the request is substantial; whether it has adverse environmental impact.

PAUL BLOSER: You're right. I was reading off the wrong one.

MICHAEL JONES: That is right. I just wanted to make sure.

PAUL BLOSER: On the Area, going back to it, start over again.

Can the requested variance be mitigated by reasonable means? And that basically is alternatives to this. You know, have you looked at having the business based out of someplace else and what would it mean to you?

MR. BURNS: If I did have it based out of another place -- as it is right now, it is me and my son that is going to start the business. It doesn't make sense for me to go rent a place when I have a place already. And we're not going to be there all of the time in there. We're going to be there in the morning, out of there and back at night. There won't be any difference than what has been happening there for the last 29 years that I have had that place there. You know.

PAUL BLOSER: Other than if you were someplace, the increase in rental.

MR. BURNS: I would have an increase in overhead and stuff like that. As it is right now, I'm starting all over. I just don't foresee where I should go rent a place and put more overhead on when I already have a facility at my house already and just to run a home business out of there.

MICHAEL JONES: If I can jump in to help the applicant just to say one thing. When we talk about can benefit be achieved otherwise, he mentioned he cannot fit the van in his attached garage. So he can't comply with the code and use the attached garage because it doesn't accommodate the business vehicle. That would be one reason why you can't comply with the code.

PAUL BLOSER: The -- the attached garage, is that heated?

MR. BURNS: No.

PAUL BLOSER: Where this one is also?

MR. BURNS: Yes.

PAUL BLOSER: You need the heating.

MR. BURNS: The detached garage is heated.

PAUL BLOSER: So the heat is also a factor also?

MR. BURNS: Yes.

PAUL BLOSER: Is there anything else in that category? Alternatives? Other than you renting someplace else and spending the money?

MR. BURNS: And spending the money.

PAUL BLOSER: Um, will the requested variance create an undesirable change in the character of the neighborhood or to nearby properties?

You did mention that visibility will not be any different than what you have been doing for --

MR. BURNS: Right. Nothing will be any visible difference.

PAUL BLOSER: There is no machinery to make noises.

MR. BURNS: No. None.

PAUL BLOSER: It is all hand labor basically.

MR. BURNS: It is what it is.

PAUL BLOSER: No emissions of any type?

MR. BURNS: No. Just changing glass.

PAUL BLOSER: No water running, so there is not any discharge of chemicals or anything.

MR. BURNS: No.

PAUL BLOSER: As far as the requested variance, is substantial in nature or character? Anything other than no change is an increase. You know. Is it a substantial increase? What we're looking at is a change in use moving from the attached garage to the detached garage for the business. It's a trade-off. I don't know if the applicant, Mr. Burns, is there anything you can comment on that?

MR. BURNS: Just the attached garage is not fit for what I got to do. It just isn't going to fit my vehicle in there. It's not finished. It's not heated. I got this barn that is 3,000 square foot. It's been there for 12, 13 years and, you know, I want to start using it now and I have come to the -- you know, I'm one of the honest people in the Town that is going to come and say, "I want to use a home business out of my property," and not be like the rest of the people in the Town that just do what they want to do.

PAUL BLOSER: We're not making any change, physical character change to either the house or the barn at this point. Nothing is changing physically --

MR. BURNS: No.

PAUL BLOSER: -- increasing in size than what you have already got?

MR. BURNS: None.

ROBERT MULCAHY: Will there be a sign on it?

PAUL BLOSER: They are forbid by having a home business. They are forbidden.

ROBERT MULCAHY: Even on the property --

PAUL BLOSER: Yes. Regardless of the size.

Will the requested variance have adverse physical or environmental effects on anything in the neighborhood, the properties? Noise, air?

MR. BURNS: None.

PAUL BLOSER: Audio visual or --

MR. BURNS: No.

PAUL BLOSER: And the last one that we have to cover is the alleged difficulty resulting in the requested variance a self-created hardship?

Yes, it is. You start a business from scratch.

MR. BURNS: Yes. Start all over from scratch.

PAUL BLOSER: This is a business you have been in for how long?

MR. BURNS: 30 years.

PAUL BLOSER: Ray Sands Glass you were co-owner.

MR. BURNS: I was co-owner there and I sold out, and now my son will start it all over and we will run a small thing, not like we were over there. So.

PAUL BLOSER: So you have experience in this. You have been doing it for a long time.

MR. BURNS: Been doing it for a long time.

PAUL BLOSER: Your focus is more auto and construction equipment, farm equipment glass as opposed to cutting a mirror for somebody?

MR. BURNS: Right.

PAUL BLOSER: Or shop work?

MR. BURNS: Right.

PAUL BLOSER: Again, I look at this, this is not a whole lot different than cake decorating or assembling barbecue sauce, things we have allowed people to do in their houses.

You're not putting cars out front for sale. You're not displaying goods in the front lawn. And this is why I looked at this and said, he is starting a business, and the code does allow for customary home. My opinion.

Like I said, I'm not a professional and I don't interpret it, but from what we have reviewed before in other cases, his work is done off the property for a majority part of the day. There is no evening hours. There is no weekend hours. It is strictly an 8 to 5 job. It's off site. A majority of it. That's the way I look at this.

It's a home-based -- his office is there. It is just the two of them. The code does allow for that portion of it. It's home-based. The big trade off we're making is moving a portion that is allowed for the attached garage to a portion of the square footage of the detached garage. That's what we're doing.

There -- there was a verbal request to put a sign on this, on the building. He did submit a picture with a drawing on here. Signs are forbidden by the code in this situation. The sad part about it is we have other businesses in Town that -- how many houses and properties can you go by and you see a plumbing business with their cube van parked in the driveway, ice cream trucks and pizza trucks that are parked at the curb that are one step short of being allowed legal access on a road. They can display what they want and we don't have any jurisdiction on that. But signs are not allowed. That's where it stands for that. For a home-based business.

So, at this time, I'm going to open -- is there any other comments?

MR. BURNS: I do have signatures from my adjoining neighbors, too, that said they didn't have a problem with what I'm doing, so if you want them.

PAUL BLOSER: Please.

MR. BURNS: That's the original. Here is a copy.

JAMES WIESNER: What happens to the old glass, Frank (Burns)? Will you have a dumpster there?

MR. BURNS: I actually -- since I help my cousin out, he has a dumpster that I'm going to use his, so there wouldn't be any dumpsters on the property or anything, because I just want to keep it the way it is, so, you know.

PAUL BLOSER: I will leave you with the original. We have a copy.

MR. BURNS: That's okay. You can have both of them. I made a copy of them.

PAUL BLOSER: Anything else you have comments on at this point?

MR. BURNS: No, I just want to say that I was trying to do the right thing for the Town and be an outstanding person, what I have been for 30 years.

PAUL BLOSER: And asking permission rather than forgiveness.

MR. BURNS: That's right. That's right.

BILL STEIMER: Um, just a few comments. Um, thank you for being straightforward. And for the Board being cautious on this whole matter because we set a precedence in this room many years ago for another glass sales outlet at 4298 Union Street, and that was clearly spot zoning, and I was in attendance at the meeting, and the applicant explained that he was going to use 15 percent of that building for the business and 85 percent for his, I will call, select cars and custom car collection.

Since that time, um, the business is 98 percent of the building. Um, there is clearly a freestanding sign. There is an "open" illuminated sign in the window, and that was clearly spot zoning.

And we looked at that business when we were putting the Comprehensive Plan together that now exists, and we looked at that as a mistake. And so I think we -- we need to -- even though Mr. Burns has been a real good neighbor to all of us in the community, um, we need to look at the bigger picture, as well.

And for instance, right in the Comp. Plan, and I would hope that this Board uses this for guidance as well as all of the other Boards and Committees throughout the Town.

But, um, this site is -- was in Sub Area 9 in the study that produced the -- the Comp. Plan. And I will read this, if anyone wants to check it online or in the book, um, it's clearly visible.

One statement for Sub Area 9, in the first paragraph, the 2030 plan recommends that no new applications for any type of non-agricultural commercial operations be granted in the delineated agricultural areas within the corridor from the western Town boundary (Chili/Riga), eastern to the Scottsville Chili Road area (New York 386), south of Black Creek to the Chili Wheatland Town line.

And that -- that is just kind of a summation of a lot of detail in here that -- trying to get across that the -- that our Town and our community want to keep business in a central location and want to support agriculture in this area and south of that. So I'm representing a member that put together the Comp. Plan and also the recommendation from the Conservation Board at this time saying we do not endorse such a change of use.

Granted, your -- the -- the flexibility your using and how that comes about does make a difference in -- and certainly has advantages and disadvantages in both directions, but I think we still need to look at the bigger picture and say are we doing the right thing looking at the big picture and looking at our whole community?

Thank you.

PAUL BLOSER: And that was why -- the glass place that you're speaking of is one of the reasons why I don't like Land Use, and why I felt from my standpoint an Area was better to go that route. We would be avoiding that spot zoning type thing and keeping a -- a total commercial business aspect out. If he was doing glass work 100 percent of the time out of the building, I would look at it in a whole different perspective.

By using it as an area in home occupational, it's where his office is -- how many do we have in this Town that are self-employed contractors, sales reps, home care aides, whatever, that are working based out of their house. They're independents. None of them have these applications.

If we're not making -- if I look at -- if I'm not making -- the applicant is not making any physical changes to the property visually, aesthetically, noise, um, or environmentally. We're not making that impact.

The fact that he is starting to farm the land again is also another -- as far as I'm concerned, an enhancement. It is part of his -- going to be part of his income package, part of what he sold out and moved into here is to enable himself to do his mobile business and to do his farming. So that is why I'm looking at it completely different.

Yes. It's out of the box, but I think that's also why I -- I wanted Area and didn't want the Land Use. It changes a lot of things. We also look at each application stand alone. Um, and we don't set precedent. Inasmuch as you say you do, we are charged with looking at each application individually. Um, and that's what I'm trying to do with this one, which is why I have gone this path with this. We have never done this before. But again, that's what we do on this Board, is to review and make allocation for a change like this.

Um, and as far as the other businesses go, we don't have the staff to go door to door to control who is doing what in Town and capture all of the contractors and anybody else that is doing stuff. But it's -- but it's -- I applaud him for coming forward and wanting to do it the right way. The Building Department did their job as they're charged with. And what we're trying to do is look at what is within the law and within our purview to allow him to be an individual private homeowner and still have a start-up business. That's what this country is about, individual entrepreneurship and not have it affect your neighbors.

Maybe I'm on a stool, but it's just one of those -- I -- I think it's time to open public comment.

ADAM CUMMINGS: Think we're good. Let's open public comment. Let's leave it at this point.

PAUL BLOSER: I'm sure there is public comment.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

DAVID CROSS, 610 Scottsville Chili Road

MR. CROSS: Sure. Hi, Frank, your son. David Cross, 610 Scottsville Chili Road. I have nothing personal directed toward to you. I'm your neighbor. I live two doors north of you. Never met you. Great neighbor, by the way. Really no problems in the neighborhood.

Um, I totally agree with Ed Shero's comment on the side table. There is no way that this could be shoehorned into an Area Variance. There is nothing dimensional about what the applicant is requesting.

This is a Land Use Variance, all day long. All day long.

There is nothing -- I don't see -- I can see an Area Variance for a barn that is too close to the lot line or if there is a setback issue, something dimensional. I think the Zoning Board would be on really shaking ground considering an Area Variance in this case.

Why isn't a Special Use Permit being considered? It probably fits this a lot better? I -- yes, in an AC zone a Customary Home Occupation is allowed, I believe, by Special Use Permit. And I would ask the side table.

MICHAEL JONES: I don't know if we discussed that, because it -- yes. Customary Home Occupation only requires a permit, a use permit, special permit when there is an outside employee. So when the business is conducted entirely within the family that dwells at the property, it's permitted as a right. But if you have an outside employee, then you need the permit.

DAVID CROSS: I understand.

But there is still a square footage -- I think it is 500 square feet.

MICHAEL JONES: Correct.

DAVID CROSS: I heard a quarter of 3,000 being 750 square feet tonight. I think the Zoning Board has to be very careful with that.

I totally agree with the other comment about the Comprehensive Plan. I sat with you on that Committee for three years. Put a lot of effort in that Comprehensive Plan. It would be a shame for you guys not to recognize that.

The sign, I didn't quite -- I came in late. I apologize. I didn't hear if the sign would be considered tonight or not.

PAUL BLOSER: No. It's not.

DAVID CROSS: That's good. That takes, in my opinion, an undesirable effect on the neighborhood away.

I -- I believe the benefit could be achieved otherwise. Plenty of spots in Town that a business could be operated. So -- and again, I -- you know, the self-created thing, of course it is self-created. I know that is what you're weighing.

Again, I would like the codes -- I totally agree with Ed (Shero)'s comment. This is a Use Variance all day long. I do not see how an Area Variance is even on the table here.

With that, I will close. Thank you.

DOROTHY BORGUS, 31 Stuart Road

MS. BORGUS: First of all, I would like to commend Mr. Shero for stating his convictions, standing up for what he thinks he is right and true. I am not usually -- not often a fan of the Building Department, but in this case, I am 100 percent behind Mr. Shero in what he did and what he started. And I agree with Mr. Cross, this does not fit what you're trying to do here.

The code reads attached. And I don't think it's up to this Board just to -- just to change the code because it doesn't suit this applicant or that you don't like the other plan for a Land Use Variance. You can't be inventive and tailor a code to fit an applicant and that's what you're trying to do here. It's wrong.

Um, BILL STEIMER brought up a -- 4298 Union Street. I must say that we have heard this story before. We have heard how it was going to be all field work. With a part-time job. It wouldn't be a problem. It wouldn't be outside storage. There wouldn't be signs. Well, look at it today.

And, Mr. Bloser, you said yourself, this Town cannot police this. Once you do this, these people are on their best behavior and their good word to do what they say. You will have no guarantees that he does what he says he is going to do, and I have absolute respect for him as a businessman. It's not that. I don't have any personal problem here with Mr. Burns at all. It's not that.

It's just you're putting your -- putting your foot in something that you can't control. And we have had enough mistakes. 4298 Union Street was a mistake. I think we would all agree it was a horrible blunder, horrible. Spot zoning in its worst; it was horrible. Let's not repeat the mistake again. Just because we made one, let's not make two. Ironically it's still a glass business. That's kind of puzzling.

I, too, had a question about the sign. We're reassured there won't be a sign.

As far as the five conditions for what you're proposing, um, this gentleman is in business. He knows where there is -- long time businessman. He certainly knows where there is space he can rent. And I don't see where money should be an issue. He just merely said he already sold half interest in a very flourishing glass business already. I don't believe he should have a problem financially in renting sufficient space elsewhere.

And he doesn't want to do it because -- by his own admission he doesn't want to spend any

money. What is -- what -- please, this Board, you got to be hearing this, too. He says that he -- he -- that he -- his garage or rental spaces aren't high enough for his van. There is a lot of rental space that would be high enough for his van and be heated. These are not excuses. Well, they are. They're excuses. They're not reasons. I guess that is the differentiation.

He says there is no visible difference. Well, there is. Every time he pulls in with his van with all of the lettering on it and stops in his yard to get lunch or whatever, his sign is in the yard, because he will have a lettered truck, you can bet on it. You -- obviously he would, anybody would in business. He will have a sign in his yard and it will be on the sides of his truck.

This is definitely a self-created hardship. I think everybody agrees with that. And Mr. Bloser says it's not like cake decorating. He said it was the same, I guess, akin to cake decorating. Well, this not cake decorating, people. This is not cake decorating. As far as these five -- these -- these items in this balancing test, I don't know how even you can sit there and look at them and say that on balance you can vote yes.

Now, the other thing I would like to mention, and I had gone through my Comprehensive Plan, as well. I am only one of three people in this very small crowd in this room today who spent close to three years working on that Comprehensive Plan, and I hope you got your copy there. I understand one is supposed to be available. If you could get it out, I know that BILL STEIMER already read the one sentence in particular that I, too, found in the Comprehensive Plan today, but I think it would behoove everybody on that Board to pass that book along and read that to themselves. It's one thing to hear it read to you.

When you read it yourself, you can see that this is forbidden by the Comprehensive Plan. To me that's the end of all this discussion, no matter what other red herrings you pull out, this is the bottom line. It's not condoned by the Comprehensive Plan. It is forbidden.

And if you look at the Executive Summary in that book, Mr. Bloser, it's on page 5.24. It's the first paragraph and it's the second -- I'm sorry, third sentence.

And when it says "any type of non-agricultural commercial operation," "any" is in italics. We were so emphatic when we worked on this plan we would not leave a loophole. There would not be a space for somebody to slide through and do something that was not the intent of the Board.

Now, I will wait while you do that. I think it's important that this be individually read. I hope the chain on the book isn't so short that you can't do that.

ADAM CUMMINGS: That's as far as he can pull it.

MS. BORGUS: Well, maybe each member can go up and read it. I would like each one of you all in conscience and all clarity to read the words in that sentence.

Now, while he is doing that, let me explain, too, there is an Executive Summary on page E2 and E3 that definitely says, "An expansion of any commercial enterprises should be in Chili Center where Chili Avenue, Paul Road, Chili Center Coldwater Road have been designated as the place where business will be conducted."

Business was not to be spread all over Town. It was to be confined to the Chili Center area and it was to be a commercial zone.

On Chapter 4, under "Community goals," on page 4-1 and 4-2, you will see the same idea again.

And then when you get to Chapter 5, with the part of the paragraph that you're reading now, is in agriculture, and it runs from page 4.17 to 4.1 -- I'm sorry. That is agriculture. 4.17 to 4.19 gives the objectives.

And on Chapter 5, future land use plan, on page 5.24 is that -- that very definite comment I'm talking about.

I have my copy here. Would you like to read mine, Mr. Wiesner?

JAMES WIESNER: I read it before.

MS. BORGUS: You read it.

How this Board can sit here and even think of something that is black and white. It is laid out for you, no way can you do this. Aside from the fact that it is the wrong kind of a -- of a decision, zoning wise, even if you were to consider it.

Everything is against this proposition, everything. Let's not have another 4298 Union Street that we live to regret. Nobody can figure out yet how that ever got through the Zoning Board before, and probably in years hence, if you ever agree to anything as bad as this, people will be wondering how you did it here tonight again. No way.

ADAM CUMMINGS: I would like to make a motion to close public comment unless there is other public comment.

Sorry, Mr. Rettig. Go ahead.

CHARLES RETTIG, Coldwater Road.

MR. RETTIG: Charles Rettig, Coldwater Road.

I would like to first make a comment as to Mr. Shero and the Building Department doing his job. I definitely agree with Dorothy Borgus for what she has mentioned and stated very succinctly to the Board.

Also, I would like to state that BILL STEIMER is very much correct on 4298. It was a mistake. It was spot zoning. And now, as he mentioned with problems of expansion, et cetera, it's not what was intended or what was approved.

So there is a conundrum here. And this Board, at this time, has amended the application. Addressing that, for whatever the Board does tonight, I just want to mention a couple of things. Just for clarification.

Um, what was mentioned as a 3,000 square foot building, um, it was mentioned as a maximum use proposed by the applicant as 1500 feet. That should be 1500 square feet.

And that be a condition.

Number 2, if, like I say, underline "if," this Board goes ahead with this amendment, proposal -- not suggesting that they should -- but a condition that no business be in the existing attached garage.

A condition that no sign be allowed.

A condition that this be a one-year to reevaluate for this unusual application. And if this Board looks at it as a compromise for going ahead for an Area Variance, I just wanted a clarification. Do I understand correctly that an Area Variance would not be permanent to the lot, would be to the individual owner and if the lot changed ownership, that this Area Variance would not go with the property?

MICHAEL JONES: That's not an accurate statement. Variances run with the property.

MR. RETTIG: So Area Variance continues with the property in perpetuity; is that correct?

MICHAEL JONES: I will not go as far as perpetuity, but a variance is attached to the land. It's not personal to the property owner, the business or anything of the sort.

Now, the Board has the authority to put conditions on it. For example, if it becomes unused, that it will expire. They can put such a condition on it. They can put a condition it be up for review after a certain number of years to determine whether it will continue or not after they assess the impacts over a period of time.

So they can do a number of things, but they can't make it personal to the business or an owner or something like that.

Does that answer your question, sir?

MR. RETTIG: Yes. Thank you for the clarification. Appreciate that.

Again, if the Board goes ahead, that they make this a condition that it not go beyond the existing owner and future area use, even though the general definition is as the attorney just mentioned.

I think this Board has a lot to look at. Also, as Mr. Cross pointed out also. And Miss Borgus pointed out with the Comprehensive Plan, that this does not meet the conditions of the Comprehensive Plan. And again, going back to what BILL STEIMER mentioned, that 42 -- 4298 Union Street was a mistake. I was at that Public Hearing also. I certainly definitely agree that that was a mistake in that proceeding with that particular application.

As I stated also, as Miss Borgus pointed out, this is not in the comprehensive -- not allowed, as I understand it, per the Comprehensive Plan, the best -- based upon what is on the Board's table at this time, um, what is on your agenda at this time, with the amended application, I think the best that this Board could do at this time is further review. I think it needs further review, and I think the best that this Board can do at this time is table this issue and think about it more carefully, review all of the aspects of this and look at it more carefully.

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.

ROBERT MULCAHY: I can't vote on it.

PAUL BLOSER: Adam (Cummings)?

ADAM CUMMINGS: I know we amended the application. I would feel more comfortable if we actually had a formalized application. In my opinion, the Use Variance doesn't look like it would be too successful, so I wouldn't be against that being withdrawn and seeing if we could work through an Area Variance option.

But either way, um, voting tonight, um, I'm still kind of unclear on what the exact application is in terms of the exact variances for the area.

PAUL BLOSER: It would be for Customary Home Occupation.

ADAM CUMMINGS: Right. But we would still have those -- we still have to put those other variances -- there are other variances, variance from the Customary Home Occupation.

PAUL BLOSER: That is the variance, to have a custom home occupation. The only thing would be is if we moved that attached garage to detached garage, or we could just say it has to be maintained within the attached garage.

ADAM CUMMINGS: Um, I do feel that more information is warranted. I'm not sure if tabling it and requesting additional information is the option I'm thinking of or not.

ROBERT SPRINGER: I don't know what to say. I'm ready to vote.

JAMES WIESNER: Honestly, I mean it's an honest gentleman looking for -- trying to run a business, but I think -- I respect him for that, but I think you're trying to stretch the legal limits what we're trying to do here.

PAUL BLOSER: He probably could have continued doing what he is doing and nobody would ever know also.

JAMES WIESNER: I agree with that.

PAUL BLOSER: If he parks his trucks in the barn every night and closes the door, no one would ever know. Or he could leave them in the driveway, because how many other trucks in Town, they take the truck home with their business name on it and park it in the driveway. It's allowed within the code. It's not illegal to park a company commercial vehicle in your driveway

as long as it's not an 18-wheeler. So I --

ADAM CUMMINGS: This one is tough. And to go along with it, I believe, and going off my memory and my training, if we deny an application, it's one year it will -- until he can come back for another variance request.

MICHAEL JONES: Excuse me. It would -- that would be correct, it would -- a denial requires a one-year waiting period for reapplication or it could be a unanimous decision of this Board to rehear the application. So keep that in mind.

ADAM CUMMINGS: Thank you. I just pointed that out to the applicant.

PAUL BLOSER: Or if we table it, what is the duration?

MICHAEL JONES: Tabled to what?

PAUL BLOSER: To table a decision and also table closing of public comment? So if he wanted to come back with something in a couple months, with a different presentation, with a better foundation, we could still have public comment Number 1, because that would be the big question from the public; and Number 2, we would have a full Board, too.

MICHAEL JONES: So how about this? If the Board is inclined to table it, why don't we ask the applicant, as Adam (Cummings) suggested, he just do the proper application as opposed to the Use Variance that we sort of patched up together into something different than what it actually was and ask him to do the correct application so it could be properly noticed and do this the right way as an -- well, I'm -- not saying right or wrong, but do it the way the Board is suggesting you may want to do it, and that is by Area Variance and have the Area Variance put in, noticed properly and consider it on its own merits as set forth in that application at the next meeting.

That way you're going through the steps. In that process, Code Enforcement Officer can provide the interpretation which should have happened in the first instance that would have given more jurisdiction to decide whether a Customary Home Occupation applies or not. You may hear this in the form of an appeal, which you have jurisdiction to do.

But since we have kind of touched every possible type of ZBA action, let's try to straighten it out to what it actually is and come back to the next meeting --

PAUL BLOSER: Or go to the Planning Board for a special purpose, special use?

MICHAEL JONES: Unless there is an outside employee working at the business --

PAUL BLOSER: Not necessary.

MICHAEL JONES: -- it is not necessary.

As I said before, the applicant need not come to any Board at all if he doesn't use the detached garage. He can conduct it entirely within the walls of his home; he doesn't need any Town approvals at all. He can do it per zone, as of right, a home occupation. My understanding is he wants to utilize the barn which is not attached, and therefore, he needs some relief if he wants to do it that way.

ADAM CUMMINGS: I would feel more comfortable with that, because right now as Ed (Shero) said, he denied one application. He has not denied this application.

PAUL BLOSER: Right.

JAMES WIESNER: He would also have the option to withdraw and come back to do an Area Variance. That would be the other option, too.

MICHAEL JONES: That's the way.

ADAM CUMMINGS: That is the way I would like to see it, is a withdrawal tonight, not a tabling. Because we have already opened and closed public comment. It was a public comment on an amended application that was incomplete. So a full withdrawal and coming in as an Area Variance, um, application --

MICHAEL JONES: I think Adam (Cummings)'s procedure is correct. That would be the best legal procedure to do it. That would provide clarity if it can achieve those based on the Building Department's interpretation, Code Enforcement's interpretation and then it would be a true (indiscernible).

PAUL BLOSER: With that, Mr. Burns, would you consider withdrawing your application at this point?

MR. BURNS: I guess that's the way it sounds I got to do it.

PAUL BLOSER: Then we would accept your withdrawal at this point.

ADAM CUMMINGS: So just to really clarify it, really there are two options. We can move forward and vote. If we vote no, you have to wait a year until you can reapply or you withdraw it and you will fill out different paperwork than you did originally that would answer those five questions that we pointed out. And you work with them to see what the true variance would be.

MR. BURNS: Work with?

ADAM CUMMINGS: Building Department. And their interpretation.

MR. BURNS: What is that?

ADAM CUMMINGS: And their interpretation. So those are your two options. So you did vote to withdraw it?

MR. BURNS: Yep.

PAUL BLOSER: Then it is accepted and that's what we're doing.

ADAM CUMMINGS: Yes.

DECISION: Application was withdrawn by applicant. No votes or determinations were made by the Board.

The 7/23/13 minutes were approved.

The meeting ended at 8:55 p.m.