

CHILI ZONING BOARD OF APPEALS
November 25, 2014

A meeting of the Chili Zoning Board was held on November 25, 2014 at the Chili Town Hall, 3333 Chili Avenue, Rochester, New York 14624 at 7:00 p.m. The meeting was called to order by Chairperson Adam Cummings.

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

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

Chairperson Adam Cummings declared this to be a legally constituted meeting of the Chili Zoning Board. He explained the meeting's procedures and introduced the Board and front table. He announced the fire safety exits.

ADAM CUMMINGS: Public notice sign, anyone have an issue with that?

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

1. Application of Jeff Schuetz, owner; 21 Green Valley Road, Pittsford, New York 14534 for variance to erect an open porch to be 6 from side lot line (12' previously approved on a corner lot), variance to allow existing utility shed to be 39' from side lot line (55' required abutting a street) and 3' from rear lot line (8' required) at property located at 40 Charles Avenue in RAO- 20 and FPO zone.

Jeff Schuetz was present to represent the application.

ADAM CUMMINGS: The overhead is not functioning tonight. We can post up a plan. Dorothy (Borgus), would you like the map?

MS. BORGUS: I would like to look at it, yes.

MR. SCHUETZ: My name is Jeff Schuetz. I'm the owner of the property at 40 Charles. We bought it as a foreclosure back in February, and most of these conditions were in place at the time when we bought it. One of the liabilities of the property in my mind has always been there wasn't any covered entry, so you just get rained on as you stand there waiting to open the door, or if you're waiting for someone else to come to the door. And I -- we just felt it would be improved if we had a covered entry.

The other conditions were the house was built apparently originally in 1970 without meeting setback requirements on two sides that have since been -- one of those setback requirements, I understand, has been changed from 45 feet to 40 feet, so that is no longer an issue.

The other one has been granted at 15 feet, but that still did not accommodate the property because the house was built at a little bit of angle on the lot and the setback -- it is only set back about 12 1/2 feet from that side. So we didn't -- we didn't put that in the application because we're -- if we have an approval on -- on the overhang for the entry, then that would satisfy the 12 1/2 feet requirement, as well.

ADAM CUMMINGS: Correct.

MR. SCHUETZ: And the shed is -- is where it was when we bought it. It has been there for many years, and so just looking to be able to leave it where it is. It is set back, um, more than most sheds in the neighborhood, going around, looking at quite a number of sheds, everything I could find in the nearby neighborhood and I couldn't find one shed that met the requirements. And actually most were worse than ours either closer to the road or closer to the fence line, et cetera, so we're just looking to leave it is where it is basically.

Haven't done one of these before so I don't know if you're looking for anything more than that.

ADAM CUMMINGS: No. That is a good history. And objectives of what you're looking for.

I would like to start with the front porch and you mentioned that it was an enclosure, a canopy for your entryway. So has the -- the stoop or the porch itself -- is that existing?

MR. SCHUETZ: Yes. There was a concrete pad but no overhang. And we're not looking to enclose it or anything. Just looking to keep the rain off.

ADAM CUMMINGS: Okay. And you're not looking to extend it closer to the road?

MR. SCHUETZ: No. Just using the same existing footprint.

ADAM CUMMINGS: Then the shed, um, this neighborhood definitely has sheds closer and some within -- it has been existing. 3 feet is a pretty minimal -- I believe that is the minimum until you need a State variance; is that correct?

ED SHERO: No. 5 feet.

ADAM CUMMINGS: 5 feet.

ED SHERO: Even if granted, he will need a State variance.

ADAM CUMMINGS: So you would need to apply to the New York State --

MR. SCHUETZ: Ed (Shero) explained that to me.

ADAM CUMMINGS: We do have -- I do have a referral from Monroe County Department of Planning and Development since it is near the airport and they have determined that this is a local matter, and they do have it check boxed as requiring airport approval.

Let me see if I have anything else there.

Ed (Shero), have you heard anything at the Building Department coming from Monroe County follow-up? I'm only going off one check box that says airport approval.

ED SHERO: You got the -- the sheet has both boxes checked?

ADAM CUMMINGS: Yes. I don't have another letter following it up. It says that they need the airport referral form, and I don't have a copy of that.

Do you?

ED SHERO: Nope.

ADAM CUMMINGS: All right.

ED SHERO: I just have the -- the --

ADAM CUMMINGS: The application?

ED SHERO: Yes.

ADAM CUMMINGS: So on the submittal checklist it says that the airport referral form was submitted, but I don't see a copy of that. So you don't have it in your file?

I don't see anything else on that form. Obviously because of the zoning overlay that is there.

While we get that answered we'll start with some Board questions. Do we want to flip the coin which side? Maybe change it up and have Ron (Richmond) start from that side? Let Jim -- JAMES WIESNER: Works for me.

RON RICHMOND: You already asked what I would have asked about, making the porch bigger. So that's all I have.

FRED TROTT: Is there a foundation on the shed?

MR. SCHUETZ: No. I don't believe so. It might be on little flat concrete blocks or something.

ADAM CUMMINGS: So it might be on masonry blocks to raise up or is it --

MR. SCHUETZ: Nothing substantial. Maybe the little flat ones. But whatever was there when we bought it.

FRED TROTT: So it can be moved?

MR. SCHUETZ: It could be moved. It's -- you know, somewhat delicate at this point, perhaps.

ADAM CUMMINGS: Okay. That would help us out at the Town, because one thing to point out with these variances is it's not you, the specific property owner. It stays with the land. So if we approve a variance for a shed or structure to be 3 feet off the property line, the next person can create a structure 3 feet off the property line. So we definitely weigh that into our decisions here.

If we can minimize -- our goal is to minimize or avoid variances if we can, so if we can minimize that by moving it to another -- especially with the number of variances that are on this existing property, we would like to do that.

MR. SCHUETZ: Well, there is a practical issue in terms of it's in the location that it is in because it's the most practical spot on the lot because it's closer to the back door and, you know, yet it is still behind the back of the house in terms of from the -- from the Theron side. It is still in the backyard of the property. I don't know if you saw the -- there is one picture that I submitted that shows -- shows it -- shows sort of the backyard and where it is in relation there.

ADAM CUMMINGS: Yes. The third one on the right, where you can see that it is -- it is still 30 whatever it is, well, 40 feet or so back from the road at that point. But it is also, you know -- there is a practical issue with it being closer to the house. It is more practical to get to. And more convenient. You know, in terms of how people have arranged their sheds people are typically doing them, it seems like when you look around, they're trying to do it -- the location that makes sense.

FRED TROTT: We are just looking at your property right now.

ADAM CUMMINGS: The neighboring properties, those will be a separate matter of code compliance that we won't be hearing tonight. But it is good that you recognize that. We'll take that into other considerations in the Town.

Not necessarily specific to where the sheds are right now. But thinking about zoning regulations and things like that. Not to say anything is changing, but the Town does take those into consideration. The practicality is one thing, but we really need help, assistance with documenting -- it's -- we have five questions here. You filled them out in the application. Those are the five criteria we're looking at. It is obviously self-created hardship. Whether they are preexisting, but it is still self-created. But in terms of deviation or variance from our code, that's what we're trying to evaluate and it's your burden to try to prove to us why you need this on there. Practicality is one thing, but if you could -- if you kind -- you kind of noted it where it is a delicate structure, so there is a risk of losing it if you attempt to move it.

Any idea, ball park how much the shed would be worth to replace it if it fell?

MR. SCHUETZ: I'm guessing, you know, \$800, \$1,000, something in that ball park.

ADAM CUMMINGS: Because it is feasible. And your lot is unique in that it looks like it is -- and -- and there is still question marks on the whole thing. It is almost like there are two lots

there. So you have plenty of backyard to move it. Yes, it is closest to the house, but moving it even closer to the house would actually mitigate this variance request.

MR. SCHUETZ: Well, if I move it closer to the house, without moving it further back, it wouldn't be within the 55 foot setback requirement. That was my understanding. I think right now -- I got the exact number, but I think we estimated it something like 40 feet or 41 or 2 or something from the setback.

ADAM CUMMINGS: Right. You're saying off Charles Avenue?

MR. SCHUETZ: No. Off of Theron.

ADAM CUMMINGS: Well, you're -- I'm not saying -- 39 foot, that's -- that's a separate one. Ideally, the Town would like to see that shed moved onto technically Lot 19 there to be 55 feet off Theron Street and then still move it to -- to the south so you don't require a setback off of the side lot line. So that would be 15 feet off of that, is what I am mentioning here.

Is that clear?

MR. SCHUETZ: Yes.

ADAM CUMMINGS: I just wanted to point that one out.

Now, the logistics of really why you want it there, other than the argument it has always been there, we need more substance to base our decision off of. We will take that into consideration, but we would like additional considerations.

So you're estimating around \$1,000, \$800 to \$1,000 for a new shed to replace that one?

MR. SCHUETZ: Yes.

ADAM CUMMINGS: Plus demolition costs and relocation if you don't have the equipment.

MR. SCHUETZ: It's a practical issue, basically.

ADAM CUMMINGS: Yes. With cost.

MR. SCHUETZ: Right.

FRED TROTT: Are you the owner of the property?

MR. SCHUETZ: Yes. Co-owner.

FRED TROTT: You're a co-owner?

MR. SCHUETZ: Yes.

FRED TROTT: When did you purchase the property?

MR. SCHUETZ: February.

FRED TROTT: February?

MR. SCHUETZ: Yes.

FRED TROTT: None of the stuff came up in a survey when you purchased the place?

MR. SCHUETZ: No. No. I didn't hear about this.

ADAM CUMMINGS: It looks like O'Neill & Rodak, February 6th, 2014. Which I'm assuming that survey plat was made as part of the closing?

MR. SCHUETZ: Uh-huh. Or at least updated.

FRED TROTT: Is this your place of residence?

MR. SCHUETZ: No. We bought it as an investment property. It was a foreclosure.

ADAM CUMMINGS: Yep.

FRED TROTT: Who is doing the roof work, the front porch?

MR. SCHUETZ: Contractor.

FRED TROTT: You didn't know you needed a permit for that?

MR. SCHUETZ: I didn't think about it actually. I should have.

ADAM CUMMINGS: And you didn't ask the contractor?

FRED TROTT: And the contractor didn't say you needed a permit for it?

MR. SCHUETZ: No, they didn't.

ADAM CUMMINGS: So right now, just so everyone notices that note, there is a stop work order on the construction right now, so that contractor has ceased work at -- at the request of the Building Department.

FRED TROTT: I assume if we approve this, they have to show the footings for the post?

JAMES WIESNER: No building permit for the shed itself. It is too small.

FRED TROTT: I'm talking for the porch.

ADAM CUMMINGS: Good question. Ed (Shero)?

ED SHERO: I would say no because that porch was built with the house.

ADAM CUMMINGS: So that foundation would have been part of the original construction.

ED SHERO: Unlike the rear porch.

ADAM CUMMINGS: Yeah. The screened rear porch.

ED SHERO: Right.

FRED TROTT: Is there a variance for that?

ADAM CUMMINGS: No. The issue with the screened porch in the back is that a building permit was not obtained to add that onto the house. But a variance isn't required.

FRED TROTT: I don't have any more questions.

MARK MERRY: Knowing this is an investment property for you, I'm curious as to your concern for having this covered entryway if it is not for personal reasons? Have your tenants voiced a concern? You mentioned in your advocacy several houses in the neighborhood do not have this feature.

MR. SCHUETZ: Right. It's -- I just think that people should be treated equally and I would have wanted something like that on the property if I lived there. So I'm thinking that it would be -- I want to be able to provide it to tenants over there, as well. I just think that it is

reasonable for -- if it is the kind of feature that I would appreciate, I know that they would appreciate it.

There is not really, you know -- there is no great financial incentive for me to do this. In fact, it is probably a silly thing for me to spend money on. Except that I like to provide -- I like to provide good property and do the kinds of things that I think should be done to a place rather than just the minimum or, you know, just look at it strictly from the dollars and cents standpoint.

The property, it's two issues, as I said in the application. It's the practicality of it, that, um, when you're standing there, if you're waiting for somebody to come to the door, you're standing in the rain.

And the second issue is that the property, I -- when they built these '70 houses, they often neglected these kinds of things, and it's something that, you know, would enhance the property both aesthetically and practically. So that's my perspective on it.

MARK MERRY: Thank you. No other questions.

JAMES WIESNER: I guess my first question is, if he only has 23 feet right now and the State code is 5 feet, we vote on it and we say yes, it doesn't end it, right?

ADAM CUMMINGS: No. Still has to apply with the State to get a waiver.

MR. SCHUETZ: I understand.

JAMES WIESNER: Both parcels 18 and 19 are yours?

MR. SCHUETZ: Yep.

ADAM CUMMINGS: Looking at the photos you did provide, it looks like the house at the corner of Morrison and Theron, that actually has a front porch, but it also has a side porch, so I just want to point that out and actually it has a front -- a front deck. But it does have an overhang, an enclosure, a canopy. And we'll call it an -- I won't call it an enclosure. It's a canopy over the side entrance next to the driveway. I just want to point that out to everyone.

MR. SCHUETZ: I was pointing that out partly because it is closer to the road than what we're proposing on the same place, just a few doors down. So obviously this neighborhood does have some properties closer than ours.

FRED TROTT: But we don't know if the property that you pointed out didn't do the same thing that this property did.

ADAM CUMMINGS: Correct.

FRED TROTT: Built it and oops, we made a mistake. We're 3 feet off.

ADAM CUMMINGS: Yes. That would be part of our Code Enforcement. Any future investigative efforts that we aren't considering tonight, but certainly, could be a possibility.

MR. SCHUETZ: And the property at 26 Charles, which I provided a picture of, has a garage that is, you know, as close as what we're talking about, I believe. I don't know what -- you know, whether it had permits or not. I'm just saying in terms of how it affects the neighborhood or the look of things, I don't think that is -- there's a negative aspect to it. But -- from what I can see. I think it would be a positive aspect in terms of how it improves the thing.

ADAM CUMMINGS: I did want to go through the list before I opened up the Public Hearing. Just as we're noticing, this is an existing house. Existing issues. I just want to go through the whole list for the record because part of our job is also trying to bring properties up to code compliance, so I'm sure you're already aware of these, but your existing variances, there were existing variances that were granted, for instance, a .45 foot setback. It was actually built with 44.6 feet. A 15 foot setback that was constructed at 12.3 feet, so I just point that out so everyone is aware where we're here right now. And obviously that 12.3 feet is greater than the 6 feet that is being requested for the porch, so that is why that variance covers both.

The screen porch, which we already mentioned, on the rear of the building, was added without a building permit.

The garage was converted to a bedroom without a building permit. And these are issues being discussed with the Building Department and as I mentioned earlier, that front porch contractor had started construction but has been issued a stop work order. So they have ceased, to my understanding, but it is not like they went in and completed it.

And then the shed, which we have talked about, requiring a variance, but it is small enough that it does not require a building permit.

And there is still a question mark of when the parcel was combined with the adjacent one, which is referred to as Lot 19 or 38 Charles Avenue. We just want to clean that up for the subdivision or the combining of those two parcels which was done in the past prior to this, just to clean up that paperwork.

So just wanted to point those out, that our objective is not only to consider the variances but to bring this parcel up to code compliance.

You understand all that?

MR. SCHUETZ: Yes.

ADAM CUMMINGS: You have talked to the Building Department.

MR. SCHUETZ: Yes. Fairly lengthy conversation.

JAMES WIESNER: So that would be conditions of the -- yes. We'll -- we'll list those out as we continue on with this one.

MICHAEL JONES: I don't have anything to add.

ED SHERO: Nothing at this time.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

DOROTHY BORGUS, 31 Stuart Road

MS. BORGUS: Dorothy Borgus, 31 Stuart Road. This man has bought a nightmare. I can't -- I hope he got it at a reasonable price because he has a lot of problems here.

I have to agree with Mr. Merry. If the applicant was going to live in this house and that was going to be his home, I think he would have a bigger argument for a variance than he does just because it's a rental property and he thinks it would be nice.

Um, I think the Board is on the right idea. There is a lot of room here on this lot to move this shed so it doesn't require a variance and since there have been so many variances and so many problems, I can't imagine that this Board would feel obligated to grant yet another one. Time to get hard-hearted here if that is what it takes. It seems as though people down in that area have done whatever they pleased for a long time.

And although the area is much, much nicer than it was a decade or so ago, it still could use some improvement and this would be a good step forward as to start to get some of these properties into compliance.

Um, this man mentions he would like to do this -- put this roof on this porch for practicality. That doesn't count. I'm sure the Board knows it. Practicality is not a reason to claim a hardship. That is -- just doesn't fit.

Um, he has got room to move the shed, and I think that's what should happen. He has a lot of room there. Plenty of room.

How old is this shed? I haven't heard that. Do we have an idea when it was built?

ADAM CUMMINGS: No.

MS. BORGUS: It is pretty ramshackled. I understand from the applicant it may be questionable to move.

ADAM CUMMINGS: Correct.

MS. BORGUS: If it is in that bad a shape, maybe he would be better off if it were taken down and a different one put up that is in the right place. Again, that's the -- that's what you get into when you do foreclosures, when you buy into foreclosures. I believe the answer to the question about the lawyer questioning any of these things, apparently that was not done. The attorney did not catch any of this. And the contractor went ahead with an addition and didn't get a building permit?

ADAM CUMMINGS: The addition was prior to this --

MS. BORGUS: I'm sorry. Not the addition, but the roof.

ADAM CUMMINGS: The porch roof.

MS. BORGUS: The porch roof. He went ahead -- a contractor went out ahead without a building permit in the Town of Chili. I would suggest -- I will suggest whatever attorney and contractor this man is using he doesn't use them again.

ADAM CUMMINGS: We don't have control over that.

MS. BORGUS: I know you don't, but this is for his information. This is unforgivable. This is -- this is 2014. This is Chili. I -- any Town you know you have to have a permit and a lawyer should certainly understand there is all these things wrong with this property. I realize this has nothing to do with the Board, but it is just -- they're -- there ought to be enough good professional people we don't have to hire people that don't do good work and create problems for -- for the applicant and for the Town.

You're on the right track. Let's get it cleaned up. Move the shed. If the shed can't be moved, it falls apart, it is toothpicks, then you build a new one. If you want to have a shed, you get into compliance and put it where it belongs.

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

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

ADAM CUMMINGS: I would like to impose a few conditions. The most obvious is that a building permit -- if a variance was granted, a building permit for the front porch would need to be obtained. I will label it being prior to the recommencement of construction, because you have already started with construction. Um, and then I would like to continue moving on with the next one. So adding on -- also, the -- the back screened porch, obtaining a building permit for that. Is that reasonable, understanding of that?

MR. SCHUETZ: Yes.

ADAM CUMMINGS: Um, also, a building permit for the garage that was converted to a bedroom. Um, we're not going to list all the requirements of that, because frankly I'm not aware of all -- I will just list it as a condition and --

MR. SCHUETZ: I have those.

ADAM CUMMINGS: -- and you can work with the Building Department.

Um, obviously, is there -- Ed (Shero), is there any additional paperwork for him to -- we'll call it close or get rid of that stop work order? Is it -- or is this, in essence, doing that?

ED SHERO: That is basically it, yes. We can make a notation that a flood plain permit is required. In the flood plain area. All those three things you mentioned also require flood plain permits also.

ADAM CUMMINGS: I will mark those down also, flood plain permits would also be required.

Can do all that at one time. He doesn't need additional flood plain permits?

ED SHERO: That's correct.

ADAM CUMMINGS: I would like to have a little more discussion on the shed first. It's a -- putting practicality aside, I -- I agree practicality is in there, but we're looking at it based on our code and land that is on there and the structure. Especially the fact that it can be deemed a substantial variance because it even needs a State variance. The reason why those are in there, um, for the -- for the setbacks is different issues that have come up over the years and those were the Town's decisions to make those restrictions or those -- those limits, those setbacks. Um, so I -- I -- I strongly recommend that -- that that shed be moved to be in compliance or a new shed be put in in a compliant area and that would thus on the property as a whole minimize the amount of variances.

So instead of -- obviously there is existing ones -- even if we don't grant the -- the porch setback, you're still -- this property is still not in compliance with the previous variance, so we actually -- I will refer this to -- or defer this to the side table. If the 6 foot is not granted today, what happens with the existing ones that he is not compliant with?

ED SHERO: You're back to 12.3.

ADAM CUMMINGS: That is what I am saying.

MR. SCHUETZ: I did ask that question when I made the application and was told that all -- all I needed to ask for was the six because that would take care of the other if it was granted. But I said what if it is not granted, because I still need a variance for the 12.3, and was told that this is all I -- needed to be asking for.

ADAM CUMMINGS: Okay. I -- I do not agree with that answer.

MR. SCHUETZ: Well, I didn't agree with the answer. That is why I asked the question.

ADAM CUMMINGS: As Chairman, I would say we would then address that with a modification of -- that's a sticky one because I would hate to vote and deny a variance and then we're right back at square one because then we can't grant a setback variance at 12.3 feet because we just denied a 6 foot one.

I'm not saying that is the way we're voting right now. I just pointing out as the property as a whole, the Town would view that as a pretty good compromise minimizing the amount of variances by eliminating those shed variances, and making it more acceptable to have the other variance for the front porch enclosure or canopy.

MR. SCHUETZ: Well, the shed variance is obviously a smaller issue than the others.

ADAM CUMMINGS: We're just looking at the number of variances at this point.

Because this -- if we granted this, you have already received two variances, which -- I will say no fault of your own, the builder back then constructed it, but now we're adding on three more, so that would technically be five area variances for this property. So not saying one is more than the other, that is a significant amount of variances on a single parcel of land.

MARK MERRY: Or can I ask a question? If Mr. Schuetz decided to table his application, moves the shed and comes back before us just for the front porch, could it potentially lead to a more favorable view from the Board because he has one less variance?

ADAM CUMMINGS: Yes. I would say that.

MARK MERRY: Is that where we're trying to go for?

ADAM CUMMINGS: That is where I am reading that, correct. I'm viewing that as compromise between that and the applicant and Town. I'm not saying we even need to table it to the next meeting. He could either withdraw that variance of the 3 foot and the 39 foot --

MARK MERRY: Or he could do that tonight.

ADAM CUMMINGS: Yes. Or we could vote on them and say no. Or yes. I'm not saying which way we would go. I'm just saying those are scenarios that could play out tonight. After a Board vote. There is lots of routes we can go. Either tonight or wait until a future one to consider your options more. We can certainly do that.

MR. SCHUETZ: Well, I was asking for the shed partly because I'm already applying for a variance, and so there was a question of cost, do I move the shed or do I not, and -- and incur the cost of moving it and, et cetera, or do I ask for a variance because looking around, it seems like that is the norm. If -- of the neighborhood, so -- whether that would be an issue with you, I don't know, when I make the application. You're making it clear that it is an issue from your perspective, so if I end up needing to move the shed, I'll move the shed or dismantle or whatever need be.

ADAM CUMMINGS: I'm saying if -- if the shed in and of itself was the only variance on the property, it would be reasonable since it does have surrounding properties that are similar in character. We'll use that term off the questions that we're evaluating, but since that is not the only one, we're trying to -- our ultimate goal is to minimize or avoid variances for the property.

So -- so in our eyes that would be a minimization of variances.

MR. SCHUETZ: I understand your overarching consideration about minimizing variances on the property. My personal philosophy would be to evaluate the merits of each one, whether or not it is worthy or not worthy and make a decision.

But it if -- if on the other hand your perspective is strong -- has -- has more to do with minimizing the number of variances, my preference certainly is for the porch, not the shed. The cost of whatever moving it is. The porch is an enhancement to the property and it's -- I think it has merit in terms of both the enjoyment of the residents of the property.

I don't think there should be a distinction made between whether anyone owns or is a tenant. I think people deserve to have the same enjoyment of the property.

ADAM CUMMINGS: Correct. I would like to point that out, too, we should not take into

account of whether it is a primary residence, secondary residence or tenant residence. We're looking at the land, the setbacks and those variances, not the use of them.

JAMES WIESNER: Do you plan on voting on them separately?

ADAM CUMMINGS: I was just contemplating that. I think what would help clear things up is, we'll split this single package of variances into two separate issues, one being the shed and one being the porch. I think that's a very good point, Jim (Wiesner).

As long as the applicant is okay with that, I think that would be a cleaner way of doing things. The reason why I explained -- let me explain why I think so, very quickly.

Is -- is it helps minimize your risk. If we think of that application as a whole, and say in the back of our minds we're thinking the porch was okay, but the shed was not, then we would vote on the application as a whole. We might vote both of them down even though we might have considered one over the other.

MR. SCHUETZ: It was my understanding, and maybe I'm wrong about this, but normally when -- if you have multiple questions for variances, I would assume each one would be looked at individually.

ADAM CUMMINGS: Um, as they're written right now, they're actually all in one.

So I am going to split them off.

MR. SCHUETZ: I have a concern if the porch was not granted, not having to come back and make a separate application for the 12.3 feet. I mean I think that would be an unnecessary hardship on my part because I was -- I raised the issue and it was -- was told -- this is how I was told to proceed.

ADAM CUMMINGS: So I'm going to move forward with splitting those off, the shed and the front porch.

JAMES WIESNER: Then the -- each one would have the same set of conditions?

ADAM CUMMINGS: Yes. Yes. Because we still want to make the property compliant so regardless of the outcome.

JAMES WIESNER: What happens if for some reason they both are voted down and like the building -- building permit for the garage is turned into a housing unit? Does that mean that the Town can no longer enforce any of that?

ED SHERO: We'll still enforce that.

JAMES WIESNER: But in other words --

ED SHERO: Just a condition of the variance.

JAMES WIESNER: Some of the other conditions involved with it, such as coming into compliance with the back porch, the rear porch.

ED SHERO: He would be given a certain date to comply and he would still have to comply.

ADAM CUMMINGS: He would still -- Ed (Shero) is saying they'll still go after other enforcement avenues. I will call this a less courtroomish.

MICHAEL JONES: The way we do this when the violation is brought to our attention, they're referred to the Board to see if they can be brought into compliance. If that can't happen, a prosecution will be an issue. We won't prosecute right away. We'll give them a chance to bring it into compliance first.

ADAM CUMMINGS: So yes, it would still be the same conditions of approval for either one of them. And yes, theoretically, we could still split it off and put the shed into a whole another one but less paperwork on my side to combine them and the Town's side. Um, so we're going to do two votes. One for the shed. Or -- and one for the front porch. The -- the canopy on the front porch. Um.

FRED TROTT: So you're doing 500-12 and the another will be 500-6 feet --

ADAM CUMMINGS: You're saying the code references.

FRED TROTT: One vote on this one.

ADAM CUMMINGS: And one on these two. Correct. One vote on code section 500-12(d)1 and one vote on 500-60(d). Correct.

All right. First time, so are you -- your first time here, so is that completely understood?

MR. SCHUETZ: Yep.

ADAM CUMMINGS: I don't have anything else to add. Does anyone else here, the Board?

FRED TROTT: No.

ADAM CUMMINGS: The shed first.

MICHAEL JONES: Mr. Chairman, can I suggest that a SEQR determination be made with respect to all three required -- or I guess as required, but with all three -- so you make your vote with respect to all three applications or all three variances.

ADAM CUMMINGS: Yes.

MICHAEL JONES: That way you don't have to do it each time.

ADAM CUMMINGS: Got you. I was actually going to do it twice, but --

MR. JONES: We'll, three applications or three variance requests.

ADAM CUMMINGS: I was going to do SEQR for the one, for the front porch and then do a SEQR for the two variance requests for the shed.

MICHAEL JONES: That would be perfectly fine, but you could do one for all three if you felt it could be done that way.

ADAM CUMMINGS: I will continue on separating them so it -- to keep it clear for the Board here. First, we'll move on with the shed.

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

Fred Trott made a motion to approve the shed portion of the application with suggested conditions, and Mark Merry seconded the motion. All Board members were in favor of the motion.

DECISION ON THE SHED: Unanimously denied by a vote of 5 no with the following findings of fact having been cited:

1. This variance request was substantial in nature as the desired distance from the side lot line did not only require a local (Town) variance, but also required a variance from New York State. It was determined that the shed could be relocated to another portion of the parcel and meet the requirements of the Town code with minimal investment on the part of the applicant.

ADAM CUMMINGS: That has been denied. We'll have a letter on that. So now, I will go through the process for the front porch.

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

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

DECISION ON THE PORCH: Unanimously approved by a vote of 5 yes with the following conditions:

1. Building permit must be obtained prior to the recommencement of construction.
2. Floodplain permit must be obtained.
3. To bring this property into compliance with Town Code requirements, the necessary permits and approvals for the converted garage space, screened porch at the rear of the house, and the sub-division of the parcel with 38 Charles Avenue must be obtained.

The following finding of fact was cited:

1. The proposed variance involves the construction of a roof canopy above an existing front stoop that has existed for over 15 years on this property and will not result in a further encroachment of Theron Street. There are several other properties in this neighborhood that have similar overhangs and front porch structures.

ADAM CUMMINGS: So that one has been approved.

So with the shed, you do have options still on that. You can relocate it to have it compliant off of -- make sure I have the road name correct -- Theron. And off the side lot, so you can relocate the existing shed. Saves you a few hundred dollars or you can construct a new one because you do have a big enough parcel to put it there. It can still be an amenity that would be nice for whoever is using this parcel.

Once again, continue working with the Building Department to remedy those other ones, because obviously you want to remedy them as quickly as possible to get a tenant in there.

Thank you for your time this evening.

Fred Trott made a motion to approve the 10/28/14 meeting minutes approved, and Mark Merry seconded the motion. All Board members were in favor of the motion.

The meeting ended at 7:55 p.m.