

CHILI ZONING BOARD OF APPEALS  
March 22, 2021

A meeting of the Chili Zoning Board of Appeals was held on March 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 Manger.

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: Board members, any issues with signs? I did get a photo from Paul (Wanzenried) about the Kings Crossing extended phase. It was in the snowbank as it was talked about last month. So Mother Nature did win on that one.

The Board indicated they had no problems with the application identification signs.

1. Application of Lisa Skeval, 12 Gary Hill Drive, Rochester, New York 14624 to erect an egress window 7.5 ft. from side yard setback (10 ft. required) at property located at 12 Gary Hill Drive in R-1-15 District.

Lisa Skeval was present to represent the application.

MS. SKEVAL: My name is Lisa Skeval. Not Skeral.

ADAM CUMMINGS: Sorry. It had an R on there.

MS. SKEVAL: That's okay.

My -- my address is 12 Gary Hill Drive and you got it covered.

I'm just trying to put an egress window in for my kids' room.

FRED TROTT: Is that just to put -- make you into code?

MS. SKEVAL: Yep.

COMMENTS OR QUESTIONS FROM THE AUDIENCE: None.

Philip Supernault made a motion to close the Public Hearing portion of this application, and Mark Merry Supernault seconded the motion. The Board unanimously approved the motion.

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

ADAM CUMMINGS: This requires a building permit, correct?

PAUL WANZENRIED: Bingo.

ADAM CUMMINGS: So you will have to continue getting a building permit. I'm sure you already applied for one, were denied and then sent here.

MS. SKEVAL: Uh-huh.

ADAM CUMMINGS: So keep working with Paul (Wanzenried) in the Building Department on that, but that will be a condition of approval for this.

MS. SKEVAL: Okay.

ADAM CUMMINGS: I don't have anything else.

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 Mark Merry seconded the motion. The Board all voted yes on the motion.

Philip Supernault made a motion to approve the application with a 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. Building permit must be obtained.

The following finding of fact was cited:

1. Location of egress window does not adversely encroach neighboring properties.

2. Application of Matthew Segar, 32 Indian Hill Drive, Rochester, New York 14624 to erect an accessory structure to be 1,344 sq. ft. (1976.5 sq. ft. total) where 1,200 sq. ft. is allowed at property located at 32 Indian Hill Drive in R-1-15 District.

Matthew Segar was present to represent the application.

MR. SEGAR: Good evening. How are you doing.

ADAM CUMMINGS: Good. How are you?

MR. SEGAR: Good.

I also have a revised updated site map. If it helps out, I have a printed copy for everybody.

ADAM CUMMINGS: That would be great.

MR. SEGAR: I think proposition is, as you said, to add onto my garage. I currently have a garage that's -- it's tucked underneath my house and due to it being such a short ceiling, I can't park anything in it and it's pretty much rather useless. Just wanting to -- the main reason for erecting this said building is because I have a boat and a large-sized truck and I actually have another car. So I'm trying to make it look nice in the neighborhood and I don't want a bunch of cars parked outside.

That is pretty much the whole reasoning behind all this. Just trying to keep it looking -- it's a nice neighborhood and I want to keep it that way.

My grandmother lived there and it has been passed on three generations and I just recently purchased the property, I want to say, six months ago.

ADAM CUMMINGS: And in the back you have got a metal storage container, wood frame shed and an attached garage, correct?

MR. SEGAR: Well, the garage is underneath the house. And I want to give you an updated blueprint.

ADAM CUMMINGS: Yes. If you could hand that out, that would be great.

MR. SEGAR: It's also in a different location, as well. I talked with some of the maybes and trying to make it more user friendly. The -- if you look at the original diagram, where it was -- you guys will get it --

ADAM CUMMINGS: I will bring these over to the Side Table.

MR. SEGAR: If you look at the original location where it was placed, that -- actually my grandmother had the biggest pool in the neighborhood, probably in the County. It was actually in that area where the garage was originally designed to be placed and after talking to local neighbors and my immediate neighbor to the left-hand side, and other neighbors, I figured it would be the best place to put it there because this way it wouldn't be -- it would be -- I figured with the pool being gone, the garage being placed there, it would be kind of -- be easy on everybody's eyes. Kind of like pool gone, to place the garage in that place.

And actually after talking to my one neighbors -- that was the immediate neighbor -- we worked it out and better to actually be farther away. So that is what the revised site map is for.

ADAM CUMMINGS: Is that your neighbor on the east or the one to the northwest?

MR. SEGAR: It would be the northwest.

ADAM CUMMINGS: Okay.

MR. SEGAR: And I mean it's -- it's not 100 percent to scale but to the best of my ability. You can see, I know that with the -- with the setbacks, if I'm not correct -- I'm pretty positive it's 40 feet from the rear lot line. Is that correct?

ADAM CUMMINGS: I believe so, yes.

MR. SEGAR: 40 from the rear. If you look at this diagram here.

ADAM CUMMINGS: The setbacks are good. And now that I'm seeing an updated map, I don't see the metal storage container.

MR. SEGAR: That was just temporary. I moved into this place right before winter when I closed on it, so it's like everything is stored in there. That's -- that's not permanent. I don't want to look at the thing either, as well.

ADAM CUMMINGS: Okay.

MR. SEGAR: But -- and that is another reason why this is on the larger side because I do have quite a large truck and I have always had pretty large boats. I want to keep it all in, inside and protected, especially with like the -- a lot of break-ins and stuff like that. It's a nice neighborhood and I'm not trying to disturb anything in its integrity obviously. I'm third generation in this house and I have been waiting, I think, 17 years to purchase it.

ADAM CUMMINGS: How tall is it going to be?

MR. SEGAR: I have the -- that document there, I think it's 14 foot from the roof -- the roofline.

ADAM CUMMINGS: That's going to be shorter than your split-level house?

MR. SEGAR: Yes. Correct.

PHILIP SUPERNAULT: So looking at your house from Indian Hill Drive --

MR. SEGAR: Yep.

PHILIP SUPERNAULT: Your neighbor on the left is on Creekville [sic]; is that correct?

ADAM CUMMINGS: View.

MR. SEGAR: Yes. Correct.

PHILIP SUPERNAULT: So where would your building be in relation to his home or their home? I'm assuming this is you here (indicating).

MR. SEGAR: It would be place here (indicating).

PHILIP SUPERNAULT: So there are trees --  
MR. SEGAR: Yes.  
PHILIP SUPERNAULT: -- that would come out?  
MR. SEGAR: No. It is inside the trees.  
PHILIP SUPERNAULT: Okay. All right. So -- so when he looks out, when they look out, they would be looking at your building?  
MR. SEGAR: Correct. And -- but it's literally inside those trees.  
PHILIP SUPERNAULT: Okay. Thank you.  
The dimension of the length, width of the building?  
MR. SEGAR: 28 by 48.  
PHILIP SUPERNAULT: 28 by 48, less than 14 feet tall?  
MR. SEGAR: Yeah. I think that's the right measurement for it. I don't have the other paperwork with me because I have the other stuff here.  
But they -- the Town submitted all that paperwork to them, I thought. That's what they wanted.  
PHILIP SUPERNAULT: I have no further questions at this point.  
JAMES WIESNER: So the shed that you have drawn on this map, it appears to be -- be to scale, relative to the rest of the drawing. Is that --  
MR. SEGAR: Correct.  
JAMES WIESNER: -- correct?  
MR. SEGAR: Yes. It is a very large building. It is almost as big as -- it is bigger than a house, but -- but that's just my opinion. That's all I have.  
MARK MERRY: Is there anything relatively the same size in your neighborhood?  
MR. SEGAR: Yes. Actually, on -- it would be Creekview, I -- I actually lived across the street to that house earlier in my childhood. I would be the third house on the left. I am thinking that -- I grew up in 12 Creekview, so it would be an even number on the opposite side. There is something almost identical to what I'm proposing to build.  
MARK MERRY: But that is situated -- as you're proposing to situate this structure, in the middle of the yard?  
MR. SEGAR: Yes.  
MARK MERRY: In a residential neighborhood?  
MR. SEGAR: Yep. Identical set-up.  
MARK MERRY: That's the only one I drive by.  
Also page 3, was the alleged difficulty self-created? You elected to answer "No."  
Can you explain that answer?  
MR. SEGAR: I didn't really understand the question, so I asked the people in the office what they said. They just said to say "no" because -- I didn't understand the question. And they didn't -- as well.  
ADAM CUMMINGS: The answer is always "yes" because you own the property.  
MR. SEGAR: Oh, okay.  
Then yes.  
ADAM CUMMINGS: You're here for a variance to go against the code and you own the property?  
MR. SEGAR: Okay.  
ADAM CUMMINGS: It is assuming you knew the rules. Whether you did or not is a different story, but it is always self-created.  
MR. SEGAR: Then yes, it is -- yes. So when is -- when is it no? Is it ever no?  
ADAM CUMMINGS: Matt (Piston) I have never heard of an example where it is now. I will see if Counsel has anything.  
MATTHEW PISTON: I think topography, a landlocked parcel that maybe --  
ADAM CUMMINGS: That would be a good example.  
PHILIP SUPERNAULT: Or preexisting.  
MATTHEW PISTON: Not preexisting.  
ADAM CUMMINGS: Preexisting would have been known. And then the code changed and it -- it's preexisting, non-conforming and then any updates would have to conform.  
MR. SEGAR: I have never done anything like this before. This is my third home and I plan on staying here.  
ADAM CUMMINGS: And it has pavement all around it.  
MR. SEGAR: The other building? Yes. Build it. I complimented on the gentleman's building and I told him I would plan on building something like that myself.  
MARK MERRY: Not the same situation, though.  
PHILIP SUPERNAULT: So to access the building --  
MR. SEGAR: Yes.  
PHILIP SUPERNAULT: -- are you going to have a drive?  
MR. SEGAR: Yeah. I'm going to stone in the back. There is already stone there. I'm just going to continue it to the face of it. I'm going to be doing a turnaround. I don't want to lose the grass or anything like that or mess with the drainage.  
ADAM CUMMINGS: Honestly, you don't really have enough room. You only have .68 acres. It is already very tight. That other property does abut to the back, 490.  
MARK MERRY: Right.  
ADAM CUMMINGS: Not neighboring parcels -- or residential parcels.  
MARK MERRY: My other question would be, the shed that is there, you're removing

that?

MR. SEGAR: I wasn't planning on it, but if at all necessary, it has been there since the original -- my grandparents bought it in 1943. If it needed to be, then I'm willing to do that.

MARK MERRY: Willing to do that. Okay. Thank you. Appreciate your answers.

ADAM CUMMINGS: Paul (Wanzenried), to ask a question on that, it looks like the square footage it is probably not a permitted structure on file because it's smaller than this.

Is that accurate?

PAUL WANZENRIED: Correct.

ADAM CUMMINGS: Is that included in the total calculations of the square footage?

PAUL WANZENRIED: It is not. I think we want that shed removed.

ADAM CUMMINGS: I agree.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

WILLIAM SAVINO, 30 Indian Hill Drive

MR. SAVINO: Good evening. William Savino, 30 Indian Hill Drive. I'm Matt (Segar)'s immediate neighbor to the south --

ADAM CUMMINGS: To the east --

MR. SAVINO: Well -- well, yeah. We have lived -- my family has lived in 30 Indian Hill Drive since 1965. It's a beautiful neighborhood. It's quiet. Matt (Segar) and I have -- his father and I were great friends growing up.

Matt (Segar) and I discussed the size of the building. I think he knows where I feel -- my thoughts on it. However, I -- we had a very good conversation Saturday. Friday we had a conversation that I think left us both not -- not unhappy or frustrated, but I know he was a little concerned that it was concerning to us.

Friday -- or Saturday we reconvened and I thought it was a great example how two neighbors could get together and have an applicable discussion about something that is about to happen in the neighborhood. He has made, you know -- been more than forthcoming and willing to make concessions. I know -- I keep -- told him this is not my decision, but I appreciate you working with us if -- if this passes to put it in a place that is best suited for the neighborhood. We're concerned about the green space. We have a pool out back.

And what I think -- I guess I just wanted to say that I don't think that you see neighbors actually communicate and get along about -- over something like this like we did and he is very ambitious and I think he truly wants to keep the sanctity of the neighborhood. So -- so I'm not opposed to the project or him having something there. I know it's up to the Town. But he -- he and I have had a discussion about the size of the building and the feeling in regards to the space and things. So I just felt like I wanted to let you guys know as a neighbor, he's been very good.

MR. SEGAR: Appreciate it.

ADAM CUMMINGS: Okay. Thank you.

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

ADAM CUMMINGS: If this -- well, we are going to move forward with this decision, but one condition of approval, as Paul (Wanzenried) Wanzenried just said, we would like to condition the approval that you remove the wood shed. The wood-framed shed. Not a wood shed. But the wood-framed shed, which by my calculations, looks like an 8 by 12 shed which would be 96 square feet. Not included in this total, but I just wanted to point that out. If you are agreeable to that.

I do want to pose the question, are -- well, first of all, it's your first rodeo, as you said, so I did want to explain our process here. We're here to hear a case where you would like relief of the Town's code. That's why you are asking for the variance here.

MR. SEGAR: Correct.

ADAM CUMMINGS: Our aim is to look at the properties, not necessarily the property owners, because our variances are granted for the land forever. For instance, if we grant this and this large building gets to go in there, not even necessarily the orientation -- it's the size of the building that we're looking at.

MR. SEGAR: Correct.

ADAM CUMMINGS: That means even if you chose not to build and it and you sell it to someone else, they are granted permission to build this structure. So it's not specific to the owners or -- it's -- rather it's specific to the land.

MR. SEGAR: Okay.

ADAM CUMMINGS: It is great to see neighbors come in and communicate with each other and come in and speak to us because usually we don't see that either. So thank you for coming in and sharing that.

I honestly had thought you got input from Lot 58, the one to left. Did you get input from them, as well?

MR. SEGAR: They are college people and they're -- they're not concerned.

ADAM CUMMINGS: Got you.

MR. SEGAR: But like I said -- you want me to go up there and talk -- like I said, I can't stress it enough, this has been in my family for -- for forever and a day. I grew up in this neighborhood. My parents -- I think it was back in 1992 my dad moved in there with my

grandmother. My dad spent all his years growing up there. It was always my grandmother's house. From the time I was 16 years old, old enough to know that I want a house -- I built forts in the pit in the back. This is my stomping grounds. I lived on 12 Creekview and then I moved to Indian Hill where my grandmother lived.

So it is -- in the bedrooms there are still my crayon drawings on the wall. So I'm not trying to disturb any of the neighbors. Like I have a professional relationship with many of them. They're still all the same families and whatever.

I'm just trying to utilize the property so I can have -- to keep the -- the same -- I guess say the aura of being my grandmother's house. I don't want to leave stuff outside. I want it to look nice and appealing. I have spent the first time in my life over \$500 in gardening stuff to bring back the front of the yard. If you look at satellite pictures, I want it to look nice and I want it to be --

ADAM CUMMINGS: So I will go back to the structure and the specific question is, 28 by 48 is a big structure in this neighborhood. We had another application off of Chili Avenue that actually came in twice. We denied it both times because it was such a large structure.

MR. SEGAR: Okay.

ADAM CUMMINGS: I believe it was much larger than this one. But my question to you is, how big do you -- to you absolutely need? Is it necessary for you to have it? Because once again, our job is to minimize these variance requests.

You have done a great job of coordinating with your neighbor to put it in a less obtrusive location, but it's still the size that we're evaluating here.

So we would like you to prove that it -- that it's -- it's out of place and we just need proof other than to hold toys in there of what justification is there for such a big one. Because the one -- the example that you showed us, it actually looks like he is operating a business out of it. Which that lends itself to a whole other concern we have in the Town.

You may not do that, but who is to say the next person that --

MR. SEGAR: I don't know. That will be in 50 years. It will be in my family. That's -- I fought tooth and nail to get that property and I'm never going. I plan on having kids in Churchville-Chili School District. I went to there. So it's -- if I'm not doing it, no one is doing it.

ADAM CUMMINGS: So back to my original question, did you evaluate going smaller?

MR. SEGAR: No. I can't make it any smaller because -- if you look in the parking lot, you will see one of my pickup trucks and it's quite large. I -- I don't want it to be an eyesore for anyone in the neighborhood. I have always had boats. You know, I don't want -- I don't want it to be stored outside. I don't want it to be an eyesore. And I figured that doing it and keeping it, you know, all of the stuff sitting outside, I don't want it to look like a junkyard or whatever. I want it to look clean and organized.

There was at one time a pool back there. An Olympic-sized pool. The biggest pool in the area. That was removed and it's -- it's the identical size to the said building.

ADAM CUMMINGS: Of area, but not height.

MR. SEGAR: Correct.

ADAM CUMMINGS: Not a structure.

FRED TROTT: I have a question for you. If you went 30 by 40, you would reduce your footprint down but -- not by much and you would still be able to fit the 27 foot boat in.

MR. SEGAR: Yeah, but it's actually -- when it works out, it is like -- I think it is 32 foot and some change with the tongue. So getting that to park in there, would -- you know, it's --

FRED TROTT: There is 40 feet one way.

MR. SEGAR: Yes.

FRED TROTT: The truck will not be more than 20.

MR. SEGAR: But to be able to park -- to be able to park it in that spot, put it in a corner or whatever, you wouldn't be able to do pretty much anything with it in there. You know. I -- I did the calculation so many times trying to make it work. Like I said, I'm not trying to disturb -- the least amount as possible.

FRED TROTT: So you plan on working in there, too?

MR. SEGAR: Well, storing my boat and my truck.

FRED TROTT: Do you plan on running a business out of there?

MR. SEGAR: No.

ADAM CUMMINGS: But to be clear to the point that Fred (Trott) just said here, is by code, you're allowed 1200 square feet.

MR. SEGAR: Correct.

ADAM CUMMINGS: So therefore --

MR. SEGAR: That's the variance I'm applying for.

ADAM CUMMINGS: -- even if we deny this tonight -- and I don't want to pre-ordain our decision -- well -- he's here for the 1200 square foot, not the total? Or is he here for the total?

PAUL WANZENRIED: Total.

ADAM CUMMINGS: That's right. It's an attached garage. I kept thinking that was part of the house and it wasn't counted on.

MARK MERRY: But to your point, Adam (Cummings) -- and it was a great suggestion by Fred (Trott) -- we're here to minimize rather than necessarily automatically reject due to the size of your request.

MR. SEGAR: I understand.

MARK MERRY: I know it's a lot to take in. Would you rather take Fred (Trott)'s suggestion of going 30 by 40 -- not perfect, but it gives you what you just asked -- that you

wanted, right -- rather than have us deny you and waiting a whole year to come back. I'm not saying it is going to happen. But just something to think about right now.

I think Fred (Trott) has come up with a good solution and Adam (Cummings) has kind of identified a concern about the size of the structure. I don't think your neighbor would mind if it was a little bit smaller.

MR. SEGAR: I'm sure.

MARK MERRY: Just something for you to think of. We're here to work with you. We're not here to be obstructive.

MR. SEGAR: I appreciate that.

Yeah. I mean -- it would make things a lot harder, but if that is what it took, you know, that's -- if that is what I absolutely have to do -- it would make things real difficult on my mind. I'm not here to make waves. I'm just here to ask for permission and not do anything without asking. I'm not trying to make anybody -- not make an eyesore. I have talked to the neighbor and I -- overall goal is to make sure everybody is happy. I'm not trying to step on toes or disrespect. That's our safe haven -- you come home from work. You want to relax. They have a pool in the backyard. I explained to them, with the prior houses I had before, I know right away it is a very big important thing and I offered that I would plant trees on my property so he can have -- I wouldn't want -- it's not fair if I put something up in my backyard I guess the way -- I word it -- is if I'm going to make something or erect a building in my backyard, it's not fair that I -- that I would ask him to plant bushes and trees on his property to hide mine -- we'll call it "an eyesore."

So I said, you know, in lieu of that, I would plant something to make it easier if that was something he requested. Because I'm just trying to make sure everybody is happy. So I would be able to do like -- kind of like what I would like to have the accomplished goal of and also not be a nuisance or an eyesore or annoying in any way or impede on their safe haven. So I want to work with everybody to the limits of the Town and just want to do the right thing.

MARK MERRY: I give you a lot of credit for that.

ADAM CUMMINGS: Absolutely.

MR. SEGAR: Appreciate it.

ADAM CUMMINGS: I'm just going to state an opinion here. I agree that that is a good minimization. It brings it -- it reduces it down by 144 square feet in terms of the request that is being requested of us to consider and by extending it 2 feet wide, it's not going to make it that much higher. Just a few inches taller. So now it is still -- what I'm getting at it is not going to exceed any other code requirements by going higher.

MR. SEGAR: The nice thing is if you look at the elevation in my backyard, it pitches downward. I'm at the top of the hill. So having the bigger -- though, no matter what it is underneath the footprint of my house, my roofline. But because it is set down lower, it is more easier on the size from a distance if you're looking from your standing view. It actually looks like it's a 6 foot tall building because it's down -- downhill in elevation.

So that is the other thing that I wanted to -- not to justify it or whatever, but to make it so it's easier on, I guess, explaining, you know -- because like I said, I'm trying to be a nuisance or whatever. The first day I bought -- put the offer on the house, I went over and talked to the neighbor and told him what I was planning on doing and what I would like to do. But like I said, I want to work with everybody and I will come to a common agreement where everybody is comfortable. And I'm not asking for special privileges or whatever, but -- but this house means a lot to me and where it is located and I just want to make it work with everybody together.

ADAM CUMMINGS: Okay. One last question is, you're just planning on one story? You're not planning on doing loft spaces or two stories?

MR. SEGAR: No. No. No nothing.

ADAM CUMMINGS: Perfect. Any other questions from the Board? Would you entertain that reduction to 30 feet by 40 feet?

MR. SEGAR: If -- if it was -- if it would make or break, then yes. If I had to do that, I would -- I'm a negotiating man. If that is what it took, then that is what I would take. I think -- what is the old saying? Like one -- one in the hand and two in the bush or however it works, I think this is how this came to be. So...

ADAM CUMMINGS: Okay. So the Board's understanding it is revising or minimizing this one to be a request of 30 feet by 40 feet, which is 1200 -- actually, I have to -- what did you say 632.5?

PHILIP SUPERNAL: 1832.

ADAM CUMMINGS: 1832.5. 1832.5 square feet is the minimized number. All right.

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 Fred Trott seconded the motion. The Board all voted yes on the motion.

ADAM CUMMINGS: Ask for a motion to adopt this application with one condition of approval that the wood frame shed be removed?

Mark Merry made a motion to approve the application with a condition, and Philip Supernault seconded the motion. The vote on the motion was 3 yes to 2 no (Wiesner, Cummings)

ADAM CUMMINGS: Revised to be 30 by 40. Board vote?

DECISION: Approved by a vote of 3 yes to 2 no (Wiesner, Cummings) with the following conditions:

1. Building permit must be obtained.
2. Existing wood frame shed to be removed.

The following findings of fact were cited:

1. Requested variance was reduced and minimized.
2. The adjacent neighbor spoke with moderate support and the compromises that the applicant and him agreed for this project to avoid detrimental impacts to the adjacent property.

ADAM CUMMINGS: You did pass 3 to 2, so congratulations.

MR. SEGAR: Thank you.

ADAM CUMMINGS: Nice presentation, sir.

MR. SEGAR: I was going to make a PowerPoint, but I didn't know how this works.

ADAM CUMMINGS: I would have come up with a way to play a PowerPoint. So thank you very much. And to point out to everyone, I believe the one on Chili Avenue, I think that was around 2000 or 2100 square foot. That one is a very big one. Thank you, sir.

OLD BUSINESS:

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, Evan VanEpps, Nathan Buczek and Phil Lepore were present to represent the application.

ADAM CUMMINGS: The change that was accommodated from our request at the last meeting is they did speak with the -- Brickwood did speak with the Church and it negotiated acquiring 10 feet further property towards the Church to the east which then minimized the variance request for that front setback where previously to the buildings from the front line -- front setback line was 40 feet. It's now at 50 feet. The rest of the application remains the same, correct?

MR. BRENNAN: Daniel Brennan from the law firm of Davidson Fink here on behalf of the applicant.

Just to refresh your Board's memory, we're seeking four area variances tonight, one for the setback from the street, one for the setback from the internal street and one for the three-bedroom units and one for -- for the sidewalks.

So based on feedback that we received from -- from the Board at last month's meeting, we have come to an agreement with -- between Brickwood and the Church to -- to acquire an additional 10 feet for the -- for the new property to be subdivided. I think that creates a larger site. I know one of the comments we heard from the Board is that this project was a little bit too dense, a little bit too tight. So we have added some additional space that I think addresses that.

This will reduce the requested relief from -- from the front setback variance. And so we -- we would request that the Board approve all four of the variances. I think we went through the legal standards last month and -- and in our papers that were submitted back in August and updated a couple months ago.

ADAM CUMMINGS: Thank you.

Just pointing out some of the dimension marks, there are dimension marks for Union Square development to the west. It ranges between -- I see 30 feet. 34 feet. 43 feet and it just depends where it was measured from the front of the building. From the edge of payment to the front of the building.

This application is for 30 feet. Phase 1 of Kings Crossing was actually granted a variance of 25 feet. But they have elected to not go that tight. And keep it at 30 feet. Which jives in nice with the -- with the adjoining property to the west.

And there is that -- so interior setback and then the 75 foot and the 50 foot dimension. And sidewalks -- sidewalks are still off; is that correct?

MR. BRENNAN: That's right. Although, if -- one of the updates we have made to the concept plan here indicates where there are no existing sidewalks on the neighboring developments in addition to along Union Street which is -- which is the street that this property

accesses. The reason we -- we have included that is, I think, that's germane to the -- to the standard of whether or not the project is consistent with the existing character of the neighborhood. And it is. I mean there -- there's already no sidewalks in this neighborhood, so creating an additional project that doesn't have sidewalks isn't going to change the character of the neighborhood and it's the same with the -- with the internal setbacks, is that both -- both projects to the neighboring -- neighboring this site don't comply with the -- with the internal setback requirement. And so again, while it doesn't -- it doesn't mean that -- that this variance is -- has to be -- that alone doesn't mean that it has to be approved. It goes directly to that -- to the legal standard whether or not it is consistent with the existing character of the neighborhood. And you know, as I think we mentioned last time, these variance are critical to allowing this project to move forward. You know, we have done the best that we can. We have worked very closely with the Planning Board to create a project that fits on this site. We're consistent with -- with the zoning designation. You know, apartments are an allowed use in this zoning district and to deny the variances here would be effectively to deny the Church the ability to use this portion of its property for any productive use. You know, they don't have a need to expand the Church onto this portion of the property so it needs to be sold and to sell it for an apartment project is consistent with the zoning designation.

ADAM CUMMINGS: Any questions, Phil (Supernault)?

PHILIP SUPERNAULT: No questions at this point.

FRED TROTT: Any thought of reducing the three-bedroom apartments?

MR. BRENNAN: The reason we have proposed a number of -- mix of bedrooms is based on Brickwood's experience of marketing apartments in the Monroe County area. You know they have numerous other townhouse development projects and what they found is that this is what -- this is the mix that -- that the market will bear. This is what the demand is for. And there is a significant amount of demand in this area for three-bedroom apartments which -- which obviously allows larger families to live in these units. So that is why we have proposed this.

To deny that, I think not only would it create a significant hardship, I think that it derails the project, but there really -- there really are no negative impacts from having three-bedroom units. Other thing I would note -- and we do have a little bit of data that I can provide for the Board in writing is it's consistent with the existing character of the neighborhood. That some of these other apartment projects also have more than 10 percent three-bedroom units. The original Kings Crossing project has -- has approximately 50 -- sorry. 78 percent three-bedroom and the -- Union Square project has approximately 28 percent of -- of three-bedroom units. So to go over that 10 percent is not changing the neighborhood. It's not, you know, altering the character of the neighborhood much and it doesn't have any negative impacts on the neighborhood. It is just allowing the Church to sell this -- to sell this piece of land to put their property to productive use.

FRED TROTT: Is there -- would you say with those other two subdivisions that now you have plenty of three-bedrooms and maybe it would be harder to sell?

MR. BRENNAN: That's actually not Brickwood's -- Brickwood's position here. They have looked at the market. They have looked at what -- what the demand is for -- for three-bedrooms and -- and they actually find that three-bedroom units are easier to rent. They rent for -- for a larger -- for more rent and so this actually is a bit of a compromise here. And so we think that the number of three-bedroom units that we have proposed is -- is necessary and appropriate.

FRED TROTT: Does the School District know that you're putting all these three-bedroom apartments in?

MR. BRENNAN: I'm not sure. I don't think that the School District has -- has jurisdiction over the project. And so for that reason, we -- we haven't gone to them with -- with our proposal. There is no approvals that we need from them.

PHILIP SUPERNAULT: Do your demographics illustrate why your three-bedrooms are so popular? Can you tell us what the ideal renter -- what the demographics is? Is it a family? Is it -- is it partners?

MR. VAN EPPS: Just to go back.

ADAM CUMMINGS: Can you just --

MR. VAN EPPS: My name is Evan VanEpps. I'm with Brickwood Management, 21 Cross Bow Drive, Penfield, New York.

Just going back, Kings Crossing, the Phase 1 is mostly three-bedrooms and the reason we're back here today is because that project has been successful. They have been full for as long as I have been working for the company, which is ten years. They're all full. People in there -- the reason we want to come back to Chili is the community itself is one of the least amount of efforts to maintain. Everyone seems to be good tenants, nice families. And they respect the apartment and the neighborhood. And I don't know -- I haven't heard from anyone else that you have issues with Kings Crossing Phase 1.

But we actually intend on making Phase 2 a little bit nicer. Should have some more upgrades. Should bring in even -- I think a higher clientele. Usually based on my experience -- we had projects in Webster. If you build them a little nicer, the people that come in just seem to be easier to work with and maintain a relationship with. And we have had a lot of success there. And that's kind of why we're back here and I reached out to Phil (Supernault) about a year ago.

PHILIP SUPERNAULT: I'm not questioning -- I'm not concerned about nicer because --

MR. VAN EPPS: I'm just saying.

PHILIP SUPERNAULT: I'm just wondering is it -- is it older people? Younger people?

MR. VAN EPPS: Okay. So I would say there is a lot of families. But we're get -- we're



getting empty nesters in the three-bedrooms, as well. Someone that sold their house. These three-bedrooms are as close to a house as you can get for rent. You have a two-car garage, a full basement. It's -- you walk in and it feels like you're in a home. And I think that's -- that's been a lot of the same -- typically what we have been getting, as well. So I hope that answers your question. If there is anything else I can answer while I'm already up here?

MARK MERRY: I have a question. What did you ask for them to bring back to this meeting?

ADAM CUMMINGS: Market study.

MARK MERRY: Did you receive that market study?

ADAM CUMMINGS: Negative.

MARK MERRY: Thank you. I'm all set.

MR. VAN EPPS: When was the market study asked for?

ADAM CUMMINGS: At the last meeting last month.

MR. VAN EPPS: Okay. Just so I'm clear, if I need to come -- you're looking for a market study on --

ADAM CUMMINGS: Justifying the demand for this many multi or more than two-bedroom units.

MR. VAN EPPS: We can get that if that is what you think would be helpful and appropriate. I just mention we're talking about 24 three-bedrooms here and I'm not sure --

ADAM CUMMINGS: 24 or 20? It is 24? I thought there were 20.

MR. VAN EPPS: I'm thinking. You're right. It is 20. Just 20 three-bedrooms.

PHILIP SUPERNAULT: That is why I asked the question about demographics. Was wondering.

JAMES WIESNER: Some general questions. So as far as the lot lines, they -- they essentially have changed in order for you to get the -- get to the 50 foot off the front lot line; is that true?

MR. BRENNAN: That's correct.

JAMES WIESNER: I take it the dashed line around the parking lot is an easement?

ADAM CUMMINGS: No. That -- oh, that -- yeah. I think that is for shared parking, isn't it?

MR. BUCZEK: It's going to be an easement to the Church.

ADAM CUMMINGS: What is the easement for?

MR. BUCZEK: Just so we can -- I can come up there.

ADAM CUMMINGS: Sure. Can you identify yourself -- just so Sandy (Hewlett) gets it on the record.

MR. BUCZEK: Nate Buczek with TY Lin, civil engineer on the project helping with the layout and design.

The reason why that's currently on the plan is to try to maximize the impacts to the Church parking lot. Basically the way it lays out and with the shift of even the 10 feet, we were able to keep that corner of the parking lot in place, which we're considering is a -- as an easement, access easement and still not lose another probably five parking spaces. We did even look at shifting the lot even 10 feet more and that would have impacted about another loss of about 15 parking spaces to the existing lot. So that is why we chose the 10 foot shift to try to eliminate the impacts to the Church lot.

JAMES WIESNER: Other thing I had -- I don't know what the proper person will be, but I'll quiz you a little bit on what the -- kind of the old development is, new development is as far as the ratio -- or the number of different bedroom apartments. So in -- is -- in the old Kings Crossing one, my understanding is that there is 36 units in there; is that correct?

MR. VAN EPPS: Phase 1 has 60 units. There is -- 48 are three-bedrooms, 12 are two-bedrooms. Union Square right -- right to the west is 58 or 60 three-bedrooms out of 270 units. And we're proposing 20 out of 36 for 56 percent. So kind of right in the middle of those two projects.

JAMES WIESNER: I'm only looking at what you have to what you're about to build. So Kings Crossing 1 you have 60 units; 48 are three-bedroom and 12 are two-bedroom. Correct?

MR. VAN EPPS: Right.

JAMES WIESNER: And then what's -- King's Crossing 2 is how many? I think that --

MR. VAN EPPS: 20 out of 36. And just to be clear, there was an original proposal where we were at 24. That is why I said that originally. Based on some feedback and talking with the Town, looking for more space and to try to get closer to that 10 percent, we took out -- we made sure the units we took out to make space were three-bedroom units.

ADAM CUMMINGS: So to clarify that one, you have got 20 three-bedroom and 12 two-bedroom?

MR. VAN EPPS: 16. 16 two-bedrooms.

JAMES WIESNER: So the ratio went down. 48 out of 60 relative to 20 out of --

MR. VAN EPPS: Yes. I have it all broken down into percentages if you want that. Or Dan (Brennan) has that.

ADAM CUMMINGS: I think you said it goes from 78 percent to 55.

MR. VAN EPPS: For Phase 2, it's 55, yeah.

JAMES WIESNER: It did go down. It's not like it has gone up or anything. Okay. That's all I got.

ADAM CUMMINGS: I would like a little more elaboration -- I think we talked about Phase 1 and Phase 2 on the market study. I would like to hear a little bit more objective data of

the three-bedroom as opposed to anecdotal you have something in Webster. I would leave it to you to state what that would be and give a little bit of a reprieve and an exemption from having to do a formal market study if you feel comfortable with what is said tonight.

MR. BRENNAN: Can I have just a minute?

ADAM CUMMINGS: Yep.

MR. VAN EPPS: If you're asking about the three-bedrooms again -- and I understand -- I understand your concern. If you're thinking three-bedrooms are -- have more kids and, you know, could be in the school -- in the School District and I understand that. But we're here -- we're a business. We're buying land from the Church. We paid, I think, market rate for it. And yeah, this is a little tight, but obviously we want to fit as many units if we can if we're going to do this work.

ADAM CUMMINGS: Let me guide you a little more. Webster, you have a development with more three-bedroom than two-bedroom; is that correct?

MR. VAN EPPS: Very similar. It's a good mix.

ADAM CUMMINGS: Similar to what?

MR. VAN EPPS: It --

ADAM CUMMINGS: Similar meaning it's 50/50 of three-bedrooms to two-bedroom.

MR. VAN EPPS: Yes.

ADAM CUMMINGS: So once again, you're at 50 percent.

MR. VAN EPPS: Yes. Here we're asking for 56. And Phase 1 was 78.

ADAM CUMMINGS: Correct.

MR. VAN EPPS: I understand -- but just so I can finish on that point, it's -- it's three-bedrooms take less of a foot -- footprint in our plan, so we can fit more of them. And yes as Dan (Brennan) mentioned, the rent is a little higher. There is a point where this project doesn't -- doesn't make sense and if we keep taking away three-bedrooms, it's -- I would have to really look at the numbers and it -- it just doesn't look good the more you take away. Because you take away and get to that 10 percent. Then there is way less units. The two-bedrooms are less to rent.

The way I see this is I -- I get your concerns. I know that this is a win for the Church. It's a win for my -- my family and myself and our business because obviously we would look to own these and maintain these like we did at Kings Crossing. I know there are concerns with the School District, but I see it's a win for the Town. It's previously an untaxable piece of land that now is -- is going to be generating some decent tax income for the Town as far as I can see it unless you tell me otherwise.

ADAM CUMMINGS: I just want to make sure we're clear and the Board has made it clear, the magic number is 10 percent that we're burdened to evaluate. You're asking for five times -- 5.6 of that and I'm just trying to make sure we get enough evidence to that.

I would point out and expand on what you're saying. You're now subdividing out a tax exempt parcel and creating a taxable one which is a benefit to the Town in terms of income or revenue rather coming into the Town --

MR. VAN EPPS: Sure.

ADAM CUMMINGS: -- in terms of the tax base and you are abutting two other properties, one of which is in a Planned Residential Development which is high density. The Church cannot be compared to that because it's a totally different use. It's a totally different -- not to say "zone" because it really wouldn't have been considered on zoning because it's an exempt one. But I just wanted to point out to everyone, if you take out the Church, now you have got several Planned Residential Developments, one of which happens to be zoned that way.

The other two are meeting their codes and allowing apartment buildings and not to call it clustered development because it isn't, but higher density development all in the same area of the Town. As Jim (Wiesner) pointed out, it is reducing from 78 to 55.

I personally dislike percentages because to compare it to a percentage of Union Square, for instance, with 200-plus units, it's a whole lot easier to get a lower percentage. They could have all three-bedroom apartments in this phase of it and way over here, have two-bedroom and the percentage would be significantly lower. I just wanted to point that out.

FRED TROTT: They have sidewalks.

ADAM CUMMINGS: They do have sidewalks. I would like to point out -- I live in a neighborhood that didn't get sidewalks and I'm pretty bitter about that. I don't see any feasible way to connect the sidewalks between these developments. Kings Crossing 1 doesn't have any at all and where there -- they're aligned on Union Square, um, you're going to be crossing major -- not major -- but thoroughfares of vehicular traffic at multiple spots and through people's backyards that don't have easements so it would be problematic.

MR. BRENNAN: Just to go back briefly, I think on the issue of the number of bedrooms, there are two sides to the coin. There is whether we need the three-bedrooms. I know we don't have a formal market study. It's not something you would expect to find with a development this size.

But the other side of the coin is what are the negative impacts to the neighborhood? What are the perceived detriments to the neighbors and I can't see any. I mean actually if you look at the Chili Town Code, I don't believe there is a definition of what a bedroom is. I believe that we would be able to have the exact same layout in these apartments if we didn't term them as three-bedrooms. If we say it was a two-bedroom with an office or two-bedroom with a den, it would be functionally the same type of unit. You're just not marketing it as a third bedroom. Maybe elimination of a closet or something like that might term it a two-bedroom. But it's not

actually changing the project at all.

ADAM CUMMINGS: I wouldn't even bring those points up in front of Mr. Wanzenried for the next time he does his Code Enforcement inspections because I think he will be on the look-out of closets or absent of closets and armoires to suddenly get them into it.

PAUL WANZENRIED: I already know that trick.

MR. BRENNAN: The bedroom is not defined under the Chili Town Code. So what we're looking at here is the exact same product. If you say two -- these have to be two-bedrooms, you will get the exact same building as if it is a three-bedroom. Because that term is not defined under the code. So I would ask what is the difference in the impact to the neighborhood? What negative effect does that have on any of the surrounding properties? The surrounding properties that already have three-bedroom units or already are apartments.

And the Church is obviously in favor of this. They're the ones selling the property. They're the applicant here. So while I can appreciate that you would like to see a market study, I don't think that that is feasible with a project of this scale. We're -- we're really relying -- we have put on the record that Brickwood has a significant amount of experience building projects like this that they have seen, that there is demand for this many three-bedroom units. I think that satisfies the area variance standards. And when you compare it to any harm that it is causing to the neighborhood, there is nothing that demonstrates having a three-bedroom over two-bedroom will cause any negative effects in the neighborhood.

ADAM CUMMINGS: Can I ask one more question? As we have given the example of Webster and Brickwood's extensive experience in three-bedrooms, can you name any others?

MR. VAN EPPS: Yes. Where we have built three-bedroom apartments? In Gates. That is called Ivy Bridge Town Homes and Ivy Bridge Extension. They are a majority three-bedrooms.

ADAM CUMMINGS: So once again, greater than 50 percent?

MR. VAN EPPS: I don't have exact percentage but definitely greater than 50 percent. We also are building in Farmington -- right now under construction. 28 units, all three-bedrooms.

ADAM CUMMINGS: Yep.

MR. VAN EPPS: So if I could just follow it up and based on what you said, Adam (Cummings), which was Union Square has 56 units. I can look at the percentage, but we're talking about 20 bedrooms. And again, I know you have -- want to get us as close to that as possible or meet it, but again, we were at 24. We actually had more and we brought those three-bedrooms down in an attempt to try to make this work for everyone.

JAMES WIESNER: Those other towns you didn't have to go for variances? Other towns?

MR. VAN EPPS: Not in -- so one was a little before my time and I don't believe there was a need for a variance and definitely not in Webster.

ADAM CUMMINGS: I think.

JAMES WIESNER: Some Town codes don't keep up with what happens in the community.

MR. BRENNAN: In my experience most zoning codes don't distinguish between three-bedroom and two-bedroom units. The allowed use is multi-family apartments or town homes and they won't distinguish between a two-bedroom and a three-bedroom probably because of the reason I just brought up, because it's difficult to define what is a bedroom is. What is the difference between a third bedroom or a fully enclosed office or den?

MR. VAN EPPS: I'll actually piggy-back on that.

Is Greenwood Town Homes not in this Town? They kind of did the same thing with their den when you walk in. I wasn't able to get a hold of them to get their mix, but they have, I think, a significant amount of three-bedrooms. Their middle units are all three-bedrooms, which would be half, if I'm right.

PHILIP SUPERNAULT: So this project, garages are part of this?

MR. VAN EPPS: Attached two-car garage, yes, and a full basement.

PHILIP SUPERNAULT: So everyone --

MR. VAN EPPS: Every single one.

ADAM CUMMINGS: Any other questions on any of the other requests? The sidewalks, the front setback to the interior road or the increase one from -- or decreased rather from 40 feet to 50 feet.

JAMES WIESNER: I feel this project is very consistent with what is already there.

ADAM CUMMINGS: I would agree.

JAMES WIESNER: I'm stating my opinion, but I just think that we're really weighing heavily on these people for things that are already there.

ADAM CUMMINGS: And to be clear on Kings Crossing Phase 1, you did not get a variance for that, correct?

MR. VAN EPPS: For three-bedrooms?

ADAM CUMMINGS: Correct.

MR. VAN EPPS: I believe I found out that it was.

ADAM CUMMINGS: Code requirement afterwards.

MR. VAN EPPS: Sure.

ADAM CUMMINGS: Is that accurate?

PAUL WANZENRIED: Yes.

JAMES WIESNER: That's what happened on Union Square.

ADAM CUMMINGS: Union Square because it's two different zoning classifications and

they constructed one.

PAUL WANZENRIED: The development to the north has three-bedroom units.

MR. VAN EPPS: Hubbard Springs?

PAUL WANZENRIED: That's correct. And they're 50 percent.

ADAM CUMMINGS: Yes.

PAUL WANZENRIED: Different zoning district, but the neighbor to the north is the same mix.

ADAM CUMMINGS: And to be clear to everybody, that is the one under construction around that big white house that is there. Across from the Fire Department.

FRED TROTT: That being that close -- existing.

ADAM CUMMINGS: Good point to make, if you look at the zoning map and we zoom way out, this is an example there are two zones that abut right next to each other that they could almost be rezoned they're so close.

I will move on with this one unless there is anything else from the Board? I would still like to reopen the Public Hearing. We did open and close it, but since we did change the variance, I will reopen it.

Counsel, are you okay with me just reopening it just to be extra thorough?

MATTHEW PISTON: Sure.

ADAM CUMMINGS: Motion to open the Public Hearing?

PHILIP SUPERNAULT: Second.

COMMENTS OR QUESTIONS FROM THE AUDIENCE: None.

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

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

ADAM CUMMINGS: We are going to do one SEQR on this one for all four of them, but then we're going to do individual decisions.

One condition of approval you will need a building permit to continue to work with Paul (Wanzenried) on that one.

Only other thing I'm hesitating on, Matt (Piston), is this going to be a non-coordinated SEQR Planning Board?

MATTHEW PISTON: Yes. I believe that is how the Planning Board did do it.

ADAM CUMMINGS: I won't declare us as lead agency, but we will do SEQR tonight.

Adam Cummings made a motion 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 Philip Supernault seconded the motion. The Board all voted yes on the motion.

ADAM CUMMINGS: One condition of approval will be for building permit to be obtained. Start you out first 1, 1A -- I will call it 3A tonight just to go and add it into -- Old Business Number 1 on the agenda, but I will call it 3A. This is to erect a structure 40 feet from the -- sorry -- 50 feet from front setback minimizing from original request of 40 feet where 75 feet is required.

Motion to adopt?

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

JAMES WIESNER: You're calling it 3A?

ADAM CUMMINGS: Yes.

JAMES WIESNER: Instead of 1A?

ADAM CUMMINGS: Because I already have a 1. So I'm going to renumber it and call it a 3A.

Is that okay? Matt (Piston), can I do that?

MATTHEW PISTON: I'm not sure it matters.

ADAM CUMMINGS: I don't think it does. That is why I'm trying to explain them all on the transcript.

What, Paul (Wanzenried)?

PAUL WANZENRIED: Whatever makes you happy.

ADAM CUMMINGS: Board vote.

DECISION ON OLD BUSINESS 1-3A: Unanimously approved by a vote of 5 yes with the following condition:

1. Building permit must be obtained.

The following findings of fact were cited:

1. Variance requested is minimal and is similar to other higher density

developments in this area.

2. The acquisition of additional land reduces the requested variance from a 40' request to 50' request, lessening the relief request by 13%.

ADAM CUMMINGS: Now, 3B is going to be the 30-foot setback to the interior road where 40 feet is required.

Ask for motion to adopt?

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

DECISION ON OLD BUSINESS 1-3B: Unanimously approved by a vote of 5 yes with the following condition:

1. Building permit must be obtained.

The following findings of fact were cited:

1. Variance requested is minimal and is similar to other higher density developments in this area.
2. Additionally, the 30' setback is greater than the previously approved variance for a neighboring property that had 25' setback variance approved.

ADAM CUMMINGS: 3C is the 20 three-bedroom units, 55 percent where 3.6 or 10 percent is allowed.

Ask for motion to adopt this application?

James Wiesner made a motion to approve the application, and Philip Supernault seconded the motion. The vote on the motion was 3 no to 2 yes (Wiesner, Cummings).

DECISION ON OLD BUSINESS 1-3C: Denied by a vote of 3 no to 2 yes (Wiesner, Cummings) with the following findings of fact having been cited:

1. Variance requested is excessive and the applicant failed to provide the requested materials illustrating the justification for such a significant variance request or market demand for so many multifamily bedroom units. The application was previously tabled to allow the applicant to provide the requested materials, which they still failed to provide.

ADAM CUMMINGS: That got denied.

Moving onto letter D.

Sidewalks. None proposed. Required at property located at 3 -- located at this one. So the sidewalks.

I ask for motion to adopt this application?

Philip Supernault made a motion to approve the application with no conditions, and Fred Trott seconded the motion. All Board members were in favor of the motion.

DECISION ON OLD BUSINESS 1-3D: Unanimously approved by a vote of 5 yes with no conditions and the following findings of fact were cited:

1. Variance requested is not significant.
2. Neighboring developments do not have sidewalks and the existing sidewalk networks on the adjacent properties do not have efficient or feasible points of cohesiveness for a connective corridor between these developments.

ADAM CUMMINGS: I will go back to 3C and I will ask everybody that said "no" for a reason.

So starting with you, Phil (Supernault), I just want to document the findings, the reasoning for the "no."

PHILIP SUPERNAULT: I just would like -- I'm concerned about impact on tax base and the school.

ADAM CUMMINGS: Impact on the school tax base?

PHILIP SUPERNAULT: Not on tax base, but on bringing --

ADAM CUMMINGS: On the expenses on the school?

PHILIP SUPERNAULT: Bringing kids to the school.

ADAM CUMMINGS: Do you have a different reasoning for that? Because that's not really one of the things we're supposed to be considering.

PHILIP SUPERNAULT: That's the educator in me. I think that it can be done and be more in line with the existing standards.

ADAM CUMMINGS: Fred (Trott)?

FRED TROTT: I think it's too over the required amount and --

ADAM CUMMINGS: Excessive, significant?

FRED TROTT: Yes.

ADAM CUMMINGS: Next? You were going to keep going?

FRED TROTT: Also on the -- the not providing a study that was requested.

ADAM CUMMINGS: Mark?

MARK MERRY: I think it's an excessive request and the benefit can be sought by the applicant through another method.

ADAM CUMMINGS: Okay. So the three reasons for the "no"s was not meeting the standards, extensive significant exceedance of the code requirement and lacking the required information that was requested and an extensive request. So that is our findings.

MR. BRENNAN: We would ask just briefly if the Board would consider reopening on the matter of the bedrooms and the Board would consider granting some lesser form of relief. And whatever the Board deems is appropriate for -- for a variance for the number of bedrooms and whatever that would be obviously would be to your discretion. But I think the Board has the authority to do that. We would certainly consent to it if you would vote on -- on a lesser amount of relief.

JAMES WIESNER: They have the ability to come back and reapply --

ADAM CUMMINGS: With a significantly --

JAMES WIESNER: -- with a significant change.

ADAM CUMMINGS: I would say significantly different -- changing it from 55 to something else would be significant. And to be clear, everything else got approved.

MR. BRENNAN: Well, sure. Is it possible that we could do that here tonight and that you could give us your -- your vote on what you deem to be an appropriate amount of relief -- not a non-excessive request so we don't have to come back. I think the Board has the authority to do that because you would have had the authority to do that from the beginning. That could be -- that could be a condition of the approval or that could be a separate approval altogether. And I think the applicant --

ADAM CUMMINGS: I will lean on my Counsel real quick. That would technically be a rehearing needing a unanimous vote by the Board and a super majority vote to approve it, correct?

MATTHEW PISTON: No. It has to be another application.

ADAM CUMMINGS: That's what I thought.

It has to be publicly noticed.

MATTHEW PISTON: Because there has already been a vote.

ADAM CUMMINGS: Right. We can't -- we can't back out or rescind our vote tonight.

MATTHEW PISTON: The Public Hearing is closed and they voted.

Now in order to come back, you would have to show that there is a significant change in your application, significant enough to reopen the -- or to allow you to apply again.

MR. BRENNAN: Well, I guess my request was not that we put in another application, but that the Board simply revisit the prior vote. We're not asking for another Public Hearing. We're just asking that the Board consider a lesser -- lesser form of relief.

MATTHEW PISTON: I would -- I think that you would need to reapply to show what that relief is and show that it's a significant change from your prior application.

ADAM CUMMINGS: Because we heard this application. It's different if you guys had revised it tonight before we voted, but that didn't happen.

MATTHEW PISTON: They voted.

ADAM CUMMINGS: Because we voted, it's done.

MR. BRENNAN: Okay. If that is the Board's determination, that's fine. We're not -- we're not asking for a new application. We're asking for a different relief. It's the same application. You could do it as a condition or you could -- or you could move to approve 25 percent, 50 percent, whatever you deem is appropriate. But we're not asking to put in another application. I think at this point, we --

PAUL WANZENRIED: The point is if you wanted to do that, you should have done that prior to the vote. If you had an inkling that the Board was swinging against you, you would have made that concession prior to the vote. Once it is voted, you're done. It's done. It has got to go back through the process outlined in the code which means you got to do -- you have to come back with a substantial change and they have to vote on that substantial change to rehear it again. Okay? Within a year. Otherwise you wait a year.

MR. BRENNAN: Sure.

MR. VAN EPPS: Is there a reason some suggestions were made to the gentleman before about maybe changing his and nothing was suggested for ours?

PAUL WANZENRIED: That's your question to the Board. I can't answer that.

ADAM CUMMINGS: We didn't offer up suggestions.

MR. VAN EPPS: Okay.

MR. BRENNAN: Well, our -- our request stands. I don't think we need a new application,

but if the Board is declining to do that, I understand.

ADAM CUMMINGS: So -- so the way the -- I do agree a new application would need to be made and making it -- the determination of significantly altered would be the deviation from 55 percent. And to be clear, your application would not be asking for -- as I talked about in terms of 3A, 3B and 3C. Those are approved. Those are done. Your application is specific to the three-bedroom units.

MR. BRENNAN: I guess, you know, our concern is about the unnecessary delay, which is why we were asking for the Board to consider that tonight. It's the same proof. It's the same request that we have already made. It is just the Board making a determination on what would be an appropriate form of relief for our variance request. And so that is why we're just trying to avoid unnecessary delay which -- which may -- may end up jeopardizing the project. But I think --

FRED TROTT: I think with us, though, we're tabled because of these questions. And you didn't do anything on them either.

MR. BRENNAN: Right.

ADAM CUMMINGS: I don't think that is fair. They didn't bring the market study, but they brought evidence of other percentages. They did the research for Union Square. They did the research for their original project.

MARK MERRY: To Fred (Trott)'s point, I think that was discussed at the first meeting --

ADAM CUMMINGS: Agreed.

MARK MERRY: -- as well. That is why you requested the market study.

They presented that -- the information the first time around. You came back with we need a little more --

FRED TROTT: I guess I was more direct about the guy with the garage before them. We --

MR. VAN EPPS: We meet with members of this Board and with members of the Town and were guided that 10 percent -- you know, it's the same character of the neighborhood. It is not really affecting -- we were guided that we should be able to make that change.

MATTHEW PISTON: The point is that it is closed.

ADAM CUMMINGS: At this point, there is nothing we can do at this meeting tonight. So the decision has been made.

MR. VAN EPPS: Can you give us a suggestion where you think that we should go for the next application?

ADAM CUMMINGS: Let me meet with Counsel first and then get back to you. If you can give me a day to get back to you.

MR. LEPORE: Is there a revote considering one of the members of the Board stated a --

ADAM CUMMINGS: We can't do that. It's done.

MR. LEPORE: He stated a reason that was not --

ADAM CUMMINGS: No. It's done. Cannot -- we cannot open it for another rehearing unless we go through the process that was just described.

MR. LEPORE: Even though one of the reasons given was not legitimate stated by --

ADAM CUMMINGS: One of the reasons. But then he had other reasons, too. But we can't reopen it for that purpose.

MR. LEPORE: All right.

ADAM CUMMINGS: The decision has been made.

MR. LEPORE: I'm not public -- I know the Public Hearing is closed, but essentially delaying the project, there are a lot of moving parts, a lot of factors going into this. You're basically allocating them to 10 percent three-bedroom or revise it or spend another two months applying to this Board.

ADAM CUMMINGS: Correct.

MR. LEPORE: A lot of moving parts here, Adam (Cummings), and I just want the Counsel and the Board to know there is a lot of people being affected by a 3 to 2 vote with one of those votes not quite legitimate and counseled in the right direction. I'm not upset.

ADAM CUMMINGS: I'm not understanding the last part of your statement. Counsel --

MR. LEPORE: One of the Board members provided a reason for his no vote, impact on School District. Which is not a legitimate -- it's not a legitimate reason to vote no on that variance. It's impact to the community, especially the surrounding environment. I'm not trying to be adversarial. I'm just saying you're delaying a significant amount of the situation --

ADAM CUMMINGS: Well, as I said, the vote is done for tonight.

MR. LEPORE: Okay.

MR. VAN EPPS: We appreciate you guys. Thanks.

ADAM CUMMINGS: Thank you.

Anything on last month's minutes? Nothing? Motion to accept and approve the minutes?

Philip Supernault made a motion to accept and adopt the 2/22/22 Zoning Board of Appeals meeting minutes, 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 Philip Supernault seconded the motion. All Board members were in favor of the motion.

The meeting was adjourned at 8:17 p.m.