

CHILI ZONING BOARD OF APPEALS
February 22, 2022

A meeting of the Chili Zoning Board of Appeals was held on February 22, 2022 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, Philip Supernault, James Wiesner and Chairperson Adam Cummings.

ALSO PRESENT: Matthew Piston, Assistant Counsel for the Town; Paul Wanzenried, Building Department Manager.

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

ADAM CUMMINGS: So the first one is the sign for the public notice. I wasn't able to see it but, Paul (Wanzenried) did tell me that it was more towards Kings Crossing and in a snowbank.

Can you confirm that you did have the sandwich board -- he said it was an A-frame sandwich board.

MR. VAN EPPS: Yes. We added a second one when we noticed that one was falling over, closer towards the church there.

ADAM CUMMINGS: Okay. Any other questions from the Board?

MARK MERRY: I didn't see a sign either.

ADAM CUMMINGS: Weather has not been cooperating.

Should I put our new Assistant Town Counsel right on the spot?

MARK MERRY: I would.

ADAM CUMMINGS: So the question from the Board is -- the Board members didn't actually see the public notice sign.

Can we proceed with this application if it was not in a noticeably present location? Not unique that we get this, but we do try to follow the procedure. It's a local Town Law.

MATTHEW PISTON: One moment.

PAUL WANZENRIED: The applicant by chance didn't take a picture of it? Phil (Lepore), can you attest to it?

MR. LEPORE: I did see a sign. We had a lot of snow and ice and rain. I did see the sign. I work there at the church. I can't say how long it was there, but I saw it.

ADAM CUMMINGS: Hopefully it was there ten days prior to this meeting. If it can be confirmed it was there at least ten days prior to it, I think I would be more comfortable with it.

PAUL WANZENRIED: Adam (Cummings), I can attest that the A-frame sign was there. It's in the snowbank. If we want to go dig it out after this, I would be more than happy to help you. But I can attest to it. It was there. I can attest that -- Evan (VanEpps) picked up the sign. So somebody from the -- from them picked up signs from us. I know they were picked up.

ADAM CUMMINGS: Do you feel comfortable it was ten days?

PAUL WANZENRIED: Oh, yeah. Oh, yeah.

ADAM CUMMINGS: Okay.

PAUL WANZENRIED: That I'm not -- I don't question.

ADAM CUMMINGS: Okay. It obviously wasn't up and visible for a ten-day duration, but there was an attempt made to have the notice for ten days; is that a fair statement to make? And then Mother Nature took care of not making it present for the whole ten days since it's in a snowbank right now. Well, probably not right now, but...

PAUL WANZENRIED: Hang on, Adam (Cummings). Just looking at something quick. Yes.

ADAM CUMMINGS: Okay. We'll hear it then. So we'll jump right into it.

1. Application of Brickwood Development 28 East Main Street, Rochester, New York 14614, Encounter Church of Rochester, Inc.; 3355 Union Street, North Chili, New York 14514, owner; for variance(s) to A.) Erect a structure 40' from front setback (75' required) B.) 30' setback to interior road (40 required) C.) 20 3 Bedroom Units (55%) where 3.6 units (10%) is allowed D.) Sidewalks none proposed (required) at property located at 3355 Union Street, North Chili, New York 14514 in the RM District.

Daniel Brennan, Nathan Buczek and Evan VanEpps were present to represent the application.

MR. BRENNAN: Good evening, everybody. My name is Daniel Brennan from the law firm Davidson Fink, 28 East Main Street. I'm here on behalf of Brickwood Management and the Encounter Church.

Also with me are Nathan Buczek from TY Lin, as well as Evan VanEpps, a representative from Brickwood.

So we're here today to request several variances from the Board. It sounds like the Board is familiar with the project. We have already been to the Planning Board and the Development Review Committee. This project is a long time in the planning and we have done our best to minimize the number of variances that we need to request from the Board, but we think that what we have applied for today is the minimum number that we can seek that will allow the project to move forward.

I'll just give a general overview. I think there is probably some information you're already familiar with. You have our application package. It was originally submitted back in August of last year. Since getting some comments from the Planning Board and from the Development Review Committee, we have updated the application. We have modified our plans and -- in response to that feedback. And we have added a few variances that weren't initially applied for.

So you might see a bit of a hodgepodge in your application package, but I believe that we have provided you with sufficient information to -- to make a determination both on the -- on the -- the variances and my understanding is that this Board will be acting as lead agency -- or is it the Planning Board?

PAUL WANZENRIED: Planning Board.

MR. BRENNAN: The Planning Board will be lead agency. So we don't have to make a SEQR determination tonight.

ADAM CUMMINGS: There will still be a SEQR determination. We just -- it's not a coordinated review. We won't be lead agency tonight, but for the action tonight, we'll be doing a SEQR determination.

MR. BRENNAN: I'm happy to go through the EAF that we provided and -- and myself and Nate (Buczek) and Evan (VanEpps) can discuss any environmental -- potential environmental impacts from the project. The thing we really want to focus on are the legal standards for the area variances. While we do have several different area variances, I think a lot of the reasoning in the application of the legal criteria to the project is the same for all of the variances.

You know, we do have several different criteria that are outlined in the code, but actually the New York State Courts have held that there is one -- one overall standard for -- for area variances. That is, whether the benefit to the applicant outweighs any detriment or harm to the surrounding community. And so I think that is -- probably the easiest way to think about it -- the simplest question to ask yourself. It applies generally to all of the variances to say these variances will allow the project to move forward.

We have an existing -- large existing parcel with an existing church. A large portion of that parcel is not being used by the Church at this time. And without these variances, the Church will not be able to sell their property to Brickwood. The project will not be able to be developed. So the Church will essentially have a large piece of land that's -- that's frankly unusable. Or -- or potentially unusable. So the benefit to the applicant is -- is immense. It allows them to actually use their land; whereas, right now it is not being used for anything. They don't have plans to expand the church. They don't need additional buildings or parking or anything like that. So I think the benefit to the applicant is very high.

Negative impacts to the neighborhood or communities is -- is very low, if anything at all. And I say that mainly because most of the things that we're asking for, most of the relief we're asking for here are things that have already been done in this neighborhood. We're asking for setbacks that are consistent with the character of the existing neighborhood.

You know, one -- the first variance that we identified was the setback from the internal road. We actually looked around at the numerous other apartment projects in the area and weren't able to find any part -- projects that complied with the setback requirement. So I think I have outlined each and every legal standard for all of the variances we're asking. We provided sufficient information to make a determination on each one.

I could go on and on all night, but I will stop here and I will turn it over to Nate (Buczek). I think Nate (Buczek) can get us into more of the specifics of the project and then when he is done giving his presentation, we're happy to take any questions that the Board might have.

MR. BUCZEK: Thank you.

You want me to mount that over there so you guys can all see? What is easier for you guys?

JAMES WIESNER: It's good where it is.

ADAM CUMMINGS: It's fine where it is. We can't read it from here other than the colors, but I don't --

MR. BUCZEK: I'll do my best to describe it.

ADAM CUMMINGS: It won't make a difference if it's on the board or not. So you can just describe --

MR. BUCZEK: Nate Buczek with TY Lin, 255 East Avenue, Rochester, New York. We are the design consultants on the project. We assisted with the layout.

The project does consist of basically an extension of Phase 1 for Kings Crossing. Basically we're expanding to the north, extending Arthurian Way about 800 feet -- and this is to the west of the church property on the back side -- to construct 36 total units. 20 of them would be two-story, three-bedroom units and 16 would be the one-story townhouse units.

The parcel we are developing, you know, the back side of the church is approximately 5.9 acres. It has -- the total project has disturbance of just over six acres. But that does include the new cross access, which is basically coming over to Union Square Boulevard as a -- a utility access and emergency access to -- to the property that was requested and put in from discussions

with the Planning Board.

The -- the project currently has been laid out width-wise to accommodate not only storm water but to try to accommodate as many setbacks or within, you know, the adjacent development setbacks as possible. The front setbacks -- I mean the property is really about 500 feet from Union Street and basically from there, from our property line that abuts the church, we have basically an average -- half of the units have about 40 -- 40 feet plus. What were considered a front setback.

There is another half of -- the southern units have between -- basically about 40 to 120 feet. So it does expand and get larger as you head south. That's mainly because of the storm water features for the property.

The setbacks from -- from the main roadway, we do have the main 20-foot wide roadway that extends up through the property, connects all of the driveways. We have the roadway over to the front of the units 30 feet for setbacks. To get to 40 feet would have been a crunch on the storm water facilities that we would probably not have room for and to meet these requirements, you know, we're feeling that the 30 feet would be a good compromise and to not also impact the -- the adjacent church parking lot. We don't want to make it any smaller, if possible.

So outside of that, I did mention that this cross-access easement here (indicating), there is a 50-foot wide easement that's going to be in place to access Union Square Boulevard. There is going to be new utility runs, you know, connecting to the site. The water is going to come from -- with a new hot box that will connect down from Union -- Union Square and the main out on that roadway and then connect into our development. We're going to have all new storm water facilities for this development. New water feeds, sanitary sewer, et cetera.

So to encompass all of those along with storm water, and provide access easements for all of the utilities, you know, we have worked within the setbacks for -- for the property and within, you know -- adjacent developments. So that's pretty much the description of the properties.

Does anyone have any specific questions on site layout right now?

ADAM CUMMINGS: Well, I would like to make sure -- you did cover a whole lot of Planning Board items here, but some do somewhat tie into us today. I would like to start out with some Board questions and this time, since there is only one application tonight, we'll just field questions on all four of them. We will do individual decisions, votes later on, but I would like to just do all of the questions all at once.

JAMES WIESNER: Can you show us on your site plan where the setbacks actually are? The 40 foot and the 30 foot.

MR. BUCZEK: Yeah. So it -- so as I mentioned, we're 500 feet plus or minus to -- to the buildings as minimum this way (indicating). So from -- from Union all of the way over to here -- we're 500 feet from the road.

ADAM CUMMINGS: Right. But it is measured from that property line.

MR. BUCZEK: But measured from the property line. We have 40 feet here (indicating). It -- it basically measures about 42. But then as I mentioned the southern properties, these do get larger all of the way up to about 100 feet from the property line as you get -- go further to the south.

JAMES WIESNER: So the 40 feet is on the single-story end of it?

MR. BUCZEK: Yes.

ADAM CUMMINGS: The other one is pushed further away because of the storm water management facility.

JAMES WIESNER: I see that now.

MR. BUCZEK: The rear setbacks, we are meeting that 30 feet and the side setbacks we do meet the 40 feet total to the building. The only one is the front here (indicating) and then the interior here (indicating) is measured from, you know, face of the building to the edge of the pavement, the gutter edge. That's 30 feet.

JAMES WIESNER: Those setbacks are consistent with the first phase of Kings Crossing

MR. BUCZEK: Yes. These vary from 30 to about 25 feet. You know, from edge of pavement to -- to the edge of the buildings and to the -- the garages. So that's consistent. It is consistent with a -- a few of these are 40 feet and if you are 30 feet, over on the west side of the development --

ADAM CUMMINGS: Obviously Union Square has sidewalks. How about Kings Crossing?

MR. BUCZEK: Kings Crossing on Phase 1 development, no sidewalks were installed. My understanding is, you know, since it has been developed, there hasn't been any issues or requests that I know of to install them. And we did basically the same feel here to, you know, expand -- no sidewalks. Just because -- by the time we're adding sidewalks here adjacent to the roadway --

ADAM CUMMINGS: You're cramming in more stuff.

MR. BUCZEK: We're cutting down our width quite a bit. It is base -- basically would require us to eat more into the church and that just doesn't work for them. So, you know, we have kept them out of the project, similar to Phase 1.

ADAM CUMMINGS: Did you have a variance for no sidewalks on Phase 1?

MR. BUCZEK: I believe so.

MR. VAN EPPS: There may have been, or a contribution to a Sidewalk Fund.

ADAM CUMMINGS: Are they zoned the same district, Kings Crossing?

PAUL WANZENREID: Yes.

ADAM CUMMINGS: How did they get that? I don't remember them coming in front of our Board.

PAUL WANZENRIED: Was it before your time?
MR. VAN EPPS: Was back in '08 or '07.
JAMES WIESNER: I don't remember a variance.
ADAM CUMMINGS: Jim (Wiesner) and I were here in '07.
PAUL WANZENRIED: I believe we determined that the sidewalk aspect was added to the code.
ADAM CUMMINGS: To the code after?
PAUL WANZENRIED: After the fact.
ADAM CUMMINGS: Got you. So it wasn't a requirement of Kings Crossing.
PAUL WANZENRIED: Phase 1 it wasn't a requirement or it wasn't caught. One of the two.
ADAM CUMMINGS: Got you. Okay. Thank you.
FRED TROTT: Now are these dedicated roads? Sorry to jump in it. These -- these are not dedicated roads? No plans for them to be dedicated to the Town?
ADAM CUMMINGS: To the Town?
MR. BUCZEK: No.
PHIL SUPERNALUT: So to understand the sidewalks again, you're saying you don't have room for sidewalks; is that why you're requesting the variance?
MR. BUCZEK: Yes. It would basically add another -- even if we did it down one side of the street, it's going to add at least another five -- probably by the time -- you typically have like 5 foot tree lawn and then sidewalk and then you want to -- probably at least 25 feet for a driveway to park a car. So that's going to add about another 10 feet and make this even wider as far as the total footprint and it becomes pretty tight.
ADAM CUMMINGS: There is no garages on these facilities, correct?
MR. BUCZEK: There is garages.
MR. VAN EPPS: There are two-car garages so they could do parking inside the garage, but as he is saying, there wouldn't be enough space in that 30 feet -- foot width to accommodate the median strip, the sidewalk and the pavement area. If you have a guest, the back of the car would be --
MR. BUCZEK: In the sidewalk.
MARK MERRY: How many spaces would the church lose in your parking area if you were to encroach upon -- in order to lessen your variance.
MR. VAN EPPS: They're already losing some. I don't think -- they're trying to expand their parking lot.
MR. LEPORE: We're going to expand the lot to the south, along that western border.
FRED TROTT: Where the soccer fields are now?
MR. LEPORE: No. I will see the map. Yeah. We're going to expand parking this way (indicating). This is going to be the new entrance to the church here (indicating). If -- if we're able to do our project. That's proposed right now. So -- so this -- there is parking spaces all along here (indicating). So we would lose probably -- I think it's like eight -- eight spots.
FRED TROTT: Eight spots now where it is proposed?
MR. LEPORE: Right along here (indicating). Because there are spots along the back here (indicating). It cuts out about eight or ten. This was proposed to be the emergency, but that got pushed over to here (indicating), so we have gained these back. So -- so I think it's not that many.
PHIL SUPERNALUT: Is there a barrier between this project and the church parking lot or is it just going to be sort of a natural --
MR. LEPORE: I think we're talking about a berm.
MR. VAN EPPS: Or -- a berm or fence was talked about.
MR. LEPORE: We did discuss a fence along where the parking area is.
PHIL SUPERNALUT: They're not expected to be contiguous. There will be no egress/ingress parking lot to --
MR. LEPORE: No.
PHIL SUPERNALUT: What's your -- your logic for increasing the three-bedroom units? Is it a cost? Is it basically dollars and sense, you want to have them be more saleable?
MR. VAN EPPS: It costs less to build and it makes the project make sense.
ADAM CUMMINGS: I will be honest, to get to that one we're going from 10 percent to 55 percent. I'm really struggling to see how that is not substantial. That's a jump from 10 percent to 55 percent.
MR. VAN EPPS: Now is that a new --
ADAM CUMMINGS: That's one of the five criteria we're evaluating for that one.
MR. VAN EPPS: I meant from Phase 1 Kings Crossing. Because there is 53 bedrooms there and only 8 --
ADAM CUMMINGS: I can't speak to that one. That was a different code. We already spoke about that one. You can't compare Kings Crossing Phase 1 with how old that was because we got a new code to contend with.
MR. BRENNAN: That's a good question. It's a fair question.
But again, I would ask you to think about the overall standard that the courts have held is applicable to area variances and whether the benefit to the applicant outweighs any detriment to the community.
One thing we missed in talking about this variance is the market is basically driving the need.

Would you agree with that, Evans (VanEpps)?

MR. VAN EPPS: Absolutely.

MR. BRENNAN: That is sort of what the demand is for, these larger units. I would have to ask how having three-bedroom units in this project would -- would cause any harm or detriment to the surrounding neighborhood, given we have the same footprint, we have the same buildings. Having an additional bedroom that could be used as a den or an office for a couple or a family, it seems to increase the value of the project and increases the value frankly to the Town and to the neighborhood.

ADAM CUMMINGS: I would like to counter that with two questions. I appreciate that you both have made that comment, but we don't see a market study that says the market actually wants these type of things other than anecdotally from the applicant.

And secondary to that is we're tasked with evaluating the code as the Town of Chili stands, and people wiser than me adopted the code as it is. So we're trying make sure we minimize those code requirements that the Town of Chili has. The Town of Gates has different ones. The Town of Henrietta has different ones. That is our task here, to minimize these as best we can.

PHIL SUPERNAL: Don't believe our argument is around -- I don't -- I think this is -- as evaluating whether it's a detriment. That doesn't cross my radar at all. Our concern is enforcing the code.

ADAM CUMMINGS: And not making -- it is -- is -- it is to make sure that we don't make a detriment to the neighborhood or do too much of an adverse impact to the neighborhood.

MR. BRENNAN: In upholding the code and enforcing the code, the question you have to ask yourself is does the requested variance result in -- in a benefit to the applicant that outweighs any detriment to the community. In granting these variances, you are upholding the code, because the code provides for variances from dimensional regulations that provide these types of issues for applicants.

And -- and while -- you know, one way to look at it is the percentages. And I can certainly appreciate that.

Another way to look at it is the numbers -- Nate (Buczek), what was the number of three-bedroom units that would be required or allowed under the code versus what we're asking for?

ADAM CUMMINGS: 3.6 compared to 20.

MR. BRENNAN: Right. And so we're asking for say, 16 to 17 additional three-bedroom units. So you can look at the percentages, but when you look at the numbers themselves, I don't think that 17 additional bedrooms is going to have any particular negative impact on the neighborhood or -- or on the surrounding community.

So, you know, we didn't do any -- we don't have any market studies that we have provided to you, but Brickwood does have a significant amount of experience developing townhouses in this -- in this community.

Evan (VanEpps), where -- where are your other townhouse developments you have built in the area?

MR. VAN EPPS: We have Kings Crossing. We also built Ivy Bridge in Gates. And Ivy Bridge had an extension there, as well.

And then we just completed Brittany Woods, which is in Webster, the Village of Webster. Very similar to Kings Crossing in size and design.

And right now we're currently building in Farmington, very similar units, as well. All three-bedrooms.

MARK MERRY: Would we feel better if they brought back the market material?

ADAM CUMMINGS: I'm juxtaposing the point. It's anecdotally. Only one of the five criteria we're looking at here.

MARK MERRY: We're not looking at those other areas. We're looking at the property in Chili.

MR. BRENNAN: I do think it's a fair question, but Brickwood is -- Brickwood is one of the entities in this -- that is applying for these variances and they're the ones that are looking to make money. I think that it's reasonable to infer they would only seek to build the number of units with the number of bedrooms that would maximize their profit they would be able to lease.

Evan (VanEpps) is in charge of leasing for Brickwood.

Evan (VanEpps), would you say you have an easier time leasing out three-bedroom units or two-bedroom units?

MR. VAN EPPS: I would say three-bedrooms just have families that are easier to work with. And again, it does come down to the economics behind it, as well.

ADAM CUMMINGS: I agree.

PHIL SUPERNAL: You mentioned garages.

MR. VAN EPPS: Yes.

PHIL SUPERNAL: They're part of the development. Two-car?

MR. VAN EPPS: Two-car attached.

PHIL SUPERNAL: For all?

MR. VAN EPPS: For all. And full basements for all.

FRED TROTT: With the -- are these going to be leased or owned?

MR. VAN EPPS: They will be leased.

ADAM CUMMINGS: I would like to hone this in a little bit on -- on the front setbacks. The first one, the 40 feet from the front setback, to be clear on that, this is a flag lot. That is why we have to do it in proximity to or in relation to the Union Street connection of it. Obviously the

church is the majority of it.

As pointed out, it is 500 feet from that public right-of-way, but then is -- it is minimized from 75 to 40 feet. Once again, if we went by numbers, being the math guy I am, we're almost at 50 percent. If it was 80 feet, it was 40 feet, it would be 50. So -- but at the same time it's a flag lot that is very unique.

I will be honest, on this, you have got a lot going on. This is one crammed site plan. You have storm water features in every one of the setback areas which can -- which are required. I will hold my opinion on whether they're overdone or not. With the storm water regulations. But it is all being driven by how much impervious area you have. You have to minimize the road because you've gone down to 20 foot width.

You have also packed in so many buildings, that that is what is driving to have more storm water features on there. So it is a balancing act that you're doing there. Likewise, to minimize those storm water features, you put in less buildings.

But economically, as you have already alluded to, that pretty much drives the project away. If you can't get this many buildings, it's not a market viable -- or economically viable project for you to make your return.

Then moving onto the next one, with the 30 foot setback interior. Once again -- as Nathan (Buczek) had said, the storm water features are what are pushing the buildings -- well, and the setbacks. So I guess it's not as good of a point. Because it is just too narrow of a lot. I take that one back.

And then the next one we talked about with the percentages, that's driving it based on the marketability and feasibility financially of this. And then the sidewalks. It was pointed out Kings Crossing predated that. I'm aware of several residential subdivisions that -- that do not have sidewalks that connect with sidewalks. I will point out that every one of those neighbors that I have visited, the people that don't have sidewalks have inquired about creating sidewalk districts to put in sidewalks because they're disappointed because they don't have sidewalks because they feel unsafe as they're walking down the street. So to cater to the families, I would think that the sidewalks would be more of a benefit. But if it isn't a connectivity to get to Union Square, that also bodes well to not have sidewalks because it would be an isolated development that is here.

One question I do have, do you have any documentation of that 50-foot easement to get to Union Square? I have had that in my career where it gets put on a site plan as proposed but nobody has a talk with them and then the neighboring property says, "No way."

MR. VAN EPPS: You're talking the easement for Union Square from Morgan Properties?

ADAM CUMMINGS: Yes.

MR. VAN EPPS: That is being finalized, but we have it -- it is being worked out.

ADAM CUMMINGS: Okay. Thank you.

So back to Jim (Wiesner).

Any questions?

JAMES WIESNER: So the first section that has the townhomes that are two stories, are they going to be the same construction as what is in Kings Crossing Phase 1? Are they going to look like that? Or --

MR. VAN EPPS: We would -- as best we could -- we're actually talking about maybe putting a little more stone on the front to just jazz them up a little. But probably the -- the similar siding, shutters.

JAMES WIESNER: You can kind of see like four sets there. There would be like four sets of what is -- is existing in Kings Crossing. When you look and see a grouping, there would be like two of those groupings.

MR. VAN EPPS: Kings Crossing has the ranches on the ends of a three-bedroom building. So there would be like four three-bedroom ranches on each end. That's not what we would do. We would have a building of ranches, two-bedroom, two-bath ranches. Then if you see the first four buildings, I believe, are the three-bedroom, two-stories.

JAMES WIESNER: What is the mix of bedrooms in this? You say there is -- 55 percent are three-bedroom. How many are one-bedroom?

MR. VAN EPPS: What did we say, 20 --

MR. BUCZEK: 22 bedrooms and 16 -- I'm sorry. 20 three-bedrooms and 16 two-bedrooms. The 16 two-bedrooms are the ranch style. On the site plan, I believe they are the -- they're designated in these, so anything on the north side of the site -- the north half essentially is the ranch-style two-bedroom.

JAMES WIESNER: So it would be either two-bedroom or three-bedroom. No single-bedroom?

MR. VAN EPPS: No, no.

And then also to your point, we did -- what -- the feedback from the Town, we did have this at 40 -- 41 units at some point. We had feedback from the Planning Board and kind of moved all of this away to create more green space and to try to create more room for that. So we have dropped down five units. I still think it could work with that number.

MARK MERRY: I don't think Nate (Buczek) was allowed to answer the question I had regarding what could be done to minimize the variance requested for that setback.

What could the Church give up in their parking area to minimize that?

MR. BUCZEK: You're talking about the sidewalks?

MARK MERRY: No. The front setback.

ADAM CUMMINGS: The 30 foot. And to some extent that would be the 40-foot front

setback. It would address both of those variance requests. So what he is saying is shifting it to the east --

MR. BUCZEK: Yep.

ADAM CUMMINGS: -- and displacing those parking spaces and that changing -- not that I want to speak for the Church, but that would change the allocation of parking spaces for any future projects they would have.

MR. BUCZEK: To answer your question, if we add on 10 and 10 on both sides of the road, so say 20 -- we're expanding this whole lot by say 20 feet -- it would definitely eat up the end of the -- of their parking spaces. So they have lost, I believe, eight or so already. They would lose at least another eight and maybe a couple more on top of that.

MARK MERRY: I guess the question is, is it worth the deal to the Church to lose another eight parking spaces if it gets you what you need? It is something you should probably consider tonight before we vote.

I'm all set, guys.

ADAM CUMMINGS: I'm going to go along those lines, Nate (Buczek), and keep you on the spot on this. With taking out the number of building units and everything you said in here, this is a very narrow, strange flag lot because of that little triangle that gets notched out for the storm water pond. But even taking out the architecture that you do have -- because I do agree that is the modern that people want to go to -- is -- is -- that -- that is still -- the word is in my mind -- it is a substantial one. The way -- this subdivision is fresh and it can be done and this is a partnership between those two property owners -- that is just too narrow of a lot to fit all this in. To have a road with developments on both sides of the street. So you -- how can that be accommodated? Right now there is a flexibility of moving a property line, in my opinion, and therefore, there is a way to get relief beyond these variances that are being requested here, which are substantial.

MR. BRENNAN: One of the issues that we have changing the lot is that you do have a purchase contract between Brickwood and the Church. And, you know, it specifies exactly how many acres we're getting and what parcel or how many acres that Brickwood is purchasing and what it looks like.

And so to change the -- the parcel itself, um, you need a new contract. And so, you know -- I don't want to speak out of turn, but that could potentially kill the deal for -- for the Church.

ADAM CUMMINGS: As would not getting your variances.

MR. BRENNAN: Absolutely. If the variances aren't granted, the project won't happen. The -- the Church needs these variances to be approved in order to use their land really for any financially viable purpose. I'm just bringing up about the front setback. You know, I thought we had raised this in our papers, but I'm not sure that we did.

If you look at the code carefully, the front setback is actually meant to be measured from the street and we're actually significantly farther than -- than the code requirement from the street. Not meant to be measured from the property line. It is meant to be measured from the street.

Now, I know the Town has made a different interpretation of the code and frankly we disagree with that. But I just wanted to raise that as an issue, and I think it is within this Board's purview to make a decision on that, how you interpret the code as far as the setback.

So again, I don't think -- I don't think it's a huge point, but to the extent you're having trouble with the number of variances that we have asked for, the amount of relief that we have requested, I think that's a point worth considering.

MARK MERRY: So is it possible to hear from the gentleman from the church and what your opinion is as to what will make it or break it for this evening on coming to some type of mutual understanding?

MR. LEPORE: Well, I do -- I do agree with Mr. Brennan that the Church is completely -- first of all I did want to say --

PAUL WANZENRIED: Name, Phil (Lepore).

MR. LEPORE: My name is Phil Lepore, the Financial Director for Encounter Church at 3355 Union Street.

We are -- Brickwood has been an excellent neighbor and they -- they have made an offer, a generous offer to purchase the land that we have already kind of agreed to. There are a few variances. One, we have had to eliminate our garage. So we had to add that into a purchase contract because of the boundary line.

I think parking is -- is very important because we don't really want to -- we want -- if we develop -- this -- this building right here (indicating) is not developed. It is just a shell. So to develop this -- I don't know the exact code -- but how much parking we will need -- parking is a premium.

And I will say while this is not used, this land right here (indicating) that the project is on, this is green space. And we do feel that green space is -- is a commodity that is a benefit to the church, to the neighborhood. But we're giving it up in light of this green space that Brickwood is going to assist us in making it more usable.

My point in saying that is, this -- giving up these eight spots is already a bit painful. To give up more of our parking area along here (indicating) and having to extend more asphalt, which is extraordinarily expensive to develop, um, it's -- it's a bit challenging to us.

Now I'm not the only decisionmaker. Like Mr. Brennan said, we are in a contract. Our contract includes these existing boundary lines. If we have to move these boundaries lines and

eliminate more parking, there could be some challenges, because it's not just me. It's not even just the Pastors of the church. We have to bring it to the whole congregation. We have to have a congregational vote and present it to the Attorney General's Office before we can make this deal. So any alterations or amendments to the contract, they're significant.

And, you know, everybody has different opinions, but our community is very excited about this deal. Because we have finally after 20-something years been able to develop an existing space. We have the members. We are raising the finances. This -- this project is -- this deal is going to launch us forward to be able to actually complete this.

It's -- it's a very exciting time, but moving the boundary line even more is -- I'm just saying, on behalf of the congregation, I know it would be a challenge. I know there are some challenges on the -- on the variances and how tight it is. But as far as impact on the primary neighbor, Brickwood has been a great neighbor. And no impact at all from that community and the fact they managed that property is very important, because they have been a fantastic neighbor. We are excited to sell them this land. We have no qualms about them expanding their -- expanding their housing. I don't know that there has ever even been vacancies in the last -- 2005? When did you guys do that? Those are always full. And they have been great neighbors. I don't know how else to say it. Moving the boundary line even more is a bit challenging.

PHIL SUPERNAL: What is your anticipated use for what you call that empty space now?

MR. LEPORE: This will be the new auditorium. Right now we're doing two services. Our existing auditorium is 200. We're averaging well over that and the church is growing. That happens and, you know -- and they brought in a new Pastor a year and a half ago. We met with the Town already to discuss the project. This is an 800-seat auditorium. They're very committed to helping the community, doing things in the community. Mark DeCory is a valuable member of our church. You know, there -- there is a beautiful lobby space, cafe area. You know, just what churches do in a community.

ADAM CUMMINGS: I would like to bring this back over to Kings Crossing.

MR. LEPORE: You can't ask a guy to from the church to come and -- got to preach a little bit. She get it all?

ADAM CUMMINGS: She definitely got it all. She's good.

I just want to make sure I'm clear -- bringing this back -- we're looking for the variances about that specific one. That is why the question came in about that parcel. Which to be clear, you're on a contract option with them. So right now the Church still owns the parcel. It has not been sold to them yet. It is on an option based on a bunch of parameters.

MR. LEPORE: Well, based on this --

ADAM CUMMINGS: Probably this and the Planning Board.

MR. LEPORE: Yeah, once the Planning Board signs off. There's a time period.

ADAM CUMMINGS: I still want to go back to this and this is more speaking to you because this is really your property. Once again, the application is for Brickwood Development, but if we grant these variances, and you don't get Planning Board approval -- I'm just saying a hypothetical here -- then your option would probably go away. You still have the land and you have variances applied to that. That is what we're deciding tonight. So with that, we're deciding even if you don't put in all these bedroom units, we're now tying this land down to you suddenly get a 40-foot front setback; whereas, normally it is 75 feet. You would be allowed to have no sidewalks if you decided to put something else in like a sports park or something. Or if you needed to have an interior road and you're 30 feet away. I want to be clear on that. We're looking at it as the land, not specific to this application. And that's the other visualization I want to make sure is clear to the Board. We're looking at the variances as they apply to these lands, not specifically to these applicants.

MR. BRENNAN: I think that's -- that's fair. The variances do run with the land. But I will mention -- make two points here. One would be that, you know -- I'm not actually sure what the Town -- what the time limit -- Town Counsel might know -- but there is probably what, a one-year time frame under which a building permit has to be pulled before the zoning variances are expired? Is that the case?

PAUL WANZENRIED: Variance runs with the property.

ADAM CUMMINGS: It stays with it.

MR. BRENNAN: It doesn't expire if you don't pull a building permit.

ADAM CUMMINGS: Site plans do, but not variances.

MR. BRENNAN: So we would -- we would be willing to say any -- any variance could be conditioned on this project being built. In fact, if the Board wanted to add a condition that -- that site plan approval has to be obtained within a certain reasonable period of time, we wouldn't object to that.

From -- as a practical matter, the Church on its own does not have the capability to build this project. That is why Brickwood was -- was brought in. And so, I -- I understand the concern is that, you know, if this project, for whatever reason didn't get site plan review and Brickwood goes away, you have a completely different project. I think practically speaking, that is either impossible or incredibly unlikely. And not for nothing, if we get the variance, we have to obviously comply with any reasonable conditions of the site plan approval. But site plan approval can't -- is not a fully discretionary determination for the Planning Board to make. So we would fully expect if these variances are granted, that we would -- that we would comply with all reasonable conditions of site plan approval and build the project. That is absolutely our intention and I think what would happen. And we would certainly be willing to -- agree to any

reasonable conditions that the Board wants to impose. To make sure that what -- to make sure what you're approving is actually what gets built. I think that is a fair -- that is a fair request.

You know, finally, we're happy to answer any more questions. Obviously we don't have anyone else to cede our time to. But if the Board has concerns about the project, if you have any questions that you don't think were adequately answered, if you would like additional information, you know, we would be absolutely willing to -- to go -- to come back next month and provide you with additional information. If -- if -- if there is questions that you think haven't been answered. If there are things that are not, you know, set out in our papers, please let us know and we would be happy to come back to you next month.

FRED TROTT: I have a question. How many units are in the Phase 1?

MR. VAN EPPS: 60.

FRED TROTT: 60. So you're almost doubling that and it's all going out on --

MR. VAN EPPS: I mean it is 36. And 60. They have 36.

ADAM CUMMINGS: They're in 36.

FRED TROTT: 30 and 36. Okay.

But you're all feeding out just to that one feeder road onto Union Street, correct?

MR. VAN EPPS: For -- for Phase 1, yes. There wasn't a -- there is an emergency access with a gate into the church parking lot, but that would then go away for -- Union Square Boulevard.

FRED TROTT: There -- not coming off Union Square --

ADAM CUMMINGS: That's -- that would be part of this.

FRED TROTT: So there would be an access road that people could drive on.

ADAM CUMMINGS: No. The emergency road.

FRED TROTT: Just emergency only. So back to my point, there is only one feeder point --

PAUL WANZENRIED: Yes.

FRED TROTT: -- for this whole group?

ADAM CUMMINGS: Correct.

MARK MERRY: I don't know. I think the applicant --

ADAM CUMMINGS: I was going say that is more of a Planning Board site plan.

FRED TROTT: I just wanted to get the whole grasp of it.

MARK MERRY: I think it has -- I'm hearing uncertainty here.

ADAM CUMMINGS: I want to make sure we get the questions first. I want to go to the Side Table to see if they have anything else to add. I'm seeing blank stares. One is a no from Paul (Wanzenried) because I know his facial expressions.

MARK MERRY: Glasses are up. Not good.

ADAM CUMMINGS: Matt (Piston), you're new. I can't tell yours.

MATTHEW PISTON: Nothing to add.

ADAM CUMMINGS: Do you have -- see any merits to the conditions? I know we have discussed them with the Board in the past. We have never imposed them to be specific to an application because we have it go with the land, has always been our philosophy.

MATTHEW PISTON: I don't think there's any issue with your -- with your conditioning your approval on the current -- but -- I think that is fair and reasonable.

MR. BRENNAN: We would consent to that, as well.

ADAM CUMMINGS: So to be clear, then it doesn't carry with the land? It will still carry to the land, because the Church would still have -- we don't know the exact parameters of their option and the closing of it and it's still control of their land and they would be granted these variances. We can't tie it just to the application.

MATTHEW PISTON: I think you can. I think it can be conditioned on the -- because -- because when the closing occurs, it's not going to be the same land. It is going to be a different parcel of land. So you can condition --

ADAM CUMMINGS: I see. So the subdivision has not occurred yet. There's no filing yet. That is part of the option, as well.

MR. BRENNAN: That's right. And actually Brickwood, it's not really an option but a condition. So Brickwood can close -- even if we don't get the approvals. They don't have to and they won't.

ADAM CUMMINGS: Got you. Understood.

MARK MERRY: So let me understand. If you don't get one -- if you do -- if you walk away without getting every variance tonight, the deal is done. As it stands today. Not that you can't come back next month. But you can't -- well, you can't come back.

ADAM CUMMINGS: If we make a decision.

MARK MERRY: So I'm just asking you, because I don't think there has been enough thought on your side of the fence with everybody that we have in the room tonight, what concessions can be made to minimize the variances that you're asking for. Because they are substantial. You can't argue that.

I think the Chair has done a very good job of counterpoint. So you do have a strong likelihood that you may walk away without one of these, which takes it out, from my understanding. So to your earlier statement -- I don't know if you want to meet with your team to consider huddling and coming back next month. I don't know if that is an option anyone here would consider.

ADAM CUMMINGS: We can certainly -- I think you offered it up to table it and have further discussions and bring more information to the Board. There is no public here. We do

have to do a Public Hearing tonight. I would like to open and close it tonight. But I just want to plan this ahead of time.

It sounds like you would be willing to entertain and make a -- make a request to table until next month at the applicant's request?

MR. BRENNAN: Absolutely. We would do that. I -- I think the only thing we would ask is if -- if the Board could give us a little clarification on maybe what the -- we have heard a lot of comments tonight. What the real sticking points are and what the Board would like to see. What do you think is the most likely way that we can move forward with this. What revisions do you think would get us where we need to be?

ADAM CUMMINGS: I can speak to that. And -- and speak with the Building Department. Usually we try to vet those things out with our DRC meeting and things like that. So we can have that talk. Not as a Board, but certainly have that talk through the Building Department.

MR. BRENNAN: Okay.

ADAM CUMMINGS: So with that, I do want to move forward with this and open up the Public Hearing.

COMMENTS OR QUESTIONS FROM THE AUDIENCE: None.

Fred Trott made a motion to close the Public Hearing portion of this application, and Phil Supernault seconded the motion. The Board unanimously approved the motion.

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

ADAM CUMMINGS: Now I would like to take the applicant up on their request to table it until next month for all four of these variance requests.

JAMES WIESNER: Where does this stand with the Planning approval at this point? Have they been before the Planning Board? Are we the first stop?

PAUL WANZENRIED: They have preliminary approval.

ADAM CUMMINGS: Right.

JAMES WIESNER: They have preliminary approval already. So we're the hold-up.

ADAM CUMMINGS: Sort of. They don't have final yet and I'm guaranteeing one of their conditions is subject to our variances.

JAMES WIESNER: And you don't know what the other conditions were.

ADAM CUMMINGS: I don't know. No.

PAUL WANZENRIED: Other conditions of?

JAMES WIESNER: What other conditions were as part preliminary site plan approval?

PAUL WANZENRIED: Off the top of my head, standard --

JAMES WIESNER: Whole bunch?

PAUL WANZENRIED: Standard boilerplate issues. They have done a traffic study. They submitted that. The Board was all right. That I think they have to put a light in at the entrance to Union Street. That was one of them.

JAMES WIESNER: So they -- they're kind --

PAUL WANZENRIED: The access road and easements -- the easement approvals for that were one of the requirements -- conditions.

JAMES WIESNER: They're pretty minor things. No cliffhangers.

PAUL WANZENRIED: No. No. No. No. They're coming back -- scheduled to be back March 8th, so if they plan on attending that meeting and going forward, more than likely the Planning Board, if it was to give approval, would just say all variances need to be obtained from the Zoning Board.

ADAM CUMMINGS: Right. That might actually work out better because if they request any changes that may change these variances, we would have their work out of the way.

PAUL WANZENRIED: Usually that is done prior to preliminary.

ADAM CUMMINGS: Agreed. Agreed.

MR. BRENNAN: If we were able to get our final Planning Board approval subject to the variance -- variances we requested, is that something that would -- that this Board would be willing to go forward with? Or would you still need to see additional changes to our request, even if the Planning Board blesses it and says --

ADAM CUMMINGS: There are still going to be additional ones, but we'll work with you to work out --

MARK MERRY: These are the key things. Appreciate your being patient and time you put into this. We're here to work with you. As you acknowledged, we have a responsibility to a very large community ourselves. Right? And with every applicant, the majority, there is always some other clarification that gets us over the hump, right? Or there is some concession that is made that is hopefully minimal. That's so it's a win/win for the Chili community and the applicant. We're not here to be obstructive whatsoever. That's not what we're doing here tonight. So I'm just -- I think there is some areas --

ADAM CUMMINGS: Well said.

MARK MERRY: Okay. So that's "Mark, stop talking."

ADAM CUMMINGS: No. You're spot on. You don't have to keep going. You said it perfect.

So we'll keep working with you on that exactly what we're looking for. But I do have that

on -- at the applicant's request to table it.

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

DECISION: Unanimously tabled by a vote of 5 yes to table at the applicant's request.

ADAM CUMMINGS: So this one has been tabled. We'll work with you. Be in touch with Paul (Wanzenried) and we'll keep going on this. But thank you again for the presentation.

The Board had a discussion about a correction needed to a decision letter and the resulting minutes from the January 25, 2022 meeting.

Phil Supernault made a motion to accept and adopt the 1/25/22 Zoning Board of Appeals meeting minutes, as corrected, and Fred Trott seconded the motion. All Board members were in favor of the motion.

Adam Cummings made a motion to adjourn the meeting, and Phil Supernault seconded the motion. All Board members were in favor of the motion.

The meeting was adjourned at 8:02 p.m.