

CHILI ZONING BOARD OF APPEALS  
June 2, 2015

A special meeting of the Chili Zoning Board was held on June 2, 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 Vice Chairperson James Wiesner.

PRESENT: Mark Merry, Ron Richmond, Fred Trott and Vice Chairperson James Chairman Adam Cummings (excused).

ALSO PRESENT: Michael Jones, Assistant Town Counsel; Ed Shero, Building & Plumbing Inspector

Vice Chairperson James Wiesner 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.

JAMES WIESNER: First thing we need to discuss, everybody able to get out to the site and see the sign no problem?

The Board indicated they had no problem with the notification sign.

1. Application of Faber Homes, owner; 3240 Chili Avenue, Rochester, New York 14624 for variance to allow existing dwelling under construction to be 30.9' from front lot line (35' req.) at property located at 2 Club House Drive in PRD zone.

Jared Hirt and Bernard Iacovangelo were present to represent the application.

MR. HIRT: Good evening, gentlemen. Jared Hirt with Evans & Fox on behalf of Faber Homes.

If I could, I do note I have handed the binder that we have submitted tonight to Mr. Richmond, Mr. Trott, Mr. Merry and Mr. Wiesner.

JAMES WIESNER: This is supplemental material that you're giving out?

MR. HIRT: It is. Some of the items that are being produced tonight in the binder were also produced in the original application provided by Faber Homes, and then there are supplemental documents that are being produced at this time.

JAMES WIESNER: So this was what was presented for the building permit, when you say "application"?

MR. HIRT: The original application that was submitted for the -- for the area variance that was submitted to Town Clerk did include some of the items that are being produced tonight, but it did not include all of them.

JAMES WIESNER: Can you give us a description of the variance that you're requesting tonight, please?

MR. HIRT: Certainly. If you actually turn to Exhibit A, in the binder, it is a -- an instrument survey map of the property at 2 Club House Drive, and the variance that we're seeking is a small variance, which if you look at the property, and the house that is on the property, the total width of the property running from east to west is 67 feet.

Now, 36.7 feet of that house meets the 35 foot setback requirement. 20.2 feet of it is approximately 31 feet. So we're looking for a 4 foot, 1 inch variance for that. And then 10 feet of it, as you can see, sits back another 1.4 feet, but it still doesn't meet the 35 foot requirement. So at the end of the day, what we're seeking is a variance of 4.1 feet, for the front lot line of the property.

I know the Board is well aware of the legal factors that it is required to consider under Town Law 267, but if I could, I would like to go through the binder and address each and every one of those factors tonight for the Board.

The first factor is obviously whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the variance that we're seeking. Again, and as depicted on Exhibit A, the variance is very small. The required variance pursuant to the site plans is a 35 foot front variance, and most of the house, in fact, meets that. We're only seeking a 4 foot variance for a very small portion of the property.

Now, on Exhibit B, we're producing pictures of not only the house itself, but also the neighborhood to show that candidly without having the survey that is being provided to the Board tonight, it is very unlikely that anybody would ever even know that this house does not meet the front setback requirement. You can't tell by looking at it. It doesn't stick out when you drive-thru the neighborhood and as the pictures depict, it looks like every other house. It fits the character of the neighborhood and nobody would ever know. And, in fact, my client didn't know until the surveyor went back out and realized what had occurred.

FRED TROTT: Can I jump the gun a little bit? What exactly happened here?

MR. HIRT: Sure.

What happened was the -- in the process, the surveyor goes out and based upon GPS readings that he puts into the computer, he gets a marking of where he needs to put in the stakes. And those stakes then are used by the excavator to dig the foundation and dig out where the house needs to be set. There was an error performed by the surveyor when he did that, such that the end result, he staked it out, everyone went in, Superior Walls put in the foundation, the house got constructed and then when he went back out for the closing survey because the house has been sold, he realized that he had made a mistake and that the house or actually parts of the house were actually 4 feet closer to the road than he originally had thought. That's really what it boils down to, is that the surveyor made a mistake and it wasn't found until after the house had already been constructed.

And again, you know, my client had been out there. Workers had been out there. No one -- it's not significant enough to where anyone noticed it until the surveyor actually prepared the map and noticed that it encroached onto the front setback requirement.

MICHAEL JONES: Excuse me, is that Exhibit I in the binder that you passed out, the affidavit from the surveyor?

MR. HIRT: Yes. What Counsel is referring to, and we can kind of put the cart before the horse, the factor that is considered by the Board, the last factor is whether or not it was a self-created hardship. Exhibit I in the binder is, in fact, an affidavit from the surveyor, Douglas Madge, indicating what exactly happened and it's our position it really wasn't my client's fault and is not a self-created hardship. That's why we hire experts in the field to do what they do. We hire a surveyor and we relied upon his measurements and we built the house accordingly. And his affidavit indicates exactly what happened.

So the predicament that we're in today and the situation we have, we have a house that has been constructed, it's ready to close and at the 11th hour we realize that we're 4 feet closer than we need to be, only again on a very small portion of the house.

We have looked into other alternatives. The -- can we move the house? Can we tear the house down and rebuild? Can we deconstruct part of the garage and the family room and do that? And attached with the binder that I have provided to you, exhibit -- excuse me, Exhibit C are the building plans of the house. And the problem that we have in simply deconstructing the house, if you look at pages 3 and 4 of the building plans, the way the house is set up, it's the garage section of the house that is too close to the road. Well, you would think why can't you just move the garage back? The problem is, there's a family room directly behind the garage. In order to do that, would require you essentially to deconstruct not only the garage, but the family room, as well, and at that point in time, the cost that would be incurred to deconstruct all of that, you're looking at approximately \$57,000 to deconstruct the family room and the garage, and then to reconstruct it, you're looking at approximately another \$90,000. The estimate for that work we have and we have provided as Exhibit G to our binder.

My client has approximately \$123,000 into the construction of this building, and again, this wasn't our first approach. We have looked at all sorts of alternatives. One is to -- again, we could totally knock down the house, which doesn't seem like it would be the most rationale, reasonable thing to do. To do that, we did receive an estimate for that, and you're looking about \$11,500 to demo the house. That's in Exhibit H. All that does is take us back to square one where we would have to rebuild the house and incur another \$123,000 in building costs.

I do want to make another point of what we're dealing with in terms of also moving the garage and the family room and why it's not really appropriate or even really feasible at this point. These houses are built on Superior Walls, which I'm not sure if any of you are familiar with it, what it is is a pre-fabricated system, and basement walls come measured for that house. They're not the typical block walls that you would see in what most of us have in our homes.

So in order to move the whole garage and family room, not only would we have to move it at that point, but then somehow -- and we're not even sure if this is feasible -- we would then have to jackhammer up the basement and take a pre-fabricated wall and somehow get it out of there when they're typically set in with a crane.

So we're really appealing to the senses of the Board to say we're kind of at a loss. We don't really have any other options at this point other than to completely demo the house and start over from scratch. For a small 4 foot encroachment, it doesn't seem that is really fair or reasonable, especially when it's not impacting any of the other neighbors or the characteristics of the neighborhood.

Um, the other factors that -- that the Board must consider is whether or not the requested area variance is substantial. Again, the entire house is 67 feet wide. Only 30 feet of that, or 20 feet of that, is within the setback requirement of 4 feet. Another 10 feet of it encroaches only 2.7 feet and the rest of it is all in compliance.

So at the end of the day you're looking at approximately 11 percent of the house that encroaches 4 feet and another 7 percent of the house that encroaches less than 3 feet. So at the end of the day, it's not a significant encroachment.

The other factor that, as you are well aware the Board must consider is whether it will have an adverse impact on physical or environmental conditions in the neighborhood or the district. And I have given a lot of thought to this before I came tonight and I could not think of one impact that this has on the physical or the environmental conditions of this neighborhood. Again, it's a very small encroachment of 4 feet in one area and less than 3 feet in another area.

And if you look at the pictures that have been provided to this Board, and there's pictures of the neighborhood and all of the other houses, you won't be able to tell driving up and down

that street that this house encroached into the setback.

We talked about this being not a problem that we created but one that, in fact, was created by the surveyor that we hired. And Mr. Madge's affidavit clearly sets that forward. We have relied upon an expert that we hired, and he got it wrong. But as this Board is well aware, even if you were to determine that this was a self-created hardship, that's not a -- that in of itself is not enough to knock us out of the box at this point.

Are there any questions that the Board has?

FRED TROTT: Does the surveyor still work for you guys?

MR. HIRT: That's a good question. I can't answer that question because I'm not building with Faber.

JAMES WIESNER: Is the surveyor here today or tonight?

MR. HIRT: He is not. He is out of Town. That much I do know.

RON RICHMOND: Has the surveyor had this issue before?

MR. HIRT: Not that I'm aware of. In fact, in his affidavit, I believe he indicates this is the first time -- and, in fact, there has been 28 homes that have been built in Vista Villas and every single one of them complies, and it's my understanding that the surveyor worked on all of those. And I believe in his affidavit he references that, I believe he has done around 1,000 of these jobs and never had this issue, so...

JAMES WIESNER: So I just want an understanding. The cost that you have provided in section -- section -- Section F would be -- the cost in there would be those associated with essentially pushing the garage back further to the west.

MR. HIRT: Exhibit F is the summary job cost report. So you will see there is \$123,645 to date that we have expended on just the construction. That doesn't include the lot. So that's the cost out-of-pocket that my client spent.

Now, if you look at Exhibit G, there are two estimates on Exhibit G. One is the cost to deconstruct the garage and the family room, and that's been estimated at \$57,500. And again, that just gets us to a point where it is deconstructed. Now we have to put it back together. And the cost to do that is approximately \$89,000. So for us to deconstruct it and then move it back 4 feet, even -- even if we could do that, you're looking at about \$160,000 -- \$150,000.

Then Exhibit H, again, we did look at other alternatives, and that's \$11,500 in Exhibit H. That's just to knock the house down and, again, that seems like a pretty severe circumstance to take a brand new house and just level it because of a -- a small encroachment.

I also do have, and it's not included within the binder, but we did reach out to a company that moves houses, and if I could provide this to the Board members, they give us an estimate of \$51,000, and that would be to -- to lift the house up. What that doesn't include is what we do after that, and that's kind of the \$64,000 question, and -- so that's just to lift it up and then because of the fact it is built on Superior Walls, we have to somehow get those walls out and then jackhammer up the concrete, build up somehow another basement wall and no one knows if that can be done or -- can be done and at what cost.

JAMES WIESNER: Pretty safe to say that any sort of mitigation to -- to -- relative to the building would be well in excess of \$100,000?

MR. HIRT: Yes.

FRED TROTT: What about just taking the front of the garage, that 4 feet off and just building from that point up? Because it looks like the garage is 30 feet deep.

MR. HIRT: You're saying lob off the first 4 feet?

FRED TROTT: Yes.

MR. HIRT: I asked that question. My understanding in doing that, it is not as simple as that. There's a lot of structural issues that come into play and then you have a certain depth that you need to park cars in a garage, and that isn't an option from what I understand, because that was one of the very first questions I had.

MARK MERRY: What are the structural issues you're referring to?

MR. HIRT: But you have -- with regard to the Superior Walls basements, and then you have also in the structural part of it, if you look in the building plans how everything is tied together with the garage backing up to the family room, if you look at -- from what I understand the joists that are there, and then -- again, also the basement walls, it becomes much more complicated than simply taking a saw and cutting off the 4 feet.

RON RICHMOND: There is basement under the garage?

MR. HIRT: If you look at the plans, the way they're set up, there is a basement wall directly under -- specifically page 3.

RON RICHMOND: So you wouldn't have the side wall connecting the house from the garage but not necessarily the whole garage, if that was the thought process?

MR. HIRT: So you -- correct. To answer your question. If you look at how the Superior Wall foundation is laid, and again, these aren't block walls. They're pre-fabricated walls. The garage to the -- to the distance of the garage and depth of it, um, is -- the plans I'm showing show only 20 feet.

RON RICHMOND: 20 feet of depth of garage?

MR. HIRT: Correct.

FRED TROTT: I thought I saw 30. Maybe I need a magnifier. I see here on the wall pad here --

Mr. Iacovangelo approached the dais to explain the dimensions.

FRED TROTT: I was thinking it was 30 feet, so you have enough room. I was looking at -- because you wouldn't just have a foundation underneath the garage. Correct? You don't have that Superior Wall --

MR. HIRT: No, I understand that the Superior Wall is, in fact, that -- if you look at page 3 of the plans, from the Superior Walls -- which are Exhibit D.

RON RICHMOND: Are the rest of the houses in the community set back at 35?

MR. HIRT: They are.

RON RICHMOND: So was there not an eyesight that was able to be seen from the stake-out that --

MR. HIRT: It's --

RON RICHMOND: -- that, "Oops. We're 4 foot in front of the house next to us"?

MR. HIRT: Even driving by, the contour of the road, you can't even tell. I mean they -- no one knew until the surveyor actually went out there and was doing the survey for the closing.

RON RICHMOND: Did your client put some sort of QC mechanism in place to hopefully alleviate that from going forward?

MR. HIRT: Yes. Again, this is -- out of 28 homes that they have put in there, this is the first time that this has happened there.

RON RICHMOND: I get it, and I saw the affidavit, too, but I mean it is a self-created issue, as a contractor for your client. I mean, it's still -- it is self-created. It is not something that was just -- just an error.

MR. HIRT: It's a mistake on the surveyor's part. There is no question about it.

MARK MERRY: So I guess the question I would have, and what Ron (Richmond) is mentioning, there is error omission insurance. The surveyor would carry that, I think, for his profession. Does he not have that coverage? And can that not be utilized to resolve this issue?

MR. HIRT: I would assume he does. I don't know that for certain. I would assume the surveyor does.

MARK MERRY: That would be one of my first questions. I routinely visit that with my architects unfortunately.

MR. HIRT: But I think the question we have is, if we have a small encroachment that is 4 feet, you know, on a -- only in a certain area and another 2.7 feet in another area and the rest of the house is in compliance, does it -- you know -- does it warrant --

MARK MERRY: Will you let him off the hook?

MR. HIRT: -- the destruction of the house? That's the question. Especially when it's not impacting --

RON RICHMOND: I don't think anyone is warranting whether or not it's a matter of destroying what is already invested. I think it's a matter understanding how we got here and what the steps might be that are put in place to make sure we don't get here again.

MR. HIRT: Sure.

RON RICHMOND: That's part of the research and doing your due diligence and in making our decision.

MR. HIRT: Sure. I think that's fair.

Again, this is one of those exceptions. I mean, it's unfortunate, but the surveyor has indicated that of all of the surveys he has done for Faber, this is the first time this has happened.

RON RICHMOND: Understood.

MR. HIRT: So I can rest assured that my client has taken the proper steps that need to be taken to insure this doesn't happen again.

RON RICHMOND: I think that is all I was getting at.

MARK MERRY: Page 3 of the application, Number 2, I just want to make sure on the same -- there may be a small difference, but I read the response and it sounds like more than 11.7 percent of the house.

Can you clarify that for me? I would appreciate it.

MR. HIRT: I'm sorry, could you repeat that?

MARK MERRY: Page 3, Number 2, I read this as home width spans 30.3 feet -- is out of compliance; correct?

MR. HIRT: It is, but part of that --

MARK MERRY: The additional 36.7 frontage of the home is in compliance.

MR. HIRT: That's correct.

MARK MERRY: So what's the entire length of the front of the house, the frontage of the home?

MR. HIRT: 67 feet is the total width of the house.

MARK MERRY: How much is out of compliance?

MR. HIRT: Excuse me?

MARK MERRY: So 30.3 percent is out of compliance?

MR. HIRT: No. The total width of the house is 67 feet. Of that 67 feet, 36.7 feet are in compliance. Then 20.2 feet are 4.1 feet closer to the road than they should be.

MARK MERRY: Right.

MR. HIRT: Then 10.1 feet or 2.7 feet --

MARK MERRY: So roughly 45 percent of the house is out of compliance?

MR. HIRT: Yes.

MARK MERRY: Not 11.7 percent.

MR. HIRT: What I was referring to, the 11.7 percent -- you're required to have a 40 foot setback. How much are we in violation of that 40 foot setback? When you look at the 40 feet,

because we're 4.1 feet in, that's roughly 11 percent.

So at the end of the day, what I'm saying is it's not as if we're 20 feet onto the setback. We're 4 feet onto the setback.

MARK MERRY: I will say, as you mentioned before, driving by the house, half dozen times, that it is hard to tell that you're 4.1 out of compliance. It is kind of amazing how close the frontage is in that neighborhood.

Easier on me when I have to shovel the driveway in the winter than what I have today. Just visually you don't see much of a difference driving up and down within that complex at all. I agree with that.

JAMES WIESNER: Ron (Richmond), do you have anything?

RON RICHMOND: I'm set.

FRED TROTT: Not that this is part of our Board, but is there like any kind of penalty that the Town can lay on them?

ED SHERO: The only penalty is to be denied.

MICHAEL JONES: This isn't cheap.

FRED TROTT: Do we have a whip or something where we can give them lashes? I just don't know. It just -- it seems as though I understand the concept of the problem, but I'm also concerned about the other 100 houses that are in that subdivision.

MICHAEL JONES: I understand your concern. I do want to caution the Board that the ZBA is about compliance and offering the -- the relief where necessary where the zoning doesn't quite fit or doesn't work. Enforcement is not in the purview of this Board but the Town. I know other matters between the developer and the Town go on without this -- in front of the Board.

While I'm talking, I just did want to point out one thing. While Counsel did misspeak -- it's not a 40 foot setback. It's a 35 foot setback -- in judging how substantial it is, while I understand Counsel's point that less than half of the house is out of compliance, the substantial test is based on the length, so the 30. whatever feet versus the 35 required, so the 4. whatever foot is what this Board has to decide whether or not it is substantial, not the fact that less than half the house is over the line.

FRED TROTT: I have nothing further.

#### COMMENTS OR QUESTIONS FROM THE AUDIENCE:

DOROTHY BORGUS, 31 Stuart Road

MS. BORGUS: First thing I would like to object to is the fact that a couple members of the public have been here to attend this hearing and we have no idea what you're talking about in that folder, that binder. None.

JAMES WIESNER: I recognize that. You usually go to the Building Department ahead of the meeting.

MS. BORGUS: It wasn't there. A lot of what they're -- what they gave you in that binder is not in the Building Department. That's my point.

JAMES WIESNER: I know some -- there was some additional information there that was requested from the Board. As you noted, it doesn't show up until tonight.

MS. BORGUS: Wrong. It is wrong. I'm not saying you're wrong. I'm saying it's wrong when it is done this way. I think these people are pretty confident that they come in here and mea culpa and everybody will just fall over for them. That's just not the way this is done. I don't care how much they paid for tonight's hearing. They should have paid a lot more than they had to pay. This is a mess. They should have -- but they could have complied with the rules.

They don't seem to think that there is going to be anybody in the public who gives a hoot that would come in here and listen and realize they didn't have the same information. That isn't the way Public Hearings are supposed to work. So I object to that.

And the next thing I'm going to object to, I will tell you right off, I'm a notary. And when I looked at these affidavits, the applicant and proper owner certification, and the affidavit -- the affidavit from the surveyor, the first thing that jumped out at me -- I mean I know it, something is missing. Look at those. There's no registration number. That's not even legal.

I called them -- the -- the Monroe County Clerk's Office to ask. Am I wrong? You know, I mean, all these years I have been a notary I've been putting numbers on and can assure you Mr. Jones puts a number on his when he notarizes anything. And they tell me that isn't legal. There is no way for anybody to know that this is a legal notarization when there is no registration number for you to go on the website and check. Anybody could do that. That's illegal. So you start with that.

This whole thing is a fiasco and it doesn't get any better as it goes along. I also notice, at least to the best of my knowledge, and my driving by that there was no building permit ever posted on that house. That's supposed to be done.

This idea that most of the house meets the zoning code is supposed to be okay. It's not okay. They wouldn't be here tonight if it was okay. And the idea that this isn't a self-created hardship because the surveyor made the mistake, that's a bunch of bunk, too. The surveyor is an agent of the developer. The law of agency prevails. It is their self-created hardship.

Could you tell me what the date on the survey is?

JAMES WIESNER: I don't see it on here. It's not there.

MICHAEL JONES: The certification on the survey in the binder indicates that it was made on May the 7th, 2015.

JAMES WIESNER: Okay. It isn't signed here, but I see what you're -- I see the paragraph

you're referring to.

MICHAEL JONES: And with regard to the affidavit, the numbers are not actually required. Typically, notary stamp would have that. I have notarized when I did not have my stamp. What is required, they need to State the County in which you're qualified and you have to have a statement of qualification that is Monroe County.

I would point out that affidavit doesn't have the jurat at the top, which would indicate where -- what County this was made in. But I don't believe that the failure to include the registration number of the notary indicated makes it a non- -- non-affidavit.

MS. BORGUS: Well, according to the Monroe County Clerk's Office, the section that deals with notaries, licenses and registrations, you either have to have it on your stamp or you have to handwrite it on whatever you are notarizing. It is an essential part of the notarization.

JAMES WIESNER: I hear what you're saying and I also hear what our Town Attorney says.

MS. BORGUS: I know. But I don't believe that he trumps the County Clerk.

MICHAEL JONES: I do not trump the County Clerk. You're absolutely right.

MS. BORGUS: Well, after the fact I would hope that Mr. Jones calls tomorrow and for my satisfaction, proves to himself that I'm correct.

MICHAEL JONES: Probably won't do it. This is my last ZBA meeting.

MS. BORGUS: Well, it's sloppy work all of the way around. It's sloppy work from the people that notarize. It's sloppy work from the people who surveyed. This is a mess. And I also would like to understand, and this is for my own understanding, posted on the house, there was a -- there was a walk-through statement signed on -- dated rather 2/15 of this year.

JAMES WIESNER: Is this posted on the house?

MS. BORGUS: Yes. It was in the window on the -- on the patio door. And I don't know how you can have a walk-through on a house on 2/15/15 when the building permit wasn't issued until the 25th of the same month. This whole thing looks like it was patched up. You can take that for what it is worth. You can't walk through a house that doesn't exist.

And I agree with some of the comments from the Board, who knows that this isn't going to happen again and again. These lots are very small. In this instance the house is quite large. You only have 35 feet frontage on -- on the front of the lots set back. 35 feet setback. You know, I think you're going to be -- you are going to get this again and again. When you have a large lot, this isn't a big deal. But when you have a lot this small, it is a big deal. And I think that there is an adage that goes -- that goes along with sewing. Anybody who sews knows this, and I guess carpenters have the same rule. Measure twice, cut once. In this case, they better measure more than twice before they go digging any more holes and putting houses where they don't belong.

And again, I think it's very arrogant of these people to come in and start a presentation and go on for I don't know, 15, 20 minutes here talking to this Board when the people who came for a Public Hearing are not privy to the information provided. And it doesn't -- it does a disservice to the Board when they expect that you're going to be able -- the four of you will be able to sit up there and plow through everything they gave you at the 11th hour.

Thank you.

CHARLES RETTIG, Coldwater Road

MR. RETTIG: I see a document in the file from -- the applicant property owner certification, Item Number 2, authorization to enter the property whereby the property owner has authorized members of the Zoning Board of Appeals to enter the property -- I'm just going through it quickly, not reading every word, but you can reference that. Property associated with the application for purposes of conducting any necessary site inspections relating to this application.

That's on a document dated May 15th, 2015.

Did any one of these Board -- any one of your Board members walk through the property?

JAMES WIESNER: I can speak for myself. Everything that I was -- needed to see I could see from the outside and supporting documentation that we have I think is sufficient. It's not typical that we walk onto a site. In fact, it has always been recommended that we have not in the past. So the likely answer is no.

MR. RETTIG: Thank you.

I will also note on the document applicant property owner certification, May 15, 2015, signed by Bernie Iacovangelo, Faber Construction Company, President. Um, that the notary by John R. West does give Monroe County, and the commission expires February 26th, 2018, but does not have the notary file number, and I reference a comment by Mrs. Borgus that that is not a legal notarization.

I also note that Chili Counsel made a statement, and I'll quote -- you can look at the files. "I do not believe that that is necessary."

My comment is, that is wrong. That notary is not legal. Check it out for yourself. It's not a fact that the notary -- that the notary is not required to have the notary license number. One reason to table this meeting.

Second, a supplement of materials was presented to this Board tonight. Exhibit A, B, C, G discussions by the applicant, and I would request one piece of information -- I did not hear it because it was rather low key -- but can you tell me the name of the person that spoke for Faber Homes tonight?

MR. HIRT: Jared Hirt.

MR. RETTIG: Sorry. I didn't hear you.

MR. HIRT: Jared Hirt. H-I-R-T is the last name.

MR. RETTIG: Jared H-I-R-D?

MR. HIRT: T.

MR. RETTIG: T. Thank you.

My comment in regard to the supplemental materials presented to the Board by Mr. Hirt is the fact that also, as Mrs. Borgus pointed out, that none of us or anyone else going to the Building Department to see this information before this meeting to review or for even this Board to properly review the information before this meeting, you didn't have that opportunity. I didn't have that opportunity. Nor did anyone have that opportunity. Second reason this ZBA meeting as presented tonight should be tabled.

In regard to the affidavit, of Douglas W. Magde, M-A-G-D-E, the surveyor, that again, is dated May 18th and notarized by John R. West, Monroe County expiration February 26th, 2018. That again, notary is not legal. It's not proper. It's not complete.

How does the public know the circumstances? How do you the Board know? How do you check this beforehand? Second -- third reason this meeting should be tabled.

Just noting some of the comments in the affidavit of the surveyor, um, just going down to Number 61 on the first page, where it -- it states that "certain mathematical calculations to establish GPS" -- that's a quote. "Certain mathematical calculations to establish GPS reference points by latitude and longitude to pinpoint the precise placement of stakes to be placed on the property," end quote.

To -- to do a GPS and stake -- place a stake takes a GPS identification to place the stake at the proper location. There are no mathematical calculations to that. So I question that.

The point was brought up that there was a walk-through on this building, on this structure February 15th, 2015. With a signature page -- signature of Bernie Iacovangelo that is posted on the building, and that's rather interesting because the building permit, which is permit number B-23-2015 for Lot 10 for 2 Club House Drive was issued and dated 2/24/2015. Something doesn't jive on the construction of this building, and the walk-through and other documentation here. Another reason this should be -- certainly get better information to table this particular meeting.

On the building permit, permit number 23 -- permit number B-23-2015, states specifically, "This notice is to be fastened" -- quote, "This notice is to be fastened on a part of the building for which it is issued where it may be seen plainly by all persons."

There is no and never has been any building permit placed on this building. Another reason this meeting should be tabled.

The applicant hasn't even posted that building permit. According to the requirements of the Chili Building Department, the information handed out to applicants and standard procedures. Reason that this meeting should be tabled.

Also, if you note, and I don't know if this is in your file. I can't tell, because I don't -- haven't seen your notebook files, et cetera. But the completed inspections list lists March 13th, 2015, wall inspection by Pat Sheridan. The wall is prefab, is still to the best of my knowledge, placed on -- required to be placed on a minimum 6-inch compacted gravel, which is not a -- not a normal concrete poured footing. So it's in place of the concrete footing. Spreads the load. Apparently it takes the load. That's -- that's allowed, according to New York State Building Code.

However, no misplacement of the wall was noted or found or corrected at that inspection. To find out what happened, what really happened, I think the meeting should be tabled.

Next inspection 4/10. April 10th, 2015. Rough plumbing. And then I'm going to reference the next item, which is 4/30, April 30th, was rough frame, which happened to fail. Could be a minor reason. But both of these were inspected by Pat Sheridan.

But my question is this, on April 10th, which is before -- for the plumbing, which is before April 30th, for the rough frame, how is it possible to put in plumbing before the frame is up? In fact, in the -- now, that's not saying the plumbing below grade couldn't be done, but the Chili building code states that the plumbing should be done quote, "after --

JAMES WIESNER: I have to admit, I am trying to follow where the relevancy --

FRED TROTT: We're talking about a zoning violation. That's not -- the building code violations isn't our --

MR. RETTIG: Hold on. Hold on. I'm pointing out some discrepancies right along. But I'm just saying -- let me -- I won't harp on that. But after -- but after other -- other things have been installed and before the insulation. So I'm just saying, there is a discrepancy on the framing and the inspection reports based upon -- get back to that walk-through of 2/15/2015. It all points out to some -- some issues on this whole thing of what we can believe.

FRED TROTT: We're just here for the --

JAMES WIESNER: At this point we're here for the variance.

MR. RETTIG: Okay. I understand.

JAMES WIESNER: If there is something pertinent to the variance, we certainly want to hear it.

MR. RETTIG: Well, that's why.

JAMES WIESNER: But there is a lot of extracurricular items at this point that I don't think necessarily pertain to, I think --

MR. RETTIG: The question is, why wasn't the discrepancy on the placement of the walls or the placement of the house determined at an earlier date and not just suddenly come -- coming to us after the house is totally completed? Or almost completed. Also states in the building

permit application, when it is made according to the Town of Chili permit requirement, that it must be accompanied by a tape location map or instrument survey map. Was this done?

This is when the building permit application is made to the Town, by the applicant, it must be accompanied by a tape location map or instrument survey map. Which would help -- would have helped the -- would have helped the applicant find his problem before it becomes a problem after the house is already built. So that is my question. Was this done?

JAMES WIESNER: I have written that one down myself and we'll get that answer.

MR. RETTIG: Without an answer tonight, this should be tabled because you could ask that directly of the applicant, but if you chose not to, at this point, I understand. But it's just another reason why this should be definitely tabled.

Even in the building permit it states that all work should be executed and in compliance with permit application and approved plans. Specifications, plans and any amendments must be submitted prior to -- for approval.

So we don't know of anything, nothing in the file that I was able to see of what was approved plans prior to this date of the permit of February 24th, 2015. We don't know. We haven't been able to answer that question either. That's in regard to the surveyor or any approved plans, specification plans or amendments, et cetera. So that's another reason why without that information, this meeting should be tabled.

I didn't see in the inspection report any requirement for approval of quote/unquote, "footing," like I said. 6 inches of compacted gravel is a footing.

JAMES WIESNER: I don't see how this is relevant to the application.

MR. RETTIG: Footings require locations for the walls and the wall locations are very important for the location of this house for how the applicant built it. Therefore, it's very applicable.

So summarizing with no legal notary stamp, no legal surveyor notary document, if no building permit was posted on the building, there's nothing legal for which this Board has documentation to make a viable decision on. Unless -- unless, it has been said before, not by me, this Board decides not to table this and my comment is, Chili will prove itself to be an illegal or lawless Town because this is not the way to do business. This should not be the way to do business in this Town. This meeting should be tabled appropriately to get proper answers before proceeding.

MICHAEL JONES: Mr. Chairman, if I may, I just want to respond to the affidavit discussion again. Again, I filed affidavits in various counties without incident without inclusion of the number, but that is aside from the fact, because when we're not in a courtroom, the rules of evidence do not apply. We do not swear in the members of the public when they come to speak before the Board and we don't require things such as letters from neighbors or so on to be notarized. So even if this affidavit was not properly notarized and therefore is not an affidavit at all, it would be treated just as a letter from the surveyor which, of course, could be considered by the Board. So I think that's --

JAMES WIESNER: Notary could be considered more a procedure?

MICHAEL JONES: In fact, it is more procedure. It is more form over substance. I didn't mean to talk over you. It is more form over substance. But as I say, we routinely accept letters from various people, various professionals. We don't require affidavits. It's just not a formal courtroom setting that we have here. And ZBA and Planning Boards and Town Boards are not considered to be adversarial processes here. So it is not necessary to have an affidavit from everybody.

Mr. Rettig, of course, is not sworn in. We don't do that.

JAMES WIESNER: Okay. Thank you.

Ed (Shero), could you comment at all about -- obviously when they came in for a building permit, are they required to have a survey, completed survey map showing the siting of the actual house?

ED SHERO: Yes. They're required to have a permit as per plan.

JAMES WIESNER: And what was part of the building permit package? Did it show that the house was actually meeting --

ED SHERO: Yes. The setbacks.

JAMES WIESNER: And it wasn't until after they went back to do the final survey of the site --

ED SHERO: Correct.

JAMES WIESNER: So what they presented, for all intents and purposes was correct?

ED SHERO: Yes.

JAMES WIESNER: Within code?

ED SHERO: Yes.

JAMES WIESNER: And as a result of this hearing, they found out that it was different and that's what brought us here.

ED SHERO: I will agree with you on that.

JAMES WIESNER: Okay. Thank you.

MR. RETTIG: Just a quick comment in regard to Mr. Jones' further comment, I would just like this Board -- I'm not sworn in, but the information I'm presenting has some validity to it. I would just like this Board to prove for themselves, find out if -- if Monroe County requires that as a legal document.

However, my comments throughout my -- my previous comments throughout, still come down to the bottom line, that with the information just presented, which the rest of us have not

seen, reviewed -- even this Board has not reviewed in detail for this meeting, that this meeting still logically should be tabled.

MR. HIRT: Although I certainly --

JAMES WIESNER: Anybody else, as far as the Public Hearing goes? Anybody that wants to be heard? Or has anything else to say? We will close the Public Hearing at this point if not.

James Wiesner 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.

JAMES WIESNER: I will give him an opportunity to reply.

MR. HIRT: Thank you. I certainly can appreciate all of the comments that the public has. The reality, though, is that many, if not all of the comments that were provided to this Board, um, aren't relevant to the application that is before it tonight. The reality is, that we're here because there is, in fact, a small violation or discrepancy in the setback. With regard -- I just want to touch on a couple of points, and one of those is that Mr. Rettig, I believe his name was, was commenting on no one noticed the fact that this house was 4 feet closer to the road than it should have been. I think that in and of itself is evidence that this is not a substantial violation. If people are going there every day and no one is noticing it until the surveyor actually puts the tape on the lot, I think it's fair to say that nobody noticed it.

The other thing is that -- I just want to make this clear, that although the surveyor in this particular case made a mistake, his affidavit, or letter, whatever we want to call it at this point, clearly indicates that he has provided over 1,000 surveys for Faber Homes. 285 of them were at Park Place. Another 28 of them were at Vista Villas. They were all in compliance. So it's an anomaly. This is an exception to what usually happens. It's a mistake I'm sure that everybody wishes didn't happen.

To your question about my client putting in some type of quality control measures. I did speak to him while the Public Hearing was going on. That has been done. I'll get more information for him, but there is a checks and balances that came as a direct result what happened here. But again, this is the first time in over 1,000 times that it has happened.

So with regard to tabling this, this house is done. We have two buyers that want to move in. In fact, they're City police officers who would be here tonight, but unfortunately, they have to deal with what is going on in the city. So I don't see any basis or any reason why this should be tabled tonight. There has been nothing really presented by any members of the public that would indicate that.

If the Board has any questions, I would be more than happy to answer them.

JAMES WIESNER: I agree with you. I see no reason to table this. They're -- there was some late information, but I don't think that -- the application was properly filled out on time and it -- I don't think it's truly unusual to have some last-minute information. Obviously anybody who is going to plead their case will always try to gain more, so I don't see a problem with that.

And certainly if anybody wants to see the additional information, um, you -- we have asked the folks, too.

So as far as we go, any more Board discussion on this?

That's it. Moving forward with our procedures here.

At this point, I don't really see any conditions of approval, because the building permit has already been issued, so there is really nothing we can apply there. Unless anybody here on the Board has any other input for that. I don't really see any conditions of approval. So for that, I won't put any conditions of approval.

James Wiesner 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.

Ron Richmond made a motion to approve the application with no conditions, and Fred Trott seconded the motion. All Board members were in favor of the motion.

DECISION: Unanimously approved by a vote of 4 yes with no conditions, and the following findings of fact were cited:

1. There is significant cost with moving or modifying the structure.
2. Area variance is minimal and applies to the garage only.
3. Area variance has minimal impact on the surrounding neighborhood.

JAMES WIESNER: That is the end of our hearing for tonight. That is all we have. Good night.

The meeting ended at 8:08 p.m.