

A meeting of the Chili Zoning Board of Appeals was held on March 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, I was out on the first Sunday. I didn't mark down the date, but I didn't have any problems with any of the signs. Did anybody else?

DAN MELVILLE: I saw everything.

PETER WIDENER: No problems whatsoever.

RICHARD PERRY: Scary, it is two months in a row.

DAN MELVILLE: But we only had three, though.

BEVERLY GRIEBEL: That's good. Sometimes there is a problem with rain or if it is blowing.

Dennis Schulmerich arrived.

1. Application of Edward Briggs, owner; 2129 Westside Drive, Rochester, New York 14624 for variance to park and store a 34' long recreational vehicle along side of house (28' long allowed) at property located at 2129 Westside Drive (corner Evergreen Drive) in R-1-15 zone.

Edward Briggs was present to represent the application.

BEVERLY GRIEBEL: I'm a little confused. The application was to park and store recreational vehicle on the side of the house.

MR. BRIGGS: Yes, ma'am.

BEVERLY GRIEBEL: I guess there is a clarification for Counsel. When you have a corner lot, is that considered on the side? Is that a side or a front?

KEITH O'TOOLE: Every place there is a road, we call it the front. So you have two front yards on a corner lot.

BEVERLY GRIEBEL: Okay. This was advertised to be along the side of the house which should be, I guess, on the opposite side of your house.

MR. BRIGGS: Yes, ma'am. My house faces Westside Drive. My driveway is off Evergreen Drive, and my motor home is parked there. My garage faces Evergreen Drive, and I have parked there in that -- on the driveway.

BEVERLY GRIEBEL: Now, do you intend to seek approval to leave it parked on the driveway?

MR. BRIGGS: Yes, ma'am. Normally I use it during the winter. I usually go to Florida for a while. I use it during the summer on multiple occasions. We go out on many weekends. We go camping quite often with it. It's used all summer long.

I would like to make a statement at this time, if I may.

BEVERLY GRIEBEL: Well, let me clarify something else.

Counsel, was this advertised correctly? Should it have been to store in the front driveway?

KEITH O'TOOLE: Well, the advertisement is technically correct. It is alongside the house, though we're talking about a variance from the requirement that it actually be located in

the side yard.

BEVERLY GRIEBEL: Well, I didn't bring the book. It is too heavy for me to carry.

DENNIS SCHULMERICH: I have it.

DAN MELVILLE: It just says alongside the house. It doesn't say in the side yard, on the advertisement.

BEVERLY GRIEBEL: Okay. Along the side of the house. Well, I guess we'll hear the applicant's statement, but I think there is a question in my mind as to how this should have been advertised. If it should have been advertised to park it in the front driveway. Since that is apparently what the gentleman wants to do. Well, we'll hear your statement, sir.

MR. BRIGGS: When I bought the house in 1978, I had a 30-foot motor home at that time that I brought with me when I moved into Chili. A few years later, I bought a larger motor home, a 32-footer, and I put in a concrete pad alongside my driveway to park that motor home in. Between the two, they were parked there about 17, 18 years.

My wife passed away, and when my wife passed away, I took my motor home and I went and I eventually remarried and done a lot of traveling, and the lady that is my present wife, we -- she had property and we stayed there most of the time. But because she has problems and the house she had was too big for us, I moved back in. Unbeknownst to me, they had changed the law between the time I moved and the time I came back. So I had no knowledge that, you know, there was any limitation on keeping a motor home there.

As I said before, we usually go to Florida in the winter, but because she has two knees replaced and she broke her leg last year, we didn't go to Florida this year, otherwise it would have been gone a good share of the time.

Also, in the summertime we're gone, as I say, many, many weekends and sometimes for a week or two at a time in which we travel. And this is why I would like to keep the motor home there, because of loading it, unloading it, putting food in it and clothes. I don't know, you know, of any problem that it is creating. The motor home is 26 feet from the roadway on Evergreen Drive. If it would be advisable, I could add some more space to the front of it, move it up probably another 7 or 8 feet, that would give the 35, 40 feet from the roadway. I don't feel it is blocking anybody's side line or it is creating a problem. I would like to keep it in my yard.

BEVERLY GRIEBEL: Have you explored alternative places to store it?

MR. BRIGGS: No, I haven't, not at this point in time. If there is no place in Chili that it can be stored, I would have to go outside of Chili. I could try and rent space to keep it.

BEVERLY GRIEBEL: Would it fit alongside the back of your house?

MR. BRIGGS: I would have to move a shed, which is in pretty rough shape anyhow, and I'm going to try to replace that this year. We just moved back in in October, and I have done a lot of work inside. I have replaced the kitchen and bathroom and that stuff. I haven't done much else outside. I could move the shed and put it up to where it is behind the house. Yes, I could do that. I could -- given time, I could do that, yes, ma'am.

BEVERLY GRIEBEL: That might be a possibility, which is what we would like to see, if possible, to have it -- if people live in a house, not a corner lot, to get it up along the side of the house so it is back behind the front setback of the house.

MR. BRIGGS: I could make arrangements. I would have to -- probably have to get that blacktopped or something so I wouldn't make a mud hole. I could make arrangements given a -- you know, given a time frame, I could get that blacktopped or whatever to move it back there out of sight.

DAN MELVILLE: So basically that is going to be there year-round unless you're traveling to Florida or wherever?

MR. BRIGGS: Yes, sir.

BEVERLY GRIEBEL: So you would plan on storing it for the winter.

MR. BRIGGS: No. Like I say, we're gone at least five, six weeks to Florida, but because my wife broke her leg last year, it kind of put a crimp on the plans. We didn't go to Florida. Otherwise it would have been gone part of this Florida, too.

DAN MELVILLE: Were you planning on replacing the shed this year?

MR. BRIGGS: Yes, I was, when the weather got better. The bottom is starting to rot out. I could move the shed back further and put the motor home where the shed is now. Basically on the plans it shows -- okay.

DAN MELVILLE: No further questions.

RICHARD PERRY: How long were you out of this property?

MR. BRIGGS: About four years. My son lived there while I was gone.

PETER WIDENER: In 1978, when you owned the property?

MR. BRIGGS: I purchased the property in '78, yes.

PETER WIDENER: You had a 30-foot --

MR. BRIGGS: Motor home, yes.

PETER WIDENER: Did you have a variance then?

MR. BRIGGS: No.

PETER WIDENER: When it went to 32-foot, did you have a variance?

MR. BRIGGS: No. As far as I can see, that law was instituted in 1995, according to the way I read the paper.

PETER WIDENER: Now you have a 34-foot?

MR. BRIGGS: Yes, sir.

PETER WIDENER: That is just something I wanted to consider. Thank you.

DENNIS SCHULMERICH: This is for the side table, I think. I don't know -- I noticed the applicable zoning code section is not filled out. What is the specific code that we are looking for?

KEITH O'TOOLE: It is Section 115.33 (g)9.

DENNIS SCHULMERICH: 115.33 (g)9? Yes.

KEITH O'TOOLE: Page 11,585.

DENNIS SCHULMERICH: I will pass and come back possibly in a second.

GERRY HENDRICKSON: I viewed his property with his motor home there in place, and there is plenty of sight distance through there, but maybe if it was moved back another 5 feet or 6, that would maybe give it more room, but I think that would be the best, because if they put it beside the house, it would be a neighbor's -- you know, complaint there, too. To me --

BEVERLY GRIEBEL: That is kind of where they are supposed to be, by code.

GERRY HENDRICKSON: Well, I know --

DAN MELVILLE: Sometimes the neighbors don't like that alternative.

GERRY HENDRICKSON: That is right. He has his, you know, platform already there, the cement platform so it won't sink in. If he was to go back in there, it would give him a hardship. It would dig his ground up and --

BEVERLY GRIEBEL: Well, there is the off-site storage possibility.

GERRY HENDRICKSON: Well, that is a problem, too, because he is constantly going out there. He would be going out there -- if -- you keep your food in there all of the time, don't you?

MR. BRIGGS: Yes. Normally I keep my food in there, and I keep it plugged in so that the refrigerator runs, so the staples I keep in there --

GERRY HENDRICKSON: Right.

BEVERLY GRIEBEL: But I don't think that is the Board's problem.

GERRY HENDRICKSON: That is it for now.

DENNIS SCHULMERICH: Is the vehicle licensed yearly throughout the year?

MR. BRIGGS: Yes, sir, it is.

DENNIS SCHULMERICH: The length of the vehicle?

MR. BRIGGS: 34 foot.

DENNIS SCHULMERICH: There is no occupancy of the RV on site while it is there, even though --

MR. BRIGGS: Oh, no, no, no.

DENNIS SCHULMERICH: It is not being used as an apartment?

MR. BRIGGS: No. Only if my wife throws me out, maybe.

DENNIS SCHULMERICH: Good idea to keep it plugged in.

DAN MELVILLE: Got to keep the beer cold.

(Laughter.)

DENNIS SCHULMERICH: That is all I have. Thank you.

RICHARD PERRY: Dan (Kress), is this as a result of a complaint?

DANIEL KRESS: To be honest, I'm not clear on how this first came to our attention.

RICHARD PERRY: You're not aware of any complaints from the neighborhood?

DANIEL KRESS: No.

RICHARD PERRY: Have you had any discussion with any of your neighbors?

MR. BRIGGS: No, I haven't. I haven't had any problem with my neighbors. During the Ice Storm, when we -- nobody had any electric, I supplied electric to the people across Evergreen and the neighbor behind me and the neighbor next-door so that they would have electric to keep their houses warm at the time. So the generator, if nothing else, came in handy at that time.

RICHARD PERRY: Since you moved back in in October, you haven't had any adverse comment from any neighbor about the new motor home?

MR. BRIGGS: No, sir, I haven't.

RICHARD PERRY: Okay. That is what I wanted to hear.

#### COMMENTS OR QUESTIONS FROM THE AUDIENCE:

BILL SOULES, 2133 Westside Drive

MR. SOULES: Bill Soules, 2133 Westside Drive, and I support Ed's request.

DENNIS SCHULMERICH: Where do you live in relation to --

MR. SOULES: West.

DENNIS SCHULMERICH: Immediately west?

MR. SOULES: Yes.

DENNIS SCHULMERICH: Thank you.

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.

DECISION: Approved by a vote of 6 yes to 1 no (Beverly Griebel) with no conditions, and the following findings of fact were cited:

1. Corner lot problem: two front yards.
2. Application of Mr. & Mrs. Rick Dierna, owner; 1 Ambush Lane, Churchville, New York 14428 for variance to erect a 20' diameter above-ground swimming pool to be 3' from rear lot line (10' req.) at property located at 1 Ambush Lane in R-1-15 zone.

Mr. and Mrs. Richard Dierna were present to represent the application.

BEVERLY GRIEBEL: Where is your fence in relation to this diagram? The chain-link fence is yours?

MR. DIERNA: Yes. Along the property line.

BEVERLY GRIEBEL: The fence is on the property line?

MR. DIERNA: Yes.

BEVERLY GRIEBEL: The shed nearby belongs to?

MR. DIERNA: We have a shed on our property which is on the outside of the fence.

BEVERLY GRIEBEL: Now, wait a minute. The chain-link fence is on your property line.

MR. DIERNA: Yes. We only have our backyard fenced in. We live on a corner lot. We have more front and side yard than backyard, so the shed, because the backyard slopes away, had to be out on -- not actually the front yard, but the side yard, but behind the house where it is more level.

BEVERLY GRIEBEL: So the shed is on another portion of this side yard, backyard?

MR. DIERNA: Back side yard.

MRS. DIERNA: East side.

BEVERLY GRIEBEL: Outside the fence.

MR. DIERNA: Outside the fence. So the fenced-in area is just a limited area.

BEVERLY GRIEBEL: Okay.

MR. DIERNA: Because we have more front and side yard.

BEVERLY GRIEBEL: Okay. Where is the pool going to go in relation to the fence?

MR. DIERNA: Down in the further corner of the lot there.

BEVERLY GRIEBEL: There is going to be 3 feet between the fence and the pool?

MR. DIERNA: Yes.

BEVERLY GRIEBEL: On both sides?

MR. DIERNA: More towards the back lot line than the side fence because we have a 20-foot deep patio. We're limited with space from front to back to put a pool. As you go towards the shed side of the yard, that backyard narrows and gets smaller so it can't go back that far.

BEVERLY GRIEBEL: Now, normally we don't allow anything closer than 4 feet to a property line.

MR. DIERNA: 4 feet?

BEVERLY GRIEBEL: What would that do to your plans?

MR. DIERNA: If I was pushed to do 4 feet, I could do 4 feet. I just didn't want it on top of the patio, either. I have a retaining wall between the patio and where I am going to put the pool.

BEVERLY GRIEBEL: So if it were pushed 1 foot more so it is 4 feet, then it would be close to the retaining wall?

MR. DIERNA: Yes.

MRS. DIERNA: The fence that runs alongside the west side of the house is not on the property line.

MR. DIERNA: There is another probably 10 feet to the property line from that fence there. That fence runs to the corner of the garage.

BEVERLY GRIEBEL: Okay. The pool would be on the fence line?

MR. DIERNA: No. There would be more room on the side of the fence.

MRS. DIERNA: We could even move it more to the east. That is not a problem. The issue is towards the back, because we have a shallow backyard.

DENNIS SCHULMERICH: You don't have an issue of the variance on the side?

MR. DIERNA: No. The back line.

DENNIS SCHULMERICH: The size pool you want it, there is no way to get it in the required distance?

MR. DIERNA: Correct.

MRS. DIERNA: We would have to move the retaining wall and then it would be too close to the patio.

MR. DIERNA: Right on top of the patio.

DAN MELVILLE: Did you ever consider an oval-type pool?

MRS. DIERNA: The smaller pool is 28 feet.

MR. DIERNA: The length of the backyard, it would still be too close to the lot line.

BEVERLY GRIEBEL: So if you moved it so it were 4 feet, then how far would it be from the retaining wall?

MR. DIERNA: Probably 2 feet.

MRS. DIERNA: No. She is saying if we move it 4 feet from the fence, how close to the retaining wall, 2 feet?

MR. DIERNA: Yes.

MRS. DIERNA: That's it?

MR. DIERNA: Yes.

RICHARD PERRY: What is the purpose of this retaining wall?

MR. DIERNA: Interblock -- interlock blocks along the back of the patio for landscaping.

RICHARD PERRY: Okay. Is that developed at this point?

MR. DIERNA: Yes. It is like 2 feet on one end and tapers off to just two levels of blocks on

the other, because of the slope in the backyard.

BEVERLY GRIEBEL: Is there any regulation as to how close something could be to a retaining wall?

KEITH O'TOOLE: Not to my knowledge.

DANIEL KRESS: I'm not aware of anything that would restrict it.

MRS. DIERNA: It is not a retaining wall in as much as a foundation to the house. It is just a retaining wall for landscaping.

RICHARD PERRY: How wide is the retaining wall from -- or how far from the edge of the patio is the --

MR. DIERNA: How deep from the patio?

RICHARD PERRY: Yes.

MR. DIERNA: About 4 to 5 feet. I would say about 5 feet.

RICHARD PERRY: Your patio is 23 feet wide.

MR. DIERNA: 23 across and 20 feet. From the house out it is 20 deep.

BEVERLY GRIEBEL: Is there a particular reason you don't want that in proximity to your patio?

MR. DIERNA: The pool.

MRS. DIERNA: We feel if it is that close to the children, if they run between the patio and retaining wall, if they fall, they will get hurt on the retaining wall.

MR. DIERNA: If there is somebody on the patio and the pool is too close, somebody could climb over the edge or fall in.

MRS. DIERNA: We just want it a safe distance from the living area outside.

BEVERLY GRIEBEL: Your backyard slopes?

MR. DIERNA: Yes.

BEVERLY GRIEBEL: Will you have to dig in for the pool or raise the other end?

MR. DIERNA: Part of the pool will have to be just into the ground maybe this much (indicating).

BEVERLY GRIEBEL: So you may have to put a fence on that part anyway?

MR. DIERNA: On the pool?

BEVERLY GRIEBEL: Yes.

MRS. DIERNA: We do. We have a deck that goes around it.

BEVERLY GRIEBEL: It will have a deck --

MRS. DIERNA: Not completely around it. A two-section deck.

BEVERLY GRIEBEL: On the deck --

MRS. DIERNA: We haven't decided where to put it, but if that is where we have to put it.

RICHARD PERRY: It looks like this drawing you have here is not anywhere's near where you intend to put it.

MRS. DIERNA: In fact, our yard is not even graded the way it is supposed to be graded in Town records.

RICHARD PERRY: This 20 feet you have drawn on here doesn't represent the addition of the decking around it; is that correct?

MRS. DIERNA: Well, the deck -- how much does the deck come out?

MR. DIERNA: I'm not sure.

RICHARD PERRY: Is the deck all of the way around?

MRS. DIERNA: No. Two-section deck.

RICHARD PERRY: That is going to be up between the pool and the patio, or on the side? That is where you are going to enter and egress from the pool?

MRS. DIERNA: Yes.

RICHARD PERRY: That will be on the side?

MRS. DIERNA: Yes. You can't access that from the patio.

MR. DIERNA: We don't want access to the pool from the patio.

RICHARD PERRY: It looks like your pool will be on the fence that goes up to the corner of the garage. How far from that fence is it going to be?

MRS. DIERNA: That's not really important to us. It is --

RICHARD PERRY: Well, it is important to know whether you're going to build this on the

fence.

MRS. DIERNA: It won't be on the fence because we have to have a lawn mower in there.

MR. DIERNA: Could have 4 or 5 feet there because I have more room to play side to side than front to back. I could move it side to side. As I move further down the back of the yard towards the shed, then I get closer to the back of the lot line because it tapers narrow at that end.

RICHARD PERRY: What are you going to do about drainage for the pool?

MR. DIERNA: We're on an easement. The water drains back behind the clean-out and everything behind our yard.

RICHARD PERRY: That does not go into any neighbor's yard?

MRS. DIERNA: There is an easement that runs all of the way down.

RICHARD PERRY: The two neighbors' yards?

MRS. DIERNA: Right.

MR. DIERNA: Our yard is at the lowest point. Our neighbor's yard drains into our yard. He sits higher.

RICHARD PERRY: That is the same for neighbors on both sides?

MR. DIERNA: Yes. Everybody drains towards us.

RICHARD PERRY: So if you should have an accident, it would all stay in your yard?

MR. DIERNA: It would drain to the back corner. There is a pipe that goes to a pond on Perna's lot, a retaining pond.

DENNIS SCHULMERICH: So the pool was not in your plans when you drew up the plans for the deck and the retaining wall?

MR. DIERNA: Not at that time.

DENNIS SCHULMERICH: If we don't grant the variance, what are your options in terms of the pool?

MRS. DIERNA: We'll still get a pool, it is just that we feel it won't be safe for our children at this stage because they're small.

DENNIS SCHULMERICH: I appreciate the safety issue, but it was more a question what would be your recourse in terms of putting it in and what would you have to do.

MRS. DIERNA: I don't understand.

DENNIS SCHULMERICH: Would you have to take out part of the retaining wall?

MRS. DIERNA: Yes.

DENNIS SCHULMERICH: Is the retaining wall completely finished at this point?

MRS. DIERNA: Short about 20 blocks. We ran out when we were building. It is basically all done except for the top row of blocks.

MRS. DIERNA: Top row is 75 percent complete.

DENNIS SCHULMERICH: Done yourself?

MR. DIERNA: I have done it all myself.

BEVERLY GRIEBEL: An option would be to go to a 15-foot pool.

MR. DIERNA: That is tiny.

DAN MELVILLE: What is the retaining wall made out of?

MR. DIERNA: It is not a wall. It is the interlock blocks.

DAN MELVILLE: Technically you could move it.

MR. DIERNA: Push come to shove, it could be moved.

DAN MELVILLE: That would be a lot of work to pick up all those blocks again.

DENNIS SCHULMERICH: Could you talk more about the safety issue in terms of the kids? If you have a 4-foot wall on the pool and you end up moving the pool closer to the patio, and you have to take out a portion of the retaining wall, you have expressed concern a couple times about safety. What are you thinking about when you say that in terms of safety of children?

MRS. DIERNA: I'm concerned if it is a narrow space between the patio and the pool, if somebody should slip and fall and hit their head on the blocks.

DENNIS SCHULMERICH: It is the distance -- it is not the end of the pool. It --

MRS. DIERNA: It is an above-ground pool.

DENNIS SCHULMERICH: I didn't know how elevated the patio was. If the pool was adjacent to the patio immediately and the patio is elevated, your 4 foot becomes something less than 4

foot. I didn't know where your concern was. Thank you.

RICHARD PERRY: I just would ask where the filter and all that would be situated?

MR. DIERNA: When we place the deck, we could place all that under the deck so it is hidden. It is a deck that comes with the pool.

RICHARD PERRY: It wouldn't be any closer to the fence than --

MR. DIERNA: That is right.

DAN MELVILLE: You said there is a deck around the pool?

RICHARD PERRY: Two sections. Normally 4 feet?

MRS. DIERNA: Um, I'm not sure.

MR. DIERNA: It is probably from the end of there to here (indicating). It is a two-section deck. Like here (indicating) it has rails all of the way around with a slip-up ladder. That is the way you enter and exit the pool.

DENNIS SCHULMERICH: The deck will be on the Rochelle Drive side, based on the map I'm looking at here.

MR. DIERNA: Either that or behind the garage side.

DENNIS SCHULMERICH: Okay. So would you -- so --

RICHARD PERRY: You will be close to the fence, aren't you? The way this shows, the drawing, you're right on top of your fence with the way you have it situated on the map.

BEVERLY GRIEBEL: If the fence goes from the corner of the garage to the point of the property, is that a fence line there? We have a copy. We can't quite read it.

PETER WIDENER: You could move the fence. That is not a fence line. The fence line -- this is the property line (indicating). This is the fence (indicating). So they could move that fence and have all that space yet (indicating).

BEVERLY GRIEBEL: Right. Right now it looks like the pool is right on top of the fence.

PETER WIDENER: On the fence. But that fence --

MRS. DIERNA: That is the way it was drawn. This is not correct. I was looking -- when I drew that circle, I was looking at the line -- the lot line as the fence. That is not correct.

MR. DIERNA: We won't be on the fence. We won't be that tight on the fence like you're seeing there at all. It looks like that way, but that is not the way it will be.

PETER WIDENER: Did you put up the fence?

MR. DIERNA: We had it installed.

MICHAEL MARTIN: How tall is the fence?

MR. DIERNA: Regular 4 or 5 feet chain-link fence. Standard size.

DAN MELVILLE: Was the fence put in that way because of restrictions, deed restrictions there?

MR. DIERNA: What do you mean? To run up to the back of the house?

DAN MELVILLE: Yes, because there is an association.

MR. DIERNA: There is no association in our tract. We ran it that way so we wouldn't have to have an extra section of the fence off the side of the garage because off the side of the garage, now your lot starts to slope and your fence will be cocked like this (indicating).

BEVERLY GRIEBEL: Got you.

MICHAEL MARTIN: Do you have any concerns about kids being able to jump into the pool off the top of the fence?

MRS. DIERNA: No.

MR. DIERNA: Our kids don't climb the fence. They never have.

BEVERLY GRIEBEL: Wait.

PETER WIDENER: When did you purchase your home?

MR. DIERNA: '92.

PETER WIDENER: And the grate that is in the back, the water drainage in the back of the property, that goes underground out to a retaining pond?

MR. DIERNA: On the far side of Whispering Winds.

PETER WIDENER: When you winterize a pool that size, you have to drain a lot of water. That will go to that grate without affecting the neighbors?

MR. DIERNA: Yes.

PETER WIDENER: That is my concern.

MR. DIERNA: We're at the low end.

PETER WIDENER: The grate is not on your property?

MR. DIERNA: No.

PETER WIDENER: That is why the grate is there?

DANIEL KRESS: Just for the Board's information, and the applicant's as well, as of January 1st, New York State has a brand-new building code regarding pools and fencing around swimming pools. I can't promise you folks what you already have there is not going to have to be redone and/or moved. I'm not sure that the Board should necessarily get too hung up on the location of the fence, because that fence may not even be adequate per the current code requirements. I don't have enough information to know whether it is or not. I'm just saying that may or may not really be an issue for the fence to stay where it is.

BEVERLY GRIEBEL: I know when I had a pool back in the '70s, we had to dig it in part of the backyard, and in that part, since it wasn't -- I believe it had to be a 4-foot side wall, we had to add a fence to several sections of the pool to get that requirement fulfilled. So they might run into this problem. I don't know what the new code says.

DANIEL KRESS: Well, the new requirements are comparable, but go beyond that in terms of restricting the access mainly so that children can't easily get into the pool when it is not supervised.

BEVERLY GRIEBEL: When we dug it in, it was halfway up the side wall, the pool on that part, on the lowest part.

We did get a letter in, that came into the Building Department from a Jim Bernitt at 32 Rochelle Drive, and I don't know where that is in relation to your house.

MR. DIERNA: He is next to us.

BEVERLY GRIEBEL: Okay. And it says -- it is dated March 25th, 2000 -- "Tonight you are going to hear a request from a Chili resident to have a variance for their property. They are asking for the variance because the pool they want to install will not fit on their yard without coming too close to the rear lot line. I would like to bring up some issues for your consideration. Please review this letter while you are deciding upon the variance.

First, I would like the committee to know that the homeowners installed a concrete patio and rock retaining wall in the fall of 2002. This patio is not even finished yet. Please refer to the photos attached. This is a self-created" --

MR. DIERNA: Patio is finished.

BEVERLY GRIEBEL: I'm just reading the letter.

MR. DIERNA: Landscaping is unfinished.

BEVERLY GRIEBEL: Let me read it and then you can comment.

"This is a self-created problem by the homeowner. While they were putting together their plans for the patio and rock wall, they should have figured out a way to make everything fit. This requested variance is to allow them to place their pool 3 feet from my yard. This is a 70 percent variance. That seems like a substantial amount to me. Can they move the pool farther west? Can they live with a smaller pool? 3 feet is very close.

The home at 1 Ambush Lane sits on a hill. All the drainage off that property runs south behind my yard and a neighbor on James Hollow Way to an open drainage unit. The Chili Building Department puts out a manual for new pool owners that clearly states 'you may not drain your pool water onto neighboring yards.'

I also have some privacy issues as well. Where will the filter go? Where will they store their skimmer, hoses and other pool supplies? As you can see in picture number six on the attached sheet, I already have to look at the back of their shed with old wooden posts and rocks which face my property. I just don't want it to become an eyesore. If the pool is 3 feet away from the existing fence, how many times will they be in my yard to retrieve a beach ball or frisbee?

It is not my intention to deprive the homeowners of a pool. I feel I have some legitimate concerns that I wanted to voice to you. I would be willing to compromise with the homeowners if they were to install a 6-foot stockade fence the total length of the current chain-link fence within 30 days of the pool installation. They would also give up the maintenance of my side of the fence and install it according to Town Code."

I'm not sure what that means, but anyway. Now, I don't know about this drainage into neighboring yards.

PETER WIDENER: I don't know if it is a neighboring yard.

MR. DIERNA: It is on an easement. It is an easement that runs along the whole west side of the lot.

MRS. DIERNA: The water from Ambush Lane drains down -- it is technically our yard, as well.

MR. DIERNA: Everybody's yards were created to drain down into the easement into the pipe.

PETER WIDENER: When they mow the easement, they can't stop the restrictions --

DENNIS SCHULMERICH: Is that a shared easement or is it completely on your property?

MR. DIERNA: It is shared. Everybody is on that easement.

BEVERLY GRIEBEL: Now, Counsel, can they drain into an easement?

KEITH O'TOOLE: If it is a drainage easement.

MRS. DIERNA: It is. In fact, I want to make a couple points. Number one, these neighbors that you're referring to, that wrote this letter, we have not spoken with them for years. We have had argument over argument because of one fence that was installed. A second fence was installed. We have a split rail fence on our property line. She complained when I stained it a different color. They complained we cut our grass too close to the lot line. They are continually causing problems for us.

BEVERLY GRIEBEL: We won't go --

MR. DIERNA: They put a shed 6 feet from the lot line on an easement which you approved.

MRS. DIERNA: Our yard -- in fact, Jim Perna and Mr. Carr redid our backyard, I would say four or five years ago because it was not graded properly and they said they could not grade it 100 percent the way it is supposed to be because of the location of the shed, because the shed is right basically on the lot line, 3 feet from the lot line.

So in order for them to fix our yard, the Bernitts would have to take down their shed, which they won't do. So we have had problems because he did not consider the rules. He is so concerned with the rules, but he did not follow them himself.

As far as frisbees, I can't tell you how many times my children have returned toys that have ended up in our yard. That is not a big deal. It is not a big deal. They make an issue out of everything.

DENNIS SCHULMERICH: Where does the drainage easement start in relation to the back fence lot line? Is the fence on the --

MRS. DIERNA: No. It is nowhere near the easement.

BEVERLY GRIEBEL: Or the plot map? Where is it on the plot map?

MR. DIERNA: All this area runs back to here (indicating). It would drain to the easement and back down to the pipe. The easement is on the line, all of the way down (indicating).

DENNIS SCHULMERICH: It is not back here (indicating)?

MR. DIERNA: No. This way (indicating), it slopes this way (indicating) to the easement.

BEVERLY GRIEBEL: On your garage side?

MR. DIERNA: Correct.

DENNIS SCHULMERICH: That helps.

MRS. DIERNA: As far as the 3 feet, I mean if it is 4 feet, whatever, I don't see what difference it would make, them looking at our pool, whether it is 4 feet or the regulated 10 feet. To us it is not a big deal. If it is not approved, that's fine. If our children get hurt, it is on his conscience. He is just doing it because we complained about his shed and took it to the Town and he is just trying to retaliate with this. I guess that is all it is.

BEVERLY GRIEBEL: We won't get into that other stuff, but I see where it is coming from. Since it came in, we have to enter it into as part of the record.

MR. DIERNA: The patio is finished. There is nothing to finish on the patio. All that needs to be finished is the one top row of paver blocks and plant flowers or bushes, what have you.

RICHARD PERRY: Did these folks get a copy of this letter?

MRS. DIERNA: No, we didn't.

DANIEL KRESS: It just came in today. I literally didn't know about it until an hour ago.

KEITH O'TOOLE: You can have my copy.

RICHARD PERRY: You can have my copy. You're more than welcome.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

JIM BERNITT, 32 Rochelle Drive

MR. BERNITT: If you have any questions, you can ask me. Yes, I did write that letter, and my main concern is the 3 feet from my lot line. And the drainage. The drainage does go on the south end of my property, which does flow from about four houses down past my backyard. Which technically is -- is the easement, but it is grass, and it will be taking chlorinated water and backwash through the yard.

As far as the shed goes, that has already been approved by the variance.

MR. DIERNA: When you placed the shed, you didn't follow the Town Code for the shed.

BEVERLY GRIEBEL: Let's just not comment. We'll let him speak.

MR. BERNITT: My main concern is the 3 feet to the back lot line and everything else is basically in the letter.

BEVERLY GRIEBEL: We have already said we can't approve anything less than 4 feet.

MR. BERNITT: Thank you.

KEITH O'TOOLE: Just for clarification, that 4-foot rule doesn't apply here.

BEVERLY GRIEBEL: It doesn't?

KEITH O'TOOLE: Because we're not talking about combustible structure such as sheds.

BEVERLY GRIEBEL: But being able to maintain, mow lawns and that.

KEITH O'TOOLE: Well, that is a judgment call for the Board. But there is no State Building Code issue here.

MR. DIERNA: 20-inch push mower back there.

BEVERLY GRIEBEL: It has always been our thinking that you have to be able to get --

DAN MELVILLE: 3 feet is plenty of room.

BEVERLY GRIEBEL: Well, we'll decide it during discussion.

PETER WIDENER: In your letter that you wrote to us, you said that a 6-foot stockade fence would be acceptable to you.

MR. BERNITT: Yes.

PETER WIDENER: Then you left a disclaimer in there saying they would give up the maintenance on your side of the fence. What would you plan to do with that?

MR. BERNITT: Just basically trimming around the fence, or, you know, that would then technically become part of my daily maintenance of my yard as opposed to them coming and cutting one strip on the side of the fence.

PETER WIDENER: How about painting the fence?

MR. DIERNA: How about if he purchases the fence? I will go for that.

RICHARD PERRY: If the fence is on your yard, it is your fence.

MRS. DIERNA: That is the thing. When we originally put a fence in there, the first fence we had installed was a split-rail fence. Because they are not good neighbors, and he -- weed wacks, he hacked every single posts after I stained it and it was obvious it was intentional. I had to go back and stain it again.

Another time with the chain-link fence, my husband works sometimes six, seven days a week --

DENNIS SCHULMERICH: Pardon me, split rail on your fence?

MRS. DIERNA: Yes. And he damaged our fence. It was on our property. I didn't call the police because I felt it could be taken care. He damaged my property.

DAN MELVILLE: Was the fence on the property line?

BEVERLY GRIEBEL: I think we're talking about the pool.

MRS. DIERNA: I'm just making a statement where he says he doesn't want us to maintain the fence.

Another time his wife called me and said -- because my husband was working overtime and didn't have a chance to cut the grass. First he wants us to come cut it and now he is making another reason --

RICHARD PERRY: First of all, letters are read into the record, but demands that other people make have nothing to do with this proceeding.

BEVERLY GRIEBEL: It is up to the Board whether we follow all of this or whether we don't follow any of it. The Board takes everything into consideration.

PETER WIDENER: My concern was exactly what Rich (Perry) qualified, that you take care of your fence and no one else needs to.

MR. DIERNA: Right. Which we have always had to in the past.

PETER WIDENER: I couldn't understand the last sentence, but now I understand it. 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 Dennis Schulmerich seconded the motion. All Board members were in favor of the motion.

DECISION: Approved by a vote of 6 yes to 1 no (Michael Martin voted no) with the following condition:

1. Pool to be minimum of 4 ft. from rear and side lot lines.

The following findings of fact were cited:

1. Applicant will have sufficient clearance to maintain pool, fence and property.
2. Consistent with other neighborhood structures.

Note: A building permit is required prior to the pool being installed.

3. Application of Linda Nicolosi, owner; 291 Chili Scottsville Road, Churchville, New York 14428 for variance to allow a lot to be 3.38 acres (5 acres req.) with a lot width of 200.55 (275' req.), variance to erect single-family dwelling to be 45' from side lot line (50' req.) at property located at 301 Chili Scottsville Road in PRD & FPO zone.

Rob Fitzgerald was present to represent the application.

MR. FITZGERALD: I'm a Project Engineer with Avery Engineering representing both Phil and Phil, Junior Nicolosi tonight. I just want to briefly let the Board know what we're proposing on the site.

It is an existing parcel. We're proposing a single-family parcel for this Phil to my left. It is a good site with public water, public electric, cable, gas. We have done percolation tests out there and we can fit a septic system on the site. We also show the Board we could do grading to fit the house on the site with the exception of a variance. We would like to ask for 5 feet of relief on the north side of the property.

BEVERLY GRIEBEL: That is kind of because you have to skew the house based on the elevation lines and for the septic, that kind of dictates where you place everything?

MR. FITZGERALD: Yes. We could skew the house and probably fit the house on the lot without the 5-foot relief, but then it wouldn't be parallel with the road and it would kind of look off, I guess, crooked.

BEVERLY GRIEBEL: And sometimes these houses that have to rely on the septic, that is the number one dictating factor.

MR. FITZGERALD: Yes. That is why we proceeded with the perks before we even brought this project to the Board.

BEVERLY GRIEBEL: If anyone in the audience wants to go up and take a look at that, they can go over there.

And this is just a site map that you submitted tonight?

MR. FITZGERALD: Yes. The map I wanted to show the Board, which is highlighted in blue, the parcel at hand, the surrounding parcel is just to show that is in general characteristics with the neighborhood that is highlighted in orange. They're mostly undersized lots as this one is. With the exception of the two on the eastern side of the road, they're all undersized, the ones that are highlighted, and most of them don't have the required lot width of 275 feet. I just want to show it is in

general compliance with the neighborhood.

GERRY HENDRICKSON: I know what he is trying to do. I know how small the lots are.

BEVERLY GRIEBEL: Not in depth.

MR. FITZGERALD: It is 3.2 acres, which is a decent sized parcel.

GERRY HENDRICKSON: A little rough getting into.

MR. FITZGERALD: It will need a little fill.

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

DENNIS SCHULMERICH: I'm interpreting this lot exists as it is today and this is not being created by splitting one lot into two. So we're basically taking an existing lot and looking to have a variance.

BEVERLY GRIEBEL: Yes. So we can fit the house on there.

PETER WIDENER: The lot exists already.

DENNIS SCHULMERICH: I just didn't know if the splitting of the property --

BEVERLY GRIEBEL: These were all split off in the past.

MR. NICOLOSI: Years ago.

PETER WIDENER: 275 required. Do I see -- if it is an approved lot already, then I don't need to ask that question.

MR. FITZGERALD: For clarity, there's an angle point in the front lot, the front property line, so there is 180 feet and then to the south is another 20.55.

PETER WIDENER: My concern is if it is already approved, I don't need to address that.

BEVERLY GRIEBEL: It is just for the setbacks.

PETER WIDENER: Where were the perk tests done? I can't see those.

MR. FITZGERALD: If I could point it out, it might be easier. They are designated in these areas here (indicating), in deep holes in the middle (indicating).

PETER WIDENER: Okay. I see the system now. Great.

BEVERLY GRIEBEL: So many lines on here. It is hard to pick them out.

PETER WIDENER: The perk testing, this is all below grade level already. Will you bring it up?

MR. FITZGERALD: Yes. It will be a walk-out basement so they won't have to fill a huge, huge area. There is discussion of possibly digging a pond in the rear of the parcel to get the fill.

PETER WIDENER: There is a pond on the other side. Any drainage from this property will probably wind up over in that pond?

MR. FITZGERALD: Possibly, yes.

PETER WIDENER: Everything goes to the swamp to the north of that anyway.

MR. FITZGERALD: Right.

PETER WIDENER: The walk-out basement is off the back of the house?

MR. FITZGERALD: Yes, the rear of the house will be the walk-out basement.

BEVERLY GRIEBEL: This shows the swamp. I guess those little twiggy things are the swamp on this plan.

PETER WIDENER: You will bring this up to road grade level?

MR. FITZGERALD: Yes.

BEVERLY GRIEBEL: A berm in the back to make a pond, and then you will get some fill material?

MR. FITZGERALD: It is being discussed. It is costly. If they could get their hands on free fill, obviously that is nice, or maybe a combination of both.

GERRY HENDRICKSON: That property used to be good farmland in there.

PETER WIDENER: The variance for the 45 feet, what lot is it from? South or the north?

MR. FITZGERALD: That would be on the northern property line.

PETER WIDENER: Is it 50 over here (indicating)?

BEVERLY GRIEBEL: Yes. It is because -- they -- they could have done it without, if they had skewed the house the other way, parallel to the side lines, but then it would not have been parallel to the road. It is because this goes back at an angle. When you look at some property, you think everything goes back in nice, neat rectangles, but it doesn't.

MR. FITZGERALD: It is just skewed in relationship to the road.

BEVERLY GRIEBEL: Yes. And it is -- when it gets off to the side, it is more skewed. The properties further south are nice neat little rectangles, but this one, I don't know.

MR. FITZGERALD: Pie shaped.

BEVERLY GRIEBEL: Kind of pie shaped in the back.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

DARIO MARCHIONI, 120 Old Scottsville-Chili Road

MR. MARCHIONI: As a neighbor, I would like to speak in favor of this application.

He is a nice young man here who wants to build a house next to his parents.

BEVERLY GRIEBEL: Thank you.

KYLE PHILLIPS, 385 Morgan Road

MR. PHILLIPS: Kyle Phillips, I'm kind of a neighbor, too, and I speak in favor as Dario does. 385 Morgan Road.

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.

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

1. The lot shape and septic siting dictate placement of house.

The meeting ended at 8:10 p.m.