

CHILI ZONING BOARD OF APPEALS
May 17, 2016

A meeting of the Chili Zoning Board was held on May 17, 2016 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, Fred Trott, James Valerio, James Wiesner and Chairperson Adam Cummings.

ALSO PRESENT: Eric Stowe, Assistant Town Counsel; Paul Wanzenried, Building Department Manager.

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: Without any further adieu, we'll move right into any issues with the signs.

JAMES WIESNER: I didn't see the one on Paul Road.

MR. VALERIO: It was on Adella or Phyllis, one of the sides.

ADAM CUMMINGS: Over in the subdivision?

MR. VALERIO: Yes.

ADAM CUMMINGS: That's true. On those ones -- never mind. I'm thinking about Bellaqua. I'm thinking -- both side roads, different property.

Any other issues? I say we move forward with it. Everybody okay with that? All right.

1. Application of Parkminster Church, owner; 2710 Chili Avenue, Rochester, New York 14624 for approval to modify existing variance granted 6/23/98 to allow existing 8' x 7' double-faced freestanding sign to be 112 sq. Ft. (56 sq. Ft. Previously approved), variance to allow existing 3 wall signs on building to remain (2 signs allowed), variance to erect two special event banners 11 times per year (2 times per year allowed) all as per plan submitted at property located at 2710 Chili Avenue in R-1-20 zone.

Jim Odmark was present to represent the application.

MR. ODMARK: My name is Jim Odmark, O-D-M-A-R-K. I'm Chairman of the Trustee Board of Parkminster Church. We take care of the grounds and all this kind of stuff.

You want my home address?

ADAM CUMMINGS: The church address is fine.

MR. ODMARK: This exercise, we became aware of the need to file -- to revise our variance when the Town came out and asked for information about our signage in March. When we responded to that, we became aware that we're not in compliance in some areas and that is why we're here tonight, basically trying to true up what has existed so that we can be in compliance with the Town.

ADAM CUMMINGS: You say -- you say in existence it has been there about five years?

MR. ODMARK: Yeah. The double-facing sign probably was altered five or six years ago to its present configuration. I mean, the fingerprint is the same, but -- the footprint is the same, but a panel was added in the middle, to make it bigger so more square footage that way.

The other signs, the signs on the building themselves, I think they have been here almost ten, at least. Because the preschool has been in existence for 25 years and we had some various type of sign for that. And the East Hall, which is where we have the second congregation meeting has been meeting there for 15 years. We didn't know we were in non-compliance, but now we're trying to do something about it.

ADAM CUMMINGS: Okay.

JAMES WIESNER: I just -- there -- you have -- there are two churches that use it. There is Parkminster and the --

MR. ODMARK: Risen Savior Christian Community has been worshipping in the East Hall. I think for almost 15 years.

JAMES WIESNER: So it distinguishes between the two areas?

MR. ODMARK: Yes. We worship at the same time. So the entry way sign helps to direct their people to make sure they know where to go and it's been a good existence.

ADAM CUMMINGS: And for that one, there are two signs, correct? There is one right at the door, which is Sign Number 3, and then --

MR. ODMARK: Correct.

ADAM CUMMINGS: -- and then Sign Number 4?

MR. ODMARK: Yes. The Sign Number 4 is the major sign. That is at the entrance. They use the south-facing entrance. Then their secondary entrances, the one where Sign Number 3 is, that is also the entrance shared by the preschool.

MARK MERRY: Two questions.

MR. ODMARK: Sure.

MARK MERRY: Wall sign, Sign Number 3 you just referenced, can that sign go away? You have two -- then three. If you had to lose one of the three, which one would it be?

MR. ODMARK: Well, I will tell you why we put it there. Because we didn't have it there until probably I want to say five or six years ago. The Pastor of the church that meets in that section of the building asked, and their Board asked if we could have a placard there so some of the elderly people who come would know that they could come in at that parking level and not have to go up the stairs, especially in the winter. So that is the utility of the sign. And it's basically to help those folks out.

Now, if the Board directs we can't have it, we'll take it down and we'll just have to do without it. But that was the rationale for it.

MARK MERRY: If you were to lose that sign, would there be a detrimental impact on that --

MR. ODMARK: I think as part of how they want to care for their parishioners when they come in the parking lot and the parking lot is pretty full because we're both worshipping at the same time, they want to make sure their folks, the easiest, most direct way to get into the church. So that is -- that's -- that's -- that would be the detrimental effect, is that some number of these people would be confused and wander around and that would be an issue for them.

MARK MERRY: If they had not attended the service before, correct, so they were new worshippers?

MR. ODMARK: Yes.

MARK MERRY: I assume people by now know the best way to get in, right? The majority.

MR. ODMARK: I'm sure that is probably true of any place. Of course, like with any church, you're always trying to welcome new people in.

MARK MERRY: Special event banners. What size are we talking about? Are they all consistent with the size?

MR. ODMARK: So the two places where we put them up is in the corner of the lot, there are two posts facing kind of the Chili Pixley exit. Or intersection. And let me see. I think I have --

ADAM CUMMINGS: You have it marked down as Banner Location 1, which spans 9.5 feet.

MR. ODMARK: That is the distance between the posts. 9.5. The banners, unlike the one picture, are significantly smaller because they're hung by ropes between them. The other area, Location 2 is a little less. Did I give a dimension on that?

ADAM CUMMINGS: They usually fluctuate, and I don't believe our code has anything in terms -- they're discussing it, I'm sure. I don't think we call out dimensions of banners, especially for religious organizations. As it says, they're allowed two times per year. I'm not even positive that it quantifies how many banners. It just says two times per year.

JAMES WIESNER: 32 square feet.

ADAM CUMMINGS: Does it have it in there, Jim (Wiesner)? Let's recite that so everybody knows --

JAMES WIESNER: If you follow --

ADAM CUMMINGS: It doesn't cite it in the application package calling it out.

MARK MERRY: Our code is 32 square feet.

MR. ODMARK: So is there a code requirement as to the square footage of a banner? If I was aware of that, we could direct in the future for us to make sure we're in compliance with that.

ADAM CUMMINGS: Jim, what is your section?

JAMES WIESNER: 500-48(D)10. This is the section of the code that is referenced for the first variance request.

ERIC STOWE: Mr. Chairman, we're at 500-48 (D)10.

ADAM CUMMINGS: Got it. Thank you.

ERIC STOWE: Is that the one we're talking about?

ADAM CUMMINGS: Yes. I can.

ERIC STOWE: The important word there is commercial.

ADAM CUMMINGS: I thought we had something about religious -- with past experience we had with another religious application.

ERIC STOWE: (D)4. And (D)14.

ADAM CUMMINGS: Thank you.

ERIC STOWE: Bingo.

ADAM CUMMINGS: (D)14 is what I'm looking for. All right. Sign not exceeding 32 square feet.

So you have got your posts. You're restricted by 32 square feet, not exceeding 20 feet in height, to the top of the sign. So we did not make note of that.

MR. ODMARK: I assume the 32 square feet is the sign area, so that if it is hung -- if there are ropes attaching it to the posts on either side that doesn't count, right?

ADAM CUMMINGS: This is -- I will defer to the side table. Do we have a definition that deciphers the difference between a banner and a sign?

ERIC STOWE: I feel like we do, but I wouldn't bet on it.

ADAM CUMMINGS: Because I see both called out in different areas.

ERIC STOWE: In the absence of a specific definition, it takes on its normal meaning.

ADAM CUMMINGS: Okay. So we'll say yes, it is synonymous. So we're going with 32 square feet. How big is the "Now enrolling preschool" you have depicted there?

MR. ODMARK: Well, it is -- let's see. It is between two posts 9 feet apart, so if you eyeball it, 9 1/2 feet apart, it is little less than half of that, so probably 4 feet, 4 1/2 feet. And I'm -- I don't have a dimension. I'm just guessing, just like you can do, as well, from that 9 1/2 foot dimension.

FRED TROTT: Figure 2 feet on each side. That's not square.

MR. ODMARK: Could be --

FRED TROTT: I -- I was thinking 4 feet. 4 feet by ---

ADAM CUMMINGS: Even if we say it is 5 by 2, it is 10 square feet. It is definitely not exceeding the 20 feet in height. Just to call that out.

So on --

MR. ODMARK: We can make sure we're in compliance any time we put up a banner, just knowing that we know this.

ADAM CUMMINGS: So really you can't exceed 4 by 8.

MR. ODMARK: Uh-huh. Okay.

MARK MERRY: So this happens 11 times during the year?

MR. ODMARK: Yes. On page 13, I have listed the -- the events that are standard part of the church calendar. We basically went back and reviewed the last five years of the church calendar to see what are the events that are standard as part of our organization's reaching out to the community. That is what it is listed there.

MARK MERRY: So the impact to your organization if we bring you down to code, just two times a year, what impact does that have upon you?

MR. ODMARK: Part of our mission is to reach out to the community and invite them to things like Holy Week worship and things like that, so it precludes our ability to fulfill that part of our mission.

ADAM CUMMINGS: Right. So with that -- that's what our --

ERIC STOWE: That one I think would be more under (D)4 and that is a temporary sign, special public institutional event sponsored by a religious community service organization period not exceeding 90 days prior to the event, removed 7 days after.

ADAM CUMMINGS: Correct. So our code does acknowledge that. The question still lies, is if they're not pertaining -- I guess they are all special institutional events.

MR. ODMARK: Yes, they are.

ERIC STOWE: Is it more the relationship between the daycare and the religious institution? If it's a profit -- a profit-making endeavor versus not, that puts it in the realm of commercial.

ADAM CUMMINGS: Right. So for instance, your Preschool Open House, Preschool Registration, "The Summer's Best Two Weeks Registration" and the "Perennial Sale," those appear to be more on the fund-raising side of things, not the worship side of things; is that correct?

MR. ODMARK: I would say the Perennial Sale is an annual fund raiser that helps pay for kitchen supplies. I mean, churches have bake sales, different things like that. That is one we have done for probably 20 years.

The preschool itself is a non-profit part of the organization that reaches out to the community and been in existence for 30 years. So it's all knit together. Not everything is a specific worship service, but it's all -- it is kind of hard to separate those things from what we are, which is a church and a church family and trying to promote welcome service to the community in that way.

ADAM CUMMINGS: Okay.

MR. ODMARK: The person -- Kathy Reed, I think her name was at your office who helped a lot -- she was very helpful helping me put this all together -- suggested that, you know, rather than come back again and again, put down what you think is reasonable, which is why we researched for the last five years, this is a good footprint the way we operated for the last decade and decades.

ADAM CUMMINGS: I like having a list that we can pare down if you don't hold those events this year, rather than having a surprise hey, there is another event; hey, there is another event. So I do appreciate that you gave us so much more than we typically receive.

And along with these, you erect these in two different places?

MR. ODMARK: Yes. One is facing our parking lot, which is in the back of the building, where everybody parks. The other is facing the corner of Pixley and Chili.

ADAM CUMMINGS: Okay.

FRED TROTT: I notice that in 1998, when you got approved for the 3 by 8 double-faced free-standing sign, there was also supposed to have a street number added to it. And I'm --

MR. ODMARK: Yes.

FRED TROTT: I'm assuming that one is, and I don't see a street number on there.

MR. ODMARK: That was called to my attention actually when we did the application. I have updated pictures now that show that the street signage has been added last week. We didn't know we were supposed to have that. So it's on the Chili Avenue side posted on both sides.

ADAM CUMMINGS: That matches -- the 2710 goes vertically right along the right post.

FRED TROTT: When you changed the sign out, you added the center part?

MR. ODMARK: Variable data part was added. Prior to that there were three horizontal

banners up next to the top. So the posts remain the same. We just reallocated space.

FRED TROTT: Well, I have a question. Why can't you put your messaging, the temporary signage -- why can't that go in that area?

MR. ODMARK: They do go there, as well.

FRED TROTT: So then you would have -- actually have three?

MR. ODMARK: Well, I mean -- we promote special events. We promote sermon titles that go there. I mean, any number of things. Just like the fire hall has an LED sign and that is always changing and things like that.

FRED TROTT: Yes. I'm just asking why -- why couldn't we eliminate this one and just put it in there (indicating)?

MR. ODMARK: Less effective, I think would be our response. For those special -- special events, you want something out of the ordinary, something different. People become blind to the sign that is there all of the time, but if you have a special event, something pops up and catches their attentions. That is the rationale for having the banners.

FRED TROTT: So then you're saying this part isn't getting seen? So now -- I will have to say, now, this part maybe shouldn't be there then. Just to throw it at you.

I'm just asking these questions.

MR. ODMARK: I understand.

FRED TROTT: If that was something that could be done.

MR. ODMARK: I -- like I say, I'm not the person who puts all of the letters up at the different times there, and my guess is there are some times when the special event type activities are also promoted on the main sign and sometimes they're not, because it's dedicated for the sermon titles going up that week or something else that is happening that week.

So we're just trying to be as effective as we can in reaching out to the community.

FRED TROTT: Okay. Where -- where would this be seen, this one?

MR. ODMARK: It's north-facing, so that is where the parking lot is for all of the parishioners and the families that come to Parkminster.

The -- the primary place we have used that has been for an annual youth promotion banquet and where we're trying to get the families to come out to promote the youth. We haven't used that as much as the corner one. The primary one we use is the one at the corner of Chili and Pixley. That was used probably twice last year.

FRED TROTT: Okay.

MR. ODMARK: So I guess if I gave the impression that both those places would have both banners all of the times, that is probably not true. The primary one is the one at the corner of Chili and Pixley.

ADAM CUMMINGS: Most of the time the one in the back of the building we wouldn't even know it's there.

MR. ODMARK: True. Except the parishioners. That is why -- only the ones you're really trying to direct at the people that are already coming go there. So like Preschool Registration wouldn't make sense to go there. Those people are already coming.

FRED TROTT: Then how long are these event signs up for?

MR. ODMARK: Probably the longest one would be prior to -- the Preschool Registration period, which is about -- it would probably be about your 60 days, because that's the period of time when they're trying to get registration up for the following year. And about half that time would be -- the signs that promote our summer camp. So it's those things with long lead times where we're trying to get people to be aware and commit to something in time for us to define an event.

The Perennial Sale, I don't think that banner goes up a week or two before it actually happens.

Holy Week, of course, is during Holy Week, so a lot of things are much shorter than that.

FRED TROTT: I have nothing further.

ERIC STOWE: We have permissible signs for the religious uses under (D)4.

ADAM CUMMINGS: Yes.

ERIC STOWE: I struggle with calling some of these -- most of them are commercial. Under 10. Looking at that.

So just bringing that into your -- into your discussions.

ADAM CUMMINGS: So -- so I understand what you're saying, you say the list of the 11 items that he has listed there, you struggle with those being deemed commercial?

ERIC STOWE: No, not all of them being -- Lenten, Holy Week, Advent, Christmas, clearly religious.

ADAM CUMMINGS: Yes.

ERIC STOWE: I don't -- Summer's Best Two Weeks, like a vacation Bible School type?

MR. ODMARK: Yes, it is. It's a sports-themed Bible School.

ERIC STOWE: Okay. I -- I struggle with that one. That to me is a religious one. The preschool, preschool, Perennial Sale.

ADAM CUMMINGS: Winter Carnival.

ERIC STOWE: Sorry. I skipped that one. I don't know what Prism Live is.

MR. ODMARK: That's the youth -- the annual youth celebration banquet and fund raiser for the youth. Basically getting the -- we have probably about 40 or 50 kids that meet weekly in our youth programs and they're not all just our church kids, but kids from all over the area and it's an annual event to bring their families in to help them support the programs of the youth during that -- the coming year. I can't tell you what Prism stands for. It's probably an acronym,

but I can't tell you what it is.

ADAM CUMMINGS: I'm in agreement with those. So that the Board understands, we can't restrict the use of this piece of land for religious purposes. That's why we're really -- why I'm really highlighting -- the --

ERIC STOWE: The distinction is unreasonable restrictions.

ADAM CUMMINGS: True. Unreasonable restrictions. Which is all perceptive. So -- so with that, I would just like to call attention to those, that they are -- they would fall under (D)4, as long as this is -- that is my opinion -- as long as they meet that part of it, um, I'd like to keep going with that section of the code.

The other ones, the Preschool Open House, Preschool Registration and those type of -- not to say merely, but predominantly fund-raising commercial ones, I would push those towards (D)10 for this location.

Anything else from the Board?

MR. VALERIO: I have a question. Are we going to vote on these different -- like the main sign, the three sides, the banner, are we voting on them separately or is this all one package?

ADAM CUMMINGS: Good question. I think it would behoove the applicant to have them separated. So I agree with that, with that suggestion of separating it out, three different categories. You have got your freestanding sign, your double-faced, free-standing sign, your wall signs and then your event banners. So, in essence, they would become three separate applications with three separate votes.

Do you understand --

MR. ODMARK: Uh-huh.

ADAM CUMMINGS: -- that one? That just make it clear for our findings?

MR. ODMARK: Sure.

ADAM CUMMINGS: And also benefits you in that if one gets turned down and they're all packaged together, they all get turned down. In this case, if we turn one down, only that one will be turned down. Good suggestion, James (Wiesner).

FRED TROTT: Also, for like the wall sign, do we put a condition that size ---

ADAM CUMMINGS: Wall signs.

I don't know as that they're exceeding. Right now we're just looking at quantity for the wall signs, not dimensions.

Side table, can you answer that question quickly instead of me thumbing through this?

ERIC STOWE: Sorry?

ADAM CUMMINGS: Is there a -- are they exceeding the square footage for the wall signs? I don't have it anywhere in my paperwork. They're just going at quantity, when they have an exceedance of one, they're allowed two, they have three. I'm not finding anything in (B)1 pertaining to this.

ERIC STOWE: Well, those are -- (D)1 is signs that are permitted without a permit.

ADAM CUMMINGS: (B)1, B as in boy. 50-50. (B)1.

ERIC STOWE: Sorry.

Just 16 square feet. Cumulative.

ADAM CUMMINGS: Correct. So it is each individual in this one.

FRED TROTT: So 16 for each?

ADAM CUMMINGS: Yes.

FRED TROTT: So I guess my question would be, can we put as a condition that they would be these sizes?

ADAM CUMMINGS: There are sizes in the application and they can go up to that 16 square feet.

FRED TROTT: I'm saying put it as a limit.

ADAM CUMMINGS: You're saying pass a new local regulation?

ERIC STOWE: No.

ADAM CUMMINGS: That would in essence be passing a new Local Law -- or zoning law.

FRED TROTT: New variance.

ADAM CUMMINGS: Not a variance. We would be enacting new legislation and we can't do that. You're trying to put a condition that is more strict than this. We can't do this when the code already allows something else. Follow me? Doesn't look like you're following me.

FRED TROTT: I guess, but I'm just saying why can't we put it as a condition?

ADAM CUMMINGS: Because we're trying --

FRED TROTT: That these signs, you know -- because he is already asking for relief of that ---

ADAM CUMMINGS: Because then we would be overriding the zoning code and we can't -- we can provide relief what is in there, but we can't do that. They're distracted over there. I would like to stop and we can talk offline about this.

ERIC STOWE: We cannot reduce the permitted -- the permitted size of a sign in a variance. We can only change the number of permitted signs. If we give them three signs, they get three 16 square foot signs -- up to, because that is what is permissible. We can't say only those signs you have up.

ADAM CUMMINGS: On the flip side, we can't say those signs that you have right there, and they're at this size, and instead of 16 square feet, we're going to reduce it to 12 square feet. We can't do that because the zoning code says 16 square feet. We don't have that power.

FRED TROTT: So just a summary, if we -- if we approve the three wall signs, they can be larger than what they show now?

ADAM CUMMINGS: Yes. Yes.

ERIC STOWE: They can be whatever is permissible at the time of the installation if we reduce the size -- of the -- if we reduce the permissible size to 12 square feet -- just a hypothetical -- and they have a 12 -- they then go put a 16 foot sign up, it would be have to be 12. As long as it is 16 and the sign goes up, it would be permissible.

ADAM CUMMINGS: Counsel, when you say "we," you mean the Town of Chili code?

ERIC STOWE: Correct.

ADAM CUMMINGS: Not the Zoning Board of Appeals.

ERIC STOWE: Would it require a code amendment to change the size permissible.

ADAM CUMMINGS: Which we can't provide code amendments here. We're providing relief from the code. It will -- if anything is approved, you would need to get sign permits from the Building Department.

MR. ODMARK: Oh, okay. After I -- just so we have that in the record?

ADAM CUMMINGS: Yes. And you work with the Building Department to take care of all that paperwork.

So any other questions from the Board?

Fred (Trott), you have another one?

FRED TROTT: Exceeding the color limit.

ADAM CUMMINGS: Oh, is it four or three? Actually, they have five now that I look at it. They have got red, yellow, green, blue and white. Oh, these colors. So the Parkminster School, that is not on our agenda tonight. It's not on the application. But I agree with you, it exceeds the number of our colors.

ERIC STOWE: Not on our Public Hearing notice. It is not before the Board this evening.

ADAM CUMMINGS: So we can't discuss it tonight. But it is a good note for the Building Department to mark down. It looks like we're going to be coming back.

MR. ODMARK: So what is the requirement, because I was unaware of this. You know -- blues are nice for kids, so that is how they designed it.

ADAM CUMMINGS: I agree. Our code allows up to four colors. Four different colors.

MR. ODMARK: And -- white and black are considered colors, right?

ADAM CUMMINGS: Yes. Actually, it's true. Is the lettering blue or black?

MR. ODMARK: It's black.

ADAM CUMMINGS: So there is black, white and then four colored balloons.

FRED TROTT: The white is counted?

ADAM CUMMINGS: Yes.

FRED TROTT: It is really?

ADAM CUMMINGS: Yes.

FRED TROTT: Did not know that.

ADAM CUMMINGS: It's a color. Yes. We will not be addressing that tonight as it is not on the Public Hearing notice.

FRED TROTT: Now, would he have to ---

ADAM CUMMINGS: He has to either paint that or come back.

FRED TROTT: And if he decides to come back, he has to put in another fee?

ADAM CUMMINGS: Yes.

MR. ODMARK: Another 100 bucks?

ADAM CUMMINGS: Yes.

FRED TROTT: So let me ask the next question. If we table it tonight --

ADAM CUMMINGS: Then he can submit paperwork through -- yes. We could do that. So one other option is to table it tonight, add this to it, send out a public notice so the public is notified of this color variance, and then you wouldn't have to pay another \$100. We would just amend it and add it on and re-notice it.

MR. ODMARK: I would rather do that. I think that's being a better steward of our resources than ---

ADAM CUMMINGS: I would agree.

MR. ODMARK: -- then shelling it out again. So that means everything gets tabled because it is all as one?

ADAM CUMMINGS: Yes. I -- I would prefer to have the entire property done at once because if we did a couple of them, then it becomes splitting it up and we have already started this path.

Do you want to have a Public Hearing tonight anyway?

FRED TROTT: Why are you looking at me?

ADAM CUMMINGS: Because you have the most content.

MARK MERRY: Just a thought, you -- if you're giving yourself additional time, you may want to consider how you can better use your freestanding sign to address your special event banner request. I think Fred (Trott) made a good point. I think you can easily reduce your 11 signs down to the required 2. Give it a little more thought.

ADAM CUMMINGS: I would -- I would caution against the statement of two. When we identified one, two, three, four, five worship events.

MARK MERRY: Then five.

ADAM CUMMINGS: Let's use five.

MARK MERRY: Use it as a negotiated meeting, but 11 is a little much.

JAMES WIESNER: What are you calling commercial at this point?

ADAM CUMMINGS: Preschool Open House, Preschool Registration, Winter Carnival, Perennial Sale, Prism Live.

MR. ODMARK: So the Winter Carnival, just so we're clear about what that is, that's a family gathering, family-centered gathering with games. There is no concessions. There is no -- anything happening there other than an event to bring families together.

ADAM CUMMINGS: Okay. Is there mass or anything at that one?

MR. ODMARK: Um, we don't do mass because we're not Catholic, but ---

ADAM CUMMINGS: Sorry. That was my own ignorance on that. But you're doing a gathering. Are you doing a worship at that one?

MR. ODMARK: It's a gathering where we probably eat a meal together and play games and, you know, there may be some prayers and testimonies. Not what I would call a formal worship service, but it's a religious gathering of the community.

ADAM CUMMINGS: So I would add that one. So that brings it up to six. Winter Carnival, Lenten Worship, Holy Week, yearly family event.

JAMES VALERIO: Is education not-for-profit considered commercial?

FRED TROTT: It's not considered religious.

MR. ODMARK: What is like -- a parochial school like St. Pius that has the same signs up for their registration? I'm just curious how you handle those.

ADAM CUMMINGS: We handle them in a similar fashion.

MR. ODMARK: Okay.

ADAM CUMMINGS: They -- they came forward -- I don't remember the year, but they came forward several years with an Eagle Scout project to construct their double-faced monument sign and we addressed banners at that time. So pointing you towards 48(D)4 and (D)10, for those two different ones, but I agree with you, for the religious education side of things, even though it is education, um, it is religious-based. So we'll divvy that up and make sure we're prepared to move forward with that at the next month's meeting, as long as you're okay with tabling it.

MR. ODMARK: So I will leave the list and request as is, and at the next month's meeting, if per your discussion, you want to slice it a little differently and give direction to us ---

ADAM CUMMINGS: That's a good idea.

MR. ODMARK: Because the list is a good representation of what we feel our needs are.

ADAM CUMMINGS: Okay. And what you have done for the past several years.

MR. ODMARK: Yes.

ADAM CUMMINGS: So it is our worse-case scenario. It is not like we'll have a surprise event.

MARK MERRY: He made a very good point, you can't ignore that. We're not maximizing the use of that monument sign. The freestanding sign should be used better.

FRED TROTT: I think --

MR. ODMARK: Well --

FRED TROTT: What we're trying to say is maybe we don't know if you're the person that does all of the decision-making, but maybe float it by the Council or whatever of what issues we discussed here. Just so you have a better idea and maybe help --

MR. ODMARK: Okay.

FRED TROTT: -- form some stuff here.

MARK MERRY: We're not saying you can't get the word out, but there are other ways to do it.

MR. ODMARK: Sure.

ADAM CUMMINGS: I think moving forward we'll still open up tonight the Public Hearing because we had quite a bit of lengthy discussion. So I'll open up the Public Hearing tonight.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

DOROTHY BORGUS, 31 Stuart Road

MS. BORGUS: The point was made that the sign in the back of the church, near the parking lot, would only be seen by parishioners who were attending. But that also does establish precedent when you allow so many signs on a church. As far as the colors in the daycare sign, that also is an issue at the Baptist Church here at Chili Center and they were made to reduce their colors.

Um, as far as so many signs for daycare programs, I -- I hear the reluctance on the part of some Board members and I agree. It's a fine line there, but this is -- these aren't religious services. And what if every daycare center in the Town, and I'm sure there are many -- they're affiliated with churches -- all came in and wanted what, five banners apiece? Five banners for their sign up -- some of which, by, you know, testimony here has been -- they're up 60 days. You're not looking at a -- a two-day deal.

Now, the church up at Beaver Road, Beaver Road and Chili, they put banners up, but I must say, they get them up like a week ahead. Two days later, they're down. They do have banners and they do a nice job with the banners and they have a good spot for banners, but they're not hanging around forever.

I must say that I can't -- in reading this, I could not comprehend how a church could have 11 events. And I tend to think, too, that these are not religious events. Just because it is

somehow connected with the church doesn't mean it's a religious event.

Um, I would also like to point out, too, for the -- for the information value to the applicant, that Wegmans wanted banners, too.

ADAM CUMMINGS: I would not like to make the synergy between commercial banners and religious banners.

MS. BORGUS: I realize that. I realize that. But it was turned down seven -- seven/zero, so. Yes, that's true. But it's -- it's over bannered, let's put it that way, in my opinion. And I sense that the Board feels the same way and I hope that they remember that when these people come back.

Um, the other -- the other thing maybe you could do about restrictions, if you were to pass any -- especially the banners, would be to put a time down that they can be up. Restrict that somehow. Even for daycare registration, I can't see 60 days. Anybody who has a daycare issue doesn't need 60 days to think about it all summer long to be ready for September. That's not necessary.

So -- and I think that the church should realize, too, that the purpose of this Board is not to just deny or -- or grant, but to -- but to -- to grant if it's done that way, to grant with the least change to the code as is possible. Compromise. So it isn't as though everybody is, you know, against the -- the proposition or whatever, but when you ask X to be excused from the code, you should have to expect that you will be given the minimum necessary to meet your requirements and still keep the code semi intact. Thank you.

PAUL CRAIG, 27 Pinewood Knoll

MR. CRAIG: Paul Craig, 27 Pinewood Knoll in Chili. I'm also the clerk of session at Parkminster Church. My wife is a registrar for Parkminster Preschool. The -- the length of the time for the sign is -- they do their -- their enrollment to try to get an enrollment, but there is also this preK that's free in the Town now, that -- that -- there is a preK part of Parkminster preschool, and the preK is a lottery. So they try to get their enrollment started early, but then there is a preK lottery. People don't find out about that until -- you know, until right away, so there's a time gap between the point where we start registration for the preschool and the time when the lottery comes out for the preK for the people that find out their kids got in the preK or they didn't.

So we want to inform those people about the -- about the -- that those spots are still open at Parkminster. I'm not sure if that is 20 days, 30 days or 40 days, but there is a gap there and I wanted to notify the Board of that.

MR. VALERIO: Just to clarify, you mean the School District's preK?

MR. STEVENS: Yes. To be honest. That wasn't available when my kids were in.

MR. VALERIO: You're saying you want parents to know for kids who don't get into the Gates-Chili School District preK, yours is available?

MR. STEVENS: Yes, thank you very much.

BRETT HUGHES, 6500 Ventura Drive

MR. HUGHES: Brett Hughes, 6500 Ventura Drive. Just a general observation, just a statement for the Board to consider of these gentlemen. In popular culture, in some people's eyes, white and black are not actually considered colors. If you stick with the acronym, ROYGBIV we're all familiar with, you could make an argument depending how many colors they are going for in consideration.

ADAM CUMMINGS: Good point.

PAUL WANZENRIED: I do have one question. What is the affiliation of those rather large A frames that are not on your property advertising the Parkminster "Summer's Best Two Weeks"? Currently you have one, I believe, on the corner of Old Ivy and Chili Ave.

MR. ODMARK: In prior years, we have used those to promote the summer camp and this year when we applied for this, we were made aware that the Town doesn't want to have A frames, and so we told our Committee for that Summer's Best Two Weeks, we weren't going to have any of those signs posted on the property.

Some of our parishioners asked if they could take the signs and put them on their private property because they want to support the camp. That is how they got to the places that you're talking about.

PAUL WANZENRIED: Just to be clear, A-frame signs are prohibited regardless of who's doing it.

MR. ODMARK: Okay.

PAUL WANZENRIED: Okay? That's all I have to say. Thank you.

ADAM CUMMINGS: All right. Now I would like to hear a motion to close the Public Hearing. Do I have a motion?

James Valerio 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 think the consensus was the applicant was okay with tabling. There was a good point about black and white. I remember Palmer Foods and I believe we included white in that four colors. So -- I would still like to table it to make sure. I don't want to

have you process another \$100 fee as a surprise coming forward. As long as you're not pressing for the schedule, I would like to delay this for one more month and gather some more information. We had some good conversation today and I think it would help your application and our benefit to know exactly what is going on. So without any other discussion, I would like to move to table this until next month.

FRED TROTT: So moved.

JAMES WIESNER: Second.

DECISION: Unanimously tabled by a vote of 5 yes to table until the June 28, 2016 meeting to discuss if there is a need to revise the application and append an additional variance request for the preschool sign, which appears to have more colors than our code allows.

Note: Applicant to obtain new signs to post and maintain as per Town regulations.

Note: Applicant to obtain new signs at the Building Department to post/maintain as per Town regulations.

MR. ODMARK: What additional paperwork do you require from me?

ADAM CUMMINGS: Right now, the only thing -- because you already have the picture of the sign, under Section 3 for the area variance, we would have to mark down the section of the code with the color limitation and just mark down the number of colors. If you were going to seek that.

Now, as we said, there is a couple different options. We didn't come up with any solutions tonight, just a lot of problems. But a lot of solutions for the proposal, you could repaint the sign. We could determine the interpretation of it, so we -- so we have some latitude to discuss and I would invite you to talk to the Building Department some more.

But in terms of your paperwork, it's all fine here with the exception of if it's deemed to have that variance, we would add that one line in there with a section of the code and say that we're going from so many colors to so many colors. In terms of yours, you don't have to process any more fees or paperwork.

MR. ODMARK: Okay. Thank you.

2. Application of Mitchell Phillips, owner; 542 Paul Road, Rochester, New York 14624 for variance to erect a 30' x 8' deck 19' from side lot line abutting a street (28' previously approved) at property located at 542 Paul Road in R-1-15 zone.

Mitchell Phillips was present to represent the application.

MR. PHILLIPS: My name is Mitch Phillips. I tend to talk loud. I will try to talk quietly into the microphone here.

I live at 542 Paul Road. I bought the house five, six years ago. It was a -- it was a foreclosed home, I believe. It was vacant, had been vacant for years. There was actually, um -- if you look towards the Adela Circle side, the little stretched-in area, there was actually a deck per se constructed there. There was a ramp with footers and everything else that was there. I assume whoever lived in the house before became some type -- some type of handicapped and need the ramp to enter the home.

Um, naturally, I don't need it -- knock on wood right now anyways -- and so I removed that.

What -- what remained was a -- concrete steps in the front, to the front door and a concrete pad to the side door, which is near the garage. And whoever put that in, I don't know if it was the original builder or homeowner or whatever, both have sank pretty bad. And to be honest, it pools up with water, especially towards that side door there, towards the driveway. So I have tried to -- I have tried to do different drainage things with the downspouts on my -- on my gutter system and really what I would like to do is clean that up, that whole area up.

Since I bought the house, you know, I think I have improved -- I have improved the value of the home and aesthetically improved the value of the neighborhood. It was kind of an eyesore before. What I would like to do is put that deck up and then finish -- start and finish landscaping the yard which doesn't require a permit. But the deck does. Unbeknownst to me, and this is my first time buying a house -- this particular house -- I actually own another house in Chili, as well, but I didn't realize there was a variance already in place for that house. It did not meet the setback requirement and previously granted there was a variance in place. I naively thought I just have to fill out a permit.

So when I came down and filled out the permit about a month and a half ago, I was pretty eager to get started on constructing the deck. They informed me that my house doesn't meet the required setback and a variance application would be required.

So I did the best I could to fill out the paperwork. Um, a buddy of mine drew up a rough sketch of the deck on Excel and it's really pretty much it.

ADAM CUMMINGS: Okay. So the Monroe County Department of Planning and Development did receive the referral and they have checked this to be a local matter.

Monroe County DOT had no issues, and as I said, it's a local matter. It's back on us.

The old setback was 28 feet, going back to 1953.

MR. PHILLIPS: I have a question. I don't mean to like -- you know, muddy up the waters at all, but if there was an -- I -- I imagine an environmental mediation branch. We work with the Department of Labor EPA all of the time. If there was already a variance approved that permitted the house to be constructed, you know, beyond the setback requirement, um, set forth by the Town requirements, don't -- doesn't the variance already exist?

ADAM CUMMINGS: The -- the variance does exist. So if you could construct this deck to be 20 feet off of Adela Circle, you wouldn't be in front of us right now.

MR. PHILLIPS: I'm sorry, did you say 20?

ADAM CUMMINGS: 28. 28. You also have a back line setback of 28 feet.

MR. PHILLIPS: Because the house doesn't even meet the 28 feet right now.

ADAM CUMMINGS: That is what I was going to say. When it was constructed back in 1953, it was supposed to be 28 feet off the road and someone laying out a house --

MR. PHILLIPS: Missed.

ADAM CUMMINGS: -- was 2/10 of a foot closer than they were supposed to be.

MR. PHILLIPS: That was another question I had. Because when I was talking with, I guess the clerks or admins that were in the Building Permit Office, is that line doesn't necessarily represent Adela Circle. That line represents just my western boundary.

ADAM CUMMINGS: Correct.

MR. PHILLIPS: So she said there is -- there is naturally -- in every Town, there is an easement on the side of the road that is a part of the Town's property, right?

ADAM CUMMINGS: You will have a right-of-way, yes.

MR. PHILLIPS: She couldn't confirm.

ADAM CUMMINGS: This is off the property line. Not the right-of-way line.

MR. PHILLIPS: Okay.

ADAM CUMMINGS: I can't even fathom a guess. I can say with certainty neither you nor I were there in 1953. But that could be an overhang. That could be a miscalculation by the surveyor. Who knows. Either way, the house is not in compliance, so that is another thing to note, that -- regardless of the 19 feet, we may want to consider -- this is the Board I'm discussing with --

MR. PHILLIPS: Sure.

ADAM CUMMINGS: We may want to consider at least revising to 27 feet to make this compliant. Now, I understand it's preexisting, nonconforming and who cares, but now back onto the deck, the deck you're looking to really build it off of what was previously there for several years, and you're looking to extend it 8 feet towards the road.

MR. PHILLIPS: Correct. And that's only because I'm trying to, on my behalf, trying to -- trying to minimally impact that distance, right? Because I mean 8 feet, truthfully is a couple large steps. So I mean, when I first was talking about building the deck and was talking about, "Hey" -- with my buddy who is going to help me construct it, was -- let's kind of roughly figure out how we would do this. Right? And then I will get a rough material list together and see feasibly when I want to do this.

So that was not the original intent. It wasn't until I came here and found out that the house is already -- because, for whatever reason -- and I understand, the more homes, the more taxpayers and to grow the area, whatever, but they were permitted to build that house not at the required setback and then also call my house Paul Road -- I know that is considered a front yard, but technically my doors and driveway and mailbox all come to Adela Circle. So I'm kind of in that conundrum, okay, I will reduce my own plans, what I wanted to do and have 12 feet altered to try to minimally impact that side facing circle and say -- call it eight. And -- and generically, I said 30 by 8, but it is really more of an L shape.

ADAM CUMMINGS: So it's not 240 square feet.

MR. PHILLIPS: No -- really -- correct.

ADAM CUMMINGS: Not that we're worried about square footage. But it is a good point to make.

MR. VALERIO: So what was there before with the stone you talked about -- or the ramp?

MR. PHILLIPS: Yes. It was a pressure-treated -- it was nice. It was a pressure-treated ramp and it wasn't like one of those things where somebody kind of unfolded and erected it. They constructed it. They poured footers.

MR. VALERIO: There was never a permit for it?

MR. PHILLIPS: No. That was my next question to them, when I was trying to fill out the permit, and they said, "Hey, your house doesn't meet the minimum setback."

I was, "Oh, okay. I was unaware of that."

They said, "You would have to file for a variance."

One lady said to the other lady there was already a variance in place. I deal with the State all of the time. There are applicable variances. If you run into the same problem enough times, they don't want to waste everyone's time or money or effort. So they will say, "For this particular situation, there is an applicable variance."

So I'm like if there is a variance already permitting the house to be closer than what the setback is, what would be the problem me attaching a small deck to that. I was still within the variance. I was just naively assuming.

That's when she said, "It is just for your house, not for a deck."

So we were kind of like -- I was trying to get further explanation of it. I said, "Well, the homeowner previous to me had a ramp. It was a constructed ramp," and -- because -- because

what we also talked about was hey, another plan of mine -- I want the deck -- and another plan of mine -- and I hope this doesn't get on the side of you guys denying the deck -- the worse case scenario, I can dig it all out and pour concrete. There is no variance permit to do that. There is nothing that says I can't do that.

But preferably, I would like to have a deck, dress it up with some bushes around it, and dress the yard up. I've cleaned up the house. I haven't done the yard. I would like to complete the project.

And so I said, "Well, the homeowner before me had a structure."

She said the reason that the concrete and pavers would not be considered, um, something I have to get a permit or variance for because it's not considered a structure. I said the homeowner prior to me had a structure. They had footers for sure. They had pressure-treated lumber. I mean, I'm not in the construction world now per se, but I did that during collection. What they constructed was every bit of a deck.

She said, "Well, it's a ramp and we don't deny ramps."

You have to have access to the house. I get that. Like I don't want to deny anyone, you know, their right to enter their home, but, you know, it -- it is on that fine line of that is a constructed -- you know what I mean? That's a constructed piece of framing there. You know what I mean? It has footers, pressure-treated, attached to the house. So I don't know.

ADAM CUMMINGS: You have done a very good job pleading your case. I would say enough -- you have given enough explanation on everything. So it was a previous built structure out of compliance, but now it is gone, and now you're looking to be revising that old variance from 28 feet to 19 feet.

FRED TROTT: Couple of questions, it shows a porch 4 feet.

ADAM CUMMINGS: 4 feet off the side lot. The east side lot line back in 1975, I'm assuming the east lot line is where that 200 feet and the stone patio in the back --

MR. PHILLIPS: Which doesn't exist.

ADAM CUMMINGS: So I think they might have applied back in 1965 and just --

MR. PHILLIPS: They did have -- I did demo out, when I came there, because the garage was actually like -- the garage concrete was heaving and there was like a slate like laid in the back, kind of where that is.

ADAM CUMMINGS: Right. It calls out a stone patio on this surveyor's mark. This one is calling out a porch. I'm wondering if the stone patio may have replaced an old porch. Or could have been a deck.

MR. PHILLIPS: They did have a sliding glass -- I think they had a porch there at one time, but it doesn't exist any more.

FRED TROTT: So that is the east side.

MR. PHILLIPS: The side I'm proposing is the west.

ADAM CUMMINGS: Correct.

FRED TROTT: All right. Other question I had for you, are you using the existing footers?

MR. PHILLIPS: No, no. So when I tore that -- I tore those footers out.

ADAM CUMMINGS: Okay.

MR. PHILLIPS: To be honest, what I plan to do, I would have loved to have had footers on the house side -- I don't know if this is the type of meeting --

ADAM CUMMINGS: No. Don't worry about construction tonight.

ERIC STOWE: You can amend the variance from 28 to 27.8.

ADAM CUMMINGS: We're here for a new variance.

ERIC STOWE: Right.

ADAM CUMMINGS: We're replacing the old variance. Incorrect use of the word "amend."

MR. PHILLIPS: The new variance would specifically address the deck, not necessarily the house setback, right?

ADAM CUMMINGS: Is there two different setbacks? Like the house will still be at the 28?

All one setback.

MR. PHILLIPS: Okay. Easy enough.

ADAM CUMMINGS: Built structure.

One condition, need to get a building permit. You already started that process. I will -- if -- if it is approved today, it will just recommence.

MR. PHILLIPS: Don't find out until a week from now, and then if I am approved, I apply for my building permit?

ADAM CUMMINGS: If it is approved tonight, if it is approved tonight, you could go there tomorrow.

MR. PHILLIPS: But how -- I apologize. I just don't know how the message is delivered it is approved.

PAUL WANZENRIED: Because I am the Building Department.

ADAM CUMMINGS: That is why we have the side table here.

MR. PHILLIPS: Okay.

MARK MERRY: He actually has a T shirt that he wears that says that.

ADAM CUMMINGS: It says, "I am" and "Building Department" on the back.

But we do communicate. You may not receive the letter yet, but it has been put in the records.

MR. PHILLIPS: Okay.

ADAM CUMMINGS: Or made into a record. It hasn't been adopted yet.

COMMENTS OR QUESTIONS FROM THE AUDIENCE: None.

James Valerio 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 of approval, the building permit from the Building Department must be obtained prior to the commencement of construction.

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 Valerio 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 James Wiesner seconded the motion. All Board members were in favor of the motion.

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

1. Building permit must be obtained from the Building Department prior to the commencement of construction.

The following finding of fact was cited:

1. Proposed variance provides an aesthetic and functional impact to the dwelling that is similar to other surrounding properties. Additionally, the proposed structure is located further from the road than a prior structure that existed on the property for many years, which did not adversely impact the surrounding properties or pose a safety concern to the public.
3. Application of Robert Fallone Jr., owner; 15 Bellaqua Estates Court, Rochester, New York 14624 for variance to erect a 12' x 25' deck 62' from rear lot line (75' required abutting a street) at property located at 63 East Bellaqua Estates Drive in R-1-20 zone.

Robert Fallone, Jr. was present to represent the application.

MR. FALLONE: Good evening. My name is Robert Fallone, Jr. 15 Bellaqua Estates Drive. Here regarding 63 East Bellaqua Estates. It's the model home right on the corner of Beaver Road and East Bellaqua.

Pretty restrictive lot. It has -- surrounded on three sides by Bellaqua Estates Drive, East Bellaqua and Beaver Road. So that's the deck -- 12 by 25 coming right off the door that was just put in, in the back.

ADAM CUMMINGS: Okay. And knowing this subdivision, I believe quite a few of them along Beaver Road have been in for variances.

MR. FALLONE: Right.

ADAM CUMMINGS: Because it's -- I will put it in air quotes, their "backyard," but it's fronting a street, so it's a front yard.

MR. FALLONE: Correct.

JAMES WIESNER: So the patio will be at ground level. The deck will be off the second floor?

MR. FALLONE: Which is really the first floor. It is just the way that the ground goes toward Beaver Road, it exposes the basement. That's the -- the windows closest to the ground. It is actually a basement.

JAMES WIESNER: So the patio is actually down by the basement?

MR. FALLONE: Correct.

JAMES WIESNER: The actual door coming out of the deck is.

MR. FALLONE: The first floor.

ADAM CUMMINGS: They're both going to extend 12 feet off the back of the house, correct?

MR. FALLONE: Correct. That patio will probably be only about 10.

ADAM CUMMINGS: Okay.

FRED TROTT: I'm just reading here and want to confirm. So you're selling the property and the customer wants these in there?

MR. FALLONE: Correct.

Been for sale for almost three years, so we finally got it sold. This is one of the requests that they wanted.

COMMENTS OR QUESTIONS FROM THE AUDIENCE: None.

Mark Merry 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 on this one is -- if it is approved, building permit must be obtained from the Building Department prior to construction.

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.

Mark Merry made a motion to approve the application with the following condition, and James Valerio 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. Building permit must be obtained from the Building Department prior to the commencement of construction.

The following finding of fact was cited:

1. Several other parcels have similar structures built a similar distance from Beaver Road in this neighborhood. The constructed tree barrier and berm area provide a buffer from the roadway and proposed structure will not hinder any traffic visibility or safety in the area.

INFORMAL:

1. Fastrac Markets, 6500 New Venture Gear Drive, East Syracuse, New York 13057. Applicant has submitted a revised sign variance application. The Board is required to vote on whether to hear this revised application prior to the required one year waiting period of a denied application, at property located at 1064 Scottsville Road in G.B. zone.

Brett Hughes was present to represent the application.

ADAM CUMMINGS: I will just make note that you are in the audience. Thank you, the applicant.

So everybody has reviewed this --

FRED TROTT: Do I need to put this up?

ADAM CUMMINGS: You can go ahead and put it up.

So we do have a dated, revised package. I brought the old one, too. So the way this procedure has to work is this is a rehearing. So just so the Board is aware, the rehearing process -- in order for us to rehear this, the Board has to vote and it has to be a unanimous vote. If there is one dissenting, it does not pass and then we would go back to the one-year waiting period. That's the course of action that we're pursuing tonight.

To summarize, this revised or compromised package, as it is called, the three window signs were removed from the package and I'm reading this from the letter from Napierala Consulting. It reduces the proposed total area of building signs from 165.73 square feet down to 132.35 square feet. Reduces the number of proposed building signs in half from six down to three.

They have also removed two of the four Fastrac logos on the fuel dispensers from the package, so that reduces the total number of dispenser signs from 64 to 32. Once again, a 50 percent reduction. The total number of freestanding signs is reduced from 66 to 34. Just missed 50 percent on that one.

Um, the total freestanding sign area is reduced from 211.01 square feet down to 198.87 square feet. Um, and that is the summary. Everything there. There are pictures in here what the new ones would look like. It is significantly less signage on the -- on the fuel pumps.

And, Fred (Trott), I'm not picking on you, but it does look like they compromised and I'm not seeing an electronic sign here. I'm seeing a mechanical sign.

FRED TROTT: Do you have the old one?

ADAM CUMMINGS: I don't have it. I thought I did. I brought the Genesee Valley Regional Market. That doesn't do me any good. Jim (Wiesner) has it.

FRED TROTT: No. I guess what I'm -- do you know what the -- what --

ADAM CUMMINGS: What were you looking for, Fred (Trott)?

FRED TROTT: Well, like say, for example, are the --

ADAM CUMMINGS: If you compare the fuel dispensers.

JAMES WIESNER: I don't see what has been reduced.

FRED TROTT: They took the bottom ones off.

ADAM CUMMINGS: All of the bottoms are off and that's on both sides. I just want to make note that they're still -- I don't know that was.

FRED TROTT: I guess what I was wondering, what was the variance allowed on that one, 64 and 32? Variance to allow how much?

ADAM CUMMINGS: We didn't call it out. We never called it out. I have to go back and do the math. We may have it up here.

Here we go. That's where we -- that's right. This is where we discovered -- right there. This is where we discovered they would be called freestanding signs. So by definition, they were allowed one. And then the quantity skyrocketed.

FRED TROTT: Yeah.

ADAM CUMMINGS: I think that was your question, the quantity?

FRED TROTT: Yeah. Yes.

ADAM CUMMINGS: So -- by our interpretation --

FRED TROTT: Really all we're losing is the "Take and Bake," "Fresh Foods" and one "Fastrac" on the bottom.

ADAM CUMMINGS: On each side of the dispensers.

FRED TROTT: Each side.

ADAM CUMMINGS: Yes. Once again, it's -- we can say "only," but it really is a 50 percent from what was originally proposed. Now it is that. If you want to put a mathematical number on it, and then -- and then going through the rest of it, um, it is staying the same. So.

MARK MERRY: So Adam (Cummings), because this is my first time with some type of deal like this, and not hearing a justification -- is there a justification period as to why we should have another hearing, prior to the one year?

ADAM CUMMINGS: That's --

MARK MERRY: I mean -- at the time they went forward --

FRED TROTT: Is that normal?

MARK MERRY: If they were denied, a one-year waiting period, I'm not seeing or hearing another thing otherwise.

ADAM CUMMINGS: We have done two rehearings that I can recall. Jim (Wiesner), how many do you recall?

JAMES WIESNER: Sounds about right.

ADAM CUMMINGS: In all my time here. And I have never had a set period on it. It's -- new information was provided to the Board and then we made a decision to rehear those. And that's -- that's really the crux of what we're deciding tonight.

JAMES WIESNER: Is --

ADAM CUMMINGS: Is this enough of a change or a compromise or enough new information to warrant rehearing this? So meaning they went down and they reduced that sign. They took the numbers down -- or the logos off the bottom part of it. They took off those building signs, which we denied the last one, so we did deny the signs on each side of the fuel pumps, the five wall signs, and the one fuel sign on the pump canopy. Those were what we denied back in January.

MARK MERRY: So with that stated, my next question would be, are -- everything denied, is that completely off the --

ADAM CUMMINGS: Yes.

MARK MERRY: So everything is off.

ADAM CUMMINGS: Off? I'm not following.

MARK MERRY: The other items are no longer on what was originally given to us?

ADAM CUMMINGS: The nine items?

MARK MERRY: The items that were given to us, for reconsideration, are those included?

ADAM CUMMINGS: Well, the ones --

MARK MERRY: That is what I'm asking.

ADAM CUMMINGS: We denied signs on each side of the fuel pumps. They're still coming back for signs on each side of the fuel pumps. They're just looking to change the number, um, from 64 to 32. And likewise, that changes the number of freestanding signs, which they're allowed one by our code.

MARK MERRY: Okay.

ADAM CUMMINGS: From 66 to 34. Just to be clear, because I was getting confused by the question. We still have the other variances for the other signs that we did approve. Those are still approved. We're not addressing any of those tonight. These are just for those three types, and it does not appear the fuel canopy is on this one. That's correct. So -- no.

They are allowed the one. What is the fuel canopy size?

Fuel canopy, 22 by 22 square feet. I'm still seeing it here. But that's right. That comes under the freestanding sign area. That is where that one falls.

FRED TROTT: Can I ask another question as far as opening this back up again? If we allow them to come back, are they -- is all of the denials off the table then?

ADAM CUMMINGS: No. Because that's the next stage of it. When we rehear it, in order to rescind these and approve them, it has to be a unanimous vote. So there -- two unanimous votes. First unanimous to rehear it. Second needs to be unanimous to go with the compromise.

So even going through this rehearing step, we can -- if we rehear it, it is unanimous, we open it back up, we have this information here, we could even -- even gather more information. When we vote on this rehearing of the specific variance requests, if we have a split vote, even if it is 4-1, it does not carry.

FRED TROTT: That was my question. It only pertains to these variances that they picked up.

ADAM CUMMINGS: Correct. Which coincides with the three that were denied.

MR. VALERIO: If we denied this hearing earlier, can they begin construction still?

ADAM CUMMINGS: Yes. They just can't do these specific signs.

MR. VALERIO: For a year.

ADAM CUMMINGS: And it is a year from our decision, January 26th. So we're already into May. So it would be in January if they want to come back. So those are the options going around.

MR. VALERIO: Potentially could delay them opening?

ADAM CUMMINGS: No. They could still put in the pumps without the signs. I'm sure that's not what they prefer, but it is an option.

We have the wall signs. I will speak to industry standard. I have floated around Town. Byrne Dairy has generic ones on theirs. Other ones do have logos at the top header. Not the bottom. So I would -- so I would agree with this one in terms of those logos being taken off the bottom of what I have typically seen. I am only pointing out an observation. Not trying to sway it one way or another. Once again, it's just the rehearing. We're not going into the next part of it.

JAMES WIESNER: That would not be tonight.

MARK MERRY: That would not be tonight.

FRED TROTT: Right? It wouldn't be tonight?

ADAM CUMMINGS: We don't have it on the public notice, so no.

FRED TROTT: They would still have to have a public notice and everything else.

ADAM CUMMINGS: Yes. As you can see, it's under Informal. We're only talking about a vote to rehear.

FRED TROTT: The only reason I say it, they already had a Public Hearing.

ADAM CUMMINGS: On the other one. This is all new.

FRED TROTT: Okay.

ADAM CUMMINGS: This is all new.

MARK MERRY: The other question is can the vote start right to left?

ADAM CUMMINGS: Yes. We can start at the top, if you want. Yes. We can.

MARK MERRY: Does Paul (Wanzenried) have a vote?

ADAM CUMMINGS: That side table doesn't have a vote.

MARK MERRY: You said the top.

JAMES WIESNER: He is the Building Department, you know.

MR. VALERIO: Either way, you're not the last vote.

ADAM CUMMINGS: I just want to have any discussion for the Board -- and this is where -- or the discussion by the Board, um, of any part of this new compromise plan that we have in front of us.

Not hearing much -- we -- we may not have any. I'm fine with that. I just want to take the opportunity since it's here.

FRED TROTT: Yes. A little bit perplexed because I don't remember exactly all of the conversation about the other signs. I know we talked about the gas pumps. Those are the ones that stick out in my mind.

ADAM CUMMINGS: The fuel pumps and the signs above -- the signs above the -- the marketing sign areas, above the digital fuel price display, those -- those were the other ones that jumped out. The advertising. Those were the ones I remember discussing the most.

"Ethanol-free diesel," I would count those as signs, but I would also say they're required. Just putting a yellow or green didn't let anyone know what they're filling it with and that is a public safety hazard if we don't list what the fuel sources are.

ERIC STOWE: We also have, I believe, a provision in our code that he says if it's required, it's not a sign.

ADAM CUMMINGS: Perfect. I don't know if it is required. But it should be.

Once again, this is for rehearing this one. I have been through it twice --

JAMES WIESNER: Well, Fallones, Bellaqua Estates -- I don't know what the second one is you're talking about.

ADAM CUMMINGS: It was either -- I picture it as a church application.

JAMES WIESNER: The one on Chili Avenue where we had a lot of banners?

ADAM CUMMINGS: Yes.

JAMES WIESNER: And we didn't have the right to do it.

ADAM CUMMINGS: That was the one.

MARK MERRY: You see there is a justification why you do that. Here -- they can -- this is a key for developing the site. It is not mandatory they have these additional signs. If they open and say, "I will buy a housing development. Will you consider rehearing my application and compromise?" I will lose something and gain something. To me that is more of a swaying factor. Part of the Board discussion here, right?

But to know that you are going to be able to find an establishment open -- they're going to open initially with less signs than wanted. Is it going to keep a customer away? You're going to go to a Fastrac, you will go to Fastrac. You definitely know they're there. You will not miss them. They're in the gray location.

Those signs, in my mind, not being there day one when they open, I don't see that. But what I'm seeing is a huge impact. But I'm only one of five.

FRED TROTT: Well -- other question I have, I guess the part I have to pull out that nags

at me is I remember -- we're giving them an option to table, to reconsider when we discussed those changes and they -- at the time they were not.

ADAM CUMMINGS: That's a risk they took.

FRED TROTT: They were willing to take that risk knowing it would happen.

ADAM CUMMINGS: I don't think they knew that it would be an avenue.

FRED TROTT: Right. That is part of that process. They're -- they're developers. They knew --

ADAM CUMMINGS: Yes.

FRED TROTT: So they know, we're taking a risk and -- and it was they more or less drew a line in the sand, I want to say.

ADAM CUMMINGS: Or they rolled the dice. If it had passed.

FRED TROTT: They crossed the line in the sand.

ADAM CUMMINGS: This is a different line in the sand. This is a line in the sand that you still have -- they're doing the other part of the process they can do. They can ask to be reheard. That is where we're at.

JAMES WIESNER: Without regards to what has happened before, they made a substantial enough change to be reconsidered to have us take a second look at it, is really what you're looking at.

ADAM CUMMINGS: I hold two hats on. I would go off the numbers and say the numbers are significantly reducing this. Yes, it's all signs, but it's a quantified number that I would view as significant.

Once again, I'm not totally sitting at that. I'm the Chairman tonight. I'm just trying to see which way the Board feels tonight. But there is a numerical number that has been changed. There are still signs. There is no disputing that. There is still an exceedance of the number of signs. But you could see that as a substantial change.

JAMES WIESNER: Are we going to rehear it? It's not whether -- what's going to happen after that.

FRED TROTT: After we rehear it. True.

ADAM CUMMINGS: Right. Right. And knowing developers, in January more than likely, they will be back here anyway. So what is really gained by -- that is just me playing Devil's advocate, what is gained by waiting until January?

MARK MERRY: So I'm clear then, if we do allow them to rehear it, we have the hearing, they're denied for a second time, they're back on the clock for a whole year?

ADAM CUMMINGS: Correct.

FRED TROTT: From the point they're denied the second time?

MARK MERRY: Wow.

ADAM CUMMINGS: So that's -- that's the risk they have. But once again --

MARK MERRY: So 12 months or 7 months.

ADAM CUMMINGS: Right. And -- and it's -- basically we're trying to do a compromise. This is the next plan that came forward. As I just said, we're re-discussing the rehearing part. We could get more information before the next meeting. If they wish -- if they come up with new information, if they come up with new design standards, if something else changes -- not to say changes from these numbers.

MARK MERRY: If it was denied. I don't see it as a compromise. I see it as a measure to try to get something you want to have; whereas, the original hearing, someone says, "Oh, gee, you know, we're really think you don't need all of the signs," and they say, "Hey, I will cut it in half."

To me, that carries a lot more weight than you get zero. Well, how do I get more than zero? Let me now cut it in half. I think --

ADAM CUMMINGS: Okay. Calculated risk.

MARK MERRY: -- it is better off the top, right?

ADAM CUMMINGS: In their case. Yes. I see where you're going. That's a very valid statement.

Counsel, do we have Public Hearing on this?

ERIC STOWE: I don't believe we do. The -- the standard you need to maintain and be aware of is don't make your decision based on arbitrary or capricious rulings. Look at it on the merits of the application. So just don't be -- it can't -- do not base your decision on well, they had their chance. They didn't reduce it at the time. They're asking you to reconsider. Capricious may be considered, well they had it. They didn't do it when we asked them to; we'll deny the rehearing. Don't make that a foundation of your determination.

ADAM CUMMINGS: Okay.

ERIC STOWE: It is not a punishment. An application has been made to rehear -- to rehear.

ADAM CUMMINGS: That application are the numbers that I just read.

ERIC STOWE: Right.

FRED TROTT: So I'm just trying to remember the conversations.

Did we have an issue with the size of the Buildings A, B and -- the monument sign?

ADAM CUMMINGS: The monument sign --

FRED TROTT: I mean -- the three building signs that were denied.

ADAM CUMMINGS: I was going to say the monument sign we approved.

FRED TROTT: So the three --

ADAM CUMMINGS: The menu board sign we approved. The issue we had was they

came in with five wall signs on the building.

FRED TROTT: Three "Fastrac cafe."

ADAM CUMMINGS: Yep.

FRED TROTT: Then two "Eat and bake," "Shake and Bake" or whatever signs.

ADAM CUMMINGS: Yes. The other solid letter -- not solid letter, but the lettering signs. Correct. So they are now taking those ones off.

FRED TROTT: So I'm just -- so let me ask this next question. If we allow to rehear it, just to propose -- I know, and we have an issue with the three building -- say for example we have an issue with one part of this denying, can they table that to make changes to it like we would do at an open ---

ADAM CUMMINGS: So you're thinking when they come through the next time, split up the variances into each individual one? Yes, we can do that. But once again, each one of these has to be unanimous.

MR. VALERIO: Like you did the first time?

ADAM CUMMINGS: Yes. But all of them still need to get a unanimous vote.

JAMES WIESNER: Really all we're considering at this point is is it substantial enough to be reheard.

ADAM CUMMINGS: Reheard. Yes. That is where we're jumping forward to these other points.

JAMES WIESNER: We're not trying to rehear the case.

MARK MERRY: This is part of the Board discussion. I think it's a good question.

ADAM CUMMINGS: I think in splitting them out in this instance, they all need to be a unanimous vote.

ERIC STOWE: Just to go back to our code, whether new evidence is submitted or conditions have changed to an extent that further consideration is warranted.

FRED TROTT: So we're considering it now.

MARK MERRY: Right.

ADAM CUMMINGS: We are considering whether something is significant enough of a change to rehear it.

MARK MERRY: In your opinion. Your personal opinion is it significant enough a change.

ERIC STOWE: That would be a vote.

ADAM CUMMINGS: Correct.

ERIC STOWE: So hold that for a vote, please.

ADAM CUMMINGS: Going for a vote. Let's go towards a vote.

MR. VALERIO: Yes.

FRED TROTT: So we're just voting to hear the new proposal?

ADAM CUMMINGS: Yes.

The Board voted unanimously in favor of the motion to hear the new proposal.

ADAM CUMMINGS: So we got there as a 5 to 0 vote. It will be coming up more than likely at the next Board meeting.

Counsel, is there a timeframe that we have to do for this action on the rehearing? That I don't remember, if there is a 60-day requirement or anything.

ERIC STOWE: Off the top of my head I do not know the answer, but I would -- but it would start with their application.

ADAM CUMMINGS: Right. Because right now they're just informal in here with that application. So we'll be looking at your application. That one passed through. Thank you for coming out.

Mark Merry made a motion to approve the 4/26/16 Zoning Board of Appeals minutes, and Fred Trott seconded the motion. The Board was unanimously in favor of the motion.

Adam Cummings made a motion to adjourn the meeting.

FRED TROTT: Sorry. I had a question. Will they be coming through with a new packet?

ADAM CUMMINGS: Probably be that one.

JAMES WIESNER: He has options.

ADAM CUMMINGS: He has --

JAMES WIESNER: He can plead his case any way he wants at this point.

ADAM CUMMINGS: Yes. So he has a strict compromise here or in his eyes a strict compromise. Could be more.

JAMES WIESNER: He could have been listening to us.

ADAM CUMMINGS: Could be more. If it is less than this, then our vote is much easier. Because then we won't rehear it because it is not what we revoted to hear.

Do you second the motion?

FRED TROTT: Sure. I will second anything.

The Board was unanimously in favor of the motion.

The meeting ended at 8:38 p.m.