

PROCEEDINGS HELD BEFORE THE ZONING BOARD OF APPEALS
AT 3333 CHILI AVENUE, ROCHESTER, NEW YORK ON
July 28, 2015, COMMENCING AT APPROXIMATELY 7:00 P.M.

PRESENT: ADAM CUMMINGS, CHAIRMAN, MARK MERRY, RON RICHMOND,
FRED TROTT, JAMES WIESNER

ALSO PRESENT: ERIC STOWE, ESQ., Asst. Town Council, ED SHERO, Building &
Plumbing Inspector

REPORTED BY: Constance S. Barefoot, Court Reporter, EDITH FORBES COURT
REPORTING SERVICES

Chairperson Adam Cummings 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.

1. Application of Barbara Denigris, owner; 254 Archer Road, Churchville, NY 14428 for renewal of special use permit to allow two horses and six ducks at property located at 254 Archer Road in R-1-20 zone.

BARBARA DENIGRIS: Hi, I am Barbara Denigris. I live at 254 Archer Road, south of the railroad tracks. I have been there since 1974. I have had horses there, 2 horses, and a piece of land that's L shaped since 1976. It's L shaped and the pasture part of it is behind my neighbors, which you can see on the diagram. I have 2 neighbors to the south. And the pasture is between them and what eventually became Vista Villas. Most people know that Vista Villas was chopped up into 2 phases. Phase 1 is buildings and houses right now. Vista Villas Phase 2, which is directly east of me on the other side of the pasture, has been rezoned forever wild. So the weeds and everything have grown back up as it was way before Vista ever came there. Phase 3 is also -- I don't know what that is -- Forever Wild I guess. They are not going to put anything there for a while. I have -- I would like to continue the opportunity to have 2 horses there in that pasture. It's -- I have got a lot of great grass, a walk-in barn. You can see where the pasture meets the south corner of the barn. That's a walk-in. It goes into a 10' x 20' stall. So the horses have an opportunity to get grass and in the winter they can walk in and out of the barn at free will. It is an electrified fence all the way around, 3 strands of electric tape, a combination of cedar posts and I guess PVC pipe posts that are designed to put tape through. I just would like to continue the opportunity to have the ability to have 2 horses. The ducks came about because I

am a first grade teacher, a retired first grade teacher in the city. And every year I would hatch some duck eggs in the classroom. And they would eventually, obviously, they couldn't stay in the city, so they came back to me. So presently I have 6 ducks. Two of them were hatched with the neighborhood children and they already have names, so they definitely are pets. I have an in-ground pool and a backyard that the neighborhood kids love to come visit and they do it often. I asked for -- originally, way back I asked for 1 horse, but horses are herd animals. They do like company from other animals. So that is why I have always preferred to have 2. Right now there is just 1. But in the event that my horse passes away, that that property could be used to board a couple of horses. It would be nice to be able to get some money off of my property and board it. It is definitely a safe place for boarding. I have also been in touch with an agency called Begin Again Horse Rescue down in Lima, where they take in animals that have been abused or need help for whatever reason. They quite often are looking for places where people, where they can foster. You know, people will foster these horses. So that would be another way to give back to the community. Other than that, it is just a sweet little piece of land tucked right back in there. I am very fortunate to have that acre and a half. I know that Chili is attempting to hold on to green space and farm space. And this would be a nice spot along the eastern border up there, where it is Forever Wild, there is a lot of grownup vegetation, and you literally cannot see it in the summertime. And the houses that are built in Phase 1 are way up at the top of the hill so they are quite a distance away. And, once again, they can't see anything through the trees. Maybe in the winter, they can see a little bit more, but it's separated definitely by vegetation. Other than that, I have had these neighbors for years. Most of them at least 10, 15 years have been there and they have always enjoyed what I have had going on in my backyard, the ducks included. So that is all I would like to do is just maintain that.

MR. CUMMINGS: I will just, for the record, for the history on this. It does date back to pre-dating the Zoning Board granting special use on this property back in 1977, there were horses allowed on this. And it varied from 1977 until the last one, which was September 26, 2006, it varied between 2 horses and 1 horse. So I just wanted to let the Board know and the public that this has definitely been well established. And I have not received any complaints. I am going to ask Ed over at the side table. Have you heard of any complaints from the neighbors or anyone?

MR. SHERO: No.

MR. CUMMINGS: Okay, thank you. And I have to be honest. I didn't even know there was a pasture back there. I've lived here a lot of years. So with that, we will jump right in, in the effort to save time. Jim, do you want to go first, some questions?

MR. WIESNER: I am just curious. Between the barn and the house there is kind of a fence and a structure that is sideways. Is that the pool?

MS. DENIGRIS: Yes. An in-ground pool, yes.

MR. WIESNER: And the ducks themselves, they just roam on the property?

MS. DENIGRIS: Yes, they do. And they have enough sense to come back down toward the house when it gets dark. At night they are locked in the barn. Obviously, there is wild critters out there at night, and we keep them locked in the barn. But during the day they visit the neighbors' bird feeders and keep all of the bird food up off the ground so it cuts down on the squirrels.

MR. WIESNER: So they are truly pets. They come home every night.

MS. DENIGRIS: Oh, yes. They know where they are fed.

MR. WIESNER: That is all I have.

MR. CUMMINGS: Mark?

MR. MERRY: What is the term of your request? The last renewal was 10 years. What is this renewal request for?

MS. DENIGRIS: I would like to keep it at 10. That has always worked out.

MR. MERRY: Okay. Thank you.

MR. CUMMINGS: That was going to be one of my conditions. I was going to mark down the year. There has been a series of 3, then 5. It started at 3, then it went up to 5. And the last one was 10 years. So I agree with the 10 year period for this one. I do not have any other questions. Fred?

MR. TROTT: I have no questions.

MR. CUMMINGS: Ron?

MR. RICHMOND: No questions.

MR. CUMMINGS: Side table?

MR. STOWE and MR. SHERO: Nothing.

MR. CUMMINGS: With that, I will open it up the public comment period. And with that, anyone who would like to speak, and this goes for all the other applications, if you would just identify yourself and your address for the record. So the public hearing is now open for this application only. Yes, sir.

MR. KETCHUM: Dave Ketchum, I live at 257 across the street (Train noise.) I just want to say that everything that is said about the animals, my kids just loved going over there and learning from the ducks and everything else. And we've fed the ducks for all that time. And at times, I was taking care of the animals for her, but never had any issues.

MR. CUMMINGS: Okay, excellent. Thank you, for your comments. Anyone else? Not hearing any, I will entertain a motion to close the Public Hearing.

MR. TROTT: So moved.

MR. CUMMINGS: So moved. Is there a second?

MR. RICHMOND: Seconded.

MR. CUMMINGS: So Fred made the motion and Ron seconded it. All those in favor say, aye. Mr. Wiesner, aye; Mr. Merry, aye; Mr. Trott, aye; Mr. Richmond, aye; Mr. Cummings, aye.

MR. CUMMINGS: Any opposed? The public hearing is now closed.

The one condition I do have here is for a period of 10 years for this special use permit. Any discussion the Board would like to have? The last one was -- I did want to ask one question about the previous one. It did expire on January 25th. I am just curious of what transpired over the last six months?

MS. DENIGRIS: I lost track of it. I didn't realize it had expired until I got a letter from you folks. And I wanted to make sure I got the maps and everything all together. I apologize for that delay.

MR. CUMMINGS: Well the date to me is kind of strange, because it was issued for 1 horse and 6 ducks on January 25, 2005, but then it was amended on September 26, 2006. So I'm not sure -- and maybe that is a question for the side table. Wouldn't the amendment, wouldn't the 10 year period then go from the new date instead of the old date?

MR. STOWE: I would tend to think so.

MR. CUMMINGS: I guess, the reason I bring that up is because, with that line of thought, you went from not having a permit to you haven't expired yet. So you are actually a year in advance of when you would need it.

MS. DENIGRIS: Okay.

MR. CUMMINGS: We will still do 10 years from today's date. I will not make you come back again next year on September 26th.

MR. TROTT: We do appreciate you coming in early though.

MS. DENIGRIS: I came back to amend it I think, because I realized that, you know, horses need company.

MR. CUMMINGS: Yes.

MS. DENIGRIS: And to have just 1 horse, was not enough.

MR. CUMMINGS: And as I said, in the past, back in 1983 and 1993 you had two horses.

MS. DENIGRIS: Like the old days.

MR. CUMMINGS: I just wanted to point that out for everybody. So without anything else, I will declare the Zoning Board as lead agency as far as SEQR, based upon information and evidence presented at this hearing, determined the application to be a Type II action with no significant environmental impact. Is there a second?

MR. TROTT: Seconded.

MR. CUMMINGS: Okay. We will go on to a vote -- or hold on. We have a second. All those in favor say, aye. Mr. Wiesner, aye; Mr. Merry, aye; Mr. Trott, aye; Mr. Richmond, aye; Mr. Cummings, aye.

MR. CUMMINGS: Any opposed? That goes through. Now, I would like to ask for a motion to adopt the application with that one condition.

MR. TROTT: So moved.

MR. CUMMINGS: We have a motion from Fred. Second?

MR. RICHMOND: Seconded.

MR. CUMMINGS: We have a second from Ron. All right. So a Board vote. Jim, you can still be first. Mr. Wiesner, yes; Mr. Merry, yes; Mr. Trott, yes; Mr. Richmond, yes; Mr. Cummings, I also vote yes.

MR. CUMMINGS: So this is approved. You will get a letter from the Building Department within a week. And, once again, thank you for being early.

MS. DENIGRIS: Thank you.

2. Application of Lukas Curley, owner; 11 Hilltop Drive, North Chili, NY 14514 for variance to erect a 21' x 7' open porch to be 50' from the front lot line (60' req.) at property located at 11 Hilltop Drive in R-1-15 zone.

MR. CURLEY: Lukas Curley, 11 Hilltop Drive, North Chili, New York 14514. So I would like to remove the existing front porch, which is a concrete slab that is split down the middle. The steps are getting in rough condition too, kind of a safety hazard and all of that. And there is a metal awning, also, that is partially rusted and in rough shape. So I would like to remove the existing one to replace it, and rebuild it with a new with pressure treated porch with a roof on it. So I have architectural drawings. There are a lot of -- they are all stamped and everything, so it's all up to code and everything. I just plan to follow the plans to the "T" and that would be it.

MR. CUMMINGS: So we will go right to Board questions. I will hold off on mine. Jim?

MR. WIESNER: I don't have any questions.

MR. CUMMINGS: Mark?

MR. MERRY: No questions.

MR. CUMMINGS: I just have one. It looks like you are going to extend out 7' from the house and it currently sits at 6'.

MR. CURLEY: Correct.

MR. CUMMINGS: So you are going to be 7' x 21' but you are not extending it further than that 7'. You are extending it lengthwise or rather widthwise to be 10' longer.

MR. CURLEY: Correct.

MR. CUMMINGS: So you are going from 11' to 21', but that's no closer to the road. And you are just moving 1' closer to the road.

MR. CURLEY: Yes.

MR. CUMMINGS: 7' off.

MR. TROTT: Would we look to like to look at his plans?

MR. CUMMINGS: I would like to look at his plans. Can you hand those up. And we will make sure they get to the Building Department. Ed, are you going to require these?

MR. CURLEY: I made a copy already.

MR. SHERO: I think I already have them.

MR. CUMMINGS: What is that? Ed, is he required to have architectural stamped drawings for this type of structure?

MR. SHERO: Yes.

MR. CUMMINGS: Okay, perfect. You love these. I will leave them in front of you two first. I just want to check and make sure that we have adequate space. I'd hate for you to build it and then be a little bit closer and have to come back to us.

MR. CURLEY: The whole house sits close to 60' to the road.

MR. CUMMINGS: So you are at 59.3' to the road as the surveyor noted it. And you would like to change it to 50'. So that leaves you with 2.3' to play with. So I agree that that is a good measure to have. Any comments from the Board on this? All right. Fred, while you look at that, I'll skip over you. Ron, any questions?

MR. RICHMOND: Are you just tearing out the existing concrete or are you just building over the top of it?

MR. CURLEY: I am going to rip it all out.

MR. RICHMOND: That's all I have.

MR. CUMMINGS: Fred, any questions?

MR. TROTT: No, I don't have any questions.

MR. CUMMINGS: Okay, side table?

MR. STOWE and MR. SHERO: None.

MR. CUMMINGS: With that I will open up the Public Hearing. Anyone from the public that would like to make a comment about this application? Not seeing any hands, I will entertain a motion to close the Public Hearing.

MR. RICHMOND: Motion.

MR. CUMMINGS: Ron makes a motion. Is there a second?

MR. TROTT: Seconded.

MR. CUMMINGS: All those in favor say, aye. Mr. Wiesner, aye; Mr. Merry, aye; Mr. Trott, aye; Mr. Richmond, aye; Mr. Cummings, aye. Any opposed? The public hearing is closed.

MR. TROTT: I have one question though. Just looking at the picture, are you planning on screening it in?

MR. CURLEY: No.

MR. TROTT: No, okay.

MR. CURLEY: We have a handrail, but no screen. It won't be enclosed.

MR. TROTT: The way it looked, it kind of looked like it had a screen.

MR. CURLEY: Oh, no.

MR. TROTT: Okay. That was all.

MR. CUMMINGS: One condition of approval, you probably already know it talking to the Building Department, but you have to get a building permit prior to construction.

MR. CURLEY: Yes.

MR. CUMMINGS: Prior to the start of construction.

MR. CURLEY: Yes.

MR. CUMMINGS: Anything else from the Board? I have got that one condition. All right, with that I will declare the Zoning Board as lead agency as far as SEQR, based upon information and evidence presented at this hearing, determined the application to be a Type II action with no significant environmental impact. Is there a second?

MR. WIESNER: Seconded.

MR. CUMMINGS: Second from Jim. All those in favor say, aye.

Mr. Wiesner, aye; Mr. Merry, aye; Mr. Trott, aye; Mr. Richmond, aye; Mr. Cummings, aye.

MR. CUMMINGS: Any opposed? Now, I would like to entertain a motion to adopt this application with that one condition of approval.

MR. TROTT: So moved.

MR. CUMMINGS: Fred made a motion. And a second?

MR. MERRY: Seconded.

MR. CUMMINGS: Board Vote. Mr. Wiesner, yes; Mr. Merry, yes; Mr. Trott, yes; Mr. Richmond, yes; Mr. Cummings, I also vote yes.

MR. CUMMINGS: So this is approved. You will get a letter from the Building Department within a week.

MR. CURLEY: All right. Thank you.

MR. CUMMINGS: Real quick, before you leave. Those are at the Building Department though, right?

MR. CURLEY: There is actually a copy of them there.

MR. CUMMINGS: You've got a copy. I just want to make sure Kathy gets a copy for the file.

MR. CURLEY: Yes, they've got the stamped one and extra one.

MR. CUMMINGS: Perfect.

3. Application of Dunbar Armored, 50 Schilling Road, Hunt Valley, MD 21031, property owner: Paul Road Industrial Center LLC; for variance to allow existing 8' high fence in front setback area (4' allowed) at property located at 465 Paul Road in L.I. w/ADATOD zone. I believe this was a typo. So I read it verbatim as the agenda said. But it's not an actual existing 8' fence. So that is a typo. Yes, sir.

MR. CANE: Good evening. My name is Brian Cane. I am with Dunbar Armored, 50 Schilling Road, Hunt Valley, Maryland. And our application is for an 8' high chain link fence. It is new. It is not existing.

MR. CUMMINGS: Yes.

MR. CANE: And it's outside our overhead doors for the purpose of securing our vehicles before we open our overhead doors. That is an extra layer of security for our business. And we are asking for an 8' chain link fence.

MR. CUMMINGS: Okay. That was going to be one of my questions. Not that it is really applicable here, but Dunbar Armored is in terms of --

MR. CANE: Yes.

MR. CUMMINGS: Not to name another place that does it, but armored vehicles that transport money and things like that.

MR. CANE: Correct.

MR. CUMMINGS: All right. Jim, any questions?

MR. WIESNER: So the intention would be, you would back into that fence and close the fence behind you, is that --

MR. CANE: We would pull into the fenced area, close the gate before we opened our overhead doors. And exit in the same fashion: Open the door, pull into the fence trap, close the door, and then open the gate.

MR. WIESNER: Okay. That's all I have.

MR. MERRY: No questions.

MR. CUMMINGS: I think down the road there is a similar I believe the Navy and Marine Reserves has a similar setup with their chain link fences on Chili-Paul Road. But I don't have any questions. Fred?

MR. TROTT: I just want to confirm. This is only in your part of that building.

MR. CANE: Correct statement. It's in front of our two overhead doors at our space.

MR. TROTT: So it is not going to be like in front of Paul Road?

MR. CANE: No. It's simply controlling our doors.

MR. TROTT: Yes, I just wanted to make that clarification.

MR. CANE: The parking lot is unrestricted.

MR. CUMMINGS: Ron, any questions?

MR. RICHMOND: So it's basically, a one vehicle in one vehicle out at a time kind of process.

MR. CANE: Yes.

MR. RICHMOND: Sliding gate?

MR. CANE: Pardon?

MR. RICHMOND: Sliding gate?

BRIAN CANE: Yes, motorized.

MR. RICHMOND: That's all I have.

MR. CUMMINGS: Okay. Side table?

MR. STOWE and MR. SHERO: Nothing.

MR. CUMMINGS: Before I open up the public hearing, I just want to say that this is a little bit different than the other one before it. This one, we do require a fence permit here in the Town of Chili. So you will have to obtain a fence permit from the Building Department prior to the construction. With that, I will open up the Public Hearing. Not seeing any hands, I will entertain a motion to close the Public Hearing.

MR. TROTT: Motion.

MR. CUMMINGS: Second?

MR. RICHMOND: Seconded.

MR. CUMMINGS: Ron seconds. All those in favor say, aye.

Mr. Wiesner, aye; Mr. Merry, aye; Mr. Trott, aye; Mr. Richmond, aye; Mr. Cummings, aye.

MR. CUMMINGS: Any opposed? None opposed. So that's closed. Any other conditions or anything we would like to --

MR. RICHMOND: Did I see something about signs?

MR. CUMMINGS: Oh, you are correct. So on the property -- we wear two hats, trying to make our properties code compliant. There is a sign on the property without a sign permit. So if you could work with the Building Department and apply for a sign permit at the site.

MR. CANE: We have no signage.

MR. CUMMINGS: I am going to defer to the side table real quick.

MR. SHERO: It's not Dunbar's sign, but it is Buckingham's sign.

MR. CUMMINGS: Oh, Buckingham has a, "For Lease Sign." That's true.

MR. SHERO: It's not a, "For Lease Sign." They have a sign.

MR. CUMMINGS: So it is not there's.

MR. SHERO: Not Dunbar's, no.

MR. CUMMINGS: I am picturing a sign out there.

MR. SHERO: I'm not sure which one it is, to be honest with you.

MR. CUMMINGS: So should we go and ask Buckingham to remove the sign?

MR. SHERO: They could get a permit for the sign.

MR. CUMMINGS: But that is not for this applicant.

MR. SHERO: But sometimes they just need a little motivation.

MR. CUMMINGS: We will have them move the sign off of their property.

MR. SHERO: Dunbar is not the owner of the property.

MR. CUMMINGS: I know. I just looked at the owner on here. So I am taking it that the side table would like a condition on there to get all signs on the property to be approved and have valid permits, sign permits.

MR. SHERO: We would appreciate that.

MR. CUMMINGS: Okay. Is that reasonable? I know it's not your sign, but the Town is kind of asking for your assistance.

MR. CANE: We would be happy to make the effort to facilitate.

MR. CUMMINGS: Yes. Because this one is really going to the property owner. The property owner, the sign that is on the property. Even though you are, I guess --

MR. MERRY: He's basically a tenant in Buckingham's building --

MR. CUMMINGS: Yes.

MR. MERRY: -- and Buckingham is in violation.

MR. CUMMINGS: Yes. So this variance is not specific to Dunbar Armored. It is to the property. So if you want to pass that condition along to Buckingham Properties.

MR. CANE: We can do that.

MR. MERRY: Is that really fair to hold him hostage?

MR. TROTT: We have done it in the past.

MR. CUMMINGS: Well, it is not really -- he is doing an application to this parcel of land, not this --

MR. SHERO: But if he gets held up moving forward because of them.

MR. CUMMINGS: Then he needs to talk to the landlord. But in terms of our property, the parcel of land we would like to get that in compliance. I'll just say, sign permit must be obtained from the Building Department. If the sign disappears, then the sign permit requirement disappears too.

MR. CANE: You've got me at a disadvantage. We just rented the space.

MR. CUMMINGS: I know. So while we are here, Ed, I will check in with Kathy too, but if we can touch basis with Buckingham Properties to make sure they get notified as well. I think it would help it out. That's all I have. I will declare the Zoning Board as lead agency as far as SEQR, based upon information and evidence presented at this hearing, determined the application to be a unlisted action with no significant environmental impact. Is there a second?

MR. RICHMOND: Seconded.

MR. CUMMINGS: Second. All those in favor say, aye.

Mr. Wiesner, aye; Mr. Merry, aye; Mr. Trott, aye; Mr. Richmond, aye; Mr. Cummings, aye.

MR. CUMMINGS: Any opposed? Now, I would like to ask for the motion to adopt this application with those two conditions of approval.

MR. RICHMOND: Motion.

MR. CUMMINGS: There is a motion. And a second?

MR. TROTT: Seconded.

MR. CUMMINGS: Fred was the second. Board Vote.

Mr. Wiesner, yes; Mr. Merry, yes; Mr. Trott, yes; Mr. Richmond, yes; Mr. Cummings, I also vote yes.

MR. CUMMINGS: So this was approved. You will get a letter within a week. This is a unique case. We will do our best to work with you and the owner to make this happen. You are kind of caught in the middle of it.

MR. CANE: All right. Thanks, folks.

4. Application of Donald Temperato, owner 39 East Bellaqua Estates Drive, Rochester, New York for variance to erect a 9' x 16' utility shed 5' from side lot line (where 8' is required) at property located at 39 East Bellaqua Estates Drive in R-1-20 zone.

MR. TEMPERATO: Don Temperato, property owner of 39 East Bellaqua Estates. I'm looking to erect a 9' x 16' utility shed 5' from the property line. 2 x 4 construction with vinyl siding and an architectural roof.

MR. CUMMINGS: All right. And I am looking at it. There is 11' shown on the plan between the house and that building?

MR. TEMPERATO: Yes.

MR. CUMMINGS: Ed, that satisfies the requirements for separation that you need?

MR. SHERO: Yes.

MR. CUMMINGS: Thank you. Jim, do you have any questions?

MR. WIESNER: Yes. I am just curious. Obviously, you have got the whole backyard and you ask to put it in the side yard. What is preventing you from putting it in the back yard?

MR. TEMPERATO: For work purposes, I do a lot of, you know, I am in construction. I do a lot of work with tools. So in and out of putting tools in the shed and in the back of the van. And I also would need to get a variance to put it in my backyard because it is considered to have -- I have two front yards, because Chili-Scottsville, so either way I would have to get a variance.

MR. CUMMINGS: And this one is less.

MR. WIESNER: And the backyard was 40' or something?

MR. TEMPERATO: Yes.

MR. WIESNER: Okay. That's it.

MR. MERRY: I have no questions.

MR. CUMMINGS: I have no questions either. Fred?

MR. TROTT: The garage will -- the shed, I'm sorry, will match the house and the roof on the house also?

MR. TEMPERATO: Yes.

MR. TROTT: That's all I have. I've noticed that your neighbor has it looks like almost the same set up.

MR. TEMPERATO: Yes.

MR. CUMMINGS: Ron?

MR. RICHMOND: No questions.

MR. CUMMINGS: Side table?

MR. STOWE and MR. SHERO: No questions.

MR. CUMMINGS: One condition on this is that you will have to get a building permit from the Building Department prior to construction. With that I will open it up for the public hearing. I don't see any hands again. So I will entertain a motion to close the public hearing.

MR. TROTT: So moved.

MR. CUMMINGS: Second?

MR. WIESNER: Seconded.

MR. CUMMINGS: Ron has the second. All those in favor say, aye.

Mr. Wiesner, aye; Mr. Merry, aye; Mr. Trott, aye; Mr. Richmond, aye; Mr. Cummings, aye.

MR. CUMMINGS: Any opposed? The public hearing is closed. Anything else from the Board? All right. With that I will declare the Zoning Board as lead agency as far as SEQR, based upon information and evidence presented at this hearing, determined the application to be an Unlisted action with no significant environmental impact. Is there a second?

MR. TROTT: Seconded.

MR. CUMMINGS: Second from Fred. All those in favor say, aye.

Mr. Wiesner, aye; Mr. Merry, aye; Mr. Trott, ye; Mr. Richmond, aye; Mr. Cummings, aye.

MR. CUMMINGS: Any opposed? That one is all set. I would like to entertain a motion to adopt this application with that one condition.

MR. MERRY: So moved.

MR. CUMMINGS: And is there a second?

MR. TROTT: Seconded.

MR. CUMMINGS: Fred has the second. Board vote.

Mr. Wiesner, yes; Mr. Merry, yes; Mr. Trott, yes; Mr. Richmond, yes; Mr. Cummings, I also vote yes.

MR. CUMMINGS: This has been approved. You will get a letter from the Building Department. And thank you for your time.

MR. TEMPERATO: Thank you.

5. Application of JFJ Holdings, 280 Merrimack Street, Methuen, Massachusetts 01844, property owner: CRT LXXIX, LLC for variance to allow existing ATM kiosk to be 54.3' from the front lot line (75' req.), variance to allow existing freestanding sign to be 14.7' (15' req.) from the front lot line at property located at 3249 Union Street in a G.B. zone.

MR. BOUCHARD: Good evening. Brian Bouchard with CHA Consulting. We are the project engineer working on behalf of the applicant for this project. Just a brief history of the project. We began engaging the Town almost two years ago at this point with the proposal to develop this parcel from the existing bank into a proposed Dunkin' Donuts retail space. We attended all of the preliminary meetings, the workshop and concept review meetings with our sketch plan concept plan showing how the redevelopment would work in terms of removing the existing teller canopy; reusing the existing building, but still adding the necessary site infrastructure, such as the parking lot, drive-out and drive-thru lanes, and things of that nature. Since the very beginning, we always did show the ATM kiosk and drive-thru lane on the site, which is obviously a necessary part of maintaining the site, Dunkin' Donuts purchasing the site. In fact, at some of those very first workshops that we had with the BRC and Planning Board, a large majority of the discussion was on traffic circulation and how we could best manage the safety of the vehicles moving with also the pedestrian movements that we have the on-site. All of the various Town departments and the town engineer offered their comments throughout the planning process, many of which had to do with zoning topics, such as providing ample parking. Very specific, we noted that the front yard parking required a variance, which we did come before you before. However, nobody really ever classified the ATM kiosk as an actual building. So we proceeded through the approval process and got our final site plan approval, architectural approval, conservation board approval. Subsequently, we moved into the building permit and site construction. And then at a point when the ATM itself was being installed, it was noted that that particular kiosk would need its own building permit. And, as such, because of its location on the site would also need the variance to be located within the 75' front yard. So that brings us today. You have our application materials. The site plan is shown on the graphic as well as the standard of proof that are contained within their application of the relief that we are requesting. First, is obviously, that the ATM kiosk itself is not a very significant structure, although it is being classified as a building, less than 50 sq. ft., and is smaller than an average shed. But more importantly, there is no access into it. There is no doors or windows. It's basically, just a statute that sits on a concrete slab bolted to the ground. So it is not a significant

structure. Second, would be that we still do, as we did work through the planning process, provide 54' of the 75' required front yard. You can see driving by out there now, as much of the site work is done, there still is a green space out front. So there is still a portion of that front yard that we provided and the kiosk itself is not dominating the front yard. The principle building is still setback beyond that required 75' setback. And third, is obviously what I already talked about, it is a unique lot in that the existing building that we are using and redeveloping is all of the way at the back of the site. So much of the traffic circulation and the area that is needed for safe movements of vehicles entering and exiting happens in the front yard. So it is truly the safest spot to provide cueing and not have spill-out traffic which would be utilizing the parking lot, the parking area, as well as the drive-thru lane. That is dealing with the kiosk. And then on a separate note, part of our application does deal with the monument sign, which was always shown on our site plans to have the required 15' setback. At the time the monument was built, it was about one brick course over the line, as we documented with the "as built," which was submitted to the Building Department. It shows up as 14.7' from the property line of the 15' required. So we would also would request consideration for that. I can go through some of the standards in more detail. If you have any questions, I would be happy to answer them.

MR. CUMMINGS: I will hold off on my questions. Jim?

MR. WIESNER: I don't have any questions.

MR. CUMMINGS: Mark?

MR. MERRY: No questions.

MR. CUMMINGS: That monument sign, I hate to bring it up, because we had it last month. Was that a surveyor error of staking it out so that it was constructed in the wrong location or what happened on that?

MR. BOUCHARD: I actually don't know that specific of how it ended up that way. There is, obviously, a brick facing on it. So perhaps between the stake out, where the stakes were laid, and the mason pouring the forms for the structure itself and the foundation, didn't account for the additional brick. It's actually not perfectly square to the property line either. It's more square to the driveway. So there is one corner of it that is beyond the 15' and it's the other corner that sticks out slightly.

MR. CUMMINGS: So you are saying that it's not parallel --

MR. BOUCHARD: It's square to the sidewalk now.

MR. CUMMINGS: Okay. So it is not parallel to the road.

MR. BOUCHARD: Correct. It looks more appropriate.

MR. CUMMINGS: I want just wanted to find that out. Fred, questions?

MR. TROTT: No.

MR. CUMMINGS: Ron?

MR. RICHMOND: I have no questions. I will just make a comment. That the property itself right now is a far cry better than it was, as it existed.

MR. CUMMINGS: Agreed. One condition that we will want or I will want to propose for this is that a building permit must be obtained for this, for the kiosk that is.

MR. BOUCHARD: Sure.

MR. CUMMINGS: Now, that it has been defined as a building. Any comments from the side table?

MR. STOWE and MR. SHERO: None.

MR. CUMMINGS: I do have one. I could be going off line, but I just want to put it in the record. Ed, is there a formal definition of a kiosk in case we have a future event of a kiosk coming into the Town?

MR. SHERO: I don't believe so.

MR. STOWE: It is defined as a structure?

MR. CUMMINGS: We define it is a structure?

MR. STOWE: A structure is defined as a building, anything that is constructed.

MR. CUMMINGS: Okay.

MR. BOUCHARD: And that is not exactly true. The true definition of a structure is anything that could be inhabitable or contain chattel. Which chattel is a word in the code that defines what a structure is. And I had to look up the word chattel, because it didn't seem to fit. You can't house people in it. You can't go inside this particular structure. But what is chattel. A chattel is anything other than what is carried with the land, so it could be goods. In this case it is paper money.

MR. CUMMINGS: Okay. Thank you. I am glad that is now on our record.

MR. STOWE: Our definition of a structure is anything that is built.

MR. CUMMINGS: Yes.

MR. TROTT: Well, then my question is, why wasn't this caught ahead of time?

MR. BOUCHARD: I think it goes beyond what is built, because it is also things like light poles and pedestrian light pole bowlers that are built, the half structures.

MR. CUMMINGS: I see we are getting into some semantics.

MR. BOUCHARD: I had to truly look it up and to figure out why it wasn't caught, and that was the reason, because there is a chattel within the kiosk, which is paper money.

MR. RICHMOND: However I do know what a chattel is.

MR. CUMMINGS: I am using it tomorrow. All right. Well, I would like to open up the public hearing. I don't see any hands. So I would like to -- I will make a motion to close the public hearing. Is there a second?

MR. RICHMOND: Seconded.

MR. CUMMINGS: Ron seconded. All those in favor say aye?

Mr. Wiesner, aye; Mr. Merry, aye; Mr. Trott, aye; Mr. Richmond, aye; Mr. Cummings, aye.

MR. CUMMINGS: Opposed?

MR. CUMMINGS: All right. So I've already mentioned that one condition of approval. We will call it a building structure permit that includes chattel. I even beat tomorrow, I made it today. But I don't have anything else. Does anyone else have anything? I would like to keep both of these together as one application. I don't see any reason to separate them. All right. I will declare the Zoning Board as lead agency as far as SEQR, based upon information and evidence presented at this hearing, determined the application to be an unlisted action with no significant environmental impact. Is there a second?

MR. RICHMOND: Seconded.

MR. CUMMINGS: Second from Ron. All those in favor say, aye.

Mr. Wiesner, aye; Mr. Merry, aye; Mr. Trott, aye; Mr. Richmond, aye; Mr. Cummings, aye.

MR. CUMMINGS: Opposed? Now, I would like to ask for a motion to adopt this application with that one condition of approval.

MR. WIESNER: So moved.

MR. CUMMINGS: We have a motion from Jim. Second?

MR. RICHMOND: Seconded.

MR. CUMMINGS: Ron seconds. Board vote.

Mr. Wiesner, yes; Mr. Merry, yes; Mr. Trott, yes; Mr. Richmond, yes; Mr. Cummings, I also vote yes.

MR. CUMMINGS: This has been approved. You will get a letter from the Building Department within a week.

MR. BOUCHARD: Thank you, very much.

6. Application of Five Star Bank, c/o Gary Bugert, 220 Liberty Street, Warsaw, New York 14569, property owner CRT LXXXIX, LLC for variance to allow 4 signs on ATM kiosk (2- 5'10" x 1'2" & 2- 8'9" x 1'6") where one sign is allowed at property located at 3249 Union Street in G.B. zone.

MS. SMITH: Good evening. I am Laura Smith. I'm with Harter Secrest and Emery. I'm here with Gary Bugert of Five Star Bank. We are here to discuss the other part of the story of the discovery that the kiosk is a building. We also learned upon correspondence with the Town, that it was subject to the Sign Law of 500.50 and we were out of compliance as it was written. So we are here tonight to ask for a sign variance to allow for illuminated signs on each side of the ATM. Two specific reasons come to mind for needing the lighting and the illuminated signs on all 4 sides. The first is just giving notice to both Five Star Bank customers and other customers who wish to use the ATM when engaging in business in the general business district. It was a very thought out structure that was built here, both to be esthetically pleasing and also to comply with the character of the general business district and the surrounding businesses around the ATM. Here we have a bit of an unusual situation that is rare to have an ATM that is not collocated with the branch. So we were very thoughtful in making sure it was clear that both this is an ATM -- since it's in the front yard of a Dunkin' Donuts, now, I still wish it would have coffee come out of it.

MR. CUMMINGS: We don't want another kiosk though. Don't give them any other ideas.

MS. SMITH: Not another kiosk. So first, that this structure inside of the Dunkin' Donuts parking lot is an ATM. The other important feature is to indicate that it is a Five Star Bank ATM. Certainly, Five Star Bank is open to all customers, but people have preferences of which ATM they are visiting. So we want to make it clear both visibly and structure and it belongs to Five Star Bank, which people are engaging in ATM activities in this business district. Another important issue when addressing the ATM is compliance with the New York State Banking Law, which requires an ATM to have adequate lighting, which like all state laws, you then have to go to the definition to find out what adequate lighting is. And it is certain foot candles, which is a unit of lighting that is a measurement that these illuminated signs help provide. So it's part of a 3 step process. The illumination from the signs, together with the parking lot, the parking lot lighting that surrounds the ATM, and then lighting underneath the canopy, those 3 together help Five Star Bank to comply with the state law. So to remove one of these signs from the face, we would have to replace it with some sort of lighting so that it would meet the requirements of the state law. Those are, I think the 3 biggest issues we are trying to address when approaching the

ATM design as we have it. And then, also it is important to us to fit within the character of that business district of, you know, being vibrant, being open for business, being ready to serve the people of Chili.

MR. CUMMINGS: Okay, thank you. Board questions?

MR. WIESNER: I just have a question. You say for the signage on there, that you need that to meet the lighting requirements. If it was also a clear panel, it would also meet those requirements and it would still allow lighting out.

MS. SMITH: True. Yes. It's the illumination of the sign that is helping us meet those requirements. It's just the esthetic quality of both being able to provide notice to all of our customers coming up and down Union Street. So we are kind of able to serve two purposes at one time.

MR. WIESNER: If it was a clear panel, you would still meet the law requirement?

MS. SMITH: Yes, we would have to replace it. There would be, if the sign were taken away, there would need to be some sort of illumination to go in its place. A clear panel would, but it not might be as esthetically pleasing as a sign.

MR. WIESNER: That's all I have.

MR. CUMMINGS: Mark?

MR. MERRY: So you were originally approved for one sign?

MS. SMITH: I believe one sign is allowed under the code for a building. That is not really taking into consideration a structure this small. I think the square footage is -- you have to do some percentage based on the square footage of the building, but not to exceed a 100 sq. ft. Of course, that would be not appropriate dimensions for a kiosk of this size. The one sign is allowed on the building as a right.

MR. MERRY: I think you have made a very good point. The proportion of the structure, the structure itself is tiny. It is a tiny structure. The signs I don't think are appropriate for the magnitude that you are looking for. So if we were to come back to you and say, we want you to rethink that, we were to give you 2 signs. 2 signs would be sufficient and you could modify your down lighting, to make up your candle requirement, would that be something you would consider?

MS. SMITH: To be honest, I am not sure because of the location on a corner. It is important to us to have both have the traffic going north and south on Union Street. But since it's on a corner entering into a shopping plaza, I think both the back signs and the front signs are important as well, to give notice to anyone who would be using an ATM, that this is an ATM that is available for use when doing business in the business district. And then, also giving notice that this is a Five Star Bank ATM. So if you are a customer of another bank, whether or not that is your preference to use another bank's ATM.

MR. MERRY: So if this Board decided that 4 signs are too many and we denied you your request, what is your fall back plan?

MS. SMITH: I would have to defer to my boss here, Gary, to what Five Star Bank would want to do.

MR. MERRY: Okay.

MR. BUGERT: We don't currently have a plan for something like that. We would have to go back to the drawing board. Our intent from the beginning was, we would work with the Board

when we did all the planning with the space, provided the pictures. This was all provided up front. And we've been going along with the whole premises of that.

MR. CUMMINGS: On the monument sign that was just approved in the last application, what is on that sign? That is the one we didn't do in the application. What is on that one?

MR. BUGERT: It says Five Star Bank ATM.

MR. CUMMINGS: Exactly. So that is already directing people to the site. There is something of a Five Star ATM on there. So that lends itself to -- and we had a similar occurrence here in the Town, just so you know the history. The Byrne Dairy requested all 4 signs on their canopy at the gas stations. They compromised and put 2 on, which is kind of where our thinking is going along here, so that we are minimizing our variances. So that is where we are trying to look at it. Instead of -- not to say, setting a precedent, but showing that you have, even though it is a small structure, you have all 4 sides to try and find a compromise in between. So once again, you already have the monument sign that is pointing people there. And your driveway is only allowed in one direction. So I guess I would have to hear more of why you would really need all 4.

MR. BUGERT: I think it's going to look really odd if you don't have it on all 4, because you are going to be approaching -- if you are walking from Dunkin' Donuts, and you don't have that sign, you wouldn't see what it is. You wouldn't know that is an ATM. You wouldn't know that it's a Five Star Bank. If you are coming from the Post Office and you took that sign off, you would have the same effect, coming from the other side, you would have no idea what this building is.

MR. CUMMINGS: Well, I don't know. The people who have already entered Dunkin' Donuts knows there is a Five Star ATM there. And this structure is such that it looks like an ATM. You may not know which bank it is, but we all know it's an ATM. Some day we will be dispensing coffee out of it too, but it's still an ATM. The people may not know that it's ESL or M&T. Well it's not green, so it's not M&T, and it's not light blue, so it's not that. So I think Five Star Bank has done a good job of marketing. One thing I do want to point out for Five Star Bank, because we did see your application with the Wegmans Chili-Paul Plaza, your decorative logo, the Five Star points, is artwork. It is not a sign. So if you wanted to put that on the Dunkin' Donuts side, that would show that it's Five Star Bank, but it's not a sign. So therefore, you could have a reduced number of signs and just not have the words, Five Star.

MR. BUGERT: So we could use that.

MR. CUMMINGS: Correct. And that would apply to any of the sides. Correct, Ed?

MR. SHERO: I believe that is what we discussed, yes.

MR. CUMMINGS: So, once again, you could even, if we wanted to go to the other extreme, you could have 0 signs on there, but you could have 4 artworks on each side. And then you will have one sign.

MS. SMITH: Or one sign and 3 artworks?

MR. CUMMINGS: Correct. Well, you are given one. So you can automatically have one somewhere.

MS. SMITH: Right.

MR. CUMMINGS: And you already have a directional sign on that monument.

MS. SMITH: With the understanding that we would still need illumination.

MR. CUMMINGS: Yes.

MS. SMITH: On all 4 sides.

MR. CUMMINGS: Yes. Correct.

MR. BUGERT: We are certainly open to listening. I mean, I can only say that if you put the star on one side it is really going to look awful. In that space it is going to look awful. And our whole goal was to make this look presentable to the public.

MR. CUMMINGS: Were also weighing this out, because we are granting a variance that the next kiosk could come in and have for 4 signs on it.

MR. BUGERT: Understand.

MR. CUMMINGS: So I think it's been a good dialogue here.

MR. MERRY: Some very good points.

MR. TROTT: Fred, do you have questions?

MR. TROTT: I don't have any questions as much as I do have a statement. Because I drive around the county a lot, I have seen these stand alone ATMs and they do have signs on just 2 sides.

MR. CUMMINGS: Okay.

MR. TROTT: Don't ask me where or what bank, but it was within the time frame that this came up.

MR. CUMMINGS: Okay. Ron?

MR. RICHMOND: I think with everything that has been said, that maybe the best recommendation is probably to consider going with the logo on the north and south sides and then leaving east and west, if you think you need to have 2, should be something that you should consider.

MR. CUMMINGS: Because you don't have to modify it. These are just recommendations from the Board. You can leave it at 4 and then just run the risk, if we do deny your application, then you wait one year until you reapply -- or if you wanted to reapply for a variance, not to say it would pass at that point.

MR. RICHMOND: Could they do that now, or would they have to table it and come back next month?

MR. CUMMINGS: For what?

MR. RICHMOND: If they decide to hold back or amend their application tonight?

MR. CUMMINGS: No, they can amend it tonight.

MR. RICHMOND: That's all I have. Not to put you on the spot, I just want to make sure you to know your options.

MR. CUMMINGS: No, that is all we are discussing here. Our goal is to minimize variances. Side table?

MR. STOWE and MR. SHERO: Nothing.

MR. CUMMINGS: Well before we go too far, we should hear what the public has to say. I would like to open that up right now. I don't see any hands. So I will make a motion to close the public hearing.

MR. TROTT: So moved.

MR. CUMMINGS: Okay. We have a motion from Fred. Is there a second?

MR. RICHMOND: Seconded.

MR. CUMMINGS: Second from Ron. All those in favor say, aye.

Mr. Wiesner, aye; Mr. Merry, aye; Mr. Trott, aye; Mr. Richmond, aye; Mr. Cummings, aye.

MR. CUMMINGS: Opposed? So one condition of approval, regardless of where we

go, is a sign permit needs to be obtained from the Town for however many signs there are beyond -- well, even with the one, correct, Ed, even if it's the one that is allowed, they would still need a sign permit?

MR. SHERO: Correct.

MS. SMITH: For each sign?

MR. CUMMINGS: Yes. I am not sure if it's a blanket permit or if is one permit for each sign. I don't know the answer to that. I don't administer that.

MR. SHERO: I don't know.

MR. CUMMINGS: I am thinking that it's part of the structure, but I don't know.

MR. SHERO: Don't say that.

MR. CUMMINGS: Plus the sign. We will check into that. I don't know with the 2 structures on it. So did you want to continue the dialogue for this? Do you want to maintain your application as it stands? Or would you like to table it and think about it?

MR. BUGERT: Well, I would really like to, obviously, stay with the 4 signs. I mean, that would be my ultimate goal. And I think it would look much better that way. But if the Board is saying, in fact, they won't allow that, then I guess, we will have to consider the 2 and take a look at that.

MR. CUMMINGS: We haven't voted. And I am not trying to sway you one way or the other. But my general sense is that there may not be a high probability of this variance being granted. But I am not saying anything for sure. We wouldn't know until the Board votes came in. I just want to give you the opportunity, if you want maintain it at 4 we can move forward with that. Then, if it was denied, then you are allowed one. So, you would still be able to put the one in. You would still need a sign permit, but you can put that one in.

MR. RICHMOND: Does this gentleman need to make a decision now or can he step back from the podium and continue his caucus and then come back at the end of the meeting before we adjourn?

MR. BUGERT: I mean, I guess, is the Board willing to accept 2 signs? And we will have to deal with the other 2 sides as far as the logo.

MR. CUMMINGS: Once again, I think that increases your probability on it. There is at least one Board member, if not two, that chimed in that said that that would be the compromise that they would recommend. Am I speaking out of turn here?

MR. MERRY: No.

MR. RICHMOND: I don't think you -- can give an indication any other way.

MR. CUMMINGS: But once again, the art work has been decided upon, so you can still put the artwork on it.

MS. SMITH: As illuminated artwork.

MR. CUMMINGS: Yes.

MS. SMITH: I would appreciate it if -- I would not like to table this for another meeting, but if we could take a few minutes and as we move through the agenda, I would appreciate that.

MR. CUMMINGS: Okay. Yes, we can do that. I would like to ask, Mr. Stowe, is that all right?

MR. STOWE: Yes.

MR. CUMMINGS: Okay.

MS. SMITH: Thank you.

MR. CUMMINGS: So with that, we already did close the public hearing. We will just go back to this application later on.

7. Application of Nicholas Smith, DDS Companies, 45 Hendrix Road, West Henrietta, New York 14586, property owner SMATTL Holdings, LLC for variance to allow a buffer zone between proposed Industrial Subdivision and residential zone to be 10' (where 100' req.) at property located at 3513 Union Street in a GI zone.

MR. CLARK: I have the updated plans here, application of Nicholas Smith DDS.

MR. CLARK: Good evening. My name is John Clark. I am with DDS Companies. I am here tonight on behalf of Mr. Lee Digello. Mr. Digello is the owner of 3513 Union Street. Also with me is Nick Smith, also with the DDS Companies. The property that we are talking about tonight is a 21 acre parcel located directly across from Boon Drive on Union Street. It's on the west side of the road. It's zoned general industrial. Mr. Lee Digello is interested in subdividing this 21 acre site into 8 different lots. The area would be served with a new town dedicated road with a cul-de-sac. He is also interested in constructing 8 new industrial use buildings. The total square footage of the 8 buildings would be approximately 185,000 sq. ft. broken up into -- the different square footages that you see on the plan. The site itself would be served by public utilities. There is water, gas, electric, back there. Everything is right up the road on Union Street. So those would also be run down to the new road. There are some wetlands on the property. They bisect the property from south to north. All of the drainage on the site runs west toward the wetlands and east toward the wetlands. So we would be providing stormwater drainage that would adhere to all of the state and town regulations. We have been in front of the Planning Board in an informal discussion on this project back on June 9th. At that time, it was indicated to us that we would need a variance for a 100' buffer that is required between an industrial parcel zone and a residential zone parcel. This area that we are proposing is on the southern property line of our development project. To the south of that line is an existing railroad. Now, the zoning line actually comes up to our southern property line so it includes the railroad. That railroad right-of-way is approximately 100' wide. In addition to that there is RG&E. RG&E owns property that is to the south of the railroad. That is another 50' right-of-way there. So while the intent of the code is to buffer these two industrial and residential zones, what is really happening is there is 150' between our property and what would be the actual northern property of a future residential development. That parcel to the south that is zoned residential, it is about a 25 acre parcel that is currently for sale. It does have some wetlands on the back of the property and it is screened by existing vegetation along that railroad right-of-way. The existing vegetation that is on the railroad right-of-way is pretty mature. It is very thick. Certainly, in the summer and fall and in the spring, it offers a very good visible screening. It runs nearly the entire length of the southern property line. It is on the south side of the railroad tracks, however. But in the summer months, you will not be able to see any of the buildings other than Lot 5, which is the furthest building that we are proposing in the southwest corner of the property. The only reason that is visible at all is because there is a gap in that tree line. Now once again, those trees are owned by the railroad and they could be taken down by the railroad at any time. That is not exactly what we think would happen. We think the railroad would like to minimize their exposure to the residents to the south, but we do understand that. One of the

things that we thought about, obviously, when we were going through this was how to mitigate the screening during the winter months. So what we are proposing to do is build a 5' high berm that would provide a row of evergreen trees. Something that would stay green, that would be tightly planted that would provide that visual screen that we would be looking for. The wetlands themselves that are shown at that opening in the existing tree line, are going to prohibit any development in that area. There certainly won't be a home in that area. There is about 2 acres worth of wetland, about 300' from the south of the property line and about 150' to the east and west. So that is a very significant chunk and it is right in front of that opening.

Therefore, what it is doing is making sure that no houses go there and we don't have to worry about residents looking directly through that area. But again, we feel that the screening that we are proposing will help that. The definition of the buffer area is 100' of vegetated buffer. It does not include ponds. It does not include parking lots. It does not include buildings. Lots 5, 7, and 8 encroach on this 100' buffer. Lot 5 with parking lot and pond. Lot 7 with parking lot and pond. And Lot 8 with about 20' of building and parking lot. So really the buildings themselves are going to meet that 100' buffer area. Whether the variance is granted or not, those buildings will stay pretty much where they are, because they will meet code, except for Lot 8, we would have to move that slightly. But we feel that the existing vegetation and what we are proposing, that these buildings will be significantly screened, even during the winter months. One thing that is interesting about this site is -- and I've already mentioned the dynamic of the existing right-of-way, the railroad right-of-way, and the RG&E right-of-way, is that is a 150' of buffer before you even get to our property line. The definition of a buffer, as I said, is a 100' of vegetated landscaped area, green space basically. If you look at where our ponds are being proposed and you take it to the northern edge of the ballast that is to the right of the railroad, you are looking at about 50' of vegetation there. If you look at the southern side of the railroad from the ballast to that property line, you are looking at another 25' plus the 50' right-of-way of RG&E. It's about a 125' of green space between that northern property line of the residential community to our southern property line. Again, understanding that the zoning line comes to our southern property line, that is why we decided to mitigate with the trees. Now, one thing, as I stated before, the buildings will pretty much stay where they are. We just may have to move our parking and our pond somehow. So we are really trying to screen the ponds and the parking lot. We feel that with the existing vegetation, the 5' berm the proposed trees that we can confidently do that, even for the neighbors that could potentially be closer to our property than those that exist on Davis Road. So what we did was, we didn't want to ignore the residents on Davis Road, because it is obviously very important that they keep their sense of community as well and that they are not impacted by this in a significant way. So we went out to the site and we floated balloons up to a height of about 35'. That is the proposed height of the buildings that we want to build. So on the corners of all 4 lots of those proposed buildings, we floated balloons up to 35', and we Photoshop'd in a rendering that shows what the proposed buildings may look like from the backyard of one of the residences on Davis Road. I believe that this was View No. 1 on the packet that I gave you of the overall plan. View No. 1 is down near 1488 Davis Road in the backyard looking to the north. And that's through that gap in the existing trees that run along the railroad right-of-way. So it's not very evident on the above screen, but I do welcome residents to look over on the board, it's a little more evident. We have shown the proposed buildings at 35' height and we have shown the proposed trees that would be planted at about an 8' height on a 5'

berm and you can see them covering up the buildings slightly. The next rendering that we did is also of View 1 and that shows the trees a bit more mature. It is tough for me to sit here and say that they are 50, 65, 75 percent mature. But what we did, basically, we felt that over the next 8 years or so, 5 to 8 years, that they would grow from maybe 8' height to possibly 16', 20' height depending on the type, which would be something that would grow aggressively. In this view you can see the trees are nearly at the top of the buildings at this point, at least from the vantage points from the residences on Davis Road. And again, I think it's important to keep in mind, the buildings themselves, especially this one on Lot 5, will probably stay at the exact location that is shown there. So we are really trying to block the parking lot and the pond, which are not allowed in the buffer either. But the building on Lot 5 would be satisfying that 100' setback. The next view is View No. 2 and that is from the backyard of 1484 Davis Road. And again, you are looking at the building on Lot 5, which we did the exact same way, and with the trees that were planted heights. So there is some significant distance there, it is probably 800' to 900' from the backyard to the property line and then another 100' to the building. So it's a pretty good distance away. And again, like in View 1, we took these too and we matured the trees a bit to show that hopefully within about a 5 to 8 year period, we would have some really good visual screening of that entire building. Again, the parking lot and pond would be completely screened. There is quite a bit of vegetation along the northern property line of the homes on Davis Road and then certainly vegetation along the existing railroad. As we moved on down Davis Road, there really was not much to see. The balloons were not visible as we moved down Davis Road. There was no point for buildings on Lots 7 and 8 where we could see them. So we moved out to Union Street and we stopped at the corner of 3551 Union Street and took a photo looking back toward our development. And what this photo is showing, and you can't see it by the naked eye right here, but there is a small pink dot, which represents one of the balloons that we flew. That would be the southeast corner of the building on Lot 5, but it is almost completely covered by existing vegetation from that railroad right-of-way. Similarly if you look at View 4, we kind of turned our camera up the road, because we know there is an existing industrial facility that is right on the corner of our facility. That would be 3535 Union Street. And I apologize for the darkness on this photo. It's really pointing out the fact that that existing vegetation along the railroad has completely hidden that property as well. They have existing vegetation on their site that hides that. But we feel that this would be a very similar look to what we have, especially, on Union Street back to the industrial park. View 5 is more establishing what the existing vegetation looks like up and down that railroad corridor. So we are standing at Union Street, looking west down the railroad corridor, and you can see the vegetation on the left here, that is all existing trees that are fully matured, that we feel are going to be there for years to come. It doesn't seem logical that the railroad would remove those trees any time soon. Lot 6 -- or View 6, I'm sorry, we moved up more toward our property toward Lot 8, and we took a photo looking back to the east. Again, I apologize for the darkness here. But on your right is the existing vegetation along the railroad right-of-way, presenting a very solid screening, albeit during the summer. We do understand that in the fall and the winter, those leaves are gone. But even still, those trees will provide some screening along with our proposed evergreens, we think that that screening will be accomplished. If we move up to View 9, let's take a look at that one. That is in the gap that we identified where the trees stop along the railroad. We looked back toward the homes that are on Davis Road.

And there we can see a couple of homes that we took the pictures from. Just more evidence that, yes, there is that gap that we were looking at. That is the gap that you can see the proposed buildings through. So, again, the proposed vegetation should help to minimize the view of that building, but it should completely eliminate the view of the pond and the parking lot. So I think in kind of closing of my comments here, I think it's important to note that it's a bit of a unique situation with the railroad there, with the RG&E right-of-way there, but we do understand and we are trying to meet the intent of that, which is to not change the character of the neighborhood, not provide any sort of negative impact, and to minimize any of that visual impact that we have out there. So we are here tonight seeking a variance. We had originally -- we had the application in originally for 10', but I would like to change that to 25', because after looking at it a little more closely, to get a berm up there, to get those trees in there, we are going to need a little more space between our property line and the pond to effectively get that berm up to the height that we want and to be able to plant the size trees that we want. So if that is acceptable, I would like to change that to a lesser impact to the variance, which would be instead of 10' would be 25' where a 100' is required. I will be glad to answer any questions.

MR. CUMMINGS: We'll go in the same order. Jim?

MR. WIESNER: I do have a question. So when you go south on the property, you cross the Conrail right-of-way, you cross the RG&E right-of-way.

MR. CLARK: Yes.

MR. WIESNER: And there is that big open area between there, the RG&E right-of-way, and you hit the houses on Davis Road.

MR. CLARK: Yes.

MR. WIESNER: It doesn't say in here. Is that one parcel that is owned by a single entity?

MR. CLARK: It is. It is one parcel approximately 25 acres in size and I know that it is currently being -- trying to be sold.

MR. WIESNER: So I see it's zoned residential.

MR. CLARK: It's a zoned residential area, correct.

MR. WIESNER: That's all I have.

MR. MERRY: I will not make you repeat everything you just shared. I appreciate you taking the time and the presentation you put together. Again, if this Board were to deny your application, what is your fall back plan?

MR. CLARK: We would have to look into different ways of designing this that can still create some sort of financial gain. My client has spent a lot of money on this property. And the building sizes that we are putting up are very small as compared to what is allowed by code. We are not even 50 percent of the size of what is allowed on all of these lots except for one, and that would be the one in the back. So in order to try to realize the financial gain, he is looking to develop this in a manner that is acceptable to his finances and to the community. And we feel that understanding that, you know, the residents that are there now, do not deserve to be impacted by this. We think that what we have shown here tonight minimizes those impacts quite a bit. To answer your question, the fall back would be, my client would have to sit down and think about if this property is actually going to make financial gains or allow him to see the financial gains that he deserves by taking the risk of purchasing this property and by developing it as required by code, understanding that we are asking for a variance, and thinking that we are mitigating that as best we can.

MR. MERRY: It sounds like you thought a little bit about moving it from 10' to 25'. Is there any other movement?

MR. CLARK: One of the things that we were thinking about was the stormwater. And that really is one of things that is pushing into this hard, is the wetlands are down on that property line. If we didn't -- if the pond wasn't a restriction of this and the parking lots, we wouldn't even be here today. We know we can get the buildings to work. And the other thing we are trying to do is to minimize any impact to those wetlands. So that is why we are giving up quite a bit of the property for development, that is allowed by code to develop, so we can minimize any impact to the wetlands, because we know that they are environmentally sensitive.

So we tried to make these a bit longer than we normally would. We would normally push them wider and push the buildings away. The other thing that we could possibly do, is we would have to look into is filling in some of the wetlands and I don't know as if that is a better choice.

MR. MERRY: I am all set. Thank you.

MR. CUMMINGS: I have a couple questions. It's kind of teetering on this is one of those unique circumstances, the chicken and the egg, between us and the Planning Board. But those wetlands, as you referenced there, it doesn't tell us what type they are. Are they state regulated wetlands, do you know? Are they state or --

MR. CLARK: They are federal wetlands.

MR. CUMMINGS: So they are federal. So you don't really have to worry about the buffer unless --

MR. CLARK: Right.

MR. CUMMINGS: -- the federal then tells you they want you to put in a buffer.

MR. CLARK: Right. We do not have to adhere to a 100' adjacent area on those wetlands. But they are in a critical area. They are going to be impacted slightly with the road. We will have a culvert over there. But we are going to stay under the minimum 10th of an acre disturbance. Which once you get beyond that, then you are into a whole different ballgame.

MR. CUMMINGS: Do you have any reserved tenants at this point? I know this is just a plan, but as these things always evolve, if you get a different tenant in here, the buildings are going to change, which I would hate for us to grant a variance here and then suddenly everything changes again. I just want to be proactive on our part.

MR. CLARK: There is not a tenant that has specifically signed up for one of these buildings. However, my client has had conversations with potential clients that have asked for these type of buildings, especially for that Lot 5 in the back, which is probably the most exposed.

MR. CUMMINGS: Okay. And then just one last kind of question and a commentary. Those photos from the neighbors' backyards on Davis Road, did you ask for permission to take those photos on their properties?

MR. CLARK: Yes. I believe that we did went to doors and asked.

MR. CUMMINGS: I only say that because of the news footage that has been in the last couple of days and our subdivision's experience over on Union Street. I just want to make you aware that people are very aware of their property and they may not want strangers on their property.

MR. CLARK: Sure.

MR. CUMMINGS: I don't have any other questions. Fred?

MR. TROTT: One of the questions I had, you had asked the questions if these properties were already sold or divvied up, if they know that this is coming to the site. Also with that, do they

need all this parking? I know that now days, a lot of things are automated, parking is not needed as much. And I think if we can mitigate some of this buffering with less parking spots, I would be more than willing to look at it that way.

MR. CLARK: We did look at that. There is one building, I believe it is on Lot 8, where we are slightly over parked by conversations that my client has had with potential tenants, they were requesting additional parking. That is why we did come in with that oversized parking lot. We feel that whomever we get in there, that they may be looking to get away from that parking a little bit. But we found recently that most tenants are looking to get a little bit more than the Town code allows. I think, regardless, we are going to be in that situation for the other lots. I don't even know if -- I think we are over parked on Lot 8 by 20 perhaps somewhere in that range. But that would be the only lot that I think that we could get rid of any additional parking. Everything else is just meeting the code.

MR. TROTT: And the way that you do have these laid out and I am sorry I am not a blueprint person, but you are saying like you have a problem with Lot 5 as far as distance and stuff. Couldn't you move that to a different spot on the property that would be less?

MR. CLARK: One of the things that is difficult about Lot 5 is that is creating, that is a need for the most stormwater that we have to maintain, we have to mitigate per D.E.C. and Town regulations. So putting it back in that area allowed us to utilize stormwater in front of the building and on the backside of the building. In addition to that, it also offers us a little bit more what is called time of concentration, where the water runs off the site. That give us a lit bit more. We had to make that a bigger area so that we could reduce that time of concentration as much as we could. But it's really the ponds and the stormwater that made us choose that site over any other site that is shown here.

MR. TROTT: I think that's all I have for right now.

MR. CUMMINGS: Ron?

MR. RICHMOND: Just staying with the parking conversation. Lot 4 doesn't show any parking. Are those proposed storage buildings? Are they self storage or are they tenant storage facilities?

MR. CLARK: I believe self storage. Is that right?

AUDIENCE: Yes.

MR. CLARK: Self storage would be what those are proposed. A potential client has requested that area for those.

MR. RICHMOND: And then you mentioned a culvert to minimize the impact on the wetlands. That goes for both drive-thrus?

MR. CLARK: Yes.

MR. RICHMOND: That's all I have.

MR. CUMMINGS: Side table?

MR. STOWE: You are correct with the chicken and the egg, just getting approvals conditioned on Planning Board approval as well.

MR. CUMMINGS: Good to know. I do have a question -- Ed, unless you have a comment, I have a question for you regarding that front parking lot. You haven't seen a lot of applications in front of the GI zone? I know we have a big push town wide to have no front parking. Is this technically a front parking that is going to look kind of odd to have a parking lot out front?

MR. SHERO: I think it is behind the front setback.

MR. CLARK: Yes.

MR. CUMMINGS: Okay.

MR. SHERO: That is what I have.

MR. SMITH: Are you talking about this building here?

MR. CUMMINGS: Yes, Lot 1.

MR. SMITH: Along Union Street, technically, we are proposing this as a dedicated road, which would make this the front. And then this is completely in line. We are in line with the front face of that building there.

MR. CUMMINGS: Oh, that's right. It's a dedicated road.

MR. RICHMOND: So that makes it side parking.

MR. CUMMINGS: Yeah, I forgot it was a dedicated road.

MR. TROTT: There is also parking in front.

MR. CUMMINGS: It's beyond the setback. The setback is really what I am looking at.

MR. SHERO: Yes. The way it is shown it is behind the Union Street setback and the other setback.

MR. CUMMINGS: Okay. I just wanted that to be stated.

MR. TROTT: My other question is why not move the buildings closer to the road?

MR. CLARK: Move the buildings closer to the road?

MR. TROTT: Yes.

MR. CLARK: In that Lot 1.

MR. TROTT: Not Lot 1 as much as --

MR. CLARK: Are you saying 8, 7 --

MR. TROTT: 8, 7, 6, 5, well, 5 you really can't do it.

MR. CLARK: Well, even 7 and 6, there is another property that is right directly to the east of Lot 8. That property line is right where the dark green starts, the tree line. So we can't move any closer.

MR. TROTT: No, I am talking about closer to your new dedicated road.

MR. SMITH: They are already butt up against the setback there.

MR. MERRY: Are you talking about moving that more towards the road?

MR. CUMMINGS: That has got a front setback it has to be off the --

MR. SMITH: There is a vehicle road -- there is a proposed Town road here.

MR. CLARK: Yes.

MR. SMITH: And all of these setbacks here. They would butt up right against that setback here.

MR. CUMMINGS: They are as close to that road as they can get.

MR. TROTT: I guess my thing is that I would be willing to give them variances that way that is the greater buffer area.

MR. CUMMINGS: They have no tenants. They don't even having Planning Board approval. I hate for us to grant variances for something that we have no idea of what is coming. I know we have a plan in front of us here. But recognizing that we don't have Planning Board approval.

MR. CLARK: Well, if it is difficult to move forward with -- we want to get this plan --

MR. CUMMINGS: Yes.

MR. CLARK: -- site plan approval. We want to get final site plan approval with this. We feel - - we have spent a lot of time with this. We have spoken with potential clients. We feel that this is what we are going to build. If not, if a client comes in and wants to change something, then

we have to come back to the Planning Board and if we have to come back here, we will come back here. But this is the plan that we want approved. So we can't move forward with that until we have this.

MR. CUMMINGS: No, I understand. That is the chicken and the egg, because -- I don't believe you have even gone in front of the Planning Board yet.

MR. CLARK: Informally we have.

MR. CUMMINGS: Informally, correct. But you haven't made an application yet.

MR. CLARK: No, because they told us to come here first.

MR. CUMMINGS: They always do that. As a side note, Ed and Eric, maybe you know the history on this. This is more a commentary again and a history, maybe I should ask the Town Board. Why is our industrial zone and residential zone on the north side of the railroad. If there is any industrial, you would think they would want to be included in the railroad and the utilities and not excluded. I didn't know if either of you could speak to that.

MR. SHERO: I can't.

MR. STOWE: I can't.

MR. CUMMINGS: Because if that was the case, that would make all of our lives easier in all of our industrial parks in this area.

MR. CLARK: Yes, because technically we are buffering a railroad is what we are buffering.

MR. CUMMINGS: Correct. I did want to point out that you do still have to take into account that big developable parcel there.

MR. CLARK: Absolutely.

MR. CUMMINGS: I am thinking like a civil engineer there. If I was doing an industrial park, I would like the railroad to be a part of the industrial zone. That is a side note. That is something separate with the Town.

MR. CLARK: But as far as your concern about the chicken and the egg, I certainly get it. We run into it quite a bit. For us to go through the site plan approval process and get that developed and then come here and be turned away --

MR. CUMMINGS: It's a significant investment.

MR. CLARK: It is a huge investment that is lost.

MR. CUMMINGS: Yes, I understand. And on the Town side, if we grant a variance, and then this plan changes, then we either have to come back for another variance or we grant a variance that your application goes away. And the next person can come in and put something in that may not be what we would care to see.

MR. CLARK: Maybe you can speak to this better than I. But there may be stipulations or conditions that are put on it. That we would have to receive our final site plan approval before. That would be a typical condition, that this would not be finalized until we had our final site plan approval.

MR. CUMMINGS: Yes. And that has been noted and that is going to be.

MR. CLARK: And that would prohibit anybody else from coming in and doing that.

MR. CUMMINGS: Correct. I don't have any other comments. Any from the Board? All right. We will open up the public hearing. Anyone with something to say? Ms. Borgus, I know you're ready.

MR. TROTT: We missed you.

MS. BORGUS: I had another commitment.

MR. CUMMINGS: We have a new stenographer. If you could identify yourself for her.

MS. BORGUS: Dorothy Borgus, 31 Stuart Road.

MR. CUMMINGS: We do everything by the book here.

MS. BORGUS: I hesitated, because I thought that if any of these people were residents of Davis Road that they should have an opportunity before I spoke. My first question was, has this been to the Planning Board yet, and obviously, it has not. Now, I have been coming to these meetings for so many years, that I am sure by now the Board knows how I feel, always feel, about people coming in here wanting a variance before they have gone the right route, which is the Planning Board first.

MR. CUMMINGS: Well, to be fair to them, they did go to the Planning Board first and the Planning Board sent them back to us.

MS. BORGUS: But not officially.

MR. CUMMINGS: Not officially.

MS. BORGUS: Not officially.

MR. CUMMINGS: Correct.

MS. BORGUS: This is, as you said, this is a very dangerous -- it puts you in a very bad spot, this whole Board. What I have seen before, is this same dog and pony show, about counting railroad right-of-ways and RG&E right-of-ways as buffer. That is a bunch of bull. There is no other way to put it. That is not a buffer. That is not a legal buffer. And that certainly was never, ever, the intent of our code. I have seen this tried before. It hasn't worked before. And it shouldn't work this time either. If they didn't try to cram so many buildings on a site, they wouldn't be here tonight, because they wouldn't have this problem. They would have a lot of room. They are trying to do too much with not enough land that has got too many restrictions on it. What I haven't heard brought up was the fact that eventually that 25 acres will be developed as residential. All of the pictures they have taken and shown you in an effort to get you to agree with them, have been taken from Davis Road. Picture how that is going to look when there are houses on that 25 acres and how close they would be to those industrial buildings. It will happen. That will be developed and those will be homes and there will be backyards and there will be all kinds of windows facing those buildings. They don't want to think about that piece. That is not their concern. But that has got to be this Board's concern. There is not much residential land left in Chili. That would be a very attractive site going forward. And if you are going to grant this variance, what you are going to have is a horrible problem. For the developer who wants to develop that, who would want to buy, build houses that close to the back of industrial property? The gentleman mentioned, you know, the financial concerns of the developer. Well, that's not the problem for this Board. It's not your worry at all. What he chose to put in here or has put in or plans to put in and the risks he takes is not your problem. The Board's problem is to protect the Town code and the people who live here. I have heard a lot of talk about trees and how wonderful all that natural vegetation is. Most of them are weed trees and they are going to die. Trees die. Maybe they won't all die at once, but you can't count on just wild trees buffering a residential area from an industrial area. That is ludicrous. And the fact that they showed you pictures of what mature trees look like. Well, you all know having served on this Board and being around this Town long enough, that no matter what, those trees will die too. So they can put up all the trees that they want and tell you what they are going to look like 15 years from now, 10 years from now. They may not even be there 5 years from now.

Because getting developers to replace trees that die, is very, very, very difficult and it's problematic. None of these -- you can't count on any of this. Not one bit of it. And as I said, I have seen this kind of dog and pony show before trying to convince boards to vote, or various boards, that railroad right-of-ways and RG&E right-of-ways constitute a legal buffer. They don't. Thank you.

MR. CUMMINGS: Thank you. Any other public comments? Not seeing any hands, I will entertain a motion to close the Public Hearing. Would anybody like to make a motion?

MR. RICHMOND: Motion.

MR. CUMMINGS: Motion, Ron. Second?

MR. WIESNER: Seconded.

MR. CUMMINGS: Jim seconded. All those in favor say, aye.

Mr. Wiesner, aye; Mr. Merry, aye; Mr. Trott, aye; Mr. Richmond, aye; Mr. Cummings, aye.

MR. CUMMINGS: Any opposed? So that's been closed. I kind of said it already. We are in a predicament. Because we didn't draw that line of where industrial or residential is. We did have that same -- Jim, I don't know if you have in your binder of what we did with Boon & Sons.

MR. WIESNER: I did. I was going to bring it up. But actually, we had the same situation across the street when Dan Boon took over the old Rochester Telephone building. His property actually backs up to the railroad the same as this development would. And he got a variance for 0'. So I think 25' is pretty reasonable.

MR. CUMMINGS: Not that we set a precedent. We also have the landscape berm. Not that we are looking at site plans and landscape berms and all those requirements, and we are not looking at that past precedent. That was a different application that was put in.

MR. WIESNER: But they did back up to the railroad.

MR. CUMMINGS: I agree.

MR. WIESNER: And they were basically under the same situation. I think in this particular case, he is offering up the 25' feet, which you know helps minimize his variance. And the one across the street was 0'.

MR. CUMMINGS: I am still, as always, uncomfortable in the fact that we don't have Planning Board Approval, but I have seen that so many times. I know that sometimes the only way to get around all that is --

MR. RICHMOND: Then we need to tell them to stop. Enough is enough.

MR. WIESNER: Well, we have the ability to condition it. If it doesn't go through site plan approval, then they don't get the variance for the zoning either.

MR. CUMMINGS: Counsel, can you help us with that exact wording for that conditional?

MR. STOWE: Granting the variance would be conditioned on site plan approval by the Planning Board and if they were to change anything, they would have to come back. Or if they were looking to be more aggressive with the encroachment of the setback, they would have to come back.

MR. CUMMINGS: Right.

MR. STOWE: If they went backwards, obviously, they would have to.

MR. TROTT: What I don't like and if you want to -- just even comparing it with what you said with Boon & Sons. With Boon & Sons, we knew what we were getting.

MR. CUMMINGS: Correct.

MR. TROTT: We don't know anything we are getting here and things can change by each one of these people.

MR. CUMMINGS: Correct. So next month -- and I am only hypothesizing here. I am not saying you are going to. But, yes, in their efforts, they could resubdivide this or provide a totally different subdivision plan on this. Realign the buildings completely. All we are looking at is that setback off the -- they can even propose different size type buildings than we are seeing in these plans here tonight, but yes, these are all things that could happen.

MR. TROTT: I think that they could do a better job of mitigating this 100' buffer. You have an open floor plan more or less. And I just -- we see it every time on this Board too. That they come in, well, we forgot about this. We didn't see that. We don't need this many parking spots. We don't need this. We don't need that. But we do need this. So we built it already. I am sorry. I guess I am just --

MR. CLARK: I think it's important, if I may?

MR. CUMMINGS: Go ahead.

MR. CLARK: The trees, the railroad tracks, everything is higher than our proposed buildings.

MR. TROTT: Yeah, it is. But railroad tracks do get declassified and they get torn down. A lot of things happen. They go back to your property, they go back to RG&E. Who knows. But to Dorothy's point, you are talking about another piece of property. I am looking at it as, you are coming across -- this all could change. And then you are saying, well, you already gave us a proposal for this. We are going with a bigger building and a higher building.

MR. CUMMINGS: But we don't get to see any of that anyway. So you can't totally into account. But we do have to weigh in the setback.

MR. TROTT: Okay. You give them 25' and then they come back and, well, actually it's only 20'. You know that that has happened. Oops, we're sorry. Oh, the trees died. Well, they need more green space for the trees.

MR. CUMMINGS: It has nothing to do with us tonight, nor does the berm. We are just looking at the horizontal distance.

MR. TROTT: He is asking for a very substantial variance for something that he doesn't have.

MR. RICHMOND: You are absolutely right, Fred. What we did for Boon & Sons, should have no say in what we are considering tonight.

MR. TROTT: No. They had -- it does have some consideration. We knew exactly what Boon & Sons was doing. These are all proposed.

MR. CLARK: If I were to say, that this is the plan we were building, would that ease your conscience? Because that -- this, for all intense purposes, is what we are building. We are getting final say --

MR. RICHMOND: That is not approved by the Planning Board, so you really can't say that.

MR. CUMMINGS: It's okay. We are going to condition it off that. I will say that we will have protection --

MR. RICHMOND: In this proposal, do we have the height of the buildings specified anywhere?

MR. CUMMINGS: Building height, 50' maximum. Yes, they have 50'. That's more or less.

MR. RICHMOND: But everything we have been going off of right now is an anticipated 30'.

MR. CLARK: Correct. That is what we proposing to build, correct.

MR. CUMMINGS: But once again, they can build up to 50'.

MR. RICHMOND: No. But as we are looking at all of these photos, we are doing it under the perception that it's 30'. Given they can go the extra 20', but none of this has any impact if it ends up being 50'.

MR. CUMMINGS: And once again, as it was noted, that is from several hundred feet away, not the most impacted area. So we need to weigh that in and that is what is our vote. It is either 100' right now because 10' is off the table, because he changed it to 25'. Right now, we have two options 25' and 100'.

MR. CLARK: I think the hangup though on the proposed changing of this, this will not change. This is the point where we are going for. We want to have this approved. So if we get our variance, we will go for final plan approval on this drawing set right here. Now if a tenant comes in and wants to do something different, we may have to come back to the Board. And at that time, you have another bite at the apple to say, well, no.

MR. RICHMOND: Well, we will impose the condition.

MR. CUMMINGS: So the site plan changes, which are bound to happen -- I know our Planning Board. You are not going to get this plan approved as it is written here, because they are going to have changes.

MR. CLARK: If it is something that impacts this variance, we will have to come back.

MR. CUMMINGS: Correct. So that is what we are weighing in on now.

MR. CLARK: And the other thing that I would also like to point out, as I stated before, we are going to be keeping those buildings where they are. The parking lot and the pond, really, what we are mainly talking about screening here, because even keeping with code, we can put those buildings where we show them. I think that that is something to just keep in mind.

MR. CUMMINGS: Yes.

MR. CLARK: This is our intention, to build this plan.

MR. CUMMINGS: And just so everyone sees, that red line that is on there that is the 100' buffer.

MR. CLARK: That is one thing that we never really actually noted that whole time. I don't remember saying that.

MR. CUMMINGS: So that is 100', so 25' is actually depicted on there. That would be the tree line.

MR. CLARK: Yes.

MR. CUMMINGS: As he said, the perimeter of -- the southern perimeter of those stormwater ponds and that parking lot is 25' just for everyone's reference. All right. Pretty clear. I know there is a lot of conjecture. There is a lot of things that will happen in the future. That is not really what is up to us right now. We are looking at that variance. And I did put it in the note already, in my opinion, it would be nice if the utilities were in the industrial zone, but they are not. We are not addressing that. So I have one condition. Anyone else? That one condition. Just to be clear, it is modified. This application is 25' not 10'.

MR. CLARK: Correct.

MR. RICHMOND: So again, just for clarification, the condition is going to be, if there is any change or alteration to the plans that are put before us today --

MR. CUMMINGS: No. No. It's going to be contingent on site plan approval by the Planning Board. If the site plan gets modified by the Planning Board requires them to, whether we grant

nothing and they can build it with a 100' buffer, or 25', if it comes back it needs to be changed at that point. But if they don't get Planning Board approval our variance, assuming it is approved --

MR. WIESNER: Then they vote based on what is proposed in front of us tonight.

MR. MERRY: It basically puts the trust over on the Planning Board to make a decision.

MR. CUMMINGS: Correct. Which is -- we can't put a say into all of these things. The number of parking spaces, we can consider the number of parking spaces that deviate from our code. But we can't do the alignment for the roads, the stormwater ponds design, all that, that is not ours to do. But it is only final site plan approval by the Planning Board. If they don't provide final site plan approval, this variance, if we approve it tonight, is gone.

MR. MERRY: Okay.

MR. CUMMINGS: And that variance is 25'. If we deny the variance tonight, they are allowed to build this plan or submit this plan to the Planning Board at 100'. You would probably have to realign a few things, but they can still move forward with this plan. Clear? All right. So with that, I will declare the Zoning Board as lead agency as far as SEQR, based upon information and evidence presented at this hearing, determined the application to be a Unlisted action with no significant environmental impact. Is there a second?

MR. TROTT: Seconded.

MR. CUMMINGS: Fred seconds. All those in favor say aye.

Mr. Wiesner, aye; Mr. Merry, aye; Mr. Trott, aye; Mr. Richmond, aye; Mr. Cummings, aye.

MR. CUMMINGS: Any opposed? So now, I would like to ask for a motion to adopt this application with that one condition of approval?

MR. RICHMOND: Motion.

MR. CUMMINGS: Ron made the motion. Second?

MR. WIESNER: You said the one condition is what again?

MR. CUMMINGS: The one condition is that there is site plan approval by the Planning Board.

MR. WIESNER: We don't need to say anything about the change in the 25' feet, from 10' to 25' as a condition?

MR. CUMMINGS: No.

MR. STOWE: The 25', the application is for a 25' buffer setback. And that the granting of the variance would be contingent upon final site plan approval by the Planning Board.

MR. CUMMINGS: So what you are asking is since he is changing --

MR. WIESNER: His original application was 10' to 25'.

MR. CUMMINGS: That is something that working with the Board tonight, he made that modification.

MR. WIESNER: You are right.

MR. CUMMINGS: He proposed it, but I think we were heading that direction, just not necessarily 25'. So with that, I need a second well, did I get a motion?

MR. RICHMOND: You got a motion.

MR. CUMMINGS: Ron. Is there a second?

MR. WIESNER: I will seconded it.

MR. CUMMINGS: Board vote. Mr. Wiesner, yes; Mr. Merry, yes; Mr. Trott, no; Mr. Richmond, No.

MR. CUMMINGS: And I, I am always stuck in the middle on these things. I will vote yes, contingent on that site plan approval by the Planning Board. Do your best to not to come back here and good luck with your plan.

MR. CLARK: I appreciate it.

8. Application of Mr. & Mrs. Robert Byer, owner; 15 Chestnut Crescent, Rochester, New York 14624 for variance to erect a 12' x 20' utility shed to be 240 sq. ft (192 sq. ft. allowed) at property located at 15 Chestnut Crescent in PRD zone.

MR. BYER: Good evening. My name is Robert Byer. My wife and I live at 15 Chestnut Crescent, Rochester. We are currently in the process of moving our stuff from a previous residence at 925 Paul Road, which we've lived there for 41 years. The reason for the request for the shed -- and I realize the shed seems a little large, but we are in the downsized -- we are downsizing. It doesn't seem it, but we are. We are going from a garage storage facility at the current residence that I had over 700 sq. ft., down to a 420 sq. ft. shed. I have 32' ladders, folded up they are about 17'. It's a little tough to get them in a 16' shed. We have lawn furniture to store; patio furniture to store; outside Christmas decorations; and outside Halloween decorations, which was my fault; outside lawn decorations and 10', 8', 6' ladders, step ladders. I've got gas cans, diesel cans, kerosene cans. All of this is used on my other property down in Allegheny. I pull them up and take them down. I have a rider and a self-propelled push mower for up here. I have lawn tools to store in there; spare wheels and tires for the vehicles; storage for the remaining tools of mine; table saw and radial arm saw down at my cabin down in Allegheny. Once I am done remodeling down there, I'm going to bring it back up here. A snow blower, I've got ramps for the snow blower to go on the back of the truck. My wife has got serving tables that are 6' long that she likes to use. I have a portable generator that is stored out there. Right now I've got the garage pretty well filled up with the remainder of my tools that I have and I have one part or section of the garage for my car. Like I said before, it seems excessively big, 12' by 20'. That's why I am going for the variance. The shed will match. The color of the shed will match the new siding that I am putting on 15 Chestnut Crescent. So it will be -- I'm trying to match it as best as possible. I took a view from May Meadow and I looked down the path. As you walk the paths there that they have going through it, and I don't believe you will be able to see the shed from that point. I also walked to Chestnut Crescent where the path crosses it and looked down. You might see just the front end part of it. I wanted to put it about roughly 17' from the property line, because there is a berm there. And over behind it there is a berm there and then there are big pine trees along with some overgrown brush that has got to get trimmed up. But it is sitting in between about a 10' wide section that is clear. So if you are walking down the path and you look up toward the house, you will see the back of the shed. I guess that's about it. I know I realize that the area up there is supposed to be a park like setting at all times. But I have seen other sheds up there, but not that big.

MR. CUMMINGS: Thanks for the introduction on that. I did want to state that I did receive the bylaws from the Chestnut Homeowner's Association and it states that it is updated October 4, 2014. I did read it. I am not sure if the Board has. I want to point out and it was written with a cover letter. There are 2 sections that may be applicable to this one. Section 10.01, Article 10,

private road and other restrictions: All homesites in said subdivision shall be known as residential homesites only and shall not be used for any other purpose other than the erection and maintenance of a private detached dwelling for a single family not to exceed 2-1/2 stories in height, and a private garage for not more than 2 cars. (This has been amended to allow for 3 car garages.). The private garage must be attached to or built into the residence. The term attached shall be construed to mean any kind of attachment, whether by common wall, so-called breezeway, a roofed porch, etc. And Section 10.02: No residence should be built nearer any side lot line than 5'. So I just wanted to point those out. The plan you have got here shows 21' and 17' and 35' from the side where it is shown on the plan. And once again that is toward the residence. I am not certain it's toward any structure or chattel. Board questions. Jim?

MR. WIESNER: I don't have any questions.

MR. CUMMINGS: Mark?

MR. MERRY: I did take a ride through the neighborhood. It's a very interesting neighborhood. I don't really understand where this is applicable to us.

There is a lot of legalese there. It is not really too clear, so I did not give a lot of credence with. Are you in compliance with this document?

MR. BYER: Yes. I checked it. I read it. My lawyer has read it. And I would be in compliance with it. There is no restrictions on the shed size for out there.

MR. MERRY: That is one question. As you noted there are sheds in the neighborhood. They are nowhere near the size that you are requesting.

MR. BYER: I know there is one 12' x 16' up there. I have seen it.

MR. MERRY: I missed that one. I also read --

MR. BYER: I agree with you. It's not on that street.

MR. MERRY: Right. It's a clear view of your backyard. You have a berm there today. You can clearly see from the front of your residence. I am a little concerned about the location. Have you given any thought to another location and possibly downsizing the size of this shed on your property?

MR. BYER: I don't really want to due to the storage of my ladders. It's hard to get one in, a 16' or a 32', I guess.

MR. MERRY: Is there a trade off for the ladders go in the garage and something else goes in the shed?

MR. BYER: The way we've got the -- the way it was built with the garage door and the steel beam, there is no way I am going to be able to get a 32 footer that folds down to 16' something up into the garage.

MR. MERRY: Rather than putting this smack dab in the middle of your yard, have you thought about another location of putting this shed?

MR. BYER: Well, the reason I picked that one spot is, like I said, there is a berm in the back. There is a big pine tree on the other side of it with the overgrown brush. And that spot there would kind of hide the view if you are looking up toward the house. That is why I picked that one spot right there.

MR. MERRY: I am thinking of your neighbors.

MR. BYER: It is back from the building or from the deck too.

MR. MERRY: That's all I have. Thank you.

MR. BYER: Thank you.

MR. CUMMINGS: I don't have any questions yet. Fred?

MR. TROTT: Any thought to putting an addition on your garage?

MR. BYER: I looked at that one side. I go down -- there is a kitchen window there. I will probably pick up 12' maybe, 13' at the most, to where the kitchen window is, along that one side there, to even it out. I really don't want to put a bump-out on the one side of the garage, where the 19' x 7' is. Put a 9' x 7' bump out. But that's a lot more expensive than having a prefabricated shed.

MR. TROTT: You are talking about a 32' ladder. That is a long ways to walk with a ladder to the shed and handling it.

MR. BYER: It's a straight shot up and a straight shot back. So if I am trying to get it in and out of the garage, going around the corner with it, it's a little bit easier. I'm not getting any younger.

MR. CUMMINGS: I understand the point about the ladders and your storage for them. I just wanted to also point out, that we are not just looking at the storage of your things in here. This moves beyond your being the owner here. That is what we are weighing here with this variance. I just want to let you know that we are not going to base it all off ladders. I want to let the public know too, we are not basing it off ladders.

MR. BYER: No. There is a lot to consider.

MR. CUMMINGS: Ron, questions?

MR. RICHMOND: I have no questions.

MR. CUMMINGS: I have one in terms of the size. You are looking at a 12' x 20'. Just doing the quick math, if you reduced it down to a 10' x 20', you would still have the length that you need for your ladders and it reduces it down to 200 sq. ft., which is only 8 sq. ft. over. Did you look into that size?

MR. BYER: No, I haven't. I could look into it, but I would still have to look for a variance.

MR. CUMMINGS: Correct. I'm just saying this minimizes the variance.

MR. BYER: Yes.

MR. CUMMINGS: Yes, it's the only way -- I just did the math on that also, is an 8' x 20', now that just looks strange to me, but that would get you below that 196' number. So I just want to point that out to you. You do have some options to get below that number, but yes, we are trying to minimize variances. Side table?

MR. STOWE and MR. SHERO: No.

MR. CUMMINGS: One condition, if this is approved, that a building permit be obtained prior to the construction or placement in this case, it's a prefab. Anybody else on the Board before I open up the public hearing? With that, I will open up the Public Hearing. Yes, sir. We will start at the far left.

MR. KELLY: My name is Michael Kelly. I live at 19 Chestnut Crescent. I am two houses from Mr. Byer to, I guess you would say, the north. I'd just like to -- I haven't met Mr. Byer yet and, you know, it's, obviously, uncomfortable for all of us here. I think my neighbors are here. I think there are about 12 of us. This is not aimed at Mr. Byer, certainly. It's the situation, not the man. I just wanted to be clear about that before I start. I think everybody would agree with that. I have been in my home for 22 years. I moved in in 1993. I think, as I look around here, most of the people here have probably been there about that long too. They are like 20 year residents in the neighborhood. And, again, we welcome Mr. Byer. But it comes down to about, you know, 3 words. It's too big. It's really going to kill our view. We've got such a beautiful park like setting

when we look out there. I have looked at it for 22 years. I have a picture of what the view from my deck looks like. I have an architectural engineering background and I am looking at that surveyor's drawing right now. I will tell you right now, that little dot up there that is showing the shed is not to scale. I think it's going to be a bigger impact than this drawing really references and these guys would agree with that. As I was sitting here, if I just walk over here, these panels on the ceiling are 2' each, as you know. This soffit from here to here, that's 12'. And from this light right here down, you count down ten of these panels that comes down to here. That's a hell of a big shed in the backyard. I consider that more of a barn than a shed. And we are just -- we are really concerned

about the impact it's going to have on the view. It's not as much, as I determine, an obstruction, as much as I would determine -- I hate to have an eye sore. It's really going to be big. If I could show a couple of pictures. The other night I went out -- 3 nights ago. Here is a beautiful view but -- you tell me if it's a beautiful view. Let me bring this down. Here is a view from my deck, from my backyard deck. You can see the railings at the bottom left with the whiskey barrel in my yard. The next, crossing over where you see the white fence, that's Sam Cammarato's. I don't know if I am pronouncing his name right. He is a fairly new resident who has only been there about a year. Where you see the 2 trees right about here that is the proposed area where the shed would go. And I just took a crack at just sketching in right here what it would like. And, again, I guessed on the scale, because we are looking at a picture. But I think

I have a pretty good eye for doing that. I was an architectural design and drawing and AutoCAD for 15 years in my career. So I think I've got a pretty good eye for what that would look like. So you can see again, not as much as an obstruction per se, but just an eye sore from what we are looking at right now. Another thing we are afraid of, these things have come up before. And we are afraid it, again, will set a precedent. When you start letting some of these rules and variances get changed in a neighborhood like this, it's just going to snowball. It's going to continue. We also have some other rules where you can't have a large RV in your front yard. I think it is a great rule. You can't have your motor boat on the side of your house. Some people, I tell friends that, they think we are crazy. But I say, if you don't like rules like that, don't move in, because you know about it before you moved in. When I closed on my house back in 1993, downtown at a lawyer's office, I think I had to sign a document that said, I would follow all of these rules in the Chestnut neighborhood, which I have done religiously ever since. I also have -- and I promise I will stop talking. I also have a note here, this is dated from the Chestnut Homeowner's Association July 18, 1996. That night they had some different votes for different topics and this one shot right here that says: Lastly, no sheds of any kind may be placed on the property of a Chestnut Homeowner's Association Member effective January 1, 1996. I don't know if this would hold up water in a court, but it is something I had on file and I have always kept, because this kept coming up.

MR. CUMMINGS: This is odd. I've got a 2014 Homeowner's Association.

MR. KELLY: And that is not referenced?

MR. CUMMINGS: That is not included.

AUDIENCE MEMBER: I will add to that --

MR. CUMMINGS: Wait until he is done. We will go through everyone in order.

MR. KELLY: I will shut up. I said my peace but, thank you.

MR. CUMMINGS: Thank you. Thank you for your comments. Well, I would go in order. You did have someone behind you, with their hand first. But if you want to start, go ahead. Just name and address.

MR. WOO: Joe Woo, 7 Chestnut Crescent. I am 2 houses the other way from this person's house. Regarding that letter about the sheds, there was an interpretation of the bylaws of that same Section 10 or whatever that you read. That one homeowner interpreted it not to allow sheds, because we actually had a potential suit brought against our Homeowner's Association. And I am not sure how, but they settled it somehow. And sheds are technically, I guess, allowed. You can apply the math, I think it was 12' x 12' is what the assumption was. I myself view the shed as too big. This is a residential subdivision. The lots, most of the lots are less than 1 acre in size. I think the -- I even think the 192' kind of, because that is a little more than 14', but it is right around 14' x 14'. So I think it's -- As the prior person said, it does affect your view looking down through the yards. And I think it's just too big. But I just wanted to mention about the past legal action on the sheds.

MR. TROTT: The question is, why would you guys clearly define it in the bylaws?

MR. CUMMINGS: I can tell you that by reading the letter. They did not get a two-thirds vote to change that.

MR. WOO: The builder basically wrote the bylaws. We moved in and we had to sign. But the bylaws were, in fact, prior to this development being fully built.

MR. CUMMINGS: So just to read the entire letter. I will read it again. Dated July 18, 1996. Dear Chestnut Homeowner's Association Member: This letter is to inform you of the results of the recent vote to amend the bylaws of the Association. As you are aware the three proposed changes were: First, to allow sheds to be placed on the property. Second, to decrease the size of satellite dishes to 24"; and lastly, changing the majority voting on amendments to the bylaws from 2/3 to 51 percent. As a result of your voting, none of the proposed amendments were passed due to the fact that 2/3 of the majority vote was not obtained from the Chestnut Homeowners. Therefore, a 2/3 majority vote remains for any future amendment changes. Also there is no limitation on the size of a satellite dish that a homeowner may place on the property. Lastly, no sheds of any kind may be placed on property of Homeowners Association Members effective January 1, 1996. Any sheds erected prior to January 1, 1996, will be allowed to remain on the homeowner's property and any sheds that is placed on a CHOA property, which stands for, Chestnut Homeowner's Association member, after this date must be removed. We apologize for the length of time this process took. However, we wanted to give every CHOA member the opportunity to vote on such an important proposed amendment. Thank you for your patience and all of those who participated. Regards, The Association Board, Joe Montagna, President; Thomas Myers, Vice President, and -- So according to this letter they still aren't allowed. I did not read that. As Mark said, I don't see it anywhere in here, but I am not a lawyer.

MR. WOO: They interrupted that one section and the only thing that was allowed basically was the house.

MR. CUMMINGS: Right. So I am not sure where that one stands, but it sounds like you have sheds in the area. It sounds like -- thank you for your comments and the letter. It is very informative. Next comment, just to keep moving along. Dorothy, you don't live there, so I will make you go last.

MS. BORGUS: That's fine.

MS. ROTH: Debbie Andreacchi-Roth, 11 Chestnut Crescent. I live next door to Bob. I can put up another picture for you that will kind of give you an idea. The numbers in the development are, the direction are a little odd. This is from our deck, which is basically where our kitchen window would be. And this area is the berm on their property and the tree is here. And I believe this is where the shed would be going. I think our biggest concern is the same as Mike Kelly and Joe Woo's and the other neighbors, is the size of the shed is so large, that it would really jettison into the backyards. Not only does it take away the view from our property, but the area behind it, which is a common area. The requirement is that it be 5' from the lot line. And if you walk back there, you can see where the sidewalk is quite close to the property behind our homes. And that changed from the original drawing, because of the water. There was water that gathered back there and they had to move the sidewalk. So our property is actually quite much closer to -- the common area of the property is very close to the back lot line. So I think for us, our feeling is that it really isn't a shed. It's a one car garage. And a 12' x 20' that is basically the size of many of the garages in the neighborhood. And I think you can see from the rendering like that, that it really will change the character of our neighborhood and the backyards. And I know on the application it did say, will it affect the character of the neighborhood. It certainly will affect the character of the neighborhood. I have a picture of -- so all of the sheds that are there now, are grandfathered in.

MR. CUMMINGS: Okay.

MS. ROTH: We actually were going to put one up, maybe a small one, but out of respect for our neighbor who hates shed, because this is the home that we purchased, we chose not to put one up. But most of the sheds I think are even much smaller than what the Town allows and they usually match the homes. Just bear with me here. This one is at -- this is on Hunting Spring and that is from the road. So you can barely see is from the road. I believe that is Joe Lenton's (phonetic) house. That would be the house that is directly behind us. And then another one that is really on 16 May Meadow, which actually is the end of Chestnut Crescent -- I'm sorry this picture was a little blurry. I took it from the car. This one is a small shed that was put up during that period when you were allowed to put up a shed. And that is actually taken from Chestnut Crescent from right outside of Mike Kelly's front door and Dave Ketchum's -- I mean their front yards. So you can see those sheds are rather small for the area. I think the other thing, and it wasn't in the application that I saw when I reviewed it at the Town, was the storage of chemicals, gasoline and diesel. I don't think that was in the initial application. And I don't know if that is a consideration, the shed contents or not, but living next door to it, I don't know how comfortable I feel about that. The other thing is I don't know what the height would be of the proposed shed. You have talked quite a bit about the dimensions, the length and width, but the height itself too. I mean, there are trees there. I don't know if those trees would have to be cut back or eliminated because of that. But again this would block the view of the entire neighborhood. Thank you.

MR. CUMMINGS: Thank you for your comments.

MR. BYER: The height of the shed would be 11' from the peak of the roof to the bottom of the floor.

MR. CUMMINGS: Thank you, for that note.

MR. MONTAGNA: I'm Joe Montagna, the gentleman on the bottom of the letter you just read. I am a current board member of the Chestnut Homeowner's Association. You are right. At one

time there was no shed allowed there. Our builder in 1988, '87, when he started building, he wrote the bylaws with an attorney, I think Iacovangelo. Little by little as the neighborhood grew, the builder kind of looked the other way, because he wanted to sell homes and there were some bylaws. When the bylaws were turned over the Association, which was the homeowners, things changed a little bit. We tried to enforce the bylaws, but it was very difficult. We did try to have those amended as you read. Unfortunately, to get those amended, it had to be notarized at the person's house, and the person on the deed had to sign. So if the owner of the house wasn't home, who signed. It wasn't supposed to sign, it was a debacle. So we never went further with that. At that time, people said, you know, sheds aren't allowed, but we can't really enforce it. We don't like them, we don't want them. But if you want to fight with your neighbor, go ahead. That is kind of how it went. We cut about 40 acres of common area. We have about 40 acres totally wild, forever wild, that we mow it weekly. Again, we want to welcome our neighbor. But, again, the shed is really, really too large. If the shed could be smaller, we would appreciate that for our neighborhood. It is a park-like setting. It would be nice if we could see the shed, the siding, the shingling. I think I did see a picture. Somebody e-mailed another Board member, I'm not sure. There were two pictures. So that is always helpful, if we can see a picture of the proposed shed.

MR. CUMMINGS: Thank you for those comments. We will address those. Anyone else?

MR. ROTH: My name is John Roth. I live at 11 Chestnut Crescent. We haven't been able to catch up before now. A lousy way to meet a neighbor.

MR. BYER: He is golfing and I am working.

MR. ROTH: I am just going to go on the selfish side. That's all I'm doing, because everyone else presented their case. On the selfish side, I don't want to look out my kitchen window and see a garage. I measured -- we have a two car garage and I measured the width of mine. This is going to be 12' high. And on the not so selfish side, again, I am looking at the neighborhood. And I don't know if you drove around the neighborhood, Mark, or walked?

MR. MERRY: I did.

MR. ROTH: But not to brag, but I would put that working class neighborhood against any in the country that would be some place that you would want to live. You've walked around and you have seen the smaller sheds, yes, but I just think it's a garage. That is all I have to say.

MR. CUMMINGS: Thank you. Yes, sir. This is the most interesting place with all of the neighbors.

MR. SAEVA: I am Vincent Saeva. I live at 18 Mae Meadow. I live across the street from the place where it is going to go. I am kind of here just because, I am kind of the representative for all the other people that don't live in the common area that are there. In fact, everybody in the tract, because we all use those paths, which we maintain through the Homeowner's Association and we pay homeowner's dues. It's cut really nice. The trees get trimmed. Everybody takes care of the area that is kind of adjacent to their property. But, also, I have a shed. It's only 8' x 10'. It's in the back corner. It's kind of shielded from the common way by some trees. And I have a tree growing in the back of it. And I have some trees on the side and things like that. I put it up when I first moved in in '91 without knowing that there were rules against a shed. So I am one of the grandfathered in.

MR. CUMMINGS: You are preexisting.

MR. SAEVA: But my point is that I know the need for a shed. You like to have it to put stuff in it that you can't fit in the garage, especially if you have a smaller garage. But I also agree with everybody else, it's just too big. Mine is 8' x 10', which is kind of small. And I think that if you are going to have a shed that is kind of an okay size, because it is very minimal. But I just think this shed is just too big. It does effect everybody that lives there, because everybody that lives there, you know, rides their bikes around there, walk down there. I mean, I taught my kids how to ride their bikes on that pathway, because they could fly off of it and crash on the grass and they wouldn't get hurt. And I see the new people that are doing that with their kid's too. So I just kind of wanted to come to speak as a member of the community. I'm not directly -- you know, because I wouldn't be able to see it, but it does effect everybody in the community.

MR. CUMMINGS: I am glad you said 8' x 10'. If it was larger than 8' x 12', I was going to defer you over to Ed.

MR. SAEVA: Yes, 8' x 10'.

MR. CUMMINGS: That is all we can enforce. But I would like to take the opportunity to thank all the community members that are in this Association to at least chime in. Sometimes we lack information like that, so thank you for coming. Is there anyone else? It's on you.

MS BORGUS: Dorothy Borgus, 31 Stuart Road. Just one thing that occurred to me, I don't live there. I'm a long ways from there. But just seeing the pictures, it looks like a beautiful neighborhood. But the thing that struck me was when I heard Mr. Byer say everything that he wanted to put in this shed, even as big as the shed is, it isn't going to fit. Then, what's he going to do? He really needs to rent a storage unit somewhere and skip this whole idea. Thank you.

MR. CUMMINGS: Thank you. Anyone else? With that, I will make a motion to close the Public Hearing. Could I have a second?

MR. WIESNER: Seconded.

MR. CUMMINGS: All those in favor say, aye.

Mr. Wiesner, aye; Mr. Merry, aye; Mr. Trott, aye; Mr. Richmond, aye; Mr. Cummings, aye.

MR. CUMMINGS: Any opposed? So that's been closed. I did want to point out, it still sounds like the Homeowner's Association and the parts for the shed those are up in the air. But I did want to focus on, our variance application tonight, the Town allows 192 sq. ft.

MR. TROTT: So who trumps what?

MR. CUMMINGS: That is what I was going to go to. We are focusing on a 192 sq. ft. shed. Now, I've read through this. I kind of am in agreement that I don't know how you would enforce this Homeowner's Association in terms of not having a shed, but that is for someone else to fight.

MR. RICHMOND: Can I just ask a question on it? I don't think the HOA's bylaws has any bearing on this whatsoever.

MR. CUMMINGS: Correct.

MR. RICHMOND: Unless somebody tells me differently. So all of this information that we have, I don't think it has an impact.

MR. TROTT: Right.

MR. RICHMOND: So really the bottom line is still just the variance.

MR. CUMMINGS: 192 sq. ft. shed. I just want to point out, that as I said, if you minimize it, if you wanted to get to 200 sq. ft., in the eyes of the Town, that is the closest that I can see that you can get to, still requiring a variance and having a shed the length that you wanted it for your

ladders. Now, with that said, if you put a shed that -- this is always where I get -- is it 192 sq. ft. or less or less than 192 sq. ft.?

MR. SHERO: Up to 192 sq. ft.

MR. CUMMINGS: Okay. Up to 192 sq. ft., you can put in a shed in the eyes of the Town.

MR. BYER: It would be easier to get rid of the ladders.

MR. CUMMINGS: Correct. And as another option, since you are throwing them out there. You are allowed, as I just read there, you can have -- it's been amended to allow three car garages. So you could extend to a third car garage, if you wanted a larger garage, or the bump out idea, if your variance for the large shed was denied. So we are still going to hear the application of the large shed. It's up to you if you wanted to revise it to a smaller size. But one again, 192 sq. ft. you are allowed to put in. In the eyes of the Town with one condition, that you have to get a building permit.

MR. BYER: Building permit. It might be cheaper to get rid of the ladders.

MR. CUMMINGS: See if you have got a neighbor that wants to buy the ladders.

MR. RICHMOND: You did mention the concern about the I-beam in the garage being in the way to hang them. I actually have a 32' ladder and the ladder hooks, I have to hang below that soffit in the case of the I-beam.

MR. BYER: The garage door is only a 6" clearance from the top of the garage door to the bottom of the ceiling. There is no way to get a ladder up in there.

MR. CUMMINGS: So once again, I want to focus on the square footage and hopefully --

MR. TROTT: I just want to get a little bit more clarification.

MR. CUMMINGS: Yes.

MR. TROTT: The Homeowner's Association, what does that -- if the Homeowner's Association said absolutely no sheds on the property --

MR. STOWE: Town law says you can still have 192 sq. ft.

MR. TROTT: So he can still have one, he just has to deal with the --

MR. STOWE: In the eyes of the Town. You can't enforce their bylaws, so that is a private contract. It is a private contract between all the owners of the property and the Town can't enforce it. You can't come to the Town and fix it. It is a neighborhood problem.

MR. TROTT: Okay. I just want to make that clear, because I didn't know how that -- you know, who had the trump card.

MR. CUMMINGS: There are no cards.

MR. TROTT: Yes.

MR. STOWE: No. They are opting out of the Town's default provision and saying that you can have 192 sq. ft. shed. They are saying that is fine. The Town says this. We all agree we won't do it. They have it for clothes lines, fences, in ground or above ground pools, all sorts of HOA's do different things.

MR. CUMMINGS: None of which we can enforce.

MR. STOWE: We can't enforce it or condition anything on it.

MR. TROTT: I would like to say though, I think you have some very nice neighbors and being the new neighbor, I don't know where I would stand as far as trying to get a whole group upset again. They seem to be very kind, as they speak. I mean, as far as being on the Zoning Board and listening to different neighborhood groups, I think that you have a nice neighborhood. You might want to put that into consideration as you go forward with this.

MR. CUMMINGS: But in terms of our decision tonight, do you still want to maintain the application at 12' x 20'?

MR. BYER: No.

MR. CUMMINGS: Okay. Then what would you like?

MR. BYER: I don't know.

MR. CUMMINGS: Would you like to withdraw this application and potentially table it?

MR. RICHMOND: Until he has the opportunity to think through what he may or may not want to do going forward.

MR. CUMMINGS: Would you be interested in --

MR. TROTT: I would think that tabling it would be better for him, if he does want to go above the 192'.

MR. CUMMINGS: Right. We already went through --

MR. BYER: I don't want to go above the 192'.

MR. CUMMINGS: So if you are not going above the 192', you can withdraw this variance application and you don't even need to get a decision from us then.

MR. RICHMOND: And you will have just met all your neighbors.

MR. BYER: About time. I think they helped me.

MR. CUMMINGS: Just for the record, you as the applicant would like to withdraw your variance application?

MR. BYER: Yes, I would.

MR. CUMMINGS: Okay. So that one is on the record. I have no idea on the application fees and all of that. I will defer that to the Building Department. I have no idea if it is refundable. I don't think so.

MR. BYER: I don't think so.

MR. CUMMINGS: I don't think so either. Mr. Byer, thank you for your time. You are all set -- wait. Do we have to vote on it to withdraw?

MR. STOWE: He withdrew it?

9. Application of Mr. & Mrs. Leroy Earsing, owner; 40 Clifton Road, Churchville, New York 14428 for variance to erect a 30' x 40' garage without a principal dwelling at property located at 50 Clifton Road in RA-1 zone.

MR. EARSING: Hi, my name is Leroy Earsing. I live 40 Clifton Road and the variance is to put a pole barn up on 50. It's my property next door, for storage.

MR. CUMMINGS: Okay. Well, that's pretty self-explanatory. Any thoughts on subdividing the two parcels and bringing them into one?

MR. EARSING: No. Because if you look, I have got plans.

MR. CUMMINGS: Yes.

MR. EARSING: That we are planning on putting a house up. I hope next year.

MR. TROTT: On that 50?

MR. CUMMINGS: Okay.

MR. EARSING: Yes.

MR. CUMMINGS: Okay. That was going to be one of my questions on this. It said 50 Clifton Road and that is where I started seeing so many other structures on there.

MR. EARSING: There were other buildings there once before. There were two other barns and a house.

MR. CUMMINGS: Okay. And you are placing this one. Can we put the map up on the overhead?

MR. CUMMINGS: But you are putting this -- we'll call it structure, near where the old barn foundation was?

MR. EARSING: Yes. It is near where the old barn foundation was.

MR. CUMMINGS: Okay. Jim, any questions?

MR. WIESNER: So you will be building a house?

MR. EARSING: Yes.

MR. WIESNER: And right now is somebody -- is it you that lives at 40?

MR. EARSING: Yes.

MR. WIESNER: So it's right next door.

MR. EARSING: Yes.

MR. WIESNER: That's the only question.

MR. MERRY: No questions.

MR. CUMMINGS: All right. Fred?

MR. TROTT: So, I guess my question is, the pole barn that you are building, you are building the pole barn before the house the pole barn would be going to the house. It wouldn't be going to you after you build the house.

MR. EARSING: It would be. We are planning on moving into it.

MR. TROTT: All right. So you plan on moving everything over to that piece of property.

MR. EARSING: Yes.

MR. TROTT: That makes it a lot more clear.

MR. EARSING: And I don't know if you guys go by it, but you can't see it from Clifton Road.

MR. TROTT: Yes. Yes. I love Clifton. If I could move there, I would. It's a beautiful hamlet and I just, you know, wanted to make sure that -- when does your house go up for sale?

MR. EARSING: I think I've got a couple of kids waiting.

MR. CUMMINGS: Ron, any questions?

MR. RICHMOND: No questions.

MR. CUMMINGS: Side table?

MR. STOWE, MR. SHERO: No.

MR. CUMMINGS: I know this is a unique circumstance. Usually we just kind of end up with someone sitting there, sitting with an empty -- that's what we had in the past. We had an empty garage that stayed on the parcel that happened to be next door. It is nice to see that you have a plan going forward. I'm kind of curious, Counsel, can we put a condition on it that the variance goes away once the residence is there?

MR. STOWE: Once the variance is granted, the variance is granted.

MR. CUMMINGS: Right that is what is so awkward about this. Okay. Well, it will have a house on there. Then if the house goes away, then the garage would stay.

MR. CUMMINGS: It does go away. If the house ever went away --

MR. TROTT: Yes, so you would have to have a variance on it to have a house on it.

MR. STOWE: On a lot with a pre-existing -- no, I wouldn't.

MR. CUMMINGS: I follow it. I think we are good. So trying to expedite things, any other questions from the Board? Otherwise, I will open up the public hearing. The public hearing is now open. Ms. Borgus?

MS. BORGUS: Dorothy Borgus, 21 Stuart Road. A question, why do we need barn before the house? I haven't heard why this is necessary.

MR. CUMMINGS: Okay, I will ask it.

MS. BORGUS: Okay. The other thing I would like to mention is there is a house just -- and I bring this up just as a case in point. There is a house just west of Union Street and the intersection of Chili Avenue. There are apartment buildings in back of the house. And the theory always was many years ago, that that got approved because the house was going to come down and more apartments were going to be built. That was 30, 40, 50, I don't know how many years ago, a long time. That house still sits there and the apartments in the back, it's a disaster for the neighborhood. So these things happen. Permission given, plans made, nothing happens, you know, for whatever reason, life has a way of turning on a dime. And just be careful, because I don't see why if you want that size building, put the house up and then come in and get an oversized building approved for the backyard. Do it in the proper order. Thank you.

MR. CUMMINGS: Thank you. Any other public comments? I don't see any. I will make a motion to close the public hearing. Is there a second?

MR. RICHMOND: Seconded.

MR. CUMMINGS: All those in favor say aye.

Mr. Wiesner, aye; Mr. Merry, aye; Mr. Trott, aye; Mr. Richmond, aye; Mr. Cummings, aye.

MR. CUMMINGS: Any opposed? So I will pose the question as to why the sequence? Why you need --

MR. EARSING: I need it for storage.

MR. CUMMINGS: For storage to construct your new house?

MR. EARSING: Yes.

MR. CUMMINGS: And you own 40 Clifton Road, so you don't have adequate storage there?

MR. EARSING: Right.

MR. CUMMINGS: So is this storage for sequencing or staging of materials to build your next house?

MR. EARSING: Yes, on that --

MR. CUMMINGS: On this parcel?

MR. EARSING: Yes.

MR. CUMMINGS: Okay.

MR. EARSING: Because I've got everything all sitting there, you know, the septic system and all that. So I am not just going to put the barn up and walk away. I'm going to put the house up. The way things are right now, I just can't do both at the same time.

MR. CUMMINGS: And there are no -- the old barn foundation, just to be clear on the record, there are no other barns on the site. That is where the old barns used to sit?

MR. EARSING: That is where the old barns used to sit, yes.

MR. CUMMINGS: Anybody on the Board have any questions? This is a unique one. Well, one condition will be that a building permit will need to be obtained prior to the construction of this structure if the variance is approved. I can't think of any other conditions.

MR. TROTT: The variance based on the house.

MR. CUMMINGS: We can't. I can't think of anything else. Anyone else have something to add?

MR. TROTT: We can't put in a time frame that the building be put in, the housing?

MR. CUMMINGS: No, I think that is unfair.

MR. TROTT: Okay. Just throwing it out there.

MR. CUMMINGS: Because the variance will stay with the land anyway.

MR. WIESNER: This is a pretty good size parcel, right?

MR. EARSING: It's a little over 3 acres.

MR. WIESNER: I can't think of a lot places, agricultural at least, where there is property and there is barns and there is no houses. In this case there is a plan.

MR. MERRY: It's well screened so it is not -- if you are going to do it, it is a good place to do it, when you drive by that area.

MR. CUMMINGS: Well, on the Application before us, I hereby declare the Zoning Board as lead agency based on the information and what was presented here, this application unlisted action with no significant environmental impact. Is there a second?

MR. RICHMOND: Second.

MR. CUMMINGS: All those in favor say, aye.

Mr. Wiesner, aye; Mr. Merry, aye; Mr. Trott, aye; Mr. Richmond, aye; Mr. Cummings, aye.

MR. CUMMINGS: Any opposed? All right. I ask for a motion to adopt this application with that one condition.

MR. TROTT: So moved.

MR. WIESNER: Seconded.

MR. CUMMINGS: Ron has the second. Board Vote.

Mr. Wiesner, yes; Mr. Merry, yes; Mr. Trott, yes; Mr. Richmond, yes; Mr. Cummings, I also vote yes.

MR. CUMMINGS: So this was approved. You will get a letter within a week.

MR. CUMMINGS: Back to Application 6. It looks like you are ready. Thank you, for being so patient.

MS. SMITH: Of course, thank you.

MR. CUMMINGS: Have you had a chance to discuss?

MS. SMITH: We have. We are interested in -- if the four signs will not be considered by the Zoning Board having two or three signs, either discussing the alternative, or if not, 2 signs with 2 illuminated artwork panels on the other sides of the kiosks.

MR. CUMMINGS: So which one is your preference?

MS. SMITH: Well, our preference is 4, but understanding that the Zoning Board is trying to minimize variances, having illuminated panels on all 4 sides is necessary, and then, having 2 or 3 signs on the other faces that do have artwork.

MR. CUMMINGS: So, once again, is it 2 or is it 3?

MS. SMITH: If 2 is what the ZBA is willing to grant. And then having illuminated artwork panels on the other sides.

MR. MERRY: So are you asking or are you telling us?

MR. RICHMOND: She actually hasn't made it clear what your answer is. What is your choice?

MS. SMITH: Having 2 signs and --

MR. CUMMINGS: Signs with letters.

MS. SMITH: With letters. And then, just making sure that it's part of the record that the other panels can still be illuminated with the artwork logo.

MR. RICHMOND: So which sides, would it be north and south?

(Discussion held regarding placement of the lettered signs and artwork and illumination, then clarified for the record as follows.)

MS. SMITH: So it's on the east side of the building facing Union and the south side of the building facing Rite Aid.

MR. TROTT: I understand exactly what you are saying.

MS. SMITH: So that is your preference?

MR. CUMMINGS: Yes. And that is what I have written here. And that was even before we went through that explanation. So we are good. Just so that we are clear for the Board, because that is a one-way entrance, that is how the traffic has to come in.

MR. TROTT: It would be beneficial for them to have it on Union Street and on the other side as you are coming in, which makes total sense to me.

MR. CUMMINGS: Now, to really throw a kink in this, we are not even going to put directions on it. We are just going to say 2 and that is it.

MS. SMITH: Excellent.

MR. CUMMINGS: 2 sides can have lettered signs. Two sides can have illuminated artwork.

MS. SMITH: Excellent. And illuminated letters on all 4 sides.

MR. CUMMINGS: Yes, yes. It is illuminated on all 4 sides. I am glad that is clear. Thank you. And I think it does make the most sense. Logistically, at this site, I have to be honest. This site has a lot of things going on with it and there is a lot of signage. There is still one more tenant to come in. So I am glad that you beautified it and provided, as I said, a minimization for the Town. Let's take the other parcel, that is your neighbor, they have got a whole slew of signs there. So let's proceed with this one. So, once again, the sign permit must be obtained. And, once again, I don't know if it's one permit or each one individually. I think it's just one.

MR. BUGERT: It's all one permit.

MR. CUMMINGS: I think so, but I can't say for sure. With that I don't have anything else.

MR. TROTT: Any conditions, none.

MR. CUMMINGS: We already held the public hearing. We haven't really changed anything. Any other conditions? Good, I hear none. So on the Application before us, I hereby declare the Zoning Board as lead agency based on the information and what was presented here, this application unlisted action with no significant environmental impact. Is there a second?

MR. MERRY: Seconded.

MR. CUMMINGS: All right, we have a second. All those in favor say, aye.

Mr. Wiesner, aye; Mr. Merry, aye; Mr. Trott, aye; Mr. Richmond, aye; Mr. Cummings, aye.

MR. CUMMINGS: Any opposed? Motion to adopt the application as it has been modified to be 2 illuminated lettered signs and 2 illuminated artwork; i.e., all 4 sides illuminated, with the one condition for a sign permit must be obtained.

MR. WIESNER: They only wanted the artwork on the panels that are clear and not all 4 sides? I guess that is how I understood it.

MR. CUMMINGS: Where they had all 4 signs before, so now, they are going to have lettered signs on the east and south. They are going to have the artwork on north and west.

MR. BUGERT: Lettered and artwork.

MS. SMITH: It sounds like the artwork --

MR. MERRY: Still artwork on all 4 sides.

MS. SMITH: It's on the solid upper right portion of it. And then our variance would really only be lettering on one more side --

MR. CUMMINGS: Yes, that's true. So it's really only on those 2 sides. So we need a motion.

MR. MERRY: There is artwork on 4 sides and lettering on 2 sides,

MR. CUMMINGS: Correct.

MR. RICHMOND: Motion.

MR. WIESNER: So moved.

MR. CUMMINGS: We have a second from Jim. Is it a second, Jim?

MR. WIESNER: Yes, a second.

MR. CUMMINGS: All right. Board vote.

Mr. Wiesner, yes; Mr. Merry, yes; Mr. Trott, yes; Mr. Richmond, yes; Mr. Cummings, I vote yes also.

MR. CUMMINGS: Thank you for bearing with us tonight.

MS. SMITH: Thank you, gentleman.

MR. CUMMINGS: You will be getting a letter within a week from us.

MS. SMITH: Thank you.

MR. CUMMINGS: Thank you. Have a good night.

MR. CUMMINGS: All right. Last month's minutes. Anybody with some comments. Sandy is not here. I have a couple of typographic errors, but nothing of substance. Anybody else with anything?

MR. CUMMINGS: All right. So I will make a motion to adopt last month's minutes with a few typographical revisions that I've identified on my set. Second?

MR. TROTT: Second.

MR. CUMMINGS: Second. All those in favor say, aye. Opposed? And our next meeting, at this point in time, is August 25, 2015 here at 7:00 p.m.

(Discussion held regarding next ZBA meeting which will be held on August 25th.)

(Meeting adjourned at 9:45 p.m.)

