

CHILI ZONING BOARD OF APPEALS
January 26, 2010

A meeting of the Chili Zoning Board was held on January 26, 2010 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 Paul Bloser.

PRESENT: David Cross, Adam Cummings, Robert Mulcahy, Fred Trott, James Wiesner and Chairperson Paul Bloser. Mike Nyhan was excused.

ALSO PRESENT: Ed Shero, Building & Plumbing Inspector; Keith O'Toole, Assistant Town Counsel.

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

PAUL BLOSER: Before we move on with the agenda, Dawn (Forte) from the Supervisor's office has a few announcements she needs to make.

DAWN FORTE: Good evening.

We just have a few things procedurally wise we want to go over. First thing we want to discuss with Boards and Committees is about training. The procedure has changed a little bit for the year 2010. I'm assuming that all of you by e-mail would have gotten that first notice that there are classes available for your credit training hours.

I did receive Jim (Wiesner)'s. We signed you up for that.

If you have not signed up, I would ask that you get it into the Supervisor's office as soon as possible.

At this point in time, what we're going to do is change the procedure on how you will do your training just a little bit. Once you get the notification from the Building Department from Kathy (Reed), and you -- you choose the dates that you want to go to, we ask that you coordinate your paperwork or your registration form with the Town Board meeting dates that is on the Organizational agenda that is online. I do have a copy for all of you tonight also.

The dates referenced above are as follows:

January 6th, January 20th, February 3rd, March 3rd, March 17th, April 14th, May 5th, May 19th, June 2nd, July 14th, August 4th, September 1st, October 6th, October 20th, November 3rd, November 17th, December 1st and December 30th (5 p.m. start time).

DAWN FORTE: The purpose of that is because we need to put it on the Town Board agenda as a resolution authorizing you to go. So, before you can actually go to that, we need to authorize it, the Town Board has to approve it for liability reasons.

Once you have filled out your registration form, we ask that you do give it to our office. We'll put the resolution on. We will make sure that you're -- you're registered and that payment is, um, processed to the vendor.

Um, from there, once you go to that training class, um, after you have gone, what we ask is that the Town Board is asking for a synopsis of the class that you went to, how does it pertain to the job that you do for the Zoning Board, and any certificates that you would get, if you could please make sure you give them to our office. We do have a training report that we are keeping track of, making sure that everybody is getting all their training requirements in.

Does anybody have any questions regarding training?

Vouchers, the finance area would like me to remind the Chairs that those are due quarterly.

Mailboxes, if you guys please check your mailboxes on a regular basis. If you have a problem with getting in, you can always call the Building Department, Kathy (Reed), and she would be able to tell you if you have stuff in your boxes.

Oath of offices. Your oath of offices need to be signed. If you haven't done so, please get to Town Clerk's office.

We just want to talk a little bit about locking the doors and the building. With the actual building, the only doors that should be unlocked for meetings is the main meeting room doors that are directly behind me.

We ask that the Chairs and the Vice Chairs only are the ones to lock and unlock the doors for the main meeting room. No other Board Committee member from any other Boards should be doing that. When you guys leave for the evening, make sure that the whole building is secure, everybody is out. Please check the bathrooms also.

And the meeting room equipment, we had Adam (Cummings) come in last week. He got training on the actual equipment in this room. We ran through it for probably about a half hour. We ran into some issues, which we did fix, and he was able to troubleshoot and did a great job. So you do have somebody that is able to troubleshoot the equipment. And if the Chair also or anybody else would like to learn that, you're more than welcome to. If you come to my office,

we can do that.

Photo ID badges, if you don't have a ID badge, make sure you go to Chris Levey, our MIS Director, and get your photo ID badges also.

Do you guys have any questions?

FRED TROTT: I do. Do -- can we do the oath of office, sign it here --

DAWN FORTE: That is the oath of office, so you will have to come into Town Clerk's office.

Okay? Anything else?

That's it for me.

PAUL BLOSER: Thank you, Dawn (Forte).

The three properties, I saw signs for each one of them. There was one down for a short time in Chili, but I saw it initially and it was up again today.

Anybody have any problems with signs?

The Board indicated they would hear all of the applications on the agenda.

1. Application of Joe Gomes, owner; 2652 Chili Avenue, Rochester, New York 14624 for approval to extend upon land use variance granted in 1992 for professional offices, to allow the individual sale of automobiles on property located at 2652 Chili Avenue in R-1-15 zone.

MR. COOK: Good evening. I'm David Cook. I represent Joe (Gomes), and we are looking for an application to extend the Land Use Variance to allow the business that is presently a tenant at this property to operate. It's a little bit unique, the type of business. It's a -- very tempting to say it is an automobile dealership or used car dealership or something like that, but it is really something that has come about with the new technology and so forth probably closer to something from ebay or Craig's List type operation.

This is a business that seeks to have people basically do a personal shopper type thing for these people, who are looking for a car, so that they will be contacted -- the business will be contacted by phone or by computer to find a specific car.

The business then does a search to find the car, goes to auction, buys the car, brings it back here to the Chili Avenue address where it would then be picked up by the buyer.

So it is -- it is selling cars, but it is a little bit different than what we typically think of a used car or a car dealership. So that is basically the process that is going on. It does appear that it needs an extension, a variance in order to continue to operate that. The zoning right now calls for, I think, professional office, and tenant type situation. So we need to have the extension of the variance.

Mr. Gomes is here, as you know. Also Sue Schiffhauer, the owner of the business, and I'm sure she will have something to explain further to you, answer any questions you have about this business. I would be happy to answer any questions, as well.

PAUL BLOSER: Do you have something to add on the business?

MS. SCHIFFHAUER: Hi. I'm Sue Schiffhauer, and this is a business that, um, I started back in April and, um, I think since then, there has been maybe two cars on the lot. It originated because as a single mom of many teenagers, I had a friend with -- who for years was locating cars for us, and decided when my career changed, due to divorce and I needed to support my kids, that it was a great service to my friends and family and co-workers to help people with the hassle of finding a car. So it is something that requires an office space, very minimal, one to three spots, because sometimes you find two vehicles they may have.

We went through all of the process, you know, legally, and through the DMV and the State to meet the guidelines, and, um, it's a business that is not going to have numerous cars sitting on the lot. It is just a safer way to transfer ownership of the cars, and to have cars, you know, if we have overstock, have a place to stay until the next buyer. But it is something that will not have huge signs or any type of flags or anything except a vehicle with a "for sale" sign in it, if we have an overlap of time with a new buyer.

Sometimes financing takes a little bit longer than usual, but it is more of a personal shopping, very quick turnover, Customer Service process than a used car dealership. It is a more convenient way of doing things with everyone being very busy nowadays, and women perhaps not comfortable dealing with the normal process. Men also. So that is the gist of the property.

PAUL BLOSER: Are there any other comments from -- you would like to make?

MR. GOMES: No, I don't have any other comments right now. If you have questions for me, I can answer it. It pretty much explains it all.

PAUL BLOSER: I have a couple of questions. This is zoned Residential, this property.

Mr. Cook, I address them to you or --

MR. COOK: Sure.

PAUL BLOSER: I know in 2004, there was a Land Use Variance granted to convert the building for professional offices with an apartment. My question now is exactly how many businesses do you currently have running in it, and is there still an apartment in there?

MR. GOMES: Yes. There is still an apartment in the building, and she would be the second -- there has always been another office in there before Sue (Schiffhauer) came in. So it would be a total of two offices in there. There is my real estate office which I share space with Dan Melville, who some of you may know, and my insurance office.

PAUL BLOSER: And you have the apartment?

MR. GOMES: And the apartment, yes.

PAUL BLOSER: How big is that apartment?

MR. GOMES: It's a one-bedroom apartment. One bedroom, kitchen, living room. Nice size.

PAUL BLOSER: It's occupied now?

MR. GOMES: It's occupied, yes.

PAUL BLOSER: One vehicle for that apartment right now?

MR. GOMES: One vehicle. That is all I allow.

PAUL BLOSER: What do you have for your business, with the real estate? How many employees do you have in there, with the insurance and the real estate?

MR. GOMES: Maybe one. My wife comes in and helps me out at times.

PAUL BLOSER: Then you're looking to move your business into there also?

MS. SCHIFFHAUER: It is used for transferring ownership of the cars solely. I'm not there all day long. It is by appointment only.

JAMES WIESNER: What other activities are going on? Is there any changing of oil or washing of cars or anything like that?

MS. SCHIFFHAUER: No. All of that is done right when we pick up the car, to the mechanic, to the car wash, to the lot, to the office to meet up with the buyer who requested the car.

DAVID CROSS: The cars don't have "for sale" signs on them?

MS. SCHIFFHAUER: They do, just in case -- in transition, so it is not confused with the other cars.

ROBERT MULCAHY: Are these sales guaranteed?

MS. SCHIFFHAUER: Yes.

ROBERT MULCAHY: So they --

MS. SCHIFFHAUER: They can either take it to a mechanic themselves. We can take it back to the auction within the seven-day time frame, or what is key, is we'll have more than one buyer lined up, so it is a definitely satisfaction guaranteed. The majority of the business is through referrals, so it is simply helping them --

MR. COOK: Did you mean it is guaranteed that the person will buy the car?

ROBERT MULCAHY: Yes. How long will it be in the parking lot?

MS. SCHIFFHAUER: It's -- like I said, probably have had two on there in eight months. It is just some people's financing doesn't go through, but nine out of ten times, it's a 48-hour process to just get it inspected and --

ROBERT MULCAHY: So if the financing doesn't go through, then what happens to the car?

MS. SCHIFFHAUER: We list it and we usually move it very quickly.

ROBERT MULCAHY: So you sell them right away?

MS. SCHIFFHAUER: Fortunately, yes.

ROBERT MULCAHY: Over the internet?

MS. SCHIFFHAUER: Yes. Craig's List.

FRED TROTT: Do you have a used car license?

MS. SCHIFFHAUER: Yes. You have to have a -- you have to go through all of the State.

FRED TROTT: What would be the maximum time you would have a car on -- on a/k/a your lot, so to say?

MS. SCHIFFHAUER: That I --

FRED TROTT: If we had a time frame that any unlicensed vehicle would be on the property for, would a week be enough time?

MS. SCHIFFHAUER: Um, usually so. There is just some unique situations where it doesn't follow through on the buyer's part.

FRED TROTT: That is what we're saying.

MS. SCHIFFHAUER: To knock on wood, it has never been an issue. Even the person who purchases has 30 to 60 days (inaudible). I know with personal -- I know what you want, I know your price range, so I usually find it and it is a quick turnover.

It is a part-time way to put my kids through college. I work full-time during the day, so it is not, um -- it is pretty well strategically planned so I don't have any cars sitting around.

FRED TROTT: What would be the most you would have on the lot?

MS. SCHIFFHAUER: The most would be two. If I found two you may like. Depends how many buyers we have that week. Sometimes we'll have four or five buyers. We try to get what we can.

FRED TROTT: You have dealer plates?

MS. SCHIFFHAUER: Yes, two.

ROBERT MULCAHY: Do the cars have to have a "for sale" sign on them?

MS. SCHIFFHAUER: Well, it is just nice. We picked the location because of the high exposure. Cars for sale on Chili Ave. on people's lawns, it's a good drive, but we like the signs on them so if financing falls through, we have two other calls that have come in to --

ROBERT MULCAHY: So you're asking for a used car lot.

FRED TROTT: I guess you missed my question. One of my conditions is that you won't be able to have a car, the same car on the lot for more than a one a week. Would make that a condition. And you're okay with that?

MS. SCHIFFHAUER: I'm okay with that.

FRED TROTT: Okay. Because if you don't sell that car, and you -- you didn't meet --

you're past that one week, if you have a neighbor that complains, you -- am I correct, she failed -- I mean she violated the condition of the permit?

MS. SCHIFFHAUER: I understood.

KEITH O'TOOLE: My recollection of when the site plan was approved, was that parking was a key issue. And I -- I believe based on inquiries I have made with the Building Department, that the property owner may not be in total compliance with the site plan at this point. Certainly, should you decide to issue a variance, if you would like to make it a condition of approval that they come into compliance with the site plan within a fixed period of time, do we have a time frame?

ED SHERO: It is mostly landscaping and drainage issues. Striping.

KEITH O'TOOLE: So it would have to be something like maybe by July 1st. That would give them plenty of time to do the landscaping.

MR. COOK: Are you referring to additional parking spaces?

KEITH O'TOOLE: My understanding is that on the 2007 site plan, your client put in the parking lot, but he never did the rest of the site work.

MR. COOK: Okay.

KEITH O'TOOLE: Nothing further.

FRED TROTT: Is the sign in compliance?

ED SHERO: To my knowledge, the sign is in compliance.

PAUL BLOSER: Any other comments, Ed (Shero), from you? Ed (Shero), do you have any other comments at this point?

ED SHERO: No. Just the site plan was never finalized. That is about it.

This came to our attention through complaints of unlicensed vehicles on the property and the dealership sign. What I mean by "dealership sign," the metal sign that the State provides you with your certification number and that is how we knew there was a dealer there.

PAUL BLOSER: That is additional signage.

Are you looking to do any advertising on the building, signs for what your business is?

MS. SCHIFFHAUER: No. I don't even like the sign with that, but because of the State, you have to have that. I don't want it to be a used car dealership. This is a very private, personal thing. The only -- sign is only there because they require it to be seen so show I'm certified.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

ROBERT PLACE

MR. PLACE: My name is Robert Place. I represent Betty Spuck who lives next door at 2650. This is, I think, the third time I have been here. Mrs. Spuck has had issues with the over-utilization of this property. I did get a copy of this application, and I would note that for me, it's -- for any use variance, they have to meet the statutory criteria, which clearly they have to show financial hardship, and that basically you can't get any economic return with the present uses. None of that is in his application. I don't believe in any case he could ever meet that particular standard.

It's a very stringent standard for a good reason. One, they have a residential use next door, and I believe that there has been kind of an over-utilization of the property. The front yard is basically all paving, and they haven't done a very good job maintaining the property. There are garbage cans outside, and so there have been constant issues with Mrs. -- for Mrs. Spuck's perspective. I have been to the site a couple of times, and again, I believe it's an over-utilization of the property.

Their variance in 1992 basically said for insurance and office. It already has at least two uses within the building, and basically, Mrs. Spuck opposes anything that would increase the commercial use of this property, which this would clearly do.

So, you know, kind of -- they ended up with something that probably would have been okay by -- by the very nature of the use, but over time it has kind of expanded to the point where it has really impinged on her ability to use her own property. Her bedroom abuts this side of the property, and so, we -- she is very much opposed to this, and as I said, from my perspective, I don't believe that they can meet the standard.

So her son, Mr. Spuck, went out and took a few pictures showing the parking lot and some of the garbage cans that are out there if I can introduce them into the record.

PAUL BLOSER: You can put them on the table here and spread them out and you can show them on our screens.

MR. PLACE: You guys are really high tech.

That shows the garbage cans that are on the side. This -- this one shows the actual location on the lot. I don't know that you're going to see -- so -- so I would like to put them into the record.

And it just shows the condition of the property and how close Mrs. Spuck's house is to this particular location.

Again, just to sum up, they clearly can't meet the stand for a use variance. Mrs. Spuck objects and she objects to anything that expands the commercial use of this property.

LISA HOLMES

MS. HOLMES: Good evening. My name is Lisa Holmes, and I reside at 2651, directly across the street from Mr. Gomes. Um, my -- I have also been here several times. My front living room window faces the property. There is already a bright "open" sign, a neon sign that is

constantly on. Now we're having more signage, the -- the new State sign that is out there.

When we moved into the neighborhood, the property had a very discreet looking sign. Over the years -- we have been there nine years -- it has gotten more and more commercial. I would just ask the Board how would they feel to have to look at cars with "for sale" signs in addition to the way the property is at this time out their front window, the "open" sign. I just strongly feel that that is a -- directly affecting my -- my property value should, you know -- I don't think I would buy my house right now if it looked like it does when I purchased it nine years ago.

DOROTHY BORGUS, 31 Stuart Road

MS. BORGUS: I have come to these meetings for quite a few years and I'm beginning to think Mr. Gomes is a regular. He is always back and it seems he is always looking for more. The last time he was present, the best of my recollection, he wanted his parking lot enlarged for business purposes. He didn't have enough parking. And now we're finding that he -- he, you know, is selling cars on it. I'm sorry, it is used cars. It is used car lot when it is used cars with "for sale" signs and no plates.

It is not consistent with that area. I would agree with the gentleman who spoke before, the property is over-utilized. I thought that from day one and I know it has been on the minds of whatever Board sat up here at the time, that Mr. Gomes has been here previously. He put signs up at will evidently because the signage is always a problem down there.

I don't know where these neon signs are, but he just feels that he can put up any kind of a sign at the road without any permits. The law, I guess isn't for him in his mind.

If this parking lot is not done, I don't know why it shouldn't be, because the Building Department should have been on that, but if it is not, that is a good reason to turn him down right there. If that was 2007, we are in 2010. And he has had more than enough time. If he isn't going to honor his commitments any more than that, you should stop cutting this man slack.

It is residentially zoned, and the answer that the Board got from Mr. Trott and Mr. Mulcahy on some pretty aggressive questioning, I believe, did not reveal one thing about these cars that don't get purchased if they're bought for a specific buyer. The -- the owner, the business owner says that she has only had two cars that she has had a problem with. Bear in mind that is only since April. You're looking at a pretty small sampling in a short period of time to see what you will have over the long haul. You have to look ahead. This could turn into something big. If this business grows, she could have a lot of cars sitting on that parking lot waiting for a buyer. And you don't know how long they're going to sit there. You're asking for trouble, because there isn't anybody that can just watch over this thing, if you allow it to grow.

The Building Department hasn't got time to sit down there and watch it and check it -- and check what car sits in that parking lot. And the neighbors, I -- they have been here every time I have been here when this man has appeared. They shouldn't have to run up here all of the time and defend their property and rights. They have rights, too.

This lady says this is a personal and private business. Well, fine. I give her credit for trying to make a living, but then find a place to do business that is not in a residential district and in a parking lot of a professional building.

Thank you.

STEVE GINOVSKY

MR. GINOVSKY: Good evening, Mr. Chairman. First of all, this is an R-1 area. No one is going to go from there because it is zoned as such.

It is a used car lot. Something was made mention by this young lady here that these vehicles are taken from an auction, maybe checked. What guarantees that they're not going to leak oil, antifreeze and as such? Is there catch basins? Is there as such to collect those pollutants? The lady that lives next door has been complaining for a number of years every time that this address comes up for an issue.

With snowplowing, lighting -- was present the last couple times when that -- it came up -- about.

At this point here, the Town also -- I have some very good friends of mine that are used car dealers. And if a vehicle doesn't sell, it can sit there for a month or two. And you're going to get stuck with it. And where does it say on New York State used vehicle law how many vehicles you can have? You could say one thing; the State says something else. You're superseded, you're gone. You are shot at in the foot.

I think this is an over-utilization of the property. It's a house that is converted to an office building for a lawyer, insurance, small business. If you're doing the internet, selling these vehicles, you got a dealer plate, you bring it in, someone comes and puts their plates on and leaves, within a 24-hour period, I couldn't see a problem with that. Possibly. If there is one at a time, or two at a time. But you cannot lock this thing up to a short period of time that these vehicles are going to be sitting there.

Also, like I said before, vehicles leak. You buy one from an auction, you don't know what you're getting. You're putting the money down, and you're out the door. If you don't like it, too bad, you got to take it back the following two weeks from now. If you're lucky. And transport it, and hope it runs. Does she have a tow truck that will be flat-bedding this stuff in and out if they don't run? You have snowplowing.

There is a whole host of points here, and it is a small postage stamp lot and it has one variance set for it -- for its use. I don't think it's in the Town's best interest and the neighbors and

the rest of the Town of Chili to let this go by. If you're going to set up a used car lot, find something with a couple acres and a garage and do it up right. If you're not going to do it that way, don't bother. We have parking problems and everything else here in this Town. We need to address it.

Thank you very much.

SCOTT BOYCE, 2654 Chili Avenue

MR. BOYCE: Scott Boyce. I live next -- on the west side of Mr. Gomes at 2654 Chili Avenue. I have been here many times on Joe (Gomes)'s behalf. It seems that one of the things -- I hear people complaining about oil, leakage. Well, we have an apartment complex on one side of my home. I got Joe (Gomes)'s on the other. Has a brand new parking lot. Nobody seems to care about what Chili Garden Apartments does. You guys don't seem to care about the trash, because they don't have their dumpsters caged in, anything like that.

If anybody would really have a problem with it, it would be my mother because my mother is a garden freak and she has all her plants right there where they plan on parking. This lady's last few cars has been parked on my mother's side of that driveway, not the other neighbor's side. The only one that parks on that side of the parking lot has been Mr. Gomes himself anyway with his own van.

We don't have a problem. I mean, her house actually sits behind Joe Gomes' house. The pictures there with the trash, he has them, yes. They're outside, out back, and it is fenced in. You can't see it from the road.

If -- you know, I -- we have no problem with it. And, you know, if you look at what we got on Chili Avenue, you have a lawyer office right at the corner. Then you got a residence. Then you have Joe (Gomes)'s office. Then you have another residence. Then you have this major apartment complex that holds what, 600 cars? 300 cars? That are all, I'm sure -- are like iii, okay?

So I mean if she is here as -- as being a X car hauler, I know for a fact when you buy cars from the auction, you don't sell them, you run them right back to the auction. You know -- as Mr. -- as Mr. Trott said, seven days. She is telling you these are guaranteed sales. The people are probably putting up some sort of a down payment for the car, deposit.

Financing falls through, she gets rid of the car. Whether she sells it out front, you know, or runs it right back to the auction. But she is only asking, you know, not to -- you know, to let it sit there for months on end. And I'm not sure in the -- Counsel can correct me, but I think in the State of New York if you have a plate on the vehicle, it's -- even in the Town of Chili, it's legal. A dealer plate constitutes a registered vehicle in the State of New York. That is my understanding. I could be wrong. She is not asking me, "Let me put a car in" -- and she didn't ask, "Let me put up banners and plaques," and all these nice big fancy signs like Auto Depot or anything like that.

She said, "The only sign I have is the one that New York State Law requires," the little authorized dealer sign she puts in her window. That's it. Nobody -- I go by the house -- I go by there every day. Those signs don't bother me. His "open" window -- his "open" sign shines right outside my window. If somebody would complain about it, it would be. It doesn't bother me one bit. He has a sign on the side of the house. It doesn't bother me.

I mean is it over use of property, I don't know. That's up to you guys to decide, but she is not asking -- from what I have been told, she is not asking to let cars sit for months on end. She has already told you that the cars are bought, taken to a garage, checked out. They're only brought there so the person who is buying the car has a safe -- you know, can just come and pick them up and drive it off the lot. That's all I got to say.

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

PAUL BLOSER: We all have in front of us the criteria that were mandated by the State, the four areas of approval. As you're considering your vote, understand that all of these areas have to be met, so with that said, a couple comments I have is -- you know, we are still looking at -- this is a residential site. It has not been rezoned. It has been the resolve of the Town not to do spot zoning. So I'm not even going down that road with rezoning. We can't do that.

They were given the land variance use for office business prior. There have been numerous complaints, some addressed, and some not addressed at this point. It appears that we still have possible site plan issues that have not been resolved. So if we're going to move forward with this, certainly the first condition of approval I will put down here, that all site plan issues be in compliance based on previous conditions imposed on the property, and that would include any drainage issues that are outstanding, paving issues, striping issues. There have been issues of garbage. I will put a condition of approval for, you know -- it doesn't belong there and needs to be removed.

I know they have a hearing coming up, I believe it is in February. Prior to that, to make sure that all our signs are in compliance there.

So I would like to start -- I will start putting these conditions down, but while I am starting to write, is there other discussion that Board members have?

FRED TROTT: As far as a condition, I would put as a condition that, um, no vehicle with a "for sale" sign on it be there more than a week.

DAVID CROSS: I see what you're saying, but I almost think a maximum number of cars that can have "for sale" signs, that may cover what you're after. If we said a maximum of two cars on the lot at any time for sale.

ROBERT MULCAHY: I have a problem with the fact that the cars -- if it is going to be sold, why does it have to have a "for sale" sign on it?

DAVID CROSS: I think the applicant explained that you have additional phone calls to --

ROBERT MULCAHY: But that car has already been sold.

MS. SCHIFFHAUER: Referrals.

PAUL BLOSER: Well, this is where -- I -- I agree. I don't think we should have cars with "for sale" signs on them in front. Especially being a business. It's one thing if it is a homeowner and they're driving the car back and forth to work and they have a "for sale" sign in it and they're driving it. This is a business.

If there is going to be a car parked there and we say no more than seven days, um, I would not want to see any sign on that. She is advertising online, through the internet, Craig's List whatever vehicle that is being advertised and people will see it there, if they're looking for a vehicle.

I would like to have a condition no "for sale" signs be on any vehicles on that lot. This is still Residential. They have been given a use variance for business in there, but we're crossing that line of it -- we're letting it go as full business, and it's not. It is Residential, still. So it is a condition I would want to see, is no "for sale" signs on the vehicles.

Comments on that?

JAMES WIESNER: I guess the other concern is, I mean, the variance goes with the land, if I understand it correctly. How do you stop someone from turning this into a used car lot ten years down the road?

ROBERT MULCAHY: I agree.

PAUL BLOSER: Selling cars.

KEITH O'TOOLE: If I may, the variance does run with the land. However, as a condition of approval, you can put a time limit on it. That would be the surest way of stopping it at some point.

PAUL BLOSER: That would be something -- because this is a new variance, I would want to, um, put like a one year on it, get started with any ways, and see how it moves forward. If it is successful, if it is not -- if we have a lot of complaints on it -- we have done that on different conditions before. I would put that down as a condition.

MR. PLACE: Are you characterizing this as a use variance?

PAUL BLOSER: This is characterized as a use variance. That is what the application is made out to be.

MR. PLACE: Again, I would just ask that you look at the proof that your own application indicates they have to meet all of the criteria. They have to prove financial hardship. There is no offer of proof.

PAUL BLOSER: That is one of the conditions, that is on our -- we're charged with.

MR. PLACE: Before the Board grants it, they have to have an offer of proof, and there is none in the record.

PAUL BLOSER: That is one of the things that we look at. That has not been presented to us, it -- it's a criteria that we have to look at. So...

MR. PLACE: Thank you.

DAVID CROSS: I will go ahead and ask if the applicant, Mr. Gomes, would speak to the financial situation? Is this going to bring in extra income for you? What proof do you have that you need that extra income to -- to get back a reasonable return on your investment?

MR. COOK: Well, I don't have any mathematical proof to give to you tonight, but what -- Mr. Gomes has sought to lease this property, to derive an income from it, and certainly part of it is how he makes that property profitable, how makes it and earns a living and so forth. In these economic times, finding tenants is not an easy thing to do. They aren't falling out of the trees. So he is -- has made an effort to find tenants. This is the tenant he was able to find and it certainly seemed at the time it was going to be a reasonable thing for her to conduct this type of business within the parameters that the Town had set forth.

You know, they -- the criteria that has to be an economic necessity, I think Mr. Place said, it is impossible to prove, and it may well be impossible to prove under any circumstances that it is an economic necessity for anybody to prove that they can't survive without a certain income. But it is certainly something that is very important to Mr. Gomes.

MR. PLACE: Can I just address that briefly? I --

PAUL BLOSER: Public comment has been closed.

MR. PLACE: Well, I just wanted to respond to his comment about the dollars and proof. Again, you know, for a use variance --

PAUL BLOSER: Sir, we have closed public comment. We asked him to -- we asked him a direct question, and at that point he was allowed to answer. Public comment is closed. I -- I understand your point, and -- it is a matter of record at this point.

I will go over what I have for conditions of approval, if approved at this point.

First thing I have is compliance to all issues and previous variance site plan issues are resolved.

DAVID CROSS: Can you add a time limit to that, Paul (Bloser)?

ADAM CUMMINGS: As was recommended, I think July 1st.

DAVID CROSS: July 1st, 2010.

PAUL BLOSER: Okay. Second, no "for sale" signs on any vehicles at any time.

Third, no vehicles for sale to be on property for more than seven calendar days. That is not business days. That's calendar days, okay? Be clear on that.

KEITH O'TOOLE: If I may, Mr. Chairman, on that advertising issue, you might want to broaden it a bit, no exterior advertising of the business.

PAUL BLOSER: I haven't got to that part yet.

KEITH O'TOOLE: Okay.

PAUL BLOSER: Thank you.

All signs on property and buildings must be in code compliance.

Granted for a period of one year. Sixth, no additional or on-street parking related to any of the businesses on the property.

We didn't put any hours of operation.

Forgive me. I didn't write down your name.

MS. SCHIFFHAUER: Sue.

PAUL BLOSER: Sue (Schiffhauer), you said you didn't have set hours. By appointment only. I think in fairness to the neighbors, we need to put a deadline on times. Hours of business.

Mr. Gomes, what are your hours of business right now for the insurance office?

MR. GOMES: Usually there until 6, 7 o'clock in the afternoon (sic). In the morning, about 7, 8 o'clock.

PAUL BLOSER: I will put --

MR. GOMES: Sometimes I do have to go a little later. Things happen.

PAUL BLOSER: I will put 8 o'clock a.m. I will say 8:00 p.m.

No on-premises advertising of the auto business.

FRED TROTT: She will have to have the auto dealer sign.

PAUL BLOSER: That is their hours of operation.

FRED TROTT: I guess to try to make it clear --

PAUL BLOSER: With their phone number. Advertising of the auto business.

It will still say -- we'll go back to -- Number 4. All of the signs on the property of the building must be in code compliance. That was mandated by the State, so that would be code compliant at that point.

Anything different for advertising -- I'm putting this to -- back to the Building Department to make sure that existing sign for the existing businesses right now are in full compliance on where they're at. So with those, applicant also -- to obtain and maintain any required State and local licenses.

ADAM CUMMINGS: There is only 11 parking lots and that was a problem with the site plan. So do we want to limit how many auto business they can have on there? There is already a insurance business and real estate business with customers with that one, and now you're adding another car that would pick it up. Possibly the person's car to park to transfer and the car that is being picked up or delivered. So -- like Fred (Trott) said --

PAUL BLOSER: 11 are allowed.

ADAM CUMMINGS: Well, limit how many vehicles can be stored as part of the automobile business. Say a maximum of two. So she can only store two on site, so she is limited to two -- two pick-ups and deliveries at a time.

JAMES WIESNER: Inventory greater than two.

ADAM CUMMINGS: Yes. Otherwise you end up with Auction USA, because this is a pretty good business model.

PAUL BLOSER: I have ten of these. I will read these down again to go through them. First one is compliance to all issues of previous variance and site plan issues are resolved by July 1st, 2010.

Second, no "for sale" sign of any vehicles at any time.

Third, no vehicles for sale to be on the property for more than seven calendar days. All signs on the property and buildings must be in code compliance. Variance granted for a period of one year.

Six, no additional or on-street parking relating to any of the businesses on property allowed.

I will put currently 11 spots are allowed.

Seven, hours of business --

KEITH O'TOOLE: Mr. Chairman, we're -- I don't like that language about the 11 spots. It is what it is. What we're limiting is whatever inventory she has. It's totally a separate thing. I don't want there to be any confusion down the road.

PAUL BLOSER: So leave it just no additional or on-street parking related to any of the businesses on the property.

KEITH O'TOOLE: No on-street parking. No "additional."

ADAM CUMMINGS: Not "additional" or on-street parking is not allowed.

PAUL BLOSER: I'm saying actually two different things here. No additional parking related to any of the businesses on the property allowed. Then I will put on-street parking.

KEITH O'TOOLE: I'm not sure I like that either.

Couple things. No on-street parking. That's Item 1.

As far as the businesses is concerned, as far as this use variance is concerned, the issue is having inventory outside. Professional office does not have inventory of any kind outside. So the question is, what is that inventory? It's vehicles. Where are they going to park it? I guess they're going to park it in parking spaces, we hope, and then we have to figure out how many

vehicles are allowed. Because it is such a tight site and because the site plan shows that one of the spaces is actually designated for snow storage in the winter, and then we have another space that is designated for handicapped parking, we really don't have 11 spaces. What we really have are -- if I have -- forgive my math, but nine spaces effectively.

And if you park two vehicles for inventory, then that means you have seven vehicles for Mr. Gomes, Mr. Melville, for the -- the lady who is making the application, and at some point they got to have clients, so where are those folks parking? So you have to be very clear.

PAUL BLOSER: Plus --

KEITH O'TOOLE: So it is not just for the business. It's for the property. And it's not just for her business. It's for anything on the property. That's what that parking lot is for. So I -- if you're going to limit something, limit the inventory, and I got to believe you can't do more than two vehicles, I think, by all practical purposes.

PAUL BLOSER: I did have that down as Item 10, that no more -- maximum of two vehicles on the property.

KEITH O'TOOLE: Thank you.

PAUL BLOSER: To go back to Number 6, I revise that condition of approval, no on-street parking related to any of the businesses on the property --

KEITH O'TOOLE: No. No on-street parking.

PAUL BLOSER: Period.

Hours of business, 8 a.m. to 8 p.m. No on-premises advertising of the auto business.

9, applicant to obtain and maintain any required State and local licenses.

10, a maximum of two inventory vehicles on the property at any time.

With those ten conditions. Do they need to be reread or are they clear? And in looking at them, as we move forward, um, how they apply to use variance as conditions, have they been met.

FRED TROTT: Can I ask another question?

PAUL BLOSER: Go ahead.

FRED TROTT: Now, being on the side of the Planning Board, Mr. Gomes, I -- I know he has been -- he is familiar with the situation. If she has been running the business since April, is there any recourse to that? I mean, he knows he would have to go to the Zoning Board or go at least to the Building Department. You know -- more or less what I'm saying, he is not negligent. He didn't know he shouldn't be doing something.

KEITH O'TOOLE: If I may, the property owner has been cited, and under State Law, in order to cure the violation, the zoning violation, they can make application to the Zoning Board, which stays the prosecution, which stops us from prosecuting the violation. That's why they're here tonight. There was previous notice to the property owner -- in fact, for the record, I would like to note there was a letter dated August 21st, 2009, to Mr. Gomes from Lu Engineers, the Town's engineer citing the code violations relating to the site plan.

I would also offer that for the record, as well as the site plan, which was last dated October 5th, 2007, which shows in greater detail the parking, the drainage issues and the like. I offer those for the record.

So we are actually doing something about it, and you're doing it.

Thank you.

Paul Blaser 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 Adam Cummings seconded the motion. The Board all voted yes on the motion.

David Cross made a motion to approve the application with the following conditions, and Adam Cummings seconded the motion.

MR. PLACE: May I ask that you address the statutory criteria that is required?

PAUL BLOSER: I'm sorry, sir, could you --

MR. PLACE: You need to set out the statutory criteria and determine whether they have met the statutory criteria.

PAUL BLOSER: Each of the Board members has that in front of them.

Thank you.

MR. PLACE: You need to make specific findings.

The vote on the motion was 5 no to 1 yes (David Cross).

PAUL BLOSER: The findings of fact. Based on presentation facts, this condition is a self-created hardship.

Applicant has not presented sufficient and substantial financial evidence to award a variance.

We'll be putting this together in a formal letter and sending it out to you within a week.

KEITH O'TOOLE: Mr. Chairman, I would like to flush out that last finding of yours, if I may.

PAUL BLOSER: Okay.

KEITH O'TOOLE: I want to be a bit more specific, if we can.

PAUL BLOSER: Okay.

KEITH O'TOOLE: Applicant's income and expense statement fails to answer questions regarding whether property has been listed for sale or lease.

I got more when you're ready.

PAUL BLOSER: Okay.

KEITH O'TOOLE: Statement only lists income from one tenant and not other tenants mentioned in record.

PAUL BLOSER: Okay.

KEITH O'TOOLE: No calculation of rate of return is offered.

Thank you.

PAUL BLOSER: Thank you, Counselor.

DECISION: Denied by a vote of 5 no to 1 yes (David Cross) for the following reason/finding of fact having been cited:

1. Applicant's income and expense statement fails to answer questions whether the has been for sale or lease. Statement only lists income from one tenant. No other tenants mentioned in record. No calculation of rate of return was offered. Based on presentation facts, this condition is a self-created hardship.
2. Application of The Estate of August Greco, c/o Frank Iacovangelo, Atty; 39 State Street, Suite 700, Rochester, New York 14614, property owners: Estate of August Greco & Lawrence Torcello; for variance to allow additional front parking on proposed Lot #1 per plan submitted, variance to allow existing building on proposed Lot #1 to be 66.5' from front lot line (75' req.) and 9.5' from side lot line (35' req.), variance to allow existing buildings on proposed Lot #2 to be 22.7' from front lot line (75' req.) and a minimum 9.5' from side lot line (35' req.) all as per plan submitted at properties located at 1611 & 1615 Scottsville Road in G.I. & FPO zone.

Anthony Iacovangelo, Kip Finley and Jack Greco were present to represent the application.

MR. ANTHONY IACOVANGELO: Yes. Good evening. Members of the Board, my name is Anthony Iacovangelo. I'm an attorney with Gallo and Iacovangelo. I'm here on behalf of my father, Frank, who was unexpectedly called out of Town on business, personal matter. So I'm here with Kip Finley from Avery Engineering to address the issues that surround the two properties located at 1611 and 1615 Scottsville Road.

The late August, Greco who owned the property at 1611 Chili Avenue, has passed and left, according to his will -- this is sort of the background why we're here -- in his will, the Oak and Brass furniture business to his son, Jack (Greco), who is present this evening, um, excepting out the family residence, which was also located on the same parcel, number 1611.

In an attempt to effectuate the intent under the will, we inquired with the Town of Chili as the possibility of subdividing those two buildings on that parcel. In doing so, in contacting Mr. Karelus from the Town, he advised us that Mr. Torcello's parcel, parcel 1615, was subdivided by deed only at some point in the past, pursuant to a deed, and that in order for us to address any issues with respect to 1611, we would also have to address any issues that may affect 1615 as they are both part of what the Town deems a subdivision.

So Mr. Finley and I met with Chris (Karelus) back in June, and sat down and sort of addressed every issue with respect to both parcels and the businesses that operate respectively there and what issues there may be with respect to utilities and setbacks and such. Most of that work was handled by Kip (Finley), but I sort of assisted here, to, again, effectuate the intent of the will and sort of report this information to the Surrogate Judge Calvaruso who is presiding over this matter in an effort to settle these things. That is sort of the background how we arrived here.

And with that, I would submit to Mr. Finley of Avery Engineering to address this.

MR. FINLEY: All right. The projector is working today, so I will make use of it.

All right. On this map, what we have done is tried to make the lots conform as much as possible to code.

Probably even better to show it on this version.

Due to the size of the file, we have a lot of acreage on Lot 3 that is in the back of the property. The two lots that we're talking about are along Scottsville Road. But this is a huge parcel, Lot 3, that is 60 some acres.

So we're focusing on this piece of property. In this district, in this zoning, it needs to have 200 feet of frontage, minimum lot size of 50,000 square feet, and then the -- the 75 foot front setback, 35 foot side setbacks and I forgot the back, but it's not anything we're asking for relief on.

In this particular case, we can achieve the frontage, if you have these numbers up on the curves. There is 200 feet of frontage there. There is more than 200 feet here (indicating). Both lots are over 50,000 square feet.

But these are existing buildings (indicating). There is really nothing we can do to separate them, other than split the middle between those. So the side setbacks that were read in the application are the setbacks here (indicating), and -- I'm trying to go backwards -- here (indicating). Then the front setbacks we're dealing were the existing setback here to this house

(indicating). And the existing setback to this frame -- or concrete block garage.

So in this case, we have done everything we can do to make the lots conform, but we do have to ask for relief for things that are beyond our control. We can't go back in time because this property was sold. It has its own tax number, was sold, transferred to deed, so we do need to keep the separation of the lots.

The other reason that we are here tonight -- did you -- I was outside. You read the parking part?

Another aspect of this, as we went through site plan review, or -- or in the through review. We went through site plan overview with the Building Department. Part of subdividing these properly is also taking care of some other things that are required such as the proper amount of parking and water service that we have to deal with that goes from one building to another.

So our request is to allow the front yard parking on here.

The reason we can't do it in any other location is the main entrance to the building is here (indicating). And then we have a septic system in the back. And no real way to get into the furniture store from the back. Existing parking is in the front. So we continue parking in the front. So the customers aren't going around back. We don't have to relocate a septic system and things like that.

And then we all will be in our site plan application taking care of validating the existing parking that is on the other project, or the other piece of property.

So that is kind of the technical overview why we're here. What the hardship is, we can't do parking in the back because there is no access and there is a septic system.

And you -- we have to deal with the setbacks we have, because the buildings already exist.

MR. ANTHONY IACOVANGELO: To bring both lots into compliance the best we can given the physical geography of the parcels. I'm not sure if you're familiar with them, but Chris Karelus and I spoke extensively how the properties are configured together and how over time they have been developed.

PAUL BLOSER: I do have -- I didn't see anything in this package from the County. Do you know if they have responded back with anything else yet?

MR. FINLEY: I did see those in the file. I didn't bring the whole file with me. I did not go through that part of it. It is in the area airport zone. We're not constructing any structures. We're not making any new driveways onto the highway. But if you don't have a copy of it, I don't have a copy either.

PAUL BLOSER: My last conversation with Kathy (Reed) in the Building Office, she had not received it back from the County either, and that is why I just brought that up.

MR. FINLEY: If we have it, it is a faxed copy. Because I don't remember getting it in the mail.

PAUL BLOSER: I just want to make sure there is nothing that we need to do because it is -- there are some wetlands on there. There is no DEC issues?

MR. FINLEY: Correct. In this case, the wetlands that are shown there were taken off their inventory maps. They weren't delineated to prove they really are there or not there.

In the front area here (indicating), there is wetlands on other spots. This area was filled a few years ago through a construction project and Mr. Greco can maybe speak to that. He said the Army Corps of Engineers did permit the filling that is on this other piece that you see in the hump next door. That was done by Keeler Construction and there is permitting in place for that.

Then there is nothing that has been done in the back. But that also -- way in the back of the property, there are other federal wetlands. There is no State wetlands so we don't have any buffers to deal with. I'm just trying to go through the things County Planning usually has. Um, we're not changing any driveway access. Not changing any traffic counts. No change in use or anything like that that they would comment on.

There is also the New York State parks trail, is that gravel trail that -- we're not touching that. We're not affecting it. We're actually doing some planting between the trail and the parking lot.

PAUL BLOSER: Is there any portion of this that is going to Planning Board?

MR. FINLEY: Yes. The parking lot has to go to Planning Board and the water service. So we also have application in so we'll be at the next Planning Board meeting.

So I guess in the past I have had situations where the comments didn't come in, but we have the Planning Board approval to go through, which will catch -- it is an opportunity for the Town to also catch any County Comments on it.

PAUL BLOSER: Okay. One of the conditions I think you know I'm going to put on that are approvals will also be pending site plan approvals.

MR. FINLEY: That makes sense.

PAUL BLOSER: And the final comment from the County Planning, that there -- nothing that they have any concerns with. So those are two conditions that I am looking for.

MR. FINLEY: Makes sense.

PAUL BLOSER: I understand what is going on with this. I don't see anything major with it. I just want to make sure that all of the Boards and all -- everybody is in agreement with everything.

MR. ANTHONY IACOVANGELO: Yes.

PAUL BLOSER: And all eyes are on this.

MR. GRECO: Could -- I have a question.

MR. FINLEY: Come on up and state who you are.

MR. GRECO: I'm Johnny Greco. Sorry. I bought half of this property years ago, so I'm

not inheriting all of it. I own half of it, and I own the property that my stores are under. My dad was protecting me before he died, and sold the property under the stores I built.

Next door they have -- the guy that has the television store next door, if he -- I know they have it figured where he is getting a large chunk of property to make his property legal.

It would block the access for the back completely from the front. Is there any way to -- does he really have to have that much property to make his property legal that we're giving him? You know, we have to pay to put his waterline in and everything else. I mean we extend it further in the back. Why does he have to have so much land to make his parcel -- I don't understand that.

MR. FINLEY: That would be the Planning Board. Actually, lot lines -- the only ones we're talking about tonight are between the buildings.

MR. GRECO: Okay. I understand that. But down the road.

MR. FINLEY: There is an opportunity for us to deal with that in the Planning Board application.

MR. GRECO: Okay. Thank you very much.

MR. FINLEY: Unless you want to add to that.

PAUL BLOSER: No. If it is not concerning this application, I -- I don't want to muddy it up.

MR. FINLEY: It kind of gets muddy when you're talking about the same project.

MR. GRECO: Thank you.

DAVID CROSS: The applicant is probably going to be asked at the Planning Board, but they're proposing four new 2 1/2-inch shade trees in the front there. I think we could probably do a little bit better job with some berming and maybe some conifers.

MR. FINLEY: Well, do you want me to answer site plan questions?

PAUL BLOSER: Some of this -- I will refer back to site plan. Because the nature trail that goes through there, there is so much that we can do. Because of the trail.

Pat Tindale has been working on a few stretches in there, specifically with Metalico.

MR. FINLEY: Oh, yes. I was at that meeting, too.

PAUL BLOSER: So she is looking at a lot of these issues. That is why I'm saying some of the site specific for -- for Conservation. I'm going to refer back to her. That would be a condition of approval, that she sign off on it, and that is going to be site plan.

MR. FINLEY: Okay. Just to satisfy your curiosity, we purposely are leaving the 22-inch maple tree in the front and the 15-inch maple and this other locust tree, because they are sizable trees that help block and separate the buildings from the trail and also buffer the buildings, which there is a residence here, an apartment, from the road. And then added more. So we -- we're making an attempt.

JAMES WIESNER: I'm trying to clear in my head -- there are three lots there, and Lot 1 and Lot 3 are essentially owned by the same person right now, correct?

MR. FINLEY: You need to help me on that one.

MR. ANTHONY IACOVANGELO: Yes.

JAMES WIESNER: Essentially half of Lot 2, the north side of it, whatever it is, the smaller part was conveyed by deed, so they're adding the other half to it to make it appropriate lot size, the transfer. That is kind of -- of the whole story there.

MR. FINLEY: That is this one, to make it the correct lot size.

This one is also to make it the separate size, but then there is more than one sibling, and is that why we're separating out the other parcel now, to give flexibility to keep the store and -- with the other land?

MR. ANTHONY IACOVANGELO: Yes. We basically have a sort of a conflict between the -- how the will was set up and what the code will allow along with conveyance in the past that needed to be fixed, as well. So it is sort of a combination of three things we're trying to sort of resolve here. In an attempt to settle the Estate, um, because there is some issue as to, um, if -- if you cannot legally effectuate the intent of a will, um, you have to have a compelling reason to -- to do that. So that is part of the issue here, is that we also have to get the -- any settlement that would occur, any sort of resolution we have, we would need the approval of the Surrogate, and he would, you know, simply defer to trying to do the best we can, given the circumstances, and obviously in an attempt to satisfy any and all applicable provisions of the code, and, you know, for the operation and use of the property.

There are two businesses operating there, on each parcel, so -- so given that, um -- a solution is right now sort of a -- still off in the distance, if you will. We're still navigating through the issues here, as they -- they were very complex.

MR. FINLEY: Does that help? One sibling is -- this one lot takes care of one sibling, but as long as we're subdividing, we'll set this up so that all can be taken care of.

JAMES WIESNER: There are deeper reasons as to how and why?

MR. ANTHONY IACOVANGELO: Yes. He left the business to Jack (Greco), but it shares the parcel with the house, which for the overall value of the Estate, and how it gets divided up, is -- is just not that easy to solve, given the -- again, the physical nature of the properties. Had everything been, you know, done neat and clean from the beginning of time with the buildings separated, proper setbacks, businesses, utilities separated and things like that, I don't think we would have many issues, but sometimes things just don't go that way.

FRED TROTT: They said something about cleaning up the lot. That is probably more Planning.

PAUL BLOSER: Yes and no. There are comments I will make on conditions.

MR. FINLEY: We're aware of that. Some things are not there any more and some still are. We're in the process.

KEITH O'TOOLE: To build on that, there are code violations on the property, and a condition of approval will be that they be cleaned up and a date certain by which they should be satisfied or come into compliance.

ED SHERO: No. Just to reiterate, the code issues and property maintenance issues be a part of the conditions.

PAUL BLOSER: I agree with the comments I have read, based on what I have seen.

MR. FINLEY: What is that? I understand it is basically like maintenance type things, fixable code compliance issues?

ED SHERO: I think they're all fixable. There is trailers, outside storage. Unlicensed vehicle. Televisions.

MR. FINLEY: That stuff I understand. I just wanted to make sure the -- if the buildings weren't in compliance, any major things that we didn't know about. Okay.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

DOROTHY BORGUS, 31 Stuart Road

MS. BORGUS: I will say it one more time. People ought to go to Planning and come here after. This is backward, boys. This is not the way it is supposed to be done and this leads to problems every time. I don't know why this is allowed.

I would like to know if there is any other GI property in Town that has buildings line 9 1/2 feet from a property line.

PAUL BLOSER: I can't answer that.

MS. BORGUS: I doubt it. If I'm reading that map correctly, that line that is -- that is -- it's not straight. There is a jog in it to get around a building?

PAUL BLOSER: That is correct, yes.

MS. BORGUS: This is the most convoluted thing I think I have seen come before this Board in a long time. I think that the -- the -- the -- the attorneys, the people involved think that all you -- six of you up there are attorneys or you're judges. We're not. You're ordinary citizens. This shouldn't be thrown at you. This is not in your ball park. You don't know enough about this to make a decision. And I don't mean that -- you know, in an -- in a -- in any way but complimentary. I wouldn't want to sit up there and make this decision. It is not your place to do this. This should be done by law, not in a Town Zoning Board meeting. This -- this is nuts.

Thank you.

STEVE GINOVSKY

MR. GINOVSKY: Good evening, again. First of all, the comment I would like to make, this is for a family that is battling, and through the Chair, I would like to say I'm sorry about hearing about your dad and as such, but family fights...

Now, getting to this property, as Dorothy (Borgus) said, the jog. We have zoning problems from before that were never corrected. We have to the right there, that pile, or Keeler -- where Keeler dropped off stuff when they redid Scottsville Road. There were complaints and as such put on that.

I don't know if it was ever cleared up. And then looking for variances here, and parking in the front, you're chopping this -- it is getting chopped up. This is spot zoning again. Just to make something -- two plots and then you have a third one out back and on the side. I think this should be -- bounce right back with the attorney to the Surrogate Court and let the family hash it out. Then come back when you have something really definite.

I heard something about water going in -- into this -- into this property. Well, if you're going to do water, is there sewer out in the front available? Get rid of the septic and maybe you could do some parking out back, if that is what you really want to do.

You gentlemen are -- are getting put right in the middle of this. And it really should not happen by you guys doing this.

Lot 22 to be 27.7 foot for front lot line, 75 foot requirement. This is self-inflicted. It is deeded off. It is chopped up. You're very foolish, and I don't think it is in the Town's best interest on this.

And it should go back, as Dorothy (Borgus) said, to Planning first and then maybe be sent back down to you guys after it goes through the Surrogate. And let -- and hash it out from there. It's not ask for forgiveness -- well, it is forgiveness. It is not permission. It's already done.

Thank you.

MR. GRECO: I was -- I have had my business there since 1969 at that location.

Um, as far as the property Larry Torcello owns, that was sold to him by my uncle in his Estate. I have been trying to get the front building torn down for years. He won't do it. I think it should be torn down because it would make the property look better. I fixed my property up the best I can, new parking lot. It's an eyesore next door to me. I guess I'm going to have to try to maybe buy it from Larry (Torcello) down the road and make it all as one.

It's -- it's just I have done everything I can to make my property look as good as it can. You know what I'm saying? I want it to look a lot better. I have to get rid of that building out front. I can't do it, because I don't own the property on it. It was divided like that years ago, and that is why it is 9 1/2 feet. It was sold to them. Why was it ever sold, I don't know.

As far as the house and the store, um, I'm trying to -- we're trying to make that so I own

that personally, because I am the only one that is paying all of the taxes on the property for the last five, six years. I paid over 40 something thousand last year in back taxes.

My brothers and sisters own about 38 percent of the property. And my dad left me the store because I built the store, and they're trying to divide it up. They figure the value of the house I would have to pay my brothers and sisters the difference on whatever they come up with, which I'm willing to do. So just to let you know a little bit about what is going on here.

JAMES WIESNER: Do you live in the house?

MR. GRECO: No. My brother does, but I pretty much pay all of the bills. I live -- I did live in Canandaigua. I live in Penfield right now. But I'm there every day. But I would like to own, you know -- and maybe buy the property next door and clean it all up, because I used to have a lot of stores and they were beautiful stores and I would like to make my store on Scottsville Road, which is my only location right now, a lot nicer than what it appears.

If you come in my store, you would love my product and I'm sure a lot of you people have been in there before. But I'm kind of struggling trying to make it look a lot better now.

Thank you.

MS. BORGUS: Thank you.

DOROTHY BORGUS, 31 Stuart Road

MS. BORGUS: I just had a -- another question. If that property has been sold, where -- why isn't there a property line -- is that property line that is shown the established line?

PAUL BLOSER: Yes.

MS. BORGUS: Yes. So that is not in dispute?

PAUL BLOSER: No.

MS. BORGUS: No. I guess that was foolish move number one.

PAUL BLOSER: This was all done a long time ago. It is just now coming in to get cleared up on the variances. These were established quite some time ago.

MS. BORGUS: I don't think that is the job of this Board. I'm sorry. It's not. It belongs in the courts.

MR. FINLEY: I can respond when the hearing is done -- or okay. Just to clarify, I think there is a better understanding now that -- the line that is between the buildings was established a long time ago. We can correct a lot of things by breaking lots into bigger sizes and that. The only way to solve the front setbacks would be to tear down buildings. That -- the house is built probably around 1900s or something and the garage in the 1950s or '60s, so we really can't -- we don't know how much right-of-way DOT acquired. Maybe the house actually met the setback once, but the right-of-way has gotten wider over time. So our solution, the most reasonable solution for the front setback is to request a variance versus tear the buildings down.

And the same with the side line is, it is the side line that has been there for a long time. We pushed out and actually this -- this is what Mr. Greco was saying, he is going to have to give Mr. Torcello a lot of land over here (indicating). The Estate will have to part with this, to make this up -- a conforming lot. So they're doing quite a bit to make it conform, but aside from tearing one or the other of the buildings down, our only option that is reasonable is to get a variance for the setback.

I think that was the biggest thing.

As far as the water, sewer, those kinds of things were taken care of through site plan.

PAUL BLOSER: What's -- what is going before Planning Board?

MR. FINLEY: Um, really, it's the parking. Um, one of the things as Mr. -- the Iacovangelo's father worked with the Town Building Department to bring this up more into code compliance, is to add parking. We don't really necessarily want to do the parking, but it is helpful. But that's a case where we didn't -- I don't think we came with the idea let's put parking in. It's part of -- if you're going to make the property go through site plan review and bring it up to compliance, you should separate the water services, put in parking to make it come up to code, put in landscaping. So we're really doing what we're being directed to do. Oh, and as far as -- there are no public sewers on the street. So we --

PAUL BLOSER: That is --

MR. FINLEY: So we're stuck with septic systems.

PAUL BLOSER: I understand that.

Okay. Thank you.

Any other public comment?

Robert Mulcahy made a motion to close the Public Hearing portion of this application and Adam Cummings seconded the motion. All Board members were in favor of the motion to close the Public Hearing.

FRED TROTT: I'm just trying to figure this out. There is no sewers running down there?

MR. FINLEY: No.

FRED TROTT: Because you have --

PAUL BLOSER: Not that section of the road.

MR. FINLEY: It's a long story. The new night club has sewers because back in the '80s we convinced Pure Waters to put them into the trunk force main with some special equipment, but Metalico is on septic. I think 84 Lumber is on septic, and then this stretch is all septic.

FRED TROTT: Seems kind of weird being close to the old GCO, you know?

MR. FINLEY: Metalico's septic system is 20 feet away from the GCO line, but it's a

pressure line, so they really don't let you hook in, but the night club had extenuating circumstances, I guess. So there are no sewers.

PAUL BLOSER: Keith (O'Toole), is there anything you could add to this?

KEITH O'TOOLE: Not really.

ROBERT MULCAHY: 9 foot setback is way in the back of the property any ways.

PAUL BLOSER: This appears to be something that has been here a long time and now is just getting straightened out.

Multiple side conversations were had by the Board members.

The Board discussed proposed conditions.

MR. FINLEY: It would be helpful to put the word "television" in there -- the other co-applicant is not here and may not see those as property maintenance issues. So if you put that in, it is clear.

The Board further discussed the proposed conditions.

Paul Bloser 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 Robert Mulcahy seconded the motion. The Board all voted yes on the motion.

Robert Mulcahy made a motion to approve the application with the following conditions, and James Wiesner seconded the motion. All Board members were in favor of the motion.

DECISION: Unanimously approved by a vote of 6 yes with the following conditions:

1. All parcels need to be cleaned up of debris and garbage, unregistered vehicles, trailers, televisions, and any other code violations to be cleared no later than July 1, 2010. This includes chassis, cabinets, and packaging products.
2. Approvals by Planning Board and Conservation Board are required.
3. Monroe County Planning and Development comments and approvals must be received by the Building Department.
4. All code violations and outstanding permits (i.e. fill permits) need to be completed and on file with the Building Department.

The following finding of fact was cited:

1. Proposed variances will not have any adverse physical or environmental effects on neighboring properties.
3. Application of Keith Nicolosi, owner; 296 Chili Scottsville Road, Churchville, New York 14428 for variance to erect a single-family dwelling to be 38' from side lot lines (40.6' previously approved) at property located at 295 Chili Scottsville Road in PRD & FPO zone.

Kip Finley, Keith Nicolosi and Tiffany Nicolosi were present to represent the application.

MR. FINLEY: It's me again.

PAUL BLOSER: You're back.

MR. FINLEY: Kip Finley.

We actually have Keith (Nicolosi) and Tiffany Nicolosi here today. I'm pinch-hitting for Rob Fitzgerald. He is there Project Manager, but since I was already here, this is another one of these extenuating circumstances that I will explain.

You have probably seen this before. As far as I remember, it has come in for side setback variance from 50 feet to 40.6 feet, and that would be for this one of the lots (indicating). If you're familiar with -- there is an existing house here (indicating), which is the Nicolosi family house. These two lots, for the brothers -- this is not developed (indicating). This is the one that is being developed (indicating). It's a modular home that's been manufactured.

When they first -- we developed this, we put in a 30 by 60 prototype footprint of a house. That's what they indicated, about the size they were going to have made.

And when they actually got done with designing it with their builder, by the time they add the bump-out on it, did the garage, and came up with their final dimensions, the house is now 28, so it is narrower, but 64, so it is longer.

This came around when we got called to do the stake-out for the house and they gave us the foundation plan from the home builder, and we thought, oh, we'll just put a round or something and have it fit.

Well, right now, it was 2 inches too long. So by the time it got manufactured, the sheathing, the siding and all of that, we still couldn't quite fit it in. So what we're asking is to revisit the side setbacks that were approved at 40.6 feet and to get relief for 38 feet, so that we -- we gave it an extra foot on each side, so just for some reason if they dig the footers and they're off 6 inches or so, we don't want to cut it that close again.

This particular case, they do have a letter from each adjacent property owner saying that it is okay with them if they change these, so it is in support of the 38 feet. The hardship is the house is in two-pieces on a trailer, was supposed to be shipped last week but we had to wait to come back here. It was just something that really couldn't be addressed through us adjusting the house or through the Building Department. We wanted to make sure it was right, because eventually I have to do an instrument survey of it and show it meets requirements.

PAUL BLOSER: So you're actually doing it the right way, rather than putting it in and coming and asking for forgiveness afterwards?

MR. FINLEY: Yes. I hope we get points for that.

PAUL BLOSER: That is big points for that.

Pretty cut and dry.

MR. FINLEY: Okay.

MR. KEITH NICOLOSI: Can I correct him, too? There is no garage. That's just the house. So he had said that it included the garage. That's just the house. Just so you know.

MR. FINLEY: To me, it just looked like that was --

MR. KEITH NICOLOSI: I just wanted to correct that.

FRED TROTT: Could you put -- put a little twist in it or whatever to get it to fit?

MR. FINLEY: No. We tried like a lot of different ways to get it to move, and it's just -- because of the awkward shape of this lot -- there's a pinch point and it gets worse as you go back. Then there is the front setbacks, they have this little bump-out on the front, so we had to push the house back a little, because they have the bump-out. We were literally in CAD trying to figure it out. There is like 2 inches we can't deal with.

FRED TROTT: You said there wasn't a garage there.

MR. KEITH NICOLOSI: Yes, correct.

FRED TROTT: Are we going to -- you have no plans of ever putting a garage in?

MR. KEITH NICOLOSI: Down the road. That might be something, but I got -- but I had fill and stuff like that. I mean, we're talking years down the road if that is a possibility. I believe they said for everything to settle, I'm looking at anywhere from five to seven years it could be.

FRED TROTT: Where is that going to fit?

MR. KEITH NICOLOSI: That will be -- will be another -- another option we'll have to address down the road, if it is a possibility. If not, we have property across the street, too, for stuff.

FRED TROTT: Dorothy (Borgus) is looking at me and I don't know if I will be here in five to seven years.

That is my only question, is --

MR. FINLEY: You may want to make sure you can really live without a garage.

MS. NICOLOSI: We have never had one, so who cares. It's not a big deal to us.

PAUL BLOSER: Well, we gave the approvals before for the lot --

FRED TROTT: Understand.

PAUL BLOSER: -- based on as presented.

FRED TROTT: I guess I'm just kind of pointing it out --

PAUL BLOSER: I agree with you.

FRED TROTT: -- to make the person aware of it. Because if I'm here, I might be inclined to say you knew that you were -- you couldn't fit a garage in there and you're coming back to -- asking to fit a garage in there. I might be inclined to be a little more -- to say you knew better.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

STEVE GINOVSKY, 19 Hubbard Drive

MR. GINOVSKY: Mr. Chairman, 19 Hubbard Drive. Sorry if I didn't give it to you before, my address.

My -- my personal opinion, for the house, at 2 1/2 foot, 2-inch, whatever you want to say, I have no problem.

But, I think it would be in the Town's best interest for this variance if a garage is ever put here, that it is on the documentation tight that you got more -- more problems than you want to deal with. I would say almost a negative at that point. As a no. But as it sits, just to squeeze it in there, you got to deal with what you got to have there. Prefab house is a prefab house. That's all I have to say, sir.

Thank you.

BILL NICOLOSI

MR. BILL NICOLOSI: My name is Bill Nicolosi. I'm Keith (Nicolosi)'s dad. I own the adjoining property next to them. So if down the road he decided he needed a -- or wanted to add a garage, I will just give him some more land. So that -- so that wouldn't be a problem. Right?

Thank you.

FRED TROTT: You see that? You guys thank me. (Laughter.)

Robert Mulcahy made a motion to close the Public Hearing portion of this application and Adam Cummings seconded the motion. All Board members were in favor of the motion to close the Public Hearing.

Paul Bloser 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.

Robert Mulcahy made a motion to approve the application with no conditions, and Fred Trott seconded the motion. The Board approved the motion by a vote of 5 yes to 1 no (Jim Wiesner).

DECISION: Approved by a vote of 5 yes to 1 no (Jim Wiesner) with the following finding of fact having been cited:

1. Proposed variance cannot be mitigated by reasonable means.

The meeting was adjourned at 8:55 p.m.