

CHILI ZONING BOARD OF APPEALS
May 15, 2018

A meeting of the Chili Zoning Board was held on May 15, 2018 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, Fred Trott, James Valerio, James Wiesner and Chairperson Adam Cummings.

ALSO PRESENT: Richard Stowe, Town Counsel; Paul Wanzenried, Building Department Manager.

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

ADAM CUMMINGS: Any issues with signs for the Board members? Hearing none, we'll move on.

1. Application of Parkminster Presbyterian Church, owner; c/o Scott McClurg, 2710 Chili Avenue, Rochester, New York 14624 for variance to allow existing dwelling to be 57.3' from front lot line (60' req.) and 15.8' from rear lot line (60' req.) at property located at 8 Cardinal Drive in R-1-20 zone.

Mark Hollenbeck, Scott McClurg, Jim Odmark and Gary Dutton were present to represent the application.

ADAM CUMMINGS: The first three will all be Parkminster. We separated them into three segments since there are a few things going on here at different addresses.

MR. HOLLENBECK: Good evening. My name is Mark Hollenbeck and I'm a partner in the law firm of Gallo Iacovangelo LLP. Ours office is at 180 Canal View Boulevard in Brighton. I'm here tonight representing Parkminster United Presbyterian Church of Rochester.

We made an application earlier this month to allow the church to subdivide their property into three distinct parcels, one for the church at 2710 Chili Avenue and then one for 8 Cardinal Drive, which is listed there and one at 10 Cardinal Drive into three different separate parcels for the purpose of making the subdivision legal and for the purpose of selling at least one of the parsonages, more specifically the one at 8 Cardinal Drive. That application for subdivision was approved unanimously by the Town Board [sic] last week, last Tuesday, subject to obtaining the setback variances from the Zoning Board of Appeals which is what we're applying for this evening.

The creation of that subdivision necessitated the variance request here because of where the lot lines had to be put. I'm here with Scott McClurg and Jim Odmark and they are Trustees of the Church; and Gary Dutton, the licensed land surveyor who prepared the survey map for the property. What I thought I would do is just make one presentation and talk about all three of the parcels if that is all right.

ADAM CUMMINGS: Yep.

MR. HOLLENBECK: The original church -- apparently the building was built around 1952, as well as the house on 10 Cardinal Drive right around that time also.

There was a deed into the church dated 1952 from a private individual for the entire parcel and there is a record at the -- at the Building Department that the Chili Zoning Board approved the church application in 1952 as a church. Unfortunately, there aren't really any other records regarding building permits for the church or the two parsonages at 8 and 10 Cardinal Drive except for a preliminary and final site plan approval for an addition to the church in 1979. So we really don't know the particulars of what was agreed to or allowed at the time. I think because it was not an official legal subdivision, there was not really a focus on any setback issues because they were all owned by the same entity.

So then we know the house at 8 Cardinal Drive was built in 1976 because that house was constructed with the proceeds of a mortgage from First Federal Savings & Loan and a survey map from Delaki (phonetic) and a legal description was created for the lot at Number 8 Cardinal Drive.

At that point, around that time, 1976 or a little bit later, all of those parcels were given tax account numbers by the County of Monroe. And taxed separately since then. And also as I understand it from talking with the -- my clients, that Bill Davis, the former Town Building Inspector, lived across the street at 8 Cardinal Drive and was familiar, intimately familiar with the house construction and church's construction and he visited the site often. And the Church had hired a commercial contractor to survey and expand the church in 1969 and 1980.

The lots have had separate tax account numbers and have been taxed as separate tax parcels for the last 40 years. And the Church would like to legalize the three lots and sell at least

8 Cardinal Drive at this point and put it back on the Town's tax rolls. In summary, we feel that pursuant to the guidelines established by New York State under Section 267B of the Town Law about -- you know, regarding variances, that no undesirable change will be produced in the character of the neighborhood or a detriment to nearby property will not be created by the granting of an area variance.

The benefits sought by the Church can not be achieved by some other method feasible for the Church to pursue other than the variances that we're requesting, that the requested area variances are not entirely substantial, especially the front setbacks on Cardinal Drive.

The proposed area variance will not have an adverse effect or impact on the physical or environmental conditions of the neighborhood. They have been there. These houses have been there for close to 50 years.

And lastly, the setback violations may or may not have been self-created. We just don't know if the variances were, in fact, required when the structures were built and approved since there were no records really going back that far to say definitively.

The structures were put in there at good faith at the time and at that point, since there was no subdivision, there was no setback requirements. Therefore, we would just respectfully request that variance request be approved by the Board this evening. Thank you very much.

ADAM CUMMINGS: So the way I would like to do the decisions for this Board and the Public Hearing part, we'll still maintain these as three parts but not make you say the same story three more times. So thank you for the brief synopsis.

To answer one more question, you said there were three different parcels in terms of tax ID and assessment.

MR. HOLLENBECK: I tried to go back --

ADAM CUMMINGS: Not that taxes were collected because it was the church, but --

MR. HOLLENBECK: Right. Right. Some taxes.

ADAM CUMMINGS: But you're trying to maintain those lines.

MR. HOLLENBECK: Exactly. I went back and I went to the County, and I got a map from 1979 that shows those three parcels.

ADAM CUMMINGS: Okay. Thank you.

So first and foremost, we're going to do the dwelling at 8 Cardinal Drive, which consists of variances for front lot line and rear lot line as listed on the application.

Jim, any questions?

JAMES WIESNER: You said you had an old tax parcel map. Were the lines already drawn in there or are the lines being drawn in now as this is coming to a close?

MR. HOLLENBECK: The lines were drawn on that map. Although, Lot Number 8 has stayed the same on our map here. We had to expand Lot Number 10 from the parcel that was drawn on the map because it didn't meet the size -- lot size of 20,000 square feet minimum.

So in conjunction with my discussions with Paul (Wanzenried) in -- he was one that was instrumental in pointing it out that none of this was, you know, put together from -- and recognized by the Town as a subdivision. Until we did that, we couldn't really go and tell any potential buyers that we have a legitimate subdivided property. So when we did that, we had to reconstruct Number 10. We sort of knew in the very beginning that 10 was not going to be big enough and so that is why we prepared it this way. But Number 8 has been the same since 1979.

ADAM CUMMINGS: And these lines you have depicted up here were laid out by a licensed surveyor. Are you certifying these?

MR. HOLLENBECK: Gary (Dutton) has.

ADAM CUMMINGS: I think that is sufficient. It helps clarifying that that may or may not --

MR. HOLLENBECK: If you want to look at it, I can provide it to you later.

ADAM CUMMINGS: Any other questions?

FRED TROTT: A question about the sidewalk. How does that impact if you sell the property?

MR. HOLLENBECK: Um, what we -- that was also brought up by the Planning Board. What we intend to do is remove some of the sidewalk that connects to the church so that it won't be contiguous, and therefore, in lieu of an easement, which I don't think would make sense. I think they're prepared to remove whatever part is needed to make it not contiguous. And that will be shown on the map that gets filed with the -- with the County, the filed map, as well as any variances that are required and approved.

ADAM CUMMINGS: That was likely a condition of the Planning Board.

MR. HOLLENBECK: It was, yes. That was the only condition of the Planning Board.

ADAM CUMMINGS: Other than getting variances.

MR. HOLLENBECK: Other than getting variances, exactly, right.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

UNIDENTIFIED FEMALE SPEAKER: I would like to buy 8 Cardinal and the sidewalk doesn't bother me.

ADAM CUMMINGS: How do I address that? We can't speak to that at this meeting, but it sounds like you're in support of this subdivision?

UNIDENTIFIED FEMALE SPEAKER: Yes, please.

Fred Trott made a motion to close the Public Hearing portion of this application and James

Wiesner 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: On this first one, those two setbacks, um, I don't have anything else to add. Anything else from the Board before I move on with the next step?

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 an unlisted action with no significant environmental impact, and James Valerio seconded the motion. The Board all voted yes on the motion.

James Wiesner made a motion to approve the application with no conditions, and James Valerio seconded the motion. All Board members were in favor of the motion.

DECISION: Unanimously approved by a vote of 5 yes with no conditions, the following finding of fact was cited:

1. This parcel has been recognized as a separate parcel for decades. The planned subdivision legalizes this fact. Additionally, there are no improvements or changes to the site compared to what has existed on it for decades.
2. Application of Parkminster Presbyterian Church, owner; c/o Scott McClurg, 2710 Chili Avenue, Rochester, New York 14624 for variance to allow existing dwelling to be 59.3' from front lot line (60' req.) and 11.8' from rear lot line (60' req.) at property located at 10 Cardinal Drive in R-1-20 zone.

Mark Hollenbeck, Scott McClurg, Jim Odmark and Gary Dutton were present to represent the application.

ADAM CUMMINGS: This one, obviously we're focusing on 10 Cardinal Drive. That was already explained that one was enlarged to make it -- I will call it developable, but a legal lot that met the requirements of the Town Code.

PAUL WANZENRIED: We're moving that shed, right?

MR. HOLLENBECK: Correct.

PAUL WANZENRIED: Make that a condition going forward.

ADAM CUMMINGS: That will be a condition, yes.

PAUL WANZENRIED: Thank you.

JAMES WIESNER: Where is it moving to?

ADAM CUMMINGS: Not moved.

You said removed, right?

PAUL WANZENRIED: Moved.

ADAM CUMMINGS: Oh, I heard removed.

JAMES WIESNER: You want it in the backyard?

PAUL WANZENRIED: I want it moved 7 feet.

ADAM CUMMINGS: So make it --

PAUL WANZENRIED: Compliant with the front setback.

ADAM CUMMINGS: To be compliant with the front setback. Is that clear?

MR. HOLLENBECK: Timing wise, does that need to be done before the map is filed with the County?

MR. DUTTON: You will note on the map -- not interrupting but we have a note noting that it will be moved in accordance with Town regulations. I think it was possibly our preference not to move it until such time because we're actually going to convey them Parcel 10, but I don't know.

ADAM CUMMINGS: I would prefer it as an accurate map and not a note.

Side table, what is your preference?

JAMES WIESNER: Doesn't meet code if it is still sitting there.

ADAM CUMMINGS: Right.

JAMES WIESNER: That's the reality of it.

ADAM CUMMINGS: So what you're trying to do is have the buyer move it?

UNIDENTIFIED REPRESENTATIVE: We would move it at the time that we have an interested buyer, because at that point, some of the church's playground things that are on that property will have to be relocated and developed in another part of the church property.

PAUL WANZENRIED: That was my next question. What is going on with the playground that this property is going to encompass? Church would still own the property, so...

MR. HOLLENBECK: The intention is not to sell it to anybody right away.

PAUL WANZENRIED: Is it a problem to move the shed because it infringes on the playground?

MR. HOLLENBECK: No.

PAUL WANZENRIED: Then I prefer the shed be moved sooner than later.

MR. HOLLENBECK: That would be fine. Right?

PAUL WANZENRIED: Because this will play out, come down five years, nobody will realize it and it will be forgotten, yada yada.

MR. HOLLENBECK: That can be done.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

ADAM CUMMINGS: Are you looking to buy 10 Cardinal?

UNIDENTIFIED FEMALE SPEAKER: Just 8.

ADAM CUMMINGS: I tried.

Fred Trott made a motion to close the Public Hearing portion of this application and James Wiesner 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: Looking at the two setback variances for this. One condition on this will be the shed to be moved to be compliant with the front setback.

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 an Unlisted action with no significant environmental impact, and James Valerio seconded the motion. The Board all voted yes on the motion.

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

DECISION: Unanimously approved by a vote of 5 yes with the following condition:

1. Shed to be relocated to be compliant with front setback requirement.

The following finding of fact was cited:

1. This parcel has been recognized as a separate parcel for decades. The planned subdivision legalizes this fact. Additionally, there are no improvements or changes to the site compared to what has existed on it for decades. Lastly, the relocation of the shed improves the code compliance related to dimensional requirements.
3. Application of Parkminster Presbyterian Church, owner; c/o Scott McClurg, 2710 Chili Avenue, Rochester, New York 14624 for variance to allow existing 12' x 22' storage shed/garage to be 264 sq. ft. (192 sq. ft. allowed), variance for shed to be 25.6' from front lot line (Cardinal Drive) and placed in the front yard (55' req. for an accessory structure abutting a street and not located in the front yard) at property located at 2710 Chili Avenue in R-1-20 zone.

Mark Hollenbeck, Scott McClurg, Jim Odmark and Gary Dutton were present to represent the application.

ADAM CUMMINGS: Jim, any questions?

JAMES WIESNER: No questions.

MARK MERRY: No questions.

FRED TROTT: No questions.

MR. VALERIO: No questions.

COMMENTS OR QUESTIONS FROM THE AUDIENCE: None.

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

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

ADAM CUMMINGS: I don't have anything else to add on this. This one is the existing church site where all of the structures are -- that are currently there.

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 an Unlisted 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 application with no conditions, and James Valerio seconded the motion. All Board members were in favor of the motion.

DECISION: Unanimously approved by a vote of 5 yes with no conditions, and the following finding of fact was cited:

1. This parcel has been recognized as a separate parcel for decades. The planned subdivision legalizes this fact. Additionally, there are no improvements or changes to the site compared to what has existed on it for decades.
4. Application of Peter Doran, owner; 51 Bellmawr Drive, Rochester, New York 14624 for variance to allow existing 6' high fence in front setback area per plan submitted (4' allowed abutting a street) at property located at 51 Bellmawr Drive in r-1-15 zone.

Peter and Christina Doran were present to represent the application.

MR. DORAN: Good evening. I'm Peter Doran, 51 Bellmawr Drive. Rochester, New York.

It's an existing fence. Any idea how long that fence has been there.

MR. DORAN: 2014 I believe it went up. It was up there before I bought the property. When I bought the property, I had a real estate attorney search everything and everything was supposed to be compliant but apparently it wasn't.

MS. DORAN: There is also --

MR. DORAN: This is my wife, Christina Doran.

MS. DORAN: There is also a shed there. It's fine. We'll move the shed. We're not going to argue that. I would just like to keep the existing fence. I have a six-year-old with a speech impairment and I just feel safer that way.

When we first moved in -- we bought in November -- no December -- and in February, the boys were playing outside and our current six-year-old was almost taken from the yard and by the time we were able to understand what he was saying and the cops got there, they couldn't find anybody around the property or none of our neighbors either saw anything.

MR. DORAN: That was at the 4 foot spot in the front.

ADAM CUMMINGS: Yep.

MS. DORAN: I also collected signatures from my neighbors, you know --

MR. DORAN: We have 30 signatures.

MS. DORAN: Doesn't ---

ADAM CUMMINGS: Did you happened that in to the Town? I don't have that.

MR. DORAN: This here?

ADAM CUMMINGS: I can add that to the document file. That's a lot of signatures.

MR. DORAN: Yeah. Everyone liked what we were doing. Originally when I bought it, it was all overgrown brush and everything back there, so there was a lot of not-so-good activities going on over there because we found used rubbers and alcohol bottles and stuff. So during the nights, things must have been going on previously.

So I said I'm taking it all out. So I cut everything out of there. We have been working on setting it up nice and doing flower beds and stuff. But I couldn't just dose it all out last year when I did it because we have underground cables there. So I had to raise up the dirt to kind of level it off after I chopped everything out of there. So it is still been in the process of making it nice outside the fence, not just trying to hide away from the road or anything like that.

ADAM CUMMINGS: So in terms of the shed, one condition we'll have on there, it's your choice of removing it completely, or relocating it so that it is compliant and --

MS. DORAN: If we do relocate it, where in the property is it okay to put it?

MR. DORAN: They just told us 7.

MS. DORAN: I just want it ---

ADAM CUMMINGS: It should be --

PAUL WANZENRIED: You can relocate it anywhere within the fence line. If you're going to put it back near the easement, you need another easement release. You have you an easement release now for your fence. If you put it back towards the west side, then you will need an easement release for the shed, too. Shouldn't be difficult to obtain.

You just have to come in and do more paperwork, so. So stay 8 feet off of the property lines, which would be the south property line and the north property line. Other than that -- and I would -- Mr. Chairman, I believe the note on there says by a -- 7/11 ---

ADAM CUMMINGS: 7/1.

PAUL WANZENRIED: 7/1. I'm okay with that deadline. It will give them a couple of months or at least a month to work on it.

MS. DORAN: Can I argue the 7/1? I'm sorry. I'm going in for surgery on the 14th of June, and it puts me out for six weeks, and he works 70 plus hours a week. I -- I juggle with all our kids and we're doing an addition.

PAUL WANZENRIED: 8/1?

MS. DORAN: Please.

MR. DORAN: We'll work on moving it as quick as we can.

PAUL WANZENRIED: All go as far as 8/1.

MS. DORAN: Thank you. I would appreciate that.

ADAM CUMMINGS: I will add 8/1. August 1st, 2008.

MS. DORAN: If we can do it prior to that, I will.

MR. DORAN: That shed is sitting on a leveled-off structure so I have to find somebody to come in and do another leveled off structure. But I have been chasing the contractors with the house and work, so, you know, like I say, I'm months behind right now. All this was supposed to be done before the weather got nice.

ADAM CUMMINGS: We'll extend it one more month, August 1st.

MS. DORAN: Thank you.

ADAM CUMMINGS: And that will be a condition of the approval today, is that the shed will be relocated somewhere on the parcel that would be compliant. In terms of the easement release, um, that's just paperwork you do at the Building Department. That really has nothing to do with tonight.

MS. DORAN: Okay.

ADAM CUMMINGS: I don't have any other things.

JAMES WIESNER: So was there a building permit obtained when it first went up back in 2014?

MR. DORAN: From my understanding from the Building Department when I came in, there was a permit, but they didn't finish off the proceedings on it or something. I'm not sure exactly how it played out.

PAUL WANZENRIED: What are you referring to? What is he referring to?

JAMES WIESNER: I'm asking if they got a fence permit originally.

PAUL WANZENRIED: There are no fence permits in Chili.

JAMES WIESNER: There isn't?

PAUL WANZENRIED: There isn't.

JAMES WIESNER: Okay.

PAUL WANZENRIED: The only issue we have with fences are easements.

JAMES WIESNER: So essentially somebody puts up a 6 foot fence, you have no way to police it.

PAUL WANZENRIED: I have no way to police it, but I have no way to permit it either.

JAMES WIESNER: Okay. That answers that question.

ADAM CUMMINGS: But then when he does catch it, he sends it to us to --

JAMES WIESNER: But then it is too late. So you might just as well not have a -- a variance -- or the code.

ADAM CUMMINGS: There is no code. That's the issue.

FRED TROTT: There is a code for height.

ADAM CUMMINGS: But no permit. Let's not worry about that tonight.

JAMES WIESNER: I mean it impacts it, because how can you hold it against somebody when they have already done it, when -- when there is no way they can check on it. Because ---

ADAM CUMMINGS: Right. That is why we're granting a variance right now. When they came in for a pool permit, it was identified that they aren't compliant in terms of the fence, so that is why we're getting a -- getting it code compliant tonight.

JAMES WIESNER: I understand that. It really doesn't matter at this point.

ADAM CUMMINGS: Just on paper. Any questions, Mark (Merry)? Any other questions?

MARK MERRY: Not now. I'm afraid of Paul (Wanzenried). (Laughter.)

ADAM CUMMINGS: And the shed didn't need one because it is too small.

PAUL WANZENRIED: Correct.

ADAM CUMMINGS: Thank you.

So you're still afraid of him? He is way over there.

MARK MERRY: I know. (Laughter.)

FRED TROTT: Is -- it sticks in my mind that somebody on Bellmawr -- I thought this was the property that they came in for a permit to have -- for the 6 feet instead of the 4 feet. Back in 2014. This isn't the property?

PAUL WANZENRIED: We have nothing in -- in our computer acknowledging --

JAMES WIESNER: If they came in, it was for a zoning variance and was denied at that time.

FRED TROTT: That was for the fence, wasn't it?

PAUL WANZENRIED: For this property?

JAMES WIESNER: Yes.

MR. DORAN: My understanding was she didn't show up to the meeting so it was denied, not because they didn't go through it.

MS. DORAN: We hear different stories. That is what we have been told here at the Town. But according to our neighbors, everybody on that list says that they were approved at the -- the previous homeowner never would have put it up if it hadn't been approved because they had argued to go even higher than 6 feet, because the backyard kind of dips down in the backyard. So like technically a 6 foot fence is like a 4 foot fence in the backyard. So they asked to see if it could be higher and the -- somebody came back and said no, it had to be 6 feet and then when it got to a certain side of the property, which is on Westway, it had to dip down to the 4 feet. That's according to our neighbors, what we have heard.

JAMES WIESNER: Because I went back and looked at meeting minutes and everything because I wanted to see what was said and done previously. There was -- it was the -- the

June 2014 or July 2014 meeting.

ADAM CUMMINGS: May 20th, 2014. It was denied by a vote of 3 to 1.

JAMES WIESNER: I suspect --

ADAM CUMMINGS: I don't have the minutes here. I'm going off the decision sheet.

JAMES WIESNER: They may have misunderstood what was being said and they thought that -- the -- they complied with the front front yard but not the side front yard.

ADAM CUMMINGS: Which is why --

FRED TROTT: That sticks in my mind that was the conversation.

PAUL WANZENRIED: Because 90 percent of the community doesn't understand when they live on a corner lot, they have two fronts.

ADAM CUMMINGS: Right.

PAUL WANZENRIED: There is a -- there is your main front and there is a secondary front, but they're still fronts as far as the zoning body goes. You still have front setbacks. Second one -- second. These people bought into this. They aren't the culprit. Okay? Just -- just to make to make that clear.

JAMES WIESNER: I totally agree. We can't police it anyway, so.

ADAM CUMMINGS: With this application, Rich (Stowe), correct me if I am wrong, but four -- well, almost four years have passed since that last one was in, so the application can come back in. It's not that we denied it forever, correct? Well, it needs to be substantially different, doesn't it?

RICHARD STOWE: Right.

MR. DORAN: Going back some years back, the house was also a distressed property. So we're training to finish the rebuild on it and trying to bring it back up to the top of the neighborhood. We have an addition going on. We just did a complete tear-off roof. We're still working on the yard and everything.

MS. DORAN: We're turning it into a home for our family and a safe place for our kids to play in the yard.

ADAM CUMMINGS: No. We understand that. This is where our Board is in a precarious spot, because we're objectively evaluating this, and as the denial stood, it stands with the land, not who the specific property owner is. I just want to point that out to both of you, that the position we're in tonight, is your story is spot on. We understand the need for it. Now we have to figure out if it's the correct responsibility of this Board.

MR. DORAN: Right. I just want to point out, too, the previous owners didn't take care of the property the way we're taking care of it either.

ADAM CUMMINGS: Counsel, are we even allowed to hear this tonight? From your --

RICHARD STOWE: Because ---

ADAM CUMMINGS: Because it was denied before, and it's the same section of fence.

RICHARD STOWE: This is a new application before the Board.

ADAM CUMMINGS: Okay.

RICHARD STOWE: This is not the same application.

ADAM CUMMINGS: Okay. Perfect.

And I do think the situation has changed. As was pointed out, privacy and security is one thing. We do need to take into consideration that I don't believe is fully considered with the Town Code. It's my own opinion stating that. Any other questions?

FRED TROTT: Well, why is it a new application? I mean, because it is the same fence.

RICHARD STOWE: A, it's a different property owner.

FRED TROTT: I realize that, but if it was denied then, what changes it is just a different --

PAUL WANZENRIED: It was only denied because nobody showed up to say anything. It wasn't denied -- it was denied by default, not by a -- a discussion or --

ADAM CUMMINGS: We did vote, but -- there was a Board discussion whether to move forward with it or not or whether to approve it or not. There was no presentation by an applicant.

JAMES WIESNER: They were here.

FRED TROTT: They were here.

ADAM CUMMINGS: I know it was -- Bob Mulcahy it says was absent.

JAMES WIESNER: I went back and read it.

ADAM CUMMINGS: I would take Counsel's advice, if it's a new applicant, it's a new application.

JAMES WIESNER: Whatever you want to do.

FRED TROTT: I have nothing further:

COMMENTS OR QUESTIONS FROM THE AUDIENCE: None.

James Valerio made a motion to close the Public Hearing portion of this application and James Wiesner 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: There is that one condition of approval that the shed needs to be relocated to be compliant with the setback requirements if this was approved. Any other discussions by the Board? Not hearing any...

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.

Mark Merry made a motion to approve the application with the following condition, and Fred Trott seconded the motion. 4 yes to 1 no (Fred Trott).

DECISION: Approved by a vote of 4 yes to 1 no (Fred Trott) with the following condition:

1. Shed to be relocated to be compliant with the setback requirements by 8/1/18.

The following finding of fact was cited:

1. The variance requested will not significantly alter the appearance of the neighborhood. The applicant provided 30 signatures of neighbors stating no objection to the 6' high fence.
5. Application of Oliver Stymus, owner; 1015 Reed Road, Scottsville, New York 14546 for variance to erect a 24' x 28' detached garage to be 78' from front lot line (100' req.) and 27' from side lot line (50' req.) at property located at 1015 Reed Road in A.C. zone.

Oliver Stymus and Dawn Stymus were present to represent application.

MR. STYMUS: Gentlemen of the Board. Thank you very much for hearing us tonight. My name is Oliver Stymus. This is my wife, Dawn Stymus. We moved in the property back in August of last year, and we have always loved the country. I grew up in the country. I just love it up there.

What my hardship is, what we're looking at is to put just a small unattached garage right -- where you can see where the turnaround of the driveway is. Our garage right now is like a car-and-half garage. When we bought the property, we bought -- the person that owned it there -- we got the zero-turn. We got about 2 1/2 acres there we mow and stuff over there. And in order to put anything in the backyard, we have the septic tank, leech field and all that is in the backyard.

If you look towards the property, there is a creek that goes down through there, all low land and it just -- I got pictures. When it rains, it just completely floods down there. What we're looking at, if we -- we know we already have the turnaround. I could use that for partial, like for the driveway to pull in. I could put my mowers and the rototiller and snowblower and stuff in there. That way my wife could use the garage in the wintertime, and I could have the other entrance for my truck that I could put in the garage in the wintertime there.

If there any other way we could have done it, I would have loved to. I have talked to Paul (Wanzenried) and we tried to come up with some different plans and stuff over there. Um, I got pictures. It's not a very big barn. We're really going to go 24 by 24. That's really what we're doing there.

ADAM CUMMINGS: 24 by 24 or 24 by 28?

MR. STYMUS: I applied for 24 by 28, but Paul (Wanzenried) told me we need 8 foot from the garage over and stuff. It's not a very big pole barn -- not a pole barn. It's just an attached garage.

ADAM CUMMINGS: So this is the package and this is neighboring properties?

MR. STYMUS: Yes. This is a couple of the other like -- over on Morgan Road, they put -- this --

ADAM CUMMINGS: This is Daniel Boon's property. This is the glass place.

MR. STYMUS: Yep. That's -- I wish I could have got a better picture. I shot through the screen when it rained.

ADAM CUMMINGS: I will pass it to the Board and then we'll put it up on the projector. That is what you're proposing.

MR. STYMUS: This is the proposed barn and just some pictures what it looks like.

ADAM CUMMINGS: While they're looking at that, can you put that on that projector right over the top?

MR. STYMUS: We're like over 300 yards from our nearest neighbors and stuff. As far as -- I know we moved into an agricultural area and people have barns and stuff.

ADAM CUMMINGS: Fred (Trott) will take care of putting it there if you want to go back to the podium. I'm just -- as a safeguard taking you away from the cables.

MS. STYMUS: I would also like to say a few words if that is okay.

ADAM CUMMINGS: Okay.

MS. STYMUS: I went by that property for years. I grew up two miles from there, since the 1960s. I always admired the property. I believe it was an omen. The woman who lived there before, her husband died. She no longer was going to stay in the property. We happened to be at the right place at the right time. Because we acquired the zero-turn, we could not use our little tractor anymore.

I believe the person that is opposing this tonight has too much sentimental value in the

property. His father built the place. His mother died in the house. His sister lived there another 15 years later and he still feels he has too deep a root in there and if you even cut a branch, he is right there. He doesn't even own anymore. We're not trying to ruin the property. We love the ambience of seeing the wildlife and everything there.

ADAM CUMMINGS: Ma'am, I would like to interrupt very quickly. Let's not make tonight personal at all.

MS. STYMUS: I'm just trying to tell you we love the property and we're trying to make it nice.

ADAM CUMMINGS: I want to make sure I'm clear. We're here considering a detached garage and its proximity to the property lines.

MS. STYMUS: Yep.

ADAM CUMMINGS: That's enough. I enjoyed the story. I'm happy you had the destiny to obtain it and you own the property.

MR. STYMUS: Yes, we do.

ADAM CUMMINGS: So you control the property, and -- in terms of this, this is the shed. What you're looking for is 24 by 24 foot shed. How -- does that change the requirements you need -- it wouldn't, because you're just adding in more space behind it, so you would still be at the same point from the front lot line?

MR. STYMUS: Yes.

ADAM CUMMINGS: That clears it up for me.

MR. STYMUS: There are no environment things to it there.

ADAM CUMMINGS: And the next one is you covered it already. Did you evaluate -- or you said that evaluated other locations on your property, further to the south is where the creek goes, which floods, which is what the photo showed, or attempted to show. The screen got in the way.

But that one is -- the only place you could attempt to get it within it. But as we have seen on Reed Road and Morgan Road and a couple of the ones in the AC zone, there really is no way to get it within the setback requirements that are stated for any detached structures.

MR. STYMUS: We have the leech field and the septic tank right in the backyard where you possibly could have put it there, but you don't want to build a leech field with ---

ADAM CUMMINGS: You can't do that.

MR. STYMUS: I wouldn't want to anyway.

ADAM CUMMINGS: You would have bigger issues at that point.

MR. STYMUS: It would be the same color as the house. It will not be --

FRED TROTT: You want one of those up?

ADAM CUMMINGS: Yes. I have asked him to put the picture up of one of the nearby properties that has -- has the detached structure.

FRED TROTT: Is this -- I get a little confused. This is an AC zone?

ADAM CUMMINGS: Yes.

FRED TROTT: So I thought they didn't need to come to get a permit?

ADAM CUMMINGS: They don't for the size of the garage. They do for the setbacks. Oh, we have a question.

PAUL WANZENRIED: It's because they're using it as a garage. It's not an ag building. It's not an ag building. It has to be -- it has to come before you. It's part of the garage.

FRED TROTT: Did that answer the question?

PAUL WANZENRIED: Is the garage square footage above the normal square footage? No. The required square footage, no.

FRED TROTT: But the one picture is not used for agriculture?

PAUL WANZENRIED: Which one is pictured?

FRED TROTT: Boon & Sons.

ADAM CUMMINGS: The red and brown one up there.

PAUL WANZENRIED: Then you need to read 500-27 -- I will let you know what it is. 500-27.

FRED TROTT: I just --

PAUL WANZENRIED: 500-27(B)10. He also has -- he is allowed 5 percent of the total acreage, too. Which is why he can do that.

FRED TROTT: Okay.

That's one of our newer laws from what I recall.

PAUL WANZENRIED: It's actually -- that property is what stipulated that law, so.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

BILL STEIMER, 1060 Reed Road

MR. STEIMER: Good evening. My name is Bill Steimer, and this is my wife Audrey, and we are at 1060 Reed Road, and we have the farm that this lot was piece-mealed out of. I'm going to try to be factual and not get into social discussions.

ADAM CUMMINGS: Thank you.

MR. STEIMER: I'm not an excellent presenter, so I have this written down. Could I present a copy to each of you?

ADAM CUMMINGS: Yes. If you have a copy.

MR. STEIMER: And side table, as well?

ADAM CUMMINGS: Certainly.

PAUL WANZENRIED: Go ahead.

MR. STEIMER: I start out with a quick overview here. In order to operate our farm more efficiently, 41 years ago we built the house at 1015 Reed Road as a second house on the farm, typically considered a tenant house for the farm operation. And to do that, we were before this Board at this time. Different Board makeup, but same Board.

Eventually my sister and her husband bought the house, and then with her husband's passing, she decided to sell the property last year. And Oliver and Dawn Stymus purchased the house. And they have been good neighbors and are really taking care of the property. So we feel badly about being in front of this Board to oppose their request for the variance. But we just have too many reasons not to do that. We'll try and explain them as well as we can, and if there is any question along the way, if you want more detail or a clearer explanation, we'll try to do that.

The first thing I did was I took the -- their application and broke down starting on page 2, Section 3 of the variance request form. And I retyped the question asked of them, and then put in what I thought was the right answer because we helped build that house. We put in the septic system. We designed the lot. We farm very close to the house now, and figure on continuing to do that.

So question one asked, "Can the benefit sought by the applicant be achieved by other feasible means?"

And our answer is yes, by adding onto the rear of the garage, offsetting it slightly to the south, so as not to need a side setback variance. Oliver and I discussed this as being a solution to their storage problem prior to them purchasing the property. This location would be north of the septic and leech field system and have no interference with it.

Question 2. "Will granting the variance produce an undesirable change in the character of the neighborhood or a detriment to nearby properties?"

This is the only answer that is somewhat judgmental. But our answer is yes, siting a pole barn in front of a house is basically undesirable. It will greatly reduce the attractiveness of the house setting and will potentially reduce the resale value of the property and lessen the attractiveness of the neighborhood overall.

Question 3. "Is the requested variance substantial?"

We were more factual. The requested change in side setback is substantial. A reduction of the required 50 foot to only 27 feet is a 46 percent reduction from what is required.

Question 4. "Will the variance have any adverse physical or environmental effect on neighborhood or district?"

And this, the word "district" on this form refers to a zoning district, not an Ag District. I'm going to be touching on both of those. The answer is yes, due to the reduction of the buffer to the farm operation. The farmland at the lot line is actively farmed. The setback reduction brings farm equipment and associated noise, dust, chemicals, fertilizer and lime applications much closer to the building area than currently situated.

Additionally, the entire area, including the 1015 Reed Road parcel, is part of the Western Monroe County Agricultural District, which falls under the jurisdiction of the Monroe County Farmland Protection Board and ultimately New York State Department of Ag & Markets. For this reason, if a building permit is issued as a result of a yes vote for this variance, an Agricultural Impact Statement will have to be submitted to the Monroe County Farmland Protection Board. That Board will then make a determination of any possible negative effects or limitations on the adjoining agricultural operation. If arbitration is needed from that point, it is carried out through the State Ag & Markets.

Does this Board have a substantial background on Agricultural Districts or do I need to explain some of that?

ADAM CUMMINGS: No. I can take care of that.

MR. STEIMER: Okay. Question 5. "Was the alleged difficulty self-created? And we determined that it certainly was. Because I personally reviewed the challenges related to additional building on this property with Mr. Stymus well before he made the decision to purchase the property. I thoroughly explained to him the building limitations per code. So they went into buying this property knowing that there was a legal challenge.

That concludes our rebuttals to the questions on variance.

There is a third page, though, which is important to us, not necessarily to you, but what you do will certainly have an impact on what happens to us.

In addition to the items addressed in the request for variance form, we have an equally important, probably greater concern.

A little background. Within our current Town of Chili Comprehensive Plan, our Open Space Plan, and our Farmland Protection Plan, we have numerous references and in some cases detail as how to encourage and protect farmland and farm operations. Within these documents -- and I brought those along tonight, with references to sections and paragraphs in there, if you're interested in that detail -- but within these documents, placing farmland in agricultural conservation easements is the preferred and also the most permanent method to ensure farmland exists into the future. And not being from an agricultural background, that is kind of fluffy. What that comes down to, do you want to have your kids have food at Wegmans when they get older, to a certain point. We have to do something to preserve some farmland, somehow.

So our family and David Robinson of 1025 Reed Road are -- are -- who is directly across from our farm and the Stymuses, as well, we are currently working with the Genesee Land Trust and are in the process of applying to New York State for an agricultural conservation easement

on our lands. Supervisor Dunning will be asking the Town Board to adopt a resolution endorsing our easement. This does not mean that we will receive such an easement. It just means that we will be in the running for it. There is stiff competition for the program. Land and farm operations applying are ranked against each other.

Herein lies our concern. There are many criteria that the State uses to compare the value of the farms and the land that is involved. It's about equal as far as stipulations for the land and the type of farm operation and how it is managed. But there are many of both.

One of the criteria, though, is how will land boundaries -- what kind of situation the land boundaries or the farmland are, and do they follow the code of the local municipality that they're within. For example, are there variances. These are considered impediments or a hindrance if there is such a thing. Their objective is to protect farmland that has the greatest buffer and subsequently the least chance for interference of farmland operations long-term.

Because this conservation -- agricultural conservation easement is in perpetuity. So we can't measure it.

Therefore, a yes vote for this side setback variance could reduce our chances and possibly eliminate our chance for a New York State agricultural conservation easement being directed to our land.

If we were to be selected, by the State, the Steimer and Robinson properties would be the first ag conservation easement farm in the Town of Chili. Additionally, our application will be endorsed by the Monroe County Soil and Water Conservation District and the Monroe County Farmland Protection Board.

Can I answer any questions?

ADAM CUMMINGS: I'll approach those questions later on at the Board. I would like to keep the Public Hearing going.

MR. STEIMER: Thank you.

ADAM CUMMINGS: Thank you for your notes.

DOROTHY BORGUS, 31 Stuart Road.

MS. BORGUS: Having a farm myself, I understand the Steimer's problem and their concerns. And also having worked on the Comprehensive Master Plan and doing it presently working on the update, I know that this agricultural conservation easement plan is something that the -- the Town favors.

As Mr. Steimer said, it's all in -- for the purpose of protecting farmland going forward. It's a very good plan if your farm fits it and if you can apply and be chosen, it's a wonderful thing not only for the Town, but all of the neighbors, as well. You keep what you've got in farmland. That's important. There is not much farmland in -- in Chili that -- I think most of the farmers want to keep it that way. This is a good plan. If this jeopardizes their chance to get into this program, it -- it certainly harms the whole of Chili. And it sounds like it would be a serious impediment.

Mr. and Mrs. Stymus have said that they have a hardship. I believe Mr. Stymus said that. Well, I'm sorry, I don't see it that way. If Mr. Steimer talked this over personally with these people before they bought the property and explained the limitations, I don't see how he can claim a hardship now a year plus later.

The problem with that picture that is shown on the -- on the screen behind you is that that barn is not in front of the house. That is -- that is a farm building. I mean, it's obvious there is a trailer outside. I must be meant for horses. I don't know where it is. It is supposed to be in the neighborhood. But obviously that is a farm building. We are talking about a garage for lawn mowers that doesn't have to be on a driveway. If these people have 2 1/2 acres they own, they have certainly got to have someplace they can put a 24 by 24 outbuilding. Obviously that building material on the other picture that was up, I can't -- I don't -- I haven't seen this house. I can't imagine that that is what that house is made of. So you will have a barn, a garage, whatever you want to call it, in front of a house, a ranch house that doesn't match the house right next to it. That doesn't do the Town any good at all. It's one of those mismatches every time you go by it, you think how could anybody have approved that? How could anybody have built it and not made it look at the same?

I just don't see hardship here at all. I'm sorry. If this was explained to these people, what the limitations of this piece of property were, it's too bad now. It's just too bad. And I really believe that people that haven't lived in Chili -- maybe these people lived here before, I don't know, but they seem to think with this Board they can come in with any kind of an idea and if they talk for five minutes, this Board will just roll over and let them have anything. That is not the way this Board works. At least it shouldn't work that way. We have a code for a reason. And an automatic shouldn't be expected when you come in here and want to be exempted from the code.

I think the Robinsons if -- the Steimers have a legitimate concern about this ruining their chances to get into the agricultural conservation easement program, and that would be a huge loss.

ADAM CUMMINGS: As applicants, you will still have your time to come to the podium. You don't have to follow my advice, but I wouldn't recommend jumping in and talking during the public comment period.

JOHN STEELE

MR. STEELE: John Steele. I own the land south of their lot, so they're -- they border my

property. I can't speak to anything that Bill (Steimer) articulated. I'm not arguing that.

I personally don't have an issue with another barn going up. That's kind of the nature of our overall aesthetics. So that's all I have to say. The watershed and the setbacks and all that, is -- I'm not commenting on that. Just my opinion as a neighbor.

ADAM CUMMINGS: All right. Thank you. Anything else?

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: So to cover a few things, we have a little bit of material. This parcel is located within a --

PAUL WANZENRIED: Didn't you just tell the Stymuses they could rebuttal?

ADAM CUMMINGS: That's right.

PAUL WANZENRIED: Isn't that part of the Public Hearing then?

ADAM CUMMINGS: That's -- well, I was going to let them come back to the podium and speak.

MR. STYMUS: Before or after the vote?

ADAM CUMMINGS: Should I reopen it? I just didn't want confrontation.

MR. VALERIO: We usually ask questions afterwards.

ADAM CUMMINGS: I'm planning on it. I'm planning on it.

RICHARD STOWE: As long as it is part of the record.

ADAM CUMMINGS: I'm planning on discussion with the applicants now in considering the public input that was brought in.

PAUL WANZENRIED: Okay.

ADAM CUMMINGS: So now I would entertain you coming back to the podium, because there will --

MR. STYMUS: I'm all for agricultural conservation. We love the farmland. I would love to never have anybody build around there and stuff.

As far as like the Boons there, what they did, they built that to put their RV in and -- the one behind it. They have a big bus RV they park in there. They have a little truck they park in there. But that is regardless. I just want to let you know it's not for agricultural.

ADAM CUMMINGS: And to point out with that parcel up there, up the hill next to the barn is another barn.

I have a couple of questions I would like to ask you. So it was clear -- well, it is clear, you own the land that is here. It's 2 1/2 acres. You have got the stream that goes across there, and did you build -- this is going to be a silly question. Did you build the house? It is the same tenant house that was part --

MR. STYMUS: That house was built in 1978.

ADAM CUMMINGS: It's the same house.

MR. STEIMER: Same house.

ADAM CUMMINGS: So it's been a residence at that time.

MR. STEIMER: It was built in '77.

ADAM CUMMINGS: Right. 41 years ago.

MR. STYMUS: Right. I like I said. We love the area over there. We try to be real good neighbors. We love the farms out back there. Bill (Steimer) works hard out there. Always doing stuff out there. He really keeps his place nice.

John (Steel) I thank him for being a good neighbor, too. He helps us out.

But like I said, we are just putting that up over there. When we first moved in, before we bought the land, we did semi-talk about it a little bit, but at the time we didn't -- I wasn't even thinking about putting a pole barn up. We did talk about maybe putting a garage or something, but at the time -- and I just let it slide there for a while. It was wintertime. We just moved in. And now it is just -- we would just like to have the room and stuff there. I figured that would be the most practical spot to be able to put it there because you already have the driveway sitting there. You could always pull your car in. I don't have to park my car, drive through the back of the lawn through leech field in order to get back into a barn -- a little garage out there.

ADAM CUMMINGS: And the garage is on the northwest corner so if you extended the garage out from your lot line, you probably would need a variance for that also for a side setback so you would still be in front of us.

MR. STEIMER: The same with the back there. It would be -- it is not going to be like it is going -- aesthetics on it is going to be -- our house is white. I just painted it last year. This is going to be white. Like I said, if you look at the picture there, it will probably be 9 or 10 feet. The walls are high and then just a 12 by 4 thing. So 14 foot high. If it is an eyesore for the neighbors and stuff, I told them before, I would be more than happy to plant some pine trees or something over. We're over 300 yards away from the neighborhood up the road there.

ADAM CUMMINGS: And -- so in a since you are in an Ag District. He brought up the agricultural districts and protection of agricultural operations is paramount in New York State. Your land is not encroaching on that and you're not looking to go hinder any of those operations.

MR. STYMUS: No. Absolutely not.

ADAM CUMMINGS: You're in support of them, because an easement would, in fact,

keep you secluded and rural in nature and no one else would be around.

MR. STYMUS: Absolutely. Like I said, I'm not doing this just to put up something to be an eyesore. That is the least thing I would ever want in my life to do there. We just need it for the room and stuff over there.

Like I said, if we do it, it will be white. It will be the same color as the house, and -- you know, like I said, it's -- any questions you want to ask me, I will -- I will be working with Paul (Wanzenried) with everything we can on here, the side setbacks and everything we can on it.

ADAM CUMMINGS: To your knowledge, is there an existing buffer to the agricultural operations that happen outside of this parcel?

MR. STYMUS: I'm not sure what you mean by that.

ADAM CUMMINGS: Have you ever seen it on a survey plat or the map for your property that you have a buffer? Or is it just you're not looking to go any further than what you are putting off of -- our setbacks is the buffer?

MR. STYMUS: Right.

ADAM CUMMINGS: You're just asking for the minimum one and speculating if you put that attached garage, your buffer would be less.

MR. STYMUS: Yes. The -- the property line goes in a radius and comes back. It goes towards the house and gets narrower and narrower and narrower.

MR. VALERIO: I have a question. The neighbor talked about their application for the agricultural plan and they don't want anything out of code. But this shows that -- when I see here, the side of the house is already under 50 feet, the side lot.

MR. STYMUS: Yes.

MR. VALERIO: That is kind of a moot point because something is already out of code, an existing structure. Is that correct?

ADAM CUMMINGS: That's correct.

MR. STYMUS: Must have had a variance at one time, I assume, when they built that.

ADAM CUMMINGS: That's -- I don't have any record a variance was granted.

Paul (Wanzenried), do you have any record that a variance was granted? It's a strange subdivision, so I suspect that may have fallen through the cracks.

PAUL WANZENRIED: Ask the man who owned it -- or his family.

MR. STEIMER: I can give you any amount of history on any of that.

ADAM CUMMINGS: So was a variance granted?

MR. STEIMER: This was before your time, but I'll say in recent history, um, in the AC District, there was a 20-acre minimum lot size. When we worked on the Comprehensive Plan in 1991, there was enough problems at that point in time that came before this Board and the Town that we studied that and it took us until 1995 to reduce that 20-acre lot to a 5-acre lot. So we actually obtained a variance in '77 to build a tenant house on the farm without subdividing the farm.

And then again, when my dad was very elderly and sold -- wanted to sell the house to my sister and her husband, we had to come back and obtain a legal split or subdivision and we came before this same Board to -- for an undersized lot because we didn't want to take any more land out of ag production.

ADAM CUMMINGS: Yep. And the --

MR. STEIMER: The house is beautifully situated on 2.4 acres, so that is why we came again before this Board. That was legalized. The vote was yes. There was site inspections by some Board members and everybody agreed that that was the best thing to do so we didn't consume any more farmland.

ADAM CUMMINGS: Okay. Thank you.

MR. STEIMER: So that happened in 2001. So...

ADAM CUMMINGS: So it never was given a setback variance. It was given a variance for an undersized lot below the five acres.

MR. STEIMER: There is no setback variance as far as measurement had -- there -- there are actually two maps and now I'm not 100 percent sure that the one I see tonight is the correct one. Both --

ADAM CUMMINGS: That was a good history.

MR. STEIMER: Both surveys were by Jim Missel & Associates. So at that -- the one that we should be using has a 50 foot setback and the closest point is the northwest corner of the garage to that property line.

Now, Mr. -- Mr. Valerio, you had a question, if I may try to answer that, so it's more understandable. Oliver and I did have a chat and a walk around and thoroughly looked at the back of the garage and I did some math and there is room for an addition on that garage. Depends what size the addition is. But room for substantial addition on the garage without interfering with the septic and the leech fields and not having to have a variance for side setback. Or rear. Because that's an arc.

MR. VALERIO: If it is already in violation, how is that possible?

MR. STEIMER: It -- you would have -- you would have to offset, though, the -- what should I call it?

MR. VALERIO: You can't go north.

MR. STEIMER: No. You -- you're going basically west. The house sits at an angle. It faces -- it's on curvature of the road. So when we talk about directions, it's not a clean direction. But basically, there is room on the back side of the garage which basically flows west for an addition. And depending on how far you brought it in from the north edge of the garage, you

wouldn't need a variance.

MR. STYMUS: Pitch the roof would be tough going back there, because you would have to have it so water and stuff could flow off the back. It would still probably need a variance, because the land arcs around on the side there. So even if I come out behind the garage, you're still going to need a variance and it will be even smaller yet coming from the radius to the point of the -- the back side of the garage, the west side of the garage. If I even could build back there.

ADAM CUMMINGS: Thank you for the explanation, sir.

I just wanted to also point out, the point was made about farm equipment. I think you already know since you live in that area, you will have noise, dust, chemicals, fertilizer, lime application. That will always continue. You can't control that.

MR. STYMUS: Right.

ADAM CUMMINGS: As long as you understand that.

MR. STYMUS: I understand that.

ADAM CUMMINGS: I just wanted to make sure that that was pointed out.

Any other questions from the Board? And -- oh, and I did want to clear up one thing. The word "hardship" has come up. We do weigh out those five questions that were discussed earlier. We don't have to answer "yes" or "no" for all of them. We weigh things with our decision up here at this Board. And so -- just to clear it up, it is a self-created hardship because you bought the property. That is just 1/5 of -- not 1/5, but it is one of the five questions we're considering and I just wanted to make sure that that clarification was on there. We're not disputing whether it's a hardship or not a hardship. Ms. Borgus did a good job explaining that, but I just wanted to make sure -- you said it was a hardship.

MR. STYMUS: Sorry.

ADAM CUMMINGS: I just wanted to make that point.

FRED TROTT: I kind of have a question. I don't know if we can ---

ADAM CUMMINGS: Go ahead.

FRED TROTT: You said that the Farmland Overlay District or whatever that you're looking to go get approval from the County --

MR. STEIMER: The Agricultural District.

ADAM CUMMINGS: I can answer this one. The Ag District is already formed. The -- the lands are -- are already identified by the County which is submitted to the State and controlled by the State Ag & Markets. Those boundaries are already in. Him and Mr. Robinson are submitting in lands or those bounded lands to submit for an easement in perpetuity to always remain agricultural that surround this parcel for this applicant.

FRED TROTT: He was saying that the -- the buffer is affected that would affect this easement?

ADAM CUMMINGS: Yes. But it's not a measured buffer.

FRED TROTT: That's my question. It's a measured buffer that says you have to be within 50 feet of --

MR. STEIMER: No.

FRED TROTT: That was my question. No other questions.

JAMES WIESNER: So discussion about variances impacting this easement application, variances on the property itself? Or variances -- kind of hard to believe it's affected by variances on surrounding property because you can't really control that.

ADAM CUMMINGS: This -- I'm very hopeful that the easement application goes through, but I find it hard to believe -- this is my own opinion that 2 1/2 acres is going to disrupt hundreds of acres that are going into an assessment. I still hope the application goes through and it would actually be to their benefit and that residential parcel, to be protected so there would be no other ones. It would remain as it has for 41 years. It would still be a residential use at that point. But in terms of the application, um, there is no formula here to say how it would impact. It's a lot of speculation of how it would impact it.

JAMES WIESNER: That is kind of the way I was interpreting it, as well.

MR. VALERIO: That's what I was trying to say, how ---

ADAM CUMMINGS: Yes. Side table?

RICHARD STOWE: There was a statement made about the relationship between this application and whether an Ag Land Use Data Form was required and how that may affect other jurisdictions weighing in. And it's my understanding that if we're talking about a use variance, to change the character of the use, that's accurate. I'm -- I'm not reading this as required for area variances on lands not asked to be part of the easement area. So there is a distinction between use and area variances and the land data.

ADAM CUMMINGS: The way I'm reading the statement is the building permit is issued as a result of a yes vote for this variance and Agricultural Impact Statement would have to be submitted to the farmland protection. I read that as the building permit application would require that and I'm not aware of that require --

RICHARD STOWE: There was a statement made about having to go to arbitration and be part of a different process and my understanding is that that is not required for an area variance.

ADAM CUMMINGS: Correct.

RICHARD STOWE: I just wanted to be sure the Board was clear on that. That is all.

Thank you for the clarification. It was my understanding it would be for a site plan issue or a use variance in terms of this Zoning Board.

RICHARD STOWE: Right. Correct.

ADAM CUMMINGS: Yes, sir.

MR. STEIMER: The -- the variance does not cause the Agricultural Impact Statement to be necessary. It's the building.

ADAM CUMMINGS: Right. But at this Board tonight, we're strictly on the variances, so therefore, the Ag Data Statement doesn't apply to us.

MR. STEIMER: This is kind of a problem of do we have the cart or the horse. Because if they deny -- if the County Farmland Protection Board denies this from happening, then it's a moot point to have the variance. So we don't know what's going to happen. We just have to follow the stipulations that if there is a structure erected within 500 feet of the edge of an operating farm that's part of an Agricultural District in New York State, there has to be an Ag Impact Statement made out. Well, how they treat that, we don't know.

FRED TROTT: But you already have a structure within 500 feet of an Ag District.

MR. STEIMER: New. New construction, Fred (Trott).

ADAM CUMMINGS: I am in agreement with Counsel, and I would like to move forward tonight that that is not something that is relevant to us and our Board decision tonight. If that comes up later on, we'll see, but that 500 foot, that such a thing that goes in, then it would be part of --

MR. STEIMER: It's Paul (Wanzenried)'s problem.

ADAM CUMMINGS: Yes. It's Paul (Wanzenried)'s problem. I just want to leave it at that.

MR. STEIMER: I just wanted to make sure it was understood what happens, even if you provide the variance, and then there is a further question.

ADAM CUMMINGS: Right. And that 500 foot by General Municipal Law, the County would get into the review of things and there is a lot of other things that would happen if that is necessary at that point.

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 Valerio seconded the motion. The Board all voted yes on the motion.

ADAM CUMMINGS: One condition of approval goes without saying, you would have to have a building permit from the Building Department prior to construction. The reason you're here tonight is because he denied your building permit so you have to come in for a variance.

Fred Trott made a motion to approve the application with the following condition, and James Wiesner seconded the motion. The Board voted 4 yes to 1 no (Mark Merry) on the motion.

DECISION: Approved by a vote of 4 yes to 1 no (Mark Merry) with the following condition:

1. Building permit must be obtained prior to commencement of construction.

The following finding of fact was cited:

1. The subject parcel has not been used for agricultural use for more than 40 years as it has been used for residential purposes during that time. Due to limiting site constraints (i.e. drainage swale/creek, septic system, irregular lot configuration), an alternative location was not feasible and would have required a setback variance in all cases. The proposed variance shall not hinder or prohibit acceptable agricultural operations and management activities in any way. Thus maintaining the existing character of the area and maintaining the rural appearance, which has existed in this area for many years.
 - 1.
6. Application of Timothy Fagan, owner; 4 Hunt Hollow, Rochester, New York 14624 for variance to erect a 16' x 20' deck 26' from rear lot line (35' req.) at property located at 4 Hunt Hollow in PRD zone.

Timothy Fagan was present to represent the application.

MR. FAGAN: Good evening. My name is Timothy Fagan. I'm the owner at 4 Hunt Hollow since about August 1st of last year, and we're planning on having constructed a 16 by 20 foot deck in the back of our house where there is nothing there right now. And we would need a variance on the setback from the existing -- from 35 feet to 26 feet.

ADAM CUMMINGS: Okay.

MR. FAGAN: I have spoken to neighbors on both sides of me, and they had no negative comments about it whatsoever.

ADAM CUMMINGS: Okay.

FRED TROTT: How many feet are -- is your property -- do you know roughly how many feet is your property to like the walkway of the -- I don't know what they call that. You have the natural walkway back there. The common ground?

MR. FAGAN: Common area?

FRED TROTT: Yes. There is green space and then a pathway.

MR. FAGAN: I don't know how many feet between my property line and that walkway which is common area.

ADAM CUMMINGS: According to the map, the common area is up through the property there.

FRED TROTT: I'm talking about the pathway.

MR. FAGAN: There is a path. 20, 25 feet maybe.

FRED TROTT: That's all.

MR. FAGAN: I could be off on that. I don't know exactly.

FRED TROTT: Your structure will not be right on top of the pathway.

MR. FAGAN: No, not at all. I will be 26 feet -- I will still be 26 feet from my -- from the property line.

So if I combine those two, it is about 50 feet from the walkway?

MR. FAGAN: A little bit of a guess on my part. I would say so.

COMMENTS OR QUESTIONS FROM THE AUDIENCE: None.

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

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

Adam Cummings 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.

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

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

1. Building permit to be obtained prior to commencement of construction.

The following finding of fact was cited:

1. Deck will be located more than 40 feet from the walkway found in the Common Area and will have no impact on the neighborhood.

ADAM CUMMINGS: Minutes March 27.

MARK MERRY: Way too long a meeting. Duly noted. No corrections, though.

ADAM CUMMINGS: Ask for motion to approve the minutes from March 27, 2018?

James Valerio made a motion to accept the 3/27/18 Zoning Board of Appeals meeting minutes, and Fred Trott seconded the motion. All Board members were in favor of the motion.

James Wiesner made a motion to adjourn the meeting, and Mark Merry seconded the motion. All Board members were in favor of the motion.

Paul Wanzenried reminded everyone the date of the next Zoning Board meeting would be June 28th, a Thursday.

The meeting was adjourned at 8:29 p.m.