

CHILI ZONING BOARD OF APPEALS

May 17, 2005

A meeting of the Chili Zoning Board of Appeals was held on May 17, 2005 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 Beverly Griebel.

PRESENT: Gerry Hendrickson, Michael Martin, Peter Widener, Dan Melville, Richard Perry and Chairperson Beverly Griebel. Jeffery Perkins was excused.

ALSO PRESENT: Daniel Kress, Director of Planning, Zoning & Development; Richard Stowe, Counsel for the Town.

Beverly Griebel declared this to be a legally constituted meeting of the Chili Zoning Board of Appeals. She explained the meeting's procedures and introduced the Board and front table. She announced the fire safety exits. The Pledge of Allegiance was cited.

BEVERLY GRIEBEL: Before we begin, we'll discuss signs that were placed up. Number 1, Mr. Hegadorn. I didn't have any problem with that.

The Board indicated they would hear the application.

BEVERLY GRIEBEL: Number 2, the WHAM tower?

The Board indicated they would hear the application.

BEVERLY GRIEBEL: In Number 3, Mr. Hartz?

The Board indicated they would hear the application.

BEVERLY GRIEBEL: We're on a roll.
Number 4, Mr. Wagner?

GERRY HENDRICKSON: No problem.

The Board indicated they would hear the application.

BEVERLY GRIEBEL: Number 5, Mary Wicks? Any problems?

The Board indicated they would hear the application.

BEVERLY GRIEBEL: Good. Two months in a row. Good.

1. Application of Jeffrey Hegadorn, owner; 235 Humphrey Road, Scottsville, New York 14546 for variance to allow the total square footage of garage area, including a new 32' x 48' detached garage, to be 2,049 sq. ft. (900 sq. ft. allowed), variance to allow two accessory storage buildings (22' x 18', 13' high and 16' x 17') to be a total of 668 sq. ft. (180 sq. ft./12 ft. high allowed) at property located at 235 Humphrey Road in RA-1-zone.

BEVERLY GRIEBEL: This was held over from our last meeting to clarify all of the dimensions of everything, and there is a revised plan on the Board. If anyone in the audience wants to go look at it, go ahead.

Is the applicant here?

MR. HEGADORN: Yes.

BEVERLY GRIEBEL: We had to table it last time because of an uncertainty of the dimensions of everything. So we did get a clarification of that. I guess you walked the property with Mr. Kress and everything and had it measured out.

Now, in this new garage that you're building, tell us again what you're going to put in it.

MR. HEGADORN: For a motor home, a boat and a tractor.

BEVERLY GRIEBEL: A large motor home?

MR. HEGADORN: No. 24 foot motor home.

BEVERLY GRIEBEL: A boat. How large is that?

MR. HEGADORN: The boat is 17 feet. If you measure the trailer, it is 25 feet long.

BEVERLY GRIEBEL: Okay. And a tractor. That's a big garden tractor.

MR. HEGADORN: 25 horsepower diesel tractor.

BEVERLY GRIEBEL: The last time, I think you said you were storing that in one of those sheds. Were you storing that in the open shed?

MR. HEGADORN: Yes. I have a picnic shelter type thing I park under there when we are not using it.

BEVERLY GRIEBEL: So if this is approved to build this new larger garage, is that open shed going to be dismantled?

MR. HEGADORN: No, I don't intend to.

BEVERLY GRIEBEL: What will you use it for then?

MR. HEGADORN: We don't have any trees on our entire lot, other than maybe you can fit one lawn chair in the shade, so our family reunion every year -- or most years is held under there. Where we put out our food and have our picnic.

BEVERLY GRIEBEL: That is once a year?

MR. HEGADORN: Well, yes, plus other functions that we may do. I'm sure in the off times, I will put implements under there.

BEVERLY GRIEBEL: Well, that may be something we consider in approving it, whether one or both of the other sheds come down.

MR. HEGADORN: I didn't intend to take them down, no. They're perfectly good structures.

BEVERLY GRIEBEL: That will be up to the Board.

DAN MELVILLE: You said that shed is like a picnic shelter? That is what it was designed for when it was built?

MR. HEGADORN: Yes. We had a family reunion coming up, and we built it for that. Obviously, I intended to -- you know, I don't intend to picnic every weekend, so I intend to keep stuff out of the rain.

DAN MELVILLE: Going back to the garage, I think you did state last month it was going to have a concrete floor in it.

MR. HEGADORN: Yes, I believe it is code if we park the vehicles in there.

DAN MELVILLE: That is exactly right. You will not conduct any kind of business out of that garage or anything like that?

MR. HEGADORN: No.

RICHARD PERRY: The picnic shelter is the smaller of the two?

MR. HEGADORN: No, the larger.

RICHARD PERRY: What is the other one?

MR. HEGADORN: Pardon?

RICHARD PERRY: What is the other one, the smaller one?

MR. HEGADORN: Garden tool, garden shed. Houses, a couple of ladders and stuff.

MICHAEL MARTIN: Is it your intention to keep the garden tools in the small utility shed to not clutter up your new garage space?

MR. HEGADORN: Yes. That is how it works now. That is the reason why we want to put it up.

BEVERLY GRIEBEL: So it is garden tools, hoses, ladders, in a 16 by 17 foot shed?

MR. HEGADORN: Yes.

BEVERLY GRIEBEL: Is there a lawn mower in there?

MR. HEGADORN: Yes. There is lawn -- anything you can think of for yard maintenance type stuff. Couple extension ladders. Stepladders. Edger, that kind of thing.

BEVERLY GRIEBEL: Now, your lot is how many acres again?

MR. HEGADORN: I believe it is 6.72. I can look on my thing here.

RICHARD PERRY: 6.78 according to this.

PETER WIDENER: Did you build the home, or did you buy the home there?

MR. HEGADORN: No. I bought the home. It was built in -- over the winter, I believe of '90/'91, and I bought it in the year 2000.

PETER WIDENER: You bought it from another party then?

MR. HEGADORN: Yes.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

DOROTHY BORGUS, 31 Stuart Road

MS. BORGUS: Has this been resolved that these buildings did not have permits when they were put up?

BEVERLY GRIEBEL: That's correct. That is why they're on the agenda tonight.

MS. BORGUS: Did this gentleman build them?

MR. HEGADORN: Yes.

MS. BORGUS: In that case, have permits been purchased since then? What happens in a situation like that?

BEVERLY GRIEBEL: Well, they have to -- they're on this agenda for approval. A variance to allow the two accessory storage buildings, 22 by 18 by 13 high, and 16 by 17, total of 600 --

DAN MELVILLE: If he gets approval, then he'll get the permits.

MS. BORGUS: Then he will have to buy the permits for them?

DAN MELVILLE: Yes.

MS. BORGUS: I guess I see this, as a regular in this meeting, far too many times when people come in after they have built without following the proper procedure.

MICHAEL MARTIN: If I could for a second, Mr. Kress did some research on this issue, and the applicant did contact the Town before the structures were built, and before Mr. Kress was in his job, the person in charge advised him no permits were necessary. So it -- he did check, and was told that he did not need permits for those structures.

MS. BORGUS: Then I would hope in our Building Department we follow proper procedures now.

My thought would be that -- that the average person, living in Chili, on a residential lot, does not need over 2,700 feet of storage space. And if you allow this detached garage, that was originally asked for, I would suggest that the other two buildings be removed. It gets to be very cluttered on a residential lot, even though it is 6.7 acres when you see all these out buildings. It doesn't lend to the appearance that I think we want to cultivate, especially in South Chili, when there is more and more building going on. It sets a very bad precedent.

I did not hear the question asked as to what this new detached garage was going to be constructed of. Does it match the house? Is it something totally different? Is it a different color? Is it going to jump out at you?

MR. HEGADORN: I think we went through that last month.

BEVERLY GRIEBEL: Can you describe again what you're going -- you're going to build it?

MR. HEGADORN: Yes.

BEVERLY GRIEBEL: You did building in the past?

MR. HEGADORN: Yes. It will be vertical sided, roofed with the same material as all of the other buildings, same roof pitch as the house. Same color as the house.

MS. BORGUS: My original complaint stands. I think it is far too much -- it is unnecessary to have a variance of this size for just a residence.

MR. HEGADORN: If I could address that, the average person might not need that --

BEVERLY GRIEBEL: Please address the Chair.

MR. HEGADORN: The average person might not need 2,000 square feet, but not everybody is average. People have different life styles. That is all I have to say to that.

BEVERLY GRIEBEL: Well, I guess, you know, I have a problem with it, too, because currently your tractor is stored in the open shed, but your tractor is going to go in the new garage. So I personally would like to see that one come down.

MR. HEGADORN: Is that a question?

BEVERLY GRIEBEL: No. That is a statement. I'm just making a statement. That is my feeling on it.

The total square footage now of the garage, you have a garage that is attached to the house, and then the detached one, to be a total of 2,049 square feet, 900 square feet allowed. So that is really oversized there, and then two other sheds, one that is not holding what it was holding before.

MR. HEGADORN: Well, there are many things out in the rain that go with the tractor that could be in the rain, that cost hundreds, if not thousands of dollars apiece.

As far as the mower, bush-hog, all of those things sit out right now. So if the tractor, which is the most expensive piece of equipment wasn't undercover, I certainly would like to get those things undercover.

BEVERLY GRIEBEL: So this is a different mower than you store in the small shed?

MR. HEGADORN: Yes. There is one that my wife drives. It is just a little riding mower.

MICHAEL MARTIN: Bush-hog is a large attachment to the back of the tractor.

BEVERLY GRIEBEL: He had bush-hog plus the mower attachment.

MR. HEGADORN: Yes.

MICHAEL MARTIN: The bush-hog is the mower.

BEVERLY GRIEBEL: Well, you said both.

MR. HEGADORN: There are both. There is a 6 foot mower deck for the tractor and a bush-hog that I maintain a lot of the back fields. There are five lots there.

BEVERLY GRIEBEL: Will they -- those attachments, will they fit in the new garage?

MR. HEGADORN: I didn't size it to do that, no. Being that I already have space coming available.

BEVERLY GRIEBEL: Well, the new one will be 32 by 48. You have a 24 foot motor home, 25 foot boat with a trailer, and -- depending how long the tractor is. It is a lot of space in there.

MR. HEGADORN: Yes. Enough space to store the stuff without banging the back wall or not being able to get the doors closed.

BEVERLY GRIEBEL: Okay.

The Public Hearing was closed for this application at this time.

Beverly Griebel made a motion to declare the Board lead agency for SEQR, made a determination of no significant environmental impact, based on the testimony and the material presented at this hearing, and Gerry Hendrickson seconded the motion. The Board all voted yes on the motion.

Michael Martin made a motion to approve the application with no conditions, and Gerry Hendrickson seconded the motion. The motion was approved by a vote of 5 yes to 1 no (Beverly Griebel).

DECISION: Approved by a vote of 5 yes to 1 no (Beverly Griebel) with no following conditions, and the following finding of fact was cited:

1. Applicant described need for storage.

Note: Building permits are required for these structures.

2. Application of Citicasters Co., owner; 207 Midtown Plaza, Rochester, New York 14604 for variance to erect a second telecommunications tower to be 199' high (35' allowed), variance to erect an 8' high fence with barbed wire at property located at 591 Ballantyne Road in A.C. & FPO zone.

Frank Hagelberg, Duncan Jackson and Craig Kingcaid were present to represent the application.

MR. HAGELBERG: Good evening. My name is Frank Hagelberg. I'm counsel to the law firm of Boylan, Brown, Code, Vigdor & Wilson, appearing this evening on behalf of Citicasters Company, which is a wholly-owned subsidiary of Clear Channel Communications, and is the licensed operator of radio station WHAM which broadcasts 1180 on the AM dial.

With me this evening are Mr. Craig Kingcaid, who is the Chief Engineer for Clear Channel Rochester; and Mr. Duncan Jackson, the Project Engineer from MRB Group.

The purpose of this application is to secure two variances in connection with the construction of a 199 foot auxilliary transmitter tower on property at 591 Ballantyne Road, near the intersection of Ballantyne and Brook Roads. The facility will be supported by guy wires, anchored in three locations, will include a system of underground wires that radiate out from the tower, which are required to produce the radio signal.

The auxilliary tower and adjacent electrical cabinet, as well as three guy wire anchors are to be protected by chain link fencing with barbed wire on top, which is the subject of one of the variances.

A height variance is required in order to permit a 199 foot tower. The zoning ordinance limits towers of this sort to 35 feet in height, and as I said, the variance is required for the 8 foot fence and the barbed wire.

The auxillary tower is to be used in conjunction with the existing WHAM tower which is on the property. The existing tower is 420 feet high. It was originally constructed in 1947.

The auxillary tower is going to serve a number of purposes. First, in the event the existing

WHAM tower requires either repair or maintenance, the main transmitter would be shut down, and thereby providing a safe environment for workers, and the auxiliary tower can be used.

This will allow the station to comply with FCC guidelines at regulating exposure of workers to radio frequency emissions. There's a large set of regulations which, at the Planning Board's request, and much to Mr. Kress's delight, I have supplied him with. Essentially, those regulations say that you can't have workers close to a tower that is producing radio frequency signals for more than a specified period of time. Those time periods are relatively short. WHAM broadcasts at a maximum allowable power of 50,000 watts, and that makes -- that makes exposure a matter of minutes. That means that as a practical matter, if the tower needs maintenance or repair, it has to be shut down, and the signal goes off the air.

What that also means as a matter of practice, is that we have done this in the wee hours of the morning when maintenance has been required, and as far as I'm concerned, the only thing worse than somebody telling me to go up and work on a tower, would be telling me to go up and work on a tower in the middle of the night. But that is precisely the situation we find ourselves in.

Secondly, in the event of an unscheduled interruption in use of the existing power -- that is legal ease for something that breaks -- the auxiliary tower can be used in that case. Coverage from the auxiliary tower will be less. I will broadcast at 10,000 kilowatts -- 10,000 watts, 10 kilowatts, rather than 50,000. That is entirely sufficient to serve the Greater Rochester area during daylight hours, and during the night, instead of reaching 36 states, we may only reach a dozen or so states. But we'll be able to provide service for this area, using the auxiliary tower.

And that means that the Greater Rochester area will continue to have access to news, weather and emergency broadcasts that are very much a part of WHAM's programming.

Uninterrupted broadcasting is important because WHAM is what is called a clear channel station, small C. It is -- just to make matters confusing, it is owned by a company called Clear Channel, but let's use it in the small C sense. As such it is one of very few stations in the country that can broadcast 24 hours a day, seven days a week, night and day, at 50,000 watts. It is the only station permitted to broadcast at night at 1180, at 50,000 watts. And therefore, it has a -- it is a Class A station, as the FCC categorizes these things, and there is only one clear channel station permitted on the AM band at any given frequency, and for 1180, WHAM is it.

There is another station in Montana that broadcasts 1180. It broadcasts at 50,000 watts during the day. At night it has to scale back to 10,000 watts to make room, if you will, for the WHAM signal.

The other thing that is important to know about WHAM, because of its clear channel status, and the job it has been assigned and -- in the federal network, um, it is the primary entry point for Western New York under the FCC's emergency alert system. WHAM, is responsible for broadcasting emergency alert notifications during weather or national security events. As the primary entry point, the notice goes to WHAM, and WHAM then distributes it to the other radio and television stations in this area.

I think it is important to note the -- I call it an auxiliary tower, and I call it that for a reason. Both towers will not be used at the same time. The auxiliary tower, as well as the existing tower, is not going to be used for anything other than the broadcast of radio station WHAM.

The only potential exception to that is that the Town's telecommunications ordinance talks about accommodating government and public safety broadcasts on any tower that is constructed. For a number of complex engineering reasons that I'm happy to have Mr. Kingcaid explain, the practical possibilities of permitting collocation of either government or emergency service broadcasts is somewhat limited. That having been said, if it can be done, we are prepared to look at it and permit it if there is a governmental agency or emergency service that thinks this would be of value.

Other than that, the Planning Board asked me fairly straight out, and I hope I gave a fairly straight-out answer, we are not going to have any other type of broadcasting on this auxiliary tower, or on the main tower, for that matter, and if either Board feels it appropriate to impose a condition to that effect, we are -- we don't have any difficulty with that at all.

In terms of the location, this is a work in progress. We originally proposed it be located in the southwest corner of the parcel, more or less at the intersection of Brook and Ballantyne.

Now, the Conservation Board met late last month, and pretty much thought that that was a lousy idea and suggested that we move it off that corner. So we have -- we presented an alternate plan to the Planning Board that calls for it to be located at 900 feet to the east, essentially moving it from the southwest corner of the property, to the southeast corner of the property, and I believe the Zoning Board has copies of that revised site plan. That is an alternate that we think works.

There is -- there is some further discussion going on at the Planning Board as to whether it gets moved somewhat north, or a lot north. We're looking at that right now.

The -- there are a number of considerations there, including how many more trees would have to be removed the further north we move it, and also, there are -- there are complications, again, engineering complications about the amount of signal that gets lost when you have to send 1100 feet or 700 feet of line out to that tower, instead of maybe 200 feet or 300 feet.

That might require a larger transmitter. It might require boosters of some kind, and we are in the process of doing an analysis on that. Right now the alternative that we are offering, and that we think makes sense, is the southeast corner, and indeed I don't want to put words in his mouth, but the Vice Chairman of the Conservation Board stated at the Planning Board hearing last week that the Conservation Board's primary concern was to get it off the corner. And we -- we have done that.

In terms of -- we also explained to the Planning Board, that the fall zone, so-called, the two towers, did not conflict as we had located it in this alternate.

The alternate also addresses a number of County Planning's concerns which I will not spend time with you on.

Suffice to say, we have applied to the Planning Board for a conditional use permit, a site plan approval. We have applied to the Town Board. We have applied to the Town Board for extension of the drainage district. The site is not located in the Airport Overlay District, so we have not had the County run through that.

The other important other approval that we have got, so you can have the entire context, is we have sent a Notice of Proposed Construction to the Federal Aviation Administration which says we propose to put up a 199 foot tower at this location, tell us what you think. They came back and said that is fine. Specifically, what they said is that it does not pose a hazard to air navigation, and second, they said that it does not need to be either lighted or painted. There are two reasons for that from my knowledge of the process. The first is that it is under 200 feet, and as a general rule, the FAA does not require marking or lighting structures under 200 feet. The other real practical answer to why they came out with this determination is that we have got a 420 foot lighted tower right there, so they're not going to worry about a 199 foot tower nearby.

In terms of our variance requests. Variance to permit 199 feet, variance to permit the fences. I will address the standards for those variances in just a moment.

I do want to spend just a minute because the question arose last week at the Planning Board, and Mr. O'Toole asked that I address it here tonight. And that is to address the variances that were not applied for. We are applying for two, but there are a couple we are not applying for.

First, the Town's telecommunications tower ordinance permits, and I quote, no more than one tower facility on any tax parcel.

At the outset, while the WHAM tower technically meets the ordinance's definition of a telecommunications tower, because it has an antenna on it, it appears to me, based on my experience in doing lots of cellular telephone cell site zoning over the years, that the telecommunications tower ordinance was really designed and enacted in order to govern mobile telephone cell sites.

So to some degree, we are trying to put a square peg into a round hole here. But in any event, we believe the auxiliary tower should properly be viewed as part of the same, quote, tower facility. That is what the ordinance requires.

It is part of the same tower facility, because the two towers will never be used simultaneously, and the auxiliary tower is only going to be used when the main one is down for maintenance or repair.

Taken together, they're part of the same facility broadcasting WHAM, and it also meets the definition in the ordinance of -- in the telecommunications tower ordinance of accessory facility, because, and I will quote again, it serves the principal use. It is subordinate in area, extent and purpose to the principal use and is located on the same lot as the principal use.

I think it is also appropriate to note that the vast majority of AM radio transmitters consist of multiple towers, and the reason that is the case, is because they have to shape their signal in order not to bunch into other stations, particularly at night, and the way they shape their signal -- and they sort of create an amoeba-like patterns -- it is like a jigsaw puzzle -- the way they shape their towers is by tuning multiple towers. So most AM facilities will have two, three, four, a dozen towers in order to provide the right kind of signal.

We don't happen to have that because we are omnidirectional, but again, if we are -- if we were a regular AM, or if we weren't a clear channel AM facility, you would probably be looking at an application for multiple towers.

And given the FCC regulations on radio frequency exposure, and the necessity in our post 911 world to be able to provide emergency communications 24/7/365, multiple towers are no less a necessary part of this operation.

Secondly, the AC -- the second variance I'm not looking for. The AC District regulations provide that communications towers must be quote for personal, not commercial use.

However, first of all, it is clear that commercial radio broadcasting on this property is a legal, nonconforming use under 115-47 of the zoning ordinance. Property has been used for this purpose. That tower has been there since 1947.

It is also clear from the language of 115-47 that the ordinance expressly permits both the extension of a non-conforming use. So the question becomes is this an extension of the nonconforming use.

At Mr. O'Toole's request we have submitted legal authority to him, and I have brought copies of that letter tonight that I would ask be put into the record supporting the position that a non-conforming use can be extended when the landowner has previously shown the intent to use the entire parcel for a single purpose.

The leading case is a Court of Appeals case where part of the property was used as a quarry. New zoning ordinance comes in. The owner wants to use the rest of his property as a quarry, and the Town says, "Uh-uh." The court says "Okay," because there was clearly an intent to use the property only for that.

There has never been any other activity on this property other than radio broadcasting, and we don't intend to permit any other activity on this property other than radio broadcasting.

To the same effect courts have also permitted the extension of nonconforming uses that have utilized more modern equipment or more up-to-date methods of conducting the use to which the property is devoted.

Specifically, accessory uses introduced as part of the modernization of equipment. Again, in the quarry situation, there was a case involving the introduction of a new stone crushing machine. The Town said, "No, you can't do it." The Court said, "Yes, you can." More modern equipment, legitimate extension of a prior nonconforming use.

Another case we cite is considering a nursing home that became a nonconforming use. They wanted to put up a new wing, specifically dedicated to geriatric care and emergency care for geriatric patients. Courts said consistent with the earlier use, an extension merely that keeps up with later development in technology.

We are in a situation where we have two factors in terms of later developments that require us to update this tower by supplementing it. The first being the exposure regulations that were initially imposed for the first time in 1997, and the second is that more than ever need to make sure that we can broadcast 24/7/365 given the situation which we find ourselves in not only for weather events, but because of what happened on 911.

So I think the bottom line is, the reason we are not applying for a variance from the personal rather than commercial use is whether we view this as an accessory use or extension to a non-conforming use. The fact remains that the property has been used for over a half century for broadcasting WHAM, and what we are doing at the end of the day is making sure that we have a back-up system for that, and I don't think we need a use variance for that.

The variance standards for the variances we are asking for, the height of the fence, as the Board knows, probably only too well, the general test is a balance between the benefit to the applicant weighed against the testament to the health, safety, welfare to the community. I think that bears a little comment rather than just giving you the same old formula.

I think it is important to recognize that the only so-called benefit to the applicant is the station's ability to comply with its broadcast obligations and to be a reliable source of emergency information and also to comply with its obligations to protect workers from radio frequency emission exposure.

In fact, I think it is important to note, there is no economic benefit to the applicant as a result of this project. The cost of this facility, which is not insubstantial, will not enhance WHAM's bottom line. We are not going to be able to tell broadcasters, "Hey, guess what? If we go off the air, we can go to an auxiliary tower that has less power, and therefore, we would like to charge you more for our ad."

Probably not going to work. The auxiliary tower is not a profit center for this station. Every time we look at the costs, Mr. Kingcaid reaches for the Pepcid AC. And that's -- that's the fact of the matter.

On the other hand, the benefit to the community is clear. WHAM is one of the strongest daytime radio stations in the area, and it is clearly the strongest nighttime station in the area. It

remains committed to supplying news, weather and emergency service information to this community, and I think WHAM's track record is clear, it has proven itself time and time again during ice storms, power failures, national emergencies, who knows what.

WHAM is recognized as the -- as the place on the radio dial where a lot of people go to get their information.

We also believe there is no detriment to the health, safety and welfare of the community. The tower is neither lighted or painted and will not be visible at night. We have located it 900 feet to the east in order to take it off that corner. The area is relatively lightly populated. We have contacted the Fantagrossis who have a residence to the east, and Mr. Kingcaid can speak to that. I don't know if they're here tonight, but probably only double hearsay, but their major concerns were that they were getting some interference on their television from the existing tower, which we have an obligation to fix, and we are addressing that, and they also had some concerns about having water service to their property, and I'm going to leave them to talk to the Town about that, and happily we are not involved with that.

Beyond the Fantagrossis, the area is not heavily populated, and the number of people that will see the tower on a regular basis is somewhat limited.

Some of the highlights of the variance standards, and I'm not going to go through all of them. But since the property already contains a 420 foot high broadcast tower, we don't believe that the character either of the property or the surrounding neighborhood is going to be substantially changed. The question -- questions could be raised as to other ways WHAM could meet its objectives.

Our alternatives are either shut it down, which we don't think is the responsible thing to do, or build another tower on land where no other tower exists. We think that -- is that possible? Of course, it is possible. And we think that the amount of public controversy and perhaps public opposition to building a tower fresh on a different piece of property would be substantially, and we think the most appropriate place to put a tower is where another one already exists.

Finally, we don't believe this situation is a self-created hardship.

The need for the auxiliary tower arises because of our obligation to be a constant source of information, and our obligation to protect those workers and those are things that have come upon us since the use of the property began, and to a large degree, are beyond the station's control.

The letter that was submitted to the Zoning Board with the application details all of the other specific variance standards and the way in which this application meets those standards, so I won't take time to go through each of them, although I would be happy to address any that you think are -- I should have addressed them already. Mr. Kingcaid, Mr. Jackson and I would be happy to respond to any questions either from the Board or the public, and I thank you for your attentions.

BEVERLY GRIEBEL: Okay. I will make a note. This is 58.5 acres.

MR. HAGELBERG: Entire parcel.

BEVERLY GRIEBEL: We did not get the new diagrams.

PETER WIDENER: The southeast corner.

MR. HAGELBERG: Okay.

BEVERLY GRIEBEL: But that is not determined yet whether it will be southeast or more northerly.

MR. HAGELBERG: You're absolutely right, and let me also suggest to you that the variances before you tonight are going to be -- are not -- the variance applications are not affected by --

BEVERLY GRIEBEL: Location. Right.

MR. HAGELBERG: It will still be 199 feet, and we are still asking for a security fence with barbed wire around those four points, regardless of where the thing ends up.

PETER WIDENER: May I ask why barbed wire? It seems kind of harsh.

BEVERLY GRIEBEL: It is supposed to be to keep people out.

PETER WIDENER: We have high tensile wire, too.

MR. HAGELBERG: We can talk about -- I think we are prepared to talk about exactly what kind of wire we want, but we want -- we want a topping on this fence that will clearly and visibly discourage any attempts to get inside.

BEVERLY GRIEBEL: We have had some others that have come in -- there was a trucking company over off Paul Road, and they were having a problem, and they put the barbed wire at the top to keep pilferers out.

DAN MELVILLE: You probably don't want someone to take those towers out, you know, some --

MICHAEL MARTIN: Also exposure to the radio frequency.

MR. HAGELBERG: We have to keep them away, and we have to keep them out. We don't want folks playing with either the tower itself, or with any of the guy wires.

PETER WIDENER: Thank you.

MR. HAGELBERG: But let me just say, if -- if a different kind of a wire serves the purpose, that's fine.

PETER WIDENER: Looking at your aspects, razor wire may be better. That is a deterrent.

MR. HAGELBERG: I have been involved in applications where they have said, you know, barbed wire much better than razor wire because we hate razor wire. You know what? Your call. Razor wire will certainly be just as effective as barbed wire.

PETER WIDENER: It is more of a visual thing.

MR. HAGELBERG: I will leave that one to you. We are happy either way.

BEVERLY GRIEBEL: I was at the Planning Board hearing, and most of the issues that you are going to answer to don't really affect this application. This is just for the height of the tower, wherever its final placement would be, if approved by the Planning Board. Plus the barbed wire.

MR. HAGELBERG: I'm happy to go through that speech, but I figured I would spare you that.

BEVERLY GRIEBEL: We won't do that.

GERRY HENDRICKSON: No questions. I'm glad to see they're moving it off the corner, though.

BEVERLY GRIEBEL: The original site on the corner.

GERRY HENDRICKSON: Yes. That was dangerous there. Anybody could plow through into there.

BEVERLY GRIEBEL: It is definitely going to be moved from that corner.

PETER WIDENER: I had a few questions. In the new proposed area, it is near an old RG&E substation. Would the drop zone be affected by that or would they be clear of that?

MR. HAGELBERG: We would be clear of the substation and the RG&E easement that runs along our east boundary.

PETER WIDENER: The use of this tower would be as WHAM right now, amplitude modulation, not frequency modulation.

MR. HAGELBERG: It would be used exclusively to broadcast 1180 AM dial maximum 50,000 watts.

PETER WIDENER: Recently WHAM radio merged with television. Would this tower be use for television?

MR. HAGELBERG: No, sir. The parent companies, if you go up the ladder far enough are the same. WHAM radio and 13 WHAM TV are sort of cousins. 13 WHAM TV broadcasts from a facility on Pinnacle Hill, and together with all of the other television stations in Town, and I don't think any of those five stations want to move off Pinnacle Hill.

MICHAEL MARTIN: How often is maintenance required on the tower?

MR. HAGELBERG: Regular maintenance, several times a year. It could be two, could be four. The site is visited quite regularly, but in terms of looking at the transmitter rather than the tower itself, we want to address that. The other thing we want to address is if there is a -- an unscheduled problem with the tower.

MICHAEL MARTIN: The tower is going on 60 years old, the original tower. It seems like it is in pretty good shape.

MR. HAGELBERG: We try to keep it that way because if -- the old commercials, we are out of business.

MICHAEL MARTIN: Your FCC license requires 24/7 broadcasting?

MR. HAGELBERG: Yes.

MICHAEL MARTIN: So if for some reason you didn't have an auxiliary tower and your other tower came down, you could lose your broadcast license.

MR. HAGELBERG: It was an interesting question that was asked at the Planning Board, and I have had enough contact with radio stations and licensing over the years that I -- I believe that if we were to show that we were shutting down for maintenance on a regularly scheduled basis, they probably would say, yes, we understand that. It doesn't answer the obligation to be around if there is an emergency, and if we -- if on the other hand we were going down on a regular basis, because of lousy maintenance, then I think it would tip to the other side and the FCC could rightly say, "Folks, you're supposed to be broadcasting 24/7 and you're not. Either get your maintenance act in order or we'll have to talk about it come renewal time."

RICHARD PERRY: The current 420 foot tower, is that the original tower or have sections of it, pieces been replaced?

MR. KINGCAID: That is the original tower.

Craig Kingcaid, Chief Engineer for WHAM and the six other radio stations we have in Rochester here. It is the original set of tower, guide wires, original bowl anchors. It is all original.

RICHARD PERRY: How -- is the life time of the tower and the guy wires infinite? Is there any measure as to how long they can last with proper maintenance?

MR. KINGCAID: Um, they could probably last infinitely with proper maintenance.

DAN MELVILLE: One question I have is how come after all this time do you need an auxiliary tower?

MR. HAGELBERG: We have needed an auxiliary tower for a while. The two things that have come together are the exposure guidelines, and the need, again, post 911, it takes on a different level of importance. And have we done it as promptly as we might have, no.

Mr. Kingcaid sort of has to get the attention of the higher-ups, but has there been a need, we believe there has. We would rather address it now than wait any longer.

DAN MELVILLE: Now, normally WHAM broadcasts at 50,000 watts. Now are there any times during the day when they power down?

MR. HAGELBERG: No. Always at 50,000, 24 hours a day.

DAN MELVILLE: Now with this new tower being powered at 10,000 watts, are you still going to be in compliance with the FCC for the emergency broadcast station, since you won't be covering as many states?

MR. HAGELBERG: Yes, because the emergency broadcast situation is for Western New York and we'll still be able to cover that without any difficulty.

DAN MELVILLE: Now, someone else asked this question about other stations maybe broadcasting. Now, can this tower only broadcast on the AM band? Is that what --

MR. HAGELBERG: This tower is designed to broadcast on the AM band.

DAN MELVILLE: You can't broadcast TV off a tower like that anyway?

MR. HAGELBERG: The difference between a -- I will -- he will jump up if I say this wrong. The difference between an AM tower and either an FM tower or TV tower is that an AM tower for most or all of its structure radiates signal from all of the structure.

DAN MELVILLE: Where FM is directional?

MR. HAGELBERG: No. FM you take an antenna and stick it on the side of a tower. The tower on which you stick that FM antenna is not itself radiating signal. The signal is only being radiated from the antenna you stick on the tower. In an AM situation the entire tower is radiating signal.

If you had enough insulators and space in order to insure lack of interference, you could presumably put another antenna on the auxiliary tower. I think Mr. Kingcaid indicated to the Planning Board that the top 30 feet of the auxiliary tower is not radiating signal, so arguably it is possible. Television is not a -- is not a realistic possibility because -- because TV propagates best from this area off Pinnacle Hill, and not only best, but the way the markets are segmented, and the way those patterns are regulated, you probably wouldn't get authorization for a TV station located in Chili because it would bonk into signal from Buffalo and a signal from the south. So that is not a realistic possibility.

We have no intent, and again, if there is any interest in either at this Board or from the Planning Board in putting a condition that says you will only use this tower for WHAM 1180, and we mean it, that is fine.

Let me add one thing, and I think it is something I failed to address before, or maybe only alluded to. Why 199 feet.

If we could go higher, we could hit a larger area with that 10,000 watts.

Um, however, we know that the FAA is going to approve a 199 foot tower and not require marking the lighting because that is their -- that is their policy, and I would much prefer to come in with an application for a tower that doesn't require painting or lighting. And -- and the station owner understands that. So that is why we have not asked for anything higher.

If we go lower, it is very simple. Do the math. The -- the amount of signal just decreases. If we could bury these things, we would. They don't work real well unless they're sticking up in the air.

BEVERLY GRIEBEL: This tower then will allow you to have workmen doing scheduled repairs in the daytime?

MR. HAGELBERG: Yes.

BEVERLY GRIEBEL: Which is a much better deal than climbing 420 feet in the dark of night. Usually shut down if you can now between 2 and 4 a.m.?

MR. HAGELBERG: Yes.

DAN MELVILLE: It would also allow, too, if the main tower went down, they could power up the auxiliary tower to get the other one fixed.

MR. HAGELBERG: I don't like people using the words "tower" and "went down" in the same sense. If there was a problem with the transmitting -- I'm sure that is what you meant to say.

BEVERLY GRIEBEL: Signal diminished.

MR. HAGELBERG: Thank you.

BEVERLY GRIEBEL: Now, this at the Planning Board -- I don't know if you mentioned, it was tabled. They're awaiting for the additional information, and I guess Mr. Kress, is that going to be on the next meeting for the Planning Board?

DANIEL KRESS: That is the plan at this point, yes, ma'am.

MR. HAGELBERG: That will be dependent to some degree on our ability to assemble all of the information that the Planning Board asked for. It is my hope and intent that we can do that. But it is possible that we won't have all of that information by then.

BEVERLY GRIEBEL: Next month, or whenever you get all of it gathered together, then it would be heard.

MR. HAGELBERG: Yes. I think just as the Planning Board said whatever they did would be conditioned on what you do, it probably makes sense for you to overlap that, as well.

BEVERLY GRIEBEL: If we approve this tonight, it would be conditioned on you getting approval from them for the rest of the site plan.

It did go to the Monroe County Planning Department, and all of the issues that came back were pertinent to Planning Board and site plan.

MR. HAGELBERG: If I may, Mr. Kingcaid asked to make a statement.

MR. KINGCAID: Every time we go through one of meetings especially for WHAM, I get nervous because it highlights -- we keep the location of the transmitter site pretty quiet. Just for security reasons, I just hate going through this for this very reason.

BEVERLY GRIEBEL: Doesn't come up very long.

MR. KINGCAID: Thank God.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

HEATH MILLER, 69 Bellmawr Drive

MR. MILLER: I would just like to see a condition put on the approval of this that it only be used for broadcasting WHAM 1180 and that the two towers do not broadcast simultaneously. Thank you.

BEVERLY GRIEBEL: I know that was discussed at the Planning Board, and I think they were going to make that a condition.

BEVERLY GRIEBEL: Can we also put that as a condition?

KEITH O'TOOLE: Sure.

DAN MELVILLE: You might not want to put down "only broadcast WHAM." You might want 1180 because they could change their call letters. Then they would have to come back again.

PETER WIDENER: Several years back when they started in 1922, it was 1150. And it is now up to 1180. But that was --

RICHARD PERRY: That is inflation.

(Laughter.)

PETER WIDENER: That is FCC regulations. They have been a good neighbor.

MR. HAGELBERG: We have no issue with a condition that says you can't operate simultaneously. We won't want to do it. It would interfere with the other one anyway.

The Public Hearing was closed for this application at this time.

Beverly Griebel made a motion to declare the Board lead agency for SEQR, made a determination of no significant environmental impact, based on the testimony and the material presented at this hearing, and Peter Widener seconded the motion. The Board all voted yes on the motion.

Michael Martin made a motion to approve the application with the following conditions, and Gerry Hendrickson 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. New tower limited to broadcast of 1180 AM (WHAM) only.
2. Subject to final approvals by the Chili Planning Board.

The following findings of fact were cited:

1. Applicant described need for a second tower to allow repairs, maintenance, uninterrupted broadcasting and compliance with FCC regulations.
 2. Fencing will allow safety and security.
3. Application of David Hartz, owner; 755 Morgan Road, Scottsville, New York 14546 for variance to erect a 12' x 28' utility shed to be 338 sq. ft. (180 sq. ft. allowed) at property located at 755 Morgan Road in A.C. zone.

David Hartz was present to represent the application.

MR. HARTZ: Good evening. I'm David Hartz. I'm here to see if I can get a variance. I want to put up a pre-manufactured shed, utility shed mainly for storage of the lawn mower. I have three small boys, bicycles, ladders, things of that nature. It would be vinyl sided to match the house. The shingles would be matching the house also. It would be on some crushed stone for drainage.

BEVERLY GRIEBEL: Have you just moved in there?

MR. HARTZ: Yes. I have a three-car garage on the house. I found out I would need more space.

BEVERLY GRIEBEL: Is it already full?

MR. HARTZ: It is full.

DAN MELVILLE: Never can have enough garage space. Don't say that.

BEVERLY GRIEBEL: Now, this property is --

DAN MELVILLE: 5 3/4 quarter acres.

PETER WIDENER: Two road frontages.

BEVERLY GRIEBEL: Five plus acres. Okay.

PETER WIDENER: I think they're just general questions I have, but maybe I missed. Are there going to be utilities in this shed?

MR. HARTZ: No utilities.

PETER WIDENER: The photos that you have given us, have you decided which one you want to put there?

MR. HARTZ: It wouldn't be the -- it would be more like the garage style. Is that called a gambrel roof, the barn style? It wouldn't be that.

PETER WIDENER: Not the gambrel roof.

MR. HARTZ: Cottage style, the garage cottage style with a garage door at one end. It would have a steel door on one side. I believe two windows.

PETER WIDENER: Would you have any livestock in there?

MR. HARTZ: No. If I could, I would like to see possibly -- I know when I sketched out the map, I -- I had it in a north/south, and after -- the latest wind storm, I have been thinking perhaps I would like to rotate that 90 degrees so it would be an east/west. I would still maintain the boundaries from the property lines.

MICHAEL MARTIN: As long as your setbacks are within code, you can place it anyway you want.

MR. HARTZ: Because after Sunday, I started thinking about it.

PETER WIDENER: Are you satisfied with that position where it is now? Whether it be north, south or east/west?

MR. HARTZ: Yes.

BEVERLY GRIEBEL: But they would not have a long side against the west.

MR. HARTZ: No.

BEVERLY GRIEBEL: Swing it the other way.

MR. HARTZ: Yes.

BEVERLY GRIEBEL: Most of the wind comes from the west.

MR. HARTZ: Sure does.

PETER WIDENER: I don't have any questions at this point.

GERRY HENDRICKSON: He has it on the windy corner anyway. It is wide open. No protection whatsoever.

COMMENTS OR QUESTIONS FROM THE AUDIENCE: None.

The Public Hearing was closed for this application at this time.

Beverly Griebel made a motion to declare the Board lead agency for SEQR, made a determination of no significant environmental impact, based on the testimony and the material presented at this hearing, and Gerry Hendrickson seconded the motion. The Board all voted yes on the motion.

Michael Martin made a motion to approve the application with no conditions, and Gerry Hendrickson seconded the motion. All Board members were in favor of the motion.

DECISION: Unanimously approved by a vote of 6 yes with no conditions, and the following finding of fact was cited:

1. Applicant described need for storage on a five-plus acre lot.

Note: A building permit is required prior to construction of this shed.

4. Application of Roy Wagner, owner; 190 Ballantyne Road, Rochester, New York 14623 for variance to erect a 30' x 40' detached garage to be 1,200 sq. ft. (900 sq. ft. allowed), variance for garage to be 18' from rear lot line (50' req.) and 51' from side lot line (100' req. abutting a street) at property located at 190 Ballantyne Road in A.C. & FPO zone.

Roy Wagner was present to represent the application.

MR. WAGNER: I would like to put a 30 by 40 pole barn up on 190 Ballantyne Road for storage purposes.

BEVERLY GRIEBEL: What will you store in it?

MR. WAGNER: A couple summer cars, boats, lawn tractor, things like that. My existing building is falling down, so that is the whole idea for this.

BEVERLY GRIEBEL: And there is the -- the existing framed garage is going to come down?

MR. WAGNER: Yes.

BEVERLY GRIEBEL: What about that vinyl tent thing?

MR. WAGNER: I would get rid of that, too. I'm using that now because the other garage is so -- it is in bad shape.

BEVERLY GRIEBEL: Have you lived there long?

MR. WAGNER: I have lived there five years, but I have only owned it about a year and a half.

DAN MELVILLE: Going to be a concrete floor and everything in the garage?

MR. WAGNER: Yes.

DAN MELVILLE: Will you run a business out of it?

MR. WAGNER: No.

DAN MELVILLE: Will it be sided to match the house?

MR. WAGNER: Yes.

RICHARD PERRY: Will you have heat or electricity?

MR. WAGNER: Just electric.

RICHARD PERRY: No water?

MR. WAGNER: No.

BEVERLY GRIEBEL: How tall will the finished garage be at the highest point?

MR. WAGNER: At the highest point, um -- well, I have 12 foot -- you know, I'm not really sure. It will not be as high as the house. I will have 12 foot walls, a 4-10 pitch roof, so I don't really know what exactly that comes out to be.

BEVERLY GRIEBEL: But it won't be higher than your house?

MR. WAGNER: No.
BEVERLY GRIEBEL: Because that is a one-story house.
MR. WAGNER: No. It won't be higher than the house. I was asked that, and we made sure.
BEVERLY GRIEBEL: Because it can't be without special approval.
MR. WAGNER: Right. It won't be.
BEVERLY GRIEBEL: Who is going to build it?
MR. WAGNER: Me. And my dad.
BEVERLY GRIEBEL: Do you do building for a living?
MR. WAGNER: No, but I know enough about it where I can do anything, or my dad does, I should say.
BEVERLY GRIEBEL: Does he do building?
MR. WAGNER: He has in the past.
BEVERLY GRIEBEL: You will build it together?
MR. WAGNER: Yeah.
PETER WIDENER: What material is this going to be made out of?
MR. WAGNER: Steel and wood.
PETER WIDENER: Steel framing and wood siding?
MR. WAGNER: It will have steel siding, and mostly wood framing. It is a pole barn.
BEVERLY GRIEBEL: What will the flooring be?
MR. WAGNER: Concrete.
BEVERLY GRIEBEL: Concrete?
MR. WAGNER: Yes.
PETER WIDENER: The Building Inspector will have to watch that as far as the construction.
BEVERLY GRIEBEL: Mr. Kress, that generally is inspected after building?
DANIEL KRESS: Yes.
BEVERLY GRIEBEL: For sturdiness and all of that. It is inspected as you progress in the building of it?
DANIEL KRESS: That's correct.
BEVERLY GRIEBEL: Thank you.
PETER WIDENER: My only concern is that the existing frame garage be removed before the starting of this one.
BEVERLY GRIEBEL: Well, it looks like it will have to be, because the proposed one overlaps.
PETER WIDENER: Or it could be built in front of and left as a pile in the back. He is only asking for 18 feet off the back lot line. I wouldn't want a pile --
RICHARD PERRY: It would be right on the lot line.
PETER WIDENER: I – for neighbor concern, I wouldn't like to see a pile of rubbish back there, as far as the old barn that partly fell down and got just enough out of the way to build this one.
MR. WAGNER: I would have it down and cleaned up before I started.
BEVERLY GRIEBEL: His testimony says he will do that, so if he doesn't, the Building Department would be able to take care of that.
MICHAEL MARTIN: Taken down and removed.
PETER WIDENER: We could put that in as a requirement, for the one on Morgan Road that had to be done before the closing. We could put in that the barn has to be removed.
BEVERLY GRIEBEL: He said it will be removed, and when they do the inspection out there, they can see it is gone.
PETER WIDENER: You don't want to it to be put in as a requirement then? You have done it in the past. I'm just trying to make sure is all –
BEVERLY GRIEBEL: I don't really care about that.
PETER WIDENER: How does the Board feel?
BEVERLY GRIEBEL: How does the rest of the Board feel?
MICHAEL MARTIN: I think it has been stated that he will do that.
BEVERLY GRIEBEL: It is his testimony. It is on the record with the stenographer. So that is something the Building Department would watch. He can't build over another one.
PETER WIDENER: I just want to touch base because at one time we did have to put it in writing, and this time we are just going by verbal. Okay. Thank you.
GERRY HENDRICKSON: No. I think it will clean up the area there a little bit.
BEVERLY GRIEBEL: I never knew that there was a little street there before. It looked like

a driveway.

MR. WAGER: A lot of people said that. It goes across the street, too. Across Ballantyne also.

PETER WIDENER: Does the Town plow that?

MR. WAGNER: No.

BEVERLY GRIEBEL: No. Private road. Things you find out as you drive around on this Board. Interesting.

KEITH O'TOOLE: I notice on the plan that the new structure is proposed to be above base flood, and I would like the whole structure, so that is something the Board should encourage. Nothing further.

BEVERLY GRIEBEL: Above the -- you said it is indicated that is where it would be?

KEITH O'TOOLE: Yes. In the lower hand -- right-hand area of the survey, it shows elevations.

BEVERLY GRIEBEL: Okay.

RICHARD PERRY: Yes.

PETER WIDENER: 2 feet.

DANIEL KRESS: I actually requested that be documented on the survey because this property happens to be in the Flood Plain Overlay District.

BEVERLY GRIEBEL: So that is your intent to make it that height?

MR. WAGNER: Yes.

BEVERLY GRIEBEL: We don't have to write that.

KEITH O'TOOLE: No. That is their problem.

BEVERLY GRIEBEL: No, that is their plan.

DANIEL KRESS: Is there a driveway? It is not -- there is no driveway shown on the drawing. I'm just wondering how we get access to the new garage.

BEVERLY GRIEBEL: Do you use that Fricker Avenue?

MR. WAGNER: It is kind of a horseshoe driveway. The way the variances end up, the door will be right in the driveway off of Fricker Ave.

MICHAEL MARTIN: There are two --

DANIEL KRESS: Whatever driveway is there at present is not proposed to be altered then? That is the reason I'm asking the question.

MR. WAGNER: It shouldn't have to be altered at all, no. Because there is an entrance off Ballantyne Road and an entrance off Fricker. I plan on using the Fricker one you -- because trying to get on Ballantyne Road is impossible.

BEVERLY GRIEBEL: It is very hard. Going to get worse.

MR. WAGNER: Yes. I know.

BEVERLY GRIEBEL: It doesn't show a driveway.

PETER WIDENER: Who is responsible for Fricker Avenue? Is it the Town, County? Do we have to have a driveway cut?

BEVERLY GRIEBEL: Well, the driveway cut is already there. I remember the horseshoe going around. I'm not sure.

PETER WIDENER: I mean, a lot of driveways appear over the years but never had permits, and if Fricker Avenue -- I never heard of Fricker Avenue until I got this application.

BEVERLY GRIEBEL: It is -- we had to find out where it was.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

HEATH MILLER

MR. MILLER: It is not to speak against the application. I just had a question. It was -- I think Mr. Melville asked if the barn was going to be sided the same as the house and I believe the answer was yes.

Then you mentioned that it was going -- the applicant mentioned there would be steel siding on the pole barn. Is the house sided with steel, or do you plan to -- does the applicant plan to paint it the same color?

MR. WAGNER: I plan to make the house the same as the building.

DAN MELVILLE: The color you mean?

MR. WAGNER: Yes.

DAN MELVILLE: That is what I kind of figured you meant when you said it would be steel siding.

MR. WAGNER: I plan on making the house match the building.

MR. MILLER: Thank you.

DOROTHY BORGUS, 31 Stuart Road

MS. BORGUS: I also have never heard of Fricker Avenue. Could you just give me a nearby road for reference?

ROY WAGNER, SR.

MR. WAGNER, SR.: Can I say something? Fricker is what is called paper streets. I'm Roy Wagner, Sr., his father. But there are streets back there on the map, but they're paper streets. They're not real streets. They don't have names. They have names on the map, but they don't, know -- they're just not really there.

MICHAEL MARTIN: That is why it is --

MR. WAGNER, SR.: What you're seeing here -- on this side, this is the road going to the back of the property.

BEVERLY GRIEBEL: Right.

MR. WAGNER, SR.: But it doesn't have a name. So there is a driveway coming into his property here (indicating), and also a driveway in from Ballantyne Road. But there is really no name of --

MR. WAGNER: It is just -- there are three people that maintain that, me and two of my neighbors, as far as plowing it and keeping it maintained with the potholes and whatever, just going into what we have.

BEVERLY GRIEBEL: It is a dirt road?

MR. WAGNER: Stone road.

BEVERLY GRIEBEL: It is not an asphalt road.

MS. BORGUS: What is it near?

BEVERLY GRIEBEL: I'm trying to remember. I know that the Building Department told me where it was so I could find it along --

MR. WAGNER, SR.: There are a couple more people that live back there.

BEVERLY GRIEBEL: What is the best way to describe it? I'm trying to remember.

DANIEL KRESS: Not too far down from Theron and Lester and some of the other streets going down towards the Ballantyne Bridge.

BEVERLY GRIEBEL: In relation to the tracks, is it east or west of the tracks? I can't remember.

DANIEL KRESS: East of the tracks.

MR. WAGNER, SR.: It would be east of the tracks.

PETER WIDENER: The existing track. Not the old rail bed.

DANIEL KRESS: Correct.

MR. WAGNER: It is in between the tracks and the Greenway.

BEVERLY GRIEBEL: Okay. In between the tracks and the Greenway.

MR. WAGNER: Doesn't look like a road. It looks like a driveway.

MS. BORGUS: Other people live on this road?

MR. WAGNER, SR.: Yes.

MR. WAGNER: In the back.

DAN MELVILLE: It is a private road then?

MR. WAGNER: Yes.

MS. BORGUS: It is stoned?

BEVERLY GRIEBEL: Yes. It looks like a dirt road.

MS. BORGUS: Okay. Thank you.

BEVERLY GRIEBEL: Then he has a small house on the front of the property, and then the garage is going to come down, and then there is one of those vinyl tents that will come down, too.

MR. WAGNER: All that will go. The vinyl tent and the -- when the garage is built.

BEVERLY GRIEBEL: As many times as I have been along that road, I never saw it before. I didn't --

MR. WAGNER, SR.: You could go by it every day and wouldn't see it.

BEVERLY GRIEBEL: I don't know if there is a street sign.

MR. WAGNER: No.

BEVERLY GRIEBEL: It looks like a driveway that goes back there.

MR. WAGNER: Exactly.

BEVERLY GRIEBEL: This went to the Monroe County Department of Planning for airport review and came back as a local matter.

The Public Hearing was closed for this application at this time.

Beverly Griebel made a motion to declare the Board lead agency for SEQR, made a determination of no significant environmental impact, based on the testimony and the material presented at this hearing, and Peter Widener seconded the motion. The Board all voted yes on the motion.

Michael Martin made a motion to approve the application with no conditions, and Gerry Hendrickson seconded the motion. All Board members were in favor of the motion.

DECISION: Unanimously approved by a vote of 6 yes with no conditions, and the following findings of fact were cited:

1. Will improve appearance of the property.
2. Lessens the rear setback variance compared to garage to be dismantled.

Note: A building permit is required prior to construction of this shed.

5. Application of Mary Wicks, owner; 9 West Canon Drive, Rochester, New York 14624 for variance to erect an open porch to be 53' from front lot line (60' req.) at property located at 9 West Canon Drive in R-1-15 zone.

Mary Wicks was present to represent the application.

MS. WICKS: Good evening. Actually, I want to take down the existing front steps which are concrete and are shaking and sinking, so I had a couple of bids from construction companies for what to replace it with, and one of the problems of the existing concrete steps is when you open the front door, whoever is standing on that landing has to step back onto the step, so I wanted a larger landing.

So the current walkway comes from the driveway, up to the front of the house and then it turns. It is just a short little turn before you go up the steps. So in this diagram, the landing would come all of the way out to where the current walkway is, and then the steps would come down to meet the walkway.

BEVERLY GRIEBEL: So you can pull open the door without falling.

MS. WICKS: Exactly. There could be two people standing there. They could move back without having to go down the steps. There would be railing all of the way around. There would be handrails. The steps are intended to be closed steps. Um, and I'm going to be using Trex, like that composite, not decking. Not pressurized decking. I'm going to get the Trex.

BEVERLY GRIEBEL: Whatever that is.

MS. WICKS: I'm not sure.

MICHAEL MARTIN: It is not wood. It is a composite, simulated material.

BEVERLY GRIEBEL: It is recycled.

MS. WICKS: I think there is partially recycled plastic in that. It lasts longer, the maintenance is longer. The railing will be white, and the -- the decking, and the treads would be gray.

PETER WIDENER: The size of your deck or porch, is that 4'6" by 9, is that the old one?

MS. WICKS: No. This is the new one.

PETER WIDENER: You referred to it as a porch?

MS. WICKS: It is what we wrote down in the application.

BEVERLY GRIEBEL: Porch with some steps.

MS. WICKS: Yes.

PETER WIDENER: I understand. Those old concrete ones disintegrate.

GERRY HENDRICKSON: No questions. It will be an improvement for her.

DANIEL KRESS: Will there be a roof over this?

MS. WICKS: No.

DANIEL KRESS: Strictly landing and steps?

MS. WICKS: Yes.

DANIEL KRESS: Thank you.

COMMENTS OR QUESTIONS FROM THE AUDIENCE: None.

The Public Hearing was closed for this application at this time.

Beverly Griebel made a motion to declare the Board lead agency for SEQR, made a determination of no significant environmental impact, based on the testimony and the material presented at this hearing, and Gerry Hendrickson seconded the motion. The Board all voted yes on the motion.

Michael Martin made a motion to approve the application with no conditions, and Peter Widener seconded the motion. All Board members were in favor of the motion.

DECISION: Unanimously approved by a vote of 6 yes with no conditions, and the following finding of fact was cited:

1. Will improve appearance and safety for front entrance.

Note: A building permit is required prior to construction of this porch.

The meeting ended at 8:30 p.m.