

CHILI ZONING BOARD OF APPEALS
April 22, 2014

A meeting of the Chili Zoning Board was held on April 22, 2014 at the Chili Town Hall, 3333 Chili Avenue, Rochester, New York 14624 at 7:00 p.m. The meeting was called to order by Chairperson Adam Cummings.

PRESENT: Robert Mulcahy, Michael Nyhan, Fred Trott, James Wiesner and Chairperson Adam Cummings.

ALSO PRESENT: Michael Jones, Assistant Town Counsel; Ed Shero, Building & Plumbing Inspector

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

OLD BUSINESS:

1. Application of Palmer Fish Co, Inc., 900 Jefferson Road, Rochester, New York 14623, property owner: DMP Real Estate, LLC; for variance to erect a 40' by 11' wall sign to be a total of 440 sq. ft. (205 sq. ft. previously approved) at property located at 171 Weidner Road in GI zone.

Kip Palmer and Arnie Rothschild were present to represent the application.

ADAM CUMMINGS: This is a continuation from last month where we required a few additional items to be submitted and they were submitted. Hopefully everybody on the board here received the packet, with the comprehensive sign plan.

JAMES WIESNER: I didn't get it.

ADAM CUMMINGS: Probably in your mailbox. I'm not sure. I was out on vacation last week. If you guys could share. In that it shows the plan signs in there, but also the requested dimension, perspectives of the wall sign that we're looking at here tonight. So with that, I invite the applicant up.

MR. PALMER: My name is Kip Palmer. I am the President of Palmer Food Services, as well as the owner of DMP Realty. We have obviously put together this packet so that hopefully we can bring some clarity to what our request is and the basis for our request.

As you can see the, the -- the plan is there. Um, the -- the actual sign itself and the dimensions and how it is constructed and all that sort of thing are there. Um, I don't -- I presume -- I shouldn't presume anything, but I presume that the issue is that "Palmer" on the building. I mean, the other ones are basically interior signs and the other sign that would be on the road is the same dimensions as basically the one now that I recall.

So those aren't really issues, as far as I know. The issue is primarily the sign on the building.

As you can see, um, we have brought basically, for lack of better terms, science to bear in terms of how -- about what size that sign needs to be depending on the roads and the number of feet away from the sign for the sign to be seen.

Our biggest concern is because where the building is located, and it's on a curve and the driveway comes upon you rather quickly, that to not have a sign that can be seen from some distance, when you begin that curve around the road can be a significant traffic hazard and could create a situation where trucks are braking very hard to make the immediate right and we have a lot of concern about that.

So we also provided all the other information in terms of the -- of the sign legibility rules done by the United States Sign Council and all of that other stuff.

We ask you to please approve the sign so that we can get on with life.

JAMES WIESNER: Looking through this, this is very complete.

MICHAEL NYHAN: I read through the package and it has the information I asked for.

ROBERT MULCAHY: I agree.

FRED TROTT: Um, the only question I had, and I was trying to see if it is in here, was it still your plan to do the clover, whatever you call that, the four different colors?

MR. PALMER: Go ahead.

ROBERT MULCAHY: Your symbol.

MR. ROTHSCILD: In the logo?

FRED TROTT: Yes.

MR. ROTHSCILD: The plan would be to try to keep it the correct colors. If that needed to be modified, we can do that.

JAMES WIESNER: I think we discussed last time the four-colored needed a variance.

ADAM CUMMINGS: They were going to leave it to three.

MR. PALMER: To three.
ADAM CUMMINGS: And one generation would be left out.
MR. PALMER: Right. My great, great grandfather is very offended at this point.
MR. ROTHSCCHILD: That's not a problem.
ADAM CUMMINGS: I do have a question or more of a clarification. If you go to the white tab and you -- the vital signs graphic, the overall height and the overall length and then the total square footage.
MR. ROTHSCCHILD: You may have different color tabs here.
ADAM CUMMINGS: Sorry. The second tab.
MR. ROTHSCCHILD: Got it.
ADAM CUMMINGS: Right after the sign that is -- or the exhibit that is up here.
MR. ROTHSCCHILD: Right.
ADAM CUMMINGS: This says "141 feet," but I'm assuming that is inches for the height and 480 inches for the length.
MR. ROTHSCCHILD: That's correct.
ADAM CUMMINGS: So the total square footage of 470. However the application is for 440.
MR. PALMER: I can't answer that. I have to ask the sign company.
MR. BIANCHI: What was the length?
MR. ROTHSCCHILD: It was -- the length is -- is 40 feet.
ADAM CUMMINGS: Right.
But then the overall height is 141 inches is how I am reading that, which is actually almost 12 feet. You're 3 inches short of 12 feet. So therefore it's --
MR. PALMER: What is the largest letters?
MR. ROTHSCCHILD: I think that may be -- just off the top of my head, Mr. Chairman, I think that might be the spacing from the largest point in each extreme, because of that rounded-out logo.
ADAM CUMMINGS: Okay. That's a good clarification then.
So it is still maintaining at 440 square feet is what you're looking for?
MR. ROTHSCCHILD: Correct.
ADAM CUMMINGS: I'm trying to look, just so everyone is aware we're looking for a comprehensive site plan planning for other signage. We're not looking at those tonight. We're just looking at the one, but there is a plan for other signs, which has been provided in here.
Also a map showing line of sight and photographs showing the prospective view from Scottsville Road. These are in here. Along with the photograph locations. Apparent size, and in addition to that, there are design standards in here showing the legibility rules for signs from the United States Sign Council. And the layout of the proposed sign, which is what we're on right now. So we are staying to the 440. So it needs to be revised, it would become 11 feet, would be the -- the eliminating factor.
MR. ROTHSCCHILD: We'll just change the spacing.
ADAM CUMMINGS: Perfect.
Any questions on the line of sights?
MICHAEL NYHAN: I think looking at the sign relative to the size of the building, it sounds very large, 40 feet, but relative to the size of the building, I think it fits the building quite well.

Adam Cummings made a motion to declare the Board lead agency as far as SEQR, and based on evidence and information presented at this meeting, determined the application to be a Type II action with no significant environmental impact, and James Wiesner seconded the motion. The Board all voted yes on the motion.

ADAM CUMMINGS: Any conditions on this? We did not have any conditions --
MICHAEL NYHAN: Sign permit.
ADAM CUMMINGS: Yes. Sign permit.
Sign permit from the Building Department be required. That will be the one condition.

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

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

1. A sign permit must be obtained from the Building Department.

The following finding of fact was cited:

1. The proposed variance application demonstrated and confirmed that due to the distance from the road, the increased size of the sign is appropriate to be readable and effective Scottsville Road. Additionally, this sign follows the recommended rules from the United States Sign Council.

PUBLIC HEARINGS:

1. Application of Roy Burger, owner; 970 Morgan Road, North Chili, New York 14514; property owners: Roy Burger and James Gillen; for variance to create two undersized lots from three existing lots with Lot 1 being 3.56 acres (5 acres required) and Lot 2 being 2.12 acres (5 acres required) with a lot width of 181.08' (275' required) at properties located at 970, 972 and 976 Morgan Road in AC zone.

Robert Hatch, Roy Burger and James Gillen were present to represent the application.

MR. HATCH: Good evening. My name is Robert Hatch. I'm a land surveyor with Schultz Associates. I'm here to represent Mr. Burger and Mr. Gillen, who are in attendance. Actually, they're right behind me.

This application is pretty straightforward. My client has gone into agreement with his neighbor, Mr. Gillen, to subdivide vacant lot that is between their two existing houses. They basically want to split that lot in half. Each one of them getting half of that lot, increasing their lot sizes accordingly.

Obviously in the AC zone, they still don't meet the five-acre requirement, so we're here to get a variance. That's basically what we're here for.

ADAM CUMMINGS: Thank you.

FRED TROTT: Who owns the lot right now?

MR. GILLEN: Me, Jim Gillen.

FRED TROTT: You're selling after to --

MR. GILLEN: Right.

FRED TROTT: And it was previously subdivided?

MR. GILLEN: It was a separate lot, 120 feet wide, 581 feet deep. It was just -- just sat between -- my dad bought it in 75 just for piece of mind, nobody to build on it. And it is still just piece of mind. He would like a little more. I pretty much own right up to the driveway, and if you look at his plot, as -- Lot 2, as it is now, it is literally like either side of the house. He has -- only has 6 to 8 feet at the most, maybe 5 feet off the driveway, so a little breathing room for him. And we have got -- I have a park and our other neighbor is here, too. He has all of the land behind us. It is just us three.

FRED TROTT: Thank you.

MICHAEL NYHAN: So the number of acres in the center, that will be the total acreage you will have once you split the lot?

MR. HATCH: Correct.

MICHAEL NYHAN: The 3.8?

MR. HATCH: Yes.

MICHAEL NYHAN: No other questions. Thank you.

ADAM CUMMINGS: One quick question. On Lot 2, as it is depicted here, the framed shed, any idea about how far away that is from the side lot line?

MR. HATCH: That shed is -- I think it -- I don't have the revised plan. I think that is the revised plan. It is 15 feet. 15 feet. If you have the older one, it was at 7. Um, it was an issue, so Mr. Burger moved it.

ADAM CUMMINGS: Okay. Great.

MR. HATCH: Mr. Chairman, that was 15.8 just for clarification.

ADAM CUMMINGS: Thank you. That matches what is on here.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

DOROTHY BORGUS, 31 Stuart Road

DOROTHY BORGUS: Was the lot that they are going to split in half, was that a separate tax parcel?

MR. HATCH: Yes, ma'am.

ADAM CUMMINGS: It looks confusing. It looks like --

ED SHERO: Yes.

MICHAEL JONES: Yes.

ADAM CUMMINGS: Yes.

MS. BORGUS: So in a way, you're making one lot bigger and -- in a way one lot smaller?

ADAM CUMMINGS: Correct.

ED SHERO: No.

MICHAEL JONES: No.

MS. BORGUS: I said in a way. You're taking -- you're still not -- if you're kind of splitting hairs here, because although it is a separate tax parcel --

ED SHERO: No. You're taking the lot, you're splitting it in half. You're giving 50 percent to one lot and 50 percent to the other, so both lots are getting bigger.

MS. BORGUS: Right. But who owned the one they're splitting?

MR. GILLEN: I did.

MR. HATCH: Mr. Gillen.

MS. BORGUS: So one of the owners is ending up with less property and one is ending up with more? Am I right? That's why I say, "In a way."

ADAM CUMMINGS: In a way, yes.

MS. BORGUS: Because the man who owned the smaller lot had the use of the one in the

middle. If he owned it, he could have done anything he wanted with it. So getting right down to the actual square footage here, one lot -- one -- one man -- let's not say "lot." One tax owner, tax parcel owner is getting increased size lot and one -- one resident is -- is cutting his space down because he is selling half of the land he owned next door.

ADAM CUMMINGS: If you assign it to people and the owners, correct.

MS. BORGUS: People rather than tax parcel.

ADAM CUMMINGS: Yes.

MS. BORGUS: I don't know. This is kind of different. I don't know. There is so many undersized lots and -- in crazy shapes over on that road, that I suppose this is just one more. But we really should stick to the five acres.

ADAM CUMMINGS: Or one less, however you want to look at it.

MS. BORGUS: Well, it is just --

ADAM CUMMINGS: It's technically one less.

MS. BORGUS: Two more lots that are under size and don't fit the zoning code.

ADAM CUMMINGS: We'll call this one consolidation, going from three to two.

CHARLES RETTIG, Coldwater Road

MR. RETTIG: Just some clarification, please. The vacant lot is what number out of this 970, 972 or 976?

MR. GILLEN: 972.

ADAM CUMMINGS: 972.

MR. RETTIG: Thank you.

And the three existing lots as you post here, Lot 1, 3.56 acres; Lot 2, 2 -- 2.12 acres and what is the acreage of 972, which is being split as I understand?

ADAM CUMMINGS: Those two acreages are after the split.

MR. RETTIG: Okay. What is the 972 lot size acreage prior to the split?

ADAM CUMMINGS: I do not see that listed here. We were not provided with an existing acreage.

MR. GILLEN: Roughly 1.4. Between 1.3 and 1.4 acres.

MR. RETTIG: Thank you.

So I understand that 970 is one existing house. 976 is the other existing house. And 972 is now the vacant land that is being split --

ADAM CUMMINGS: Correct.

MR. RETTIG: -- to be split according to this request between the two houses?

ADAM CUMMINGS: Correct.

MR. RETTIG: Thank you.

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.

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

ROBERT MULCAHY: This is kind of an easy thing.

MICHAEL NYHAN: The lots will then be combined, right? This won't be four lots.

ADAM CUMMINGS: Right.

MICHAEL NYHAN: Will be two lots.

ADAM CUMMINGS: It will be two lots if you're looking at the map, look at the bolder lines. That will be one lot, which has that label in the middle that says, "584.93 feet to center line" is the center label, and then the bold face to the east would be Lot 2.

MICHAEL NYHAN: Okay. I just wanted to clarify that. It's not a separate lot that something different could be done with.

ADAM CUMMINGS: Right.

MICHAEL NYHAN: Thank you.

ADAM CUMMINGS: Anyone see a need for any conditions on here? I don't see any. It is a pretty basic subdivision.

MICHAEL NYHAN: The Building Department will probably want a map for their records.

ADAM CUMMINGS: Well, they will have this map.

MICHAEL NYHAN: But the with the final.

ADAM CUMMINGS: This is the final.

MICHAEL NYHAN: Okay.

ADAM CUMMINGS: Final plat.

MICHAEL NYHAN: Okay.

JAMES WIESNER: Does this go to Planning Board, too?

ADAM CUMMINGS: It is just the land. I believe it -- I will leave that to you. Ed (Shero), it ends at us.

MICHAEL JONES: Can't hear you guys.

ADAM CUMMINGS: We'll speak up.

Did this go to the Planning Board at all?

MICHAEL JONES: No. This would actually otherwise be an administrative approval because it is a reduction in the number of lots so it wouldn't need Planning Board approval. The

only reason it that has to come before the Board is because code requires five acre lots, so it is technically still undersized. Even though we're going from three to two.

ADAM CUMMINGS: Thank you.

Adam Cummings made a motion to declare the Board lead agency as far as SEQR, and based on evidence and information presented at this meeting, determined the application to be a Type II action with no significant environmental impact, and Robert Mulcahy seconded the motion. The Board all voted yes on the motion.

Robert Mulcahy made a motion to approve the application with no conditions, and Michael Nyhan seconded the motion. All Board members were in favor of the motion.

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

1. The proposed variance is not significant and will reduce the amount of lots that are below the required 5 acre size for parcels in the A.C. zone. This consolidation also increases the width of Lot 2 thus minimizing the required variance for the area variance pertaining to the lot width.
2. Application of Ronald Hull as Executor of the Estate of Joan Hull, 187 Betteridge Road, Churchville, New York 14428, for variance to allow existing dwelling to be 58.5' from front lot line (60' required) at property located at 22 Old Ivy Circle in R-1-15 zone.

Ronald Hull was present to represent the application.

MR. HULL: Good evening. I think it's pretty self-explanatory and straightforward.

ADAM CUMMINGS: Real quick, before you continue, just identify yourself for Sandy (Hewlett).

MR. HULL: Ron Hull. I'm the Executor the Estate of Joan Hull, who is the owner of 22 Old Ivy Circle.

ADAM CUMMINGS: Thank you.

MR. HULL: We are here just to correct a recently discovered error which occurred when the building was -- the house was constructed in 1968, in that apparently, um -- and I have the original plans so I can actually show you what was submitted and measured.

When the original plan was drawn, they -- the planner measured it at one point. It was approved that way. That was the original drawing, and it was intended to have a 60 foot setback. And I believe they thought they were drawing it from the closest point of the arc of Old Ivy Circle. They miscalculated, and they went undiscovered from that point where it was thought to be conforming until the spring when we had it surveyed and the survey showed basically where the arc intersects the house is where it is shown in yellow, and that portion is closer to the road than is allowed by -- or what was intended through the setback. So it intersects at its most -- at the deepest point it is 1.5 feet and shrinks to 0 as you go through the arc. So it results in an area of about 5 square feet of the house actually intrudes into what was intended to be the setback.

So our application is simply to get an approval of an area variance for that minor intrusion to -- it's on the setback which has existed since the building was put up in 1968. Apparently through -- only been sold a couple of times and apparently on neither of the prior sales did the surveyor actually draw the arc from the road until I was lucky enough to get a surveyor who did that for us.

ADAM CUMMINGS: All right.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

CHARLES RETTIG, Coldwater Road

MR. RETTIG: Just a comment. The house being built in 1968, you're talking about 5 square feet, and the detailed explanation of the reason or the way that this happened, I see no reason why the Board should not approve it.

ADAM CUMMINGS: Thank you.

MARK TRZYZEWSKI, 6 Gateway Circle

MR. TRZYZEWSKI: Mark Trzyzewski, T-R-Z-Y-Z-E-W-S-K-I. I'm a resident at 6 Gateway Circle. I would just like (indiscernible) this application for two reasons. It's a 2 percent variance and you need to look at what it is. 58.5 acres at 60 feet. You're talking about by calculation roughly a 2 percent variance. Practical reasons, is it not practical to move the house. He's not George Easton. He doesn't have the financial resources to move the house. Alternate to cut off the porch, that's not really a good option. The sensible thing is to approve it.

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

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

JAMES WIESNER: We'll see more of this as the accuracy gets greater and greater.

Adam Cummings made a motion to declare the Board lead agency as far as SEQR, and based on evidence and information presented at this meeting, determined the application to be a Type II action with no significant environmental impact, and Fred Trott seconded the motion. The Board all voted yes on the motion.

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

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

1. The proposed variance is a direct result of technology providing more accurate measurement information compared with past techniques. The variance is not significant in nature and only impacts a very minor portion of the property.
3. Application of Venessa Mitchell, 48 Loyalist Avenue, Rochester, New York 14624, property owner; Bernard Mitchell; for variance to erect a 10' by 18' enclosed porch to be 24' from rear lot line (30' required) at property located at 48 Loyalist Avenue in R-1-15 zone.

Venessa Mitchell was present to represent the application.

MS. MITCHELL: Venessa Mitchell. That's V-E-N-E-S-S-A. 48 Loyalist Avenue.

MR. MITCHELL: Bernard Mitchell. I own the property.

MS. MITCHELL: And we're asking for a variance to -- we want to take down our deck and erect an enclosed area. Just the same size the deck.

ADAM CUMMINGS: Okay. So you're looking to -- you're going to demolish and remove the existing deck?

MS. MITCHELL: Right.

ADAM CUMMINGS: You will not construct sides and roof and enclosure around that?

MS. MITCHELL: Right.

ADAM CUMMINGS: Brand new, same dimensions with the -- a new and enclosed porch?

MS. MITCHELL: Yes.

ADAM CUMMINGS: At that location.

All right. That's pretty well there. Before we get going too far, I just want to get out the application. You do have a very unique lot. It's on the curve. And just looking at it, there is really no rear lot line. It is actually two side lot lines, so with that, side lots -- or side setbacks on side lot lines are different than rear setbacks from rear lot lines, so I would like to discuss it with the Board, but my interpretation on this it is actually a side setback, which looking at the zone for this one, it would require -- just to make sure I'm reading the right number -- Old Ivy -- just to show -- the application is for a rear setback, which is required as 30 feet and you're asking for 24 feet. The side setback requirements are actually 8 feet. So with that, a variance wouldn't need to be granted. That would be the interpretation --

MICHAEL NYHAN: That interpretation was probably made by the Building Department. That is why we're here; is that correct?

MICHAEL JONES: If I can jump in, yes, that is correct. So this Board has jurisdiction in a couple different ways. One is to review the variance as requested, but the Board also has statutory jurisdiction to hear appeals, to -- to say that you disagree with the Code Officer determination that it was a rear setback and rather than you can interpret it as two side lines. So if I understand Mr. Chairman's discussion, it is being suggested this be viewed as an interpretation whether or not we're dealing with a rear setback or a side setback.

ADAM CUMMINGS: Correct.

MICHAEL JONES: Okay.

ADAM CUMMINGS: Thank you. Thoughts?

FRED TROTT: I think you bring up a good point.

ROBERT MULCAHY: I think it is a side setback.

FRED TROTT: Because if you look at it -- if it's a rear setback, wouldn't you go straight back from the --

ROBERT MULCAHY: From the corner of the lot --

ADAM CUMMINGS: Right. You would go back to where the rear is, but where --

FRED TROTT: You're measuring to the side. It --

ADAM CUMMINGS: Which is in the rear -- well, you're measuring it to that point.

FRED TROTT: Yeah.

ADAM CUMMINGS: Which we don't have that measurement. But you're measuring --

FRED TROTT: That would be the rear, is that point.

ADAM CUMMINGS: It's a point, but it is not a lot line.

FRED TROTT: No.

JAMES WIESNER: You could theoretically say that that is a line.

ADAM CUMMINGS: We're bringing in geometry now. Sadly our zoning code doesn't define geometry for us, or at least this geometry.

MICHAEL NYHAN: So what basis is used by the Building Department to determine which is the side and which is the back lot line? How do you determine which is a rear and the side lot line on a house that is on a curve such as this?

MICHAEL JONES: Mr. Shero was asking me to speak. This has been actually a recurring problem with the Building Department, so this Board's direction would certainly be welcome. Different -- it has been discussed, you know, using the two sides and coming up with the closest point has been done in this application. Other members could argue you should use the apex of the triangle where it meets, and again, we have heard other people say it is not a rear setback at all. So this Board's direction would be very welcome to the Department.

MICHAEL NYHAN: When the initial building permit was approved, what did they use as the side and rear lot line?

ED SHERO: They initially used the same reason why you're here tonight.

MICHAEL NYHAN: Okay. Thank you.

ADAM CUMMINGS: So I -- I want to -- I don't want to bring it up too much, but the existing building corner is actually 22.9 feet.

JAMES WIESNER: There is no variance either.

ADAM CUMMINGS: Which is less than this.

JAMES WIESNER: There is no variances.

ADAM CUMMINGS: I -- my stance is it would be nice to set a precedent to try to establish this.

ROBERT MULCAHY: I agree.

ADAM CUMMINGS: So the real discussion is, is how do we want to view this as -- as corner lots or curved lots like this, having two -- having a front yard or a front lot and two side lines instead of --

ROBERT MULCAHY: What is the effect of that?

ADAM CUMMINGS: So the setbacks would be off the side lots, not rear lines.

ROBERT MULCAHY: I would go with that.

FRED TROTT: I'm sorry? I didn't quite understand that.

ADAM CUMMINGS: So --

ROBERT MULCAHY: Would use the setback from the side lot lines.

FRED TROTT: Instead of the rear.

ADAM CUMMINGS: They would be defined as side lot lines, not rear lot lines. So therefore, the setbacks would be measured or compared to the requirements for a side setback and not a rear setback.

ROBERT MULCAHY: Because we do have that problem. I have seen it before. And I agree with the fact that we should use the side lines.

JAMES WIESNER: That appears to be the way it is done. Because if you look at the setbacks on the corners, they're not 30 feet.

ADAM CUMMINGS: Correct.

JAMES WIESNER: So I would be more inclined to believe that they interpret it the way you have done just now.

ADAM CUMMINGS: Well, that's how we're going to from now on. Or we hope to.

MR. WIESNER: I'm okay with that.

MICHAEL NYHAN: I'm sorry, what would you use for the rear lot line? Would you use the intersecting point?

ADAM CUMMINGS: There wouldn't be one.

ROBERT MULCAHY: No rear lot line.

ADAM CUMMINGS: No rear lot line.

JAMES WIESNER: Basically it comes out of the equation.

ADAM CUMMINGS: Correct.

ED SHERO: Adam (Cummings), you wouldn't even use the point?

ADAM CUMMINGS: That is what I am starting to rethink. We'll have to define that one. It's where -- maybe we do the -- maybe we do a radius.

FRED TROTT: You can't do a radius.

ED SHERO: They have straight lines off the side of the house and went straight, and as soon as it hit the lot line, everything behind that is a rear lot line.

ADAM CUMMINGS: Right. Now, what happens with our eastern corner, that's 22.9 feet from that same lot line, if we do that same measurement and we're asking for a variance of 24 feet?

ED SHERO: But you see at the time that was considered side lot. You see the -- the -- the measurements at 24.22, what they did is they continued that until it intersected the -- I guess it would be the side lot line and when it intersected the side lot line, from that point, going to the rear became rear lot.

ADAM CUMMINGS: So going perpendicular from the farthest -- the farthest corner from the road, perpendicular to the lot line and anything to the -- we'll keep calling it in quotation marks, "rear," that became the rear of the property. And the same with the eastern -- the eastern point, which is labeled as a dimension of 22.9 feet, that line which is perpendicular to that lot line, everything north going to Loyalist Avenue's frontage became a side lot and everything south.

ED SHERO: I could draw it on there and make it -- I will draw it up there.

ADAM CUMMINGS: That would be best.

JAMES WIESNER: Basically you're saying --

ED SHERO: This is the way it was looked at. I'm not saying I agree.

JAMES WIESNER: As I look at it, the isosceles triangle with 30 feet off the two sides and then there is a line that joins and that is how I would view it.

ADAM CUMMINGS: Because this one is unique because it is on a curve, so the house isn't perpendicular to everything.

ED SHERO: So everything from this point, the side ended here (indicating) and the side ended here (indicating). And then this in here (indicating) became your rear yard.

ADAM CUMMINGS: Got you.

ED SHERO: I didn't come up with it. I am -- I'm just telling you the way they did it. I can't really make more sense of it. The way you're describing it, makes more sense to me using the point, in my opinion, as your rear yard and this is all side. We run into this problem, too, and we have with corner lots. The problem is different inspectors over the years, and I have researched this in textbooks and there is no clear definitive way of -- of doing this unfortunately.

ADAM CUMMINGS: The other way I have seen it done is going straight down to here (indicating), and this is where it begins and that becomes the rear and that becomes rear (indicating). I didn't write on it.

ED SHERO: Like I said, it doesn't seem -- I can't say either way is right or wrong.

ADAM CUMMINGS: So that -- so those are -- to clarify that, those are the three options.

ED SHERO: You see, now, to me, I would have gone -- if this is what we're describing you go out here about 30 feet and this radius here -- not very good -- would be to me the setback.

MICHAEL NYHAN: To match the street radius; is that what you're saying?

ED SHERO: Well, in this situation, it does, yes.

MICHAEL NYHAN: It wouldn't always.

ED SHERO: It wouldn't always. No. When you get to a corner, there is different -- but in this situation, yeah, it would.

ROBERT MULCAHY: I would think the simplest way we just use the side lots.

JAMES WIESNER: But the other thing is 8 feet is really close. You're pushing the house up to the side lot line and --

ED SHERO: It makes this one a little unique, too, is it is not squared with the lot, the two sides. Where your other lots will be squared with one. And here you have nothing squared.

MICHAEL NYHAN: My question is can each lot, or can each -- I guess case you would say that may come before the Board, can it be decided visually, or are you saying precedence -- or are we setting precedence by saying all corner lots will then conform to this decision?

ED SHERO: That is what we're looking for, some clarity here and they would all use the same approach.

ADAM CUMMINGS: Almost like we're defining how to measure.

MR. MITCHELL: So my question is is there a rear lot line?

ADAM CUMMINGS: We're sharing the same question. Right now there is. It's either a point, a radius or a line going --

JAMES WIESNER: I don't like the radius method because you could -- theoretically with a really wide house, you could push it right up to the lot lines.

ROBERT MULCAHY: Then it could be different in each one.

JAMES WIESNER: I don't really like the radius method.

MICHAEL NYHAN: If you drew a line straight back on this particular property, it would appear as though --

ROBERT MULCAHY: It's more than 30 feet.

MICHAEL NYHAN: That measurement would be, yes, more than 30 feet from the lot line, because it is right at that -- matching the side and the rear lot line.

JAMES WIESNER: The other thing I would look at is if -- if you came in from the corner and did 30 here (indicating) and 30 here (indicating) and draw a line from it, you --

ADAM CUMMINGS: Just -- just saying 30 feet off it.

JAMES WIESNER: 30 feet off the corner this way (indicating), 30 feet off the corner that way (indicating) and you have a line and that makes --

ED SHERO: That would be fine. I would think that would be fine, too.

MICHAEL JONES: Anything is fine at this point.

ADAM CUMMINGS: Good point. I like that one.

ROBERT MULCAHY: That's simple.

ADAM CUMMINGS: That would still allow us --

JAMES WIESNER: But again, is that allowing you to push the house?

ADAM CUMMINGS: The house can still get closer, just like you see the 10 feet there. So they will still be up to 8 feet off of that. Not to say this is, but in the future.

JAMES WIESNER: Maybe there is a couple criteria.

ROBERT MULCAHY: 1 inch equals 30 feet?

ADAM CUMMINGS: Yes.

ROBERT MULCAHY: You go 1 inch. 1 inch. Now you have a line there. Right?

ADAM CUMMINGS: Right.

ROBERT MULCAHY: So your line would be right here (indicating). Now, if you want to measure from there. You're saying go 30 feet. 30 feet on that map is 1 inch.

ADAM CUMMINGS: Well, maybe not this exact one. This one has been scanned. The

scale is not exactly accurate at this point.

Well, we have a few options here. How do we want to define this? It's one of the most confusing ones we have had in a while. We do want to protect the neighboring properties, too. The 10 feet didn't look too bad off of that side, on the northwest corner. By definition they're allowed to go 8 feet on that one, but it just depends on how far along that property line.

JAMES WIESNER: Actually, the -- if you were to do it the way it's stated here, on the application, you would actually be closer to the corner of the house than you would be to this.

ADAM CUMMINGS: Correct.

JAMES WIESNER: Because you would be 24.3 to the corner of the sunroom, but you're already 10 feet off the one side.

ADAM CUMMINGS: Well, just like Ed (Shero) was saying, is the -- the 10 feet follows the 8 foot setback requirement, because it's -- it's not that straight line.

MR. WIESNER: Okay.

ADAM CUMMINGS: Being extended from the line of the house.

JAMES WIESNER: It's where it intersects the lot.

ADAM CUMMINGS: So that is what he was saying, the determination is that the rear lot line starts right where that rectangle is extended, that angle point and then the same down there. But with that --

MICHAEL NYHAN: I think this particular property, whatever measurement we use, that new sunroom will be further from that lot line than the corner of the house.

MICHAEL JONES: Correct.

ADAM CUMMINGS: Correct.

MICHAEL NYHAN: I think to decide on moving forward, however the lot is on the corner would be determined, which would be the side rear lot line, I think would rather have input from some other Boards as well, the Planning Board, the Architectural Board, perhaps, before that decision is made, but I think it is something with the Building Department's input and the other Boards, perhaps, we can make a definition for the Building Department to use in the future.

MR. MITCHELL: In other words, we're setting precedence as to how future --

ADAM CUMMINGS: You will be one of the supporting articles to help us with that precedent being set. Articles of conversation.

JAMES WIESNER: I think it is precedent setting here. I think it is best to use the interpretation at this point -- which I think is reasonable.

ADAM CUMMINGS: Well, based on this logic, we are going to be farther away from the existing corners of the house. But as a safeguard, I think we do want to take the more conservative route which would be the variance.

JAMES WIESNER: I would agree to do it as it was presented.

MICHAEL NYHAN: Have further discussions with other Boards and the Building Department to make a determination on what all of the other Boards think in the future for what the lot lines will be, whether the rear or side setbacks.

JAMES WIESNER: I think that we just clarified how it was taken, I guess.

ADAM CUMMINGS: So on this one, we're extending the sides of the building, extending those lines down to where they intersect with the property lines and then drawing a connecting line perpendicular to those two lines, those intersecting lines to define the points.

JAMES WIESNER: Actually, then it becomes -- it almost becomes an arc.

ADAM CUMMINGS: Well, no. It wouldn't be an arc. It would -- if we're connecting. We're not going off of one point. We're not going off of the -- the point at the intersection of the lot lines and then connecting those two, we're just drawing -- just like Ed (Shero) drew on -- we're in the -- we're not doing this (indicating) and drawing it from there to there.

We're just drawing it straight from there or -- where this is rear setback requirement and therefore, it would be measured from this point (indicating) and actually measured from this point (indicating). And then all of these would be side setbacks, which are 8 foot required.

JAMES WIESNER: I guess I see that -- that -- that line that will become the imaginary back lot line.

ADAM CUMMINGS: That is exactly what it is. That point is what differentiates between the side lot line and the rear or the back lot line.

JAMES WIESNER: The imaginary rear lot line.

ADAM CUMMINGS: Yes. Well, they're all imaginary, but yeah.

JAMES WIESNER: This is real imaginary.

ADAM CUMMINGS: This is very imaginary.

So is everyone okay with that?

MICHAEL NYHAN: With what?

ADAM CUMMINGS: With -- with following on with the variance application as it stands and that determination of the -- the determination that there are, in fact, rear lot lines and rear setbacks and side lot lines and side setbacks in this instance?

JAMES WIESNER: Yes. I think you would -- it would seem like you would do the rear setback from the point perpendicular to that deck or that sunroom to that line.

ADAM CUMMINGS: You're right. Which isn't going to be 24 feet.

JAMES WIESNER: No. That would be this right here would be closest approach right here (indicating).

ADAM CUMMINGS: You're right.

JAMES WIESNER: Based on this being your imaginary rear lot line.

ROBERT MULCAHY: It won't be -- that's right. It won't be.

ADAM CUMMINGS: It won't be 24 feet. I don't have my ruler here to measure on a scaled plan.

Comments from the side table?

MICHAEL JONES: I'm sorry, just a little confused. The imaginary lines are the setbacks to the various places you could put the setbacks. Are you talking about measuring the setback from the setback?

ADAM CUMMINGS: We're saying that that would be the determination of creating the difference between the rear lot line and the side lot line. Then you would measure the setback off of that.

JAMES WIESNER: We have created our own rear lot line.

ADAM CUMMINGS: Yes.

ED SHERO: You can't create your own lot line. You can create a setback line measure.

ROBERT MULCAHY: I like what Mike (Nyhan) said, bring it before all of the Boards and have a meeting about that.

MICHAEL NYHAN: In two weeks.

ROBERT MULCAHY: Pass on this one way or another.

MICHAEL NYHAN: You look at this application. The setback they're requesting is further from their lot line than what their current corner of their house is. From the lot line. Whether it is a side or rear lot line, it's further from the lot line than the corner of their house. It's 24 feet versus 22 feet.

MICHAEL JONES: Right.

So if I may, the -- the Board can treat this as a variance as requested and decide whether or not to grant the variance from the way the Department calculated it, or you can proceed with the interpretation and determine whether there is a variance needed at all. So it sounds like you're going to head toward the variance and that's fine, and the Board will take your comments into consideration when they make future determinations and consult with other Boards as discussed and that would be fine. I just want to make sure you don't forget to open the Public Hearing portion before you make any decisions.

ADAM CUMMINGS: Okay. I wanted to get this definition out of the way first.

JAMES WIESNER: So really, our choice then is to just accept his -- accept his determination and move forward with the application? Which means --

ADAM CUMMINGS: Correct.

JAMES WIESNER: We wouldn't slow anything down at this point.

ADAM CUMMINGS: Correct.

MICHAEL NYHAN: I just think it needs more discussion than what should be presented at this meeting when you have people here that are to be heard still tonight -- you could talk about this for hours to hear everyone's opinions.

ADAM CUMMINGS: Well, I think with that, I will like to open Public Hearing.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

DOROTHY BORGUS, 31 Stuart Road

MS. BORGUS: If the deck, the existing deck is to be removed, if I'm understanding this correct, and an enclosed porch built to the same dimension, was this ever in conformance?

ADAM CUMMINGS: I don't believe so.

MS. BORGUS: It sounds like it never did meet code.

ADAM CUMMINGS: Correct.

FRED TROTT: Yes. There was no --

MICHAEL NYHAN: There was no permit from the Building Department to build the deck.

ADAM CUMMINGS: Correct.

ED SHERO: Just remember though, anything built before 1991 didn't need that permit.

ADAM CUMMINGS: This was constructed in 1987.

MS. BORGUS: Thank you.

MARK TRZYZEWSKI, 6 Gateway Circle

Mr. TRZYZEWSKI: I'm Mark Trzyzewski. I reside at 6 Gateway Circle. I will speak on their behalf. I own a similar corner lot. Only difference is mine is paralegal to one side, perpendicular to the other, so it is very easy to interpret being where my back lot line is, I have neighbors that have the exact same configuration on the corner where they're just like that. They have one in the back.

Looking at this one realistically, I would support the proposal for two reasons. They have a side clearance as required and I seen new requests for significantly less clearance than that. You're replacing the same size, the existing room.

I really believe that (indiscernible) a four-season room. (Indiscernible) outside deck. If I look at, they don't look people that would be very loud, have loud parties. They just want to have the convenience (indiscernible). I can't speak for the new residents. But realistically -- but other than that (indiscernible). Is there really an impact to the neighbors? If there was, the neighbors would be here protesting.

So again, if they were my neighbors, I would have no problem with this.

CHARLES RETTIG, Coldwater Road

MR. RETTIG: You said that the deck was built in 1991; is that correct?

ADAM CUMMINGS: No.

MICHAEL NYHAN: Actually, 1987.

ADAM CUMMINGS: Sorry, I misspoke. 1987 is the map that we have here. I don't actually have that year when the deck was built.

MR. RETTIG: Oh, the house was built in '87; is that correct?

ADAM CUMMINGS: I just have a map that shows that it existed in 1987.

MR. RETTIG: Okay. Well, we go back some years. My comment -- my question is, in regard to the 24 feet from the rear lot line, 30 feet, you stated -- one of the Board members stated 22.9 feet.

What was that correction?

ADAM CUMMINGS: The 22.9 is the southeast corner of the residence.

MR. RETTIG: That was just measurement correction.

ADAM CUMMINGS: Correct.

MR. RETTIG: Based upon that line going to the side lot, we'll call it -- side lot line in a -- perpendicular at the side lot?

ADAM CUMMINGS: Right.

MR. RETTIG: Okay. Comment, when the Board's going off with the -- the redefinition of rear lots, et cetera, um, I personally think that's the wrong way to approach it specifically at this Board meeting. I think when you have a lot on a curve, you may have a different shape back or side lot lines, et cetera. You may have other issues and other problems that you may not see here as you're proposing potentially drawing your lines and making a quote/unquote, "rear lot line," et cetera.

So I think if you go by calling it your "side lot lines," as you indicated, the zoning code is 8 feet; is that correct?

ADAM CUMMINGS: Correct.

MR. RETTIG: Okay. But these people have come in asking for a variance not necessarily knowing the -- exactly what the definition was.

Correct?

So comment is, you got a -- similar to this other gentleman for what he said, you have an existing deck. You have an existing size. You have the proposal to remove that existing deck and install a new deck porch within the existing dimensions, porch dimensions, or deck dimensions, either one. If you consider the dimensions from the side lot lines, which you have here, um, I don't see a problem in approving this specific application, not setting -- just putting a condition down in your decision that this is not a precedent, but this is a Board decision on this particular case, and thereby the Board is acting according to the code and this Board is not attempting in any way to rewrite the code which allows the Planning Board, the Zoning Board and the Town Board to come up with any final definition that may differ from this Special Use Permit case in the future.

ADAM CUMMINGS: We are not rewriting any zoning code tonight.

MR. RETTIG: Appreciate that.

ADAM CUMMINGS: Probably ever.

MR. RETTIG: Appreciate that, but I just wanted to make that comment just in regard to this particular application. I see no reason why the application shouldn't be approved based upon the unusual circumstances of the corner, curved front lot and the only -- the fact that you only have side lots.

ADAM CUMMINGS: Thank you.

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

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

MICHAEL NYHAN: I have a few questions. What will this structure be made of? What will the building materials be? It is a glass three-room or constructed wood with siding?

MS. MITCHELL: Glass three-room.

MICHAEL NYHAN: Roofing material?

MR. MITCHELL: The roofing --

MS. MITCHELL: I think the typical, just like we have on our house.

MR. MITCHELL: Just like a house roof.

MICHAEL NYHAN: Are you doing this yourself or are you having a company build this?

MS. MITCHELL: A company is building it.

MICHAEL NYHAN: Okay. So will there be any side on it?

MS. MITCHELL: No.

MICHAEL NYHAN: All glass on the three sides with an asphalt shingle roof?

MS. MITCHELL: Right.

MICHAEL NYHAN: Thank you.

FRED TROTT: I had another question.

Now the deck presently is more or less on your second floor?

MS. MITCHELL: Pardon me?

FRED TROTT: Isn't the deck more or less like on your second floor?

MS. MITCHELL: It's a raised ranch house, so it's the main level actually.

FRED TROTT: So the three-season room will be on ground level?

MR. MITCHELL: No.

FRED TROTT: Raised also.

MR. MITCHELL: Raised.

JAMES WIESNER: In your application it says the deck was 12 by 19 and sunroom will be 10 by 18. So actually the sunroom will be smaller than the deck; is that correct?

MR. MITCHELL: Yeah. With the specs you have, yeah.

MS. MITCHELL: Well, the deck is not -- there is like one little piece, like where -- when they built it, it was like to put the grill. It's not a big -- the whole deck is not 12 by 19. It was just one little piece that protrudes out.

MR. MITCHELL: There is a little space for -- you can put a grill in there. But nothing big.

ADAM CUMMINGS: I do have one question for Ed (Shero) on the side table.

Are you going to want any kind of architectural drawings for this? Or are we going to require a building permit?

ED SHERO: Drawings, but I think the company provides them. You have already met with them, so I think they have already provided drawings. In this instance, I don't think it is necessary as a condition, other than the permit.

ADAM CUMMINGS: Okay. Thank you.

Conditions, one is that the deck be removed and properly disposed.

Second, that a building permit be obtained from the Building Department.

MS. MITCHELL: The building permit, the contractors will take care of that, right?

ADAM CUMMINGS: That is between your contract with them, but I would clarify that with them. That is always a discrepancy of whose responsibility it is. It is either going to be yours or your contractors. Just work that out with him.

MS. MITCHELL: Okay.

Adam Cummings made a motion to declare the Board lead agency as far as SEQR, and based on evidence and information presented at this meeting, determined the application to be a Type II action with no significant environmental impact, and 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 5 yes with the following conditions:

1. The existing deck must be removed and properly disposed.
2. Building permit must be obtained from the Building Department.

The following finding of fact was cited:

1. The property has a very unique configuration since it is located completely along the curve radius of Loyalist Avenue. This variance is minor in nature and will still provide a larger setback than currently exists between the main house structure and the side lot line and that require setback from the adjacent properties.
4. Application of Laura Bugajski, owner; 19 Bright Oaks Drive, Rochester, New York 14624 for Special Use Permit to allow an in-home business for a pet bakery at property located at 19 Bright Oaks Drive in R-1-15 zone.

Laura Bugajski was present to represent the application.

MS. BUGAJSKI: Laura Bugajski. I'm the owner of the property at 19 Bright Oaks Drive. I'm requesting a Special Use Permit to operate a home business and employ one person from outside the family.

ADAM CUMMINGS: And just since you covered almost all of it in there, what kind of home business will it be?

MS. BUGAJSKI: A pet treat bakery.

ADAM CUMMINGS: Okay.

JAMES WIESNER: On your lot map you have got -- it says on the back of the house, that there is a 10 -- or 22 by 17 addition.

Is that part of the business?

MS. BUGAJSKI: That is where the business will operate from. I have already received a building permit for that.

JAMES WIESNER: Is this part of the garage?

MS. BUGAJSKI: It will be attached to the house as part of the garage.

JAMES WIESNER: That is what the other page of the application is.

MS. BUGAJSKI: Yes. That is the floor plan for the attachment.

ADAM CUMMINGS: Just so everybody knows, this one is for a Special Use Permit due to you having an outside employee, correct? You will have one outside employee?

MS. BUGAJSKI: Correct.

ADAM CUMMINGS: So that is why she is coming in front of us.

MICHAEL NYHAN: You listed your hours of operation. Is that when you would actually do the baking?

MS. BUGAJSKI: That is when my employee would work. Yes. She would be doing the baking, packing everything like that, everything that needs to happen for the business.

ADAM CUMMINGS: And how much supplies would you be getting in per day per week and how would that get delivered?

MS. BUGAJSKI: Because this is so small time right now, we would actually probably be buying our supplies from the stores ourselves like Sam Clubs or something like that, you know, those deliveries to the house.

MICHAEL NYHAN: What about shipping?

MS. BUGAJSKI: Shipping, we'll use UPS, FedEx that already comes through the neighborhood.

MICHAEL NYHAN: And I see there will be ovens in here that you will be using. Types of smells does cooking dog pet treats or pet treats give off?

MS. BUGAJSKI: It's all human grade food so most of them are like pumpkin treats with cinnamon so it smells like a human cookie.

MICHAEL NYHAN: And how about external venting? How hot would the ovens be and what type of venting will you be needing or what size venting will be needed to the outside of the house?

MS. BUGAJSKI: Um, I don't have a vent at the time. All of the ovens are self-vented, and we do have an air conditioning unit that will be vented to the outside.

MICHAEL NYHAN: They're self-vented, meaning you will not need an external hood?

MS. BUGAJSKI: That's correct.

ROBERT MULCAHY: Will you have traffic coming in and picking up stuff?

MS. BUGAJSKI: No, no store front. No people will come to the house besides the worker.

FRED TROTT: Did you bring samples?

MS. BUGAJSKI: I didn't open the business yet so no, but I will.

FRED TROTT: Well, I do have a dog (Laughter.)

ADAM CUMMINGS: We can't accept them. We can only try them. (Laughter.)

FRED TROTT: With -- other question I had is what kind of waste do you have and how will that be removed?

MS. BUGAJSKI: Um, I mean really, we have packaging waste that would be recycled the same we do our household right now. It would be cans for the food waste and everything like that. So everything is pretty much recyclable, boxes, bags.

FRED TROTT: You wouldn't have like an outside dumpster or anything like that?

MS. BUGAJSKI: Nope. It's very small time. Just part-time operation.

ADAM CUMMINGS: So just real quick, the extra employee, you just stated that you're hoping to have a new business. Is this part of your business plan?

MS. BUGAJSKI: Yes. That is part of my business plan. Actually when I applied for the application, I didn't have my LLC yet, but I have received it as of now, so. The acquisition of the business will be going through in May.

ADAM CUMMINGS: I only asked -- the other part of my question that I would like to ask right now is if you did it by yourself, it falls under different rules by the Town, so I just wanted to --

MS. BUGAJSKI: And I understand that. If it is not approved by the Town to have the extra employee, I will operate the business by myself which wouldn't fall under any legal requirements or anything.

JAMES WIESNER: Now, is the -- does the business already have a -- is permitted already in Town, already has a license?

MS. BUGAJSKI: Well, it was permitted if I operated it myself. That is why I'm here for the Special Use Permit.

JAMES WIESNER: Right. That is something that would have come before here, or does it just go before -- because we get a lot of home-based businesses.

ADAM CUMMINGS: This isn't a home -- this is a Special Use Permit to use the house. It is no longer a customary home occupation.

JAMES WIESNER: Okay.

ADAM CUMMINGS: Because she has the outside employee. That is why it is different.

JAMES WIESNER: She already has the license, already has the permit from the Town.

ED SHERO: There is no permit. The permit is the building permit.

ADAM CUMMINGS: Right. I'm not aware of any --

JAMES WIESNER: It's not like a hairdresser in your house or -- where you come in and you get -- you get a land use variance or whatever it is.

ED SHERO: Right. The use variance isn't required for this.

ADAM CUMMINGS: Right. I was just looking at my list. I don't see anything in the permits for -- for businesses.

All right. So with that, I will open up to Public Hearing.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

CHARLES RETTIG, Coldwater Road

MR. RETTIG: What were the hours stated to the Board?

ADAM CUMMINGS: The hours were for Monday through Friday, 10 a.m. to 2 p.m., in the application.

MR. RETTIG: Thank you.

The question was asked by a Board member in regard to traffic. Um, we assume or are we hearing no other additional traffic other than FedEx, UPS and the additional worker in the house; is that correct?

ADAM CUMMINGS: Correct.

MR. RETTIG: We note that this is a Special Use Permit. Is that, just for clarification, with the house and if the -- with the house and present owner, that if the present owner leaves that property, that that does not leave it open for a Special Use Permit by others, do you know?

ADAM CUMMINGS: I believe it will stay with the property, but we can restrict it to this business.

MR. RETTIG: Could you ask Counsel on clarification?

ADAM CUMMINGS: That is my next step. I will discuss it with them.

MR. RETTIG: Thank you. Just for that clarification. You also possibly, with Counsel's help, if the Board decides to keep this Special Use Permit for this specific house, only -- whether you could possibly do that or should do that.

ADAM CUMMINGS: That will be our --

MR. RETTIG: I will leave that for the Board.

ADAM CUMMINGS: If it is possible, we would add it in as a condition. We will look into that.

MR. RETTIG: My only comment is -- my only further comment is in regard to this particular application, it doesn't preclude additional people coming in or does she have to -- does the applicant have to reapply if additional workers are requested and the business becomes "too big," quote/unquote.

ADAM CUMMINGS: We plan to have that as -- as a future discussion on a condition of approval.

MS. BUGAJSKI: Actually, I wrote in the letter to the Town if it does grow bigger and I need more equipment or other workers, I will have it move out of this location and not have it be a home-based business.

MR. RETTIG: Thank you. Total square footage for the specific applicant's pet treats?

MS. BUGAJSKI: 374 square feet.

MR. RETTIG: I heard 354?

MS. BUGAJSKI: 374.

MR. RETTIG: 374 square feet. Is the addition presently in place?

MS. BUGAJSKI: It's in the process of being built. I currently have the building permit.

MR. RETTIG: Okay. Is the addition exactly a -- an addition to the house, or to the garage for clarification, please?

MS. BUGAJSKI: It is connected to the back of the garage.

ADAM CUMMINGS: You can go ahead. I did want to point out just answer the Board and not -- not the public.

MS. BUGAJSKI: Sorry. It is connected to the back of the garage. It does go into the house a little bit, but the majority of the building is behind the garage.

MR. RETTIG: So there is -- as I understand it, therefore, without routing specifically shown in the layout, um, I will ask the question, is there a specific pathway that is doorways that is included or -- or is enclosed from the weather between the house and the pet treat manufacturing?

MS. BUGAJSKI: Yes. We have the current door in the back of the garage that went out to the backyard. That will now be the entrance to the addition.

ADAM CUMMINGS: We have a -- we have a -- we have a drawing that we can add to the display up here. There is two means of egress. One is a door going into the garage labeled as G -- it's labeled as "GAR," so -- see connecting to the house. There is also a backyard door, a man door on the -- that would be the 17 foot side or the -- on the south side. The south side of the building there is a man door going outside.

FRED TROTT: And also there is no basis for the approval for the building.

ADAM CUMMINGS: Correct.

FRED TROTT: This is just for the employee.

ADAM CUMMINGS: We're looking for Special Use Permit, which is prompted by -- thank you. But we appreciate your comments.

MR. RETTIG: Special Use Permit is prompted by the pet treats application specifically. Yeah. I understand that. Thank you.

But I appreciate the clarification here.

Are there any -- I think the question was asked, are there any additional -- are there any fans or specific external fans from the facility, and are -- and/or are there any roof fans?

MS. BUGAJSKI: No roof fans. Just a heating and air-conditioning unit that will vent to the outside.

ADAM CUMMINGS: So the answer that was given is, it's an internally or in-house

ventilated ovens and then just normal HVAC ventilation. Or venting orifices.

MR. RETTIG: Okay. And then the other -- the other question in regard to waste, whether it be food waste, grease, whatever, again, just clarification for the Board to think of conditions that if it gets too large, how -- what is too large as far as waste being removed in 50 gallon -- 55-gallon drums, et cetera or no 55-gallon drums stored outside, which it could be, based upon grease, waste, et cetera.

MS. BUGAJSKI: There is actually no grease in the treats. There is no grease.

ADAM CUMMINGS: We'll make sure there is a solid waste management protocol for her to follow, standard practices.

MR. RETTIG: Very. Good. Thank you. Best management practices.

ADAM CUMMINGS: We will use that lingo.

MR. RETTIG: Thank you very much. I appreciate the clarification and the applicant's willingness to clarify also. Thank you.

ADAM CUMMINGS: Thank you.

DOROTHY BORGUS, 31 Stuart Road

MS. BORGUS: Um, one of the members of the Board asked about a -- how supplies would be delivered. Where are supplies to be stored in this addition?

MS. BUGAJSKI: I'm sorry, should we put the map up there?

ADAM CUMMINGS: Yes. I was just going to --

FRED TROTT: I will put it up.

ADAM CUMMINGS: Thanks, Fred (Trott).

MS. BORGUS: While that is being done, so we can shorten this up, I read the paperwork in the Building Department and, um, it -- it read that she wanted Special Use Permit -- this is from her paperwork from the Town in order to employ one additional person for up to ten hours per week on an as-needed basis.

But now I'm hearing that this person is going to work Monday from Friday to 10 to 2. That is 4 hours a day, 5 days a week. That is 20 hours.

MS. BUGAJSKI: That would be the only hours she would be there. It doesn't mean she will be there every day during those hours, but if she was working during -- if she was working for me for the business, it would be between the hours of 10 and 2.

ADAM CUMMINGS: But in this instance -- thank you for pointing that one out. In this instance, whether she worked 1 hour or 20 hours --

DOROTHY BORGUS: It's still an extra person.

ADAM CUMMINGS: -- that's what's prompting it to be a Special Use Permit.

MS. BORGUS: I don't have a problem, I guess, as long as this applicant thoroughly understands that she just can't increase employees and -- and I hate to put it this way, but I hope nobody finds out. This has got to be by the book. Thank you.

ADAM CUMMINGS: Thank you.

MR. RETTIG: One additional comment. Um, I think it's generally a condition, but just to clarify and make a condition, no external signs.

ADAM CUMMINGS: Correct.

MS. BUGAJSKI: That was included in my application. There will be external signs.

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

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

ADAM CUMMINGS: We're voting on a Special Use Permit.

ROBERT MULCAHY: For the one person.

ADAM CUMMINGS: The question I did want to ask over to Counsel, Mike (Jones), can we -- can we restrict one of the conditions to this application only, or does the Special Use Permit follow the land so that a new owner is not -- it's not a typical variance.

MICHAEL JONES: No. It goes with the use. So you can put a condition on this particular use. This isn't like a variance where it is going to be following the land. It follows the use.

ADAM CUMMINGS: So a future owner could have a dog treat use, but they couldn't come in and have a carpenter company.

JOHN NOWICKI: Correct. Correct. If she sold the business and the property to a new person, they could buy the permit for whatever period of time you granted for and so forth.

ADAM CUMMINGS: But one of the conditions we will have is to grant it for a period of five years, at which point it would be -- need to be brought back to -- for renewal and at that point we would evaluate any impacts.

MICHAEL JONES: Correct.

ADAM CUMMINGS: Complaints, if we had any.

MICHAEL JONES: So any conditions the Board is interested in imposing should be imposed as a particular use for this applicant's business.

ADAM CUMMINGS: Thank you.

I mentioned one condition I would like is the granting of it for a period of five years, and then you would come back in for -- for -- hopefully it's doing well.

MS. BUGAJSKI: Yes.

ADAM CUMMINGS: In an ideal world, we wouldn't renew it; you would be bigger and better.

MS. BUGAJSKI: That's correct.

ADAM CUMMINGS: And somewhere else, but that would be the first one, is granting it for a period of five years.

Condition Number 2, um, partially mentioned no on-premises advertise, no signage. No on-street parking. Um, relating to the business.

Hours of operation shall be held per your application.

MS. BUGAJSKI: Okay.

ADAM CUMMINGS: So no expanding the hours beyond 10 to 2.

Will also require that you will obtain and maintain the necessary State and local licenses. I'm not going to pretend to know what you need for a dog treat, but just make sure they're there. A building permit for your addition from the Building Department will need to be obtained.

MS. BUGAJSKI: Actually, does that need to be a condition because it has already been obtained?

ADAM CUMMINGS: Then you're already done with one.

Any others?

FRED TROTT: Do you have to have it -- a Health Inspector have to inspect.

MS. BUGAJSKI: No, because it was a home business. If I was working in a facility outside the home, that would get involved.

FRED TROTT: How do you sell the dog treats?

MS. BUGAJSKI: Um, it's wholesale right now to different businesses and it's all online through a -- either through the website or the 800 number that we have.

ADAM CUMMINGS: Just -- it was brought up during public comment period. Just estimate on how much solid waste would be created. I'm sure you're not going to stockpile drums anywhere, but just a rough ballpark and a description of the best management practice of how that is done. Is it cleaned out on a weekly basis, a monthly basis? What is your plan?

MS. BUGAJSKI: We would be able to use our current Waste Management program right now, where we put the recycling out by the road and the same with the, you know, garbage can that everybody gets, so we don't see that we would need to exceed any of that right now.

ADAM CUMMINGS: Okay. And that is picked up weekly, correct?

MS. BUGAJSKI: Uh-huh.

ADAM CUMMINGS: Not biweekly?

MS. BUGAJSKI: Weekly.

ADAM CUMMINGS: Okay. Thank you.

I can't think of anything else. Everyone okay with those six conditions? All right.

Adam Cummings made a motion to declare the Board lead agency as far as SEQR, and based on evidence and information presented at this meeting, determined the application to be a Type II action with no significant environmental impact, and Robert Mulcahy seconded the motion. The Board all voted yes on the motion.

Michael Nyhan made a motion to approve the application with the following conditions, and Robert Mulcahy seconded the motion. The vote on the motion was 4 yes to 1 no (James Wiesner).

DECISION: Approved by a vote of 4 yes to 1 no (James Wiesner) with the following conditions:

1. Granted for a period of five (5) years.
2. No on-premises advertising.
3. No on-street parking pertaining to the business.
4. Hours of operation as per application.
5. Applicant to obtain and maintain any required state and local licenses.
6. A building permit must be obtained from the Building Department.

The following finding of fact was cited:

1. The applicant requires one additional employee to develop her business investment and will be completely contained within the house and not result in a visual or olfactory impacts in the neighborhood.

There was a recess in the meeting.

5. Application of Archer Road Vista, 783 Wangum Road, Fishers, New York 14553 for variance to allow lots in the Vista Villas Subdivision (existing Section 1 and proposed

Sections 2-6) to be either less than the required 10,000 sq. ft. minimum or more than 20,000 sq. ft. maximum per plan submitted at properties located at 234 Archer Road, 3, 5, 10, 12, 13, 15, 19, 21 Prestwick Lane and 8, 10, 12, 14, 16, 18, 20, 100, 103, and 104 Clubhouse Drive in PRD zone.

Walt Baker, Gary Pooler, Bernard Iacovangelo, Shawn West and Vivek Thiagarajan were present to represent the application.

ADAM CUMMINGS: Before we keep moving with this, I would like to split these into two, where Section 1 will be application 5A. And then -- yes?

MR. THIAGARAJAN: Vivek Thiagarajan. I'm the attorney for Gary Pooler, Manager of Archer Vista, LLC. We believe those should be viewed as one application. The reason that we say that is because it's one overall plan. The -- the way to treat any of the issues would affect the same people in Zone 1, Phase 1, as it would affect the people in the other phases, as well. So we believe that the Town, the Zoning Board should -- should actually view it all as one.

ADAM CUMMINGS: Okay. So we'll continue with one then. Thank you.

So once again, if you didn't catch that, identify yourself for the stenographer.

MR. THIAGARAJAN: I'm Vivek Thiagarajan. I'm the attorney for Gary Pooler, Manager Archer Road Vista. With me also is Mr. Pooler himself. And also we also have the -- the engineer, Walt Baker, from DSB Engineering. We also have Bernie Iacovangelo who is from Faber Homes, who has the exclusive builder's right for the Phase 1 and also his assistant, Shawn West.

This project, as the Town knows, stems back from 2004. I have set up two maps, if I can show it to the Town's attention. This is the map from 2004. In 2004, the Town granted final on Phase 1 and also granted the preliminary for the entire Phase 1 project.

I have indicated here how the Town Planning Board had granted these lots and also, as you can see by the orange indicated as to here (indicating), this is the lots that were under 10,000 square feet.

Additionally, these lots that are in purple were lots that were over 20,000 square feet and similarly, um, these in pink were also over 20,000 square feet.

This is a project that has been ongoing for many years. Obviously ten years, 2004. And at the time when the preliminary was granted, the Town Planning Board actually stated that this was a final -- not final, but preliminary plan for the entire project. Based upon the fact that the code states the 10,000 to 20,000 square feet, this is what was the initial project. This was developed, this was the plan -- the Planning Board had granted and so we relied upon this from that 2004 date.

Unfortunately, um, from 2004 to 2007, um, there wasn't any homes that were sold. My client, Gary Pooler and Archer Road Vista, LLC came into the project in 2007. At the time the project was in foreclosure, there was issues, and so he wanted to continue to see if he could revive the project. From 2007 to 2012, very few lots were sold. In fact, only seven lots were actually sold. In five years, that's 1.2 houses per year, which would cause an issue. Obviously, this -- at 193 lots was the initial plan. If you took it over 50 years, you would sell 70 houses. That is something that wouldn't work for the Town of Chili. Wouldn't work for the community, the people that bought into the project.

And so we wanted to address these issues by trying to figure out a way that we could make this project viable and beneficial to the current landowners so they could be part of a project that would be completed.

Additionally, we wanted to make sure that Town of Chili had a completed project. So -- and the PRD, um, the section where it talks about lots, had identified the fact that these lots were already created. They had separate identification, separate numbers, tax ID numbers. So in the PRD section it states, 115-14(E), um, special provisions applying to a Planning Residential District. It states one, "In order to carry out the purpose of the district, the following objectives shall be met: A, Maximizing choice of housing types, tenure and lot sizes for all economic levels." And also E states, "Offering a more innovative and desirable residential environment than would be possible through the rigid application of other provisions of this chapter."

Knowing that, again, we're looking for the best interest of the Town and also the current landowners, we knew that we did not want to have this 200 years of -- or 150 years to sell these 200 lots. So we worked with the new builder, Faber Homes, and we tried to design a new way to attract more buyers. We -- one of the things that we did is we got rid of the HOA. Part of this plan that was given to -- or intended to be given to these owners was through the HOA dissolution that occurred late last year. And we found that these results have been very beneficial. The community has loved this. I believe in the last 14 months, we have sold over 14 homes. So -- which is double what we had sold in the previous five years.

Staying consistent with that, we tried to -- we dissolved the HOA and with the dissolution of the HOA, we had to give some of the lands to the other land owners. We got a lot of the landowners to rely upon it.

In December, we went before the Town Planning Board. We had approvals, we thought, so we went forward. Relied upon that. The people that were the landowners, they got this additional land and we continued to go forward with the project.

Um, the reason that we're here today is because we have found out that there is potentially a defect that was in this initial plan. This initial plan had lots that were well -- that were under the 10,000 square feet. We were coming to you so that we can cure this issue that has existed

since 2004. We wanted to cure it so we could have it so that going forward, from here on forward, we could also have the approvals. But again, as I said, in December, we thought we had gotten the approvals. There was a decision that was rendered, giving the approvals and then later, in -- in the last meeting we found out that we were to come to you for the same approvals that we had previously been granted.

As stated, we relied upon it. We had followed through with it. And again, for the color coding, you can see these are the same -- the same, similar designs. In fact, I believe it's the same 95 lots that were the 10,000 square feet that are here that are now also under the 10,000 square feet.

Again, our goal is to stay with the spirit and the intent of the actual community and the intent would be to, you know, make sure that we have a project that is selling, that is developing, that we can create a community that will be vibrant and fitting with the community of the Town of Chili.

So that is kind of our plan. That is what our intention is to cure that issue so that we can make -- make sure that we have a community that people when they buy in, they will know from here on forward that this is the type of community they would have. Again, as I stated before, we feel like any issues that apply to the first phase are similar issues that would apply across the Board.

ADAM CUMMINGS: Thank you for that introduction. And a lot of background.

We'll start with any questions and I will get to a letter that I received from the engineer. I want preliminary questions out.

JAMES WIESNER: If I understand you correctly, the flaw on the lot sizes was there initially from the original plan that was submitted?

MR. THIAGARAJAN: Correct. In 2004, the plan was submitted before the Town Planning Board. As you can see, these are the lots that were approved by the Town Planning Board. And at the time -- and here's the -- the square footage of each of these lots, as I said, I have indicated that the ones that are in orange were less than the 10,000 square feet. And, in fact, a lot of these lots we've, you know, made them actually a little larger for these new lots that we're proposing.

JAMES WIESNER: So the map on the right is the one from 2004.

MR. THIAGARAJAN: This is 2004, and this is 2014 (indicating).

JAMES WIESNER: Now what is the purple again?

MR. THIAGARAJAN: So the lots that were in purple were actually the lots that were above the 20,000 square feet. As you know, in the PRD, it is 10,000 to 20,000, so we wanted to indicate those, as well, for your benefit.

ADAM CUMMINGS: With that, I -- I would like to invite Walt (Baker) up, Walt Baker just to address the -- I will read it out, but I did receive an email for comments that were from our Building Department that just needed to be clarified ahead of time, and it's an email from David Lindsay, our Commissioner of Public Works Superintendent of Highways.

Number 1 was, "Lot 16 appears to be 57 feet wide at the front setback which does not meet the minimum in the site data listing of 60 feet."

The response back was, "The east lot line was adjusted east to meet 60 feet width at the setback," and we did receive an attached drawing that shows that.

MR. BAKER: Correct.

ADAM CUMMINGS: "Lot 247 also did not meet the 60 foot as it was proposed to be 57.52 feet wide." There is also an attached drawing showing that to be 60 feet for property lines of Lots 243 -- 243 through 248, so that obviously included 247.

Um, "Lot 248 did not seem to have adequate buildable area due to the pie wedge shape and the sanitary sewer easement, storm sewer easements across the lot. You might need to eliminate this lot and have an area be redistributed between Lots 244, 245, 246 and 247. The property lines of Lots 243 through 248 were adjusted to provide more width to Lot 248 and the 44 foot wide 2500 square foot Faber Homes house is shown in the attached Drawing 2 which was included in the packet."

"Lot 521 has a proposed area of 8,193 square feet and this is below the proposed minimum lot size of 8500 square feet."

And the response was "Property lines of Lots 520 through 522 and Lots 414 and 415 were adjusted to meet the minimum area of 8500 square feet which is in an attached drawing in this package."

"Lots 331, 332 and 334 have extreme side lot angle -- side lot line angles that do not provide a usable rear yard to prospective home buyers, particularly in comparison to the other lots proposed in the subdivision. We recommend eliminating Lot 334 and distributing the land between Lots 332, 333 and 334."

And once again, the attached -- the response was, "The attached drawing shows the 44 foot wide 2500 square foot Faber Homes house on the questionable lots there appears be usable backyard. The last comment, Lot 239 and 238 -- and Lot 238 are shallow. Um, while we do not ask for easements on the rear yard swales, we may ask that -- we may ask to do that in this case given the importance of making sure that some future homeowner does not stick a fence, pool or shed in the swale and mess up drainage. If we ask for the easement, it looks like these lots will not be buildable. You might need to combine some of them to make it work. The attached drawing -- or an attached drawing shows the 44 foot wide 2500 square foot Faber Homes lot on each lot -- house on each lot and there appears to be adequate room along the rear lot line for an easement, if necessary, which is shown on a detached drawing in this package."

I just want to put those in, we did respond -- or we did get your responses via that. I know there was some IT issues.

MR. BAKER: I have some extra copies.

ADAM CUMMINGS: Oh, perfect. Thank you.

If you could distribute that to the Board, that would be excellent.

MR. BAKER: As Chairman mentioned, there were a couple lots in the overall design. During the process of developing the preliminary plans, like Vik (Thiagarajan) mentioned, we went through concept. I first got involved in this project last summer, and we submitted a plan, an overall concept plan to the Planning Board, and at that time, obviously, a concept is basically a single drawing that denotes the minimum lot size, the maximum lot size and areas of all of the lots throughout the project and we have 221 lots that we're proposing.

And as Vik (Thiagarajan) mentioned, the original plan had -- besides the golf course it had 193, and they were basically split in half, I would say, between the townhouses and -- and the single lot, if you will. I also brought what we got on the corner of the map, which he was referencing, was just basically a summary sheet of the -- the difference between the original plan with lot sizes.

So like I mentioned, what this is is basically a summary of the original, like what we call the original overall plan from 2004, which was originally designed with -- with what they call single-family lots and townhouse lots. And townhouse lots, as everybody knows, is a grouping of two or more lots together with a common firewall between their -- their residence, which in effect is the property line. The property line goes right down that firewall. So each townhouse has a single tax account number, and it's classified as a lot as far as New York State subdivision. So everybody in a townhouse owns that lot. They own the building, even though this have a common wall between them and their neighbor.

So basically, when you have a townhouse lot, these lots that were approved, as you mentioned back in 2004, are under 10,000 square feet. So even though they're grouped together, I believe the -- the thought was that the fact that there was four lots hooked together, it's greater than 10,000 square feet. But in effect, in New York State Law, really subdivision is a lot, has its own tax account number and it stands alone. So according to the code, the code says the lots have to be between 10 and 20,000 square feet, so that is why we highlight the ones in orange are actually less than 10,000 square feet. As you can see from the summary sheet, we have 81 lots that were townhouse lots, but they were under 10,000 square feet. With the proposed plan, obviously there are two existing townhomes that are -- that were sold off and occupied by individual homeowners now, and they will remain in the project, but the remainder of the site we redesigned it last summer and came into the Planning Board with the redesigned plan for single-family homes. And with a minimum lot size of 8500 square feet and 60 feet in width.

So this table, I hope, has cleared up where we show the lots that are actually under 10,000 square feet, the lots that actually fall in the 10 to 20,000 square feet and the lots that exceed 20,000 square feet. Like I mentioned, original plan had 193, and we're at 221. When you go up to 221, um, we also eliminated the golf course, the -- the parking lot for the golf course which had 200 plus parking spaces. The golf course building itself and 18 holes of the golf course.

At approval, as you mentioned, Phase 1, which was approved and filed, had three golf holes in it, which were originally built but never used. And with the redesign, we tried to absorb that land back into the project, and that is why you see the purple shaded areas are those lots that actually backed up to the golf course and we were a -- approached the existing property owners that own adjacent to that former land that was developed, and of course, the HOA, dissolving the HOA, and asked them if they would take that additional land. We would deed it over to them, and so now those lots are, in effect, greater than 20,000 square feet. So we have some lots that over 20,000. We do have lots that are under 10,000 square feet. But they're single-family homes, not townhouses.

And obviously, as Vik (Thiagarajan) mentioned, the project really didn't take off as originally intended, and -- two townhouses were sold. There was only a total of five, I believe, single-family homes that were sold out of the whole project until up to about a year and a half ago, when the other builder came on and started selling the lots. I hope that makes sense.

I did also bring a couple photographs of the housing types that -- we briefly talked about the housing type. The map I passed out and placed on the overhead is representing the largest house being proposed at this time by the builder. I also handed out -- which I'm sorry, I only brought a couple photographs of another site that is actually up in the Town of Greece where the same house design is being constructed today and those lots actually up in Greece are 55 feet in width.

The lots we're proposing are 60 feet in width and the largest house is shown on this map and the responses that I -- that the Chairman read regarding the Town Engineer's comments, when he said the homes that we propose is -- 44 feet wide is the largest home, 2500 square feet, and I placed that on that map that you see on the overhead, so that is the largest house, which comfortably fits on a 60 foot wide lot. We end up with 8 foot side ties, so conceivably 16 feet in between structures if, in fact, that large house is built on two lots next to each other. But again, that is one of, I believe -- how many models you have, 4, 5, 6?

MR. BERNARD IACOVANGELO: How many different type models?

MR. BAKER: Yes.

MR. BERNARD IACOVANGELO: About 10, 12.

MR. BAKER: 10 or 12. Okay. So basically they're -- I just handed out that stapled version of a couple relative designs that would be used, and as Bernie (Iacovangelo) just

mentioned, there would probably be 10 or 12 different models that prospective home buyers could choose from. The largest one again is 44 feet in width and 2500 square feet, four-bedroom, and you could also select from a ranch style home and that could be 36 feet wide. So generally all of the homes, as you well know, range in that -- in that area of two-car garages and that.

So I hope that gives you an understanding of what we're trying to do as far as the lot size and having a minimum of 8500 square feet is more than adequate for the house design we're proposing and the proof is that he has been able to market and sell over the past year and a half with quite a bit of success.

ADAM CUMMINGS: Did you get a chance to look at housing models?

JAMES WIESNER: Yes.

MICHAEL NYHAN: Clarification. In December you went before the Planning Board?

MR. BAKER: Correct.

MICHAEL NYHAN: For resubdivision of some lots?

MR. BAKER: Yes.

MICHAEL NYHAN: Is that relative to eliminating the golf course and parking lot?

MR. BAKER: Yes. That was -- that was the intent, when we went to the Planning Board last summer, we proposed redesigning this site, eliminating the golf course, eliminating the HOA and designing it and the plan I presented is basically the same plan you see now. The overall 221 lots is what we presented to the Planning Board at the first concept meeting, and then comments we got were -- you would realign the road, the southern row.

The major concern at the Planning Board meeting was in the beginning, we had this road coming up through here (indicating) and it kind of continued on.

So what we did was redesign it and made a T intersection to stop the traffic so it wouldn't be -- wouldn't be a potential raceway, if you will, or a non-stop area where traffic could slow down. So that was the redesign we did from last summer to December, and we came in in December for the revised preliminary overall and also a final for Phase 1, which is -- Phase 1 is already filed at the County. So at Monroe County, it was filed, but it didn't have -- obviously it had an area which was slated to be the golf course holes. So we redesigned that and received approval from the Planning Board for Phase 1, and we also lost four lots doing that redesign from 45 lots to 41 lots in Phase 1. So it worked.

MICHAEL NYHAN: Absence the variance for the lot sizes, has the Planning Board then approved the design of all of the phases the way they work together now?

MR. BAKER: Conceptually. When we left the meeting in December, we had that plan and we received no further comments negative against what the design was, and we were -- we told the Planning Board, okay, so we're going to proceed to preliminary design. So it took us a couple months to redraw the plans. Obviously concept is a single sheet, as you well know, and then we go into preliminary design: It's the topo, the profiles, the water mains, the sewer lines, all of the grading, all of the details, the Town standard details and we compared those plans for the February Planning Board meeting.

Then we went to the February Planning Board meeting and then we received comments from the Town Engineer about the lots -- similar to what we had here, and we got tabled at that meeting based on the comments that we had. And to correct those, an issue came up, even though we received final approval for Phase 1, we prepared the map and sent it to Monroe County Health Department to get signed and sent it to the Town for signature, and it got delayed in the signature process to the point where they asked us to come to the Zoning Board to get this clarified as far as the lot size.

MICHAEL NYHAN: The lot size is to correct the original issue already approved and already to bid, and secondly, to finalize all of the phases to show the concept of how this could work in this piece of land?

MR. BAKER: Yes, sir.

MICHAEL NYHAN: Okay. All right.

ADAM CUMMINGS: I'm just looking at the DSB. On Nearfield (phonetic) Drive, the sample one, just to make sure I'm clear, that is -- I think it was stated that is the 2500 square foot model, the biggest model there is.

MR. BAKER: Correct. That is the first floor that you see on that plan. It is the first floor for that 2500 square foot lot.

ADAM CUMMINGS: Are there any -- yes. That is showing the 5 foot setback off it. I'm assuming this doesn't allow any additions to be built up. There's no options that have it being off the great room going farther, especially to the --

MR. BAKER: To the sides.

ADAM CUMMINGS: To the sides. There is one that's a mud room. So obviously that will not really grow too much, but are there any bay windows or things like that --

MR. BAKER: Options?

ADAM CUMMINGS: -- that would then need variances as they encroach?

MR. BAKER: No. Actually, we -- with this design we presented the Planning Board with a 5 foot side setback. That is why I labeled it on there 5 foot setbacks, but in reality, we're going to be -- because we have this room, in fact, it will be -- if somebody, for whatever reason, wanted to put a fireplace on, but I don't think that fits in the design anyway, it's a possibility.

ADAM CUMMINGS: Window wells, fireplaces and bay windows.

MR. BAKER: Yeah. Overhangs?

ADAM CUMMINGS: Yes.

MR. BAKER: Well, we have 3 feet.

ADAM CUMMINGS: Shifted from townhomes, which are connected buildings as separate lots to now additional residential single-family homes which have different grading patterns, site development, dimension requirements and things like that. Just want to make sure it can be housed and looking that you're not encroaching that 5 foot side setbacks, same with the front setbacks.

MR. BAKER: Correct. Correct. Yes. We actually had that discussion with the Planning Board because they thought with 5 foot, that is kind of tight. That is why the photographs actually brought with me, um, the -- that's of a site project that we -- we did. I designed it. And it has lots that are 55 feet wide.

As you can see, the lots are fitting -- or the houses fit pretty comfortably on that lot. This is -- the market, again, you're going to have a variety of homes, styles, sizes and based on what the code says, you know, it's going to meet the need or the intent of the code as far as having varied lot sizes and different segments of the population. So you can have a ranch. It could be empty-nesters. Could be new families. It's open for just about anyone's need.

ADAM CUMMINGS: All these are single-family? No multiple residences?

MR. BAKER: Yes. The only multi-family, if you will, is the two-unit townhouse that's already built and it's actually these two right here (indicating). These are the only two that were built from the original plan, which are -- which are right here (indicating). So those two -- those two were originally built and none of the other townhomes were ever sold.

ROBERT MULCAHY: How wide is the overhang?

MR. BAKER: Um, what you got, 1 foot overhang?

MR. BERNARD IACOVANGELO: 12 inches.

MR. BAKER: 12 inches, 1 foot.

MICHAEL JONES: Just two points I wanted to make are: Number one, I would just want to concur with Counsel that this is essentially a fix. It's because there has been various Planning Board approvals over the years, and it was an oversight with respect to the PRD's inclusion of that one dimensional requirement of the lot sizes.

And then Number 2 is that granting a variance in a situation doesn't actually approve the project. It still has to go back to Planning Board for the Planning Board to do the full review of the PRD. It is just whether or not to grant the Planning Board the flexibility to deal with lot sizes.

So those are the two points I wanted to make for the Board's consideration. Thanks.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

JOHN HELLABY

JOHN HELLABY: John Hellaby, Vice Chair of the Chili Planning Board. Excuse me if a little bit of this information is redundant. I have made some notes here that I would like to read from.

But this application was before the Planning Board on April 8th. At that meeting it was tabled pending the decision of tonight's meeting. However, the Board's consensus during discussion was it would not like to see the undersized lots approved. We have no problem with the seven oversized lots, however, we realize they might have to be reconfigured should this whole subdivision get another look or reconfiguration.

As mentioned, the preliminary approval was based on townhomes which lends itself to the smaller lots, which I'm sure you're aware of.

To my knowledge, there were no undersized lots in Section 1 that was previous by the Planning Board. There are, however, in Sections 2 through 6, 92 undersized lots of 180 proposed which equates to a little over 50 percent, which we believe to be in excess.

The Planning Board is in agreement with the site plan review letter dated March 6th, 2014, by Michael Hanscom, PE, of Lu Engineers, the Town Engineer. In this letter he states we would estimate that resizing the undersized lots to 10,000 square foot minimum to meet the PRD requirements will reduce the number of lots in Phase 2 from the current 50 lots to 46 to 47 lots.

Michael (Hanscom) also goes on to demonstrate that requiring minimum lot sizes in Sections 3 through 6 would result in lot reduction of 7 to 11 lots overall in each section. So it's feasible to do.

He also states a significant advantage of requiring the 10,000 square foot minimum lot size is that the lot width of the undersized lots would probably increase which would make it easier to provide adequate drainage between the homes. The developer is currently asking for approval of 5 foot setbacks for these lots. This is significantly less than the 10 foot setback required in the R-1 Residential District of the R-1-12, R-1-15 and R-1-20 zones.

Given the history of this project, we believe that this application or applicant, excuse me, needs to take this plan back to the drawing board and take a closer look. It would turn out to be an overall improvement for not only the subdivision in the Town of Chili, and I think it would be a much better product for the developer, as well.

I thank you for your time this evening.

ADAM CUMMINGS: Thank you.

MR. TRZYZEWSKI: So on the advice of the Town Attorney, I actually drafted a letter to the --

ADAM CUMMINGS: Sorry. You identified yourself a couple times.

MARK TRZYZEWSKI, 6 Gateway Circle

MR. TRZYZEWSKI: Mark Trzyzewski. The address is 6 Gateway Circle, Chili. Okay?

I did address a letter to the Town Board. I didn't have time to drop it off ahead of time, but I do have 20 copies, so again, I will just give you one for the record. I will give you each one. I will make them available to the public. I also printed a large copy to display to the audience.

ADAM CUMMINGS: Are you going to read from the letter, as well?

MR. TRZYZEWSKI: I will read most of it. I won't bore you with the whole thing, but you have it for your reference and your records. Anyone is welcome to one. They all say the same thing.

I will start off who I am. I am a local resident of Chili. I live at 6 Gateway Circle, which is one of the older subdivisions. It is Chestnut Ridge. (Indiscernible) 60s subdivision, R-1-15. I have one of the largest lots in the subdivision. I'm probably 30,000 plus square feet, so that would be probably four of what -- the proposed lots.

One of the things that attracted me to my property -- I wasn't rich at the time. I -- actually my job at Kodak was going away at the time. I bought my house because of the lot. Mine was the starter ranch that could be added on if we expanded.

So when I look at developer's intent, he wants to offer affordable housing, there's a lot of factors to affordable housing. Is it a solid house? (Indiscernible)? Does it have a nice lot?

The developer's location. He actually has a beautiful location. It's -- it's not a swampy part of Chili. It's a nice rolling hill. It's a nice location. You have access to all of the Town amenities. You have access to shopping, access to the airport. So it's a beautiful piece of property to work with, and I think he can do a lot with it.

My day job, I'm actually a corporate compliance auditor. But I mentioned global auditor for one of the major medical companies. I travel the world looking for quality compliance, actually compliance to standards and regulations, environmental concerns, health, safety and also regs.

So actually what I did was I pulled his application package for the zoning request. I pulled his application request also for the Planning Board. I went back to 2004, gathered the original application. I have some of the approval letters. I also have some original proposals from the (indiscernible) site.

So that gives me kind of his work package of what he is submitting for the request.

Then I have to go back to the -- the Town of Chili, on your website, you put the Zoning requirements. You also have the Planning requirements. You have the Master Plan.

And then what I also did, I went to a couple other towns. When you look at your PRD, it's a unique animal. Planned Residential Development. There's not a lot of rules and regulations for that one. You look at Chili. It's greater than 10,000 square feet, less than 20,000 square feet.

You do a Google search for it. You get a couple hits. Not a lot of detail.

Again, it kind of falls back to the Planning Board. What do they think is adequate? What are the side spacings? What is the rear yard spacing? What is the front spacing? What makes sense for that community? And it differs.

So again, when I did my Google search, I came up with a couple different locations that have PRD developments. When you look at those, the Town of Orchard Park does in Erie County; Spencerport does; Hilton does; Rotterdam in Schenectady County. Little different environment there because you have tighter spacings.

So let me just kind of read it for you a little bit. When I looked at this, I had some concerns as a resident, and because -- I have no concerns with the greater than 2500 square feet because again, it's not quite being the intent of the PRD. PRD was created at one time -- I believe the intent was in 2004, that they wanted common areas for the golf course. Again, smaller lots so you can enjoy the green space from the golf course. I can go golf. My kids can go play somewhere. They don't have to play in the street. Um, I'm sacrificing a little bit. I'm conserving resources. I'm sacrificing my own lot a little bit for a common area.

That's a little bit different now. So when I look at this one, I actually pulled the letter by the DSB Engineers and Architects from March 20th and their letter (indiscernible) and the site plan is over there, plus more drawings. I did the full CD of submission.

And I was asked by what -- my wife help a friend of hers that was one of the purchasers of one of the first lots. She is one of the residents -- I don't want to mention names, but she was one of the residents of the lots -- one of the first five purchasers, so she has concerns, but she doesn't want to speak in public, so I'm trying to help my wife help her is why I'm here. And again, if anyone has any questions, you're welcome to ask me at any time.

So what I did is actually took the applicant's submission package to the Board and from DSB Engineering answered five questions, and these are standard questions posed by the Town. I'm sure you're all familiar with those, probably more so than me.

On the 20th, they answered no. Can the benefits being sought by the applicant be achieved by other feasible means? The applicant indicated no.

And I believe the answer is yes. Okay, the applicant has eliminated the Homeowners' Association. It currently offers homes at a lower price point than originally submitted by Vista Villas Phase 1, using lots 10 to 20,000 square feet or townhomes on smaller lots. That's what's this was about.

Originally you're talking about lots of 10 to 20,000 square feet. Well, when you really look at the approvals of the first 8500 square foot lots, they were for townhouses. They were not intended for, however, proof for single-family residential homes. I mean you get a townhouse, (indiscernible) a home, I have a different set of expectations. I lived in townhouses in California.

There is a difference. When I go into that one, I know I am going to have a neighbor on top of me and I have a very small lot and the piece of mind that there is fire safety wall in between me. Again, when you look at the townhouse locations, there is different constructions to those. You're talking about fire resistant materials in a lot of locations.

ADAM CUMMINGS: We're just looking at lot sizes.

MR. TRYZEWSKI: I know, but I'm saying -- when I looked at -- it is all addressing the zoning, is the lot size request. I don't want go into other details for the Planning side. That's a separate discussion. This is only talking about why you should not approve Lots to be 8500 square foot or less. The requirement was less than 10. That is all I want to cover.

ADAM CUMMINGS: Thank you.

MR. TRYZEWSKI: Okay. And when I look at this one, they -- they indicated no. But when I look at this one, the lack -- this -- the lack of sales they attribute to the general economic slump. When they say they haven't been able to sell lots, well, when you look at the economy, the housing market in total was down. So people weren't selling lots. If look locally, you have a manufacturing slump, so people aren't buying. Is that the reason the lots aren't selling, or is it because they're -- or because of the size?

So again, they haven't -- they haven't significantly showed any -- where I come from, I need statistically factual data to make a point. They have offered none for -- for the question. When you look at the application, it talks about but it doesn't offer that one.

And what they're trying -- when I read the application, they want to offer affordable housing. That was the purpose of that one. So I can answer this one. If they want to offer affordable housing, you simply offer a smaller square footage houses. I.e., 10,000 square feet, and offer a smaller square footage house and it fits the same price point as (indiscernible). I can offer a ranch or cape style house. It gives me the most living space per dollar, so again, gives the best (indiscernible) value.

I could also partner again -- and I will just use the name Barden Homes, but I could also bring in pre-fabricated structures where they have a group buying power and they could fabricate at a common site 24 hours a day versus the stick-built. So again, offering the most value by other alternatives.

And when I looked at this one, it -- to sell this one, as others mentioned previously, simply redraw the site plan. Again, you're at the ink stage. Move the lot lines. You can get back to 10,000 square feet. There is nothing geographically that (indiscernible) wouldn't work. You're not saving trees. They're not saving monuments. I looked at this one. I used to be a draftsman. I'd simply move the lines. That would be a remedy.

Lastly, they're not going to like this one, but again, if I want to offer 10,000 square feet, lower your profit margins. Again, I mean, I look at these lots, um, they're very narrow, they're very deep -- and I came from a postage stamp lot. I really think they're just trying to maximize -- I hate to say it -- their profit margin because realistically, the utilities are expensive; the asphalt is expensive. I mean, when I go for more frontage, that drives up their cost, which I understand, they're trying to balance that.

Question 2, will granting the variance produce an undesirable change in the character of the neighborhood or detriment to nearby properties? Again, I -- I reviewed what they said. Applicant did not directly answer the question, rather indicating the proposal would attract home buyers with an affordable product. So again, they didn't answer the question. And what they said is, basically -- they didn't say "yes" or "no."

I believe the answer the same as the past question is -- I believe the answer is yes.

When you look at this one in greater detail, you have -- and again, they changed their (indiscernible) the one I pulled, but you are talking about -- you will -- roughly 50 percent of the lots, almost 15 to 20 percent are undersized, but there are a couple exceptions. When you go through it, there are lots as small as, I think, 8200 square foot and majority, 8500 square feet.

But again, when you look at this as a whole, it's significantly different than the original proposal that was produced in 2004, and also the preliminary from 2013. You look at the nearest development to the north. That one is zoned R-15 and if you go directly north on Archer Road -- (indiscernible) that one, that's an R-15 development. Again, if I have to compare and maybe drive side by side -- and I do. I drive by that way when I take my daughter to soccer -- it is significantly different. I'm looking at the same size house or larger house on half the lot.

So the question is does this fit the neighborhood? This is my own opinion; the answer is no.

Question 3, is the requested area variance substantial? Applicant indicated no. So again, I believe the answer is yes.

When I look at this one, let's talk about green space. When I look at this one, there is 193 planned with an 18-hole golf course. Now you're talking -- you have 240. I believe it is currently showing 221. So again, there is a fair amount of difference.

But I really think the big difference is when I look at this one, there is no place for kids to play. Like I can play soccer on my -- on my lawn. I can play soccer on my side lawn with my daughter. I mean to be fair, you go over to Union Station, that, I think, that borderline with PRD development, kind of splits the difference. Over there they put in Union Station Park, and they have access to Black Creek Park immediately adjacent to them.

I look at this one. If I drive through here, the kids are going to be playing in the street. When I look at the requirements that they are proposing, you have a 35 foot setback on the front lawn. The notes I have show 5 foot side setback and 10 foot deeper yard. So I looked at that one. There is really no green space for kids to play, and then when you talk about this one, there

is a lot of other factors about this one, too, because they also do not mention here very well -- they mention eliminating the Homeowners' Association. When you eliminate that, that changed a lot of things also because in this case when I did that one, correct me if I am wrong, and I could be wrong, but I believe that now allows an unlimited number of licensed vehicles in the driveway.

So again, in my case I have five cars. I have a neighbor with eight cars. I have neighbors with boats. I have neighbors with campers. That all could mean that has to fit on this lot, so could my neighbor with eight cars fit it on his two-car deep -- you mean driveway? Probably not. So where is he going to park?

I have another neighbor that has a wood-burning fireplace and he heats with wood. So now, so you look at side setbacks, you're talking 16 foot. He's burning firewood all winter long, into in the fall. So would you want one of these houses next to somebody with a fireplace? Next to your windows? You want your windows open. And you're so close, you're just going to smell the smoke or you will be breathing in the -- I will say the ash or the dust.

The other concern -- then the other one I have with this one, I think kind of -- to Question 4 a little bit. Is there any adverse physical or environmental impact? The problem I have with the setbacks they propose on -- I have the drawings that show the 35 feet, the 5 feet, which you talk about 8 feet, 16 is between and the 10 feet deep backyards. I look at this one. There are two things that would bother me a little bit.

At the Irondequoit Bay in 2012, I mean, they -- the crazy man set fire to his house. They couldn't get in there to fight the fires. Well, 16 - I'm sorry in that case, eight houses burned because the side-to-side spaces were so close plus your combustible materials. Again, you'd say, "Well, that's not going to happen in Chili."

Well, last month, I couldn't get down my street for the better part of the day as the snow wasn't plowed. Again, if I put these so close together, that is a concern to me.

And then the bigger concern -- again, that was a small fire. You could you really put -- New Jersey last year, after Hurricane Sandy, they lost 135 houses because of side-to-side spacing. I mean, you want to put big, tall houses together, very close, you want to make them combustible, is that a concern?

Well, I mean, they couldn't get to them. But you also have to remember Chili has a volunteer Fire Department. We're not a professional Fire Department.

ADAM CUMMINGS: I would like to keep the points toward the lots.

MR. TRZYZEWSKI: That is lot size. It all ties together the spacings.

ADAM CUMMINGS: I would like in the effort to -- to continue on with the question --

MR. TRZYZEWSKI: I'm almost done.

But my final point is when you do the lot sizes, it ties to the Planning Board. You set the lot sizes at 8500 square feet, that -- I mean, again, you can do that. That's within your right, but then also you have to look at the Planning Board and have to -- the appropriate spacing, side spacing, rear spacing, front spacing and also maximum, I'll say, populated percentage that you would want the building to be upon that size lot.

8500 square foot lot might work with a 1200 square foot house. 8500 square foot lot is not such a good -- with a 2500 square foot house.

ADAM CUMMINGS: Valid point. Your letter is well written here. I just want to make sure you stay focused on your letter here and get these points out and not as many stories of neighboring --

MR. TRZYZEWSKI: That's fine. I want to read it again because I didn't want to bore people.

In the last one -- I'm going with this one, um, when I looked at the purpose of the original Vista Villas for PRD and it is within this zoning requirements, if the developer wanted to kind of even things out, the developer can actually kind of with the intent of it offer green space back to the development.

I know the last Planning Board they talked about doing \$500 per allowance back to the Town in lieu of green space. That really doesn't help the residents. If you want to give the Town \$500, that doesn't help the actual people living there. What helps the people actually living there is to follow the guidance from the zoning laws, and I think that comes down to donating some portion of land per -- I think 3 acres per 100 houses is what the Town ordinance recommended, so in this case, 240 times the -- that would be about 7 1/2 acres would be a suggestion to the developer or this Board. If they really want undersized lots, then put common areas and make the developer take those -- develop those to the Town and then turn those over to the Town. That would kind of even things out and takes concerns away -- some of the concerns away in terms of the green space, the area for the kids to play.

The last one is, my mind, was the alleged difficulty self-created? In my mind, Gary Pooler, he did not create the downturn in the housing market, the downturn in economy. But in this case, his proposal again is an ink drawing. Either by some -- I will say misleading, just for sake of conversation, of the (indiscernible) 8500 square feet for townhouses versus single-family. But when I read the laws, and again, I look at it says 10,000 square feet between 10 and 20, there is now other restrictions.

When I look at that one, if I was doing this one, I would comply with the requirements. I don't see any reason why the developer can't. And again, I -- I -- again, I'm not -- I'm an engineer. I'm not a civil engineer. So I don't claim to be the same as the people that wrote the application.

Again, when I look at things, and I have to I review a lot of things for work. People are

kind of expected to answer the questions, and I really see a lack of them answering the questions or avoiding the issues as kind of like the zoning intent. I don't know if it was intentional, but again, they told some of the facts but maybe they shaded them a little bit. I'm trying to portray the other end of the answer.

ADAM CUMMINGS: Thank you for your comments and your letter.

MR. TRZYZEWSKI: Did anyone have any questions?

MR. THIAGARAJAN: First, I want to address some of the comments that were made by some of the members of the audience.

ADAM CUMMINGS: If you would like.

MR. THIAGARAJAN: Members of the audience, Again, Vivek Thiagarajan.

First, I will -- I will start with Mr. -- how do you say --

MR. TRZYZEWSKI: Trzyzewski.

MR. THIAGARAJAN: First thing, is he acting on behalf of he says his wife -- to help a friend of his -- friend of hers. I mean, my understanding is he is not an attorney.

MR. TRZYZEWSKI: I'm not an attorney.

MR. THIAGARAJAN: My understanding is 6 Gateway Circle is not within 500 feet of the actual -- the project itself. If we -- if we have issues with somebody that is living there, if it was disclosed, then we could potentially find out ways we can address those concerns. The issue is we don't even know -- Mr. Trzyzewski doesn't -- it is not even a friend of his. It is a friend of his wife's.

So again, all of his comments, his comments that he made are comments that he is making, not his wife's -- much less his wife's friend that might have the concerns that might be relevant to this.

ADAM CUMMINGS: That is correct.

MR. THIAGARAJAN: The second thing I want to say is again, most of the statements that he is making, um, are statements that are for Planning issues, they're not Zoning Board. We're here to the narrow application to state that there is lots that we're seeking to cure this issue that has been there for the ten years regarding the variance.

Again, as -- as he stated, there is the truth that these lots were there since 2004 and these lots were under 10,000 square feet. In fact, a lot of these townhome lots were well below that number and we're actually raising those as we create this new plan. Part of the reason again that we are changing it from the townhomes to the single-family homes is the fact that now we're able to sell to single family homes. You talked about the character and the community of the neighborhood. If you look at the character and community of the neighborhood, again, this is kind of beyond the scope, but there is not a lot of townhomes. People aren't buying townhomes in the community around here in Chili. They're buying single-family homes. The proof is that, you know, Mr. Trzyzewski talked about he would not be interested in buying that house, but we have 14 other people that have said they wanted to buy it. They wanted to be part of the community of Chili as stated in the PRD, our goal is to be able to create the opportunity that these people can be part of that community and we're asking for -- help us with curing this issue that has been in existence since the beginning of 2004.

You know, again, additionally, one of the things that was also raised previously is the fact that the Planning Board representative had stated that their understanding was that there wasn't any of the lots that were single-family homes that were approved under 10,000 square feet in Phase 1. I believe that these single-family homes, from 2004, and in this area, which is still in that, you know, Zone 1, was underneath the 10,000 square feet. So that -- I just wanted to clarify that that was there.

Again, we find that we're here for the narrow application of just the fact that we're asking you to go forward. As stated, we had concept plans. I believe there was multiple concept plans that were, you know, entered into discussions that were since last summer and previously where the Town, we believe, was on Board with this plan.

Again, we felt like we were following through the spirit and the intention of the initial plan in 2004. Where again, we tried to make it so it is more friendly to fit the community around it. Again, just north of the railroad tracks. There is another, another community that is --

ADAM CUMMINGS: Older residential neighborhood there.

MR. THIAGARAJAN: North.

ADAM CUMMINGS: But on the same token, in Chili we do have several townhouse communities, too, that we would like to bring to light there that we do have townhome communities in Chili that --

MR. THIAGARAJAN: And that is correct, but again, the fact is there was only one townhome that was -- there was two townhomes that were sold and I believe to the same individual within the five years that were marketed as townhomes. Fact is no one was buying those, and if -- if they'd been interested, we would have been more than willing to have sold those to them in those period years. No one was buying them, so we had to make -- we had to make an adjustment.

ADAM CUMMINGS: Thank you for your points. We'll try to continue on with the lot size, square footage.

MR. THIAGARAJAN: Gary Pooler --

ADAM CUMMINGS: We're still in public comment. Just remember that. We'll continue. You're next, though. I will take care of the comments in the back, too.

MR. POOLER: I just wanted to clarify a couple. Gary Pooler. 783 Wangum Road, the owner of Vistas Villas, Managing Partner of Vista Villas. I got involved in this project in 2007.

This was a -- preliminary approved in 2003. Approved in 2004 by another group and another engineering firm and I had nothing to do with it.

I get involved in 2007, after it's a failed project. I'm out there trying to fix the project, get it back up.

I finally got a builder in here that is building houses, we're going forward. The economy has been tough. We finally got some economy going forward and we have a product that -- a builder that is able to build and sell homes. Thank you.

MIKE FERRUGIA (phonetic), 9 Clubhouse Drive

MR. FERRUGIA: So I do live in that neighborhood. Um, I bought there because I liked the value that Faber Homes was offering. I like the -- what I saw there. I knew that it was a brand new development. I knew it was changing. Everything that I'm hearing today wasn't anything that was marketed to us, so, um, I didn't know about smaller lots being proposed in the future. So would I have built there versus Greece, maybe not. You know. This is all new stuff that is coming up. So when they say nobody -- they're selling houses, this wasn't made known to anybody that was buying there, that it was being re -- rezoned.

ADAM CUMMINGS: We planned.

MR. FERRUGIA: In addition to that, just in the three hours I have been here, I have heard -- and I live over there and I like the train, but the traffic in that area, you can't get out of that development between 4 o'clock in the afternoon and 5 o'clock. So I can't imagine putting more houses in there, cramming more in there and trying to get out of there. There is no light. You got to wait for the train and if the train is there, forget it. You could be stuck in that development for...

ADAM CUMMINGS: Thank you for those comments and I would encourage you to go to the Planning Board meeting and voice those concerns, as well. There's a comment over here (indicating).

MR. RONCONE: I know him. I have known him for a long time. But he -- but to be honest with him, too --

ADAM CUMMINGS: Can you identify yourself by name?

PAT RONCONE

MR. RONCONE: And I have a house in that development and I paid good money for it. And I don't want to have it degraded. What I mean to say is this. It's over a \$200,000 home that I have. I want to know -- I want to know for sure now what -- what they're going to build in that project. And like he said, there is only one outlet. There has got to be more than one outlet in that area. So I'm interested in knowing what his -- he was going to happen.

ADAM CUMMINGS: I will restate what I told that gentleman. Please take those comments to the Planning Board.

JOYCE RONCONE

MS. RONCONE: I would like to -- I'm Joyce Roncone, one of the original owners on Prestwick Lane. I would like to know why the Town is letting this project change so drastically since what we were told when we moved there six years ago. The whole thing is changing. The whole thing is changing since we moved in and our value in our house is going way down because of what is going around us. That's all.

LUANN VANPEURSEM, 17 Clubhouse Drive

MS. VANPEURSEM: My name is Luann Vanpeursem, 17 Clubhouse Drive, current resident of the development.

Again, I would like to reiterate that I'm happy with my home. And when I bought the -- the lot, I was told that it was going to be a certain dimension, and that has since changed, and also, again, I was told that there were going to be bigger lots in the future development and now I'm seeing that that has changed also. And I am concerned about the tightness of the homes between each other, and with children playing, kids usually don't play front to back. They play side to side because they don't want a ball to hit their house, and if you have a tight lot, where are these going to play? Thank you.

SPEAKER: I would just like to comment on Mr. Pooler's attorney's comments. I am (indiscernible). That is my husband. I am an attorney and I have represented four out of the seven original people that purchased the houses there. And each one of them purchased them because of the lot sizes and what they had to offer, not because of what they are now. My only comment.

CHARLES RETTIG, Coldwater Road

MR. RETTIG: My comments, I will go back to reference Mr. Hellaby's comments as Vice Chair of the Chili Planning Board. Referring to the April 8th Planning Board tabling with good reason, he listed a number of problems, issues, the 5 foot setbacks. R-1-10 foot is required. This is not acceptable.

He even mentions, and I will reiterate, to get back to this layout, to be relayed out, and no lots under 10,000 square feet, I do that -- I make these comments for a number of reasons.

I take the attorneys' comments to heart to point out that he is a Faber attorney, and to mention that many of these residents are not in the area, we are residents of the Town of Chili

and have a direct interest in Chili and, as these other people have pointed out tonight, that have residence within the facility, are not being properly represented -- their interests are not being properly -- their interests are not being properly represented because their potential housing values are going down.

So I take -- I take exception to the attorney's comments specifically where he says, "I believe," quote/unquote, and if that's his comment, that's fine for a more friendly layout to the community, to paraphrase him, with this concept plan, I take -- I take exception to that because he's representing, he has a specific interest in representing Faber Homes and not representing the Town of Chili. So that's a general point -- I think is worth noting.

And we have a gentleman presenting an email to the points expressed tonight, and Dave Lindsay, as the Director of the Department of Public Works -- I first ask the question, what is the date of that email, please?

ADAM CUMMINGS: April 10th, 2014, 10 a.m.

MR. RETTIG: Thank you. And his comments are being heard by many of the people here tonight for the first time. He is mentioning specifics for what does not meet the codes 57 feet versus 60 feet on a lot width, et cetera. Lots that are not buildable per his comments in his email.

I think he has some very good points that need to be seriously and thoroughly addressed by this Board. So I go onto other responses distributed tonight. This is extremely unsettling because all of the information has not been presented to the Building Department as others are required to do prior to the application going in, and you, the Board, are seeing these, and we are hearing of them for the first time tonight. Then to see a summary sheet being handed out with further comments the first time tonight for even the Board to see. And then to go on to photos being presented to the Board tonight talking about the Town of Greece for 55 versus 60 feet. If we have 65 feet -- or 60 -- beg your pardon. Greece has 55 feet versus Chili has 60 foot width lots. We're interested in the Town of Chili Code for 60 foot width and we don't have a concern with Greece and what some nice pictures look like. I haven't seen them. I assume they're nice pictures because I haven't seen them. They were presented to the Board and we, the public, have not even had a chance to see them.

ADAM CUMMINGS: Mr. Rettig, we can show those to you.

MR. RETTIG: I appreciate that. That is not my intent to review at this time, because I don't think it's fair to the rest of the people in this room and others that have to -- that would like to review this in more detail.

ADAM CUMMINGS: Thank you.

MR. RETTIG: Thank you.

As we get to the fact that there is no clubhouse, the golf course is eliminated, the HOA is eliminated, and I believe lot changes from 193 to 221 or something in that order, as I understand, I ask the question, what is the percentage of green space on this proposal? I haven't heard anyone give me a percentage.

ADAM CUMMINGS: That's -- that's been held by the Planning Board. I don't see it on the site plan we have, but that is where their jurisdiction would fall into. The actual disturbance would be the same for our yard; it is just whether there would be a different number of lots meeting the square footage requirement, which is the variance we're hearing tonight, is the different lot sizes.

MR. RETTIG: Right. Appreciate that. I just bring it up as a point based upon the fact that, as you know, and I know, the Planning Board tabled and has not acted and that's one of the issues, and we're dealing with lot sizes. We're dealing with the total acreage of the entire project, and we're looking at the lot sizes for the house -- number of houses, so it does enter into, but as you indicate --

ADAM CUMMINGS: Correct. It will be based on our decision of how that proceeds in the future. Not in our control tonight.

MR. RETTIG: Correct. Thank you.

There was mention of approvals on conceptual plans, things have been changed, February Chili Planning Board meeting, as I understand, tabled this with good reason. My -- my comments come down to be summarized, that just the way this is being handled, with the handouts and additional information, I don't think this Board has any choice in my mind other than to table fairly, ask the applicant for a plan that meets the code, based upon all of the complaints you have heard, based upon what you see -- if you go up there and look at the site, you will see how close some of those houses already built under 10,000 square feet are on their lots. It's just, you know -- it just -- a picture doesn't show it. Go and look at them. See for yourself. If we're talking about as mentioned 5 feet to the lot line, bay windows, fireplaces, places for kids to play, if you go in the first driveway, the first street, off Archer, just south of the railroad tracks. I did.

And you drive in there, and granted, houses are still being built, et cetera. There is a ten-year-old kid playing soccer with his net in the middle of the road. Middle of the road. I slowly went by and he was still there in the street, playing, so again, it comes down to where are these kids supposed to play and I'm talking about now, and it is not even finished yet.

So my comment comes down to the fact that handouts have gotten out tonight that others haven't seen, um, the Planning Board tabling with good reason, I think this should definitely be tabled and that's not just my comments. That's hearing other comments in the -- in the audience this evening.

ADAM CUMMINGS: Thank you.

DOROTHY BORGUS, 31 Stuart Road

MS. BORGUS: I kind of object to the public just not having their comments heard without interruptions from the developers. If you don't mind, Mr. Chair.

I have to agree with Mr. Rettig. After -- at the Planning Board, and this is an aside, I know, you people probably aren't there, but at the Planning Board, the same gentleman, Mr. Baker, I believe it is, went up there, again, and he handed things out to the Planning Board minutes before he wanted a decision. I was furious about it. There was -- there was no public comment because the Board just tabled it. But after the meeting I explained to the developer, Mr. Baker, and Mr. Pooler, and to the Board members on the Planning Board that that is very, very unsatisfactory. I, for one, was in the Planning Board -- in the Building Department today. None of what you got tonight was there. Yet I am given an opportunity, supposedly, to come in here and express an opinion about undersized lots. How would I do that when I am not entitled to the information?

So after my complaint after the Planning Board, which was just a few days ago, Mr. Baker came in and he did not one handout to you people tonight at the last minute, but three. That's insulting to the public. It's insulting to this Board. It's undemocratic because nobody has the information to make a decision properly, or for the public to comment on -- on anything before it's decided. That kind of thing has got to stop. There is a deadline for these Boards and this information should be in so that this Board has an opportunity to look it over, take it under consideration and make a decision. That has got to stop from now on and especially on a project that is as big and important as this one is.

It's doubly insulting, three times as insulting, who knows how many times insulting when you look at the scale of what you people are being asked to decide and you're not even given the information until after the 11th hour.

Now, I would like -- when I go down Archer Road, and I look at those houses that are presently built along Archer, the first thing that strikes me is how did they get that close to the road? I would like to know when Section 1 went before the Zoning Board for front -- for front setback variation. Did it ever?

ADAM CUMMINGS: I have no record of it.

MS. BORGUS: You have no record. In other words, it never did, right?

ADAM CUMMINGS: There is a variance from February to combine three lots into one, but other than that, I do not --

MS. BORGUS: So I think if you look at the records, you will find that it never went to the Zoning Board for front setback variance. Prove me wrong. There is no record.

ADAM CUMMINGS: No record to does -- to confirm or deny.

MS. BORGUS: No record. They got permission from the Planning Board and they just built. Now look what you've got. Mr. Retting is right. You go down Archer Road now and you look at those houses and it's -- the visual of it, just the few they built, crammed in on those lots is appalling. It's absolutely appalling.

Mr. Lindsay's email is right on target. He points to pie-shaped lots with easements, no less. Lots with no usable backyards due to angles. This is insane. This started out as a wonderful project. It had all kinds of potential. It was townhouses. It was different size houses. It was -- it was an HOA. It was a golf course. It was a clubhouse. It was going to be wonderful. It has deteriorated into looking like that. It looks like it -- a bunch of rabbit hutches. It's terrible.

And these people say they don't sell houses. Well, who would wonder. I don't know what they're charging for those things, but people have got to be awfully hard up to want to live in Chili to buy into that kind of a project, and they want you to make it worse by approving even smaller lots. This is a self-created hardship. There is a greed motive here. That is the only thing that -- that doesn't do the Town any good at all. It does the developer good.

And they keep talking about how the fact that 10,000 square foot lots were approved originally. Yes, for townhouses. So let's stop talking about that because we have a different situation here now. These are homes. So let's stop trying to make the comparison that that was approved. It was approved, but not for what they want to do with it now.

And the point has been made and I know these are Planning Board issues, but it definitely falls within the -- the information you need to consider before you vote. And that is these children don't have a place to play. There was supposed to be green space. There was supposed to be a lot of green space. Now there -- as far as I can see, there is nothing and they want to put more people in. They want you to approve smaller lots yet so there is more kids that don't have a place to go. You wonder why you have juvenile delinquents. It was a premiere development; it is not one now. They want you to give the blessing to make it worse.

The side setbacks of 5 feet. Mr. Iacovangelo, the builder, has already built a subdivision off Union Street with side setbacks and, you know, these houses are very, very, very close together. I don't know if they're 5 feet, but they're very close and witness -- witness the problems that that subdivision has had because of the closeness of those homes. People are in complaining -- I've been at the meetings they complain and -- about barking dogs. You know, balls bouncing off their houses. They're too close. So the builder here knows what happens when you build houses this close together. He knows and he still wants to do more, I guess.

The statement was made that the townhouses don't sell so that is why they're going to something else. I beg to differ. Because those townhouses by Wegmans, next to Wegmans on Paul Road, looks to me like they get filled up and rented, sold, whatever as fast as they're put up and it may have something to do with the quality and the size and the green space, so that -- that is just an outright falsehood that townhouses don't sell in Chili.

ADAM CUMMINGS: Can we refer to lot sizes?

MS. BORGUS: I know lot sizes. I'm telling you, this all comes down to lot sizes and the 10,000 square foot lots that were to be town houses, now he says they don't make them because they don't sell them. He wants to make more money. That is what it comes down to.

Then he made the statement that they're trying to do a community that -- they're trying to build a subdivision that fits the community. If I have ever seen a subdivision that didn't fit the community, it's that one.

This Board has got to vote no on this. We cannot -- we cannot have this kind of good valuable land just -- just crammed with too small of houses on too small of lots. We don't have much land in Chili left to build on for development for housing. This would be a terrible waste. It's a beautiful spot. They should go back to the drawing board, and I know that is not your decision, but you enter into -- when you vote tonight, you will have a piece of that. You have to own a piece of that. That's what this Board is for. That subdivision -- that subdivision ought to be redrawn at -- at a reasonable level of occupancy to have decent sized lots. No more little lots that are unusable.

ADAM CUMMINGS: Thank you.

MR. BERNARD IACOVANGELO: Good evening, Mr. Chairman, members of the Zoning Board. My name is Bernard Iacovangelo, and I'm the President of Faber Homes, and I have entered into an agreement with Archer Vistas, LLC to purchase lots in Phase 1 of this development called Vista Villa. And we have heard a lot of comments vetted this evening before you, much doing with the Planning and so on. I think that the developer's Counsel did a good job in trying to bring it back to the point in place it began.

And a lot of the things that were just mentioned by Miss Borgus, a lot of them I agree with. Some I don't. But a lot of them I do. And she was here at the last meeting that we came before this Board in order to rectify a failed design. I will get to that in a minute.

But here we are this evening, the developer is attempting, after he was involved in, you know, trying to get this project moving in 2004, and it's just not going to work as a golf course community, especially when in the infinite wisdom of the Planning Board at that time, to approve a three-hole construction. Planning Federations throughout the United States recognize that in golf course communities, the amenity has to be built in totality so that it can be truly represented as a full golf course community. That would have differentiated at that time whether or not the project could proceed forward or not. So that didn't happen. Three holes were put in. It was sold as a golf course community with three holes. People did buy in. However, the problem then became whether or not the rest would be built. And could the property sustain starting prices at 235 and up, at that location, in that School District, near that tracks and so on.

This developer came to me three times between 2009 and 2012 requesting my assistance to help try to sell these homes -- these lots. I refused twice, and finally I said I would try to assist him. Now, that's when all these issues started coming up. Number 1, we talked about -- I said part of it is the HOA. We have to get rid of the HOA. It's a burden to the monthly qualifications of homeowners when obtaining a mortgage. By the time we looked at it, he had reduced it down from \$125 down to about \$40 by reducing services. And the HOA was basically going away.

So we met with all of the homeowners in that community and discussed with them what the intentions were of the developer going forward. We showed them, you know, the plans, conceptual plans. They were conceptual. We showed it to them and they all signed homeowners affidavits indicating that they wanted to have the Homeowners' Association go away. And with the knowledge that so was the golf course concept. So these are copies of their signed affidavits.

Upon submitting that to the Planning Board, we got their authority to go forward removing the HOA. Which we did. We told them we were going to get rid of the golf course area, you know, and that they were going to send the authorization to the Attorney General, which they did. The developer sent it to the Attorney General of the State of New York and got rid of the HOA. So that was one cure.

But in that process, in that process now, we had these areas that had to be -- because it was an -- already in Phase 1, a filed subdivision map, they had to be reconfigured. We had talked to the Town. The Town didn't want any green space that they would have to maintain, okay, and so we came up with another formula pursuant to the law that allows you to come up with an amount per lot to be given to the Town in the General Fund so that it can be used to help develop additional parks, recreational spots within the Town for the community at large. And there is well-developed case law on this.

So in furtherance of that, we started looking at some of the lots. The first lot was Lot Number 1 on the original subdivision. If you don't mind, I would like to walk over here.

ADAM CUMMINGS: Go right ahead.

MR. BERNARD IACOVANGELO: This lot in the drawing by Passero was 24,000 square feet (indicating). This lot over here (indicating) by the drawing of Passero was 29,000 square feet approximately.

The rest of these lots were all 7600, 6600 feet. And I talked to you in the language of a Zoning Board, because all you can reference is the Town Code. The law established by this Town. And the law at that time, which is the law at this time, defined a lot, if you look at word usage -- A, the word "lot" includes the word "plot" or "parcel." If you look at "parcel," it says, "Land identified by a legal description and tax account number which is filed and proposed to be filed in the County Clerk's Office."

Whether the type of structure is single-family attached or single-family detached, there is

still a lot or a parcel. Because when you go back to Section 115-83, a lot is defined as a parcel of land under separate ownership or parcel as designated on a plot plan recorded in the Monroe County Clerk's Office. They all have separate tax account numbers. So the Planning Board at that time, when approving this golf course community, created lots, four sides, for filing that were under the 10,000 square feet. And over the 4,000 -- or 20,000 square feet as prescribed in the PRD.

Notwithstanding the fact that that is what the code says they can't do.

Now, in addition to that, the setbacks along this road are the same today as they were when this was approved in 2004. We are building everything pursuant to obtaining a building permit from the Town of Chili, following the -- the layouts of this original map along Archer Road. We are only (indiscernible) to this Board a request for one thing. Let's cure it all.

We came in here several months ago -- well, maybe a year ago, and Dorothy (Borgus) was upset because we keep coming in trying to fix this thing. She said it. If you look -- she was -- she says, "It was wrong from the beginning and now we're always fixing it."

And she's right. She's right.

Lot 1 today is 39,000 -- or Lot 3 today is 39,000 square feet. The Lot 1 and 2 as designed by the original project designer and approved by the Planning Board had so many easements on it from the RG&E that you could not place a home on it. There was no area on those first two lots which received lot lines, tax account numbers, filed on the plat in Monroe County Clerk's Office. So we had to come before this Board and explain it to you and we received approval to go beyond the 20,000 square feet. And we even demonstrated in that meeting, in that meeting that Lot Number 1 was already over 24,000 square feet.

So the point I'm trying to make to you, is please, don't blame the current Managing Partner of this LLC, because this occurred before he even bought in. Many of the things we're discussing he wasn't even aware of.

Secondly, we're trying to make it so that it sells, which it has been proven and a couple of the homeowners are here -- but as you go on, and I understand Mr. Hellaby's presentation, asking for it not to be approved. However, 115-14, Planned Residential Development District's purpose talks about exactly what we're talking about. It explains it. That is what it is there for.

When the Town Board rezoned this at the developer at that time's request, they made it PRD. And that gave ultimate flexibility to the Planning Board.

Permitted uses, all residential uses are permitted within the Town. We fall within that. So to start talking about R-1-15s, R-1-10s, R-1-11s is not in keeping with what the Town Board felt in their wisdom at that time would be best for this community. To give it flexibility.

So we don't want to be mixing the concepts now of R-1-11, R-1-15, R-1-20 when the Town Board back then in its infinite wisdom said, "We want you to have the flexibility you need to achieve your planned development."

Now, are we trying to correct something? Yes. Are some of the lots going to be smaller? Yes. Are some of the lots going to be bigger? Yes. We are still falling within the PRD classification. Has it been completely approved and vetted with the Planning Board? We thought it was. We thought it was. And I will tell you why we thought it was. One of the homeowners is here tonight because she is saying, "I'm not sure."

Because we went before the Planning Board and we received approval for Phase 1 to be redesigned and upon that approval, which was in December, we made those representations to these homeowners. The plan has not been filed because there has been a decision to send this back to the Zoning Board. This is the December 11th approval. And this the December -- or the March 19th amended decision which was prepared April, submitted to the developer without being placed back on the Planning Board agenda, being able to be vetted with him and give him adequate discussion, opportunities and not being able to, you know, be heard. And we can't find where there was -- has been a vote taken by the Planning Board for this amended decision.

But the only difference is what? They're saying go to the Zoning Board, which we're here to do, to give you an opportunity to correct an issue on this project that goes in the spirit and intent of the original design.

It's not asking you to approve lots below 10,000. And it's not asking you to approve lots greater than 10,000. What it is asking you to do is to approve the flexibility. Let them have the infinite wisdom as to which size they're going to buy into. That's their job. So this is all within your legal province.

It's all within the definitions of the code not only today but in 2003. Yes, that was designed that way, and yes, they didn't send it here. They are sending it here today. We're asking to you do the right thing. To cure it and give them the opportunity to have the flexibility they need to vet it totally and to allow the first section to be filed because we have got homeowners that were told they're getting 20 more feet and now they're not getting it because that map is not filed and we can't do it. They have already closed. They already have a mortgage in place, and this is happening every day. Because we did have an approval. We did vet this whole conceptual plan with them three times and two times in DRC.

So I agree it may not appear like it has been vetted and there has been enough, you know, deliberation on this because documents continue to be handed out at the hearing, but that is what hearings are for, to get additional and full complete knowledge and information. So it is not like we just came and tried to slam dunk this opportunity. We talked to each and every one of the homeowners because you can't get rid of the previous HOA without the seven previous homeowners signing off. We couldn't even have that discussion with them unless we talked to DRC.

So I talked to you. I talked to you as a resident of Chili. I talked to you as a developer in Chili. I talked to you as somebody that wanted to see this completed because it has been an eyesore here since 2004. It's starting to have some improvement and I will tell you, he has some correct comments, too. You got to have facts. Comes from California. The fact is they all live in zero lot lines. Fact is they haven't got enough developable land to give you any bigger than a 40 foot wide lot that is 120 foot deep.

I belong to the National Association of Home Builders and we have a Builders 20 Club. I have got two members in our club from California. We talk about it all of the time. Postage size lots. 3500 square foot homes on it.

But he's right, too, there are drainage concerns. But that is what engineers work out. On these lots we can put on 2800 square foot homes if there is a demand for them. So it is not the width of the lot. It's how they're designed and how the -- it insures proper drainage, traffic and so on. That is a Planning decision.

I'm just saying to you, we have got a Section 1 map that is ready to be filed. It can't be done without the variances that we're speaking for tonight and that is affecting homeowners. We have two more that will close. They don't know whether they're getting a small deed or a large -- a small lot or large lot. They don't know. They were told that this is what it is going to be. It has been approved pursuant to that December approval. And they're not signed yet.

ADAM CUMMINGS: I would like to interject real quick. If you could summarize it.

MR. BERNARD IACOVANGELO: In sum and substance, we are asking you for something legal to cure so that we can go forward -- this developer can go forward and we can get these correction deeds filed for homeowners that are already bought into the project. And let this other -- all these other issues be vetted in Planning Board.

Thank you.

ADAM CUMMINGS: Thank you very much, sir. The last public comments?

If you could keep it brief, it would be much appreciated.

MR. RETTIG: I'll be brief. I will just point out that while having this vetted to go to the Planning Board, doesn't address the issue at hand on the lot size and the problems before this Board. And another handout which we're not aware of, so it is still for the Board, I understand, but still, based on the issues before this Board, the issues on the table, the issues that were -- have been brought up tonight by the public, I beseech this Board, please, table it at this time, at least, if they don't delay.

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

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

ADAM CUMMINGS: A lot of public comment. A lot of good points to be made. I think it was very clear to everyone here that's our task, and Counsel pointed out that way, it is providing flexibility for the Planning Board with the undersized or oversized lots is our main focus on this tonight.

FRED TROTT: Well, I have a question.

ADAM CUMMINGS: Hold on.

MICHAEL JONES: I just want to caution the Board in one respect. There is one legal issue that has come up during the public comment, and with all respect intended, I would caution the Board to please disregard Mr. Hellaby's comment, because as a Town official, it is really not appropriate to speak on behalf a Board that hasn't taken action. And I would just caution this Board to make whatever determination it makes, disregard those statements and put that out of your mind and focus on the legal issue of the variance being flexibility and lot sizes, and we're dealing with a PRD.

You heard comments about setbacks and the like. Under the PRD zone the Planning Board has jurisdiction over every single dimensional requirement except lot sizes. That was the mistake that happened apparently about a decade or so along with this complication. If we focus on the legal issue at hand and leave comments that should haven't been potentially been made, I would (indiscernible) that would be advisable.

ADAM CUMMINGS: Is that clear?

JAMES WIESNER: Yes.

ADAM CUMMINGS: Excellent.

So Fred (Trott) had a question, comment?

FRED TROTT: Is it my understanding that Phase 1 has no undersized lots.

ADAM CUMMINGS: Correct. Those ones are all oversized.

MICHAEL NYHAN: No, that's not true.

ADAM CUMMINGS: Or not true.

MICHAEL NYHAN: You're --

FRED TROTT: Where are the undersized lots in Phase 1?

ADAM CUMMINGS: You're right. Go ahead.

MR. THIAGARAJAN: The undersized lots in Phase 1, um, are right here (indicating). So these are undersized lots in Phase 1.

FRED TROTT: Those are the existing townhouses?

MR. THIAGARAJAN: Correct.

Again --

FRED TROTT: But that is under the premise of the original application, that townhouses would be on that -- under sized lots.

ADAM CUMMINGS: We're just looking at undersized lots, not townhomes versus single-family homes. They were just undersized lots that were built on.

FRED TROTT: Well, I guess hearing what Mr. Iacovangelo said, that he has people trying to buy the houses, of the oversized lots, but they can't because it hasn't been approved yet, why couldn't we approve Phase 1?

MICHAEL NYHAN: The application is for all phases.

MR. THIAGARAJAN: Yes. Again, the application is for all phases. Again, as stated before, there is no -- in the code the definition of lot does not imply a difference between any type of townhome lot or single-family home lot. Again, they're single-family homes and the lot is defined as a lot.

ADAM CUMMINGS: Fred (Trott), to answer, that was how I opened it up, to see if you wanted to split it in two different and the applicant wanted to treat them as one.

MICHAEL NYHAN: The lots, there are several issues that I think need to be addressed by Planning Board such as traffic. The townhomes where you are on one lot, two homes, I think you have more traffic than with all single-family homes with traffic like -- because you have one home on each of those lots instead of two.

ADAM CUMMINGS: Each of the townhomes have one house on each lot. But the lots are individual for each townhome.

MICHAEL NYHAN: Oh, okay.

JAMES WIESNER: The lot line actually goes right down through the center.

ADAM CUMMINGS: We don't really -- that is differentiating. We just need to think about the parcels themselves, not as if it is a townhome.

MICHAEL NYHAN: I'm reading the PRD code today and it states specifically that the whole purpose of the RPD is for flexibility in building a residential community. And I think when you look at the lot sizes, I'm looking you went from 5 lots in the original plan over 20,000 square feet to 23 lots over 20,000 square feet, and seeing that initial document that was placed up showing the overall original 2004 and the proposed 2014.

ADAM CUMMINGS: You're saying the summary table from the current plans that were previously submitted.

MICHAEL NYHAN: Correct. So the difference is 28 more homes and there is 12 more lots that were -- would be under 10,000 square feet. Two would be between -- the difference of 2 that would be between the 10 and the 20 and then 18, a difference of 18 less that would be over 20,000 square feet from the original plan.

ADAM CUMMINGS: Right.

MICHAEL NYHAN: So more homes will actually have a larger lot than smaller lot.

ADAM CUMMINGS: Right.

FRED TROTT: Not by much. We're talking 43 percent are smaller lots.

MICHAEL NYHAN: Initially 83 lots would be smaller. Now it would be 95. The initial plan was approved in 2004.

FRED TROTT: We're still -- it is still a percentage that has increased.

MICHAEL NYHAN: Right.

FRED TROTT: And we're almost at 50 percent that are undersized.

ADAM CUMMINGS: Little bit under but close. Around 40 --

FRED TROTT: 43, 44.

MICHAEL NYHAN: So --

ADAM CUMMINGS: Oh, so that's --

MICHAEL NYHAN: You had read the letter from David Lindsay. It looks as though all of the concerns that were raised by Mr. Lindsay were addressed appropriately, correct?

ADAM CUMMINGS: Correct.

I can't speak to the amended decisions of the Planning Board. That was the first I had seen those tonight. But they really don't pertain too much to this one other than they had a decision that they were looking to us for the variance for the lot sizes.

MICHAEL NYHAN: So from here it would then go back to the Planning Board?

ADAM CUMMINGS: Correct.

MICHAEL NYHAN: Based on our decision tonight and then they would have the final approval of what this subdivision -- this development would look like; is that correct?

ADAM CUMMINGS: Correct.

ROBERT MULCAHY: That's right.

MICHAEL NYHAN: Okay.

JAMES WIESNER: So it hasn't been through final on Planning, in other words?

MICHAEL NYHAN: Correct.

ROBERT MULCAHY: Our decision is only on the --

MICHAEL NYHAN: Only on the size of the lot.

ADAM CUMMINGS: The smallest lot size, I have seen it written several places but then I heard it verbally, 8500 square feet.

MR. THIAGARAJAN: The majority are 85. I think there might be one or two that might be --

MR. BAKER: 85.

MR. THIAGARAJAN: 85.

MR. BAKER: 85 and up.
MICHAEL NYHAN: It looks like the lots, 87 -- most of the lots. There is one.
MR. BAKER: Most of them --
MR. TRZYZEWSKI: Can I make a correction to that?
ADAM CUMMINGS: You can't make any more comments tonight. I'm sorry. It's been closed.
MICHAEL NYHAN: All these back lots are 8700 square feet.
ADAM CUMMINGS: At that plan, right now. It's not finalized, but I'm just trying to find out what the numbers are.
MICHAEL NYHAN: Right.
MR. THIAGARAJAN: I think there might be one, but again, to reiterate, they're making the -- them larger than the previous lots were.
ADAM CUMMINGS: Because saying things are less than 10,000 square feet and greater than 20,000 square feet, also being an engineer, that's kind of vague. So if you then come in with a 4,000 square foot, we have provided that flexibility because you can go down to zero if you wanted to by the wording of that.
MR. THIAGARAJAN: Understand that.
ADAM CUMMINGS: So I just want to find out and put it in the minutes record of what it will --
MR. BAKER: 85.
MR. THIAGARAJAN: Application is for 8500.
MR. BAKER: Bottom line. 85 and up. Greater than 20. We're up to 32. I think 32 is the largest.
ADAM CUMMINGS: That was the next question, what the maximum would be.
MR. BAKER: 32. The cul-de-sac lots are (indicating).
Excuse me. He is right. Because of the golf course --
ADAM CUMMINGS: Well, you have an existing one that we granted a variance for 53,000 square feet.
MR. BAKER: So greater than 20.
ADAM CUMMINGS: Greater than 20, and there will be one that will likely be --
MR. BERNARD IACOVANGELO: 79,000 square feet.
ADAM CUMMINGS: So we'll say 80,000 square feet.
MR. BAKER: Right. The one that you just approved last August was what?
MR. BERNARD IACOVANGELO: 39,000.
MR. BAKER: 39,000.
ADAM CUMMINGS: I wanted to have that discussion with everybody just for the range.
MICHAEL NYHAN: So what's the range?
ADAM CUMMINGS: 8500 square feet up to sounds like 79,000. Not that we're -- we're just adding flexibility is what we're doing.
MICHAEL NYHAN: Correct.
ROBERT MULCAHY: The Planning Board has the final decision.
ADAM CUMMINGS: Yes. The Planning Board, it falls on their shoulders.
MICHAEL NYHAN: On the site.
ADAM CUMMINGS: Fred (Trott), what is your magical calculator doing?
FRED TROTT: It's actually a magnifying glass. I'm old.
ADAM CUMMINGS: Sorry about that.
I don't have any other comments. Conditions will just be referral back to the Planning Board for their final approval. Um, unless anyone has any other ones.
So you all set reading that?
FRED TROTT: Yes.
ADAM CUMMINGS: You just trying to find out what the numbers are on the lot sizes?
FRED TROTT: Yeah. You picking on me because I'm blind?
ADAM CUMMINGS: I didn't pick on you. I'm just asking. I think with that, and that one condition, that we'll refer it back to the Planning Board for their approval.

Adam Cummings made a motion to declare the Board lead agency as far as SEQR, and based on evidence and information presented at this meeting, determined the application to be a Type II action with no significant environmental impact, and Michael Nyhan seconded the motion. The Board all voted yes on the motion.

James Wiesner made a motion to approve the application with proposed conditions, and Michael Nyhan seconded the motion. The motion died by a vote of 3 no to 2 yes (Michael Nyhan and Robert Mulcahy).

DECISION: Denied by a vote of 3 no to 2 yes (Michael Nyhan, Robert Mulcahy) for the following reason:

1. See findings of fact below. It should be noted that the Zoning Board will not hear any requests for any future applications for dimensional lot variances in this subdivision(with the exception of the existing Phase 1) until an application is made to the Planning for final approval of the site plan.

The following finding of fact was cited:

1. The requested variance is significant in nature and can be mitigated by reasonable means by revising the site plan to minimize the amount of lots that do not fall within the allowable size range (less than 10,000 sq. ft. or greater than 20,000 sq. ft.) as stated in the PRD zoning where the maximum range was determined to be 8500 sq. ft. to 79,000 sq. ft. The proposed development has multiple phases with Section 1 being an existing phase with several houses already constructed from the 2004 site plan that was submitted approved. Sections 2 through 6 are conceptual in nature and can be mitigated by reconfiguring the lot development configuration to potentially resolve the need for variances or deviations from the allowable lot size range.

ADAM CUMMINGS: So this was denied 3 to 2. So our findings will be sent in the next five days.

Likelihood on the -- on the Planning Board side of it, you will still go back to the Planning Board, I presume with a revised site plan.

MR. THIAGARAJAN: Thank you.

The 3/25/14 Zoning Board minutes were approved.

The meeting ended at 10:31 p.m.