

CHILI ZONING BOARD OF APPEALS
May 28, 2024

A meeting of the Chili Zoning Board of Appeals was held on May 28, 2024 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: Fred Trott, Philip Supernault, James Wiesner and Chairperson Adam Cummings.

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

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

ADAM CUMMINGS: Any issues with the signage?

The one change I was going to possibly entertain is moving number 7 up just because I'm expecting that one to probably have the most public input. We can, as a Board, leave it the way it is if we can or if we want to move that one to the beginning? No preference?

ADAM CUMMINGS: No preference? Jim (Wiesner), any preference?

JAMES WIESNER: No.

ADAM CUMMINGS: Well, we'll just leave it at the end then.

But I do want to ask the Side Table and Counsel, it is all right if I ask for a motion to go into Executive Session to discuss something very quickly with the Board?

MATTHEW PISTON: Yep.

ADAM CUMMINGS: Audience, we'll be right back in just a few minutes. We're just going to go into Executive Session to talk about a procedural matter.

The Board went into Executive Session at 7:04 p.m.

The Board returned from Executive Session at 7:19 p.m.

1. Application of Jack Hill, 77 Chestnut Drive, Rochester, New York 14624, applicant/owner; for a Land Use Variance to operate a gift shop (not a permitted use) at the property located at 2675 Chili Avenue. R-1-15 District.

Jack Hill was present to represent the application.

MR. HILL: Good afternoon -- or afternoon or evening everyone. My name is Jack Hill. I reside at 77 Chestnut Drive Rochester, New York 14624.

ADAM CUMMINGS: All right. And this is your letter of intent that we received to the Building Department (indicating).

And -- or a letter of intent from Theresa Members. I will summarize it that Theresa (Members) is looking to put the gift shop at this address.

Is that correct?

MR. HILL: Yes, sir.

ADAM CUMMINGS: Previously this one had a Use Variance for a beauty salon and that went back to the '50s; is that correct?

MR. HILL: Yes, sir, the way I understand it.

ADAM CUMMINGS: But the one we're going to talk about that went back to 1985 was specifically a beauty salon and now you're looking for it to be a gift shop at this location.

MR. HILL: Correct.

ADAM CUMMINGS: And then just skimming through, that is your application.

Once again, it did previously have a Use Variance here, but it was specific to a beauty salon or a barber shop.

And you did -- you did try to find other tenants, is that what I'm reading here?

MR. HILL: Yes, sir. You see I purchased the place. I have a couple of rental properties. I had some other intentions, but I feel I was misled in a major league way right from the get-go from the visit with the realtor to the closing. You know, the building is built of a commercial nature. There isn't even a bathtub or a shower.

ADAM CUMMINGS: In terms of a residential use?

MR. HILL: From a residential standpoint.

There is a business right next door to it. There is a -- an apartment complex directly across the street. There are several businesses in that vicinity, in that very near vicinity.

I ended up having to get a commercial loan. I had to purchase commercial insurance. I mean everything was handled on this like as if it was a commercial property for, you know, commercial use and that sort of thing.

So I ended up getting a realtor involved to try to get the place rented or leased as a salon or for anything. Because I did not realize at that time that was a restricted use there.

So with all that said, I ended up getting an offer from Theresa (Members) and she went ahead and signed the lease agreement and then she sent the letter of intent in, you know, thinking

that was her due diligence in what she is required to do from a business perspective. That's when we found that we had a --

ADAM CUMMINGS: That it wasn't --

MR. HILL: We had a problem.

ADAM CUMMINGS: It wasn't a permitted use for a gift shop.

MR. HILL: There is not going to be any requirement to deal with any kind of retrofits. You know, it's going to be strictly for gift baskets and, you know, gifts in nature. Floral arrangements for weddings and funerals and that sort of thing. So it's going to be a pretty, you know, low-key standpoint of an entrance and exit. And that sort of thing.

ADAM CUMMINGS: Okay. And this is an appraisal report you did have in your -- it's up on the screen right now.

Does that look familiar?

MR. HILL: Yes, sir.

ADAM CUMMINGS: Is that where you also said that it was -- I think I read it in here -- um, something in here about it being used for commercial.

Is that where you were first informed of it? Because -- because right down here under the "Property description," it does show that its zoning is R-1-1 Residential single-family -- sorry -- R-1-15. But it does say a property type of a single occupant commercial building with a current use as a salon.

Is that where the confusion came in?

MR. HILL: I didn't really read that. You know, that was -- appraisal was done for getting the loan approved.

ADAM CUMMINGS: Back in '22?

MR. HILL: Yes, sir. I actually closed in October of '22. You see, that was the other thing, is the realtor had a signed lease agreement saying that those people were going to lease from me for the next five years.

ADAM CUMMINGS: Okay.

MR. HILL: And then --

ADAM CUMMINGS: As a salon, you're saying?

MR. HILL: As a salon, the existing, yeah.

And then once the closing came and I went to go and introduce, you know -- because my original plan was to actually come in for a variance to build a garage back there to put a couple of vehicles in. Because I don't have enough room around my residence to build one, so I was going to, you know, go with that approach.

Like I say, I had the realtor -- oh, yeah, you have this. You have to apply for a variance. This will work. This and that.

And next thing you know there goes my renters and I have been trying -- I ended up with a person that signed a one-year lease. And that ended up going -- because he ended up with a lot of financial setbacks. Which was a major financial setback for me, as well.

ADAM CUMMINGS: And then you did provide a statement of income and expense. Walk me through these numbers.

So you did purchase it in October of 2022. You did borrow some money for that. It's got an estimated market value of 140,000. And you tried -- did you try to sell it again?

MR. HILL: No. That right there is filled out under -- you know, because I was not sure if -- you know, what I was filling out here. So I ended up filling it out as if I was actually going through the process of purchasing it.

ADAM CUMMINGS: So --

MR. HILL: Misinterpretation on my part more than anything.

ADAM CUMMINGS: So in this application you have comparables from both Chili and some Greece and Culver Road, I saw.

MR. HILL: Yeah. The bottom line is the appraisal calls all that out for, you know --

ADAM CUMMINGS: Yep.

MR. HILL: -- for getting the approval for lending from the financial institution.

ADAM CUMMINGS: The reason I point that out, one of the criteria we have to do is an economic hardship question as to whether you are getting a return on your investment and --

MR. HILL: That was -- did not come out anything -- because I really lost in a major league way there. I ended up with like \$5,000 in income for the year of '23.

And the parking lot in this place was a disaster. So I ended up putting \$16,000 into repaving the parking lot.

The front window had a crack and -- so that was \$1,000 to replace it. I just had it sealed, which is another \$1400.

So I'm trying to keep it, you know, up and in good condition like that.

ADAM CUMMINGS: So where -- where did the 5,000 in income come from? I thought you didn't have any tenants?

MR. HILL: Well, that was the tenant. I got \$5,000 from him for the year.

ADAM CUMMINGS: Oh, gotchu.

MR. HILL: It was supposed to be 1500 a month times 12.

ADAM CUMMINGS: I see. Okay.

MR. HILL: Yeah.

ADAM CUMMINGS: Okay. And then on the other one, those aren't -- those aren't really into our consideration. That's -- that's your investment decisions that are part of that.

MR. HILL: Right. Exactly.

ADAM CUMMINGS: I wanted to point out that we're looking specifically to the Use Variance.

MR. HILL: Well, that's where Theresa (Members) comes in because she was fine with, you know, paying me 1750 a month and signed a one-year lease in that amount.

ADAM CUMMINGS: And just to be clear on it, so there is currently a Use Variance that was approved back in 1985 and I didn't see a record that there was an expiration on that one.

So I would -- but there are conditions on there. So -- specific to a beauty shop or a hair salon, the hours are limited to 8:30 a.m. to 5 p.m., Monday through Saturday. Thursday and Friday to 7 p.m. No Sunday hours.

Maximum of five additional employees other than the owner.

A sign permit is needed for the existing sign.

And no on-street parking.

So that's what is conditionally approved right now from -- that looks like August 27th, 1985. I just point that out because that is what's permitted there.

Here tonight we're talking about changing that to a gift shop.

Counsel, I have one question for that. If we change this to a gift shop, does that then supersede the previous hair salon so he can no longer have it as a hair salon? Or does it expand it to either one of them?

MR. HILL: That's a good question. I appreciate that.

ADAM CUMMINGS: I don't see an expiration. So typically they go with the land, but I don't know if Use Variances supersede each other when they come to these types of things.

MATTHEW PISTON: Give me one moment.

ADAM CUMMINGS: So once again, compared to the other applications that we're hearing tonight which are all area variances, you have a different set of criteria or decision-making that we have to do. The four criteria that we have, you have to meet all of them. The other ones, they may have one or two that they don't have to meet. But you have to pass all of them -- is what we're looking at here. That is why a Use Variance is extremely difficult to obtain.

PHILLIP SUPERNAULT: At the time you purchased it, what did you know of any conditions for use?

MR. HILL: I did not know of any. I -- I got the -- I have a couple of the copies from the original sale of the place, you know, that had the information -- the place when I looked at it to make the purchase.

PHILLIP SUPERNAULT: So when you bought it, it was being operated?

MR. HILL: It was -- it was -- at that time there was an actual business of a hair salon operating out of it.

PHILLIP SUPERNAULT: Was there a lease involved?

MR. HILL: Then -- then that's what had happened. I had a signed lease agreement that these people were going to continue renting from me for the next five years --

PHILLIP SUPERNAULT: Okay.

MR. HILL: -- and operate that business.

And then once the closing happened, the person -- one of the person's names that was on the lease agreement was allegedly terminally ill. So I didn't question. You know, I just said, "Okay. It is what it is."

Now I've got another obstacle here to try to get it rented back out to another tenant.

PHILLIP SUPERNAULT: Thank you.

FRED TROTT: So the current tenant -- tenant you have has only signed a one-year lease?

MR. HILL: Yes, sir. She has signed a one-year lease.

FRED TROTT: So here is my question. In a year from now she decides -- or business goes belly up, now you're back to square one.

Are we -- would you be better off doing something other with -- other -- other with this piece of property, like try to get it zoned commercial or --

ADAM CUMMINGS: So I -- I think what he -- what the Board member is alluding to is one other option or avenue you may want to pursue -- it isn't relevant to us tonight -- we have no control over this -- is possibly going the same route that the dentist office next door went. Is asking -- or investigating the Town Board's action of rezoning this property. Especially in light of subdivisions that may have happened next door and rezonings that may have happened next door and across street or down the street to see if there might be merit to that.

I think what you're saying there is that would then expand his options of not being restrictive of just a beauty salon or just a gift shop, but it would be anything listed in whatever rezoning he is going towards. If it is a Residential Business District zoning or if it is a General Business District zoning -- which I believe the dentist is a residential -- or a Neighborhood Business District. Which blends -- Neighborhood District -- Neighborhood Business District with the Residential Business District to allow some more professional uses like dentists' office or attorneys.

MR. HILL: That makes all of the sense in the world to me. I think that's a very good idea.

ADAM CUMMINGS: But that would be regardless of what our decision is tonight. It is -- it's a deliberation you would have to make and has nothing to do with us tonight.

MR. HILL: Right. That is something I can pursue on a whole other -- at a whole other time.

ADAM CUMMINGS: Did I buy you enough time?

"No" is an okay answer, too.

MATTHEW PISTON: No.

ADAM CUMMINGS: I can go ahead and open up the Public Hearing.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

KATHLEEN NEDER, 82 Attridge Road

MS. NEDER: Kathleen Neder, 82 Attridge Road.

It appears that on the -- as you're facing the property, on the right-hand side there is a single-family residential home; is that correct?

ADAM CUMMINGS: Correct.

MR. HILL: Yes.

MS. NEDER: And then on the other side. So it seems to me this is primarily a residential area. Whether it's the apartments across the street or the building next door.

I realize on the other side that there are -- there is some multi-family things. But I just -- it seems to me that --

ADAM CUMMINGS: This area is very unique. Because previously it was predominantly small, single-family residential. And then with the advent of Jetview Drive and Market -- Market Street -- or Market Drive -- I'm not sure whatever it is to get to the Wegmans complex -- there has been some spin-off businesses creeping up. The majority are professional offices that are converted homes. Much like the hair salon would be.

But yes, the majority of that area is -- the Comprehensive Plan speaks to some areas of Chili Ave., but I'm not aware of this area specifically of what the future land uses are for this area, other than the inventory of what the existing is.

But yes, good observation. And that is why the zoning is R-1-15 on this property.

MR. HILL: He is a business owner that lives on that right-hand side, as well.

ADAM CUMMINGS: Yep.

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

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

ADAM CUMMINGS: Before we get going, I did want to reiterate those conditions. I think they're reasonable.

JAMES WIESNER: Can I ask one more question?

ADAM CUMMINGS: Go ahead.

JAMES WIESNER: What have you done to try to get another tenant for the use that you -- that the property is actually -- has the license for for the beauty salon? Have you actually tried to get more tenants?

MR. HILL: Yes. What I did is -- on two different occasions, as soon as I purchased the place, I had it out on -- listed for a rental. And the individual was going to -- he wanted it to be a salon. But he wanted to sell merchandise out of it. So salon/boutique.

And then once that fell through where he experienced several hardships himself and -- we decided to go our own ways.

Then I reached out to a second real estate firm, Howard Hanna, and they put this thing on a -- I probably should have printed the email because I get emails every week how many times it was actually viewed. I'm getting things it was viewed as much as a thousand times over a month period.

There was no appointments made to look at it, but there were a couple of appointments made where it was showed and there was some offers for it for significantly less.

But this individual here, she has had this business -- this type of business in the past and she is looking at re-igniting that. She lives just a -- just a block down from that place. It will be convenient for her. When I asked her how long she was going to be interested in renting from me, she said, "Forever."

You know. Now, I know that --

ADAM CUMMINGS: No such thing as forever. No such thing as a guarantee.

MR. HILL: But her intent is to be there for quite some time.

JAMES WIESNER: It's been empty for what, a year now?

MR. HILL: It's been unoccupied for over a year.

JAMES WIESNER: That whole time period of the year you have been attempting to go find somebody else?

MR. HILL: Well, keep in mind I did have a guy that signed a one-year lease. So I -- I dealt with his hardships of not being able to pay rent and that sort of thing.

So once we parted ways, then yes, I had that listed a second time. You know.

And that particular portal covers all real estate agencies. It is not just, you know, specific for Howard Hanna.

JAMES WIESNER: Okay. I just was curious as if -- it takes a little more time to find somebody.

MR. HILL: If there was a question, "Mark, hey, I got to get something," it wasn't just me going to a -- you know, some of the local sites. I went through an actual realtor. In fact, it cost me thousands for that.

ADAM CUMMINGS: This is all anecdotal and sadly, it wasn't included in your

application here. We can take the anecdotes on it, but I can't say it is proof for us tonight.

Written documentation is what we're really looking for here.

MR. HILL: And I know --

ADAM CUMMINGS: Did you pass along that there were hours of operation, conditions or limitations already imposed? I'm guessing probably not.

MR. HILL: No, no. I never again -- I had no idea this stuff -- again, I kind of got into this. I was misled and I did -- yeah, this is more personal to me. Yeah, I got myself into a business move that --

ADAM CUMMINGS: So just the other part to point out as it is documented here, so your lot size is .18 acres which is actually below the square footage requirement.

So just to point out another hardship that you have here, even if this entire building was razed -- meaning demolished and removed -- you can't build on this lot because it's a substandard lot. It's smaller than the zoning district permits.

MR. HILL: Okay.

ADAM CUMMINGS: So you're a pre-existing, nonconforming and have those restraints, as well.

Same with your building area square footage at 780 square feet plus or minus. That is substandard for a residential building, as well, for a single-family. I just want to point that out to everybody to just remember that we're in a unique property here, even compared to the other properties in this area.

Some of the other ones that were not conforming in terms of lot size, two of them, I believe, maybe even three, were subdivided into or merged into a larger parcel to make them compliant. He doesn't have that avenue here.

I just want to point out some of these factors, that he definitely has a unique obstacle -- "set of obstacles" is a good terminology for this and why we're hearing it tonight as the unique case that it is.

Other than that, I don't want to hold up the meeting too much.

Matt (Piston), are you comfortable?

MATTHEW PISTON: So it's -- essentially, it's your discretion. And if that -- you can impose reasonable conditions. And you have the power to modify prior decisions. So it is really -- it's whether or not that's something you have to do.

ADAM CUMMINGS: So what I would say to guide this Board as Chairman is say while those conditions are reasonable for a beauty salon, I think it would be reasonable to say that those would still stay for a beauty shop or a hair salon or a barber shop or whatever terminology you want to have. I don't know what other words would be describing that.

But in terms of the gift shop, or a flower shop -- floral -- florist shop, those obviously may not need the same ones as these. So we would come up with those specific to the gift shop/florist shop/-- florist shop.

Would that be fair enough to say "gift shop" is a generic enough term to fall under a florist gift shop? I don't know how our definitions are that specific or if our definitions are that specific. I don't believe they are. We have listings of types of businesses that go in but not a definition of a gift shop.

But I would say the hours, for instance, on this one you may not want to limit it to no Sunday hours because people might want to buy them on say -- well, I may or may not -- I'm incriminating myself. I bought flowers on Mother's Day -- from my kids -- on the same day as Mother's Day.

But I would say that having hours of operation cognizant of residential areas being next door, so meaning limited to say 9 to 7 p.m., would be reasonable.

And then the same with no more than five additional employees other than the owner because of the number of parking spaces that have traditionally been on this site and we haven't received any complaint from any neighboring properties. And definitely no on-street parking because it's a State road that is fairly well traveled.

And any signage that you need would have to come in compliance or require a variance as needed for what came in.

MR. HILL: Yeah. I see there was one that was denied there towards the end.

ADAM CUMMINGS: Yep.

MR. HILL: But that does have a framing and bracket on the actual structure. So that -- that sign will be there and nothing down on the road or --

ADAM CUMMINGS: Yep. To explain what was denied, we don't allow A-frame sandwich-board signs anywhere in Town.

MR. HILL: I understand.

ADAM CUMMINGS: But the Board of Assessment Review put them up here --

MR. HILL: They put one up there and I was standing -- from the time that was erected, I think it was gusty winds are --

ADAM CUMMINGS: And that's why we don't allow A-frames on Chili Ave. because they're prone to being blown over into traffic and becoming safety hazards.

Is the Board in agreement with those for a gift shop? If -- if the Board was so inclined to grant it.

MATTHEW PISTON: Adam (Cummings), the Town -- the code doesn't define floral or florists, floral shops.

ADAM CUMMINGS: Or gift shops.

MATTHEW PISTON: Or gift shops.

ADAM CUMMINGS: So I'd say they would be synonymous.

MATTHEW PISTON: Correct.

ADAM CUMMINGS: In other words, a shop that sells gifts.

FRED TROTT: So just looking at this Board action, it doesn't show a sign permit.

ADAM CUMMINGS: No. They were denied one.

FRED TROTT: They were denied one.

ADAM CUMMINGS: It is saying here back in 1985, they needed to make an application for a sign permit for the existing sign. I don't know if they ever did that back then.

It was a condition of their approval and I don't know if they did it. What I'm saying is we have current sign code regulations that may not be the same as then. So whatever sign you're planning on doing, work with the Building Department and they would tell you if it was allowed by code or if you would have to come back in for a variance.

MR. HILL: Okay.

ADAM CUMMINGS: Once again, these are all speculation if we approve a Use Variance.

MR. HILL: Sure.

ADAM CUMMINGS: Which we have not decided yet. Is that clear?

All right. I would like to move on.

FRED TROTT: Can we put it as a condition that he goes to the Town Board to get --

ADAM CUMMINGS: No. We cannot make it a condition to ask somebody to rezone their property. We gave him very helpful advice tonight which we didn't have to do --

MR. HILL: Correct.

ADAM CUMMINGS: -- in my opinion.

MR. HILL: Greatly appreciated.

ADAM CUMMINGS: So condition of approval, going to be hours limited to 9 a.m. to 7 p.m. I will say Monday through Sunday. Or if you want to say Sunday through Saturday. But I will say Monday through Saturday.

Number 2 is maximum five additional employees other than the owner.

No on-street parking.

And I would make this subject to a period of -- I think one year is too short. But I would say three years would be reasonable, meaning he has got this -- because we -- we can issue an expiration date, correct? Subject to him coming back for renewal?

MATTHEW PISTON: Yes. You can condition on a specific time frame.

ADAM CUMMINGS: Okay. Thank you.

And this would be -- this would expire after three years from issuance. What that means is if this gets approved and that goes through, after the third year, make sure to come in here and get it renewed. If it doesn't get renewed, it's expired and no longer valid. Which is why the 1985 one is fortunate for you because that one never expired.

MR. HILL: Okay. Now, when you say prior to that expiration date, I just come back over and get another permit? Or --

ADAM CUMMINGS: No. It would be another Use Variance.

MR. HILL: Another application and then that would be for another Use Variance?

ADAM CUMMINGS: Yes. That would be for the same Use Variance.

MR. HILL: Just applying for the same use -- okay.

ADAM CUMMINGS: That is specific to the gift shop as we're hearing tonight.

That also gives you a three-year period to go through other avenues. Meaning if you found a different use that this was more attracted to, then you would come in for a Use Variance for on -- I won't even say what speculation on that would be.

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 an Unlisted Action with no significant environmental impact, and Phillip Supernault seconded the motion. The Board all voted yes on the motion.

James Wiesner made a motion to approve the application with conditions, and Fred Trott seconded the motion. The vote on the motion was 2 yes to 2 no (Fred Trott, Adam Cummings).

DECISION: Denied by a vote of 2 yes to 2 no (Fred Trott, Adam Cummings) with the following findings of fact having been cited:

1. This request is a self-created hardship and did not prove to be an unnecessary hardship for all of the criteria since sufficient efforts were not provided to show that the applicant cannot realize a reasonable return on his investment.

ADAM CUMMINGS: So this one, due to absence here -- we did have a quorum, but it was a 2-to-2 vote by one absence here. He counts as a no vote. So you did not get approved for the Use Variance today, but I would recommend taking some advice that was granted tonight.

I will say the reason for that is you have very hard criteria to meet. The fourth criteria, realize a reasonable return on your investment -- you did prove that you're working hard at that.

And then the hardship being self-created. That one is tough to point it on to the realtors and everybody else. That was a tough one to push out on.

But I wish you luck on it and -- especially to see a business back out there.

Now, to be clear, that was for a gift shop specific. If you did find somebody with a beauty salon, they can certainly occupy that space.

MR. HILL: Boy, I couldn't talk to somebody just to reconsider one last time before I leave, because this has been so -- I mean I know this is my problem, but I just -- I think the way I was misled by these realtors and -- and that sort of thing -- I mean there is a Monroe County portal that calls it out as small retail and nonresidential. I mean --

ADAM CUMMINGS: It is -- you have got a very tough spot to go there and I -- I'm sympathetic to that part, but the answer for tonight is no.

MR. HILL: And your reasoning on the no votes?

ADAM CUMMINGS: I just gave it.

MR. HILL: Was just the --

ADAM CUMMINGS: You didn't prove the self-created hardship. We have to meet all of the criteria. It's definitely self-created.

I know you had some other guidance that was in there. I will say that changing the essential character of the neighborhood, you passed that one because it's been a quote, "retail shop" in the past.

Your reasonable return on investment, you passed that one. You have showed that you need it.

But you have to pass all of them and you didn't pass them all tonight, so. I wish you luck on it and -- and if you ever need to talk to the Building Department or myself as the ZBA Chair for any other questions, feel free to.

Once again, you can come in for a different Use Variance. Just not the gift shop. And we can guide you to what information might help that case.

MR. HILL: You see, because even if -- you know -- you know, no matter what the situation is now, I'm either at the helm of trying to get it out as a salon --

ADAM CUMMINGS: Yep.

MR. HILL: And the gift shop, I mean there -- there's no alterations needed to be done or special installations or anything like that.

ADAM CUMMINGS: Other than it's not permitted and you have got a difficult property there. Even to get it residential, you have got some obstacles to work on.

MR. HILL: Yeah. So you wouldn't -- okay. Thank you very much for your time.

ADAM CUMMINGS: You're welcome. Thank you.

FRED TROTT: He still can go --

ADAM CUMMINGS: You can still go to the Town Board. Yes.

MR. HILL: What is that now?

ADAM CUMMINGS: You can still go to the Town Board for the rezoning application.

FRED TROTT: And get it rezoned so then you could have --

ADAM CUMMINGS: I would recommend researching on -- and talk to Paul (Wanzenried) if you would like to -- what is the allowable uses of the possible zoning districts that I mentioned tonight, which is the Residential Business and the Neighborhood Business Districts, and see if you have that avenue there and some possible uses on that.

MR. HILL: Okay. What kind of time does that take? Is that --

ADAM CUMMINGS: That's -- I couldn't answer that one.

MR. HILL: Good enough. Well, thanks again, everybody.

ADAM CUMMINGS: You're welcome.

2. Application of Danielle C. Smith, 69 Dauntion Drive, Rochester, New York 14624, applicant/owner; for a variance to erect a fence 6'-0" in height (4'-0" permitted) in the front setback (Knights Trail) at the property located at 69 Dauntion Drive. R-1-15 District

Danielle Smith was present to represent the application.

ADAM CUMMINGS: Anything else to add on to your application?

MS. SMITH: No, nothing to add.

ADAM CUMMINGS: We set a high bar for the first one. This is looking at the front yard fence. Where you're looking to have 6 feet. Now, remember in the backyard, you're allowed 6 feet. But you're on a corner lot which is what makes it unique.

MS. SMITH: Yep.

ADAM CUMMINGS: Because you don't really have a backyard.

MS. SMITH: Correct.

ADAM CUMMINGS: You have two sides. So your dark, black line as I'm pointing up here, goes along the boundary on the north side.

Why does it make this little jog in the northeast corner?

MS. SMITH: There is a very large tree there.

ADAM CUMMINGS: That is what I was looking to have you clarify. I thought so when I drove by. It goes along the eastern boundary and then you have got it a little bit off from there.

JAMES WIESNER: So how far off the road is this fence going to be? I think it was in the application as 5 feet.

MS. SMITH: No. I think further than that. It has to be back behind the mailbox. I believe that is 9 feet.

ADAM CUMMINGS: But we're here because the front plane of the house you're looking to go have that -- so you're allowed to have 4 feet on this.

MS. SMITH: Correct.
ADAM CUMMINGS: This here (indicating).
JAMES WIESNER: So if they're allowed from the house -- to the house, that would be the amount that they would be allowed.
ADAM CUMMINGS: Right. Along that side lot line. She is looking to bump it towards the front.
JAMES WIESNER: Now they're looking for an extra 30 feet.
ADAM CUMMINGS: She is allowed the fence there. She just wants it to be a taller fence.
JAMES WIESNER: Okay. That's all I got.
FRED TROTT: Why do you feel the need to have the 6-foot fence?
MS. SMITH: Trying to create privacy. So we have a private space for our home.
FRED TROTT: 4 feet wouldn't do it?
MS. SMITH: You can see over a 4-foot fence. There is a lot of foot traffic on that road and they would be able to see over it, too.
ADAM CUMMINGS: Once again, you could move the fence back along the house and have it 6 feet.
MS. SMITH: That would really narrow down our backyard.
JAMES WIESNER: Can we specify how far in as part of the conditions?
ADAM CUMMINGS: No. We're just here for height tonight.
JAMES WIESNER: We can't put a condition on it?
ADAM CUMMINGS: No. No. We can condition it to be 5 feet in height instead of 6 feet, but --
JAMES WIESNER: But not where they put it?
ADAM CUMMINGS: Right. And once again, if she -- if we deny the front height, she can always put it farther back and narrow the backyard and have it 6 feet if we deny it.
FRED TROTT: How long have you owned this?
MS. SMITH: Oh, I have been there about 13 years.
FRED TROTT: And you need -- and you're asking -- requesting a fence now because?
MS. SMITH: I spend a lot of time outside. I work from home. So I'm there all of the time. I'm really trying to create a private environment for myself and my family.
FRED TROTT: Have you looked at any other ways of doing that with like maybe shrubs?
MS. SMITH: I could.
FRED TROTT: Arborvitaes?
MS. SMITH: I could, but I believe I would still need the variance.
ADAM CUMMINGS: Correct. Even the vegetative fence.
FRED TROTT: I apologize.
ADAM CUMMINGS: We made some people in the past cut their 10-foot evergreens down to 6 feet. They could do it all of the time.
FRED TROTT: But I thought they could be 6.
ADAM CUMMINGS: Correct. They could be 6. But we granted that variance. So she is asking -- and those ones weren't in the front yard. They were side -- so once again, it is unique because you are in the -- in the corner lot.
MS. SMITH: Uh-huh.
ADAM CUMMINGS: By having Daunton and Knights Trail.
MS. SMITH: Correct.
ADAM CUMMINGS: Actually, I would go back to Jim (Wiesner)'s question. Paul (Wanzenried), on your denial where it says "corner lot, no fencing located in yards adjacent to street," you're talking about 4 foot 0 inches permitted in terms of height; correct? I know -- I could bring up the code and say I'm fairly certain it's height on the 500-4(A)(3). But I just want to make sure that that is not a linear dimension horizontally.
PAUL WANZENRIED: (Paul Wanzenried indicated non-verbally.)
ADAM CUMMINGS: It is height.
PAUL WANZENRIED: There are no linear dimensions.
ADAM CUMMINGS: In terms of horizontal? Just vertical?
PAUL WANZENRIED: Other than distances from the setback.
ADAM CUMMINGS: But fences aren't subject to the setbacks.
PAUL WANZENRIED: No, sir.
ADAM CUMMINGS: And what is unique about our code is you got the one -- 54(A)-1 talks about the height for all properties. And then we have specifics for corner lots like this. Which is why we're really only talking about the southern portion today.
Fred (Trott), anything else?

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

TY KIRK, 111 KNIGHTS TRAIL

MR. KIRK: Ty Kirk, co-owner with my wife, Carrie. Resident of 111 Knights Trail. This fence would be very out of character with other properties in the neighborhood. And when I speak of "the neighborhood," I'm speaking specifically of those properties in what is known as the Robinhood Acre tract of -- no one else has a 6-foot fence in a front yard as this would be. Some do have backyard 6-foot fences.
Also, it would inhibit the view of the corner because as these properties are located in the

Gates-Chili Central School District, only elementary school kids are picked up right at the driveway. Any of the middle school kids and high school kids catch the bus at the corner of Dauntion and Knights Trail. And so that extra height would prevent -- whether it be ourselves or whoever purchases the property in the future -- and being a four-bedroom house, it's likely that the future owners would be -- have a family, have children going to school. It would inhibit them to be able to make sure their kids are safely on the bus.

ADAM CUMMINGS: Okay. Thank you.

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

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

ADAM CUMMINGS: I don't have anything else to add. We covered those two that were on there.

Board, any other questions? I don't have any other conditions on this one, because it's just a fence.

Going back to your original question, Jim (Wiesner), I would ask the applicant once again to explain along your southern -- where your garage ends at your driveway, by code, you could run that fence all of the way down and be 6 feet tall.

MS. SMITH: Okay.

ADAM CUMMINGS: Just make sure you're understanding of that.

MS. SMITH: I am. Thank you.

ADAM CUMMINGS: You have it proposed coming out toward the road 4 feet from this right-of-way line, correct?

MS. SMITH: 9 feet.

ADAM CUMMINGS: 9 feet. Sorry.

So you have got 9 feet going here and then your distance going -- that is how far (indicating). I'm saying 27 feet, so that would be around 18, 19 feet? Because your driveway is 27?

MS. SMITH: Yes. Yes.

ADAM CUMMINGS: So that's -- that's really what you're looking for there, is to have that jog come out there.

And then you do have a neighbor to the east, correct?

MS. SMITH: Correct. But a 6-foot fence is on that property line.

ADAM CUMMINGS: So along with the lines of his original question, is we can -- our goal is to minimize variances. We're talking about heights tonight. By code you're allowed to go here (indicating).

I would say it's reasonable to allow you, if you would like, to move it further to the north. I do agree with the concerns that were voiced because I also have experience with those with corner lots -- or sorry -- being the property next to a corner lot that put in a 6-foot fence which -- tried to. They only went with a 4-foot because my driveway was the one blocked from people coming in and children riding across the driveway, not seeing the oncoming cars.

To minimize that, would you be willing to move that -- or entertain moving it further over? Or do you want to stay with your application as you have it?

MS. SMITH: I would be willing to come in further.

ADAM CUMMINGS: Okay. So say instead of 18 feet, going to say move it 10 feet there, so that would make it from the road -- that would be 19 feet from the road. The OCD in me really wants to say 20 because it's a more round number.

MS. SMITH: You could go 18 instead.

ADAM CUMMINGS: I would leave that to Jim (Wiesner).

Would you be in agreement with splitting the difference and cutting that in half? Or no?

JAMES WIESNER: So let me make sure I understand what you just told her. So you -- so by code, she could have --

ADAM CUMMINGS: A 4-foot --

JAMES WIESNER: -- a 6-foot fence.

ADAM CUMMINGS: Yep.

JAMES WIESNER: Just to the south end of the house or the garage?

ADAM CUMMINGS: Where the garage is. So the garage, extending all of the way to the east, to that far line. That can all be 6 feet in height.

JAMES WIESNER: Okay.

ADAM CUMMINGS: She is looking to go have this one bumped out. She wants it 18 feet this way and then the distance from that jog (indicating throughout) down to --

MS. SMITH: I did check, too. The bus stops at the opposite corner. They don't stop at my stop sign. They stop at the one across the street.

And I did check to see from the road if it would create any kind of problem with viewing the intersection and stuff and it does not. We do have a lot of children in the area and I do want to be respectful of that.

ADAM CUMMINGS: So is that what you're looking for?

JAMES WIESNER: So she -- right now by code she can have it at 27.7 feet, which is the length of the driveway?

ADAM CUMMINGS: Yes. Heading east.

JAMES WIESNER: From the south.
ADAM CUMMINGS: Because once again, this is -- east is to the north -- or east is to the -- down is to the right.
JAMES WIESNER: The arrow is to the right?
ADAM CUMMINGS: Yes.
So on this plan, north is to the right and east is down.
PHILLIP SUPERNAULT: So --
ADAM CUMMINGS: I'm saying this for Sandy (Hewlett)'s benefit because she doesn't have the map to put it in the minutes.
PHILLIP SUPERNAULT: So we're basically talking along Knights Trail?
MS. SMITH: Yes.
JAMES WIESNER: So if I were to look on this up here, legally they can have it from this point down (indicating)?
ADAM CUMMINGS: Yes.
PAUL WANZENRIED: Extend the plane to the south.
JAMES WIESNER: Which doesn't seem too bad to me. I just don't like it on top of the road.
ADAM CUMMINGS: So right now she has modified her application to be 18 feet from that right-of-way line boundary instead of 9 feet. So cutting that distance.
From my cursor, going from there to there (indicating throughout).
Is that accurate?
MS. SMITH: Yeah, sure. As accurate as you can be on a projector.
JAMES WIESNER: Okay. Now that I understand a little better, I -- I don't know that I would go with that.
But -- I mean right now for the sake of sight, even for them, to be able to see -- be in the driveway and look to the east, that would give them a better view. But...
ADAM CUMMINGS: Okay.
JAMES WIESNER: I would say leave the application the way it is.
ADAM CUMMINGS: Okay. We'll leave it the way it is. Specifically, we're looking at 6-foot height versus 4-foot.

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: Motion to adopt as it was originally applied for?

Fred Trott made a motion to approve the application, and James Wiesner seconded the motion. All Board members were not in favor of the motion.

DECISION: Unanimously denied by a vote of 4 no with the following findings of fact having been cited:

1. There was a stated concern by the neighbor about potential restriction of line of sight at the corner for pedestrians and children at the neighboring properties.
2. The applicant still has the availability for the taller fence to be in line with their house or the ability for a 4' fence in that front yard area.

ADAM CUMMINGS: That one was denied in terms of that, but you are more than welcome to --

MS. SMITH: Works for me still.

ADAM CUMMINGS: Enjoy the privacy.

MS. SMITH: Thank you.

ADAM CUMMINGS: You're welcome.

3. Application of Robert Uthman, 22 Tarrytown Drive, Rochester, New York 14624 applicant/owner; for a variance to A) Install an egress window with a 7'-0" side setback (10'-0" required). B) Amend variance for structure to be 5.07' North property line (6'-0" Granted 1968) at the property located at 22 Tarrytown Drive. R-1-12 District.

Robert Uthman was present to represent the application.

ADAM CUMMINGS: Anything to add, sir?

MR. UTHMAN: Nothing to add. And yes, I'm Robert Uthman, 22 Tarrytown Drive.

ADAM CUMMINGS: I will go to the map real quick here. And as it shows here, this is where the egress window is going to go?

MR. UTHMAN: Correct.

ADAM CUMMINGS: And the other one --

MR. UTHMAN: Second part is on the north side where the garage is. This survey map,

instrument survey -- I don't know when this was done. I believe this was included in the closing documents when I bought the house.

ADAM CUMMINGS: Yep.

MR. UTHMAN: Like 1988 or '89.

ADAM CUMMINGS: Yep.

MR. UTHMAN: It shows a setback of 5.07 and 5.10 for where the garage is and the Building Department brought to my attention when I submitted the application for the -- the escape window, egress window, that the prior approval was for 6 feet.

ADAM CUMMINGS: Yep.

MR. UTHMAN: So they suggested that I --

ADAM CUMMINGS: To clean it up.

MR. UTHMAN: Just to clean that up so I included that on this application.

ADAM CUMMINGS: So that is going back to -- that garage was part of the -- was it built in 1968 or --

MR. UTHMAN: (Indicating).

ADAM CUMMINGS: That's true. I don't know.

MR. UTHMAN: I bought the property in '88 or '89. That seems reasonable, that is about when it was built.

ADAM CUMMINGS: And once again, for us considering that tonight, that 5.07 would also make the 5.18 feet compliant, too. Not to say "compliant," but it would be encompassed by that one, too, on the western side of it. That is also below 6 feet.

I don't want to speculate on it, but I'm sure it could be just an overhang that was -- they did the inside wall and now we do the outside wall. Who knows what it was. But --

MR. UTHMAN: Before my time.

ADAM CUMMINGS: And this has a surveyor's certification on there, so I feel confident with that number, that we don't have to worry about that.

JAMES WIESNER: Why do some of them have blank pages in here?

ADAM CUMMINGS: That is due to -- this was a -- these were all printed single-sided and when they scanned it, they scanned it double pages so they have the blank pages. We have a couple applications that have a couple extra blanks.

JAMES WIESNER: There is scribbly marks on them.

ADAM CUMMINGS: That is from the light on the scanner here. For instance, that is coming through from a different one.

JAMES WIESNER: Okay. I have no questions.

ADAM CUMMINGS: It is right here.

Jim (Wiesner), to show you -- see where it says in ink the location of proposed window, wall and egress? That's where it bleeds onto the back.

JAMES WIESNER: Yep. I see it.

ADAM CUMMINGS: All right. We have two of them on here. Any questions on the A one, for the egress window? Sounds like no?

JAMES WIESNER: Sorry?

ADAM CUMMINGS: Any questions on the egress window?

JAMES WIESNER: No.

ADAM CUMMINGS: How about B, for the 1968 --

JAMES WIESNER: No questions on that one.

ADAM CUMMINGS: Fred (Trott), on letter A for the egress window?

FRED TROTT: No.

ADAM CUMMINGS: Anything for letter B?

FRED TROTT: No.

ADAM CUMMINGS: Phil (Supernault), anything on A?

PHILLIP SUPERNAULT: No.

ADAM CUMMINGS: Anything on B?

PHILLIP SUPERNAULT: No.

ADAM CUMMINGS: Side Table, anything to add?

MATTHEW PISTON: No.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

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

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

ADAM CUMMINGS: Paul (Wanzenried), it's not often we get egress windows.

He needs a permit for that one, correct?

PAUL WANZENRIED: Yes.

ADAM CUMMINGS: So one condition of approval will be for a building permit from the Building Department for that egress window.

Garage predates me, so I'm not going to worry about that one.

So for Application 3A -- actually, I will do both for SEQR purposes.

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 Phillip Supernault seconded the motion. The Board all voted yes on the motion.

ADAM CUMMINGS: This is specific to 3A. I would ask for a motion to adopt this application with the one condition of approval.

Phillip Supernault made a motion to approve the application with a condition, and James Wiesner seconded the motion. All Board members were in favor of the motion.

DECISION ON APPLICATION 3A: Unanimously approved by a vote of 4 yes with the following condition:

1. Building permit shall be obtained.

The following findings of fact were cited:

1. The requested variances have either been in existence with no adverse impacts or complaints for more than 40 years or will be located under the ground surface and not easily observed from neighboring properties.

ADAM CUMMINGS: Now, 3B for the 5.0 feet for the north setback. I ask for a motion to adopt that application.

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

DECISION ON APPLICATION 3B: Unanimously approved by a vote of 4 yes with the following condition:

1. Building permit shall be obtained.

The following findings of fact were cited:

1. The requested variances have either been in existence with no adverse impacts or complaints for more than 40 years or will be located under the ground surface and not easily observed from neighboring properties.

MR. UTHMAN: As far as the building permit?

ADAM CUMMINGS: So what happened is you submitted a building permit. He denied it. That application, go back to them, even after the verbal tonight -- but you will have decision sheets -- by tomorrow morning I will have them.

So you're good to go to work with them to continue on with that permit and any inspections they need.

MR. UTHMAN: Great. Thank you very much.

ADAM CUMMINGS: Thank you.

4. Application of Rich Lipke, Turf Masters LLC, 18 Charter Circle, Rochester, New York 14606; Filomena Lipke, 18 Charter Circle, Rochester, New York 14606, owner; for a variance to allow a 53.00' setback (160' required existing cell tower) at the property located at 69 Golden Road. R-1-20/LI District

Matt Tomlinson, Rich and Filomena Lipke were present to represent the application.

FRED TROTT: Can I be excused?

ADAM CUMMINGS: I was just going to say, Fred (Trott), I will ask you to recuse yourself for this one because you're the next-door neighbor.

Anything else to add, sir?

MR. TOMLINSON: A couple things.

Matt Tomlinson from Marathon Engineering. We're appearing on behalf of the applicant. The Lipkes are with me here tonight, as well.

I'm sure this Board is aware but we did appear before the Planning Board a couple weeks ago to request subdivision approval, which we were granted conditioned on obtaining a variance from this Board.

The Lipkes purchased the property a couple years ago and it came with encumbrance on it, being a cell tower in the lease. The land was -- that the cell tower is on was not a separate parcel of land. There is a leased parcel defined, but not a separate legal parcel, if you will, or tax parcel that I'm aware of.

And so they would like to keep the west -- excuse me, the east side of the road, which I know there is a typo in my letter -- there is no house on that side -- the east side of the road for future development for a family home of their own. And list the west portion for sale.

One of the things that was requested in initial discussion with Town staff was to create a

legal lot as much as possible relative to the cell tower so it could be assigned a separate tax account number and make it legalized.

However -- and I believe the tower predates the zoning for telecommunications that is within the Town Code. I think it was built roughly in 2002. It was built only 53 feet off that north property line. Unfortunately, the north property line is the only property line that we cannot control when we create the proposed lot.

So the flag lot portion, the setbacks to the southeast and west are all compliant with code as it relates to the current regulations. But we do need to obtain a variance for an existing, nonconforming situation. I believe we have provided justification for all of those, with many of the answers being "Hey, it's there now. We're not changing anything."

But I'm happy to answer any questions that the Board may have.

I do know that with only three, we do need three "yes" votes. So I would ask on the record if for whatever reason there is a question that we can't answer, we would ask to be tabled versus a vote being taken. Because there is no substantial change that we can make as it relates to the setback from the north property line, which again, we do not control. That would be a hardship to our clients in trying to make that happen.

So I -- with that, I would be happy to answer any questions that the Board members may have.

JAMES WIESNER: So as you said, nothing has changed other than you have created a subdivision in that area?

MR. TOMLINSON: That's correct. There is no proposed improvements at all.

JAMES WIESNER: Nothing has changed. 53 feet is off of somebody else's property that has nothing to do with this.

MR. TOMLINSON: And I -- I neglected to mention when the Lipkes purchased the property, the seller retained the lease. So while they own the land underneath it, they do not have control of the lease or any of the -- it was excepted out of the sale and, therefore, they have no control over the terms of it or the conditions as it relates to the tower itself either.

JAMES WIESNER: So does that parcel go to --

MR. TOMLINSON: It will still be owned or retained as a real estate parcel by the Lipkes. It just allows them to sell -- Lot 2 -- I'm sorry. I forget what I numbered it -- unencumbered to another person who may want to do it and not have to deal with the hassle of a cell tower on the parcel of land.

ADAM CUMMINGS: I believe that would be Lot 3.

MR. TOMLINSON: Yes. So they would be able to sell Lot 2 without being encumbered by a cell tower.

ADAM CUMMINGS: Lot 3 would be the one that has this carved out of it.

PHILLIP SUPERNAL: But the tower is in compliance in relation to that lot.

MR. TOMLINSON: Except for the north property line, which is now not a lot line that we can adjust as part of this application. Everything else is, that's correct.

ADAM CUMMINGS: So from that cell tower you have 163 feet shown to the west. 161 to the south.

How about from the cell tower to the east?

MR. TOMLINSON: That's 161, as well.

ADAM CUMMINGS: Perfect. I know technically your front line could be over here (indicating) and you meet that quite a bit. So you have three out of the four. It is just that one. Prevailing wind is coming from the west.

That 160 feet is most likely for fall distance, correct?

MR. TOMLINSON: Yeah. It exceeds the height of the tower by 25 feet as required by code. We did -- subsequent to our submission here -- take a look at whether or not there are any structures within that distance on the north property line. And it appears that there is a shed or outbuilding that is approximately 190 feet to the northeast and then the houses are over 250 feet -- or the other structures are 250 feet away.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

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

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

ADAM CUMMINGS: I don't really have anything else. It's a utility tower that has been used for 22 years. Obviously, if that tower was ever -- you're already 25 feet above it right now. If that tower was ever expanded up, that would change fall distances and things like that.

MR. TOMLINSON: They'd be required to either come back before this Board, or take another pass for approvals.

ADAM CUMMINGS: Right.

JAMES WIESNER: Is this a condition from the Planning Board right now?

PAUL WANZENRIED: Yes.

ADAM CUMMINGS: I think so. I never saw their decision.

PAUL WANZENRIED: Yes.

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 an Unlisted Action with no significant environmental impact, and James Wiesner seconded the motion. The Board all voted yes on the motion.

ADAM CUMMINGS: Motion to adopt this application?

James Wiesner made a motion to approve the application and Phillip Supernault seconded the motion. The motion was approved by a vote of 3 yes with 1 abstention (Fred Trott).

DECISION: Unanimously approved by a vote of 3 yes with 1 abstention (Fred Trott) with no conditions and the following finding of fact has been cited:

1. The cell tower has been on this site for more than 10 years and the fall path of the tower is still away from any residential or commercial structures in the area.

5. Application of Lee Zimmerman, 60 S. Lake Road, Bergen, New York 14416; Ryan and Laura Farrell, 6 Guaymar Circle Rochester, New York 14624, owners; for a variance to erect a covered open porch with a proposed 55'-0" front setback (60'-0" required) at the property located at 6 Guaymar Circle. R-1-15 District Lee Zimmerman was present to represent the application.

Ryan Farrell was present to represent the application.

MR. FARRELL: Good evening. I am Ryan Farrell, owner of the 6 Guaymar Circle, Rochester, New York, with my wife, Laura, who did not attend this evening.

ADAM CUMMINGS: You're looking for a front-yard setback reduction of 5 feet for a porch?

MR. FARRELL: Correct.

ADAM CUMMINGS: All right.

Jim (Wiesner), any questions?

JAMES WIESNER: You said you were the contractor or the homeowner?

MR. FARRELL: I'm the homeowner. The contractor told me this morning he would not make it.

I live with my wife, Laura.

ADAM CUMMINGS: All right.

Once again, just to explain it, we're jumping out that way. So the 61 feet is from the front of your house. That's what is unique about this, is the arrow is being shown -- it is 61 feet to the front of this structure here (indicating).

Is that 61 feet actually to your house or is it to this --

MR. FARRELL: The concrete. The new concrete pour.

ADAM CUMMINGS: Okay. So that would -- that's a clarifying question I have.

From this to your house, does that mean that it is 67 feet?

MR. FARRELL: I would assume so. Lee (Zimmerman) had to answer that question. I believe that is how he measured it, though. What you're seeing there is to the front of deck that we're proposing.

ADAM CUMMINGS: The reason I ask is --

PAUL WANZENRIED: No.

ADAM CUMMINGS: -- I don't get why we're asking for 55 feet when we should just be asking for 61 feet.

PAUL WANZENRIED: No. It is 61 -- it is --

ADAM CUMMINGS: To his proposed deck?

PAUL WANZENRIED: It is 61.1 to the original house foundation.

ADAM CUMMINGS: Okay.

PAUL WANZENRIED: At -- subtract 6 feet from that and you will be at 55.1.

ADAM CUMMINGS: Okay.

PAUL WANZENRIED: We drop the 1 to just make it 55 feet.

ADAM CUMMINGS: I see it here. There is an arrow from the surveyor here --

PAUL WANZENRIED: There you go.

ADAM CUMMINGS: -- that shows from here to here (indicating) with that arrow.

MR. FARRELL: I apologize. There was miscommunication from Lee (Zimmerman) to me. I apologize.

ADAM CUMMINGS: Okay. Thanks, Paul (Wanzenried).

I didn't hear any other questions.

PHILLIP SUPERNALT: No questions.

ADAM CUMMINGS: Side Table, anything else other to add than correcting me?

PAUL WANZENRIED: No, sir.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

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

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

ADAM CUMMINGS: One condition of approval is you will have to get a building permit. You already started that process. Just finish it after -- you already had that denial. If we approve it tonight.

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 Phillip Supernault seconded the motion. The Board all voted yes on the motion.

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

DECISION: Unanimously approved by a vote of 4 yes with the following condition:

1. Building permit shall be obtained.

The following finding of fact was cited:

1. The variance is minimal and will not encroach or obstruct any sight lines or vision of pedestrians and vehicular traffic in the public right-of-way.
6. Application of Sammie E. Hannah, 119 King Road, Churchville, New York 14428; applicant/owner; for a variance to erect an ADA structure with a proposed 40.50' front setback (75'-0" required) at the property located at 119 King Road. R-1-15 District.

Paul St. Denis was present to represent the application.

ADAM CUMMINGS: Anything else to add?

MR. ST. DENIS: Actually, I'm just -- my name is Paul St. Denis. I'm Sam and Pam's son-in-law.

ADAM CUMMINGS: Okay.

MR. ST. DENIS: They're visiting family in Alaska. It's cold there. So I stayed home. My wife is there.

Basically, my sister-in-law has a ramp right now in front of the house. It comes out -- I don't know -- from the house probably 20 feet or so, maybe farther.

So we -- we just want -- we want to totally remove that structure and put on a front porch that will have an elevator that will be covered. And that will only come out 6 feet. The roof will only come out 7 feet. I'm not sure on here where it says 40 feet.

I haven't actually seen the plans myself. It is only coming out a total of 7 feet off the front of the house.

ADAM CUMMINGS: I'm seeing that they have got it 5.6 feet here and 4.0 from here, so that would be a total of 9.6 feet.

MR. ST. DENIS: It is probably for the steps, I'm assuming, on the front there.

ADAM CUMMINGS: It is measuring out to the steps.

MR. SLACK: Yep. So that is what it is.

ADAM CUMMINGS: All right.

JAMES WIESNER: This will actually be less -- less of a setback, less imposing than what is already there from what I see.

MR. ST. DENIS: Yes. It will be so much nicer.

JAMES WIESNER: Right now it is half your front yard. Now it will be almost like a porch on the front yard.

MR. ST. DENIS: Yes, a porch on the front yard.

COMMENTS OR QUESTIONS FROM THE AUDIENCE: None.

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

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

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 Phillip Supernault seconded the motion. The Board all voted yes on the motion.

ADAM CUMMINGS: One condition of approval which I should have said earlier -- but goes without saying -- they will need to obtain a building permit. They already started it. They got denied and came here. So just have them complete that process and that will be one condition that they must obtain a building permit, if this was approved.

Now I would ask for a motion to adopt this application with that one condition?

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

DECISION: Unanimously approved by a vote of 4 yes with the following condition:

1. Building permit shall be obtained.

The following finding of fact was cited:

1. The variance is minimal is actually further from the road than the previously installed ADA ramp that existed on this property, but never had any issues or complaints.
7. Application of Gizzi Real Estate Holdings LLC., 3850 Buffalo Road, Rochester, New York 14624 applicant/owner; for a variance to existing conditions based on new zoning district and proposed use. A) Setback to interior lot line 30.667' existing (40'.00" required). B) Lot width 149.00' (150'.00 required) at the property located at (Lot 1) 4415 Buffalo Road. RM District.

Kris Schultz was present to represent the application.

MR. SCHULTZ: Good evening. My name is Kris Schultz representing the applicant on this. I have offices at 129 South Union Street in Spencerport, New York.

This is a redevelopment of the site. If you recall, existing building on the site was a two-story professional office building and they sent demands for tenants, basically wanting one-story, not needing a two-story.

The building unfortunately lost all its tenants and it got to point where it was a vacant building. They needed to figure out what they could do.

So this was -- this was planned out to involve both the existing parcel and the parcel to the west.

Just to give you a little background how we got to this point, um, the parcel to the west was originally zoned R-1 Residential. And this parcel, both these pieces were Commercial (indicating).

And then the idea was we created this property line, leaving 100 foot, which is the minimum requirement for a commercial lot and there is a one-story professional office building proposed on Lot 2.

Townhouses were being proposed on here (indicating).

And we subsequently went through and this portion of the property (indicating) was rezoned to Multiple Residence to allow both the conversion of this building (indicating) to apartments and allow the townhouses to come in.

We later also -- after rezoning -- obtained approvals from the Planning Board to subdivide and remove this line (indicating). So this would be one whole parcel.

The recording, filing of that subdivision map was held based on the need to do the demolition and to do the remodeling on this building (indicating). Basically this kept it as a separate site. All of the parking and access remain the same. There will be an addition put on the south side of the building for access and storage as part of the code -- to meet code for apartments.

But this kept it easier for them to take care of the first phase, which was always going to be the renovation of the building.

ADAM CUMMINGS: So can you point out where is the 149 feet and where is the 30.8 feet? I don't want to confuse it tonight. That's all we're worried about tonight.

MR. SCHULTZ: So 149 is this one right here (indicating). And where we need 150.

ADAM CUMMINGS: Yep.

MR. SCHULTZ: We had 249 originally and took off 100 and left 149.

ADAM CUMMINGS: The reason you have to have 149 is you have to have 100 for that commercial --

MR. SCHULTZ: Correct.

ADAM CUMMINGS: So then meaning if you didn't have that, you would be in for a variance for that commercial lot being less than 100.

MR. SCHULTZ: That's correct.

ADAM CUMMINGS: Thank you.

MR. SCHULTZ: And again, this was the line as it exists today, which will go away soon. And this was a pre-existing side setback of 30 and change. This was the other variance for this bump-out on the building.

So no changes in the proposed building are tied into the requests for variances. It's just the sequence of running this all through over the last couple years.

ADAM CUMMINGS: So that line disappears -- sorry to interrupt you real quick. So that line disappears on the -- the west there?

MR. SCHULTZ: This will disappear once we record the approved subdivision map. We actually have -- the Planning Board approved the removal of this line (indicating), so this whole

parcel would be considered a single lot.

ADAM CUMMINGS: With a greater than 150-foot frontage?

MR. SCHULTZ: Yes. You would add another 300 and -- 300 and --

ADAM CUMMINGS: Again, that's why I'm confused why you're here then for the lot width.

MR. SCHULTZ: That is based on this being a redevelopment site where you want to make sure we supply the Planning Board with a site plan specific for the --

ADAM CUMMINGS: I see.

MR. SCHULTZ: -- for the demolition and remodeling of this building without --

ADAM CUMMINGS: So where that line --

MR. SCHULTZ: Yeah. Without having to go through and detail everything else here. It's hard to have a site plan and show only development on one part of that lot. They like to look at the whole lot as what is happening. So it was just --

JAMES WIESNER: So that is temporary then?

MR. SCHULTZ: It will be gone. Basically, they completed the demolition and --

JAMES WIESNER: So in order for them to move forward?

MR. SCHULTZ: Correct. Right. So they have completed the demolition and now they're at the point where they want to get a building permit and start actually doing the renovation. We're in front of the Planning Board. They said okay.

JAMES WIESNER: So why was the front -- so you have Lot 1 and to the right of it's Lot 2?

MR. SCHULTZ: Yep. Yep.

JAMES WIESNER: So why was -- that's just a parking lot, isn't it?

MR. SCHULTZ: Yep. But we're proposing a one-story professional office building in here (indicating). And that was part of it.

So the idea was this would go (indicating) -- and at the time they actually had a physician that wanted the one-story, easy access. So this building was actually going to have two professional suites basically set up for two docs or an attorney or whatever. So they completed this (indicating).

But, you know, this -- this property has been going on for so long without any revenue coming in. It is very important, you know, to get this turned over.

JAMES WIESNER: So that building is not shown on Lot 2?

MR. SCHULTZ: There is nothing proposed on Lot 2 today. But part of the original overall plan --

ADAM CUMMINGS: You may in the future at the Planning Board level bring that in?

MR. SCHULTZ: Yes. Yep. And it would be a stand-alone. And certainly, as part this, we have a single access here and here (indicating). So there is shared access and parking and everything else.

So the site plan for Lot 1, on itself, stands alone. There is sufficient parking and access and utilities.

JAMES WIESNER: So this is just a subdivision? There's no change to the building on Lot 1?

MR. SCHULTZ: For the site plan, there is an addition being put on the bottom for access. And to provide storage. Every time you do apartments, you also have to have storage associated with it. So there is a small addition on the side.

JAMES WIESNER: But to the setbacks --

MR. SCHULTZ: It will meet that.

ADAM CUMMINGS: Kris (Schultz), where is the 30.8?

MR. SCHULTZ: It's off the existing line, as it existed for 50 years, to that building.

ADAM CUMMINGS: And you're not doing any proposed additions into that area?

MR. SCHULTZ: No.

ADAM CUMMINGS: On anywhere on that west side of the building?

MR. SCHULTZ: No. No.

ADAM CUMMINGS: That was your question.

JAMES WIESNER: Yes.

It's not as a result of the change in zoning?

MR. SCHULTZ: No. No. This is almost like pre-existing, nonconforming.

ADAM CUMMINGS: So -- so once again, you -- you did an interior line subdivision to make Lots 1 and 2.

MR. SCHULTZ: Correct.

ADAM CUMMINGS: Just to keep belaboring that point, because you have an existing line that is 50 years old. One could say -- it's an avenue you could go -- you still have to do a subdivision -- and move it further to the west and get 150 feet and get 40 feet. So you move it 10 feet to the west.

MR. SCHULTZ: Right. This is the subdivision map that was provided to Planning Board and approved last fall.

You can see this line (indicating) is -- you know, dashed as going away.

ADAM CUMMINGS: Yep.

MR. SCHULTZ: So this will be one lot.

ADAM CUMMINGS: Yep.

MR. SCHULTZ: Zoned multiple-family residential.

ADAM CUMMINGS: Understood. I just want to point that out, that would be a whole

other step.

JAMES WIESNER: That's going before the Town Board or --

ADAM CUMMINGS: Town Board already rezoned it, correct?

MR. SCHULTZ: Yes.

ADAM CUMMINGS: So now the Planning Board for the site plan. But specific to this variance, it's unique that they're going to be here and it's going to be temporary in nature if they proceed with this entire plan and it actually happens. But they're stuck with a property line as it is, which is why we're hearing these variances tonight.

MR. SCHULTZ: Yep. So the process of going through this and trying to figure out the redevelopment and how to do it has been orchestrated with the Town Planning. We kind of outlined, do this step, do this step and do this step. And this was in keeping with that plan.

ADAM CUMMINGS: And the one last question with the 40-foot setback, that is the existing building that has been there for a couple of decades?

MR. SCHULTZ: Yes.

ADAM CUMMINGS: And you're not proposing any additions there?

MR. SCHULTZ: Nope.

ADAM CUMMINGS: So even if you didn't do the interior one, talking about the 150 feet, you would still more than likely be here in front of us for the 30.8 --

MR. SCHULTZ: Correct.

ADAM CUMMINGS: -- for the pre-existing one that never got a variance for the past couple of decades?

MR. SCHULTZ: Right.

ADAM CUMMINGS: All right. I think that was good. Clarified it.

Side Table, anything to add?

PAUL WANZENRIED: Just that make sure when that subdivision eventually goes through, that the 30. some odd feet to the western property line is to that parcel number and won't be -- when that subdivision is filed, the interior lot line goes away; right?

ADAM CUMMINGS: Right.

PAUL WANZENRIED: You don't want that 30 to the west.

MR. SCHULTZ: To the west line.

PAUL WANZENRIED: Somehow you have to verbalize that in your condition.

ADAM CUMMINGS: Well, that is tough to do when we don't even know the tax IDs.

JAMES WIESNER: I did not fully hear what he said.

ADAM CUMMINGS: So what is happening here, we're doing it to the existing lot line that Kris (Schultz) depicted there on the western boundary.

MR. SCHULTZ: So as long as you make it clear that it is for Lot 1 --

ADAM CUMMINGS: Yep.

MR. SCHULTZ: -- then you're fine.

ADAM CUMMINGS: Lot 1 as it is depicted on -- can you tell me the date of that plan?

MR. SCHULTZ: Sure.

This is January -- January 9th, 2023.

ADAM CUMMINGS: So it would be Lot 1 as depicted on the January 3rd, 2023 subdivision plan from --

PAUL WANZENRIED: Have they generated tax ID numbers for that parcel -- Lot 1 and 2?

MR. SCHULTZ: Yes.

ADAM CUMMINGS: Oh, even better.

No. We can't go off that, because they may carry it over when they expand it over and keep same the tax ID. I have learned that lesson now. Don't use the tax ID as a reference because the Assessors change them.

MR. SCHULTZ: Yeah, you're safe if you refer to it as Lot 1 --

ADAM CUMMINGS: On that map.

MR. SCHULTZ: -- on the 4415 Buffalo Road Subdivision.

You'll notice that in the resub, the County changes the verbiage from Lot 1 to AR-1.

ADAM CUMMINGS: Yep.

MR. SCHULTZ: So there is no confusion that Lot 1 is gone basically.

ADAM CUMMINGS: Yep. All right. I'm good.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

ADAM CUMMINGS: I will specify it out front, we're not the Planning Board. We're not considering Planning Board actions tonight.

It is specific to these variances only. The 150 feet versus 149 feet and the 40 feet versus 30.8 feet.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

LINDA SCHMALFUSS, 35 Attridge Road

MS. SCHMALFUSS: Good evening. Linda Schmalfuss, 35 Attridge Road. Our property is adjacent to this. When I use the pronoun "we," I'm referring to my husband, Bill, and myself.

We are requesting that this Board deny the application of Gizzi Real Estate Holdings for a variance in the interior setback not meeting the 40-foot requirement.

The rezoning from GB to MR has affected the market value of our home. Our assessment was reduced by several tens of thousands of dollars due to the Berkeley Place construction project on 4415 and 4423 Buffalo Road.

Granting this variance would also further negatively affect the marketability of our home.

This property, which has been referred to as Lot 1, has several other options. One, is moving the 16 -- 1160-foot addition which they want to put on the south side --

ADAM CUMMINGS: I will interrupt.

MS. SCHMALFUSS: -- to the west side of the building.

ADAM CUMMINGS: The only way that would alter it for our variance today is if he put it on the west side of the building reducing his variance.

That has nothing to do with what we're hearing tonight.

MS. SCHMALFUSS: Repeat that again?

ADAM CUMMINGS: So the addition that they're looking to do on the south of the building towards your house there has nothing to do -- they're within code to do that. That has nothing to do with us tonight. We are only looking at the setback to the west. So that property line to the west, the 30.8 feet that they want to do it where they're supposed to be 40 feet, the addition is not going on the west side of the building.

So that doesn't pertain -- that addition, while it might impact your property and -- I acknowledge that that is a Planning Board measure. Not a Zoning Board. So that is no relevance tonight. So I will interject and keep you on point of just the variances tonight.

MS. SCHMALFUSS: So we cannot request that the addition being proposed be on the -- that other side?

ADAM CUMMINGS: It can't be -- he is not proposing to put it on the west side. So whether he puts it on the --

MS. SCHMALFUSS: Whatever we want to say about the addition --

ADAM CUMMINGS: Has nothing.

MS. SCHMALFUSS: -- has nothing to do with this?

ADAM CUMMINGS: Yep.

MS. SCHMALFUSS: Okay. Okay. Well, that then alters a lot what I'm going to say. Let's see.

ADAM CUMMINGS: I don't mean to cut you off.

MS. SCHMALFUSS: Yes.

ADAM CUMMINGS: I'm just trying to keep --

MS. SCHMALFUSS: Keep us on point. I understand. I understand.

ADAM CUMMINGS: We do not have a lot of jurisdiction on any of those. That's the Planning Board.

MS. SCHMALFUSS: Well, I -- I guess I will continue and say that Gizzi Real Estate Holdings is not new to the development -- is not a new developer to the Town of Chili. And is aware of many of the zoning code requirements.

This developer often willfully chooses not to adhere to the Town and State's enforcement requirements but submits multiple applications for variances.

These requirements by the Town promote fire and life safety. So this developer, in my opinion, and many others, does not exhibit trustworthy business practices.

So again, we are requesting that you deny the application for the setback interior lot line of 30.667 feet variance.

ADAM CUMMINGS: I would also like to point out another avenue of what our jurisdiction is here, is we evaluate the applications, especially area variances, specific to the property. Not the property owners. Not who they are.

Same would go as if you were in front of us for an application. Our variances go with the land in perpetuity. So it doesn't matter who the people are.

An example would be if you wanted to put a pole barn on your property and you needed a side setback. That side setback for that structure stays with the property forever. Not just that it is yourself doing it or myself applying for it and me being a nice guy -- it stays with the land forever.

And I just want to point that out to everybody, while Gizzi Real Estate is the applicant in here and is a developer throughout the Town, this is specific to this lot, Lot Number 1, at 4415 Buffalo Road. And whether it is Gizzi Real Estate or Trump Holdings or whatever it is, that goes with the property and that's what we're evaluating today. Just the 150 feet required and the variance request of being 149 feet, which is 1 foot less for the lot width and the interior lot setback is 30 -- 30.8 feet as opposed to 40 feet that is required.

By all means continue on. I just want to make sure we educate that we're very -- our jurisdiction is very prescribed of what we're here for. It is specific to the land. And that's what we're evaluating.

KATHLEEN NEDER, 82 Attridge Road

MS. NEDER: I guess I'm somewhat confused. And, sir, Mr. Schultz, if you could perhaps show me again, because we were not under the understanding that --

ADAM CUMMINGS: I'll do it, Kris (Schultz).

MS. NEDER: You're requesting the -- the interior setback is on the south side of the building but -- is where they're requesting?

ADAM CUMMINGS: No.

I can talk loud enough.

MS. NEDER: It has not been made very clear.
ADAM CUMMINGS: It is on west, correct, Kris (Schultz)?
MR. SCHULTZ: That's correct.
ADAM CUMMINGS: I thought I said west. West is the backside of the office building.
MS. NEDER: Yes. I understand where the west is.
ADAM CUMMINGS: But that is where they're looking to go. So this is lot -- Kris (Schultz), correct me if I am wrong, this is the existing lot line (indicating).
MR. SCHULTZ: Yes.
ADAM CUMMINGS: And this is the western lot. That is where the 30.8 feet or 30.9 but -- 30.8 is coming off this one (indicating) and then the 149 feet is up here (indicating).
MS. NEDER: I understand that.
ADAM CUMMINGS: But it's this one. And the addition they're proposing is off this site (indicating). But our variance is only for this (indicating). They're compliant with setbacks off of this (indicating). That is why there is no variance.
MS. NEDER: Setback from here to here is required -- is that correct -- to be 40?
ADAM CUMMINGS: I believe so. 40 feet from there. So he could put a building up to about here (indicating). He would be allowed to put his building to about here (indicating).
MS. NEDER: Because the correct setback of the building is --
ADAM CUMMINGS: Currently, the building -- I don't know how far it is, but this is 102 feet to here (indicating).
MS. NEDER: It is only 36 feet here (indicating).
ADAM CUMMINGS: That's from here to here (indicating).
MS. NEDER: I understand that.
ADAM CUMMINGS: So if we're going here (indicating), it might be slightly less than 102, but it -- it is greater than 40. So that would be about 100 feet.
MS. NEDER: These are the parking spaces?
ADAM CUMMINGS: Yep.
MS. NEDER: Because this (indicating) is where they want to add the addition on.
ADAM CUMMINGS: Correct.
MS. NEDER: Which is why I'm trying to figure out -- having the addition, which is where I thought they had required the interior setback to change.
ADAM CUMMINGS: No. No. The interior setback we're considering is just this one (indicating). That is because -- because of this line (indicating) -- and that is the story I was trying to tell -- this -- regardless of them trying to do anything, they would have been in -- whatever was -- even the old doctor's office really could have -- should have been coming in here for a variance request for that.
So that is fixing what was in the past. But then this line (indicating) is going away --
MS. NEDER: Correct.
ADAM CUMMINGS: -- so this variance goes away.
PAUL WANZENRIED: Mr. Chair?
ADAM CUMMINGS: Yes, sir.
PAUL WANZENRIED: Just so we're clear, 30 feet on the west property line is a requirement of the RM District.
ADAM CUMMINGS: Right.
PAUL WANZENRIED: Parcel previously was a GB.
ADAM CUMMINGS: Oh. So it didn't even need the 30 -- or the 40.
PAUL WANZENRIED: Correct. And it is 30 feet off the rear property line.
ADAM CUMMINGS: Yep. Off the west property line.
PAUL WANZENRIED: No. No. It is 30 feet -- the rear setback is 30 feet.
ADAM CUMMINGS: So you're saying the rear setback is the south property line.
PAUL WANZENRIED: Correct. The south property line which we consider the rear, that will be 30 feet. That is required in the RM District.
ADAM CUMMINGS: Gotchu.
But once again, not part of tonight.
PAUL WANZENRIED: Correct.
MS. NEDER: Okay. That changes some of my comments. Thank you.
ADAM CUMMINGS: Thanks, Paul (Wanzenried).
MS. NEDER: I am Kathleen Neder. I'm at 82 Attridge Road.
I'm asking that you deny the request for the zoning variance, setback on the interior lot, because eventually that will go away anyway. They own the same land.
I'm going to cut down my comments here.
But the zoning code standards were put into the code for a very specific reason and should be followed as written. The zoning standards were expected -- enacted so that all are treated fairly and equally by a buffer and so that everyone can enjoy their property without adversely being negatively impacted. One party should not be favored over another.
By allowing a variance here when not needed, um, you will be allowing this developer to continually negatively impact and burden the homeowners and residents of Attridge Road more than they already have.
We have already been told by the Assessor that this development has decreased our property values. Our assessment values have been drastically lowered. We feel we have been harmed by that.
The variance is, again, not needed because it is all part of one parcel. Um, it -- it is

impacting the neighborhood negatively. Um, we -- and I understand that you have pointed out the change here, but we really feel -- again, I know it is the Planning Board, but the addition should be on the west side versus the south side so it doesn't impact us. I realize you're not ruling on this.

But we don't feel that allowing special favors due to their poor architectural design and plans --

ADAM CUMMINGS: I'm -- I'm just -- you're going into Planning Board and Architectural Advisory Committee and --

MS. NEDER: This is why they're requesting the variance, because of their plans.

ADAM CUMMINGS: No. They're requesting it for subdivisions that they have already filed that have been approved and are coming in front of us. Not about the buildings and not about --

MS. NEDER: I do understand that, but the subdivisions are of their own making because subdivisions are actually going away. And it actually has already been voted to go away. But they just haven't filed the documents.

ADAM CUMMINGS: So in our eyes it hasn't happened. That is the precarious spot we're in here. It may not happen. I have experienced that, where they propose subdivisions that never come to fruition.

MS. NEDER: Well, I do feel that this is harming the majority of the neighborhood. We're currently not even allowed to put up sufficient fencing so as to block this development. As in a 6-foot or 12-foot fence. They shouldn't be allowed to further destroy our property values.

I do personally believe that these many variance requests, particularly these two tonight, are both the punitive and retaliatory measure by the developer to further affect negatively the neighbors of Attridge Road.

I won't go into the skirting of the lines of the zoning code and the midnight activities, but I would ask you and implore you that there are many red flags here. They have a history of not seeking permission but asking for forgiveness after the fact.

I just implore you to do the right -- morally and ethically right thing to protect the residents by denying these variances.

Thank you.

ADAM CUMMINGS: Thank you.

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

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

JAMES WIESNER: This subdivision has been approved by the Planning Board?

ADAM CUMMINGS: This Lot 1 and 2 has been approved by the Planning Board.

JAMES WIESNER: With a condition that they get the zoning --

ADAM CUMMINGS: That they get variances from us for the lot width along Buffalo Road and the lot width on the west property setback.

JAMES WIESNER: So they're just waiting our approval to finalize it.

MR. SCHULTZ: Yes.

So my sequence would be your approval and we go through back to Planning next month and seek site plan approval for Lot 1.

That would allow them to start the renovation. We could file the subdivision map and merge the parcels.

ADAM CUMMINGS: Right.

And once again, that is speculative, that we're not going to worry about tonight, because this Lot 1 could still stay as it stands without an addition, with the existing building. With the rezoning, as Paul (Wanzenried) pointed out, we'd have to address that west setback and with the Lot 1 and Lot 2 subdivision, we have to address the lot width. So that future plan to the west can -- could never happen, but at least we have fixed the variance -- or we have considered the variances for Lot 1 for this specific subdivision.

Is that accurate enough?

JAMES WIESNER: What was Paul (Wanzenried) saying about the 40 feet, 30 feet?

ADAM CUMMINGS: With the old zone -- it was under General Business -- they met it because you only need 30 feet and they have 30.8 and the RM requires 40 feet.

MR. SCHULTZ: The Town Board rezoned it. Now we have to go based on Multiple Family Residential.

ADAM CUMMINGS: So that actually -- by going to RM, it actually made the setbacks bigger. If it had stayed GB and not been rezoned, you wouldn't be here for that. You would be here for the lot width.

But you could have a building that could be --

PAUL WANZENRIED: No.

ADAM CUMMINGS: No, they couldn't be here for that, Paul (Wanzenried)?

PAUL WANZENRIED: No. There is no lot width requirement under a GB Zone.

ADAM CUMMINGS: Oh, that's right. You wouldn't be here at all if you have a rezoning.

MR. SCHULTZ: We would have a vacant building for another ten years.

ADAM CUMMINGS: No. We're not here to consider that. That was rezoned and this was somebody else's.

JAMES WIESNER: Already been through Planning Board. Already through Town Board. We're the last stop.

ADAM CUMMINGS: For this specific one, yeah. And this was due to -- due to the rezoning change that -- that had nothing to do with us.

We'll do each of these separately, but -- I will do SEQR together and I will do the decisions individually.

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 an Unlisted Action with no significant environmental impact, and James Wiesner seconded the motion. The Board all voted yes on the motion.

ADAM CUMMINGS: This will be 7A, the interior lot setback as it was publicly noticed, 30.667. Sounds like surveyor speak to make sure we have accurate values, to make sure we have a little bit of buffer on soffit overhangs and things like that. So that's the one we're going to decide on first. I don't have any conditions.

Motion to adopt this application for that one -- 7A.

On Application 7A, James Wiesner made a motion to approve the application with a condition, and Fred Trott seconded the motion. All Board members were in favor of the motion.

DECISION ON APPLICATION 7A: Unanimously approved by a vote of 4 yes with the following condition:

1. Building permit shall be obtained.

The following findings of fact were cited:

1. For Lot 1 of 4415 Buffalo Road, as shown on the subdivision plan dated 1/9/2023, the proposed variance (A.) Will not significantly change the neighborhood character and was the result of the rezoning action by the Town Board. The previous zoning for this parcel required a 30' setback, which was provided at the time, more than 20 years ago; and the proposed variance.
2. (B.) Is minor in nature and achieving the limits to avoid a variance in this case would have resulted in a variance required for the adjoining property owned by the applicant.

ADAM CUMMINGS: Now moving on to 7B. That's the lot width. So reducing it from 150 feet to 149 feet. So that's a 1-foot reduction. And that's along Buffalo Road. Lot width. Ask for motion to adopt that application, 7B.

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

DECISION ON APPLICATION 7B: Unanimously approved by a vote of 4 yes with the following condition:

1. Building permit shall be obtained.

The following findings of fact were cited:

1. For Lot 1 of 4415 Buffalo Road, as shown on the subdivision plan dated 1/9/2023, the proposed variance (A.) Will not significantly change the neighborhood character and was the result of the rezoning action by the Town Board. The previous zoning for this parcel required a 30' setback, which was provided at the time, more than 20 years ago; and the proposed variance.
2. (B.) Is minor in nature and achieving the limits to avoid a variance in this case would have resulted in a variance required for the adjoining property owned by the applicant.

ADAM CUMMINGS: So these were approved. Thank you for working on that one. And I guess just keep the Planning Board and Town Board apprised. But I'll be sure, as Chairman, to check on it when that -- or if that subdivision line gets dissolved, to make sure that setback doesn't carry over to the west.

MR. SCHULTZ: Right. Thank you.

ADAM CUMMINGS: Thank you.

James Wiesner made a motion to accept and adopt the 4/23/24 Zoning Board of Appeals meeting

minutes, and Fred Trott seconded the motion. All Board members were in favor of the motion.

ADAM CUMMINGS: Next meeting -- I just want to point out the next meeting for us is June 25th, but there is an asterisk because if there is a Presidential primary, we're going to be moving the meeting.

JAMES WIESNER: (Inaudible).

ADAM CUMMINGS: I think so, but I couldn't find the answer anywhere on Google.

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

The meeting was adjourned at 9:00 p.m.