

CHILI ZONING BOARD OF APPEALS  
April 28, 2015

A meeting of the Chili Zoning Board was held on April 28, 2015 at the Chili Town Hall, 3333 Chili Avenue, Rochester, New York 14624 at 7:00 p.m. The meeting was called to order by Chairperson Adam Cummings.

PRESENT: Mark Merry, Ron Richmond, Fred Trott, James Wiesner and Chairperson Adam Cummings.

ALSO PRESENT: Michael Jones, Assistant Town Counsel.

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.

ADAM CUMMINGS: Anybody have any issues with the signage out there?

FRED TROTT: Just the one on Buffalo Road.

ADAM CUMMINGS: Buffalo Road, I know I saw the stakes in the ground. At one point, the signs were removed. We asked the applicant. It was publicly noted and we'll find out what happened to those signs, but it looked like the effort was there.

1. Application of Chili Fire Department, owner; 3225 Chili Avenue, Rochester, New York 14624 for variance to erect a 4'8" by 8' double-faced freestanding sign to be a total of 75 sq. ft. and to include tenant names (71 1/2' by 5' previously approved without tenant names) variance for sign to be 10'8" high (9' high previously approved) at property located at 3225 Chili Avenue in GB Zone.

Jim Lahey with the Fire Department.

ADAM CUMMINGS: For the record. And just a brief description on your application here what you're looking for.

MR. LAHEY: We would like to put a sign up. We are talking to our tenants. We have five tenants in the building today. What we would like to do is just be able to put their names out on Chili Avenue in a similar fashion with the other businesses along the way.

ADAM CUMMINGS: For instance, Chili/Paul across the street and Pontillo's down the road?

MR. LAHEY: Yes. As you go up the road, yes.

JAMES WIESNER: So this -- obviously there is not a sign out there now, but there was previously?

MR. LAHEY: No, not to my knowledge.

ADAM CUMMINGS: According to the Building Department, we approved the sign, the Town did in the past, but they never actually constructed it.

JAMES WIESNER: Okay. I saw the variances and I said --

MR. LAHEY: Back to the mid-'90s and for one reason or another it wasn't completed.

What we're trying to do is put that effort forward for our tenants now.

MARK MERRY: Is there any proposed lighting that goes along with the sign?

MR. LAHEY: No.

FRED TROTT: You have room to, if you get more tenants, to put up --

MR. LAHEY: That's correct, yes. This portrays our current tenant base and we have one extra in there just in case we have additional.

FRED TROTT: 3225 is the address?

MR. LAHEY: That's correct.

RON RICHMOND: The one opportunity you have there is because you have one vacancy right now?

MR. LAHEY: We had a vacancy in one of our basement storage areas. We just left it on the sign because it made sense to look at the future.

ADAM CUMMINGS: I just want to note that we did get a recommendation from the Architectural Advisory Committee. They reviewed the signage and they approved the sign without modifications. Just want to point that out for the record.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

CHARLES RETTIG, Coldwater Road

MR. RETTIG: Question in regard to what the code is and setback required.

ADAM CUMMINGS: They are asking for -- well, they previously had one. They previously had one for the front lot line to be zero feet, so the code does require -- I believe it's 15 feet, but in the mid-'90s, when the sign was previously approved to put a smaller one, that variance was granted to be zero.

MR. RETTIG: So this sign, again, is being requested at zero setback; is that correct?

ADAM CUMMINGS: Well, that one stays with the land.

MR. RETTIG: I understand. But this particular -- this is a reapplication really, is it not?

ADAM CUMMINGS: Yes.

MR. RETTIG: Okay. And they're asking for zero setback; is that correct?

ADAM CUMMINGS: Well, no. The zero stays with it. The zero stays with it. The reapplication part is just for the size of the sign. They could go back and put a sign that is the same dimensions that was previously approved. They put that up whenever they would like because the land already has that variance applied to it. So the zero setback --

MR. RETTIG: Stays with the original application carrying through.

ADAM CUMMINGS: Correct.

MR. RETTIG: Okay. Thank you very much.

ADAM CUMMINGS: You're welcome.

DAVE CASILIO, Autumn Wood

MR. CASILIO: Dave Casilio, Autumn Wood.

Is that going to block trucks pulling out, their view of --

MR. LAHEY: The sign will be 47 feet from the middle of the road. It's actually set back about 8 or 12 feet from --

FRED TROTT: I can put this picture up.

ADAM CUMMINGS: Very good question. So this is a picture that superimposes where the sign would be. It's a zero setback for the property line but not right on the street.

MR. CASILIO: Okay.

MR. LAHEY: Yes, we have deliveries.

MR. CASILIO: I know trucks and everything always have problems pulling out.

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

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

ADAM CUMMINGS: One condition I neglected to say earlier but is pretty obvious, you have to have a sign permit. Regardless if this application proceeds with an approval or a denial, if you chose to build the sign with the old dimensions and finally use those ones, you will still have to get a sign permit from the Building Department. Just wanted to throw that out there.

Architectural Advisory Committee signed off on this -- or recommended already.

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

Fred Trott made a motion to approve the application with the following condition, and Mark Merry seconded the motion. All Board members were in favor of the motion.

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

1. A sign permit must be obtained by the Building Department.

The following finding of fact was cited:

1. The amount of signage is similar to neighboring businesses in the adjacent plazas. The architectural standards of these signs achieve the goals and standards of the Town evidenced by the review and recommendations from the Architectural Advisory Committee.
2. Application of St. Pius Tenth Church, owner; 3010 Chili Avenue, Rochester, New York 14624 for variance to erect a 4' by 3' double-faced freestanding sign (freestanding signs not permitted in residential zone), variance for sign to be 7'6" tall (5' allowed), variance for sign to be 4' from front lot line (15' required) at property located at 291 Chestnut Ridge Road in R-1-15 zone.

Ray Howarth was present to represent the application.

MR. HOWARTH: I'm Ray Howarth, and I'm in charge of the cemetery up there. And we're trying to replace the original sign that is there now, which extends this way across (indicating), so you can see from both sides. Now we're going to just put it between the fence that's up there along Chestnut Ridge Road, in front of the cemetery. It will face towards the road. We just want to replace the old one. The old one is falling apart.

ADAM CUMMINGS: That's the one tied right to the white fence, extending perpendicular to the road.

MR. HOWARTH: That's the one we want to get rid of and put the other one in -- in between that -- in the middle of the fence line, along the whole front of the cemetery.

ADAM CUMMINGS: Okay. So this picture that is up here, if we're along the road, you're going to -- you're going to stand at the side of the road and view this sign straight on? It's not going to be double-sided?

MR. HOWARTH: Right. Single-sided.

ADAM CUMMINGS: Yep. In line with the fence, along the fence, behind the fence.

MR. HOWARTH: Going to be in line with the fence.

ADAM CUMMINGS: All right. Excellent.

Before we get to the Board, I do also have Architectural Advisory Committee review of this one. They reviewed it and they asked what the materials would be made of, and it looks like you replied the sign will be metal with stone-faced pillars.

They also asked about lighting for the sign and you replied that it would be lit with down-lit solar gooseneck lighting?

MR. HOWARTH: Yes. Solar lighting, yes. We don't have electric out there.

ADAM CUMMINGS: It looks like they approved the sign without modification. So you do have down-lit and it will be solar because you don't have electrical out there.

I also have the County Planning, they have the referral checklist and they have noted this to be a local matter, for the record.

MARK MERRY: Why are you relocating this sign? Why not leave it in place?

MR. HOWARTH: Because the sign, the original sign there has been there for so many years -- it's made out of wood, and it's protruding a little bit further into -- you're closer to the road. And, of course, the Town doesn't want that. They want it, you know -- so we decided to move it back where it's on our property and in line with the fence. Instead of having a double sign, we're going to have a single sign. That's the reason we did it.

MARK MERRY: And why the change in dimensions?

MR. HOWARTH: The dimensions? The dimensions are almost the same as the other one, only we're going to do it out of concrete block and covered -- face it with stone, make it more modern than it is now.

MARK MERRY: So the dimensions, sir, reflect the height of the gooseneck lighting on top of the sign?

MR. HOWARTH: Say that again.

MARK MERRY: The height of the gooseneck lighting on top of the sign, does this dimension reflect the top of those lights?

MR. HOWARTH: No.

MARK MERRY: What it would be with the lights on top of the sign?

MR. HOWARTH: Small light on top shining down on the sign, dawn to dusk.

MARK MERRY: Would the light fixture itself be a foot above the sign?

MR. HOWARTH: No.

MARK MERRY: 6 inches?

MR. HOWARTH: Right on top of the sign.

MARK MERRY: Right on top of the sign. That's all. Thank you.

ADAM CUMMINGS: To go along with that height of sign, you are asking for 2 1/2 feet higher than it was existing. I'm just curious along with what Mr. Merry just said, what is driving that? The ground? Because you're going farther in, is that what is causing it to be taller? Will the front fence block it?

MR. HOWARTH: Yeah. Basically when you look at it, it will be basically the same height as the other one, but it's in further with the fence line.

ADAM CUMMINGS: It's because the ground is a little bit different?

MR. HOWARTH: Yes.

ADAM CUMMINGS: Then for the setback moving forward or from the front -- away from the road, we do require 15 feet and you're looking for 4. I just want to make sure everybody is clear, from when -- I did my site visit out there, it looks like there is burial plots pretty close to that, so it is not like you could really get the 15 feet.

MR. HOWARTH: No, you can't.

ADAM CUMMINGS: You would be encroaching on someone's space.

MR. HOWARTH: It has to be in line with the fence because there are burial plots close to that right there. We don't want to involve any of that stuff.

ADAM CUMMINGS: I agree.

FRED TROTT: This is going to be placed with the sign that is presently there?

MR. HOWARTH: Yes.

FRED TROTT: In the same spot.

ADAM CUMMINGS: Close to the same spot. It is actually going to be closer to the fence. The one -- the one post is connected to the fence and then it extends to the road. This one is going to be parallel to that fence.

FRED TROTT: Okay.

ADAM CUMMINGS: And pretty much right in line with that fence.

MICHAEL JONES: Just one for clarification. There is an existing sign which is going to be removed and this is going to replace it, so the total number of signs will remain the same; right?

MR. HOWARTH: We'll remove the old sign, yes.

MICHAEL JONES: Very good.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

CHARLES RETTIG, Coldwater Road

MR. RETTIG: Just clarification. The sign is parallel with the road in this proposal; is that correct?

ADAM CUMMINGS: Correct. Correct.

MR. RETTIG: Is there any chapel or any other building structure on this plot with this property in relation to this sign?

MR. HOWARTH: There is a small shed in the back of the cemetery, way back. It has nothing to do with this sign here.

MR. RETTIG: The reason why I ask this question, I would like to make a recommendation, based upon the sign as it is seen, so that there isn't any confusion, I would recommend it be St. Pius the Tenth Cemetery, that they put the word "cemetery" on there, because that's identifying it, rather than a structure or a location for their service.

MR. HOWARTH: It will be St. Pius the Tenth Cemetery.

MR. RETTIG: You just don't have it on there.

MR. HOWARTH: No.

ADAM CUMMINGS: Thank you. Good suggestion.

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

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

ADAM CUMMINGS: Once again, just like the first application, it's a sign, so you will have to get a sign permit from the Building Department. As side Counsel said, we would like -- or I would like to have a condition of approval on there that the existing sign to be removed just so that we don't have another variance request in the future about having two signs.

MR. HOWARTH: It's going to be removed. It's got to come out of there.

ADAM CUMMINGS: Just putting it in writing.

Is everyone on the Board okay with those two conditions?

The Board indicated they were okay with the two conditions.

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

James Wiesner made a motion to approve the application with the following conditions, and Mark Merry seconded the motion. All Board members were in favor of the motion.

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

1. A sign permit must be obtained from the Building Department.
2. Existing sign to be removed.

The following finding of fact was cited:

1. The height requirements are direct results of traffic safety measures that require the respective signage to provide directions and notifications to patrons and drivers at the site. Due to the close proximity of burial plots, it is not possible to locate this sign in accordance with the front setback requirements, but the new, proposed sign will be located further from the front lot line than the existing sign that has resided at this location for more than a decade. The architectural standards of these signs achieve the goals and standards of the Town evidenced by the review and recommendations from the Architectural Advisory Committee.
3. Application of John Gizzi, owner; 132 Stoney Point Road, Rochester, New York 14624 for variance to allow existing two wall signs to be remain on front building (12' by 1 1/2' and 18' by 3') where one sign is allowed at property located at 4415 Buffalo Road in GB zone.

John Gizzi was present to represent the application.

MR. GIZZI: John Gizzi.

ADAM CUMMINGS: Okay. You're obviously -- 132 Stoney Point Road is your address for the record?

MR. GIZZI: Yes.

ADAM CUMMINGS: If you could just describe -- the sign has been here for a long time.

MR. GIZZI: Those signs have been there, as far as I can tell, 40 to 50 years.

ADAM CUMMINGS: So we're --

MR. GIZZI: All I can tell you is I talked to -- one of the tenants that is still in the building. That was there when it was built and those are the signs and that's what's there.

ADAM CUMMINGS: So we're --

MR. GIZZI: Not changing anything. The same signs for 40 plus years.

ADAM CUMMINGS: All right.

FRED TROTT: Any thought of updating the sign?

MR. GIZZI: Nope. No reason to. Functional. People identify the building by that sign. Patients go there. It's been there all this time.

FRED TROTT: What did happen to the public notice, meeting notice signs? It looks like there were stakes in the ground.

MR. GIZZI: I put it in myself.

ADAM CUMMINGS: What happened to it later? Three or four days ago --

MR. GIZZI: I don't know if kids took them or that wind storm took them. I went there myself and personally put them in there.

RON RICHMOND: There were some nasty winds.

ADAM CUMMINGS: I have one thing. Similar to the other two, you will need to get a sign permit. This is all part of it trying to get it compliant with our code.

COMMENTS OR QUESTIONS FROM THE AUDIENCE: None.

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

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

ADAM CUMMINGS: As I said, the one condition, just like the two applications, the sign permit must be obtained by the Building Department. Can keep working with them on that. Anything else from the Board? Doesn't sound like it.

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

Mark Merry made a motion to approve the application with the following condition, and Ron Richmond seconded the motion. All Board members were in favor of the motion.

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

1. A sign permit must be obtained from the Building Department.

The following finding of fact was cited:

1. The amount of signage is similar to neighboring businesses in the adjacent plazas and commercial properties. These particular signs have been affixed to this building for over 20 years with zero written complaints from the neighbors or nearby property owners.
4. Application of John Testa, owner; 75 Chestnut Drive, Rochester, New York 14624 for renewal of Special Use Permit to allow the seasonal sale of produce at property located at 3498 Chili Avenue in R-1-20 zone.

John Testa was present to represent the application.

MR. TESTA: John Testa, 75 Chestnut Drive.

ADAM CUMMINGS: Thank you. And brief history of -- description what you're --

MR. TESTA: Just want to renew my permit, conditional use permit for seasonal produce at my barn at 3498 Chili Avenue. I have done this a few times. Nothing has changed. Same thing I have been doing over the last several years. I don't know -- maybe 15 years it's been.

ADAM CUMMINGS: I know of at least eight. I will say the last application, so the Board knows, he did receive it for a five-year period. Obviously that has now come to the expiration date. The Building Department, I did go and ask if there had been any complaints and they have not received any complaints in the last five years.

MR. TESTA: Very fortunate David Dunning on the Board gave me a Beautification Award last year which was really nice for preservation of the barn, restoring it and keeping the property up so well. So they did give me an award for that that was very nice. Very appreciative.

ADAM CUMMINGS: Very nice. Congratulations.

MR. TESTA: Thank you.

ADAM CUMMINGS: So as we get into this, the history on this one, there is an absolute of conditions that we do put on these type of special use permits, so once again, this is isn't an area variance we're looking for. It's a Special Use Permit. As I said, it will be a five-year period. Since you haven't had complaints, I don't see any reason to reduce that, so the one condition would be it is granted for a period of five years if it was so approved tonight.

Is anyone from the Board against that?

The Board indicated they were not against that.

ADAM CUMMINGS: A second condition is that no product is to be sold, stored or displayed on the property to the east of the lot, which is where the house is.

MR. TESTA: Right.

ADAM CUMMINGS: We would like to continue that one just so there is no spillover.

MR. TESTA: Yep.

ADAM CUMMINGS: Condition 3 is on the west lot, which is referred to on plans, I believe, as R-3B or the street address of 3502 Chili Avenue. We would like to impose no carts or temporary display structures to be on this parcel. However, we will allow the display of seasonal produce items for sale around the ornamental tree base in the mulch just like you had in the past. That goes along with the Beautification Award that was provided.

Your landscaping equipment is to be stored in or behind the barn, with minimal exposure to the neighbors as -- as soon as possible at the end -- or to minimize exposure as soon as possible at the end of your season.

MR. TESTA: Yes.

ADAM CUMMINGS: Which you have done a good job so far.

The Building Department, if you continue to work with them, but we'll put a condition that you work with the Building Department to address parking as required, which I haven't had any complaints, so it sounds like you're compliant with that condition.

And in terms of employment, we did issue a condition that you were allowed four additional family members to be employed.

MR. TESTA: Right.

ADAM CUMMINGS: I'm not sure if you want to dispute that, expand that, include it? I'm not sure.

MR. TESTA: That's about it. Four extra cars.

ADAM CUMMINGS: And your open season we did mark it down from March 1st to November 15th for a seventh condition. Are you okay with that operating period, still?

MR. TESTA: Yes.

ADAM CUMMINGS: So shutdown is really November 15th. March 1st, I don't see you open that early, but just --

MR. TESTA: End of the season, gives us a time to clean up all of the pumpkins and stuff.

ADAM CUMMINGS: Right. And then condition 8, can only stay open from dusk to dawn. Now, understand that if you have a self-help part of it --

MR. TESTA: Yes.

ADAM CUMMINGS: And Condition 9, the stand to be minimum 40 feet from the road right-of-way.

MR. TESTA: I've never moved it, so.

ADAM CUMMINGS: Yep. So those are the nine conditions. I'll read those again at the end or if we have more to come in, or if we want to slim those down a little bit with this Board, we can discuss it later.

JAMES WIESNER: Missed a couple, didn't you, from the original?

ADAM CUMMINGS: I did remove a couple. They kind of went above -- above what our allowance is.

JAMES WIESNER: Just checking.

ADAM CUMMINGS: I did -- I did take a couple off.

JAMES WIESNER: Modified it.

ADAM CUMMINGS: I'm the Chair now. With that, we go to Board questions.

FRED TROTT: No questions. This is a beautiful place and I enjoy going there.

RON RICHMOND: I'll have to agree with Fred (Trott).

#### COMMENTS OR QUESTIONS FROM THE AUDIENCE:

DAVID CASILIO, Autumn Wood

MR. CASILIO: I'd like to present some pictures.

ADAM CUMMINGS: If you could -- for the record identify yourself. I know you spoke before.

MR. CASILIO: Dave Casilio.

ADAM CUMMINGS: To help us out, if you could put them on there, we can see them on the screen here.

MR. CASILIO: So -- it's a little glossy for you.

ADAM CUMMINGS: It's okay.

MR. CASILIO: I live directly across the street from the property. You can see the damage

to the pavement there.

ADAM CUMMINGS: Yes.

MR. CASILIO: So that's at the entrance of the -- the one entrance. And here is the other entrance.

ADAM CUMMINGS: I think it's the curling -- okay. I can see it.

MR. CASILIO: So a lot of this comes into my lawn (indicating).

ADAM CUMMINGS: Yep.

MR. CASILIO: So then I'm constantly having to -- it's in the lawn there ruining my lawnmower. So -- you will see that, you know, it's only in the position where, um -- in front of -- across from his driveways that's occurring. I believe that's from people making left-hand turns and then the cars that have to swerve around him and they're breaking the pavement up. And so that is ending up in my lawn. And so I'd like to see that remedied.

ADAM CUMMINGS: Well, the issue the Town is going to have is it is not actually a Town road, so that's --

MR. CASILIO: It's a State Road.

ADAM CUMMINGS: So we really need to address that with the State. So if you can bring that to the Supervisor's attention, that is part of their road maintenance and they need to pay attention to that.

MR. CASILIO: I mean the reason for it is because the people turning into the special use -- special permit section.

ADAM CUMMINGS: Well, I'd like to see -- I'd like to see a little more proof on that. I -- I would love to help you out with that, but I can't say for certain it is people going across there. It could be the snowplows. It could be bad pavement.

MR. CASILIO: Would it just be exactly across from those two driveways?

ADAM CUMMINGS: I -- I can't fathom a guess for the exact reason, but we can certainly work with the Department of Transportation at least on the Town's end to try to get them to fix that.

MR. CASILIO: You just said it's a State Road.

ADAM CUMMINGS: The Department of Transportation is -- the New York State Department of Transportation.

MR. CASILIO: I called the State and left a message, but it doesn't do any good.

ADAM CUMMINGS: That is why you work with the Supervisor's Office and maybe he could have a little more political pull to help out with that. The other part to help address that, that is a white line, so that is actually people breaking the law and they're not supposed to be passing on the right-hand side. That is another one to bring up to the Town. You could have the Sheriff's Office start enforcing that.

MR. CASILIO: It's supposed to be a bicycle, you know, pedestrians and -- you know, runners and that and they have this broken up pavement. It's a real hassle.

ADAM CUMMINGS: I agree.

MR. CASILIO: I hate it coming into my lawn. What am I supposed to do?

ADAM CUMMINGS: It is a very big inconvenience, I agree, but I don't know what our Board can do other than report it back to the --

MR. CASILIO: Well, you can cancel the permit.

ADAM CUMMINGS: But that's not guaranteed to fix your problem because if it's bad pavement, that could still end up every snowplow season showing up into your -- into your front yard.

MR. CASILIO: All right. All right. So who -- who am I supposed to contact?

ADAM CUMMINGS: I can also talk to David Dunning off -- off from the Zoning Board of Appeals, but Dave Dunning and Dave Lindsay, our Highway Superintendent, and Highway Commissioner -- I forget his exact title. They would be the two gentlemen I recommend you speak to.

MR. CASILIO: All right. Thank you.

MARK MERRY: What is your address?

MR. CASILIO: 34 Autumn Wood.

ADAM CUMMINGS: He is right across the street.

MARK MERRY: Thank you.

NICK TRIFIRO, 43 Black Cedar Drive

MR. TRIFIRO: Nick Trifiro. I live at 43 Black Cedar Drive. I'm directly behind the barn.

ADAM CUMMINGS: Okay. Can I -- yes. Bring it right on up. I will go ahead and read it tonight so it is in the record.

MR. TRIFIRO: I have copies for everyone.

ADAM CUMMINGS: That is fine. I will add it to the folder but just so the public can hear it. Because it -- the reason why I'm going to read it tonight, it was not in the project folder they could have reviewed before tonight.

MR. TRIFIRO: I wasn't aware.

ADAM CUMMINGS: That's fine.

MR. TRIFIRO: Of the meeting until --

ADAM CUMMINGS: Then I'm glad you made it. Thank you. So once again, this is dated today.

MR. TRIFIRO: Yep.

ADAM CUMMINGS: "To whom it may concern, this letter is intended to address the

renewal application of Mr. John Testa to allow him to continue the sale of fresh produce at his barn on Chili Avenue. I'm concerned that Mr. Testa has been using the barn beyond the scope of the allowed use and it seems the barn is not a safe place to store the produce.

I have lived behind Mr. Testa's barn since 2007. In that time, I have experienced many things. First, Mr. Testa has used other adjacent vacant property for his own use on a regular basis for many years. There is an abandoned home next to the barn I have witnessed Mr. Testa use it to park his trailer full of commercial lawn mowers, use the backyard of this adjacent home to drive through and find more convenient ways to enter Chili Avenue with his trailer and allow others that work for him to use the property in a similar manner.

Second, Mr. Testa uses the barn as a catchall storage area. He stores boats, trailers -- boats and trailer, commercial landscaping equipment, empty containers in the open" -- I'm assuming "open area behind the barn. He allows employees of his landscape business to park their cars both in the backyard area of the barn and on the property of the vacant home next to the barn. I know this because I have to look at this every night when I come home from work during the summer. As a homeowner with children, this concerns us as it attracts strangers to the area of our backyard. With that comment, I should mention that I consistently have to ask people to leave my property which Mr. Testa -- Mr. Testa has incorrectly informed that they are permitted to fish in the pond in my backyard which is not his property.

I know Mr. Testa has been in the news, that people have stolen from him and destroyed his property during the last few years, and it concerns me that his barn is attracting such individuals to this area, or to our area.

Third, I don't know how Mr. Testa gets power to his barn, but I do know that he has refrigerators in his barn, and the light shines from his refrigerators out of the back of the barn on many nights during the summer months, so I assume Mr. Testa is storing produce and other perishables in the barn. But what people don't see is that there are families of woodchucks, muskrats, raccoons and other small animals in the open entering and exiting the barn. From what we can tell, Mr. Testa has done nothing to control this infestation. I'm not sure if this is a health issue, but I think the community should be aware.

My concern, beyond Mr. Testa's lack of respect for me as his neighbor is that Mr. Testa is misrepresenting the use request of this facility when asking to have a produce stand in front of his barn to sell goods during good weather. What I have observed is Mr. Testa going beyond the scope of the use permitted and using the barn and land around the barn as a commercial storage facility and operation center for his landscaping business.

Personally I don't mind the storage of equipment in the barn as long as I don't see the activity, the equipment left outside, the vehicles parked behind the barn or the small animals running in and out of the barn.

Keeping these thoughts in mind, I am respectfully requesting of this Board to use their best judgment when considering this renewal as if this business was behind your own home.

Sincerely, Nick Trifiro, 43 Black Cedar Drive, Rochester, New York 14624."

Thank you.

DOROTHY BORGUS, 31 Stuart Road

MS. BORGUS: Could you tell me when Mr. Testa's conditional -- conditional use permit expired?

ADAM CUMMINGS: It expired on -- most likely, it's set to -- or it did expire on November -- well, five years would have been November 2013. I don't have the property card, so I can't speak to that exactly. I'm going off of the date of the meeting where the five year one was granted before, and five years beyond that would be 2013.

MS. BORGUS: My next question would be, what's been going on for a year and a half with this project, with this application?

ADAM CUMMINGS: I do not know the answer. That's a very good question. Let me ask the applicant.

Have you been working with the Building Department during this time?

MR. TESTA: I didn't realize that they sent -- Kathy (Reed) sent a notice to me back in November that it needed to be done and I didn't get anything prior to that. That's why I didn't even know it needed to be renewed. I've been going to the doctor. I have cancer and I have been doing that this winter.

In the spring, I know we're starting back up, so I went in to see Kathy (Reed) and told her and filled out the application. She helped me do it. So I never realized I needed to do it, because no one ever sent me any information.

ADAM CUMMINGS: Well, the onus is on you, too.

MR. TESTA: Yeah, I -- I didn't -- to be honest, I didn't even know the five years was up, to be honest with you.

ADAM CUMMINGS: Well, I'm not old enough to remember five years ago -- actually, I am, because I was here, so I unfortunately am aware that it has been five years, so we'll ask the Building Department to make sure that we are reminding people in a timely fashion.

MR. TESTA: I did come right in when Kathy (Reed) sent the letter. I ran into the Building Department.

MS. BORGUS: That does not -- I'm sorry, are you finished? I don't want to interrupt.

ADAM CUMMINGS: I'm finished.

MS. BORGUS: That doesn't quite jive by a long shot from what I heard today in the Building Department. They have -- Kathy (Reed) has been sent -- had sent three or four letters to

Mr. Testa. They have been on his case relentlessly trying to get this resolved. It's been a year and a half. In fact, the whole last season, he operated illegally. And it was a source of frustration in the Building Department, and, um, it seems to be since Mr. Testa has been trying to run businesses -- businesses out of that location -- I want to emphasize more than one -- that he is not very mindful of our codes.

What I'm -- what I would like to know now is how many people on the Board walked that property when -- went all of the way around it, saw it from the back?

ADAM CUMMINGS: We can't actually.

MS. BORGUS: Oh, yes. I saw that in your paperwork today. There is permission given on the application now.

ADAM CUMMINGS: Really?

MS. BORGUS: Yes. And the -- the applicant agrees to let the members of the Zoning Board on the property for inspection. I read it today.

ADAM CUMMINGS: I have never heard that.

MS. BORGUS: Well, now --

ADAM CUMMINGS: I am now educated.

JAMES WIESNER: Where is it? I don't see it?

MS. BORGUS: I saw it in the file.

ADAM CUMMINGS: I've never seen a document that says that.

MS. BORGUS: Maybe it's a new form.

ADAM CUMMINGS: Mr. Testa, are you aware that you signed --

MR. TESTA: No.

ADAM CUMMINGS: -- a document allowing us to go in there?

MARK MERRY: Are you holding out on us?

ADAM CUMMINGS: I don't like to go on private property, so no.

MICHAEL JONES: I haven't heard about that either, people going on private property.

MS. BORGUS: I will go back and find it.

ADAM CUMMINGS: I will go back and advise the Board I have not seen anything with a statement like that nor if there was a statement I would like on the record to advise the Board, do not go on the private property without the property owner and most likely the police force with you. Not to say this applicant needs police force, but in the future for any of them.

RON RICHMOND: There is no fear of me being non-compliant on that.

ADAM CUMMINGS: Thank you, Ron (Richmond).

I don't know how to address that.

MS. BORGUS: You don't know how to address that. Okay.

Well, today I took the time to take a good look at that property, and what I see between the -- the east edge of the barn and where Mr. Testa's equipment, supplies, whatever end, which is almost over to the next house --

ADAM CUMMINGS: Correct. Which he does own. We do not allow him to store at that facility, correct.

MS. BORGUS: But it's there. It has been there. It's there now.

ADAM CUMMINGS: And I will ask the Building Department and Code Enforcement to continue to observe that one, but I have not received a report from Code Enforcement he is not complying.

MR. TRIFIRO: I think -- I think Code Enforcement --

ADAM CUMMINGS: Please identify yourself for the record.

NICK TRIFIRO

MR. TRIFIRO: For the record, Nick Trifiro. I have been listening.

I know that Mrs. Borgus takes the onus on herself for a lot of these things.

ADAM CUMMINGS: Yes.

MR. TRIFIRO: But tonight I'm going to reinforce her statement that I have talked to Code Enforcement, particularly about the animals that come in and out of the barn and the collection of items on the east side of the barn. And we have had discussions that it isn't right, that this collection stays there and that these animals are coming in and out. Concerns us. We think it should be somewhat restricted so that we don't have to look at it, at a minimum, and that these things are stored away inside the barn. Nobody has a problem with that. It's -- it's the activities outside the barn and behind the barn that are concerning. So when you are looking at conditions for the use of this barn for produce, these are things that concern the immediate neighbors.

ADAM CUMMINGS: And to be clear, we're going to try to discuss and address as many of these as possible, but we aren't focused just on the barn. Ours is the entire property. I will point that out to. We do our best to impose conditions of the entire property. The inside of the barn, we really can't do too much about that, but we'll definitely put restrictions on to help protect the neighborhood as best as we can.

MR. TRIFIRO: Okay. Thank you.

MS. BORGUS: Today I made a list of just what I could see from the road on this property.

Assorted aged wood. I mean junk wood. Gray, weathered wood, piles of it. What looked to be a cement mixer. Maybe it was a spreader, a -- a seed spreader, fertilizer spreader. I don't know. It was big.

A huge pile of old straw, loose. Aged, mess -- you know, not nice, pristine yellow straw.

This was a mess. Piled in -- closer probably to the next home than the barn.

A picnic table. A boat. A large boat on a second trailer. A lowboy trailer -- a boat trailer.

Um, a box trailer covered, looked like aluminum, big. A lowboy trailer.

A huge mulch pile, decorative cement urns, trash cans, plywood, four pickup trucks, a John Deere tractor, a huge pile of bricks.

And so much assorted landscaping equipment that I couldn't identify it all because it's all just shoved together. I suppose because he is coming tonight, it is supposed to look like less stuff if it's bunched up. It was literally touching -- appeared to be touching all of the other pieces. It was just all pieced, shoved together like a jigsaw puzzle.

The problem, you see, and I have pictures -- maybe would you like to see those.

ADAM CUMMINGS: Certainly.

MS. BORGUS: They were taken --

ADAM CUMMINGS: After we take a look at them, I will put them on --

MS. BORGUS: The 22nd.

ADAM CUMMINGS: Of April?

MS. BORGUS: Uh-huh.

ADAM CUMMINGS: We'll put them up on the overhead after everybody on the Board is able to see them. I think they will be glossy like the last set of photos.

MS. BORGUS: Now, as I see it, the problem is not renewing a conditional use permit to sell fruits and vegetables here. The problem is that the whole property is out of compliance with our zoning code.

Completely. I mean, you have -- that house, regardless what Mr. Testa said on his application, where he states that the -- that this variation from the code will not -- will have none, no effect on the proposed -- on the neighboring properties. And he said that it's -- that there is large open lots on both sides of the property in question.

Well, I beg to differ. There is residential on four sides of the property in question. Very expensive homes, well-kept homes. People care. This is why we have zoning. This is why every Town has zoning. Mr. Testa doesn't think zoning applies to him for some reason.

Um, I have a problem with his application in the fact that he -- he -- the question is, what is the total square footage of the dwelling. Now, obviously there is no dwelling here, but he lists the lot size.

Then it says, "What is the total square footage relating to the business?" Which obviously is the barn.

ADAM CUMMINGS: Well, let -- let me clarify that. So the way the Building Department is asking -- because we're using a Special Use Permit, which is really geared towards a home occupation.

MS. BORGUS: I understand that.

ADAM CUMMINGS: That is why it's looking for a question that is not really a legal requirement. So when they ask dwelling, they advise him to put the entire lot because that's his whole lot. In regards to relating to the business, that is 16 feet by 8 feet, which is the cart, because we're focusing on the sale of produce here. That is how his application is written.

MS. BORGUS: But he is supposedly using that barn to store fruits and vegetables and produce. I -- that was --

ADAM CUMMINGS: That's going to be one of the questions I have after we finish public comment.

MS. BORGUS: In the prior times when he has been here, he insisted that was the use of the barn, was the storage of his produce. Well, then -- then the square footage relating to the business cannot be 16 by 8.

Also on his application he said how many vehicles are there -- aren't there now belonging to family members and he listed one. Well, there is routinely, five -- four, five, six pickup trucks there. This is very misleading and I think it's intentionally because it seems like from the beginning at least in my mind and the mind of others Mr. Testa has used this produce business as a front so that he could use the barn for other -- his other business. It's getting the door open.

He also said in the last time he was in here he had planted 60 fruit trees out back. I don't see any fruit trees at all. In five years, I think 60 trees would be noticeable.

I'm not done.

ADAM CUMMINGS: I was waiting for you to get organized.

MS. BORGUS: Yes. I'm catching my breath.

When Mr. Testa was here before, he -- he said it was all right what he did, in his mind at least, because it was neat. Well, now you know what, he can't even say that, because it's not neat. And I pity the people that live on the street behind this that have to look at that mess.

And I think it's awful that we're trying to improve the looks of Chili Avenue. I have served on committees to do that. We have come up with plans and yet we allow that mess that I just described in part just because that was all I could see, we -- we allow that on our Main Street in a section of very, very nice well kept homes.

I have heard of spot zoning. We have some of that in Chili. This isn't even spot zoning because it's not zoned what he is doing with it. It's time that this Board took issue with this and stopped it. Who knows what kind of pesticides, fertilizers, gasoline or what is in that barn to do with the businesses running out of there. You have no way of knowing. It could be anything. If there is a fire and the firemen have to come, they don't know what -- what kind of smoke and fumes they're going to endure, because nobody knows even what is in that barn.

ADAM CUMMINGS: Which to be fair, that could be said for many residential properties with large storage structures.

MS. BORGUS: That is true, but this one is a glaring, glaring defiance of our zoning codes

and I think it's time after as many times as this man has been in here that this Board takes issue with it and deals with it. Enough putting this off. Deal with it.

Thank you.

ADAM CUMMINGS: Thank you for your comments.

MR. CASILIO: I would just like to see the address put on the barn.

ADAM CUMMINGS: Okay.

MR. CASILIO: Because, you know, fire or whatever, or you know, if there are accidents to be reported, um, the police have no address numbers to look at to record the problem or whatever.

ADAM CUMMINGS: Okay. I can ask that the -- the Building Department on that. I would have to check the property lot lines, because if it shares a street address with the house, our code really requires it to be at the house and not the barn, if it's a shared lot.

MR. CASILIO: It isn't, but you can check.

ADAM CUMMINGS: I will just check on that, but that's a very good suggestion.

MR. TESTA: The mailbox has the number. The post behind the mailbox has the number and above the electrical service for the RG&E is 3498. I have three identifications on the building.

ADAM CUMMINGS: Okay. Thank you.

CHARLES RETTIG, Coldwater Road

MR. RETTIG: Just first wanted to have the Board note the location of the Chili Zoning Board of Appeals sign. I believe -- I don't know exactly what the code says or what the sign says, but something like 10 or 15 feet. That sign is about 30, 40 feet back from the road. You can't even read it.

Are you aware of that?

ADAM CUMMINGS: I did see the sign there. I did not actually -- actually, I'm not even aware of a legal requirement of where or how far away from things that sign needs to be, because we have had previously applications that put it in windows, if they don't have a pavement or an A-frame to put it in there. But I can check with the Building Department.

MR. RETTIG: Would you -- could you ask Counsel?

ADAM CUMMINGS: I -- Mike (Jones), is there a -- is there a requirement for those signs, for -- for the -- the public notification signs, is there a setback requirement to make them legible?

MICHAEL JONES: The public notification signs put on the property are a construct of the local Town Code. It's not a State Code. It's a local requirement. The local requirement does not specify dimensions or placement. Just that it must be placed upon the property.

MR. TESTA: I use the sign. I have the same Board that I have mounted all these times I've been going. I have three signs and put it in the exact same spot each time as I come here. So I put it right in front of the little display I had and staked it off the ground. I have used the exact same board and the stake.

ADAM CUMMINGS: Well, it sounds like you're compliant with the Town Code. That's our answer for that.

MR. RETTIG: I have no problem with the fact that the signs are up. The fact is, they're not readable and I want to make note of it. They're so far back, it was not readable. Just for the record.

ADAM CUMMINGS: Thank you.

FRED TROTT: For the record, if they're 5 feet in front of me, I could not read them either (Laughter.)

ADAM CUMMINGS: We're not about to handle your issues.

FRED TROTT: There is a lot of writing on a very small sign. I always go by and have to figure out if it's a Zoning Board sign or a Planning Board sign.

MR. RETTIG: Understood, but if our code requests that they be up front -- I hear what he is saying, that they be on the board and so on, there is no reason why they couldn't be -- as the sign -- I believe they give the signs to the individuals with specific requirements.

ADAM CUMMINGS: But once again, it's not written in our code so we can't really enforce that part. After the Town Board reads these minutes, they may consider it. I can't say they will change the Town Code, but they may consider it.

MR. RETTIG: Just want to make the comment they were far back, difficult to read accordingly.

ADAM CUMMINGS: Thank you.

MR. RETTIG: It should be noted that the barn is only 7/10 of an acre. The property on the west side is .46 acres, which is part of this Special Use Permit, as I understand it; is that correct?

ADAM CUMMINGS: Correct.

MR. RETTIG: On the east side is a vacant house that's on .73 acres that is owned by Mr. Pritchard. It's in foreclosure, but that is not the property of this particular applicant.

ADAM CUMMINGS: Correct.

MR. RETTIG: Okay. That property to the east, as I understand it, per the Building Department, is half of the driveway on the east side. Mrs. Borgus mentioned, and I will also mention, that there is a lot of hay, hay bales, wood and the gentleman from 43, the back road, also mentioned there -- he has stored other equipment to the east. That should not be done, and it should not be allowed to continue.

My most important fact is the fact this is an R-1-20 zone. Everything around it. Houses in

behind him. Houses to the left and right. And across the street. Autumn Woods are an R-1-20. That's residential.

I want to point out that Mr. Testa, 75 Chestnut Drive, has two conditional use permits or business permits out of the home. The reason why I mention that? I mention that as a hairdresser and landscape business. The reason why I mention that is because we're talking about produce on this barn property, per this Special Use Permit request. And, we see, as is stated by the other gentleman behind, and Mrs. Borgus, we see considerable landscape equipment that is now stacked on the east side of the barn, stacked so close, he can't even move one piece of equipment without moving them all. It looks nice now, but I believe the gentleman before said that there is -- has been equipment behind the barn, run behind the barn, stored behind the barn and I'm talking about landscape equipment.

This Special Use Permit for produce, reading the minutes of the previous meetings, is for the produce and the wagon cart for selling produce to be moved behind the barn. It said nothing -- your comment earlier said that equipment can be stored --

ADAM CUMMINGS: Within --

MR. RETTIG: You stated landscape equipment behind the barn. That's incorrect. It did not state landscape equipment and landscaping business, which is a commercial separate business should not be stored on this property, behind the barn, inside the barn, because it's commercial property in an R-1 zone. You wouldn't have that equipment besides your house with houses right along in a row in an R-1. This is R-1 and he should be following the code the same as everyone else.

ADAM CUMMINGS: Thank you.

MR. RETTIG: Also, this landscaping equipment on his property and running the landscape business out of this property, commercial landscaping business out of this property, there are, and it has been pointed out by others, additional vehicles on the property, employees' vehicles as they drop their vehicles and take the landscaping equipment that should not be allowed as part of this special use or conditional use sale of produce on this barn property, period.

I believe there have been other complaints. You indicated you have nothing brought forth.

ADAM CUMMINGS: I have not received anything until tonight.

MR. RETTIG: I understand. But we're bringing up -- Dorothy Borgus brought up --

ADAM CUMMINGS: Duly noted.

MR. RETTIG: -- complaints of the extension to renew the permit, the conditions of landscape equipment, the conditions of debris on the property line and on the adjacent property to the right as you look from the front of the facility.

My bottom line is, that it's an R-1 zone and commercial business should not be in any way stored, used out of this property.

ADAM CUMMINGS: Is that the final point?

MR. RETTIG: (Nodded.)

ADAM CUMMINGS: No?

MR. RETTIG: The previous conditions indicated that the driveway would be closed after hours with chains across the driveway. The gentleman who is mentioning the pavement problems, as a for instance, is not only that. I believe he previously mentioned lights on his property at night with cars turning around in that property. That was the reason why previous requests was for chains across when the facility is closed.

Also, it was stated that -- for the produce cart, when the facility is closed down, not only the chains across, but there be a closed sign. Number 1.

Number 2. So you have chains, Number 1. Closed sign, Number 2. And it is stated to have drop down curtains on the cart indicating some indication to the general public it is closed and it's not open and it's specifically unavailable at that time for additional business.

ADAM CUMMINGS: Mr. Rettig, out of curiosity, is that out of the minutes that you're reading that? Because I don't have that as the conditions that were imposed on the last variance.

MR. RETTIG: Okay.

ADAM CUMMINGS: Or the last Special Use Permit.

MR. RETTIG: November 25th, 2008, minutes.

ADAM CUMMINGS: That's what I'm asking. You're reading it off the minutes and not the documented findings sheet?

MS. BORGUS: No.

MR. RETTIG: I can go back to the findings.

ADAM CUMMINGS: Mrs. Borgus -- real quick I will go out of procedure here.

MS. BORGUS: Would you like my copy?

ADAM CUMMINGS: Mrs. Borgus, if you could bring that up.

MS. BORGUS: I got this from the Building Department.

ADAM CUMMINGS: I did not. So.

MR. RETTIG: Thank you, Dorothy (Borgus).

MS. BORGUS: You're welcome.

ADAM CUMMINGS: This is the same one that I have.

MS. BORGUS: Look at Number 3.

ADAM CUMMINGS: It says, "Cart sides to be closed, dropped at the end of the day."

It doesn't say anything about chains. That's what's throwing me off. For the driveway, I don't remember imposing chains on the driveway because we were concerned there -- there could be a concern about --

FRED TROTT: If somebody pulls in.

MR. TESTA: They were pulling in with the chains, running with the chains and taking the gates right down.

ADAM CUMMINGS: Or emergency response.

FRED TROTT: Liability issue.

ADAM CUMMINGS: There is an old condition about cart sides to be closed or dropped at the end of the day. I don't believe your wagon has that capability.

MR. TESTA: No.

ADAM CUMMINGS: That's why I didn't read it tonight as one of the conditions, because I didn't see a way to really do that. I've seen wagons that can do that, but not constructability on your wagon.

So proceed, Mr. Rettig. Sorry for the interruption.

MR. RETTIG: That's fine. I understand. But to go to Number 4 which states, "All equipment be stored in behind barn with minimum exposure to neighbors as possible at the end of the season," this statement on the conditions is referring to sale of produce.

ADAM CUMMINGS: Correct.

MR. RETTIG: And you made a statement, and I heard you earlier, all landscape equipment stored behind the barn. This does not reference and has no reference whatsoever to the landscape equipment and the degree of landscape equipment that the neighbors are seeing behind and beside the barn. Therefore, I think that is a clarification that needs to be very, very specific.

ADAM CUMMINGS: Yes. I will address that in the future.

MR. RETTIG: Thank you.

MR. TESTA: Can I comment on that?

ADAM CUMMINGS: Certainly.

MR. TESTA: All of the vehicles, all of the trailers, which is the boats, the cars, are all my vehicles, per -- in my name, registered in the State of New York and insured in my name. Everything is -- that is sitting on the side of that barn is my personal stuff. That's my stuff. It's not in the corporation's name. It's all insured, registered. Every vehicle there is in my name. If you take registrations off every one of those vehicles, they're mine personally. So I mean, it's nothing commercially. That -- the big box trailer is mine.

I have antique cars in the barn that I restore. You know, I collect cars. So that is my car hauler trailer. My boat that is sitting there which would go to the cottage. I have the other tin boat sitting there. My daughter's white Ford Escort is there. Um, have the black pickup truck. It is registered in my name. And my red truck is registered to me. I mean, there are no vehicles there at all that are not registered and insured in my name.

ADAM CUMMINGS: And includes all trailers, everything?

MR. TESTA: Everything that is there, if you take the registration, take a picture, go to the Motor Vehicles, it is registered and insured in my name.

ADAM CUMMINGS: I understand that, but are there trailers that are used for the business?

MR. TESTA: No. I have a flatbed trailer for the -- for the antique truck. I have a boat trailer. I have the enclosed car hauler trailer that is enclosed sitting there. I have my red four-door pickup truck that tows the trailer and my black pickup truck and my daughter Leah's car. They're all registered, insured in the State of New York and my name.

ADAM CUMMINGS: Just so I can have history on it, I will call it, for lack of a better term, I have seen trailers that haul tractors and have side stands to hold -- I don't want to use the term, but weedwhacking equipment or handheld lawn manicure equipment.

MR. TESTA: Which never stays there.

ADAM CUMMINGS: That comes and goes?

MR. TESTA: That comes and goes and never stays there overnight. That is my stuff. That is my equipment.

ADAM CUMMINGS: Is that picking up any of the brush piles or mulch or anything stored there?

MR. TESTA: The mulch pile is there for my barn. I did the whole front. Now I have to do the side lot and I have to do the back. The rest of the 8 yards or 10 yards there I will need more than that to finish what I need to do.

ADAM CUMMINGS: Around the barn.

MR. TESTA: Yes. I use that color at my house. So that's -- that rest of the pile has to do all of the rest of the trees to the west and the back. Each year I use about 60 yards of mulch. It's very costly, but I want to keep it nice.

ADAM CUMMINGS: Thanks for the response. I don't want to interrupt Mr. Rettig.

MR. TESTA: The John Deere tractor there is to load the mulch. I have to have a tractor there. I mean, it's a big place. But that's mine personally. It's not a -- all that stuff is mine. It's not business stuff.

ADAM CUMMINGS: Okay. Thank you. Mr. Rettig?

MR. RETTIG: Thank you for his explanation.

I just want to make sure that the Board clarifies and makes those specific clarification points because we don't know -- you don't know if he is or is not storing fertilizer and pesticides in the barn.

And my comment, my bottom line comment, again, being an R-1-20 zone, even with that amount of equipment, beside or behind his barn, would you be allowed to keep that much

equipment -- we're not talking about cars used every day in and out of the driveway -- would you be able to store them or as the gentleman at 43, the back property indicates, that equipment all over the backyard at certain times that is unsightly? And that's a point that -- I mean now it looks real neat and everything is tight on the east side of the barn. But that's not the norm. And I think that should be noted.

MR. TESTA: I'm confused, because the Town came to me last year and gave me the Beautification Award how beautiful the facility was and how much effort I put in to keeping it nice and now this -- I don't understand. They came to me and said how nice the facility was. They had pictures. They had pictures of the barn. They took pictures of the whole facility. I'm kind of confused where this is all coming from. If I was -- if I was doing something wrong, you know, I would change it, but I mean the Town came to me and said, "You're running a beautiful facility. We're so happy to have you as a business there. You're doing a great job."

I don't understand what I did wrong in just a year. I mean, this is crazy. I --

ADAM CUMMINGS: I can't speak to either of those sides. It's hearsay on both sides.

MR. TESTA: If I was doing something wrong, you know, I would change it because that's -- why would I change something if they just gave me this award that says it looks so great? I'm confused. I'm confused.

ADAM CUMMINGS: I can't answer for any of them.

Mr. Rettig?

MR. RETTIG: Just to make a further comment, I can say in the front, for what he has done, it does look nice, in front of the barn. However, we should note for what he stated he was going to put 60 fruit trees in the backyard, he didn't do that. The fact that the -- we have these questions and are bringing them up, logically for this Board to look at and consider. One of those things happens to be a silo with no cap. That can be dangerous from a building construction -- building structure standpoint in the neighborhood. Normally, the Building Department makes them take the silos down because that can be very dangerous. Kids playing around, going around a silo like that without a roof, can deteriorate very quickly. So that's -- that's a different issue in the Building Department, but I am trying to separate the -- I will state it quite frankly, the political versus the factual information that we're addressing at this Board for the permit, for the sale of produce only.

ADAM CUMMINGS: Perfect concluding statement.

MR. RETTIG: So my -- my summary point is, based upon what Mrs. Borgus pointed out, that there is now a provision for inspection, and I understand the -- with the complaints and the comments made here tonight, and I understand the Board's reservation not to view the property alone. I understand that. But I want it -- I would like to request that this specifically be tabled tonight until these problems are corrected, number one, and number two, that this Board, with whatever authority and compatriots, whether it be Building Department and/or Sheriff's Department, if you desire to do that, based upon what he signed, that you inspect the property. I think it's important enough, because if there's a fire in a residential area, and there are considerable fertilizer or pesticides that the Fire Department has to fight with number one, but that the residents have to breathe with the fire -- hope we don't have it -- but that is something that we should be looking at now, not putting off, and that's something that this Board should address.

Therefore, I request that this be tabled at this time until these problems are addressed.

MR. TESTA: Can I comment on that?

ADAM CUMMINGS: We will consider it, but in terms of -- but in terms of the Board, um, from every angle that you could think of from a public right-of-way, we can gain access to the site of those. To -- to address here specifically in terms of pesticide inventory and things within a barn, that is under Code Enforcement. Whether they can get onto the property or not. I don't believe that is under the purview of our Board and I don't want to risk overstepping our bounds.

MR. TESTA: Can I just --

ADAM CUMMINGS: Sure.

MR. TESTA: My daughter is a firefighter, a Chili firefighter. My whole family is in the Chili Fire Department. There is no pesticides. There will never be any pesticides. There is nothing hazardous in there if the building could burn. My daughter is a firefighter. I know better. There is fire extinguishers at every entrance. There's smoke detectors. I come from a firefighter background.

So I can assure you there is nothing hazardous in there, nothing that is going to harm any of the neighbors. Absolutely not.

ADAM CUMMINGS: Thank you.

Well, with that, Mr. Rettig, would you like to expound upon anything else tonight? Otherwise I would like proceed with hearing other public comments or closing the public comment period.

MR. RETTIG: Appreciate the comment that -- the response. Nothing dangerous being stored or hazardous fertilizers or pesticides being stored in the barn, for the record.

MR. TESTA: I have to be honest with you, I have several antique cars, and they're very expensive, so I keep the place very nice. It's safe. It's clean. You know, I don't want to lose my investment what I have inside that barn. So I protect that at all -- and I have put -- I have put so much money into the facility. I mean, I use the produce stand to gain some income to pay for the renovations on the barn.

Now I will put new siding on it this year. I have put several, tens of thousands of dollars in

that facility every year. It's not cheap to keep that place nice. How many barns do you see in the Town of Chili that look that nice? I put a lot of time and effort into that place to make it look nice. I don't understand why -- I'm willing to --

ADAM CUMMINGS: We're taking -- the beautification really part has no -- no part of our decision tonight.

MR. TESTA: Right.

ADAM CUMMINGS: It's a nice -- it's a nice award.

MR. TESTA: I can't do much better. I can't do much better than what I'm doing.

ADAM CUMMINGS: But I would like to point out that we are trying -- you made a very good job, Mr. Rettig, of pointing out that we are looking at the application to sell local produce and looking for a Special Use Permit. So I would like to clarify and you did a very nice job helping me clarify the landscaping equipment part. I misspoke because I did see a red trailer there.

MR. TESTA: It's personally mine.

ADAM CUMMINGS: That looks just like a landscape trailer.

MR. TESTA: That's my car hauler trailer for the -- I have antique tractors, two of them, the John Deere tractors which I restored. I use that for -- the bigger trailer for the bigger tractors. Those tractors aren't being used for landscaping. They're farm tractors. They're full restorations. I mean it's not --

ADAM CUMMINGS: So I would like to focus on that tonight. So thank you for all your comments.

MR. RETTIG: I agree with you, as Chair, in regard to separation of the issues we're dealing with, the sale of produce from this facility, I understand he spent a lot of time making the -- the place look nice from the front. I have no problem with that. But for the sale of produce, I ask that you may ask the applicant a very simple question, and that would be, is he doing any other commercial business out of the barn?

ADAM CUMMINGS: I -- I will -- before we close public comment, I will ask two questions, pointed questions. The first one, repeating what Mr. Rettig just said. Are you running any other commercial businesses off this property?

MR. TESTA: No.

ADAM CUMMINGS: Besides --

MR. TESTA: No. No mail is coming there. No. Nothing. Absolutely nothing.

ADAM CUMMINGS: No storage of materials?

MR. TESTA: No storage of materials. My -- everything that is there is registered and insured in my name. Everything. You know, there is no -- there is no corporation stuff at that place.

ADAM CUMMINGS: And the second question.

MR. TESTA: There's no mail that comes there. There's nothing.

ADAM CUMMINGS: There's no customers that go there?

MR. TESTA: Absolutely not, no.

ADAM CUMMINGS: The second question, um, is directly related to the sale of produce. Do you store produce inside the barn in refrigerators in the barn?

MR. TESTA: Yeah. Obviously I had the coolers. I've had them since day one. They have been in the barn. You have to keep the produce fresh. Everything goes in a sanitary cooler. I mean, that's where it is stored. Inside the coolers.

ADAM CUMMINGS: Because --

MR. TESTA: For spoilage.

ADAM CUMMINGS: Your application does refer only to the cart, and in terms of this property, are you doing operations of the sale of produce behind just the cart, is what I am getting at. So the use of those refrigerators, or the need for them.

MR. TESTA: So the stuff that goes on the cart needs to go in a refrigerator --

ADAM CUMMINGS: I'm saying your area is bigger than the cart for your business on this property?

MR. TESTA: Um, I guess I can move the cooler out near the cart. I can do that.

ADAM CUMMINGS: No. I'm not saying to move it out.

MR. TESTA: I don't understand the question really.

JAMES WIESNER: He is asking, the stated area that you're using for the produce business isn't just the cart. There is some square footage inside the barn.

MR. TESTA: There's a big four-door cooler that has always been there since we opened.

JAMES WIESNER: Always locked?

MR. TESTA: Yes, always locked.

FRED TROTT: It's not open to the public.

MR. TESTA: No. That is the whole thing. There is a "Do not trespass" sign right there, right on the building.

ADAM CUMMINGS: So before we keep going too much, I just totally forgot we still have public comment period open.

MR. RETTIG: Can I just --

ADAM CUMMINGS: Sorry, Mr. Rettig. You weren't done.

MR. RETTIG: One fast comment, just asking the Board to consider these points, to have these corrections, per the conditions for this facility, as the complaints and comments from myself and others this evening.

ADAM CUMMINGS: Thank you.

Mrs. Borgus, I will allow it one more time.

MS. BORGUS: Thank you.

Mr. Testa says that all this huge pile of mulch that is there, is going to be for his personal use. What about that huge pile of broken straw bales? I mean, this is a large pile of old, terrible looking straw. I don't hear anything about that. I don't hear anything about the piles of pallets that are there, too.

ADAM CUMMINGS: I am -- I am actually thinking to -- to interject very quickly, that would be part of our -- and we're not under enforcement here, but in addition to just the equipment being referenced, at the end of season, I'm going to revise that condition and ask that display products also be -- because some of them aren't for sale and some of them are decorations that stay.

MR. TESTA: 100 percent. The wood crates Dorothy (Borgus) are talking about are the displays for the pumpkins.

ADAM CUMMINGS: That is exactly where I think the straw bale was because I remember playing on them.

MR. TESTA: That's all displays.

ADAM CUMMINGS: We'll impose a condition of cleaning those quicker.

MR. TESTA: Be more than happy to take whatever is there. I will address it tomorrow morning.

MS. BORGUS: Well, this straw would not be fit for displaying pumpkins. I mean, this is last year's -- I don't know, last year's or the year before straw. This is not attractive. You would never be using that again, I wouldn't think. If you're in business, you want to sell pumpkins.

ADAM CUMMINGS: I don't think he is going to use it.

MS. BORGUS: Should get rid of it.

ADAM CUMMINGS: Correct. That is what I am going to say, to revise that one not just for equipment but also unused displays from the previous years, so when his -- when his close date of November 15th comes in, that is when enforcement is going to check and make sure everything is closed up to close out the season. That includes the decorations and stockpiling pallets that might have been used, other podium objects or corn stalks, straw, anything that could have been used as a seasonal decoration that wasn't sold.

MS. BORGUS: Okay. Now, the -- and the other concern I have are the number of trucks there. They're not there at night, but they're there in the daytime. It is obvious to the most obtuse person, that his staff, are -- are parking there. The obvious conclusion, too, would be that you pick equipment up there. I mean, you don't leave your truck somewhere and go off to work. How do you do it when the equipment supposedly isn't there to do landscaping? Those trucks are there through the day. They're not there at night. They're back the next morning.

Don't get hoodwinked here.

MR. TESTA: There's no -- there's no storage there at all. And I can have anyone I want park there. Okay? It's my property. I can have as many vehicles parked -- up to four vehicles I think you said?

ADAM CUMMINGS: Yes. Well, no. You have four -- four additional family members.

MR. TESTA: Family members, right.

ADAM CUMMINGS: We don't have anything in there on vehicles.

MR. TESTA: My dad is there, my wife is there and my daughter is there every day.

MS. BORGUS: They're there in the daytime and then they leave at night.

Um, on F, on his application it says that he has -- he has 18 vehicles. 18 vehicles can be -- can be parked in the driveway. You just be careful of that or you're liable to have 18 vehicles.

ADAM CUMMINGS: Correct. And that includes customers.

MS. BORGUS: If there are any. Thank you.

ADAM CUMMINGS: Technically, I'm only supposed to allow people to talk once, but this an exception -- because you haven't been here -- tonight, so I will just disclose this to everyone and put it in the minutes. In an effort to save time and make sure everyone has their turn and doesn't overstep this --

MR. TRIFIRO: I just basically have a question. We're talking about vehicles being allowed on the property, and I'm trying to understand, if all these vehicles are personal vehicles, is -- is the owner allowed to park them wherever they want? Like if it was my backyard, could I load my backyard up with my boats and my trucks and my cars and my friend's cars and there is no problem?

ADAM CUMMINGS: To my knowledge, as long as they are registered, yes.

MR. TRIFIRO: I just didn't understand that. Okay.

ADAM CUMMINGS: I can't say as I totally agree with it, and sometimes people overstep that bounds. I have neighbors that do the same thing. So we will do our best to appease everyone as best we can.

MR. TESTA: I also want everybody to be happy, too, so I will be more happy to address that first thing in the morning and that won't happen again.

MR. RETTIG: Mr. Chair, just a comment. I think it's -- I know you did accept his question, but I think it's worthwhile that the Chair realize that the gentleman that spoke is a neighbor in the neighborhood.

ADAM CUMMINGS: Direct.

MR. RETTIG: Directly, directly affected. I think he has a perfect right to express himself to the end of the Public Hearing.

ADAM CUMMINGS: Correct. And that's why I allowed it tonight. I just want to point it

out for the public, is we -- we like to impose where you are allowed one chance. Tonight it's a very controlled meeting, but I want to go on a side tangent. On more heated meetings, it becomes an all-night affair, so I just want to point it out to everybody.

But thank you for your questions and your letter tonight. That was very enlightening, something we had not received to date.

MR. TRIFIRO: Sorry I couldn't do it sooner.

ADAM CUMMINGS: No. That's okay.

With that, I don't see any other hands.

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

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

ADAM CUMMINGS: Mrs. Borgus, I will make sure I get you that later on. I just wanted to point out that your letter was still up here.

Public comment period definitely brought a lot tonight that we really need to discuss tonight. We already had a laundry list of conditions, but it sounds like they need to be tweaked and it sounds like the applicant is willing to adhere to them, but I would like before we get to any conditions, we can make minor modifications or clarifications to this application and it sounds like we would really need to do that, because I was not aware of the refrigerated coolers inside of there. I guess call it ignorance, I thought it was just magical fruit you had that could withstand the elements, much more than Wegmans can.

FRED TROTT: I just want to point this out. Do I read that as one?

ADAM CUMMINGS: One moment. Sorry. For that trailer, um, our -- our code, um --

FRED TROTT: He has both trailers.

ADAM CUMMINGS: In terms of trailers and recreational vehicles, um, you are allowed one boat and/or travel trailer recreation vehicle in the rear or side yard behind the front setback, only if it has a current license and is no longer than 28 feet. It doesn't -- that addresses it in the rear and side yard. It doesn't actually say anything about the front yard.

Mike (Jones), I think I'm going to need a clarification on this one. Page 417 of our code book.

MICHAEL JONES: I don't have the code book with me. Ed (Shero) usually brings it along.

ADAM CUMMINGS: I have it, but it is chained to the desk up here. It's so we don't steal it. We're just looking for a clarification how many vehicles -- it's a clarification.

FRED TROTT: It was my understanding.

ADAM CUMMINGS: Trailers and recreational vehicles.

FRED TROTT: From my understanding, it's one boat trailer.

MARK MERRY: That's the way I read that. It has to be stored --

ADAM CUMMINGS: And/or. Yes. There is a limitation on length. That's what -- the intent of that one was to have the over-length trailers, the RV vehicles stored elsewhere.

MICHAEL JONES: Correct. We dealt with this not too long ago. The intent is to allow a person to store one modestly sized recreation vehicle uncovered. If it was in a barn or something, then it's not an issue. So it was one recreational vehicle uncovered for a period of April to November of the year.

ADAM CUMMINGS: How about with regard to trailers and boats? That's what is unclear to me on that section, where it says you can have one and/or -- but I don't see a limitation. It looks like a limitation is on the rear and the side lot parking, but on the front, I don't see a limitation.

MICHAEL JONES: Well, the statute is drafted to provide permission in the side or back and not the front. And provided the vehicles are actually being used. We judge that by whether or not they're registered, they're permitted to stay there.

ADAM CUMMINGS: Thank you.

MICHAEL JONES: I understand that, you know, this is an enforcement issue, not a matter for this Board to consider. I don't want to slap your wrist, but it's not what is before the Board.

ADAM CUMMINGS: I agree. Thank you for clarifying that for us.

All right. So...

JAMES WIESNER: Can you tell me what conditions you have taken out?

ADAM CUMMINGS: Off the old list.

JAMES WIESNER: Yes.

ADAM CUMMINGS: Obviously Number 3.

JAMES WIESNER: I'm just trying to gather what the intention of some these were. So Number 3. I think two more.

ADAM CUMMINGS: Yes, there are two more.

JAMES WIESNER: 11 and 12 maybe?

ADAM CUMMINGS: Yes. Yes. The reason why I took number 12 out was the entrance and exit signs to be properly posted to code, that is kind of common sense. Already required by code, so why put another condition on it.

JAMES WIESNER: What about seasonal?

ADAM CUMMINGS: Seasonal produce, that was due to a limitation on what can be sold

by a business. Um, we have the application looking for produce. But I would have to look at the definition of produce. Pumpkins are not necessarily eaten, so I'm not sure if they qualify as a produce.

FRED TROTT: Ever have pumpkin pie?

ADAM CUMMINGS: Oh, that's true. So that's where I was going with that one. Between the corn, the straw -- I don't eat straw. You might eat straw pie. I can't tell.

FRED TROTT: Fiber.

ADAM CUMMINGS: Fiber.

So are you saying you would like those put back in.

JAMES WIESNER: Just trying -- I mean, I look at 3 and I think the intention there is just some indication when it is open to close. And I'm assuming that --

ADAM CUMMINGS: Well, we already have it in there it can only stay open from dawn to dusk. But we don't have it where he's required to have a neon sign that says "open" or "closed" or -- or any other sign.

JAMES WIESNER: Then once -- what is your closing procedure? When you close for the day, all of the -- you put away all of the produce. It goes into the refrigerator.

MR. TESTA: We do self-serve, so if my dad is not there, my wife is not there, we have a self-serve cash box. People stop by after 5 o'clock in evening, come by and get whatever they need. It's very convenient for them.

JAMES WIESNER: I guess what I'm looking at, at dusk does the produce get put away and the money --

MR. TESTA: I empty the cash box and we leave cucumbers or tomatoes, whatever can stand the evening. We put them out. Then we replenish everything in the morning time again.

ADAM CUMMINGS: So you leave non-perishables out overnight?

MR. TESTA: Yes.

ADAM CUMMINGS: You don't empty the whole cart and put it in the fridge?

MR. TESTA: No. We can do that if that is what you want.

ADAM CUMMINGS: I think I would like to impose that one. I hope it doesn't hurt your sales at all, but I think that would help alleviate the lighting issues. You're supposed to be closed after dusk. Now we won't have headlight overflow onto the neighboring properties.

MR. TESTA: Sure. That would be fine.

JAMES WIESNER: To be sure from a safety standpoint, and money box at that point.

MR. TESTA: I would have to empty it, too.

JAMES WIESNER: That would have to go away so the unsavory element --

MR. TESTA: If I took the produce and put it in the cooler in the barn for the next day, instead of losing all that, that is where the cooler -- I have to have someplace to put it. I mean, we're not doing cash sales out of the barn. It gets put back out on the stand so no one ever gains entry to the barn. And that -- that is a strict liability. I have insurance, and, you know, the insurance company does not want anybody in the barn.

ADAM CUMMINGS: So square footage related to the business, I would like to revise that right now.

You have 15 feet by 8 feet which is the cart.

MR. TESTA: Yes.

ADAM CUMMINGS: What are the dimensions of the cooler?

MR. TESTA: Four-door, so 12 feet maybe by 6 foot high. It's four doors. It's been there since I opened the stand.

ADAM CUMMINGS: Okay. I was not aware of the coolers, so that brings that up to -- up to the point of the question. And then let's see. So we will be putting in produce to be removed at dusk.

JAMES WIESNER: I would like to see the -- the money box withdrawn just so there's --

ADAM CUMMINGS: So there no enticement.

JAMES WIESNER: No intention of any sale going on whatsoever.

ADAM CUMMINGS: Are you okay with emptying the cart at dusk every night?

MR. TESTA: That's fine. If that is what you want us to do, that's fine.

ADAM CUMMINGS: I would love to address your neighbor across the street's problem with the shoulder. Part of it, their shoulder is too low because I have ridden a bike there.

MR. TESTA: My side, too.

ADAM CUMMINGS: I would love to make the DOT do that or have us fence it off so people can't park there. I do see it once in a while. Not a lot. But they won't let us fence that off. But I wouldn't -- if you're there speaking to your customers, please let them know yes, the people heading eastbound, it is convenient to park there, but let them know --

MR. TESTA: We tell them right off, no parking along the shoulder of the road. They have to come into the parking area. They address that immediately.

On my side, I paid to have stone -- I keep it nice, and I paved both skirts wide so, you know, so there isn't an issue at all. The DOT did come and put stone down last year, so...

ADAM CUMMINGS: I think they need to do a better effort, but that's a totally separate issue that is not part of us tonight.

FRED TROTT: I think maybe the 4 needs to be revised.

ADAM CUMMINGS: Oh, yes. So Number 4, where we had retracted my -- my mistake of the landscaping equipment, I was just describing the cart or the trailer that you own that was there. But in addition to just equipment, we would like any of -- any of the produce selling items stored inside -- and when we allow behind the barn, because you -- when this first -- first came

in, you didn't have neighbors behind you, many, many years ago.

MR. TESTA: Right.

ADAM CUMMINGS: Now you have neighbors. So minimum exposures to the neighbors because have you directly impacted neighbors behind you.

MR. TESTA: That's fine.

ADAM CUMMINGS: I would -- I would really like to exaggerate that minimum exposure to the people behind you.

MR. TESTA: We'll address that tomorrow immediately.

ADAM CUMMINGS: Okay. Any others?

MARK MERRY: Does this have to be five years? Will we limit that per the comments at Public Hearing?

ADAM CUMMINGS: No. We can -- original.

MARK MERRY: I'm not comfortable going five years.

ADAM CUMMINGS: Originally I believe you came in for two or three one-year ones and then we went to a five-year.

MARK MERRY: I think maybe we're back to the baby steps again just because of the missed time and -- I don't have a real estimation right now for this Board to understand why it wasn't renewed.

ADAM CUMMINGS: I think that's a fair compromise. The five-year seems to have been too long a time for you and everyone to -- to really react to that, so we will impose the one year. It will be more of a task on us, but I think it's worth it. I think it provides value for us to see you on an annual basis to check in on --

MR. TESTA: Sure.

ADAM CUMMINGS: -- on your measures you're implementing here instead of five-year basis. You will still have enforcement overseeing you, but I think it helps us with compliance with that and incentivizing you to keep it and keep our best interests of the Town.

So I agree we'll revise that one year. Everyone else on the Board okay with that instead of five?

The Board indicated they were okay with that.

RON RICHMOND: I think we have addressed plenty. I think the term was a critical point to bring up. I agree 100 percent.

ADAM CUMMINGS: And I will say on the record, this is -- this is, from our Board's perspective, this is your warning. We will give you a second chance, but you missed the permit before. So you now have a track record of missing that. I -- regardless of issues that were going on and miscommunications between you and the Building Department, I would just let you know, at least my opinion on it, is you did miss that, and so this is kind of your warning. Let's not have it happen again.

It sounds like it won't, but I just want to put that out there.

So we have nine -- once again, actually, looking at number 11, only seasonal produce, just so we don't have merchandise going out, commercial merchandise I think would be a good one.

Jim (Wiesner), are you -- is that what you were thinking, along those lines?

JAMES WIESNER: Yes.

RON RICHMOND: So does that prevent the displays from being sold because they are not produce?

ADAM CUMMINGS: Yes. Well --

RON RICHMOND: The crates.

ADAM CUMMINGS: Well, the displays, I don't believe are sold.

MR. TESTA: That's why I still have them.

ADAM CUMMINGS: Right.

RON RICHMOND: Okay.

ADAM CUMMINGS: So we will have that one on there. We have taken care of that one.

In terms of signage, I haven't -- we received some complaints tonight, but I haven't seen any documentation that there is any traffic accidents or anything like that. If anyone else at this Board knows of any information like that, but it seems like a -- safe directional visual aids serving their purpose out there. So I -- I think we have covered that.

MARK MERRY: You will speak with Supervisor Dunning regard the situation across the street to try to help?

ADAM CUMMINGS: Yes. We'll try to help out with that road over there. Not sure how far we'll get, but we'll do our best.

MARK MERRY: Definitely make an effort.

ADAM CUMMINGS: We have addressed the cars.

Once again, we're in a tough spot up here, because we're taking the word of multiple parties, so we're going to assume that everyone is telling the truth, and if they're not, we'll have enforcement take care of them later.

MARK MERRY: Well, issues have been raised. I'm basing that one-year term based on fact there was a missed renewal and it looks bad.

ADAM CUMMINGS: I agree. But other than that, it looks like we have those ten conditions. Number 1 being granted for a period of one year, instead of five years.

Number 2, no product to be sold, stored or displayed on the property to the east of the lot, which is where that house is. And on the west property, no carts or display structures to be -- no

temporary display structures to be on this parcel. That is to help the neighbors to the west. And the people to the -- to the north. However, we will allow ornamental tree bases around there.

Equipment to be stored in or behind the barn with, underlining, minimum exposure to the neighbors as much as possible. I'm actually going to take off, "at the end of the season." I want that to be at all times. Instead of just at the end of the season, cleaning everything up, just keep it, um, minimally exposed to the neighbors in -- in the area behind the barn, at all times. I think that's what your plan is. Um, especially you're going to have displays out front, and then when you have wrapped them up, store them to the side and get them out of there as fast as you can.

Once again, the Building Department to address parking with the owner, as required. I'm not sure that they addressed anything with you. I'm just putting a condition in there, if anything comes up. I haven't heard of anything. Once again, traffic accidents or the like.

Um, Number 6 is four additional family members may be employed. I didn't hear that you wanted to increase or decrease that, so 4 sounds okay. You named your daughter, your father --

MR. TESTA: My father is there every day.

ADAM CUMMINGS: Open season, March 1st to November 15th. I think that's reasonable, especially since November 15th, um, gives him a month and a half after -- or gives him 15 days after Halloween.

Um, Number 8, can only stay open from dusk to dawn. And the additional revision to that is that produce and the cash box will be removed from the cart every night at dusk. And the stand to maintain its minimum 4 [sic] foot separation from the road right-of-way.

FRED TROTT: 4?

ADAM CUMMINGS: Did I say 4 foot? I meant to say 40. And the last condition is only seasonal produce may be sold there, so we don't want to see any -- any toys, commercial merchandise, things like that, re-saling. You haven't done that. I'm not saying you have. I'm just pointing out the intent of our condition there.

Any additional ones from the Board?

JAMES WIESNER: Want to say something about no storage of business-related equipment? Or is that --

ADAM CUMMINGS: No other business-related equipment?

JAMES WIESNER: Yeah.

MARK MERRY: I think it's -- just address the third paragraph of the letter. Somehow we need to --

ADAM CUMMINGS: With the -- the commercial landscaping equipment specifically?

JAMES WIESNER: He may very well stop by with his equipment during the day, and that's no big deal, but the storing sort of equipment overnight or long-term that would be -- that would be unacceptable.

MARK MERRY: So we're talking about equipment behind the barn.

ADAM CUMMINGS: Let's just say --

MARK MERRY: Related to him --

ADAM CUMMINGS: No operation of any other commercial businesses. That would include storage of materials, equipment, um, employees, anything related to another -- not even just landscaping. Any other commercial business.

MARK MERRY: Right.

JAMES WIESNER: Okay.

ADAM CUMMINGS: So no other commercial businesses shall be operated from this property. Now, if you so choose to pursue that, you would have to come back for a second Special Use Permit.

MR. TESTA: That means I can't go there in the morning with my truck and trailer and put everything out?

ADAM CUMMINGS: Put everything out?

MR. TESTA: All my produce. I go there every single morning with my truck and trailer and get everything set up.

RON RICHMOND: The point is you can't operate another business or store any components of another business on the premises. I think that is the point he was trying to make. In support of the business that you are doing to sell produce, nobody is saying you can't come in and drop off your merchandise and carry on throughout your day.

MR. TESTA: Right.

RON RICHMOND: Or recover the stuff you have to recover at the end of the day.

MR. TESTA: Because my business is my truck and trailer and I drive that all day long every day.

ADAM CUMMINGS: No. At that point, that is part of your produce business. What we're saying is you can't -- I will take the landscape part off it. But say you have a separate business -- I will focus on a hairstylist. So you -- if you wanted to store materials or overflow product because another business, say a hair stylist didn't have enough room in -- or your hairstylist business didn't have enough room in another location, you can't store the overflow or extra products at this site.

MR. TESTA: What would we use the building for if you can't store your own stuff there? I don't understand.

RON RICHMOND: In support of another business entity.

MR. TESTA: Okay.

RON RICHMOND: In support of another business entity, don't use this property, according to one of the guidelines we're putting in place, as --

MR. TESTA: Right.  
RON RICHMOND: -- as criteria met.  
MR. TESTA: So the tractors and stuff I have out there, what will I do with all that stuff?  
RON RICHMOND: What are you using --  
ADAM CUMMINGS: You said you're using.  
MR. TESTA: They're all my personal stuff. I mean.  
FRED TROTT: You're using them for -- to beautify the property. It's not that you're using it --  
MR. TESTA: Right.  
FRED TROTT: So you're coming in there at the end of the day.  
MR. TESTA: Leaving my truck and trailer in the backyard with all of the stuff on it.  
FRED TROTT: With six lawnmowers and weedwhackers and paving equipment and that. That's what we're talking about.  
MR. TESTA: I just want to clarify. I do go there every day with my truck and trailer.  
FRED TROTT: If you're using a tractor to lay out mulch, that is understandable. That is with anybody. But if you're sitting there putting a business, where you have guys showing up leaving from there, with the trailers and equipment of -- lawn equipment --  
MR. TESTA: Okay.  
FRED TROTT: -- or paving equipment, whatever kind of business, it's a separate business and you have to have a special permit for that.  
MR. TESTA: I understand that.  
MARK MERRY: I think with the code department doesn't want somebody coming in a month from here with a portfolio pictures with a jumbled mess of vehicles behind your barn. That way everything gets shoved down and it is a lose/lose for everyone. We don't want that.  
MR. TESTA: I understand. I understand. But the vehicles I have there all now, I would be more than happy to address that, are my own personal vehicles, so it addresses the issue with the view for the neighbor behind me. I will address that.  
ADAM CUMMINGS: Excellent.  
MR. TESTA: Those are my vehicles. That is my stuff. Can I do that? Can I leave my own stuff there?  
ADAM CUMMINGS: Yes.  
MR. TESTA: Okay.  
ADAM CUMMINGS: As long as --  
MR. TESTA: What does the barn --  
FRED TROTT: As long as it is not for your business equipment. If it says, "Pikuet Paving," you're running Pikuet Paving out of --  
MR. TESTA: Yes.  
FRED TROTT: -- that's a separate business.  
ADAM CUMMINGS: And -- and for right now, this is for one year. We'll see how it goes.  
MR. TESTA: Thank you.  
ADAM CUMMINGS: But we're just trying to -- clarifying, we don't want other businesses.  
MR. TESTA: I just want to understand what -- you know, what is going on.

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

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

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

1. Granted for a period of one (1) year.
2. No product to be sold, stored, or displayed on property to east of lot.
3. On west lot R-3b (known as 3502 Chili Avenue), no carts or temporary display structures to be on this parcel. However, the display of seasonal produce items for sale around ornamental tree base (on mulch) is allowed.
4. All equipment to be stored in or behind barn with minimum exposure to neighbors as possible.
5. Building Department to address parking with owner, as required.
6. Four additional family members may be employed.
7. May open from March 1st to November 15th.

8. Can only stay open from dusk to dawn. The produce sale cart shall be cleared of all items, including unsold products, cash box, etc. These items must be stored in a secure location.
9. Stand to be a minimum of 40' from road right-of-way.
10. No other commercial businesses shall be operated from this property.
11. Only seasonal produce may be sold.

The following finding of fact was cited:

1. This particular special use request has been renewed several times since 2007. There have been zero documented traffic incidents or injuries due to its operation.
5. Application of Mr. and Mrs. Thomas Grace, owner; 12 Matlyn Drive, Rochester, New York 14624 for variance to erect an 8' by 20' deck 35' from rear lot line (40' required) at property located at 12 Matlyn Drive in R-1-15 zone.

Thomas Grace was present to represent the application.

MR. GRACE: Good evening. I'm Tom Grace from 12 Matlyn Drive.

ADAM CUMMINGS: Brief introduction what you're looking for here. Pretty self-explanatory.

MR. GRACE: Actually 16 by 20 foot deck. The extra 2 feet is they have a kitchen cantilevered out from the house that is from the foundation where there wood overhangs. 16 by 20 foot.

One corner of the deck -- I have two maps included, one with the proposed project and one before. The one with the proposed project shows at one corner of the deck is approximately 38 feet 40 property line in the back.

ADAM CUMMINGS: Okay. I just want to point out it is pretty standard dimensions. You can get planks of wood at 16 feet, so it kind of makes sense where you're going with it in terms of size and where you're looking for that variance.

FRED TROTT: You said 38 feet? I'm looking here, it --

MR. GRACE: They asked -- they recommended I ask for a 35 foot variance just as a little bit of a buffer on it.

FRED TROTT: All right. That is where I was going. No other questions.

RON RICHMOND: I have no questions.

ADAM CUMMINGS: So -- I'm trying to get this straight. They asked you for a buffer of 3 feet?

MR. GRACE: I didn't -- yes. I didn't do the dimensions and everything. I'm having a contractor do that. He is working with the Town Building Department on it. And they recommended to ask for a 35 foot variance as opposed to the exact dimension.

ADAM CUMMINGS: Okay.

FRED TROTT: We have had people being a foot off be more than willing to let --

ADAM CUMMINGS: That is what I was expecting to hear, is a 1 foot difference, not a 3 foot. I was just curious where you heard that from.

COMMENTS OR QUESTIONS FROM THE AUDIENCE: None.

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

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

ADAM CUMMINGS: I don't really have anything else. Drove around there. There is a shed there, but it doesn't require a building permit, so you don't have to worry about code compliance. There is really no impact to the neighbors around that.

Everybody else in that neighborhood -- not everybody, but there was a large contingent of people that also had decks of similar size.

JAMES WIESNER: Irregular lot, too, which doesn't help.

ADAM CUMMINGS: Yes, and to the back, the wire fence that was there, um, doesn't look like we'll have much more coming across. These were from the other one -- these were Dorothy (Borgus)'s, too.

So with that, I -- I don't have any conditions of approval unless anyone from the Board would like to impose any.

JAMES WIESNER: Permit for the deck.

ADAM CUMMINGS: Oh, yeah. How did I forget that? Deck permit. You will have to get a deck permit from the Building Department. Gosh, you got to get a permit for everything.

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

Ron Richmond made a motion to approve the application with the following condition, and Mark Merry seconded the motion. All Board members were in favor of the motion.

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

1. Deck permit must be obtained from the Building Department.

The following finding of fact was cited:

1. Multiple properties in this area have similarly sized decks, and requested variance is not substantial. This particular lot is uniquely shaped, but the proposed structure will not create an adverse impact to the neighboring properties as it will be screened by vegetation to the south and is also located a significant distance from the drainage easement.

Adam Cummings made a motion to accept the 2/24/15 Zoning Board of Appeals minutes, and Ron Richmond seconded the motion. All Board members were in favor of the motion.

Note: There was no Zoning Board meeting held in March.

The meeting ended at 8:54 p.m.