

CHILI ZONING BOARD OF APPEALS
August 25, 2015

A meeting of the Chili Zoning Board was held on August 25, 2015 at the Chili Town Hall, 3333 Chili Avenue, Rochester, New York 14624 at 7:00 p.m. The meeting was called to order by Chairperson Adam Cummings.

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

ALSO PRESENT: Eric Stowe, Assistant Town Counsel. Ed Shero, Building & Plumbing Inspector, was excused.

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: Any issues from the Board on the public notice signs?

The Board indicated they had no problems with the public notice signs.

1. Application of Roberts Wesleyan College, owner; 2301 Westside Drive, Rochester, New York 14624 for variance to erect a second wall sign on the Smith Science and Nursing Center building to be 18' 8 1/2" by 2' 10" at property located at 2301 Westside Drive in PID zone.

Rich Grier was present to represent the application.

ADAM CUMMINGS: That's the existing sign.

MR. GRIER: Richard Grier, Director of Facilities, Roberts Wesleyan College, 2301 Rochester, New York.

As was mentioned in the application, we're requesting variance to put up a second sign on the north side of the building essentially for a way of finding and identifying the building for people coming to the campus or in the event of an emergency, it enables the building to be visible, the name of the building to be visible from multiple sides and not just the east side.

The sign would be the same material, which is currently on the sign that you see on the -- on the projection screen, which is a quarter-inch aluminum material. It is an unlit sign and the sign on the north side would be the same except the letters are 15 and 10 inch and these are 18 and 15 inch.

Happy to answer any questions or any comments.

ADAM CUMMINGS: The spreadsheet that is identifying sign number 39 as the Crothers Science and Nursing Center, it is highlighted in there. There is 39 and 40.

Can you just explain what the campus signage chart is here?

MR. GRIER: Sure. A couple years ago at the request of the Town, we did a Master Plan of all of the existing signs on campus and tried to project a couple of the signs we thought might be coming up on campus. This would reflect all of the existing signs. So what I did was updated that version and gave it to the Building Department so it shows Sign 40 on that list is the existing sign that we have the permit for to put up and then 39 is the one that we're requesting the variance for.

ADAM CUMMINGS: Okay. Good.

MR. GRIER: Then there is a map that accompanies it so you can find them on campus.

ADAM CUMMINGS: Yes. That was part of your inventory before. I remember seeing that when you came in several years ago, so I was -- I was going to ask if it was going to be updated or politely request it be updated to include this sign.

I do want to point out one condition tonight will be to obtain a sign permit from the Building Department from this.

MR. GRIER: Correct.

ADAM CUMMINGS: And other than that, I don't have any other questions.

FRED TROTT: No. Just other than it looks like usually you have like one or two signs per building?

MR. GRIER: Most of the buildings have at least two signs on them.

FRED TROTT: This one will be not facing the road. It's inside?

MR. GRIER: That's correct.

RON RICHMOND: Will the sign remain not lit?

MR. GRIER: That's the present plan. There is no power run out to that -- either location. So -- and there is lighting -- I don't know if you have been over at night, but there is some building lighting already, so if we light the sign, it will distract from -- plus we would have to come back to get a permit to do that anyways.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

Ron Richmond 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 did mention that one condition I would like to add. Everyone in agreement with that?

And we already discussed -- as the Building Department would like us to, we already discussed the sign inventory in their Master Plan. He updated that already. They have that in their file. Other than that, I don't have anything else to add unless someone else on the Board does.

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

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

DECISION: Unanimously approved by a vote of 4 yes with the following condition:

1. Sign permit must be obtained.

The following finding of fact was cited:

1. The sign location will be similar to the other sign on this building and will serve as a way finding measure as it is located on the internal portion of the campus. Due to this sign being unlit, it will not have any transmittance or impact on adjacent properties.
2. Application of Dennis Doyle, owner; 31 Stover Road, Rochester, New York 14624 for variance to allow existing in ground swimming pool to be 14' from dwelling (15' required) variance to allow existing gazebo to be 46' from front lot line (48' previously granted) at property located at 31 Stover Road in R-1-15 zone.

Marshall Klingelhoffer and Maureen Macaulay were present to represent the application.

MR. KLINGELHOFFER: I'm going to be the buyer. Mr. Doyle is active duty military and he has already gone to Fort Lewis, Washington. His realtor, I believe, is actually walking in the door right now. She will represent him here. I just want to be here --

ADAM CUMMINGS: Nice delaying.

MR. KLINGELHOFFER: I see her walking in the door right now. Marshall Klingelhoffer. Last name K-L-I-N-G-E-L-H-O-F-F-E-R. First name Marshall, M-A-R-S-H-A-L-L.

MS. MACAULAY: Hello. I'm Maureen Macaulay, the realtor representing Mr. and Mrs. Doyle. Sorry. My GPS took me to Riga this evening.

And anything you like from me, just let me know.

ADAM CUMMINGS: All right. Well, typically -- you're representing the applicant, so typically we ask you to give a brief description what you're looking for tonight and then we'll pose any questions to you.

MS. MACAULAY: Sounds good. We have a gazebo on the property that does have a C of C already on it, so I don't know why that is being asked for.

The pool is apparently an issue in that it was built with the house. The Town has no records of it. The buyer would like to have that rectified with the variance. Apparently we're missing 6 inches.

ADAM CUMMINGS: Okay.

MS. MACAULAY: Just like to have everything certified for once with the transfer of this property so it doesn't have to keep going through this process every time it is sold.

ADAM CUMMINGS: We are definitely appreciative of that here at the Town. I would note that the Building Department did ask and they also put it in a memo there were no violations that they are aware of on this property. A couple of conditions for this will be a pool permit -- really you have alluded to and we're trying to bring this property up to compliance. So one condition will be to apply and obtain a building permit for the pool and I think we're just -- it looks like there was something to do with the 1994 setback for the gazebo and it just wasn't placed in the exact same spot.

MS. MACAULAY: I don't understand that because we do have a C of C on that that has already been approved, so I was wondering how did it --

ADAM CUMMINGS: I don't know the answer to that.

MS. MACAULAY: I mean, we're talking years gone back with a lot of this stuff.
ADAM CUMMINGS: So I think that is a good enough background.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

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

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

ADAM CUMMINGS: This is really updating to get it compliant. These are dated. As I said, 1994 was the variance for the gazebo setbacks. We're looking at 21 years ago. And then the pool, I don't know how to explain that one, but we'll update that right now and get the permit. Needless to say, to take out the pool or relocate the gazebo would be a pretty big financial burden for the applicant.

MS. MACAULAY: Exactly.

ADAM CUMMINGS: I did mention the pool permit. As you said, there is a building permit for -- or -- a Certificate of Completion for the -- for the gazebo from back then, so I won't require a building permit for the gazebo. I'm just trying to see if there is a shed on there. I just want to see if that was overlooked. I'm checking to make sure they have a permit and approval for the shed.

MS. MACAULAY: I have all that.

ADAM CUMMINGS: Good. Then I won't search any more.

I don't have anything else for conditions other than pool permit.

FRED TROTT: I had a question. It might not be -- might be unrelated. With it being a pool permit, will they have to bring the pool up to the standards of today?

MR. KLINGELHOFFER: Yes. As the buyer, we will.

FRED TROTT: That's not a big ordeal?

MR. KLINGELHOFFER: No. We already had an Electrical Inspector come out and give us, you know, what needs to be done in order to do that and we'll be compliant for the permit.

ADAM CUMMINGS: Just continue working with the Building Department on that one.

MR. KLINGELHOFFER: Yep.

ADAM CUMMINGS: Thank you.

So with that, nothing else to add.

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

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

DECISION: Unanimously approved by a vote of 4 yes with the following condition:

1. Pool permit must be obtained.

The following finding of fact was cited:

1. The structures located on this parcel have existed for several years with no complaints from neighboring property owners. Many of the surrounding properties also contain pools and accessory structures in this neighborhood, so they are in character with the area.
3. Application of Pikuet Paving, Inc.; 110 Golden Road, Rochester, New York 14624; property owner: Mr./Mrs. Steven Pikuet; for variance to erect a 3,444 sq. ft. storage building to have a 50' buffer zone to residential zoned properties to the north (100' required) and 65' buffer zone to residential properties to the south (100' required) at property located at 110 Golden Road in GI zone.

Jess Sudol, Dennis Pikuet, Robert Pikuet and Steven Pikuet were present to represent the application.

FRED TROTT: I would like to recuse myself.

ADAM CUMMINGS: So Fred (Trott) -- just so everybody is aware, Fred (Trott) is a neighbor there so he is going to recuse himself from this.

With that, I just wanted to let the applicant know we do still have a quorum up here, but I do want to point out that by only having three members, we have to have a unanimous vote of three votes tonight, so a two to one would, in essence, be a no action and a denial of the application. Just wanted to point that out up front to notify you if you would like to present your case tonight but also wait until you have a fourth member to increase the probability of getting an

approval, I just wanted to put that out there right up front.

MR. SUDOL: Understood. I think we'll move forward with the three of you if you don't mind.

My name Jess Sudol from Passero Associates. We're the civil engineer for the project. Our client -- with me, this evening on behalf of Pikuets Paving is Dennis Pikuets; his cousin, Robert Pikuets; and father, Steven Pikuets.

Pikuets Paving, as most of are you familiar with, is a long-standing business in the Town of Chili. The sub parcel is approximately three acres at the end of Golden Road and immediately adjacent to Route 490. The proposal is for a storage and maintenance facility, a pre-engineered building shown on the right of that screen, also in blue on the little map that I hung up there. Really the whole theory here or the game plan for the Pikuets is to be able to do onsite maintenance of some their vehicles and store some of their vehicles inside instead of having to leave them outside in the weather. Currently their vehicles have to stay outside, and then when they have to maintain them, they have to drive them all of the way to some local maintenance area, all of the way down Golden Road and through the neighborhood and all of the way back to the facility where they're fully capable of doing this onsite.

So we started working with the Pikuets several months ago looking at our options for how best we could put this facility on this particular parcel which is zoned General Industrial. The first thing you will see is the parcel itself is pretty linear in nature, certainly not a solid geometric square, which would make siting the building a lot easier. It starts with a very narrow width next to Golden Road to the west and maximum only 230 feet wide all of the way to the east where it actually abuts a residential property or residential subdivision, I should say, over in that area.

So there is 100 foot -- although the building falls within the building setbacks as outlined by the zoning ordinance, there is an additional 100 foot buffer from residentially zoned property which we have to the south, and in addition to that, there is also kind of a quirky thing in the zoning where that residential zone actually applies to the north even though there is practically 500 feet of interstate there, you know, directly to our north.

But nonetheless, to keep everything clean, the variance actually applies to both the north and the south property lines. The way we went siting the building was by kind of putting it A, where it would function well for the facility; and also to try to maximize those separations but without really disturbing the existing vegetation and causing any kind of environmental impact. You know, we could increase the amount of buffering if we continued to move that building to the east, to the right of that screen. There is a couple problems with that, why we feel that would be detrimental to the project.

For starters, that would cause us to add more pavement, which is more snow management. It would cause us to remove more trees and cumulatively you basically have a negative environmental impact without much benefit. Furthermore, our nearest neighbors, if you will, single-family homes are off to the east. So we certainly don't think that made a whole lot of sense for us to try to pick up a couple feet on our buffer area, again, one of which is the 490 and the other which is to undevelopable land to our south in turn for moving closer to homes.

So we really thought it made a lot of sense here, and when you look at is the hardship, you know, kind of our own problem, you know, really came from the geometry of the parcel, not necessarily our own doing. In fact, if you did want to put any additional facility on this property and match the buffers and the setbacks would actually be impossible because it doesn't leave you a big enough building envelope. So really the only way for us to accomplish the goal of constructing this facility to really improve the property as a whole is to site it where we currently have. You know, we considered pushing the building further to the north to increase the buffer to the south, but we really don't want to get the building too close to 490. We really want to keep a lot of vegetation that is going to be there today and provide some screening. We are obviously going to propose to enhance some of that screening.

There is also some utilities along the right-of-way that we didn't want to encroach on either by moving that building any further to the north. That is why it is spotted there. We really feel we balanced the site as best we can.

Just to point out a few miscellaneous items, there is a small box shown on our site plan which is labeled "storage." Really what that is is a temporary facility or I should say was because in light of it's location, where we recently surveyed, the Pikuets have removed the roof from that and now it is precast blocks they will reposition as this facility developed.

There is also an existing topsoil pile which is located where the being is currently sited. Currently the Pikuets have a deal in place to sell that topsoil at a discounted rate just to make room for this building, but they don't necessarily want to sell it at that discounted rate unless we're able to move forward with the project. Those are just housekeeping items with respect to the project.

But again, I would be happy to answer any questions and anything I can't answer, I'm sure one of the Pikuets would be happy to.

ADAM CUMMINGS: Thanks for that summary. I have to apologize. I never knew how to say it, so I apologize. I will say "Pikuets" from now on.

I did want to also let everyone know I do have the Monroe County Department of Planning and Development -- their referral form. They have noted that the environmental checklist has been completed by them and they have determined this to be a local matter. So they don't have anything else to chime in with us.

And I thought that was a pretty good presentation of everything. So I don't have any questions.

MARK MERRY: It sounds as though this is -- this is not a necessity. This -- this is -- this request is a want. It's not really a need.

MR. SUDOL: It is. There has been input from the community over the years because of the exposure on 490, there is existing outside storage of equipment that -- at the end of the day, Pikuets Paving will not shut down if they can't construct this facility, but they feel it will improve its impact on neighbors because you won't have the vehicles going up and down Golden Road.

But it will also, you know -- it will improve the overall appearance of the facility especially from 490. So while not an actual necessity, but it is an improvement that over the years has been suggested to them that cannot only serve the Pikuets but also the Town of Chili as a whole by just providing a cleaner facility and also reducing the traffic on Golden Road which is otherwise completely residential.

ADAM CUMMINGS: I just wanted to make -- you are trimming some trees, but it looks like it tapers a bit, but you will have quite a bit of landscaping and you can sort of see it up on the rendering up on the screen right now. So there will be quite a bit of existing tree line, some mature tree lines in the buffer.

MR. SUDOL: That's correct. Especially we're looking to go do that primarily along the south property line and to the east.

RON RICHMOND: Is there a proposal down the road to put additional buildings on the parcel?

MR. SUDOL: No. This is it.

RON RICHMOND: On the side, this fuel tank, how many gallon fuel tank will that be?

MR. DENNIS PIKUET: That fuel tank is -- they're both 500, but they're not currently in use. We're -- we're going to change -- we're going to change where everything is. We are going to have a facility come in that owns the fuel tank and update it to the Fire Department standards. So right now currently we're not using any fuel. We don't have any fuel there. It's there, but they're both empty.

RON RICHMOND: It is anticipated to do that, though.

MR. DENNIS PIKUET: Yes.

RON RICHMOND: When you get to 500 gallons, there is a Fire Marshal requirement.

MR. SUDOL: Double-walled and everything.

MR. DENNIS PIKUET: Right. I have been talking to the Fire Marshal about it.

RON RICHMOND: That's all I have.

ERIC STOWE: With respect -- was the storage building the building depicted on the south of the map there?

MR. SUDOL: Yes. That is really not a building. That is the temporary structure I referred to.

ERIC STOWE: That is labeled, called out on the Building Department's comments?

ADAM CUMMINGS: Yes. So that is labeled existing storage building on the site plan dated July 2015, and as Counsel has said, the Building Department would just like to have a building permit and it's in violation of the New York State Building Code since it's so close to the property line. So taking the roof out, it's no longer a business -- a building. That's a different story. But I would still recommend as you're reorganizing things, to make sure you're keeping track of setbacks off the property line to be compliant with New York State's requirements.

MR. SUDOL: Again, this process provides the opportunity to clean up a lot of those things like the fuel tanks, this building, really to get the entire site in compliance.

ADAM CUMMINGS: Once again, there were no violations on the property that the Building Department is aware of. I don't have anything else to add. The building permit would be required for this new building, and if that south storage building remained, you have two avenues there. Either remove it or if it is going to remain as a building on site, you need to get variances from both our Town and New York State if you want it to remain.

Once again, you have talked about what is going to happen with that one, but just if it does stay.

MR. STEVEN PIKUET: That has already been removed.

MR. DENNIS PIKUET: That's been taken.

MR. STEVEN PIKUET: On the south side.

MR. DENNIS PIKUET: That's gone.

ADAM CUMMINGS: Well, that's easy.

MR. DENNIS PIKUET: That's just blocks. Can I address Mark (Merry)'s want versus need?

ADAM CUMMINGS: Yes. Just identify yourself.

MR. DENNIS PIKUET: Dennis Pikuets, 24 Rochelle Drive, Churchville New York 14428.

As far as a want and a need, our trucks are currently -- we have added trucks to our fleet. The doors on our current shop are only 10 foot. The trucks are currently about a 13 foot height, so we are unable to service three of our vehicles right now. We have to take them to Jack's Repair and already we have incurred a \$25,000 repair bill that we could have done ourselves. So it is more of a need than a want at this point.

ADAM CUMMINGS: Thank you for that information.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

FRED TROTT, 101 Golden Road

FRED TROTT: I can speak for the Pikuets. They have been neighbors of mine for 50

years, 40 years. About 40. Quite a long time. They have been fine neighbors. Any time we have had any problems, we have been able to contact them on speed and stuff like that and they have been very good neighbors.

One thing that has nothing to do with this, but in the future, um, we are looking at the properties on the south of them are -- is for sale and it's zoned Residential, so I don't know given the reduced amount of traffic would be a good thing. You're going to get people that will be buying property there that are going to be saying stuff. So... I think if they can reduce the traffic flow, it would be good.

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

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

ADAM CUMMINGS: The one condition I have on there is the building permit must be obtained prior to construction.

Anything else you gentlemen would like to see?

RON RICHMOND: Just if that existing storage building is down, I think we're good on that part.

Just want to reiterate it one more time so it is clear for the record, that a two to one vote is a no action or a denial of this application and it does need a full unanimous vote. So it is up to you if you want to proceed or --

MR. SUDOL: Do we have the option to immediately table once we have a no vote?

RON RICHMOND: Boy, that would be nice, wouldn't it?

ADAM CUMMINGS: No.

MR. DENNIS PIKUET: Go ahead.

MR. SUDOL: Go ahead.

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

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

DECISION: Approved by a vote of 3 yes with 1 abstention (Fred Trott) with the following condition:

1. Building permit must be obtained prior to construction.

The following finding of fact was cited:

1. Due to the uniqueness of the dimensions of this lot, it is nearly impossible to construct any structures in areas that would meet the buffer requirements in the Town Code. This variance minimizes the visual impact to the neighboring residential properties to the south and east by maintaining the existing woodland areas that serve as screening and will have little impact on the nearby residential properties.
4. Application of Mr. and Mrs. Joseph Bietry, owner; 28 Saddleback Trail, Rochester, New York 14624 for variance to erect a 1,200 sq. ft. garage without a primary dwelling at property located at 201 Morgan Road in AC and FPO zone.

MR. SMITH: Hello. My name is Nick Smith with DDS Companies here representing the Bietrys at their property, 201 Morgan Road. We're currently seeking a variance to erect a secondary structure prior to a primary dwelling and that's on their property that is approximately 67 acres.

This building is to house equipment used to maintain their property, which as just stated is quite a hefty size, and currently there is an existing building that is approximately 900 feet -- or 900 square feet in compliance with the code. However, there has been -- it's been brought up to our attention that a portion of the building is not meeting building code. So that will be removed. However this happens to go.

But they're currently looking to add a second building on this site in order to house all of the equipment which would be a John Deere backhoe, a utility tractor with a bush-hog, flatbed trailer, wood chipper along with unique odds and ends, power tools storage.

On the plan you can see we're currently proposing just some utilities brought to the existing building along with electric to the proposed building and an access road a little bit closer. Currently, there is one near to the neighbors that they want to remove or abandon and move that over with permission from the County. Because it is a County road.

We looked into, you know, initially expanding this building. However, just due to the size

and trying to fit the equipment in along with the overhead door height, it wasn't a feasible option. It would be much cheaper for my client to just put up a second structure that might be 1200 square feet or could be smaller in size that can house this equipment rather than trying to expand and jigsaw, which is what the previous owner tried to do, which is why that building is no longer in compliance.

I think that's about it, but I can answer any questions now from the Board.

RON RICHMOND: The existing building will come down?

MR. SLACK: Not the entirety. There's a portion that's not up to the building code. That's the front portion, if you look on there, like of -- kind of like a T shape. It is about 200 square feet that is coming down and then there is the remaining 900 square feet roughly.

RON RICHMOND: You mentioned the proposed site of the new building could be --

MR. SMITH: At the moment, we kept it under the maximum, which is 1200 square feet, I believe, for secondary structures or accessory structures. But it may be smaller. We just really want to leave our options open based on all of the equipment he needs to store, the height of the door and anything along those lines.

RON RICHMOND: What will determine if it is made smaller?

MR. SMITH: I guess just the granting of this variance. We can -- we can change the size once we know exactly what is being stored in it. I know there were a few items up for discussion equipment-wise they had and they weren't sure if they would be able to be stored. I guess maybe that is the next step in determining exactly the size we need.

RON RICHMOND: There is no plan to increase the size?

MR. SMITH: No. It would not be larger than that size. That would be the absolute maximum.

RON RICHMOND: That's all I have.

FRED TROTT: Where would you put the future home?

MR. SMITH: Yeah. So that was one thing that we were hired also to plan for -- ahead for them, where they wanted to put their home, and I know it's kind of hard to tell. I can't really point it out from here, but there is -- it's kind of coming up to a hill along there where that gas line is running and behind that property, and the homeowner was thinking that where that driveway begins to turn into the -- the proposed barn, it would kind of T almost into the homes, somewhere over in that area, but back towards --

FRED TROTT: I will bring that up to the screen.

MR. SMITH: I can point it out hopefully a little better for you.

So we looked at a few different options for them. One of which was to put the house somewhere in this area behind the brush here or within the brush, trying to keep it in line with the other homes on the street and also to, you know, give it a little bit of screening. It's been a good area. Also keeping it away from that flood plain.

And then there were other options up along the hill. I know this entire property, it is kind of hard to tell, but it come -- there is two entrances. There are two fronts, I should say. One along here and one farther down past the four other houses there. So I guess we were trying to keep our options open to possibly put a house in the future up here. But I think at the moment our -- our most likely candidate is somewhere within this area (indicating). Just kind of T'ing off from that driveway or like I said, in the opposite direction of the proposed accessory structure.

FRED TROTT: When -- when is the goal to have a house built on the property?

MR. SMITH: Initially talking, we weren't exactly sure. I know they're -- you know, their financials aren't in order at the moment for that.

MS. SMITH: We're still paying for the property.

MR. SMITH: But there is plans for a future home on this property. It's not -- it's hard to say exactly when, but I guess --

FRED TROTT: Let me ask this question. You bought this property with the preexisting building on it?

MS. SMITH: Uh-huh.

FRED TROTT: My only concern is that we are going to a third owner.

MR. SMITH: And they get one more building.

FRED TROTT: Another building and they say we need another building and we still haven't had a house built on the property.

MR. SMITH: That's true. That's understandable. I know it's not -- there is no real way we can guarantee it because we're not planning to build within the next year exactly or even two or three, but, you know, I think it's more of a five-year goal possibly, more around that range comparatively. Otherwise we would be having plans for the house on here with this at the same time, and at least giving you a little bit better of a picture on that.

FRED TROTT: And I don't know if you asked that question. You couldn't expand from the initial building?

MR. SMITH: Um, there -- we could expand. It is just the overhead door is currently the same height as the man door at 7 1/2 feet and there is really no way to get all of the equipment in through that door along with there -- there isn't enough storage, so we would like to, as you said, expand in the front which is what the previous owner tried to do and I think it just didn't turn out very well for him. Obviously they could do that much better, but that was -- it was looked into at first, but we just felt that adding a whole new building would save costs mostly.

FRED TROTT: I have nothing further.

ADAM CUMMINGS: I did receive -- I'm not sure if you're aware, dated August 25th, 2015, Monroe County Department of Planning and Development --

MR. SMITH: Not yet.

ADAM CUMMINGS: But they -- they did finish their review of this, because they did receive it as a 239-m review. It did go to their DRC. They do have comments, so read those five comments, I believe.

MR. SMITH: I assume it is probably for the County road mostly.

ADAM CUMMINGS: Nope.

You have -- and you can see them on there, you have wetlands and you have Ag & Markets to contend with on this one.

Just so everyone is aware of, on the record, comment Number 1 is, "According to the Flood Boundary and Floodway Map published by the Federal Emergency Management Agency, this site may be located within the federal flood insurance program's 100-year flood plain boundary. The municipality's permit administrator should be satisfied that the proposed development will meet the requirements of the National Flood Insurance Program in order for the municipality to maintain eligibility in the program and for the applicant to obtain flood insurance."

MR. SMITH: We -- we did get a survey in this area and this dark line is actually the flood boundary, just so you're aware.

ADAM CUMMINGS: Yes. Which isn't where you're proposing to develop.

MR. SMITH: No. So we should be well away.

ADAM CUMMINGS: Number 2 is, "According to the New York State Department of Environmental Conservation Freshwater Wetland Map, this site may contain a portion of Wetland CI-39 or its adjacent area. This official wetland boundary must be determined by the New York State DEC due to the fact that the Freshwater Wetland Map indicates the approximate location of the freshwater wetland boundary. The applicant may need to obtain an Article 24 permit from the New York State DEC."

And then it gives you contact to the Permit Administrator.

MR. SMITH: Again, we have their adjacent areas shown on this lighter line and we are well away from it and from being out there, you can tell why it is shown as a wetland, but I do think we're a significant amount away from that.

ADAM CUMMINGS: Number 3 is, "According to the National Wetland Inventory maps prepared by the United States Department of the Interior, this site appears to contain a portion of a federal wetland that is classified as PUBHh, PEM1E, PEM1F, PFO1E. Although a buffer is not required, it is beneficial to the wetland if a natural buffer of 100 feet is left around it. In addition, please note that, while the NWI maps are based upon aerial photography and not field data, they are a strong indicator that wetlands regulated by the US Army Corps of Engineers may exist on your project site. Final verification of the location of federal wetlands can only be determined through an onsite delineation. The applicant may need to obtain a permit from the Corps."

And contact information there for the relevant people.

Number 4 is, "Article 25AA of the New York State Agriculture and Markets Law, titled Agricultural Districts, provides counties with the opportunity to create agricultural districts for the purpose of protecting and promoting the agriculture industry. According to our review of recent aerial photographs and the agricultural district maps, this project occurs on or within 500 feet of land in agricultural production in Monroe County's Southwestern Agricultural District; therefore, an Agricultural Data Statement may need to be submitted for this project as required in Section 283-a of Town Law and Article 25AA of the New York State Agriculture and Markets Law."

Then they give you a reference to where the form can be found. And I'm sure this is not news to you. I just wanted to read it to you.

MR. SMITH: That's fine.

ADAM CUMMINGS: And, "Development of this property should be designed so that it does not alter existing drainage facilities used by adjacent parcels. If the land is being farmed, the applicant is encouraged to contact the adjacent farmer and the Monroe County Farmland and Agriculture Protection Board to discuss the proposed development."

And then contact information.

And Number 5 is once again from the New York State Department of Environmental Conservation, "It appears a portion of a stream is located on the subject property. Streamsides, sometimes called riparian zones or stream corridors, are the link between land and water, and the health of the streams depends in large part on the condition of the streamside."

It just goes on to state, "In order to protect the stream corridor, consider the following."

To, "Maintain healthy, vegetated streamside buffer by preserving trees and shrubs along the stream edge and limiting logging to removing large branches that fall into the stream and divert streamflow and cause erosion.

Control waterflow through the streamside buffer to filter contaminants and reduce erosion by managing stormwater runoff from dwellings to prevent channelized flow."

So once again, that is protection. I just noted those for everyone's information. It's not directly related to our application, but I just wanted to make note that we did receive that on that date. We do get a few of these, and these are always difficult applications, because our code is set in such a way that we don't like to have these. We have seen quite a few of them, and they have been somewhat similar to this. Some have not been similar to this, where you're trying to plan for your future home but as this property attests to, it doesn't always go according to the plan so the plan is left over with a building without a house. So the Town Code doesn't really enjoy that unless it is for agricultural purposes, so --

MR. SMITH: If I may add.

ADAM CUMMINGS: That is our -- I just wanted to explain our position for the applicants. So we aren't doing anything personal here. This variance if it is approved, stays with the land. It doesn't matter who the owners are. I just want to make that public education effort so you understand where we're coming from. Variances stay with it forever.

So if we grant -- not to say this -- hypothetically, if we grant five buildings on this without a residence, it doesn't matter if you're the property owner, the next person down the line gets five buildings to do with them as they please. So I just wanted to point that out for our -- for our task up here at this point.

MR. SMITH: I just wanted to add that this addition of this building really is to -- in good faith, almost that they're trying to maintain this property as best they can. It is quite a large property. And to store all of the equipment needed, they need an additional space in one way or another.

ADAM CUMMINGS: And the existing one is inadequate to do that.

MR. SMITH: At the moment.

ADAM CUMMINGS: That addition that you talk about, the front of the building to be removed, the Building Department has made note that there is an illegal addition on that.

Is that what they're alluding to?

MR. SMITH: Yes. That's exactly it.

ADAM CUMMINGS: Just wanted to make sure.

MR. SMITH: The photos I think I have supplied. You can see the addition. It doesn't look like it belongs, so it makes sense.

ADAM CUMMINGS: Yes. Thank you.

MARK MERRY: We touched upon it a little bit. I guess I'm curious what thoughts would be given to razing the existing structure and starting over. The cost is minimal to do that.

MR. SMITH: I guess it is -- it was hard for us to balance the cost in this scenario where to raze or change, alter the additional structure would be more of a cost than to add on to this structure. However, there are other options out there, correct, that we did look into.

MARK MERRY: If you were denied this this evening, you would have to go back to Plan B.

What is Plan B?

MR. SMITH: Exactly. Plan B would be to expand on that existing building. However, it's already almost at 900 square feet and I feel that in order to house the equipment, we would need it to be significantly more or at least more than 1200 square feet, which is the minimum required.

And then in any case, we would need to come here for a variance to be over that 1200 square feet acceptable square footage.

MARK MERRY: Given the additional background that Adam shared with you this evening, there might be a better opportunity for you to come back for a variance for that potentially than you're kind of swimming upstream right now with trying to put this structure. Just more food for thought as to what your options are, so make sure you have -- make sure you had discussed this with your client.

MR. SMITH: Yep.

FRED TROTT: I have a question. This is in an Ag District?

ADAM CUMMINGS: Yes.

MR. SMITH: Yep.

FRED TROTT: Now am I confused in thinking that you didn't need --

MR. SMITH: It says on the code you don't need to have the dwelling if it is for maintaining agricultural land. Technically this -- it is not being farmed, so they do need a primary dwelling. So that would be the only difference in this case. However, as we're stating, these structures are being used to maintain this land. It is not for, you know, just housing a whole bunch of old cars or something along those lines or you know --

MARK MERRY: Well, currently, but that is where we don't have control.

MR. SMITH: Correct. Yep. Understandable.

FRED TROTT: Then my second question is, with it being in an Ag District, do they need to get a permit for a second building? Because I thought that's what somebody else on Morgan Road, he had to -- to get their second building.

ADAM CUMMINGS: That code changed. Well, they have the residence. That person you're thinking has a residence on it.

FRED TROTT: Because they have a residence on it they can have more than the one exterior building?

ADAM CUMMINGS: Correct. But in that case, they -- when they came -- when that specific application came in, they had to come for a variance because the zoning code did not allow them to have more than one, so they were granted a variance. Then the zoning code changed. Then they can put it in what they want.

FRED TROTT: So they would have to have a residence on the property --

ADAM CUMMINGS: Yes.

FRED TROTT: -- to do that.

Where that is what is denying these -- that's -- that's where I was just trying to get at, I was just trying to understand what would be the difference then and between somebody else in the neighborhood.

ADAM CUMMINGS: Counsel, is that your understanding of it, as well?

ERIC STOWE: No. It is more to do with agricultural uses in an Agricultural District since

the use is not agricultural in nature. The farm or the land is not being used for agricultural purposes. If it were dedicated to agricultural purposes, it would be far less onerous to get the permits for the building.

ADAM CUMMINGS: Understood.

FRED TROTT: It doesn't answer the question.

ADAM CUMMINGS: You want to know why are they --

FRED TROTT: Because he wasn't using his third building to -- you know, his second outside building for agricultural. If I remember, it was to hold a boat.

ADAM CUMMINGS: Right. Well, that --

FRED TROTT: Other stuff.

ADAM CUMMINGS: -- that one --

MARK MERRY: That was voted down.

ADAM CUMMINGS: We voted down the variance.

FRED TROTT: Yes. But he built the building in the same spot he was talking about.

ADAM CUMMINGS: Correct. But then you have to go back and look at the zoning code change that happened after we denied the variance. Because I believe that specific zoning code changed. I don't remember which one it was specifically. But that was the Building Department's part. We're at a loss that they're not here to help us with that one.

ERIC STOWE: Can't help you with that one. Sorry. Not familiar with it.

ADAM CUMMINGS: But I do remember something to that effect.

FRED TROTT: I'm just --

ADAM CUMMINGS: So in this case, they don't have a residence and it's not agriculturally used. So we're taking that other one out. We're taking that other one out of your mind.

MARK MERRY: Let it go.

FRED TROTT: I'm willing to let it go. I'm just asking the question, what -- what -- if it is the house, I can totally understand that. That is preventing them from even having to be here tonight?

ADAM CUMMINGS: No.

FRED TROTT: I guess I'm filling in for some people in the audience who are normally not here.

MARK MERRY: You're doing a very good job.

ADAM CUMMINGS: I was --

FRED TROTT: And not anything against you, I just had these questions and I just want to make sure we're thorough and we --

ADAM CUMMINGS: So I'm actually trying to check it, because your existing one, the 932 square feet or -- reduced down to 872 square feet, that is pre-existing, non-conforming, but I'm trying to quickly read the code here. Because we're adding 1200 here, 1200 is your new building, so should it be the addition of the two of them together, which is your storage square footage or 2,072 square feet on this property without a residence? Now, our variance is only looking at we want to change it to two, but I'm curious if there is a section of the code that limits -- because we're already calling out 1200 as the maximum square footage allowable. If the structure is larger than 1200 square feet, they would need another variance. Well, I'm questioning if the two added together needs another variance. Sorry to put you on the spot, Counsel. I will read it frantically, too.

ERIC STOWE: No. That's half the fun. Which section are you in?

ADAM CUMMINGS: 500-27, B(10). The last sentence, which was just revised March 18th, 2015, "Prior garages attached or both on substandard lots shall not exceed 1,200 square feet nor shall they be higher than the ridgeline of the primary dwelling for that lot as measured from the floor level of the structure."

This is exactly the one we were looking at. So moving forward, for any substandard lot, one being less than five acres -- that doesn't apply to this one.

This is where the Building Inspector has to make a determination. I'm reading this as each building --

ERIC STOWE: I would agree.

ADAM CUMMINGS: -- the way I'm reading this.

ERIC STOWE: Right. Because they specifically call out the cumulative effect can't be more than 5 percent, but they don't call that out if the cumulative square footage can exceed 1200. So I believe it's a per building, per structure limit.

ADAM CUMMINGS: Okay. So sorry we went through that exercise, but we at least cleared it up. The 1200 is the maximum you can get without a variance on that. And it is not cumulative until Code Enforcement says their interpretation is different.

MR. SMITH: Until March of next year when it is changed. (Laughter.)

ADAM CUMMINGS: We're going to change it next year. (Laughter.)

So I guess what we're focusing on tonight, we made it through that part. The code allows you to not have any. It doesn't want any structures before the primary residence is on it.

Is everybody clear on that part? They're asking -- one was preexisting. It is below 1200 square feet. The other one they're asking for a proposed one at 1200 square feet. So in essence, we're looking at one new building. The variance will be for two, but that is because one was already there. So we are looking at two buildings.

RON RICHMOND: I do have an additional question.

ADAM CUMMINGS: Sure.

RON RICHMOND: I know we had talked about removing the non-compliant front of the existing building. But you had also mentioned that there were other options.

What other options are available?

MR. SMITH: It would be a complete overhaul of the entire building and in all reality, it would need to be razed.

RON RICHMOND: So the only other option that is available, just to make sure I'm clear, is to rehab the existing single building that is there?

MR. SMITH: There are other options. We could replace the existing building. I'm not sure if that -- how that works with the code, since it is preexisting and if we were to remove it and then restore a building in that same location, I don't know --

ADAM CUMMINGS: The only way that would hold true is if we still maintained the variance to allow two structures. If you minimize the variance tonight, kind of like where I believe Ron (Richmond) is going, is reducing the variance down to one structure, you have two options there. You get rid of the other one, or rebuild or replace the other one at 1200 square feet.

RON RICHMOND: Exactly.

MR. SMITH: Okay.

RON RICHMOND: I understand that you -- the expressed concern about more cost effective to put up an existing structure.

MR. SMITH: Along with the possible need for more than 1200 square feet then.

FRED TROTT: I think we would be more willing to go more square footage with less building.

MR. SMITH: That's understandable.

RON RICHMOND: I would tend to agree with that.

ADAM CUMMINGS: So what we're trying to do is really try to minimize variances tonight. So right now the minimizing of this one is to do one which has been pre-existing, nonconforming. So, in essence, you have been operating with a variance, just not formally with a variance. So, therefore, we -- for the Town's benefit, we are increasing that. As we have already alluded to, you have one structure. There has not been a house built on it. I think somebody said it. When you add the third one, when you add the fourth one and still no residence goes on there.

MR. SMITH: Yep.

ADAM CUMMINGS: So would that be an option? And I'm not saying you still can't go with this plan as you lay it out here, but for right now -- and just leave the driveway, and for right now, just do the one structure.

Because the other thing we don't want to have happen is to have excessive storage out there where people -- and -- any property owner can just go and start using this for something else. I won't put hypothetical uses out there, but start storing excessive items that we don't want. There are some landscaping businesses out there that would like to use this. There is even glass repair businesses out in this AC zone that we're trying to control, because it is our AC zone.

So we're just trying to be aware of that, too, so we don't want too many accessory structures. We want it to be aimed for residential and minimize the opportunity for someone to not use it for that.

RON RICHMOND: I just want to add the point, that if -- if I could have, I probably would have put a condition because the application says 1200 square feet. I probably would have put a condition anyways that it does not exceed 1200 square feet, if we can put a condition.

MR. SMITH: Yep.

RON RICHMOND: So if we went back to the original conversation that I started about rehabbing or rebuilding this single dwelling -- or the single structure that is on there right now, I would -- to Fred (Trott)'s point, it would probably be more inclined not to try to have a 1200 square foot --

ADAM CUMMINGS: Well, right now the code allows 1200 square foot, so I don't think we have to condition it. If they want to go above it, they would have to come back in for another variance.

RON RICHMOND: Which would then be another variance, so that is why I am saying.

ADAM CUMMINGS: But I guess what I'm saying then is we don't need to condition it because our code already restricts it. But I see what you're saying.

Hopefully you all understand it, too, is the way he has explained that is, if you're going to enlarge that existing 872 square feet, you can't enlarge it to 2000 square feet to give you the same storage space --

MR. SMITH: Exactly. That is kind of what our thought process was, too, with the two structures. In that case, to keep one that is existing and also to have the square footage within another structure.

ADAM CUMMINGS: Well, to play Devil's advocate on that, you're looking for two -- you're looking for two non-compliant structures, so in essence, it's one variance, but it's really two, because one was a preexisting, non-conforming. If you go and enlarge this one building and ask for larger than 1200 square feet or 2,000 square feet, that's in essence or that is two variances.

So in -- in my opinion, this is really weighing two variances versus two variances.

MR. SMITH: Yeah. Uh-huh. Understandable.

ADAM CUMMINGS: And I kind of like the compromise of one building. While there is two variances on there, we -- we are not doing as many impacts on the site right now, not that that is anything that we totally look into on this one, but we are not introducing two separate

structures. This parcel has already been used for one -- one -- one single, non-primary residence lot structure. So that's just some -- some input that our Board is giving you all. Of course, I'm not saying which way the Board is going or where our vote is. I just want to point it out for your course of action.

The next part of the -- I'm sure Nick already knows, but I will point it out to you as applicants if a variance is denied -- I'm not saying it is or isn't at this point in time, but if it is, you have to wait one year before you can apply again unless there is a substantial change to your application. So I just wanted to point that out to you, it is not like you can go in and wait a month and then pay again to get it. It is a one-year waiting period.

MR. SMITH: With that in mind, would you prefer to table this to explore other options?

MS. SMITH: Uh-huh.

MR. SMITH: Okay. I think -- I think we'll try to coordinate with Kathy (Reed) or anyone else to get on the next agenda, as well, to have this tabled and to explore other options, too, the other variance options.

ADAM CUMMINGS: Okay.

MR. SMITH: Like you said, there will be one required, I think, in either case.

ADAM CUMMINGS: Yes. Yes. In any case, you will have one. And depending on the plan, just to speak out loud right now, being closer to there, it would really help you locate where your next -- you have two possible locations for the home. This would really help you and not hinder you in terms of your site plan development where your house would want to be. Because I'm aware of out there, and I -- you have got the tree line there. I would hate to cut up the tree line and put in a new building which is kind of cutting in your wetlands, which is a nice aesthetic visual part of your house, to take those out for no -- for a storage reason when your house could be up the hill and have a nice pristine view. So just looking at the plans as I'm looking at it right now, there would be less impact to the natural environment that's out there now for you to enjoy on your property. Some people like golf courses, like myself, so I would just strip the whole thing out and put a driving range in, but I just think that is food for thought. So they put it out there for us to table it and I would just like to make a motion to table this.

FRED TROTT: Motion.

ADAM CUMMINGS: I won't even say next month. We'll just say that you can notify us when you're prepared at a future meeting and we'll leave it open-ended with that and continue to work with the Building Department.

RON RICHMOND: Second.

DECISION: Unanimously tabled by a vote of 4 yes for the following reason:

1. Tabled at applicant's request to further discuss potential options.

MR. SMITH: Can I just get clarification? The two variances, the alternative route would be although it is a pre-, non-conforming, you would still require the one variance for the accessory structure and for the square footage, correct? So those would be the two separate variances.

ADAM CUMMINGS: Well, you would only need a second variance if you went beyond 1200 square feet.

MR. SMITH: Correct.

ADAM CUMMINGS: If you kept it at one structure, at 1200 square feet, you would only have one variance.

MR. SMITH: Yes.

ADAM CUMMINGS: If you went with one structure and combined your storage square footage here, it would be one variance for the one structure, one variance for the 2,000 square feet because it exceeds 1,200 square feet.

MR. SMITH: Okay. Yep.

ADAM CUMMINGS: And then this one is on paper. One variance. But it is two. Because the other one is preexisting, nonconforming.

MR. SMITH: Would it -- sorry, is it technically two variances if the building was left untouched, that non-conforming building? I mean, there is no alteration to it at that point?

ADAM CUMMINGS: No. No.

MR. SMITH: So technically it is just one variance.

ADAM CUMMINGS: Correct. I'm saying in perception, it is -- it is like two variances in our eyes right now.

MR. SMITH: Yep. Okay.

ADAM CUMMINGS: Okay. Thank you. Look forward to continuing -- you do have a nice piece of property and it's a nice, quiet neighborhood.

MS. SMITH: Thank you for your time.

MR. SMITH: Thank you.

ADAM CUMMINGS: Our next Board meeting is Tuesday, September 22nd.

We do not have meeting minutes yet. I just wanted to make note of that. We should get the draft form of them in the next few days and we'll distribute them out so we can act on them next month. Just want to let everybody know.

RON RICHMOND: I do know there is one application for next month.

ADAM CUMMINGS: So we have one unless we can talk to them.

The meeting ended at 8:08 p.m.