

CHILI ZONING BOARD OF APPEALS

November 25, 2003

A meeting of the Chili Zoning Board of Appeals was held on November 25, 2003 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 Beverly Griebel.

PRESENT: Dan Melville, Gerry Hendrickson, Richard Perry, Michael Martin, Peter Widener, Dennis Schulmerich and Chairperson Beverly Griebel.

ALSO PRESENT: Daniel Kress, Director of Planning, Zoning & Development;
Keith O'Toole, Assistant Counsel for the Town.

Chairperson Beverly Griebel declared this to be a legally constituted meeting of the Chili Zoning Board of Appeals. She explained the meeting's procedures and introduced the Board and front table. She announced the fire safety exits. The Pledge of Allegiance was cited.

BEVERLY GRIEBEL: Before we begin, we'll go to the sign issue. Starting with Number 1, and this was Anthony Cerretto for a home office. There was no sign there when I went out. Now, I understand that he verbally said he was going to withdraw.

DANIEL KRESS: He hasn't officially.

BEVERLY GRIEBEL: But without an official letter of withdrawal, it had to be placed.

DAN MELVILLE: This is the second time.

DANIEL KRESS: If I may, we were told by telephone, by Mr. Cerretto, he was intending to withdraw. We did tell him we wanted something in writing to confirm that. We have not as of this date received anything.

DAN MELVILLE: I make a motion to deny this application without prejudice.

PETER WIDENER: Second.

The Board was all in favor of the motion to deny without prejudice.

BEVERLY GRIEBEL: Now, denying without prejudice means that he can reapply before the one-year time limit is up. Normally you would have to wait one year, but without prejudice means he can reapply if he wants to have this home office.

Dan Kress, what has been done about the dump trucks and other equipment related to that landscaping business? That is still on the property.

DANIEL KRESS: I wrote to Mr. Cerretto and indicated that those needed to be removed. Unfortunately, it seems to be an ongoing situation. I was frankly hoping we could speak to him and resolve that with him tonight. Given he is not here tonight, I'm inclined to give him a final notice. If this is not taken care of in short order, he will be receiving an appearance.

BEVERLY GRIEBEL: September 2nd he was told he needed a place for the vehicles no later than November. Now it is almost the beginning of December. It is up to you, but those vehicles are there and they're a distress to the neighbors.

DANIEL KRESS: I'm aware of that, that is why it is not going to go on much longer.

BEVERLY GRIEBEL: Thank you.

Application 2, Tony Rosato. I didn't have a problem with the sign. Anybody else?

The Board indicated there was no problem with that notification sign.

BEVERLY GRIEBEL: Anybody have a problem with Application 3? No problem.

Application Number 4, I did not see a sign there when I went out.

GERRY HENDRICKSON: I was out on the 18th. It was wasn't there.

BEVERLY GRIEBEL: Saturday the 15th, in the afternoon, the sign was not up.

PETER WIDENER: I saw on it on the 18th.

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KEITH O'TOOLE: I would advise the Board not to take testimony on the issue. The issue is whether the sign was seen by the Board.

BEVERLY GRIEBEL: When I was out there the first day, when it was supposed to be up, it was not up, so at this point, I think we need a motion to table.

DAN MELVILLE: Table to December.

BEVERLY GRIEBEL: To December 16th, at 7 p.m.

DENNIS SCHULMERICH: So moved.

BEVERLY GRIEBEL: Do we have a second on that?

GERRY HENDRICKSON: Second.

The Board all voted in favor to table this application until December 16, 2003.

BEVERLY GRIEBEL: That is tabled. It is the application for Susan Spino, tabled until 12/16 at 7 p.m.

The signs have to be posted for the full ten days or the application will be tabled until the next regular meeting. Okay?

Proceeding on, Number 5, Douglas Ott, Everett Drive. I didn't have a problem with that.

The Board indicated there was no problem with the notification sign for that application.

GERRY HENDRICKSON: Only problem I had was the sign was lying down when I got there on the 18th.

BEVERLY GRIEBEL: On the 18th. Okay.

DAN MELVILLE: Was that after that big wind storm?

GERRY HENDRICKSON: Could have been.

DAN MELVILLE: It was there. Just blown over.

MICHAEL MARTIN: I had no problems.

PETER WIDENER: I saw it on the 16th.

RICHARD PERRY: I saw it.

BEVERLY GRIEBEL: So apparently for a brief time it was on the ground.

DAN MELVILLE: That will happen when you have 60-mile-an-hour winds.

Except for the one at CVS. It is still there. They couldn't keep the sign up for anything; now they can't take it down.

BEVERLY GRIEBEL: The new letter that goes out with the applicants also says it will be taken down within five days of the public hearing.

Okay. So that one apparently is okay. That is Number 5.

Diane Habeeb has requested --

PETER WIDENER: I have a question about that.

BEVERLY GRIEBEL: About?

PETER WIDENER: About that one being okay because the wind blew it down, but there will be others with the wind blowing it down and we're saying no to them and yes to this one.

DAN MELVILLE: What other ones were blown down?

PETER WIDENER: We'll get to them, but we couldn't listen to the Davis Road one.

BEVERLY GRIEBEL: It wasn't up.

PETER WIDENER: But you were the only one who didn't see the sign up.

BEVERLY GRIEBEL: Okay.

PETER WIDENER: Maybe the wind blew that one down. I don't know. If we say no to one, I believe we should say no to all of them again. If the sign is not up, wind or no wind.

DAN MELVILLE: If the sign is laying on the ground because the wind blew it down --

BEVERLY GRIEBEL: So we may come back to that on Number 5.

DENNIS SCHULMERICH: Are you making a motion to postpone?

PETER WIDENER: Well, if we do it for one, we have to do it for the other one, too.

DENNIS SCHULMERICH: So are you making a motion to postpone?

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PETER WIDENER: Yes, I would make a motion to postpone that one. Even though I did see the sign, but a member of the Board said they didn't see the sign.

MICHAEL MARTIN: They saw it on the ground.

BEVERLY GRIEBEL: That is not really visible to the passersby. If we who are looking for it have to hunt for it, then people that are not aware of what is going on have to be able to see it without hunting for it. And if we have to hunt on the ground for it, then it is really not there.

DAN MELVILLE: We have a motion. Do we have a second?

BEVERLY GRIEBEL: I will second that.

It was down on one day, not posted the full ten days.

DAN MELVILLE: This is a vote to table?

BEVERLY GRIEBEL: Yes.

Dan Melville, Richard Perry and Michael Martin voted no on the motion to table.

BEVERLY GRIEBEL: We have to have some consistency.

DAN MELVILLE: Why are we making a motion if we can't vote the way we want?

BEVERLY GRIEBEL: That is true.

RICHARD PERRY: There is a little difference between the first one, Dan (Melville), between not putting it up and --

RICHARD PERRY: Not having it up on a day when wind was not a factor, and this one where the wind was a factor. I don't see anything in the sign information about how to weather 60-mile-an-hour winds.

BEVERLY GRIEBEL: But when -- now --

PETER WIDENER: We are assuming that the wind happened on this sign because that person didn't say yes, it happened or no, it didn't. But we didn't give Application Number 4 a chance to say anything about the wind. We didn't assume anything --

DAN MELVILLE: There was no wind on that first Saturday.

BEVERLY GRIEBEL: No. There was not a big wind before that.

Now, who didn't see it?

MICHAEL MARTIN: Gerry (Hendrickson).

BEVERLY GRIEBEL: Gerry (Hendrickson) didn't see it.

MICHAEL MARTIN: We're in the vote, too.

BEVERLY GRIEBEL: Right. We're in a vote.

PETER WIDENER: I guess I vote yes to table.

DENNIS SCHULMERICH: Yes to table.

BEVERLY GRIEBEL: Gerry (Hendrickson), table, "yes" or "no"?

GERRY HENDRICKSON: Yes.

BEVERLY GRIEBEL: I vote yes to table. So it is tabled until December 16th at 7 p.m.

Now, if one of our members went out -- generally I go look at them all on the same day, if I can. And if you have eight or nine or ten other people who keep the sign up and one doesn't, they're all pretty much subject to the same wind, so to be consistent, okay, that is tabled.

Application Number 6, Diane Habeeb on Red Bud, she has sent in a letter requesting to be tabled until next month because she apparently has got some other pressing obligation. So we need to vote to do that.

MICHAEL MARTIN: Move to table.

GERRY HENDRICKSON: I make a motion we --

DAN MELVILLE: We're putting all these onto next month?

BEVERLY GRIEBEL: Yes. Gerry (Hendrickson), did you second that?

GERRY HENDRICKSON: I made the motion, yes.

MICHAEL MARTIN: I'll second it.

BEVERLY GRIEBEL: Mike seconded it.

The Board was all in favor of the motion to table.

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BEVERLY GRIEBEL: She had a sign. She was okay.

Application 7, Gabriele Benner.

DAN MELVILLE: I saw this.

BEVERLY GRIEBEL: This is Beahan, 65 Beahan Road. I was okay with that.

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

BEVERLY GRIEBEL: I had to go by a couple times. It was in the grassy area. The first time I went by, there was somebody on my tail. Okay.

Number 8, Byrne Dairy on Chili Avenue is -- I didn't have a problem. Did anybody have a problem?

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

BEVERLY GRIEBEL: And Number 9, Mr. and Mrs. Paul Craig on Pinewood Knoll. It was okay. Did anybody have a problem?

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

BEVERLY GRIEBEL: Number 10, Anchor Christian Church, there was no sign there when I went out.

PETER WIDENER: No sign when I went out.

GERRY HENDRICKSON: Was when I went out. That was on the 18th.

PETER WIDENER: 16th no sign.

RICHARD PERRY: Okay.

BEVERLY GRIEBEL: I drove in and looked around and tried to get a good look on that. Can I have a motion to table that until 12/16?

DENNIS SCHULMERICH: So moved.

BEVERLY GRIEBEL: Second?

PETER WIDENER: Second.

BEVERLY GRIEBEL: Thanks.

The Board all voted yes on the motion to table.

BEVERLY GRIEBEL: Application of Kaddis Manufacturing, Beahan Road. The sign was on a board. It was on a very sturdy pole which was bent over at ground level. I had to go around the building a couple times to find it.

DAN MELVILLE: Then I guess you have to table it.

BEVERLY GRIEBEL: Yep.

PETER WIDENER: I saw the sign bent over on the ground, but no paper on the sign.

BEVERLY GRIEBEL: It was gone by then. It was really soggy --

PETER WIDENER: That was on the 16th.

RICHARD PERRY: It was back up on the 22nd.

BEVERLY GRIEBEL: Maybe it was a different pole. I guess somebody wasn't tending to it for a few days.

Can I have a motion to table that until December 16 at 7 p.m.?

PETER WIDENER: So moved.

GERRY HENDRICKSON: Seconded.

The Board was all in favor of the motion to table.

BEVERLY GRIEBEL: Number 12, application of Edward Vandewater, I was okay with that.

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

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BEVERLY GRIEBEL: Number 13, Paul Bloser, Hubbard Drive. It was okay.

RICHARD PERRY: I didn't see it on the 22nd.

DAN MELVILLE: Have to table it.

BEVERLY GRIEBEL: Okay. When I went by, there was a moving van, so I don't know --

RICHARD PERRY: It was laying face-down in the yard.

DENNIS SCHULMERICH: Motion to table.

BEVERLY GRIEBEL: Second?

MICHAEL MARTIN: Second.

The Board was all in favor of the motion to table.

BEVERLY GRIEBEL: Number 14, this Mr. and Mrs. Parker Story, Watchman Court. When I went out there, there was no sign. The gentleman came out and he came out with some kind of pole and was beginning to install it -- or said he was going to install it. That was at 2:45 in the afternoon on Saturday.

DAN MELVILLE: You didn't see one?

BEVERLY GRIEBEL: No.

DAN MELVILLE: You got to table it.

BEVERLY GRIEBEL: Okay. Motion to table that until 12/16 at 7:00 p.m.?

DENNIS SCHULMERICH: So moved.

BEVERLY GRIEBEL: Second?

I will second it.

The Board was all in favor of the motion to table.

BEVERLY GRIEBEL: Number 15, Anthony Comunale on King Road. I did not see a sign there.

RICHARD PERRY: Neither did I.

DAN MELVILLE: No.

MICHAEL MARTIN: No.

GERRY HENDRICKSON: Neither did I.

DAN MELVILLE: Is this the first time? I thought he was in last month.

BEVERLY GRIEBEL: No. That was on the Planning Board.

DAN MELVILLE: Okay.

BEVERLY GRIEBEL: Motion to table to 12/16 at 7?

PETER WIDENER: So moved.

DENNIS SCHULMERICH: Second.

The Board was all in favor of the motion to table.

BEVERLY GRIEBEL: Any one of those that were tabled, we'll not be hearing any discussion on those tonight. Those are all tabled until the next meeting, and the applicants will get a letter in the mail that will instruct them to post the sign and maintain it during the required period of time. So if you are the applicant, you will not be heard tonight. If you are here to address any questions regarding that application, any one of these will not be heard tonight.

1. Application of Anthony Cerretto, owner; 535 Westside Drive, Rochester, New York 14624 for conditional use permit to allow an office in home for a landscaping business at property located at 535 Westside Drive in R-1-20 zone.

DECISION: Unanimously denied by a vote of 7 no without prejudice for the following reasons/findings of fact having been cited:

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1. Applicant failed to post the required public hearing notice sign.
 2. Application tabled from October 28th when applicant failed to appear for the public hearing.
2. Application of Antonio Rosato, owner; 4053 Buffalo Road, Rochester, New York 14624 for variance to create an undersized lot to be 1.916 acres (5 acres req.) at property located at 252 Ballantyne Road in A.C. & FPO zone.

BEVERLY GRIEBEL: Hello. Are you Mrs. Rosato?

MRS. ROSATO: Yes, I am.

BEVERLY GRIEBEL: You're speaking for your husband?

MRS. ROSATO: Yes, I am.

BEVERLY GRIEBEL: You have water there on Ballantyne Road?

MRS. ROSATO: Yes.

BEVERLY GRIEBEL: Do you have sewers there also?

MRS. ROSATO: No.

BEVERLY GRIEBEL: No sewers.

Okay.

DAN MELVILLE: Has this been to the Planning Board?

MR. ROSATO: Yes.

BEVERLY GRIEBEL: Dan Kress, do you know the decision from the Planning Board?

DANIEL KRESS: I'm not familiar with this having gone to the Planning Board at all.

DAN MELVILLE: Does it need to? Is it an approved lot?

DANIEL KRESS: No. We're creating a new undersized lot.

BEVERLY GRIEBEL: I have that. I have it here. It was tabled until 11/25 -- no. That was here. That was this Board. I don't have anything from the Planning Board on that.

The house is going to remain on the smaller parcel; is that correct?

MRS. ROSATO: Yes.

BEVERLY GRIEBEL: And what is going to happen to the other portion of that -- the other lot that you want to create?

MRS. ROSATO: As far as I know, nothing is happening. My daughter is purchasing the house.

BEVERLY GRIEBEL: Your daughter is purchasing the house?

MRS. ROSATO: Yes.

BEVERLY GRIEBEL: And Antonio is going to keep possession of the other -- the larger piece of land?

MRS. ROSATO: Correct.

BEVERLY GRIEBEL: Okay. Now, with the house, then there is the septic system?

MRS. ROSATO: Yes, there is.

BEVERLY GRIEBEL: So that septic system, I presume, remains on this small lot that you have created?

MRS. ROSATO: It does, yes.

DAN MELVILLE: It doesn't show it on the map.

BEVERLY GRIEBEL: No. Because it's -- well, no, it doesn't show it on the little detail either.

DAN MELVILLE: It is another one of these situations, we kind of don't know what we're approving.

PETER WIDENER: We don't want a leech system on another piece of land for that house.

BEVERLY GRIEBEL: Now, this was a new drawing. May -- no. May 1st, 2004. Is that when the term expires?

DAN MELVILLE: I'm surprised they didn't show anything on there.

BEVERLY GRIEBEL: Yes. May 1st, 2004.

DAN MELVILLE: Right.

BEVERLY GRIEBEL: We're in 2003.

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DAN MELVILLE: That is right, too. He probably just put the wrong date. It was probably May 1st, 2003.

BEVERLY GRIEBEL: Probably.

DENNIS SCHULMERICH: This is per Monroe County Precise Survey.

BEVERLY GRIEBEL: You know, the thing is, if we approve something and then we're not sure where everything is, if everything isn't shown on this plot map, then we're not sure what is going on.

DAN MELVILLE: All we're giving approval for, if anything, is the undersized lot. Then it would be up to the Planning Board to fit the house and the septic.

BEVERLY GRIEBEL: But there is already a house there. But we don't know where the septic is.

DAN MELVILLE: We don't know if it is over on the other lot at all or where it is.

BEVERLY GRIEBEL: I don't have any clue.

DAN MELVILLE: We don't have anything on the map.

BEVERLY GRIEBEL: That is one of the main problems with creating an undersized lot, does it still have room for all of the underground things that are needed. With the city water, that is not a problem -- Town water. But with not knowing where the septic is, um -- side table, can you advise us?

KEITH O'TOOLE: To what end? What is your question?

BEVERLY GRIEBEL: Where is the septic system on this property? The parcel one --

DAN MELVILLE: Can you answer that?

KEITH O'TOOLE: No, I can't answer that question.

DAN MELVILLE: Then I think we should --

DANIEL KRESS: It is a fair question. It ought to be indicated on the map. It is not.

KEITH O'TOOLE: I have in the past had a client who bought into one of these situations and found out that his septic field was in his neighbor's yard and had quite the lawsuit over it, so it is certainly worth investigating and I don't see where their engineer can't come back and show us where the location of the septic field is and they can -- or -- they can bore to find it and that shouldn't be a big issue.

DAN MELVILLE: Maybe in January?

BEVERLY GRIEBEL: How long has Antonio owned this property?

MR. ROSATO: Two years.

BEVERLY GRIEBEL: When you bought it, obviously the house was there because it has been there quite a while.

MRS. ROSATO: Yes.

BEVERLY GRIEBEL: And your original maps when you bought it, did that show the septic system?

MR. ROSATO: No.

BEVERLY GRIEBEL: That is our problem.

MR. ROSATO: We have room for a septic tank. I checked it. They were going to put it on a map. We checked. The septic is on the lots --

DAN MELVILLE: But we have to see that.

BEVERLY GRIEBEL: It doesn't show on this diagram. And so we're not sure where it is.

MR. ROSATO: They just want to get the approval and then they will check it. I don't know.

RICHARD PERRY: That affects our decision.

BEVERLY GRIEBEL: We can't approve it until we know where the septic system is, because without knowing, it could be over on the property that you're going to retain, and that might be all right as long as it stays in the family, but if somebody else wants to buy that portion --

MR. ROSATO: We're not selling it.

RICHARD PERRY: We don't know that, sir. We can't predict into the future.

BEVERLY GRIEBEL: Counsel, should we table this and have the applicant somehow have the architect or whoever, the surveyor indicate where the septic system is?

KEITH O'TOOLE: Yes.

BEVERLY GRIEBEL: Okay.

DAN MELVILLE: It would be a good time to come back in January.

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BEVERLY GRIEBEL: I don't know how quickly you can do it. Our next meeting is going to be in three weeks because of the Christmas holiday.

MRS. ROSATO: December 16th?

KEITH O'TOOLE: Actually, before they go, I have a question. There is this land on the south side of the road. Is that part of this parcel?

MR. ROSATO: Yes.

KEITH O'TOOLE: So what is going to happen to that chunk of land?

BEVERLY GRIEBEL: What is going to happen to it?

MRS. ROSATO: It is going to stay with the farm. The barn is across the street.

BEVERLY GRIEBEL: That is going to be part of --

MRS. ROSATO: The farm.

DAN MELVILLE: That will stay with the farm.

BEVERLY GRIEBEL: So there is one big plot now where you have the house and where the Black Creek --

MRS. ROSATO: Right. That is on one side of the street. Then the barn is on the -- is across the street.

BEVERLY GRIEBEL: Is that a separate parcel?

MRS. ROSATO: It is supposed to be all together.

BEVERLY GRIEBEL: All together. So you want to make Parcel 1 just the house and what is on that side of the street over to the railroad track?

MRS. ROSATO: Correct.

MR. ROSATO: For bank purposes, is all.

BEVERLY GRIEBEL: On the other side of the street it will stay --

MR. ROSATO: The same.

BEVERLY GRIEBEL: With the big piece of land, even though Ballantyne Road goes through it?

MRS. ROSATO: Right.

BEVERLY GRIEBEL: Got you. Well, we need that information. They need to plot out where the septic system is.

MRS. ROSATO: Okay.

BEVERLY GRIEBEL: Now, probably we should table that until January.

MR. ROSATO: They want to close with the bank. We are really behind.

BEVERLY GRIEBEL: They want to close when?

MRS. ROSATO: With the bank. The bank wanted to get it closed. We can try to get it by December, if that will be okay.

DAN MELVILLE: You will have to have the information in time to repost the sign and everything else.

MR. ROSATO: We'll do that.

BEVERLY GRIEBEL: For the December meeting, the sign has to be posted by December 6th.

DAN MELVILLE: That only gives you a short time there.

BEVERLY GRIEBEL: We have got --

MRS. ROSATO: We'll try.

BEVERLY GRIEBEL: We have the Thanksgiving holiday in between. Now, when are you supposed to close?

MRS. ROSATO: My daughter?

BEVERLY GRIEBEL: Yes. When does the bank want --

MRS. ROSATO: By the 20th.

MR. ROSATO: December. We're really behind. We lost the sign the first meeting, and then we came back.

BEVERLY GRIEBEL: I don't know why they didn't indicate the septic system on here.

MR. ROSATO: It is there. It is inside the lot line. He was not here because he see no reason for it, but he wanted to -- the art department, drawing, the map, we'll get a copy of the drawing and we'll come back.

DAN MELVILLE: We need to know right where it is.

MR. ROSATO: The map department has the records.

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KEITH O'TOOLE: Point of reference here, if they have a closing for a refi or a construction loan, whatever is going on here, my understanding is that this requires a subdivision approval from the Planning Board, and they haven't filed an application for the December meeting, so I don't think they will be closing on anything. For what it is worth.

BEVERLY GRIEBEL: They need a subdivision approval? Were you told that?

DAN MELVILLE: Yes.

MR. ROSATO: They say it was a mini subdivision approval. They was just going to sign off. They checked the map to be signed by somebody. Then somebody else say no, it is over here.

DAN MELVILLE: This map had a signature and it was signed off.

MR. ROSATO: One person said no, and then it would come here. They really say okay.

BEVERLY GRIEBEL: This looks like JDF.

DAN MELVILLE: Nobody seems to know anything about it. I mean that doesn't matter as far as our job goes, what they have to do with the Planning Board. But we just still need the information on here in order to make a decision.

BEVERLY GRIEBEL: Right. And our agenda has to be ready for the 16th. That doesn't give much time. It has got to be ready -- really by the 4th. If it is going on the agenda for the 5th.

That only gives you a few days, and we have the Thanksgiving holiday.

MR. ROSATO: We'll just have to get a copy from the art department, that is all we need, a copy of the septic tanks.

DAN MELVILLE: Your engineer is going to have to draw that on a map.

MR. ROSATO: He can draw it on a computer. He can do it in 20 minutes.

DAN MELVILLE: He might have to do some checking out.

BEVERLY GRIEBEL: In order to draw it, he has to know where it is.

KEITH O'TOOLE: Madam Chairwoman, if I may. If they want to take the chance, let them take the chance, just so long as he understands we expect the engineer to show us where it is, not its reputed location. There has to be some factual basis for showing its location. Somebody is going to have to go out there and find out where the tank is and also find out where the field is.

MICHAEL MARTIN: More than the tank.

BEVERLY GRIEBEL: So what he has to do is show definitively --

KEITH O'TOOLE: The actual location of the septic system.

DAN MELVILLE: And leech field.

DENNIS SCHULMERICH: That will be with an engineer's certified drawing?

DAN MELVILLE: Yes.

BEVERLY GRIEBEL: Well, I guess this -- the surveyor or engineer -- who would have to do that?

KEITH O'TOOLE: The engineer.

BEVERLY GRIEBEL: The engineer.

Certified by an engineer.

And all of that must be into the Building Department no later than December 4th.

MR. ROSATO: Okay.

BEVERLY GRIEBEL: If it is not in by then, it will be held off until January.

With a Thursday and Friday holiday, and the weekend there, that is going to be a little tough. Okay. We'll see if you can do it.

DAN MELVILLE: If they can do it, we'll do it and get them in.

BEVERLY GRIEBEL: So a motion to table this until 12/16, 7 p.m. with the information that was just read out.

MICHAEL MARTIN: Moved.

DENNIS SCHULMERICH: Second.

The Board was all in favor of the motion to table.

DECISION: Unanimously tabled by a vote of 7 yes until 12/16/03 at 7:00 p.m. for the following reasons:

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1. Applicant to submit 10 copies of a certified engineer's plat which clearly shows the actual location of the present septic system and leach field.
2. Submit to Building Department no later than noon on Thursday, December 4th.
3. If submitted later than the above, then application will be heard at the January 27, 2004 meeting.

The following finding of fact was cited:

1. Further information required.
3. Application of John Vandebos, owner; 42 Black Creek Road, Rochester, New York 14623 for variance to erect a 16" x 30" greenhouse (hoop construction) to be 480 sq. ft. (180 sq. ft. allowed) at property located at 42 Black Creek Road in RAO-20, FPO, FW zone.

John Vandebos was present to represent the application.

MR. VANDENBOS: Hi.

BEVERLY GRIEBEL: This went to Monroe County Planning and came back as a local matter. What is the purpose of the greenhouse?

MR. VANDENBOS: I have an azalea collection and a bonsai tree collection and I'm beefing them up right now.

BEVERLY GRIEBEL: Can you talk a little louder?

MR. VANDENBOS: I'm beefing the stalks up so they're in the ground. I wanted them out of the ground this year, but it is a little too late. It is to house my bonsai tree and azalea collection. I would be starting my garden plants, flowers, vegetables and such.

BEVERLY GRIEBEL: Is that for your own use, or do you sell them?

MR. VANDENBOS: No. For my own use.

BEVERLY GRIEBEL: Why do you need such a large --

MR. VANDENBOS: Because I'm growing a large garden. I have a lot of bonsai trees. I have about 1,000 bonsai trees.

BEVERLY GRIEBEL: What do you do with them all?

MR. VANDENBOS: Collect them. They're my retirement.

BEVERLY GRIEBEL: In your house?

MR. VANDENBOS: No. They're in the ground right now. They're at my ex's house.

DAN MELVILLE: It is a hobby.

MR. VANDENBOS: I will sell them eventually, but not now. They still need a lot of work before they're saleable. They need a lot of pruning, trimming, wiring up. It is my retirement basically.

BEVERLY GRIEBEL: Is this a business you're going into?

MR. VANDENBOS: No. I'm not going to be selling anything for nine, ten years. When I retire, I will start selling them because I will need the income.

BEVERLY GRIEBEL: And when you have a -- will you have a store then to sell them in.

MR. VANDENBOS: No. I could sell them at shows and different venues.

DAN MELVILLE: When you get close to beginning to sell, you will need to come back here for a variance to have an office out of the home.

MR. VANDENBOS: I might be moved by then. I might not be in the area by then. I'm going to go south.

BEVERLY GRIEBEL: Greenhouse hoop construction, what is that?

MR. VANDENBOS: Well, I have a little beef about this, also. There are people all over town that have built these hoop constructions to put a car or a boat and they have -- and I --

BEVERLY GRIEBEL: Canvas-type thing.

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MR. VANDENBOS: I have asked at the Planning Board if these folks have applied for a permit and they haven't. Okay? And you know, it is a structure. And it is not much different from what I am going to be, you know, building.

DAN MELVILLE: We have had a few of them in here.

BEVERLY GRIEBEL: One as a garage.

DAN MELVILLE: One on King Road.

BEVERLY GRIEBEL: That was in a commercial area. Is this a temporary structure?

MR. VANDENBOS: It can come down in days.

BEVERLY GRIEBEL: What?

MR. VANDENBOS: It can come down in a couple of days.

DAN MELVILLE: Or a big wind storm?

MR. VANDENBOS: Yes, that's true.

BEVERLY GRIEBEL: Well, a temporary structure. But --

MR. VANDENBOS: I mean when I move, I can take the whole thing with me. I won't leave it on the property. It will come down.

BEVERLY GRIEBEL: But by temporary, what length of time do you mean?

DAN MELVILLE: Is this something --

MR. VANDENBOS: I will keep it year-round, but the temporary -- I mean temporary that it can come down, you know, within a day or two, okay, if anybody complains or -- or whatever. Or if I move.

BEVERLY GRIEBEL: By temporary, you don't mean it is just there for the winter and comes down in the summer.

MR. VANDENBOS: It will be there all year-round.

KEITH O'TOOLE: The above-ground pool fits the same bill. You can disassemble it, but most people don't.

BEVERLY GRIEBEL: Unless there is a big wind. Really big.

DAN MELVILLE: Will you have a heater in there to keep it --

MR. VANDENBOS: In the winter I want to keep it up to about 40 degrees. I don't want a hard freeze.

DAN MELVILLE: Do you have to run electric out there?

MR. VANDENBOS: No, portable gas heaters.

DAN MELVILLE: Propane?

MR. VANDENBOS: Yes.

DAN MELVILLE: Any electric out there, or anything you will run?

MR. VANDENBOS: No.

DAN MELVILLE: Now, the propane heaters do work by electric, so you would have to --

MR. VANDENBOS: They have ones that -- at least that you don't need any --

DAN MELVILLE: They have no electric for a blower or anything like that?

MR. VANDENBOS: No, it is all convection.

DENNIS SCHULMERICH: If this variance goes through, it is specified the 16 by 35 foot greenhouse. That is a variance that would stay with the land irrespective whether it is a temporary structure or not. So does the variance read as a greenhouse irrespective of construction, or will it say a hoop construction? In the event the individual sells the house, the variance stays with the house to the next owner and then they could build a 16 by 36 block house.

KEITH O'TOOLE: It is up to the Board to impose whatever conditions it feels are appropriate.

MR. VANDENBOS: There is a difference between a block house and a temporary structure.

DENNIS SCHULMERICH: It doesn't matter in terms of the variance.

DAN MELVILLE: We can put a condition on it.

DENNIS SCHULMERICH: That is what I am asking. If we approve a variance for a 16-by-36-foot structure and we don't specify what it is, and you move and take the hoop greenhouse with you, somebody could build a 16 by 36 block structure because we gave the variance forever.

MR. VANDENBOS: You can specify --

DENNIS SCHULMERICH: That is the question I am asking.

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DAN MELVILLE: For this particular structure, should the structure ever come down, you can't put another one up without coming back to the Board.

DENNIS SCHULMERICH: That sounds like a conditional-use permit as opposed to a variance.

BEVERLY GRIEBEL: And the temporary, it is not really a temporary in my --

DAN MELVILLE: It is a temporary structure.

RICHARD PERRY: It really isn't. It is a permanent structure that can be moved. Permanent use of a temporary structure.

My sister-in-law has a backyard full of greenhouses like -- I think I know what he is doing. I don't have any other questions.

BEVERLY GRIEBEL: Do you work for a government agency?

MR. VANDENBOS: I work for Eastman Kodak.

BEVERLY GRIEBEL: Okay. Because you hadn't checked that. So we'll check that "no" on this application.

I have a definite problem with the temporary. And with these kind of a -- what material is it? Like a plastic?

MR. VANDENBOS: It is made out of galvanized pipe. This is something that I love to do. I really enjoy doing it, okay? I'd like to build this structure.

BEVERLY GRIEBEL: And the structure is built out of piping?

MR. VANDENBOS: Right. It is bent pipe, okay, it has braces. I have poles that I just pound in the ground, stick the hoops in it, and they're 16 feet wide, and I have 13 hoops, and I'm going to space them out so it comes out to 32 feet.

RICHARD PERRY: It is covered with?

DAN MELVILLE: Canvas?

MR. VANDENBOS: Greenhouse plastic.

RICHARD PERRY: So it is transparent?

MR. VANDENBOS: Yes. I'm getting opaque -- it actually allows more sunlight in.

BEVERLY GRIEBEL: And the curved hoop -- so this is 10 1/2 feet high, 10 -- 10 feet high?

MR. VANDENBOS: Approximately, yes.

BEVERLY GRIEBEL: At the high point?

MR. VANDENBOS: Yes. Most likely it will be a lot shorter. I went to the highest point, but it might even only be 9 feet.

BEVERLY GRIEBEL: It will be a lot lower. So it may be less than --

DAN MELVILLE: He gave himself a cushion.

BEVERLY GRIEBEL: How do your neighbors feel about this?

MR. VANDENBOS: I have asked both Bill and Bonnie next-door and Nora to the west of me. They didn't mind at all. They are looking forward to the flowers and veggies that I give them. I gave them a whole bunch of stuff this year.

BEVERLY GRIEBEL: Now, the gardens that you have, are they indicated on here?

MR. VANDENBOS: No. I have got one that is right in the center of the yard, the main part of the yard, about 20 feet from the house. It is centrally located, the open part.

BEVERLY GRIEBEL: You have got like a stone driveway, so it is behind the house?

MR. VANDENBOS: No. The garden is right in the center of the yard, the open part of the yard, right in front of the driveway, about 25 feet up from the driveway.

BEVERLY GRIEBEL: Now, your lot is deep. So this would be cutting it back part of the lot?

MR. VANDENBOS: Yep. Way in the back.

BEVERLY GRIEBEL: 233 feet deep. The lots there are deep.

MR. VANDENBOS: It would be coming off the shed, facing east, okay? I would --

BEVERLY GRIEBEL: You have two sheds back there?

MR. VANDENBOS: Yes. I have used the shed doors -- opened a doorway on one of the sheds -- in that shed to kind of...

DANIEL KRESS: Quick comments, if I may. I don't want to further complicate matters, but just so everybody is aware, first of all, this is actually a sufficiently permanent structure that a building permit is very clearly required under the New York State Building Code that went into effect this

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January. Just so we're clear on that.

The other thing I notice is this property is partly in the floodway and in a floodway overlay zone, and there are elevation requirements that apply there, so we'll need a little bit of additional information that is not exactly on the map right now as far as the location of the greenhouse relative to those areas.

BEVERLY GRIEBEL: So the position might change from what is indicated on the drawing?

DANIEL KRESS: I don't know. Position might be just fine. You know, if I take this -- this survey map at face value, it looks as though the floodway is actually adjacent and not immediately on the property. What I am more concerned about is we do have a flood plain overlay district and generally structures in there are supposed to be 2 feet above base flood elevation. I would hate to see somebody start building something and find out it has to be 2 feet higher than it was. That is just a question that has to be settled before we can issue him a permit.

RICHARD PERRY: That would be settled by you, before you could issue the permit?

DANIEL KRESS: Correct.

RICHARD PERRY: We don't need to worry about it?

DANIEL KRESS: I don't know you need to worry about it. You just need to be aware of it.

BEVERLY GRIEBEL: Now, how do these sort of temporary canvas, plastic type structures fit in our code? Where do they fall?

DANIEL KRESS: We have been treating them as accessory structures. They have been brought to our attention, and we're making it clear permits are required. There is another application on the agenda tonight, although it did get tabled, for a similar structure. We had similar applications that I -- at least one before the Planning Board. So when they are brought to our attention, we don't necessarily go out scouring the town for these things. We do remind people they do require permits.

BEVERLY GRIEBEL: So they're treated as accessory structure like a shed or a garage or some type of thing like that?

DANIEL KRESS: Yes.

COMMENTS OR QUESTIONS FROM THE AUDIENCE: None.

Beverly Griebel made a motion to declare the Board lead agency as far as SEQR, made a determination of no significant environmental impact, and Michael Martin seconded the motion. All Board members were in favor of the motion.

Peter Widener made a motion to approve the application with the following conditions, and Gerry Hendrickson seconded the motion. The vote on the motion was 5 yes to 2 no (Beverly Griebel, Dennis Schulmerich).

DECISION: Approved by a vote of 5 yes to 2 no (Beverly Griebel, Dennis Schulmerich) with the following conditions:

1. Approved for a maximum of ten (10) years and then subject to renewal.
2. Construction as per application.

The following finding of fact was cited:

1. Applicant described need to protect immature bonsai and other plants.
4. Application of Susan Spino, 1500 Davis Road, Churchville, New York 14428, property owner: David Mack; for conditional use permit to allow a dog grooming business in home at property located at 1500 Davis Road in R-1-15 zone.

DECISION: Unanimously tabled by a vote of 7 yes until 12/16/03 until 7:00 p.m. for the following reason/finding of fact having been cited:

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1. Applicant failed to post the public hearing notice per Town regulations.

Note: Applicant to obtain new sign(s) at the Building Department to post and maintain as per Town regulations. Applicant must be present for the public hearing.

5. Application of Douglas Ott, owner; 33 Everett Drive, Rochester, New York 14624 for variance to allow the total square footage of garage area, including a new 32' x 28' detached garage to be 1,336 sq. ft. (900 sq. ft. allowed) at property located at 33 Everett Drive in R-1-20 zone.

DECISION: Unanimously tabled by a vote of 7 yes until 12/16/03 at 7:00 p.m. for the following reason/finding of fact having been cited:

1. Applicant failed to post the public hearing notice per Town regulations.

Note: Applicant to obtain new sign(s) at the Building Department to post and maintain as per Town regulations. Applicant must be present for the public hearing.

6. Application of Diane Habeeb, owner; 60 Red Bud Road, Rochester, New York 14624 for renewal of conditional use permit for an office in home for music lessons at customers' homes at property located at 60 Red Bud Road in R-1-15 zone.

DECISION: Unanimously tabled by a vote of 7 yes until 12/16/03 at 7:00 p.m. for the following reason/finding of fact having been cited:

1. Tabled at applicant's request.

Note: Applicant to obtain new sign(s) at the Building Department to post and maintain as per Town regulations. Applicant must be present for the public hearing.

7. Application of Gabriele Benner, owner; c/o Costich Engineering, 217 Lake Avenue, Rochester, New York 14608 for variance to create two undersized lots: Lot #1 to be 2.2 acres (10 acres req.) with a lot width of 115' (500' req.), side setback for existing dwelling to be 15' (50' req.), Lot #2 to be 2 acres (10 acres req.) with lot width of 100' (500' req.), side setbacks for proposed dwelling to be 15' (50' req.) at property located at 665 Beahan Road in RA-10 & FPO zone.

Lee Sinsebox was present to represent the application.

MR. SINSEBOX: Good evening, my name is Lee Sinsebox. I'm with Costich Engineering here on behalf of Mrs. Benner for this application. The request is to have a variance to create the two undersized lots. The property is measured now 215 feet by 900 feet, 4.2 acres. Essentially we kind of want to split it down the middle, each lot having 2 acres or more. This would require a variance -- the R-10 zoning called for 10-acre minimum.

If the property is subdivided, and then for -- there is an existing house on one lot, that would remain, and then a new house would be constructed on the other one, and that would -- that would require the other setback variances in the application, the side setback. So it will be 50 feet to 15 feet. That would allow room to have the house built on each of them.

The lot width would go from 115 feet and 100 feet to where 500 feet is required. We don't feel that this would be a detriment to the purpose of the Town code. We feel that it is not in conflict with

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any of the Town's plans. It is on -- this corner of the Town's -- zoned R-10 where many of the lots in there are kind of an average of 2 acres in size. I'm not sure if those lots were created before the zoning or if the zoning came before those lots, but at any rate, this seems to fit right in with the average lot size in there, so we don't think it would cause an impact to the neighborhood. It has very quiet single-family homes back in there. This would kind of fill in the spot. It is a good use of the property.

I did receive some comments from DRC, the County DRC. Their only comment in there was regarding the Little Black Creek drainage corridor. The west end of this property borders Black Creek, and the recommendations in the DRC letter was to maintain the healthy conditions of the stream, and it gave suggestions for healthy vegetation and preventing erosion. There is about 200 feet in from that stream that is zoned FPO, flood plain overlay. It is well away from any activity where the house would be -- where they're planning to build the house in front of that. So that area could remain as is and follow all of the FPO requirements.

If this Board is inclined to grant the variance, the next step for us would be to go to the Planning Board for site plan and subdivision approval to subdivide Mrs. Benner with -- keeping the one lot with the house on it and selling the newly created lot.

Looking at the tax maps, I notice also across the street all of the lots are just about this size. They're long, narrow lots, and we feel that we won't be causing an impact in the neighborhood.

I asked Mrs. Benner if she had any feedback or comments from her neighbors, and she said no one had really approached her, asked her.

BEVERLY GRIEBEL: We have one.

MR. SINSEBOX: We think it would be accepted favorably by the neighborhood.

BEVERLY GRIEBEL: Now, if anybody in the audience wants to go look at that, you can see what he is talking about.

These lots are very deep. 913 feet. 889. Very deep lots. And the frontage on them -- one, two, three, four, five, six. If done as proposed, 100.3 feet, 115 feet, 100 feet, 100 feet, 75 feet. There was a letter that came in, an e-mail came in. I did talk with this gentleman in Florida this morning, Mr. Andrews, who lives just adjacent to the new proposed lot, the one that would not have the house right now. "I'm currently on vacation in Florida and unable to attend the meeting." He is a property at 653 Beahan Road adjacent to the north side of 669 Beahan Road. He is requesting denial of the application. "The side setbacks are much too far below the requirement and would adversely affect my property value and create an eyesore with homes too close together."

BEVERLY GRIEBEL: Well, his house has a 20-foot side setback on one side, and the new lot that is being proposed is proposed to have 20-foot side setbacks. There is the lot on the other side of him that has a 10-foot side setback, one of the setbacks. So I frankly don't get his statement.

The lot widths are pretty much in keeping when you go 100 feet, 100.3, 115, 100, 75, it is kind of -- they're all alike. Similar. Very similar with 15 foot, 15-foot side setbacks, 20 foot, 20 foot, 10. So he is welcome to have his say. I don't personally agree with him. But that is read into the record, and that is -- his first name is --

RICHARD PERRY: I don't see where having a new house in an older neighborhood is going to adversely --

DAN MELVILLE: It will help his property values.

RICHARD PERRY: Yes.

BEVERLY GRIEBEL: Create an eyesore with the homes too close together. What is there is there. I don't know if they predate the zoning, but this proposal would be really in keeping with what is already there. As you say, it is similar to what is across the street. I'm not familiar with that. I don't have that map. But --

MR. SINSEBOX: When we put this together, we took the extra effort to locate all these houses -- so we could see ourselves how it would fit in there, and it almost looks natural there, as part of the community.

BEVERLY GRIEBEL: That letter was from Kenneth Andrews.

I don't have any other questions.

DENNIS SCHULMERICH: I'm assuming we're on sewers here?

MR. SINSEBOX: Yes. That would be reviewed through a subdivision approval process, the

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Planning Board. We'll detail that for them when we get to that point.

BEVERLY GRIEBEL: It has Town water and Town sewers?

MR. SINSEBOX: Yes.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

CHRIS JUDD, 669 Beahan Road

MR. JUDD: I'm not saying I'm against the application. I just have a question. The piece of property is two doors down from mine. It has very low land, a lot of water in there. Ken Andrews had asked me to speak about this. To build in there, I think you have to build that land up, because of all of the water in there. His land is already wet. If you build that up, it may flood his property.

MR. SINSEBOX: That is something that we'll -- you're correct, this property where the house would be sited is lower than Mr. Andrew's lot and the lot with the existing house on it. We do topography. We look at drainage. We study that. We'll address that through a site plan approval process with the Planning Board, just the things that they look at to make sure we don't cause an impact on either of the neighbors, but --

BEVERLY GRIEBEL: Would that be the next step with this?

MR. SINSEBOX: That is what we would do next. We would probably send a survey crew out, topo the area, get all of the information on it, plot it up, study it, see what the drainage is doing on this property and the adjacent properties and the street as well, and we'll plan the elevations of the house, and lot grading to make sure that we don't cause any impacts. The Planning Board will scrutinize that very carefully.

BEVERLY GRIEBEL: Mr. Judd, you live on the other side?

MR. JUDD: No, same side. I'm directly next-door to this lot, before it is split.

BEVERLY GRIEBEL: Well, does that --

MR. JUDD: It doesn't affect me, but my neighbor who wrote the letter asked me just to raise that issue.

BEVERLY GRIEBEL: That is definitely an issue that he can raise with the Planning Board when it goes to that aspect.

MR. JUDD: Yes. He just asked me to bring that up.

BEVERLY GRIEBEL: He didn't mention that, but that is not --

MR. JUDD: I talked to him later today.

Beverly Griebel made a motion to declare the Board lead agency as far as SEQR, made a determination of no significant environmental impact, and Gerry Hendrickson seconded the motion. All Board members were in favor of the motion.

Michael Martin made a motion to approve the application with the following condition, and Peter Widener seconded the motion. All Board members were in favor of the motion.

DECISION: Unanimously approved by a vote of 7 yes with no conditions, and the following finding of fact was cited:

1. Consistent with neighboring properties.
8. Application of Byrne Dairy, 240 Oneida Street, Syracuse, New York 13202; property owner: Harry Gitsis; for variance to allow front parking for 44 vehicles for proposed grocery store with fueling facility, variance for canopy over fuel pumps to be 13' from front lot line (75' req.) at property located at 3771 Chili Avenue in N.B. zone.

Christian Burnell, Mark Byrne and Rich Williams were present to represent the application.

MR. BURNELL: Christian Burnell, Director of Facilities for Byrne Dairy. With me tonight I have Mark Byrne and Mitch Williams, the Real Estate Department with Byrne Dairy. We're proposing to build a 4,000-square-foot grocery store with fueling facilities on the southeast corner of Union and

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Chili Street. We have met with the neighbors, Mr. Walworth, who is in the audience tonight and Mr. Vargas, who is to the south of the property. We sat down. We have looked at the plans with them. We have reviewed the plans and I believe everything was agreeable with them. Mr. Walworth can speak to it if he would like to later, but I did show him everything, the plans, and for buffering, we discussed buffering. We decided to do a 6 foot high board-on-board cedar fence with a combination of trees.

We were in front of the Conservation Board last night and did receive approval on our landscaping plan from them. We have been in front of the Planning Board on an informal discussion basis last month, and we believe it was a well-received plan. They had the same plan you're looking at. We're in front of you tonight for two area variances. One being parking located in the front yard area. The other for the accessory structure which is located within the 75 foot required front yard setback area.

This lot is very unique. For neighborhood business, it is located on a corner lot. Me and Dan Kress looked at it, looked at the zoning quite frequently. It is a corner lot which has two front yards so there is no rear yard. There are two fronts and a side yard. Because it is located on a major highway as defined in your zoning law, Chili, it sets the front yard setback back to 75 foot. If you look on the map in front of you, you will see the dotted red line area right by where the building is. That is the buildable place on that 1.2 acre site. You can see it is very, very, very limited.

Our primary use is the grocery store. We did fit the grocery store within that limited space. Again, because of the two front yards, it is just a very, very small space to utilize. And we feel it is not going to be a detriment to the neighbors or the adjoining property owners because the two developed corners have front yard parking. They have accessory structures within the 75 foot so we think it is kind of in similar character with the front yard parking. I think front yard parking for a grocery store is pretty common.

Me and the engineers and Mark and Rich, we looked at the site and laid it out a 100 different ways. There was no other reasonable way to lay this out because of the front yard and the small limited area. It is a 1.2 acre site. There was just no other way. This was the most reasonable way to lay it out.

BEVERLY GRIEBEL: I'm curious. Now, you said it is going to be mainly a grocery store?

MR. BURNELL: That's correct.

BEVERLY GRIEBEL: How is that determined, it is mainly a grocery store and not a gasoline place?

MR. BURNELL: It is a 4,000 square foot grocery store. That is our business. I don't know if you're familiar with Byrne Dairy stores. We have many stores, like in Spencerport we sell dairy products. We have 26 cooler freezer doors to sell dairy products. I know for a fact there is no other convenience store that has 26 cooler and freezer doors. We have 550 linear square feet of shelving for cereal, baby food, motor oil, chips, bread. We're just very extensive into the groceries.

DAN MELVILLE: Do you do more business selling groceries than --

MR. BURNELL: That is our primary business, dairy products and groceries, yes.

DAN MELVILLE: So the amount of gas that you sell is actually less than the dollars in groceries you take in?

MR. BURNELL: I wouldn't say less, but grocery is our main business. Mark (Byrne) can speak to that. That is his expertise.

MR. MARK BYRNE: Basically we're in the grocery business. We specialize in dairy products being a dairy. We have a huge line of ice cream products. We have a line of bake goods we make. He asked the question -- really the dollars -- the dollars, if you -- it depends how well the store does. You could sell as many dollars in gasoline because it costs so much per gallon, but the way -- the way to really look at it, the profits generated from the store, more than 80 percent of the profits would come from the store. That is our business that we're in, is the grocery business. We have our own grocery warehouse where we buy from Kelloggs to Proctor Gamble, all of the big houses. We bring our groceries directly to our stores ourselves.

Most of the products would come right from Byrne Dairy. We have our own milk trucks, ice cream trucks, our own grocery trucks. We actually bring bread. We have our own private label bread. We have our own cookies, muffins, all of the stuff you bake daily and send out to the stores.

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DAN MELVILLE: Then you have vendors that would come in --

MR. MARK BYRNE: We don't have as many vendors because we have our own warehouse. This store would get one delivery a week from the warehouse. The only thing we can't put in the warehouse would be like beer and some of the soda. Some soda we bring in ourselves. We try to bring everything into our own warehouse so we can control it. That is the grocery business. You want to buy everything direct.

MR. BURNELL: We have over 2500 items inside the store.

BEVERLY GRIEBEL: Along the same lines, I'm just kind of curious, this is in an NB zone.

MR. BURNELL: Neighborhood Business, that's correct.

BEVERLY GRIEBEL: We had another application not too long ago that wanted the gas station and convenience store in a General Business zone, and in order to do that, they had to have a Land Use Variance. So I am not understanding all this.

DANIEL KRESS: If I may, I spent quite a bit of time with the applicant early on trying to identify what exactly was the nature of the operation, and which you will forgive the metaphor, which was the tail and which was the dog, and it is clear to me the gasoline is, in fact, the tail and it is not wagging the dog. That if we told Byrne Dairy, well, you can't have the dairy, you can only sell gas, they wouldn't set up shop there. But I know there are Byrne Dairy locations where they have dairy and don't sell gas. So clearly the dairy and the grocery are the main part of the business. On that basis, since grocery is a permitted use in NB districts, I advised them they would need to proceed to the Planning Board with the understanding that the grocery store is a permitted use. That the accessory use of the fuel sales needs to be granted a conditional-use permit.

BEVERLY GRIEBEL: Without a Land Use Variance?

DANIEL KRESS: That's correct. In the other example you're referring to, the preliminary conversations I had with that applicant, pretty clearly it establishes that, in fact, the primary intention of that business was to sell fuel. So in that case I would say you did have -- to use the same metaphor, the tail there was wagging the dog.

BEVERLY GRIEBEL: I hear what you're saying. I still don't have that clear in my own mind. I don't know if the rest of the Board does. I know that is not part of the application here tonight, but I don't frankly see the difference.

DAN MELVILLE: It is probably because of the gas sales. A lot of these convenience stores, the reason they have gas is it brings people into the parking lot, and then they get them into the store to buy things when they are out -- like Dennis (Schulmerich) on his way here, he buys his cup of coffee after he gets his gas. He doesn't bring us any.
(Laughter.)

MR. MARK BYRNE: Could I interject one more time? We currently operate 57 stores throughout New York State. Only 17 of them sell gasoline. We don't really want to get in the gasoline business. We're a grocery dairy store, and we have been since the start. But the problem is that now grocery stores do carry gasoline. Wal-Mart, even Wegmans has some. A lot of these Shurfines. We had a board out in the car, we didn't bring in, but grocery stores pretty much now if you read the industry regs do carry gasoline now as an accessory use.

DAN MELVILLE: Wilson Farms.

MR. MARK BYRNE: So like I said, our primary business out of 57 stores, only 17 have gasoline. We're a grocery business. But our new locations we're putting in gasoline just like any other grocer in the industry.

MR. BURNELL: That is what we carry in the stores.

MR. MARK BYRNE: You got them articles?

BEVERLY GRIEBEL: I know the land use variance is not the question here tonight, but I just have to get that straight in my own mind what the difference is.

MR. MARK BYRNE: This is a grocery store. They have gasoline. That is what we're trying to show you.

BEVERLY GRIEBEL: But this is also in an NB zone, which is different than the GB zone we have had before. I don't get it.

GERRY HENDRICKSON: How are you going to go in -- if you want gas or diesel?

MR. MARK BYRNE: How will you what, sir?

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GERRY HENDRICKSON: You will have plenty of room to pull in there?

MR. MARK BYRNE: Yes.

GERRY HENDRICKSON: With pretty good sized motor homes and things like that? One right across from there, you have a hell of a time pulling in there.

MR. MARK BYRNE: We have given plenty of room to turn there. We're not really after big vehicles. We're after --

GERRY HENDRICKSON: I know, but people will put them in there.

MR. MARK BYRNE: It does have room if they do stop. We're not after trucks or anything. If someone has a camper or something, they could get in there.

GERRY HENDRICKSON: I'm talking about fifth wheels and things like that.

MR. MARK BYRNE: You could pull right in there.

GERRY HENDRICKSON: Without too much problem?

MR. MARK BYRNE: Yep.

MR. BURNELL: It is a large site.

MR. MARK BYRNE: It is over an acre site.

DAN MELVILLE: What kind of trucks deliver your groceries?

MR. MARK BYRNE: Tractor trailers.

DAN MELVILLE: You can get that in there?

MR. MARK BYRNE: Yes.

DAN MELVILLE: I guess you can get anything else in there.

DENNIS SCHULMERICH: First one for the side table. When Arrow Mart, which was previously Convenient Food Mart, went in across the street from where Byrne was proposed, were they required to have a Land Use Variance or did they get an area variance?

KEITH O'TOOLE: I believe that use has been in place -- well, since well before my time.

BEVERLY GRIEBEL: It pre-dated the code.

DANIEL KRESS: If I remember correctly, both of the other businesses at the -- the two other occupied corners of that intersection are so old they predate the fuel sales in one form or another pre-date the current zoning regulations.

DAN MELVILLE: They added the fuel in that store afterwards. When Convenient was there, they didn't have gas --

MICHAEL MARTIN: They had gas.

DAN MELVILLE: I don't think early on they did.

DENNIS SCHULMERICH: We don't have a comparable situation in terms of the Land Use Variance, fuel and Neighborhood Business.

DANIEL KRESS: They're more interested in selling fuel and automotive-related service than a grocery-related service. So again, I really view them as being two different entities.

MR. MARK BYRNE: One of the things to point out here, the way we set up our stores, you can notice the gasoline islands out from the perimeter of the store, we have parking on both fronts of the store. We have two sets of doors. We're really after the housewife that is going to pull up to the store and buy groceries. The gas is an accessory use. You look at any of these big gas stations, they don't even have parking spaces. Their parking space is where you have to buy gas and come in. We try to feature so people don't have to -- you know, just come to the store. That is what we're after.

BEVERLY GRIEBEL: Well, I am looking at it as -- in fairness to other applicants that have been in and more has been required of them. That is what I don't understand.

MR. MARK BYRNE: Well, we're running a grocery store.

BEVERLY GRIEBEL: I know the word from the side table, but I just can't square that.

DAN MELVILLE: On the other one we did have -- they're actually a gas retailer mainly and groceries is a side business for them.

MR. MARK BYRNE: I'm sure their store wasn't 4,000 square feet either. A lot of the gas guys, they only sell like soda and cigarettes.

BEVERLY GRIEBEL: But it wasn't designed yet, so we don't know what size it was, but --

DAN MELVILLE: That was Fast Track and they're mainly a --

MR. MARK BYRNE: If you look at like Hess, they have a lot of these little quick stores that

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are only like 1,000 square feet and they have a ton of gas pumps.

DENNIS SCHULMERICH: Intended hours of operation? 24 hours?

MR. MARK BYRNE: It is open 24 hours. Really the reason for that is, by the time you close up at night and open up in the morning, there is a lot of stuff to clean up and stuff. We just --

DENNIS SCHULMERICH: Don't bother.

MR. MARK BYRNE: It is not really worth it to send someone home for four hours. It is worth it to have someone there.

DENNIS SCHULMERICH: The Planning Board would be lead agent for this?

BEVERLY GRIEBEL: For the main application, but we would be for this small portion.

PETER WIDENER: I had a couple concerns. The businesses on the opposite corners both sell gasoline, and I am wondering if you did a feasibility study to sell your gasoline, or are you just selling to be trendy?

MR. MARK BYRNE: Like I said, we have 57 locations. We really don't want to get in the gas business, but a lot of grocery stores are now, so just to make it handy for people, we want to have it there. That does not drive our profit center. Our profit center is in the store.

PETER WIDENER: I realize what you're saying there. I'm just concerned about three gas stations on one intersection.

One is going out of business anyhow.

MICHAEL MARTIN: Plus you're building almost 1,000 new units of housing on both side of Union Street.

BEVERLY GRIEBEL: 12 pizza places open up on one short stretch of town, you can't say no.

DAN MELVILLE: You can't limit competition.

PETER WIDENER: I was waiting for them to respond, but I have another question with this variance. Have you addressed the sign issue on this? I saw some photos of your sign and they look like 25 foot signs or better.

MR. MARK BYRNE: The signs don't need a variance.

MR. BURNELL: The sign package has been submitted to the Planning Board informally, but it meets all of the requirements. That sign there is another location. The sign we're proposing is a 32-square-foot sign on the road which would meet your requirement. 4 by 8. It would only be, I think, 10 foot at the max. There would be one on the building which is a 4 by 18 which is 72 square feet. So -- all of the signs are within compliance without a doubt. We made sure of that.

BEVERLY GRIEBEL: Will you be pumping gas for people?

MR. MARK BYRNE: No. I don't think so. If you come in, I will run out.

(Laughter.)

MICHAEL MARTIN: Is this about the same size store (indicating) as proposed?

MR. MARK BYRNE: That store is longer and narrower. This will be a square store because of the lot.

MR. BURNELL: This store will be bigger than that one, square footage wise.

MR. MARK BYRNE: 100 square feet.

BEVERLY GRIEBEL: This went to Monroe County Planning and came back as a local matter.

RICHARD PERRY: You have to make sure that the address is on your sign.

DAN MELVILLE: The sign, or the pole.

GERRY HENDRICKSON: Numbers.

BEVERLY GRIEBEL: Street numbers.

RICHARD PERRY: That is one of the things we request or you're required.

BEVERLY GRIEBEL: But now that that goes -- Dan (Kress), at the Planning Board now, now that they're approving signs, are they putting the requirement on for street numbers? Dan Kress?

DAN MELVILLE: Don't we have to have that anyway per our code?

KEITH O'TOOLE: Yes.

DANIEL KRESS: It is pretty much a standard requirement at this point.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

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EDWARD VANDEWATER, 3530 Union Street

MR. VANDEWATER: I have a question. Will there be anything sold outside of the store -- Edward Vandewater. I have a business at 3530 Union Street.

I was wondering if there is anything proposed to be sold outside of the store other than gas?

BEVERLY GRIEBEL: Like what?

MR. VANDEWATER: Picnic tables. I'm told you have a store in Syracuse where you have a lot of picnic tables.

MR. MARK BYRNE: We talked to the Town about that. We can't sell Amish furniture. They said that was not allowed.

MR. VANDEWATER: That is all I care about.

BEVERLY GRIEBEL: That is a man that sells the Amish furniture.

MR. MARK BYRNE: God bless him.

BEVERLY GRIEBEL: You will only be selling gas outside the store. Everything else will have to fit inside the store?

MR. MARK BYRNE: Yep.

BEVERLY GRIEBEL: Picnic tables won't fit.

STEVE TINNEY, 18 Haverhill Drive

MR. TINNEY: I'm just concerned about the traffic situation there. I think anybody who has been in that area that goes in and out of the Arrow Mart at 5 o'clock -- or actually 3 o'clock to about 6:30, 7 o'clock, there is a lot of traffic that tries to get in and out of that Arrow Mart. Now you will put another store right across the street. You will have a lot of accidents there. You really are. That is just my concern. Have there been traffic studies done or anything? That is the thing I'm worried about.

BEVERLY GRIEBEL: Dan Kress, is that part of the Planning Board work?

DANIEL KRESS: It is certainly part of the Planning Board work. I might also say this subject has been brought up repeatedly by various Town officials to the State and County D.O.T.s who have been quite adamant in their assertions that the intersection is not in any way over-used or over-burdened, and on that basis, do not want to fund improvements. So I guess all I can tell you is, if that is their story and they're sticking to it, that they would be willing to approve this, but if they came to the conclusion that, in fact, that wasn't the case, they would be in a position of having to fund improvements to the intersection. We have had this discussion with them.

BEVERLY GRIEBEL: And the Supervisor has discussed it with the powers that be?

DANIEL KRESS: As recently as several days ago, yes. That is why I am pretty much up to date on it.

BEVERLY GRIEBEL: And they won't budge.

DANIEL KRESS: No, so far.

BEVERLY GRIEBEL: It is a nightmare at certain times. I have to agree with the gentleman in the back. Anyone that lives in Town and drives through there, it can be bad.

BEVERLY GRIEBEL: Does that impact this plan in any way, Dan Kress?

DANIEL KRESS: You have curb cuts that enter out onto Chili Avenue which are under State D.O.T. jurisdiction and also onto Union Street, which are under County D.O.T. jurisdiction. My understanding from Mr. Burnell is that both of those agencies are agreeable to both of those curb cuts. But that is certainly something we'll confirm in the process of going to the Planning Board.

BEVERLY GRIEBEL: There may be some alleviation of the problem because you have two roads to come out on, whereas across the street, that entry and exit are onto Chili Avenue right at the light.

DAN MELVILLE: Yes, but the road cut on Union Street, you would be crazy to try to pull out onto Chili Avenue turning left.

BEVERLY GRIEBEL: People do it.

MICHAEL MARTIN: Even cut-through traffic with that configuration.

BEVERLY GRIEBEL: Well, possibly.

MICHAEL MARTIN: That is a Planning Board matter.

DOROTHY BORGUS, 31 Stuart Road

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MS. BORGUS: I live about a mile from this, and I have watched that corner for a long long time in hope that we would get some beautiful endeavor there are, somebody who really wanted to make something nice and improve our corner, but I don't think another gas station is it. But that is not your problem, at this Board.

For your information, their sign was face-down for a day or two.

BEVERLY GRIEBEL: Oh, was it?

MS. BORGUS: Uh-huh.

BEVERLY GRIEBEL: I guess we didn't go by when it was.

MS. BORGUS: I appreciate you can't hear from the audience when you're deliberating on that. The sign was face-down.

MR. MARK BYRNE: There were two signs.

MS. BORGUS: The one on Chili was face-down. I don't know about the other one.

How high is this canopy going to be?

BEVERLY GRIEBEL: The canopy is --

MR. BURNELL: 15 foot. To the underneath.

MS. BORGUS: How would that compare to the one at the convenience store at the corner of Chili Scottsville Road and Chili?

MR. MARK BYRNE: Pretty much the standard height.

MS. BORGUS: That one is huge.

MICHAEL MARTIN: Down here (indicating)?

MS. BORGUS: Yes. That was another case where on paper it didn't look too bad, but I have heard comments from the Planning Board members now, and they severely regret allowing anything that big on that property that close to the road and that high. It literally hides the building, and it is almost a building without sides it is so big. So I'm just wondering how this compares with that one.

BEVERLY GRIEBEL: Well, this canopy will be -- how many feet from the actual roadway? Because you have the landscaping and edge of travel lane. Right-of-way.

MR. BURNELL: About 50 feet.

BEVERLY GRIEBEL: 50 feet from the actual traffic lane?

MR. BURNELL: More like 60 feet.

BEVERLY GRIEBEL: 60 feet from the traffic lane. That is quite a distance.

MS. BORGUS: But height wise, I guess that is not part of your application anyway?

BEVERLY GRIEBEL: No.

DAN MELVILLE: 15 feet is not real high, though.

MS. BORGUS: Well, this room would be what?

MR. MARK BYRNE: About 10.

MS. BORGUS: So half again this --

DAN MELVILLE: No.

MICHAEL MARTIN: This is at least 12.

DAN MELVILLE: You have to have room for the SUVs.

MS. BORGUS: They're not trying to attract that kind of trade.

DAN MELVILLE: A lot of people drive those.

MS. BORGUS: If you go down to that one, you will see you don't need one as high as what they have. It hides the store. It is not a bad looking building, but put that in front of it and it is not pleasant.

I'm wondering how this compares distance back from the road with Arrow Mart across the street?

MICHAEL MARTIN: To the store or the gas pumps?

MS. BORGUS: To the canopy.

BEVERLY GRIEBEL: I don't know. Side table, do you have an estimate of that?

DANIEL KRESS: I could not give you any hard number off the top of my head, no. Surely the store is much further back. The canopy, I don't know.

RICHARD PERRY: The canopy is on the Union Street side, not --

MS. BORGUS: It is pretty close to Chili, too.

BEVERLY GRIEBEL: It is closer to Chili.

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MS. BORGUS: It closer to Chili actually than Union.

BEVERLY GRIEBEL: It is closer to Chili Avenue than Union Street.

MS. BORGUS: That one is closer to Chili as well, than to Union Street.

MS. BORGUS: I'm wondering, I guess, why if you have to have a canopy there, it can't be turned around and the long side run parallel to Chili Avenue instead of perpendicular to it. It seems to me that would give you more room in the parking lot, and it would fit the site better.

BEVERLY GRIEBEL: I don't know --

RICHARD PERRY: That would make a mess out of the traffic patterns, Dorothy (Borgus). To change the canopy, you have to change the orientation of the pumps, too.

MS. BORGUS: Right. Just -- half a turn.

RICHARD PERRY: Well, I guess I trust that the engineers looked at that.

MS. BORGUS: I notice on these pictures that you have a lot of banners like you have got "Got Milk" and some other sign on the end. It probably should be explained to the applicant those are not allowed in Chili, those big banners. Where it says on the -- the end of the building where it says "Got Milk" -- that is not a business sign. That is a promotional sign. They should understand that we don't have those in town.

BEVERLY GRIEBEL: I don't know. That is a Planning Board issue, too.

MS. BORGUS: But I just want them to understand that, when they say, you know, they're set for signs. Well, not in Chili, they're not set for those kind of signs.

I think I just like to comment, it is nothing maybe that is exactly applicable to your consideration, but to the gentleman in the back, that intersection at Chili and Union is either an E or an F intersection with A being the best, and, according to State records, it is a failing intersection. And right now I think the reason that the State will not object to this kind of thing going at a failing intersection, they don't have any money to fix it, so they are going to look the other way. Thank you.

JOHN PERNA, 3785 Chili Avenue

MR. PERNA: If they believe that gasoline is just an extra, do they believe that their store could survive without it is my first question, because if they're only going to be 13 feet away from the property line with their canopy and we all know that intersection -- not this year, maybe not five years from now -- will be at least a four-lane or five-lane wide, how is that going to infringe on their tanks in the ground which are right at the intersection, plus the canopy. People will be right on the road buying gas, one.

The competition across the street, their gas deliveries, the tractor-trailer has to back out into the intersection in order to make a delivery. They have an exit-only sign that states -- that is not enforced by anybody. It is supposed to be enforced by the municipality, but nobody enforces that. When the soccer and baseball games get out in Black Creek Park and Hubbard Park and Davis Park and the whole team goes for ice cream, because they have a good product, 44 parking spaces will not be enough and you have cars pulling in and out for gas and everything else, plus delivery of gasoline being made at the same time. So there is a safety factor there for the kids. Plus the kids walking there to buy the stuff during busy times.

And that intersection is a mess. I watch it all day long. I try to make a left-hand turn and you have people whipping out of the one store and going around, making an illegal -- you know, passing on the right, which you're not supposed to do, but everyone does it to get into the intersection because they don't want to wait behind the person that is turning left. It is just -- I have been there since '77 when there were four stop signs. Now there is a traffic light and it is insufficient.

BEVERLY GRIEBEL: People get tired of waiting there. Yeah.

MR. PERNA: Everybody is in a hurry to go nowhere.

MR. TINNEY: It is basically 13 lanes, if you think about it. People are passing on the right, the left, going every which way to get around.

MR. PERNA: You're in the right, and you're wrong because somebody is in a hurry. It is just going to add to it. And Union Street from the south wasn't bad, but now with all of the housing development down there, now you see lines backing up that way, so you have more people in a hurry.

GERRY HENDRICKSON: It will be worse, too.

BEVERLY GRIEBEL: Right. But if the State okays the project --

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MR. PERNA: But the State okays everything.

BEVERLY GRIEBEL: Right.

MR. PERNA: It is the Town that needs to step in and say this is our Town, this is what we want. Not what the State says. We are the local people that pay the local taxes. We should have some rights of what should go on in our Town. It will just be a few more nails in my coffin because my type of business is going to be going to the wayside due to the fact that everything is big companies taking over and undercutting people like me, but I can deal with that.

DAN MELVILLE: What is your business?

MR. PERNA: You have the Wal-Marts who put up.

BEVERLY GRIEBEL: He pumps gasoline.

DAN MELVILLE: Does he?

BEVERLY GRIEBEL: The --

DAN MELVILLE: Where?

BEVERLY GRIEBEL: The station on the other corner.

MR. PERNA: Deep pockets put out all of the little guys. It is another deep pocket going into the intersection. I can see them having a store, because the ice cream. We need ice cream. We really don't have any other ice cream other than Chili Center and the lines are phenomenal in the summer. What are the lines going to be in the summer when the kids get out of the recreational programs and the coach says, "Hey, come on, I'll buy you all ice cream." Will they be able to have enough parking spaces for 44 cars? Is that enough for a whole team, one team, no less two or three teams?

DAN MELVILLE: That is more than the other place has.

BEVERLY GRIEBEL: You selling fresh --

MR. MARK BYRNE: Most little leaguers don't drive.

BEVERLY GRIEBEL: Will you be selling ice cream cones there?

MR. MARK BYRNE: Yes.

BEVERLY GRIEBEL: Because I'm not familiar with your store really. So you sell the frozen quarts and gallons and pints and all that, but you will be selling cones on the run?

MR. MARK BYRNE: Yes.

BEVERLY GRIEBEL: Well --

MR. PERNA: Now you will have a bunch of kids running around a parking lot and cars pulling in and out. Where is the safety factor going to come in? Will they have people out there policing it? I don't think so.

BEVERLY GRIEBEL: I don't know. Some of that, the deliveries, will you have deliveries during the night time when there are fewer customers? I'm not sure. That might be a Planning Board issue. I don't know. There aren't neighbors right nearby that would be bothered --

MR. MARK BYRNE: There are neighbors right nearby.

MR. PERNA: They want to do too much on a small corner. Maybe they should buy a bigger corner.

CHARLES RETTIG, Coldwater Road

MR. RETTIG: I would like to ask how many pumps do you have proposed?

BEVERLY GRIEBEL: It looks like four on this diagram.

MR. RETTIG: I just like to point out, as Mr. Kress pointed out in regard to New York State D.O.T. and their comments, that this intersection, Union Street and Chili Avenue, is scheduled for some eventual, in the near future, improvement, hopefully sooner than later, but in spite of the New York State D.O.T.'s apparent feedback of information, as Mr. Kress indicated, I think that this should be reviewed for parking, number of parking spaces, traffic flow, the indication of tractor-trailer gas delivery. This should all be reviewed and you should have a report. Before you approve or disapprove, you should have a report from our own Traffic & Safety Committee. Without that, I recommend that it be tabled at this time respectfully based upon the fact that we do not have our own traffic and safety review.

BEVERLY GRIEBEL: Now, what it says here, on the parking summary, available parking required, 43, provided 44. Handicapped parking two, provided two. Loading zones, one required and one noted there. Number of automobile parking spaces required, based on Town Code, is one space

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for each 75 square foot of floor area. And storage of merchandise may be deducted in computing parking requirements. So it meets the Town code with one more parking space than required per code.

MS. BORGUS: I just had one more question. Thank you.

I guess I don't understand why they're here for a variance before they have been to the Planning Board for approval. They have only appeared informally.

BEVERLY GRIEBEL: Well, it can go either way. We can hear something first. It is a limited scope. This is just for the parking and the canopy.

MS. BORGUS: I understand it can go either way, but this isn't the usual order.

DAN MELVILLE: Sure, it is. A lot of times it comes here first.

MR. MARK BYRNE: We have been to the Planning Board.

MS. BORGUS: Informally. They have not been there for a formal application.

BEVERLY GRIEBEL: Do you have approvals from the Planning Board?

MR. BURNELL: No, we do not.

BEVERLY GRIEBEL: Not yet.

MS. BORGUS: They were there informally for an informal appearance.

DAN MELVILLE: A lot of the times the Planning Board won't act until we approve certain variances.

MS. BORGUS: I have been here enough. I know that. I'm just making a point, in this case, I think it is backward. Thank you.

KEITH WALWORTH

MR. WALWORTH: I own the property right next store at 3765.

MR. MARK BYRNE: He is a direct neighbor.

MR. WALWORTH: I was just concerned about the drainage, that is all.

BEVERLY GRIEBEL: The drainage would be another Planning Board issue.

MR. WALWORTH: Okay.

BEVERLY GRIEBEL: That is not on here. That is something that they would look at.

DENNIS SCHULMERICH: When you look at the right-of-ways that are carved on the map, if the D.O.T. approves an improvement to that intersection, I'm assuming based on the right-of-ways, that the required space to improve the intersection is incorporated within the existing right-of-way?

DAN MELVILLE: Yes.

DENNIS SCHULMERICH: All right.

BEVERLY GRIEBEL: Then it would not be 60 feet from the travel lane.

DENNIS SCHULMERICH: Right. I just wanted to make sure I understand the right-of-way line. Thank you.

Beverly Griebel made a motion to declare the Board lead agency as far as SEQR, made a determination of no significant environmental impact, and Gerry Hendrickson seconded the motion. All Board members were in favor of the motion.

Michael Martin made a motion to approve the application with the following conditions, and Gerry Hendrickson seconded the motion. All Board members were in favor of the motion.

DECISION: Unanimously approved by a vote of 7 yes with no conditions, and the following findings of fact were cited:

1. Front parking consistent with other retail sites in the area and in Chili.
2. The canopy, although 13' from front lot line, will be 60' from the travel lane per applicant's testimony.
9. Application of Mr. & Mrs. Paul Craig, 27 Pinewood Knoll, Rochester, New York 14624, property owner: Sanford Freedman; for variance to allow existing deck to be 5.8' from side lot line (10' req.) at property located at 97 Loyalist Avenue in R-1-15 zone.

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Mr. and Mrs. Paul Craig were present to represent the application.

BEVERLY GRIEBEL: This is the existing deck, to remain where it is. How long has it been there?

MRS. CRAIG: Since 1987. 1987.

DAN MELVILLE: '87 it has been there?

MRS. CRAIG: Yes. It was built --

DAN MELVILLE: Before there was any --

MRS. CRAIG: Yes, before there was any requirement.

DAN MELVILLE: Why are you in here? Do you have to sell it?

MRS. CRAIG: We just sold the property and in the process of selling the property, the buyer's attorney required us to come here to get a variance for the stairway on the deck.

BEVERLY GRIEBEL: Sometimes that happens.

DAN MELVILLE: That definitely pre-dated the code.

RICHARD PERRY: I think we should table it for being too simple.

(Laughter.)

BEVERLY GRIEBEL: Now you don't want to come back.

DAN MELVILLE: No more in December.

MR. CRAIG: Our sign blew down, too, but we were prompt in putting it back up.

DANIEL KRESS: For the record, I'm informed that the Town of Chili did not actually issue building permits for decks prior to 1991, so you know, at the time no permit would have been required for this deck. Unfortunately when it came to our attention, it is actually just a touch too close to the line, we did advise the applicant if they wanted to make this thing 100 percent legal --

DAN MELVILLE: All these decks built back then may eventually have to come in for a variance if they're too close to the lot line, because there was no permit required then?

DANIEL KRESS: What usually happens is we end up writing a letter that the deck was constructed prior to the time that a permit was required, and unless, you know, we happen to find out that the deck is either grossly unsafe or too close to the property line, we do not further pursue it. But it is possible there are a few of them out there, yes.

BEVERLY GRIEBEL: Sometimes this happens. Is this holding up the sale of the property?

MRS. CRAIG: No. The property is already sold.

MR. CRAIG: It was a condition of the seller's attorney that we make the application for variance.

BEVERLY GRIEBEL: It is a nice deck.

MRS. CRAIG: It's a nice deck.

COMMENTS OR QUESTIONS FROM THE AUDIENCE: None.

BEVERLY GRIEBEL: This went to Monroe County Planning and came back as a local matter.

Beverly Griebel made a motion to declare the Board lead agency as far as SEQR, made a determination of no significant environmental impact, and Gerry Hendrickson seconded the motion. All Board members were in favor of the motion.

Michael Martin made a motion to approve the application with the following conditions, and Peter Widener seconded the motion. All Board members were in favor of the motion.

DECISION: Unanimously approved by a vote of 7 yes with no conditions, and the following findings of fact were cited:

1. No impact on neighboring property.
2. No objections from neighbors.

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Note: A building permit is required.

10. Application of Anchor Christian Church, owner; 375 Beaver Road, Rochester, New York 14624 for variance to allow front parking for 27 vehicles at property located at 375 Beaver Road in R-1-20 & FPO zone.

DECISION: Unanimously tabled by a vote of 7 yes until 12/16/03 at 7:00 p.m. for the following reason/finding of fact having been cited:

1. Applicant failed to post the public hearing notice per Town regulations.

Note: Applicant to obtain new sign(s) at the Building Department to post and maintain as per Town regulations. Applicant must be present for the public hearing.

11. Application of Kaddis Manufacturing Corp., P.O. Box 92985, Rochester, New York 14624, property owner: Country Lane Associates; for variance to erect a manufacturing addition to be 16' from rear lot line (50' req. abutting a street) and 24' from side lot line (35' req.); variance to erect a storage building to be 39' from front lot line (50' req.) at property located at 1100 Old Beahan Road in G.I. zone.

DECISION: Unanimously approved by a vote of 7 yes until 12/16/03 until 7:00 p.m. for the following reason/finding of fact having been cited:

1. Applicant failed to post the public hearing notice per Town regulations.

Note: Applicant to obtain new sign(s) at the Building Department to post and maintain as per Town regulations. Applicant must be present for the public hearing.

12. Application of Edward Vandewater, Churchville Wood Products, owner; 3530 Union Street, North Chili, New York 14514 for variance to erect a 10' x 7 1/2' double-faced freestanding sign to be 150 sq. ft. (32 sq. ft. allowed) at property located at 3530 Union Street in G.I. zone.

Edward Vandewater was present to represent the application.

BEVERLY GRIEBEL: This went to Monroe County Planning and this also came back as a local matter.

When I first went out to look at it, I drove south on the street and I thought what do you need the sign for? But then when I came back from the south headed north, the signs for the TV store next to you, the TV repair or whatever that is --

MICHAEL MARTIN: Ray's.

BEVERLY GRIEBEL: -- that kind of obstructs the view of your store.

MR. VANDEWATER: Yes. I hear all of the time from customers and delivery people that they have a hard time finding my store.

DAN MELVILLE: My wife doesn't have a hard time.

(Laughter.)

MR. VANDEWATER: I can't explain it other than the building is big. There are some products out in the front yard, and yet I still run across that often.

BEVERLY GRIEBEL: But maybe if they're coming from the south, because I took a good look. Heading from the north to the south, you're coming downhill, and it is much more visible. I thought what does he need the sign for. He has a big sign on the front. But then when you're coming the other direction, you're hidden by the -- coming over the railroad tracks there, and the TV or radio, whatever

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that is there.

MR. VANDEWATER: Yes. I don't know. I really think it would help my business. We need to get a little more recognition being on Union Street and not Ridge Road. I just thought I would try to see if I could talk the Board into allowing me to have a sign that would give me more visible presence nearer the road than the one that is on the building 100 feet back. And the sign that I would propose, I know that there is a basic 32 square feet allowed, but with the size of the building and the property, and the fact that I would like a double-sided sign, I was hoping that, you know, I went the extra mile and had a nice, attractive sign developed, and you should have a picture of it in your package there, and I was just hoping that, you know, this might help us along.

The business is in a General Industrial zone, not in Limited. I don't know if your copy has General or Limited on it, but --

BEVERLY GRIEBEL: It says GI zone.

MICHAEL MARTIN: This says Limited.

MR. VANDEWATER: It is a General Industrial zone.

BEVERLY GRIEBEL: On the published agenda, it was a GI zone.

MR. VANDEWATER: Okay.

DAN MELVILLE: Will you landscape?

MR. VANDEWATER: Yes, a flower bed underneath it.

BEVERLY GRIEBEL: What would be in those panels that are blank?

MR. VANDEWATER: There might be -- I was thinking at some point store hours that we can put in there. Maybe an advertised special or something like that. Just a little bit of variety that we might be able to use to, you know, add a little bit of diversity to what -- what it is that we sell. We change our hours from different times of the year, and mainly I just wanted a little bit of flexibility for that and maybe a couple other things. If we have some kind of specials going on.

GERRY HENDRICKSON: I can see where this would really dress it up for them, and also, are you going to put the numbers on it, house numbers on the sign there?

MR. VANDEWATER: Yes.

GERRY HENDRICKSON: When you advertise it, they will know where the number is.

DENNIS SCHULMERICH: When I first read the application, I was looking at 10 foot by 7 1/2 foot double-faced sign. As I looked more through the package, it is 20 foot in the air; is that correct?

MR. VANDEWATER: Yes. You know, I saw that the maximum was 20 feet, but I don't think I need it that high. I think I am thinking I could --

PETER WIDENER: That is 13 feet between the ground and your first letter.

MR. VANDEWATER: Is it?

PETER WIDENER: Yes.

MR. VANDEWATER: Well, the thing was, the ground is below the grade of the road, so I thought, you know, there was about 4 feet there that is already low, so I just put in there 20 feet originally because that was the maximum. But I -- you know, after I thought about it and I envisioned it on there, I think I could probably go 12 to 15 feet to the top of the sign. I wouldn't have a problem making that amendment.

DENNIS SCHULMERICH: 12 to 15 to the top of the sign?

MR. VANDEWATER: Yes.

DENNIS SCHULMERICH: That would be 4 or 5 foot below the sign?

MR. VANDEWATER: Yes.

DENNIS SCHULMERICH: And the hours of lighting on the sign? Do you anticipate 24 hours a day?

MR. VANDEWATER: No. I'm thinking timer. I'm thinking probably 6 p.m. until 10 p.m. And during the winter months, less during the summer.

DENNIS SCHULMERICH: Wouldn't be on all night?

MR. VANDEWATER: No. I don't see the need for that.

DENNIS SCHULMERICH: And if we were to come back and indicate that we understand the need for increased signage over the current code, but we're not supportive of the four changeable panels, your response to that would be?

MR. VANDEWATER: I would be a little bit disappointed. I guess I would have to live with it

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because you guys have all of the power, but --

DENNIS SCHULMERICH: I guess the reason I raise a question, I don't see four changeable panels any different than the "Got Milk" sign. It starts to become an advertising scenario. That is not what the signage is intended to be. I know from a sales perspective it would be nice to have it, but I wouldn't think you would want four changeable panels. The weekly specials up there isn't what we would want to be doing, but that is my perspective.

BEVERLY GRIEBEL: Might be a little hard to read. Might be a traffic problem. I know that with some of the changeable panels, it is to permanently advertise different businesses like in the Chi-Paul Plaza. There are panels that can change, but it is just the business sign there. It doesn't change with weekly specials.

MR. VANDEWATER: How about if I -- just instead of changeable panels, I just put my store hours there, in that area, and I just change those store hours with our seasons. This way it would be a consistent thing. The only thing that would change would be the numbers of the time, because a lot of time, you know, people aren't used to the fact that we do change with the seasons and they end up driving down the street and seeing our closed sign over the parking lot, and that is kind of an inconvenience. This would help not offend people. I thought that would be a good thing.

BEVERLY GRIEBEL: One panel with the hours.

MR. VANDEWATER: Basically. It would -- yeah. One panel, but it probably wouldn't be divided up into four quadrants.

BEVERLY GRIEBEL: One panel all of the way back.

DENNIS SCHULMERICH: That gets to the spirit of what we're talking about. I understand what you're talking about.

PETER WIDENER: My concern was the panels and definitely the height. Dennis (Schulmerich) addressed that. Thank you. No other questions.

RICHARD PERRY: Interchangeable Amish phrases, like put the bird in the hole, the horse over the fence and hay, and stuff like that.
(Laughter.)

MR. VANDEWATER: That would be cute.

RICHARD PERRY: No questions.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

DOROTHY BORGUS, 31 Stuart Road

MS. BORGUS: How many variances are already in place on this property?

DANIEL KRESS: I don't have the answer to that off the top of my head. I could certainly go check if the Board needs to know that. I don't know without looking it up.

RICHARD PERRY: How many do you think?

MS. BORGUS: I know -- let me tell you, I don't know how many people up there know the history of the building, how many were sitting on the Board at the time.

Mr. Vandewater now says he is at a disadvantage because he is in an industrial type area on Union Street. When Mr. Vandewater was going to put the building up there, the original plan he presented to the Planning Board was an industrial type of operation. So I find it a little ironic he is back now pleading that he needs a sign because people don't expect to see him there.

He was going to construct Amish furniture, period. And now he has turned it into a retail --

BEVERLY GRIEBEL: It was production, okay.

MS. BORGUS: Now it is a nice store, but it isn't what was planned in the beginning. And then my recollection is that he was told he couldn't have any front sales. He had to even store his partly finished tables, whatever, gazebos in the back. They had to be on the back line.

Well, they crept around the side. Then they crept out front. Pretty soon they were almost to the road. Eventually he got brought back before the Planning Board again and he was allowed to leave them -- to leave his material in the front. I mean he has inched and inched and inched forward on all our laws and rules, and he now is pretty near out to Union Street.

I don't know why with the signage he has and the stuff for sale that he has in the front yard that he

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can see any reason why anybody would miss his store. Either a truck delivering more stuff or a customer, because it is -- it is like trying to trip over an elephant and saying you don't see it.

I'm in a disadvantage about the sign. It is a public hearing, and I don't see a copy.

RICHARD PERRY: Dorothy (Borgus), you can take a look at this (indicating).

MS. BORGUS: The other people in the audience might be interested in this as well.

RICHARD PERRY: Anyone who is interested in this can --

MS. BORGUS: We should put them up.

RICHARD PERRY: Yes, Dorothy (Borgus).

MS. BORGUS: I brought them up so many times. Anybody who is interested can come and look, too.

RICHARD PERRY: Thank you very much.

MS. BORGUS: I agree with Mr. Schulmerich, changeable panels are not allowed on other signs in town. Also hours are not allowed to be posted -- where do you see another sign in town with the store hours on it?

RICHARD PERRY: What is your objection about posting hours, Dorothy (Borgus)?

MS. BORGUS: I just think that the man is asking for something that other people in town have not had --

RICHARD PERRY: Heaven forbid we let somebody know what the hours of operation are?

MS. BORGUS: It is a bad trend to start.

RICHARD PERRY: It is a bad trend? How about all of the stores that have the hours written on the door?

MS. BORGUS: Let them go to the door then and look. That is the place for it.

DAN MELVILLE: We have gas stations that post prices on changeable signs.

MS. BORGUS: I don't like the changeable panels.

Another thing you better be careful of here is our code -- although it should be fixed and I hope it will be. I'm going to be promoting it -- does now allow, as this gentleman says, for 20-foot signs. That is something -- something slipped through somewhere, because that -- I can't imagine a town of 20-foot signs.

So you got to be careful because if you give this man this variance for the surface of the sign, I'm not so sure you can restrict him on the height.

DENNIS SCHULMERICH: You're correct. We cannot.

MS. BORGUS: You can give him this sign, which is five times our code, if you choose to give it, just about five times our limit, and he will put it 20-foot high if he chooses, so remember that.

DENNIS SCHULMERICH: Actually that's a question. If we give a variance for signage that is exceeding the square footage allowed today, can we also provide a maximum height it can go to below 20 foot?

KEITH O'TOOLE: Yes. That is the trade-off; therefore, that is the condition.

DENNIS SCHULMERICH: All right.

MS. BORGUS: The height can be limited?

DENNIS SCHULMERICH: Yes.

BEVERLY GRIEBEL: You can have 32 square feet, 20 feet high.

KEITH O'TOOLE: That's correct. But since he is not asking for 32, then we can have a trade.

DENNIS SCHULMERICH: When did that go into effect, just out of interest? That seems awfully high.

BEVERLY GRIEBEL: The sign ordinance that went through --

DANIEL KRESS: In March of this year.

BEVERLY GRIEBEL: The political sign change and all that was --

DENNIS SCHULMERICH: I can have a political sign 20 foot high in the air?

BEVERLY GRIEBEL: Only during certain times.

KEITH O'TOOLE: Only if you hold it up with your right hand.

(Laughter.)

MS. BORGUS: Anyway, back to my original point here, I think that sign is too big. If 32 feet isn't big enough, maybe I could see one a little bigger if he thinks he has to have another sign, but that is

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-- 150 square feet is just bigger than he needs, especially in view of the fact he has his product now practically in the road and a sign on the front of the building. Thank you.

KEITH O'TOOLE: I have a question for Mr. Vandewater. Now, I only drive by your business and perhaps -- but as I understand it, you have two distinct product lines, seasonal items such as sheds, gazebos and such and the other is furniture inside the store; is that correct?

MR. VANDEWATER: Yes.

KEITH O'TOOLE: Is it not possible that people driving by, without that sign, might have the impression that you're a seasonal operation, items that they only care about in the summer is all there is, so having a sign actually advises them you do have the furniture there, so it is a 365-day operation; is that correct, sir?

MR. VANDEWATER: That is stating it fairly accurately.

KEITH O'TOOLE: Thank you.

MR. VANDEWATER: Often we have people that -- they -- as soon as they walk in, to buy one of the outdoor things, "I had no idea you had all this." That was part of the reason for the changeable things on the sign. Furniture. We have indoor furniture.

MICHAEL MARTIN: What is the square footage of the store?

MR. VANDEWATER: The building is around 10,000 square feet.

DENNIS SCHULMERICH: I have a question for the side table. Have there been any issues with this property in terms of zoning? Any complaints or issues with this property?

DANIEL KRESS: I believe I have one complaint about a sign, and if I remember correctly, Mr. Scibetta had a conversation with Mr. Vandewater and the sign came down shortly thereafter.

RICHARD PERRY: Tent sign was it?

DANIEL KRESS: Some sort of temporary sign.

DENNIS SCHULMERICH: I guess to ask a question on that, I normally like to see these issues dealt with quickly and move on and not belabor them from month to month, but if there is, in fact, a history of violations that resulted in variances or action by other boards, I guess it might be helpful to know what that history is so that we understand the track record of this development here.

RICHARD PERRY: State that again, please, Dennis (Schulmerich).

DENNIS SCHULMERICH: Sure. If there have been -- since we don't seem to know how many variances the property has gone through, if, in fact, there is a history of that, and we're seeing a profile developing, I'm wondering if it wouldn't be good for us to have a better picture, clearer picture how many variances, how many issues have gone on with this property so we understand what we're doing in terms of reviewing variances.

RICHARD PERRY: What is an appropriate number? 1, 20, 15, 2?

DENNIS SCHULMERICH: I don't know if there is any. I don't know. I guess what I am suggesting is -- the question I am asking this Board is, would we have a better understanding of how to take action on this proposal if we understood the history of the property. That is the question I am asking. I'm not making a motion. I'm asking the question.

BEVERLY GRIEBEL: If we had more information, that would be helpful, rather than having to obtain it from an audience member. Is that what you're saying?

DENNIS SCHULMERICH: That's correct.

DAN MELVILLE: But we could almost come in here with two or three variances.

MR. VANDEWATER: I could give you the history on it.

DAN MELVILLE: What difference does it make how many variances -- variances mean they're coming in and making it legal.

RICHARD PERRY: Dan (Melville), you said you had it available.

DANIEL KRESS: If the Board takes its usual recess, in the time it takes to do that, I could look it up for the Board.

MICHAEL MARTIN: Have you applied for any variances for the property?

MR. VANDEWATER: I'm not sure exactly what a variance is. I had a site plan approval originally. And they granted me permission -- this is back in 1998 -- to have a shop that would be mostly manufacturing with some incidental sales. Okay, that was the original.

But after -- the building went up in 2000. And by then, you know, things have changed and evolved where we had retail store added to that, and we went before -- we -- let's see. We went

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before -- we got a variance for retail a year -- a year and a half ago for all of the retail, and they -- they -- we put where we were going to put everything in the front yard, the gazebos and all our sheds, and that was approved. That is the total history, as far as I know. I didn't really appreciate the characterization that Mrs. Borgus put on the issue. But those are the variances or however you would term it, that is the process. Which --

DAN MELVILLE: Let's take a ten-minute recess.

RICHARD PERRY: Let's take our recess.

BEVERLY GRIEBEL: Let's keep this open and let's see what other history we can get on this. So ten minutes and we'll come back. We won't close the public hearing. That was the last application that we'll be hearing tonight. Everything else was tabled. We'll continue this public hearing shortly.

There was a recess in the proceedings.

DANIEL KRESS: I have the file for 3530 Union Street. What it shows is that in late 1997, ending up at the January 13, 1998 Planning Board meeting, Mr. Vandewater made application for site plan approval. At the time that was for a warehousing and distribution facility.

Subsequently, in March of '98, application was made for final site plan approval.

Apparently in the course of the Year 2000, I see that in February there is a letter from Mr. Smith to Mr. Vandewater that indicates that a combination retail and warehousing operation is permitted and will be allowed.

Then subsequently there is another memo from Mr. Smith dated October of 2000 which questions whether, in fact, the operation should be allowed, and Mr. Vandewater, therefore, subsequently went back to the -- well -- I shouldn't inject the word "therefore." I don't know that was a cause-and-effect relationship.

But subsequently Mr. Vandewater went back to the Planning Board in July of '02 for a revised site plan approval to allow outside display and storage of wood products such as sheds and gazebos. So we have a series of the site plan and revised site plan approvals. There are no other variances in the file.

DENNIS SCHULMERICH: Thank you very much.

BEVERLY GRIEBEL: Does that answer your question?

DENNIS SCHULMERICH: It does. I hope it was educational for others.

DAN MELVILLE: It was very educational. We appreciate it.

CHARLES RETTIG, Coldwater Road

MR. RETTIG: Question on the location, proposed location of the sign. Can you enlighten us?

MR. VANDEWATER: The Board has a site plan map where the sign is going to go. I can show you my copy. It is going to go directly in front of the store, the building itself.

DAN MELVILLE: How far from the road?

BEVERLY GRIEBEL: 20 feet from the property line. But that would be about how many feet from the road, because that would be a further distance then?

MR. RETTIG: That is perpendicular to the road?

MICHAEL MARTIN: Slightly at an angle the way the road goes, but generally, yes.

MR. RETTIG: Thank you.

BEVERLY GRIEBEL: It is double-faced, so it would be perpendicular.

MR. RETTIG: Next question would be what type of lighting is going to be on the sign?

BEVERLY GRIEBEL: It is noted on here, external lighting. One light on each side from the --

MR. VANDEWATER: From the ground.

BEVERLY GRIEBEL: From the plant area.

MR. RETTIG: From the ground. You're talking about incandescent spot or fluorescent?

DAN MELVILLE: Probably spotlights.

MR. VANDEWATER: Yes.

MR. RETTIG: Thank you.

BEVERLY GRIEBEL: Imbedded ground light, each side.
Some kind of flood light.

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Beverly Griebel made a motion to declare the Board lead agency as far as SEQR, made a determination of no significant environmental impact, and Dennis Schulmerich seconded the motion. All Board members were in favor of the motion.

Michael Martin made a motion to approve the application with the following conditions, and Peter Widener seconded the motion. All Board members were in favor of the motion.

DECISION: Unanimously approved by a vote of 7 yes with the following conditions:

1. Sign to be a maximum of 15' high.
2. One panel with hours of operation to be a maximum size of 12' x 9'.
3. Lighting of sign to be no later than 10:00 p.m.
4. Street numbers to be on each sign face.

The following finding of fact was cited:

1. Applicant described need for sign to supply information to prospective customers.

Note: A sign permit is required.

13. Application of Paul Bloser, owner; 108 Hubbard Drive, North Chili, New York 14514 for variance to erect a 10' x 8' open porch to be 37 1/2' from front lot line (40' req.) at property located at 108 Hubbard Drive in R-1-15 zone.

DECISION: Unanimously tabled by a vote of 7 yes until 12/16/03 at 7:00 p.m. for the following reason/finding of fact having been cited:

1. Applicant failed to post the public hearing notice per Town regulations.

Note: Applicant to obtain new sign(s) at the Building Department to post and maintain as per Town regulations. Applicant must be present for the public hearing.

14. Application of Mr. & Mrs. Parker Story, owner; 20 Watchman Court, Rochester, New York 14624 for variance to erect a 10' x 5' deck to be 37' from front lot line (40' req.) at property located at 20 Watchman Court in R-1-15 zone.

DECISION: Unanimously tabled by a vote of 7 yes until 12/16/03 at 7:00 p.m. for the following reason/finding of fact having been cited:

1. Applicant failed to post the public hearing notice per Town regulations.

Note: Applicant to obtain new sign(s) at the Building Department to post and maintain as per Town regulations. Applicant must be present for the public hearing.

15. Application of Anthony Comunale, owner; 51 King Road, Churchville, New York 14428 for variance to allow existing 10' x 24' fabric storage building to be 6' from existing garage (8' req.) at property located at 51 King Road in L.I. zone.

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DECISION: Unanimously tabled by a vote of 7 yes until 12/16/03 at 7:00 p.m. for the following reason/finding of fact having been cited:

1. Applicant failed to post the public hearing notice per Town regulations.

Note: Applicant to obtain new sign(s) at the Building Department to post and maintain as per Town regulations. Applicant must be present for the public hearing.

The meeting ended at 10:03 p.m.