

ZONING BOARD MEETING  
TUESDAY—OCTOBER 25, 2022  
ZONING BOARD OF APPEALS  
7:00 PM TOWN HALL  
1529 NYS RTE 12  
BINGHAMTON, NY 13901

Present: James Brewster, Chairperson  
Aleta Kinne, Vice Chairperson  
Scott Smith, Board Member  
Jon White, Board Member  
Ed Miller, Board Member  
Dan Wolters, Alternate Board Member

Also Present: Nicholas Cortese, Attorney  
Gavin Stiles, Ordinance Officer  
Kari Strabo, Zoning Secretary

James Brewster: Ladies and gentlemen, thanks for coming. We have a full plate tonight, I'm going to call the Town of Chenango Zoning Board of Appeals meeting to order now at 7:04. First order of business is we'll have a roll call for attendance.

Kari Strabo: Mr. Wolters; present, Mr. Miller; present, Mr. White; present, Mr. Smith; present, Mrs. Kinne; present, Mr. Brewster; present.

James Brewster: Mr. Cortese, we have a quorum, we're good to go. There's some Board administrative things I wanted to get into here. Just as a reminder, it is a practice of the Town that if there needs to be a recusal that you must leave the room. I was incorrect at one time when somebody had to leave the room but I let them stay, I wanted to correct that. Also, Board Members please be reminded that we should not be engaging with the code officer on an application directly. Paperwork is one thing, but we should not be discussing applications directly with the code officer outside of engaging with him in this meeting. Even though we have a very friendly code office and they try to help out folks with these applications, in general they are adversarial in theory and on paper so henceforth the appeal. Some jurisdictions probably somewhere, whatever the person's gone into is denied and said you can appeal to the Zoning Board, go figure it out, but we still have to keep that separation because we are a quasi-judicial board. Lastly to the Board, just in case we need to do any scheduling, for the next meeting I am unavailable on our regularly scheduled meeting. We have a perfectly capable vice chair to take over but should it be the pleasure of the Board that we want to move the meeting, we can entertain that idea or we can press on and Aleta will run it. I have to go out of town for work. Before we start scheduling things maybe we should just have a quick discussion on what you feel, especially Aleta.

Jon White: Yeah, get her opinion first.

Aleta Kinne: I'm ok.

James Brewster: Anybody else?

Ed Miller: I'm fine either way.

Scott Smith: Good to go.

James Brewster: Ok, we will make no changes to the regularly scheduled meeting. It's probably better because it's around Thanksgiving and it would be difficult to move that. That's probably why they move it off the week of Thanksgiving. We will press forward and see what happens. Next order of business is to approve the minutes from the September meeting. Any comments, questions from the Board?

Board: No.

Aleta Kinne: Very complete.

James Brewster: If you feel that they're complete and everything I will take a motion to approve those minutes.

Jon White: So moved, Mr. Chairman.

Aleta Kinne: I'll second.

James Brewster: Roll call please.

Kari Strabo: Ed Miller, Board Member Voted: Aye  
 Jon White, Board Member Voted: Aye  
 Scott Smith, Board Member Voted: Aye  
 Aleta Kinne, Vice Chairperson Voted: Aye  
 James Brewster, Chairperson Voted: Aye

The motion was thereupon declared adopted by a roll call of:  
 Ayes – 5      Nays – 0

James Brewster: Minutes are approved and can be filed and posted. First order of business is we have two applications that we'll do a review on amongst the Board and schedule for our next meeting and also to go through the Planning Board. The first one is 2022-V19, Kyle Hayes at 40 Avalon Rd has applied for a double area variance to build a 768 sq ft attached garage on a corner lot with less than required front yard setbacks from 30' to 21' and 30' to 18' in a Residential Zone and a short EAF. Is Mr. Hayes here? He doesn't need to be for the approval. Board Members, thoughts on the application?

Jon White: The only thing I noticed was number three wasn't answered and I know he's kind of putting on the new garage so it would be nice to know the area of disturbance and total acreage of lot size.

James Brewster: You're referring to number three on SEQR?

Jon White: Yes, on the short form. Otherwise the application seems to be in order.

Aleta Kinne: I was hoping he was here because I was a little confused with his map. The outline of the boundaries here don't really match up with the ones here. So, I wondered which was more accurate. This is just a straight rectangle but here it's L-shaped. This is great detail but I don't know which map to look at.

James Brewster: Good point. I looked at the Broome GIS and I saw the shape of the L. He does own that property. Anything else? No, ok. Motion to schedule to our November meeting and pass through Planning?

Scott Smith: So moved, Mr. Chairman.

Jon White: I'll second it, Mr. Chairman.

James Brewster: Ok, roll call please.

|              |                               |            |
|--------------|-------------------------------|------------|
| Kari Strabo: | Ed Miller, Board Member       | Voted: Aye |
|              | Jon White, Board Member       | Voted: Aye |
|              | Scott Smith, Board Member     | Voted: Aye |
|              | Aleta Kinne, Vice Chairperson | Voted: Aye |
|              | James Brewster, Chairperson   | Voted: Aye |

The motion was thereupon declared adopted by a roll call of:

Ayes – 5      Nays – 0

James Brewster: The next application is 2022-V20, Tara Jablonsky of 19 Cherry Ln has applied for for an area variance to have a licensed recreational vehicle ahead of the front line of the house in a Residential Zone and a short EAF. Is Ms. Jablonsky in the audience? No.

Jon White: I noticed on the application number three wasn't answered but I really didn't think it was a huge deal on this one because they're just looking to park a vehicle in front of the property.

James Brewster: Ok.

Aleta Kinne: I think that would be helpful to us and also the size of the camper or the RV. Is it tow-behind? Is it a bus?

Ed Miller: Yeah, that's a good point.

James Brewster: Ok. You'll have to make sure that you ask that during the public hearing so we can get those facts. Anything else? I was good. No, ok. I'll seek a motion to move that one through to the November meeting and pass through Planning.

Aleta Kinne: I so move.

Ed Miller: Second.

James Brewster: Ok, roll call please.

|              |                               |            |
|--------------|-------------------------------|------------|
| Kari Strabo: | Ed Miller, Board Member       | Voted: Aye |
|              | Jon White, Board Member       | Voted: Aye |
|              | Scott Smith, Board Member     | Voted: Aye |
|              | Aleta Kinne, Vice Chairperson | Voted: Aye |
|              | James Brewster, Chairperson   | Voted: Aye |

The motion was thereupon declared adopted by a roll call of:

Ayes – 5      Nays – 0

James Brewster: Ok, pass that on through. Now we are at the public hearing portion. We have three public hearings on the table tonight. So, our main goal here tonight will be to make sure we hear all of you tonight who want to speak on the various topics and in the Town there's also a practice in the public hearings and meetings that there's a five-minute timed allotment for speaking to the Board so keep that in mind. I will have a timer up here and I'll give you hand signals. In other news with public hearings, I need to shuffle the order around a little bit due to the fact that with application number 16, the Abbey Trust, Mr. Cortese and the law firm has recused themselves so therefore he cannot be present in any of the discussion that goes forth. So, I plan to bump that down to the third public hearing so we'll cover V17 and the interpretation and then we'll get back to the Abbey public hearing and then we'll continue on after that in also a reverse order if you will with discussion of V17 followed by the interpretation if we get to it and then discussion of the Family but we want to get through the public hearings so we can hear everybody tonight and then we can carry on with our discussion as time allows. Is that ok with the Board?

Board: Yes.

James Brewster: And that way we will be able to just dismiss Mr. Cortese out the door and we'll pick up with the Abbey application. So, with that said the Board has given me the green light on that, I'd like to open the public hearing now for 2022-V17, SonByrne Sales, Inc. Christian Brunelle representing, six parcels to be combined at 1115, 1109, 1107, 1105 Upper Front St & 301, 311 Smith Hill Rd, application for a double area variance to have a Byrne Dairy gas station and convenience store with less than required lot size from 6 acres to 2.7 acres and less than required lot width from 350' to 254' in a PDD-C zone and a short EAF. First order of business, is Mr. Brunelle here?

Christian Brunelle: Yes, I am Christian.

James Brewster: You're the applicant and you'll have an opportunity to present an overview of this and just like any other citizen hopefully you can summarize that in five minutes to the best of your ability.

Christian Brunelle: Good Evening, my name is Christian Brunelle, I'm Senior Executive Vice President of Byrne Dairy. I was in front of the Board a month ago when you guys accepted the application. Since then I have been in front of the Planning Board on October 11<sup>th</sup>, presented my preliminary site plan. It was very well received. The Planning Board recommended a favorable decision for the area variances to this Board.

Quick overview of the project, I think everyone knows where it is, Sonic is right here on the corner. There's a gas station right here. There's six parcels as mentioned before. We plan on combining all six parcels together. There are currently four parcels with road frontage on Front St. I want the Board to know that none of those parcels of course meet this. They range from 100 ft to 50 ft. 4,232 sq ft Byrne Dairy store, if everyone has seen we built a new one in the village of Endicott, I think I opened that one in June. We're building another one in Endwell right now and that'll open hopefully November 16<sup>th</sup> so this will be our third store in Broome County in probably six to eight months.

Four gas pumps, eight fueling positions, again similar to the one in Endicott. They're dive in pumps being singles, you pull right in at them. You do not stack on them, with site configuration they work best. Currently on the site on these six parcels we have frontage on Smith Hill Rd, Hillside Dr, and Front St. Currently there are six driveways, curb cuts I call them, on these three parcels-the three ones that have road frontage. Two right here on Front St, we are reducing

that to one. Anytime you do that the NYS DOT loves it. We're also reducing the Hillside Dr two driveways there to one, and same thing on Smith Hill Rd. Dumpster enclosure, I could show you pictures but I think everyone has seen the pictures before, will be way out in the back here. All these lines are contour lines, the site has already been dug out, there's probably about a 12-foot grade change in here so this whole location is going to sit down in.

We do plan on, the Planning Board asked this and I have it labeled for Planning Board, we do plan on keeping all existing trees. That neighborhood residential, they will be kept, the mature pine trees back and four mature maples here. Right now the only variances for the Board is six acres required in a PDD-C. It's very important that your Comprehensive Plan that this Town did in 2016 actually recommended abolishing the PDD-C and combining it with Commercial, so getting rid of the PDD-C. I talked to Gavin before, I believe there's hundreds of PDD-C sites currently out there and very few are six acres, if not any. If you followed your Comprehensive Plan and went to Commercial, the Comprehensive Plan calls for half an acre and 100-foot frontage but I don't think the Town has combined them, at least not yet. I don't know where they are in that process but that was in the Comprehensive Plan. As everyone knows we're not changing the character of the neighborhood. There are currently restaurants across the street, there's a gas station within 150 feet of it. There's actually a bar right here, a place to eat right here so heavily commercialized area on Front St. The speed limit is 40 MPH. It's already been submitted to NYS DOT and Broome County. The only comments that the NYS DOT had were drainage of course, which we're handling. We have to do a full SWPPP because we're disturbing over one acre, that's almost completed. Second was they wanted to see some sort of pedestrian access from Front St. so we provided a sidewalk off of Front St, sidewalk tied in here and comes across here. We do have porches on our store to get there. The third one, they wanted to see some sort of connection, cross-connection to the Sonic. Therefore, what that does is that takes anyone that is at the Sonic that wants to go to the Byrne Dairy, they do not have to go out onto Front St and make this quick in and out. Same thing with the Byrne Dairy, anyone at the Byrne Dairy doesn't have to come back out on Front St and jump into Sonic. So we're proposing the cross-connection which was actually already there. I guess this was thought out years ago when the Sonic did it. It was just kind of stopped right there by the dumpster and it never went onto the Smith property so we plan on tying that all together. Again, Broome County did review this, very, very minor, basically no significant countywide impacts. This is a permitted use by right. Lighting plan, I had that done at Planning Board, zero foot candles on all property lines, I use 100% dark-sky friendly compliant lighting. Again, you go to Endicott, 100% LED downward directional light. I think that's the quick, less than five minute overview.

James Brewster:

So now, I'll open it up to the public to anyone that would like to speak. Please address the Chairman and the Board. Try to keep your comments focused at us and not to others in the audience.

Karen Roberts:

My name is Karen Roberts, I live at 38 Prescott Rd and I have several concerns with this Byrne Dairy going in in my neighborhood. First of all, I never got the public notice about this meeting until 9:00 last night when I got home so I had very little time to put stuff together. The biggest issue for me and I think the residents of Prescott is we're already in an area where we can't get out. The light that's there comes out from Smith Hill to the car wash. We are south of that intersection. If we try to make a left-hand turn we're already half the time taking our lives in our hands because we have to wait until the red light and hope nobody is running the red light

in either direction to get out. At one time, Prescott went around and hooked into Riverview by Maine's then came out. That's since been blocked off, bought, whatever has happened and we are now on a dead end. So, we have no option but to wait for that red light or sometimes use The Spot parking lot as an additional driveway which is not what their parking lot was designed for.

I went to the Sheriff's office this morning and filed a FOIL with the Broome County Sheriff's office for incident reports from the last two years for that intersection. Of course, I haven't gotten that yet because I just filed it at 10:00 this morning. I would like to know if that study has already been done and received by Byrne Dairy. I'd like a contingency to be placed on that if it hasn't been done that a traffic study be done in that area. There's only 27 owners back there but there's hundreds of residents because we've got multi-family, a trailer park, there's more than just 27 people that have to get out at that red light. If nothing can be done at the red light which I doubt because that's a big deal, is there something that can be done to get us access back onto Front St over by Maines? Would that be eminent domain, be that whatever, is that something that could be done?

And lastly, I drove this morning from 12A at the north end and went up to McDonald's. It's exactly three miles. We have seven gas stations in three miles, do we need another one? Who else has seven gas stations in a three mile stretch of land? We need shopping, we need a place to go buy clothes, we need a place to go buy a gift for somebody. All we do is go to the Parkway. So, those are my points. It's dangerous, we need some studies done and if nothing can be done can we please get a different way to get access to our residence? Thank you.

James Brewster: Thank you.

Chuck Frampton: My name is Chuck Frampton, I live on Hillside Dr, third house up. My primary concern is that at the bottom of Hillside Dr right now, the commercial spaces that are there are professional offices, insurance office, flower arranging shop, and they're all very low-traffic, low turnover cars if you want to call it that type of businesses. So, we're talking about putting another business that depends on a high volume of traffic next to a business that depends on a high volume of traffic and adjacent to that is another gas station which depends on a high volume of traffic. As it is, coming out of Hillside Dr onto Front St at times is a real challenge. There's not a great line of sight if you're looking north. Quite often you have to scoot out into the middle lane just to be able to safely get across the road and you can't swing out all at once. To attract more cars in that section I think is presenting more of a hazard than exists right now. It's difficult now, it's going to be infinitely more difficult if we attract more cars to that area. Thank you.

James Brewster: Thank you. Anyone else? Yes, come on up.

Michele Patak: My name is Michele Patak, I live at 4 Wallace Rd. I've always lived in this area since '91. The traffic has to be examined before you change any variance. You have Sonic, originally they had no left turn there. Suddenly since the gas station opened that sign was removed. Aldi's had a no left turn signal out of there without the stop sign, the light because there's a light 50 yards away. That was removed. You have Tractor Supply, now you're going to have an entrance on and off Smith Hill that is already a nightmare with the lowest gas in Broome County as they advertise. Has anybody tried to walk Front St, to cross Front St? I used to live on the other side. And then, when my son went to Chenango Valley, they expected him to cross Front St because it was safe for them. There's no way any child waiting for a bus on Front St is safe with the amount of traffic, no lights. You can pull out, you have Smith Hill, somebody wants to make a

left onto Front St. They wait for the traffic light, they go, somebody coming out of Sonic making a left turn, boom. Has anybody thought of the traffic ramifications? Adding more gas tanks and we have many of them on Front St, just the Hess. Look into buying Hess. That's a big lot. Look into something like that. You could have two lots there. Why go into a residential where there's enough traffic on Front St and no safety? No safety for anybody walking there. Just look at the last ten years how many people have been hit on Front St, pedestrians. It's still supposed to be a residential area. I don't think bringing this in is going to cut any of our taxes or sewer bills or anything else. So please do a highway survey whether it's New York State or Town of Chenango. You all work for us so please look into it before you approve anything. Please.

James Brewster: Thank you. Yes, sir.

Darren Courtright: My name is Darren Courtright, I live on Hillside Dr. I bought that house because of the area that it's in. I bought that house because it's a residential neighborhood. We did not have this kind of thing here. I take my life in my hands every time I take my dogs for a walk on Front St. There was a kid killed not that long ago on the corner of Smith Hill and Front St, or seriously injured, whatever you want to say. But, the idea was that this Town was going to do something about that area. Nothing has been done. That intersection, the lights are not maintained, the power goes out every time the wind blows. We're going to have more features here, is anybody going to do anything about maintaining the residential area because NYSEG's not going to do it. You got the lights, how long ago did that go out and how long did it take you guys to fix that? You can say it's the state, you can say whatever you want, it wasn't addressed. Now you're going to have this in here and continue to comment on the residential neighborhood effect on this one. There is no small Byrne Dairy, the only small Byrne Dairy I've ever seen is in Horseheads or Elmira and they shut that down to put in a gigantic one like this there. You want to talk about the amount of stuff you're going to do in this? You have no intersection. Are you going to put the pumps on Hillside Dr in order to go over there because you're still not maintaining this. You cannot walk by SNK, you cannot drive by SNK. How many accidents have been there because people are lining up inside Smith Hill Rd to pull in there or they're lining up on Front St to pull in there. This is a crappy place to put this and it's really ridiculous that this Town printed these letters out on Thursday, they didn't get mailed until Friday and people didn't start getting them until Monday. This is the same thing that happened last time you guys got a grant to deal with the flooding on Smith Hill Rd.

James Brewster: Do we have anyone else for this application? No, ok. Board Members, do you have any questions for the applicant? I'm not going to go through these five factors because he did address them in his presentation and provided written documentation. I think from the applicant we have enough.

Aleta Kinne: I have a question. Would you kind of walk me through the pattern that your delivery trucks would be making in there?

Christian Brunelle: I can walk you through that. First and foremost, Byrne Dairy is not a Hess, we're not a Speedway, we're not a Sunoco, we're not a Mobile. I say that because we're a family-owned business. We're not a Citgo whereas before they dictate fuel deliveries. Where Hess, Speedway, those guys have a service to do their groceries. We are our own grocery warehouse, Byrne Dairy employees. The trucks that deliver are dispatched by our Corporate Office, it's unbranded fuel, Byrne Dairy call it how you may be, is dispatched so those delivery trucks are

controlled by us. Groceries are delivered by us. As everybody knows our milk and ice cream trucks come from Byrne Dairy. So, we're much different than any of these larger corporations who sub this out. We have direct control over our drivers. So we tell them when to load, how to load, when to be there, when not to be there. They're pretty good about getting feedback back to us, they don't want to be here if say busy time is 7:30 in the morning. We'll make sure they deliver to the site at 10:00. So that being said, most of the activity is going to come off of Front St. The delivery trucks are going to come right off of Front St. They're going to pull in, you can see the fuel tanks are right out here in the front. They're going to pull in there, more than likely they may come out Hillside or they may come in Hillside and spit out here. They are not going to go up Smith Hill Rd. So that's where most of the stuff is going to come. If you notice our travel lanes are much different than other people, Hess and those guys. If you went and measured them, between the fuel canopy and the parking spaces, there's 24 feet which is the bare minimum for code. If you look at ours, we use 40 feet and we use 45 feet out front. The reason we do that is for our delivery trucks, so they can maneuver around much easier internally around the site and go back out where the easiest way is. So I see a lot of these small delivery trucks, our grocery trucks are not 53' trailers, we actually run 48' trailers and some we run straight trucks because we have that ability from our warehouse. So we're not pulling a 53' trailer like McLane is with a sleeper camper on it delivering 15 stores overnight. We're going to pull in there, they're going to be able to maneuver around these pumps and go out Front St. We can tell them to go in Front St and leave Front St if we want. They're our employees which is much different than anyone else. So Front St, I will tell you right here 90% of the trucks are going to deliver onto Front St and we can dictate that. Very few if any would be going on Smith Hill Rd. There's no reason to go back up Smith Hill Rd.

Aleta Kinne: And so the delivery truck comes in off Front St and it's got to get back to the store.

Christian Brunelle: All of our deliveries are going through the front door so they're actually going to probably block some parking spaces, pull off to the side. That's why these entrances are needed. They're going to block probably one of those entrances for about the 10-20 minutes it takes to unload the truck. So, they're going to deliver there and come right back out.

Aleta Kinne: And they'll come out Hillside?

Christian Brunelle: Again, there's enough swing here with these 40-foot drives between the fuel canopy and the parking space and then there's 45 feet in front of the canopy between the front of the canopy and the pavement so that's 95 feet where usually it's 48 feet so it's double the distance. If you put a turning radius on this like we did, again they can deliver between this fuel canopy and the store, they can swing right back around underneath the fuel canopy and go right back out Front St. If there were 24 feet, they would not be able to do that.

Aleta Kinne: But when they do that won't it cut off being able to use the gas pumps?

Christian Brunelle: Again, they're 40 feet, tractor trailer's probably 12 feet wide so they'll still be able to come on out. They could do this a bunch of different ways, they could back into these five parking spaces here to the north, right back in those and block those parking spaces for five minutes if there's no one there. Our drivers will sit there literally until they see an opening so they don't block customers. That's the number one thing we tell them.

Aleta Kinne: So they won't be backing up?



Christian Brunelle: Yes, this site, again all deliveries go through the front door, if you go to Endicott, deliveries go in the front door. We don't have a loading dock, we don't have a loading zone. It's because everything comes through the front door. So no, it's designed not to be backing up.

Aleta Kinne: One more thing, about the ATM machine.

Christian Brunelle: That's gone. We got rid of it. The Planning Board didn't like it, I got scared. I took it off, it's not on this plan but it's on the new revised site plan so the ATM machine will get removed. There was a comment made by Broome County about stacking and safety so rather than do it, I told them before. I'll let a financial institution come in front of the Boards if they want to put one there. It wasn't for me anyways, it was for a financial institution if they wanted to do it. The new site plan will be submitted next week, there will be no ATM kiosk.

Aleta Kinne: Will that take away the sidewalk?

Christian Brunelle: No, the sidewalk has to stay. Again, that was in the NYS DOT comment letter, they wanted pedestrian access, the sidewalk will stay. They said there was kind of a conflict there so rather than readjusting everything, we removed the ATM kiosk.

Aleta Kinne: Ok, thank you.

Ed Miller: So DOT went through all the ingress and egress?

Christian Brunelle: DOT reviewed this, Broome County sent it to DOT. There is a letter that it was submitted to here. It's dated September 13<sup>th</sup> and there was a few things, I've addressed all their concerns and drainage cross section and also we moved the driveway five feet because of a utility pole conflict from the initial thing. There was a utility pole conflict on Front St. I moved it five feet to the north, actually called NYS DOT permits and gave them the individual heads up that I did move it and sent them the plan, they thought it was wonderful. He sees no issues whatsoever, please submit final permits upon approvals from the Boards.

Jon White: I have one question. You're going to do the final site plan and grading plan and all that and resubmit it to the Planning Board for final Planning review?

Christian Brunelle: They asked last Board for the final. It's 100% SWPPP, which is grading. I'm required by New York State to meet their guidelines which I am. They will be submitted to the Town engineer I think next week I'll be giving them to him. We'll have the drainage plan, there's the SWPPP, he'll have the grading plan, he'll have the erosion, the demo plan. He'll have basically the construction drawings next week.

Jon White: And you're going for the final review again with the Planning Board.

Christian Brunelle: Yes, they liked the concept, they loved this design. I cleaned up the ATM kiosk, I'm labeling the trees to remain, little tiny things. But yes, that was the plan to give them a full set.

Jon White: Ok.

Scott Smith: So, both of the variances are asking for less space than you'd normally use for one of these? 2.7 acres as opposed to the minimum six acres. Is that six our thing or their thing?

Nick Cortese: It's our thing.

Christian Brunelle: So, just to put that in perspective at Endicott, that's 1.3 acres. The one in Endwell is 1.4 acres. If you asked me an average, I've built quite a few of these I won't tell you how many, I would say the average of most of those sites are 1.3 acres to 1.5. So the 2.7 is a very large lot.

Scott Smith: And the stores are successful?

Christian Brunelle: Very successful.

James Brewster: Have you purchased these plots already?

Christian Brunelle: No, everything is contingent upon all the necessary approvals.

James Brewster: DOT looked at it and I've read the letter and there's not mention of an actual traffic study being done.

Christian Brunelle: That's correct. That's their jurisdiction to tell us if they want one and they deemed it not, a lot of times they do not if they don't see an issue. Not uncommon.

Aleta Kinne: When these six are joined, who is the owner, the Smith Hill Associates or Byrne Dairy?

Christian Brunelle: SonByrne Sales, Byrne Dairy. Or yes, it'll be the Byrne Dairy family of companies. It's not Smith Hill, we are not leasing this from Smith Hill Properties. This will be purchased into a Byrne Holding. And they'll be combined, we'll make them form one lot. That's why several times a lot of people don't like to do that. I'm fine keeping the six parcels in case something happens. I'm going to take all six lots, I believe the Planning Board is going to make it a condition. A couple members asked that and I agreed to it so that'll be a condition of the Planning Board which I'm 100% in favor of. We'll combine those. That is done with the County afterwards, it's literally paperwork, surveys all ready to do, just have a lot consolidation.

James Brewster: With that I actually do provide a summary of the letters that have come through from the other various government entities. But first, Ordinance Department?

Gavin Stiles: Ordinance is satisfied.

James Brewster: Building permit?

Gavin Stiles: Building permit required, fire inspection, if everything goes the way you'd like it to.

James Brewster: Ok. The Town engineer sends us a letter for these projects. He had no engineering objections, however he did indicate numerous conditions were to follow the site plan criteria including giving an updated site plan. He had concerns which were all addressed in this letter related to signage parking, sanitary systems, water, soil, erosion prevention, aquifer. Again, no engineering objections pending the final review of the updated set of site plans and you indicated that you're going back to the Planning Board and engineer.

Christian Brunelle: That's correct, for final review.

Nick Cortese: They don't have site plan approval yet.

Christian Brunelle: Can't do site plan approval until we have variance action to do it.

James Brewster: All right. As you know we forward these applications to the Planning Board and they returned a favorable advisory for us with a condition that the parcels are combined into one parcel. Our Town drainage coordinator returned a not applicable with no comments on his report. Broome

County Planning provided a conditional advisory and they recommend “The Town withholds taking action until full details are provided per Town site plan regulations, other regulations, and comment and the comments are addressed,” which you’ve been addressing. They also had an issue with a multi-document SEQR analysis.

Nick Cortese: Who had this issue?

James Brewster: The Broome County Planning.

Nick Cortese: Whatever. It’s fine.

James Brewster: A multi-document, what does that even mean?

Christian Brunelle: What they said was, I did a SEQR for each one, they said I should combine them.

Nick Cortese: Oh, so you did a separate SEQR for the Planning Board and the ZBA?

Christian Brunelle: Yes.

Nick Cortese: It’s not technically improper. You filled it out the same exact way, right?

Christian Brunelle: Besides one Board approval to the other, yes.

Nick Cortese: Ok. There’s no issue with that. In the Town of Chenango we do other coordinated reviews for applications like this in any event. We had this conversation before. If we were to do a combined review and have one of the two Boards be the lead agency it would kick into gear all the various time limitations that go along with the coordinated review so we keep it separate with the assumption that both Boards are going to decide the same as far as the SEQR is concerned and we’ve never yet had any remote issue with that so I’m not concerned.

James Brewster: It’s also forwarded to the Broome County Health Department. Their comment was the investigate backflow prevention requirements. Broome County DPW wanted you to address impacts to Smith Hill Rd curbing and driveway access. NYS DOT had numerous requirements pertaining to obtaining work permits, dealing with the driveway openings, the connector to Sonic, a pedestrian connection and that kiosk placement. There were no comments from the BMTS. We did have a letter received in an opposed opinion from Lorrie Roberts and she had many questions which I determined to be better answered by the code office, Town Board, or the engineer, not a lot of things that we can address here except perhaps in the environmental review.

Nick Cortese: She spoke tonight as well.

James Brewster: I know, but I wanted to make sure that I mentioned that she submitted paperwork too. So that’s all I have for correspondence. Last call for this application. Should I close it? Ok, I will close this public hearing now on application 2022-V17. Just for everyone’s sake, we go through all the public hearings and then we cycle back to discussion and coming up with a plan on these applications. As I said I moved the order around so now we’re going to talk about application 2022-V18, the interpretation. Did you want to give an opening statement to get us in the frame of mind for what we need to look for on the interpretation?

Nick Cortese: If you want me to.

James Brewster: I would like you to do that, yes.

Nick Cortese:

So, I know that this is the first interpretation that this Board has done since I've been representing you which is about three years now. I think that we've had conversations about this previously in terms of the type of analysis that you'll have to conduct here but to kind of frame the question, the applicant's question is for all intents and purposes, do storage containers, shipping containers as it were, do they qualify under the definition of a temporary structure as per §73-3 of our Zoning Code, the definitions section. I believe that the interpretation that's being appealed from is the code officer's interpretation. Gavin will obviously speak more to this that they are not temporary structures, rather they are permanent accessory-type structures and the applicant feels otherwise. So, it'll be down to you all to make the interpretation of our Zoning Code to determine whether or not you feel that the definition of temporary structure encompasses this particular type of structure. I think that that's kind of the broad brushstrokes overview of this.

James Brewster:

Ok. With that, I would like to call Mr. Pratt up to speak if you'd like. You can have the floor.

Joe Pratt:

Good Evening. My name is Joe Pratt. I'm here tonight as a concerned citizen. My purpose is to protect the integrity of the Town and its neighborhoods pertaining to shipping containers, sea containers, and verdies. The word definition goes as follows, temporary structures: "A nonpermanent structure used for purposes other than residential and includes truck trailers, tents and structures of a similar nature. A time-limited building permit, issued by the Code Enforcement Officer, is required for all temporary structures." My concern is I believe that structures of a similar nature are these shipping containers and Mr. Stiles disagrees with me. I sent in a letter of intent along with my application. I'm hoping that you all got a chance to read it. If not, I would like to read it to the public: "To Town Clerk, Ordinance Dept and all Town of Chenango Boards, I Joseph Pratt residing at 41 Treadwell Rd Bing NY. Request the following. After filing complaints, foils and verbally discussing my concerns with the ordinance officer I am asking the ZBA to define and intrepid the law for shipping containers, verdies etc. In the past it was my understanding that these containers would be allowed only TEMPORARY with a building permit allowing a 90-day use only! This has obviously been abused and ignored over several years! I have demonstrated though documentation that several of these containers have allowed to exceed 90 days and have no record of temporary building permits. This to me is a double standard for those who are required to apply for permits in the town. These containers are also not taxable and take away from the tax base. In many cases they are used for additional storage instead of constructing taxable brick and mortar additions. They are an industrial item used for shipping industry. I believe that in many cases they do not fit into the character of many zones including commercial and agricultural. They belong in industrial zones!! I also believe these should never be allowed to be stacked on top of each other. Again, I have discussed this with the ordinance officer and a clear definition of these containers are needed and the law described. I am in opposition of these containers use exceeding 90 days. Thank you. Respectfully Joe Pratt 41 Treadwell Rd." So basically, I have a couple points that I'd like to hit on. One, I don't believe they fit into the character of the neighborhood. They come in a variety of colors, pink, yellow, lime green, orange brown, gray, and someone might compare them to a shed. I'd like you to picture in your mind your shed in your backyard, your neighbor's shed, the building, and then remove that shed and put a container there. I don't believe they fit into the character of the neighborhood. Two, they are being placed with no building permits and I'm asking for the 90-day permits to be enforced. There are other residents that are required to have permits and I believe it's a double standard. Third is it takes away from the tax base.

There are business persons in this community that have storage facilities, warehouses, buildings that are used for storage. There are residents that have one-, two-, three-car garages, they've all invested tens of thousands of dollars and they have to pay tax. These containers are not taxable. They're dropped there and there's no tax, there's no building permits. I don't agree with it. I also have concerns about, I don't believe that these containers are within the NYS guidelines as far as building codes and I challenged the Ordinance officer on this as far as fire inspections, egress, doors, ventilation. Bottom line is that I oppose these containers as permanent in the Town. Unless specifically defined I would like the definition to read as follows: "Temporary structures: a nonpermanent structure used for purposes other than residential and includes truck trailers, tents, and structures of a similar nature including shipping, cargo, sea, and Verdi containers. A time-limited permit issued by the Code Enforcement Officer is required for all temporary structures and also these containers shall not be stacked." I appreciate your help on this to resolve this between Gavin and I, and I'd like to make the Town a decent place to live. Thank you very much.

Gavin Stiles:

So, my position is that according to §73-3 in our code, a temporary structure is a nonpermanent structure used for purposes other than residential and includes truck trailers, tents, and structures of a similar nature. Time limit, building permit, et cetera et cetera. A tractor/truck trailers is defined by us as a "truck having a cab and no body used for pulling large vehicles such as vans or trailers" and a trailer is defined as "any size platform structure with or without walls or guards, having wheels, that is pulled behind any type of motor vehicles used to transport or haul any material et cetera, et cetera." My position is that a sea container/storage container is neither a truck trailer or a tent-like structure as defined. That being said, said containers in my opinion are no less permanent than a pre-fabricated Amish shed or something of that nature. Based on the definition alone, that's my position. As a Code Official, I deal with the laws that are presented to me. If legislation needs to be passed to change such language so be it, but the way I read it, I do not believe that these structures are temporary structures based on the definition.

James Brewster:

Ok, thank you. Who would like to speak for or against this application? Gentleman in the back.

Jeff Neer:

Hi, my name is Jeff Neer, I live at 29 Jason Drive in the Town of Chenango. I'm here representing two organizations. The first is the Scouts. I'm the Scout Master for Troop 152 and we currently have a storage container that we purchased. It's not rusted or beat up or anything. It's in very good shape, we took all the commercial markings off. We leveled out the ground and put guard rails underneath it so we get a good foundation under it and we use it for storage of our troop equipment. We have no other place to put this stuff. I do that as a pretty permanent structure, permanent as an Amish shed and I think it's good to support an organization like that to let them have the storage, otherwise they don't have any other options. The other organization I'm representing tonight is I am past Chief and currently Secretary of the Board of Directors of Chenango Bridge Fire. We built 12 years ago a training facility with a building permit from the Town on our side lot where our old station used to be, four containers, two underground and two stacked on top. It's the only kind of training facility we've got on this side of the County for the firefighters to train in. That's even more permanent, we've got concrete foundation underneath it, we poured the sono tubes, rather large ones in all corners. When we stacked them we used the commercial locking devices for those stacking and they are also welded together. This is a very permanent structure. I have a very nice big shed in my own backyard, it's not nearly as permanent and it's not going to last nearly as long as the storage containers. I

think the Town is correct and Gavin is correct in allowing us to continue to use them. I do recommend that just like with any structure, if it becomes unmaintained and falling apart, address it for those reasons but not just because it's a storage container. Thank you.

Mike Lumsden:

First of all, the ZBA must focus on the clarity of the ordinance as it was written by the elected officials. For years the code office in the Town of Chenango have routinely excluded containers and not cited or taken action on them. In fact, there is no court case, past or present, regarding this container. I checked with the court, not one case. In all these years the elected governing Board, which this is not, has never undertaken this ordinance to clarify it. And what's happening here tonight should be done at the Town Board and not at the ZBA level. All this conversation, I believe, is incorrect. In all these years the elected Board has never undertaken this to change the ordinance. Also, the ZBA must be cautious not to over-insert themselves of the authority of the governing body and they are not permitted to craft policy. Does this citizen that is challenging the code officer have standing? In other words, does it affect directly to his property? Without having the deliberation of the minutes of the legislative Board that wrote this law, no one can clearly determine what the legislative Board was and what their intent was. The fact that the containers are not spelled out or defined leaves it up to interpretation which the code officer along with six previous code officers all read it the same way. It is evident that many people in our town take full advantage of these containers for multiple reasons. They are great for storing flammable materials. They are great for storing antique cars in, keep mice out, one of the few ways that I can keep the thieves from stealing stuff. They've blown the door off my building numerous times. I can put stuff in the storage container, park every piece of equipment in it and guess what, they don't get it. The people that are building our infrastructure have the containers, all their trucks got broken into. They put the storage containers there, they put their stuff in, park a truck in front of it to stop the thieves. The storage containers are no bigger, I have dumpsters that are the same size as my storage container and if you're standing from the road, you couldn't tell one from the other. So I want you to think about that. How many complaints do we actually have? I have shared information with the ZBA, which you guys have. I would encourage the ZBA Board to respect the decision of the code officer Stiles regarding this issue and leave it up to the elected officials or the judicial system to interpret this law. Thank you.

Webb Sisson:

Webb Sisson, Beacon Water Equipment. Yes, I've had storage containers on my property for 28 years. I had a code enforcement officer, not Gavin, previous ones, come down when I had 28 containers on my property saying it was perfectly ok, no problem, then I had a neighbor that said could you move them please. So, I moved them, but you know something? I still have a container and I have another container, a Scout container, because they didn't have any other place to put it and yes, it's going to stay there. If I get cited guess what? I'll pay the fine. This is for Scouts. But you know something, this is an individual that's got his head in the clouds, I'm sorry. Let's move down and get to reality. People use containers and they're going to use containers and until the law is changed, let's leave it that way. Leave it to the Board, thank you.

Brian Abbey:

My name is Brian Abbey, 869 Oak Hill Rd. I rent containers to the Town of Fenton, we do rent some containers in the Town of Chenango. When we do that, we have to charge taxes.  
(inaudible)

Jack Abbey:

We work pretty hard to keep our containers brand new, we are constantly changing our stock to be brand new. I can't say all of our containers are green, but our colors are green for the most

part. All of the ones are mostly green, we've gone away from the big stickers that say Abbey on the side to the small ones. They're pretty nice and they look good in the yards, sometimes they hide in the woods. As far as the sale of containers, we don't really sell a lot of containers. Pretty minimal in the Town of Chenango. If you want to look at an Amish shed, a storage container is going to outlast a shed for years and you can paint them, make them look better, pink, yellow, blue, paint them green or camouflage them.

Mark Rosenkrans:

My name is Mark Rosenkrans. I am a resident of Port Crane, however I am the cubmaster of pack 155 which meets on River Rd in the Town of Chenango across at the United Methodist Church. I will say that I used to be the Director of Chenango Valley Youth Lacrosse and I can speak that without storage facilities for these programs, by and large those storage facilities are containers. They are throughout the community. I'm sure nobody in this room knows how many there are. They are behind peoples' houses, they are in driveways, they are in church parking lots, they are at Beacon Water which we can all see from the road. If you look at the life cycle of a storage container in our youth programs whether that's scouting or at the school, Chenango Valley invested a considerable amount of money for the outdoor classroom, part of that mission is thinking about the life cycle, and life cycle, one of things we do (inaudible) in the United States Parks Department is the outdoor code (inaudible) we try to teach conservation. So, the life cycle of the shipping container is not to go back and forth. The reality is this country devours more shipping containers than they ship out. They have to go somewhere and that goes to whether it's rental, whether it's ownership. They are economical, they are strong, they are built better than any other construction out there. We've all seen the pictures of ships at sea that have accidents and these storage containers are locked together falling off the side, it's amazing they stay together. They are a godsend for many youth organizations, including scouts. Troop 199, another scout organization, I'll give you an anecdote. They had at their church where they meet, they had a big scout closet, one from Chenango Valley School District, one from (inaudible). The kids had to go somewhere, they rented the facility. Guess what, the school needed that room so the scout closet, the only alternative that the scouts had was buying a really ugly beat up trailer that was a true eyesore, a tractor trailer trailer or a good looking storage container and the storage container was more economical and good looking and sits out off of Chenango Street today. Youth baseball uses up, pack 155 we usually have storage inside the church that we meet at, however we lost that (inaudible). They're built well, they last. The question really to us as a community is not should we get rid of them, it is we should encourage them. They are something that is going to last, it's of value, we hope that our Town elected officials look at things in terms of bang for the buck. Storage containers are bang for the buck. And they do stack, and my background in mechanical engineering, I would trust that stacked storage container better than any two-story structure. In deference to Mr. Pratt's passion, I feel strongly that the eyesore mitigation, if some people see it that way, he's (inaudible)

Mike Lumsden:

I believe I had some time left so I'd like to speak. I only used two and a half minutes. Let's say I were to be cited by the code office for having a container on my property. Let's say I ignore the citation from the code department and the code officer sends it to court. The judge might issue a criminal summons. It has been in the Town's policy to hire a sheriff to serve it, costing taxpayers extra money. If I do not show up to court, the judge might issue an arrest warrant. All that means is that I get picked up and arraigned at CAP at Broome County jail. The judge would have to, by law, release me and he cannot impose bail to ensure that I show up in court.

At that point the local judges can do nothing. Their hands are tied and our local judges do not have the authority to make me remove my containers. At that point the Town Board would have to decide to use taxpayer's dollars to take it to superior court. This whole thing will take time and money. Think about it. People like myself have a good chance of defending themselves and proving that the Town Law was not written properly. People without resources will receive a fine and out of fear may remove their containers. This has been the policy of this Town for over 60 years, only enforce the law and the people that do not know how to defend themselves. Take the people that you don't like to court but look the other way. So the reality is until the Town changes the law and even when they change the law, the law can be challenged in court to find out if it's constitutional and to make sure that it isn't being administered arbitrarily. I also would like to inform the Board that Mr. Pratt also made complaints about snowmobiles, motorcycles, he brought it to the Town Board about burning. Town had a Town Law that said you couldn't burn the way Mr. Pratt read it. That was not true because there is also a provision in the Town Law that said the code officer could give me permission to burn which, in fact, I got this documented for 20 years from different code officers. The Town Board looked at these problems, they followed the NYS DEC rules to allow people to burn their brush and everything else. Mr. Pratt encouraged the Board to enforce the zero policy for unlicensed vehicles when he brought up all the vehicle issues. What did the Town Board do? They responded by adopting NYS Law. So again, in protest to this tonight, I believe this is the wrong forum and the ZBA must only consider the wording that is in our Town Law because you are not the legislative board, thank you.

Jeff Neer: 30 seconds, the other organization that benefits and uses all of these containers extensively, Chenango Forks School District. Their athletic department, their youth athletic programs. I think it's five or six containers on school property, they are all very well maintained, they're all painted alike and all presentable. That could be a problem for a school district too (inaudible). They can save money, they are efficient storage. Thank you.

James Brewster: Thank you. Anyone else on this topic?

Joe Pratt: First I'd like to say that I'm definitely grounded. My head's not in the clouds. I appreciate the work the Board does. I agree with most of you, I more than likely side with you on issues of fire department's training, the scouts need a place. My concerns are the tax base and the unsightliness of these things. As far as me constantly filing complaints, it's in the interest of the Town and I don't want this town to turn into something out of a Mad Max movie. The Ordinance Department moves forward on complaint-based issues. The ordinance officers in the past more than likely haven't had any complaints until someone like myself steps up and asks a question. So, the residents have spoken, the Board has a choice to make, I think they're unsightly, and I've given you the information I have provided to you and I'll leave it at that. Thank you.

James Brewster: Thank you. Ok, anything else? Otherwise I should go over the options again with you. We have documentation that has to be reviewed and prepared so we'll more than likely have to push this to the next meeting, correct? Or, it's an option.

Nick Cortese: It's an option. You can do whatever you'd like. I would recommend having a written decision on the interpretation that interprets the language of the law as opposed to extraneous considerations other than that and then a resolution that formally adopts that as your



interpretation. The options are to close the public hearing, have a discussion and make a decision tonight but I would recommend just for the sake of proper documentation or better documentation to have a written determination that has your official interpretation of the language of the zoning code and a resolution that adopts that interpretation. So, it would be a fairly simple resolution but the decision would basically lay out how you interpret the language of the code and why. I think we had initially discussed breaking this up into two meetings, having the hearing now, taking in the information, considering a little bit. If you want to have a Board discussion now that's fine and in fact that might be helpful because it would give me some direction as to how to prepare a draft of this decision for you guys to review and then we can take it from there at the following meeting and take this wherever you want to take it. Those are your basic options. You can either finish everything tonight if you want to or you can wait for more documentation and do a more formal interpretation and adoption of your interpretation next month, if all that makes sense.

- James Brewster: It does especially in light of the next case, as to how to move forward when you can't be here. So, we're at the crossroads. Do you want me to close the public hearing? We've heard from everyone, we've got documentation. Is there anything else?
- Jon White: If we push it out to next month, we still have the 62 days after we close the public hearing.
- James Brewster: That's correct.
- Jon White: So we can close the public hearing.
- James Brewster: Right, I think it's going to be pertinent to digest the information that we've heard and that we've seen and then discuss and come up with phraseology that he needs to write. That would be my recommendation.
- Jon White: I'd be on board with that.
- James Brewster: Ok, I will then close the public hearing right now on the interpretation and now we can have a quick discussion on pushing it along for discussion next time?
- Jon White: Yeah.
- James Brewster: In light of what we've got moving ahead of us here tonight.
- Jon White: There's a lot to digest too on the aspect of public input, like what Mr. Lumsden has said on the aspect of this is more of a Town Board thing than our thing. So, other than how the law is written now, what's there.
- Nick Cortese: Just to clarify, your task is not to determine whether storage containers are a good idea or a bad idea and the comments to that effect are correct. Your goal is to interpret the literal language of the code to determine whether this type of structure is a temporary structure or not. That is your sole task and that is your exclusive jurisdiction. Determining the merits of whether or not it should be a temporary or should be a permanent structure, that's not for you all to determine. And also as kind of a procedural point, I know that you generally conduct public hearings and then circle back and do all the discussions later. You don't have to do that if you don't want to. I am going to leave when you call the next application so if you want to circle back and do discussions on the other public hearings, it's within your purview to do that. You can restructure the agenda however you choose. If you don't want to do that, I've sent you

resolutions for the Byrne Dairy application, SEQR forms and stuff, you'd be responsible for doing that yourself if you want to vote on that this evening. As far as this application I think that we seem to be on the same page in terms of wanting to have discussion and then come up with a draft decision and a resolution and then obviously the remaining application we're recusing ourselves so that's kind of where I'm at in terms of my ability to help you so I guess just make whatever decision you all feel is best for you today.

James Brewster: Ok, so what do we think? We've got two public hearings done, we can work through one of them? And then, make a decision on the interpretation which it sounds like we already did, we just need to formalize it and then conduct the Abbey public hearing.

Jon White: Yeah.

James Brewster: Objections?

Aleta Kinne: Is this fair to Mr. Abbey or not? To have to sit through all of it?

James Brewster: Well, I'm trying to make it as logistically fair and equitable as possible. With three public hearings, it's lengthy.

Aleta Kinne: Nick can't just go out for the Abbey one and then come back in for our discussions?

Nick Cortese: I can if you want me to.

James Brewster: That's an option, we can float that. Would you like to continue the way we normally do?

Aleta Kinne: Yes, I would.

Jon White: We could continue the way we normally do and have Nick step out for a little bit.

James Brewster: All right. We're going to proceed as we normally do and we're going to recuse Nick for a temporary basis and conduct the Abbey public hearing, bring him back and we'll do our discussions on the other matters and then kick him out. That's our decision. Ok, with that as you know, our pending counsel on the Abbey application but nonetheless I'm going to open the public hearing for 2022-V16, Abbey Family Trust at 26 Buckley Rd, application for an area variance to build a single-family home with less than required road frontage from 240' to 73' in an Agricultural zone and a short EAF. Mr. Abbey, we've kind of been down this road before, do you have any general comments first on the project before we get into the five factors we talked about?

Jay Abbey: Sure. We're looking to build on a lot that's 160 acres. As you recall, a couple years ago it turns out that there's no road frontage at all, only easements to access the property. The ZBA didn't have the authority to grant a variance so we have taken a couple approaches and the last one, we were going to buy some property from one of the owners that we thought had part of the right-of-way. It turns out the Town actually owns that, it's an extension of Buckley and so as a consequence we have 73 feet of road frontage. There was a road there already, we made it a little bit more passable for fire trucks and made a large turn area to keep the grade at a reasonable level and therefore we met all the requirements to go before the Zoning Board of Appeals and request this change. This house is going to be a far distance from any other house and should not affect anything in the neighborhood or any environmental issues or anything like that so that's my request.

James Brewster: Can you come back on that Town owns Buckley Rd?

Jay Abbey: Turns out, Buckley Rd extends right to our property.

James Brewster: When you say our property, is that trust property?

Jay Abbey: Yes, extends right to the trust property. We had easements, when we purchased the land we thought it was an easement and all along thought it was an easement. I wish I knew this two years ago, as it turns out it's actually by the plot plan the Town's road. You can see it on the Broome County GIS, if you click on it you can see no ownership comes up, that means it's public, and the surveyor, Keystone, Rod Carey, came up and said you can't buy this, that guy doesn't own it, the Town owns it and so it looks like part of Justin's driveway but it's really part of the Town road.

Justin Abbey: I've maintained that driveway quite well for the last four years despite all the flood water leaking off of the hill.

Jay Abbey: So, it is a Town road and it ends right there. Although it looks like the road makes a left, that's Leonard Ln where it goes left.

Justin Abbey: And actually Leonard Ln, it exits the cul-de-sac. There's no road there at the end of the cul-de-sac but if you look on the GIS, the mapper, the Town owns that exit from the cul-de-sac.

James Brewster: Ok, we'll go over the five factors that we have to cover them to consider and you did provide some brief written documentation which we'll also consider but for the record should you be granted this variance, would your proposed project produce an undesirable change in the character of the neighborhood or be a detriment to nearby properties?

Jay Abbey: It will not, it's probably 400 ft from the nearest other home and you can barely see it from where it's going to sit and literally there's only one home that could possibly see it and beyond that there's no other houses that could even see it at this point in time.

James Brewster: Is there any way you can achieve this goal of the project without the granting of a variance by some other method?

Jay Abbey: Not really. As you know, I can't come in officially from John Smith the way I originally wanted to. We did buy a little piece of property from George Litynski that sandwiches between our 100 acres on Brotzman Rd and our 150 on Buckley but as it turns out, as was pointed out by the Matthews, the grade's too steep to achieve fire trucks. So, it's not accessible that way either. Buckley Rd is the only real accessible method to get to where I want to build a house.

James Brewster: Would you consider the request of your variance to be substantial? We're talking the difference between what's required in the Zoning of 240' to what you're asking for.

Jay Abbey: No I don't believe it's substantial. Again, we're only gaining driveway access to 150 acres.

James Brewster: In your opinion, if this variance is granted, will it have an adverse effect or impact on the physical or environmental conditions of the neighborhood or the district? As far as the project goes and then post-project, things like clear-cutting, moving earth, building a house, drainage?

Jay Abbey: Again, it's a typical house-type construction lot. I've already submitted to the Town, I didn't with this application, the opinion of a professional engineer that the runoff would be

insignificant. Due to putting up an electrical line, little bit of work on the driveway and the house, to be sure a residential SWPPP is fairly easy to come by between one and five acres and I intend to put that in, to have that done. That'll be addressed in all the grading et cetera, mostly it's sediment runoff control is what's required for that.

James Brewster: Ok, and the fifth factor that we consider is whether or not the difficulty you're encountering in the zoning is self-created? 99% of the time it is.

Jay Abbey: I would say yes. 240 feet is a lot to achieve.

James Brewster: Any specific questions on any of those factors, plot maps or anything?

Scott Smith: It looks good.

Aleta Kinne: Justin and Jay are both in the trust? They're both members in the trust?

Jay Abbey: Yes.

James Brewster: So, something I noticed at least on the plans that we got, just trying to get a mental picture of the lines on the map, have you sliced off that chunk from Justin's land yet?

Jay Abbey: Yes, that's been conveyed back to the trust because his 10 acres was square, cut that corner so we took that off, conveyed that back to the trust. We just got the description this evening, a right-of-way between Justin and Richelle's parcel that's just in their name and the trust so that they're not cut off or have to cross trust property or have a legal access across trust property, something that we overlooked at first and didn't think about that because it's all in the family anyway, we didn't think about that. But, that's being taken care of, should be shortly. When we filed the deed, I talked to the guy at Broome County, we entered in that this slight parcel has to be combined with the trust so that's being done, probably is done right now. He was doing it as of yesterday afternoon.

Jon White: You did say you had access to the property from John Smith Rd., correct?

Jay Abbey: We do have, but we don't have any road frontage there.

Justin Abbey: We've kind of been blocked off at John Smith.

James Brewster: That matter is still pending?

Jay Abbey: Yeah. There's no argument that we don't have access, that isn't the question. The question happens to be the width and can they obstruct and that's probably several months out yet.

James Brewster: The matter you had before the Town requesting, is your parcel been a bigger picture of the Town was looking into those landlocked properties?

Jay Abbey: I still believe the Town should look at that and pass the Local Law to allow, since the Zoning Board does not have that authority, they can make a Local Law so that I guess the Planning Board makes the decision similar to what the Zoning Board would do, but they have to pass a law within the Town to do that, by gaining this variance I don't need it but it's something they should really look at because there's other people. Unbeknownst the Zoning Board has provided variances for people that didn't have road frontage in the past and it's going to happen. There's a lot of property on top of these mountains.

James Brewster: All right, any questions before I open it up to the public?

Aleta Kinne: Can I just make a comment? Justin's variance in 2016 was with a condition on it about the stormwater and there was a big storm around that time and after that storm Justin put in larger pipes, riprap and everything on his own time, and took care of that problem.

Jay Abbey: If I could address that quickly, since Justin did all this work there hasn't really been any damage up above or flooding above that, that's worked out very well. The problem exists where it does is that pipe his ditch runs into and crosses over to Shapley's property is not big enough.

Justin Abbey: 24-inch and it goes 90 degrees to a catch basin and then straight down across Shapley's driveway so when that water has enough velocity it wants to go straight down Buckley. It's got to hit that pipe and go straight to the left and then turn down Buckley. That water goes right over that pipe and right down Buckley. 24-inch pipe is not big enough. Above that I've got a 32 and a 24 draining down into a 24.

Aleta Kinne: That has been corrected?

Justin Abbey: When the water gets too high it goes over that and just goes down Buckley. The rocks that I've put there are so big that they haven't moved from the water.

James Brewster: Anything else? No, ok. Thank you. Now we'll turn to public comment and would anybody like to speak for or against this application?

Carol Radice: I'm Carol Radice, 1 Leonard Ln and it's true Justin put quite a bit of drainage in but the one rainfall when it came over it washed the whole side of my yard out and the road, and the road was in my driveway, part of the driveway. It has been corrected somewhat but I still never, never had water coming down my driveway. I do now and it pools in the front of my house. I had a construction company come and put in some diversion and the Town's snowplow dug that up on me so now I have some water coming down. I'm not saying it's coming from Justin but my concern is putting this other house up on top of the hill. What is that going to do to the erosion coming down directly across the street from me? Has that been addressed at all with the runoff and the concerns by the Town?

James Brewster: I do have a report that I'll get to after comment from the Town Drainage person and Mr. Abbey did just indicate that he was going to pay for a SWPPP which is a study of that.

Carol Radice: Ok, well thank you. I appreciate it.

Theresa Matthews: We did send a letter to the Board today. We didn't get any notice about this hearing until late yesterday afternoon. I am Theresa Matthews, owning property at 2 and 8 John Smith Rd. As we said in 2020 when the first application to come for John Smith Rd happened, we're not opposed to responsible development in the Town and for a responsible plan to build a house on on 26 Buckley Rd, as long as it adheres to NYS Town regulations. We are however, opposed to the site plan that was submitted due to potential impact to our property. The current plan has components of the septic system located on a steep slope less than 200 feet directly uphill from our shallow, spring-fed well. Here are some questions we would like the Zoning Board to answer prior to approving this variance request: Has the ZBA verified that the access point at Buckley Rd meets all the requirements of New York Town Law 280-a? It appears the plan submitted with the variance application 2022-V16 is still not in compliance with Town Law 280-a. I have not seen any evidence of that part of the road being a Town road. It appears on a map that was

filed by Keystone as an access point on a gravel road. Is there any evidence that the Zoning Board has received that it's more than an access road? At the Planning Board meeting Gavin Stiles was concerned about access to 24 and 26 Buckley Rd. He suggested the Board ask the Town attorney for advice. Alex Urda expressed similar concerns. That did not happen because the Town attorney was not at the meeting. Secondly, if it is a right-of-way who owns the right-of-way where the gravel driveway Buckley Rd is located? Mr. Abbey stated that he tried to buy the right-of-way on Buckley Rd, but found out he could not because it was a Town road. So that's a point that needs to be cleared up officially with some written document that shows that is, in fact, true and not just an assertion or rumor. And if you have that information, we would really love to see it as I'm sure some of the other people in the room would. Has the ZBA verified that there is actual physical access along the pen line path to the building site in the aerial photo submitted by the applicant as their "site plan"? The site plan presented to the Planning Board was not in 1:20 scale, which we believe is a requirement, and did not have enough detail for an informed decision on their advisory. The only document submitted with the variance request was a photo with a line drawn by hand to indicate a proposed roadway to the building site. There is no actual site plan to scale showing how steep the path is nor how wide the road is (or will be). It has a section more than 20% grade steepness. Does this terrain meet standards for roads in the Town of Chenango? The town comprehensive plan says areas of more than 15% grade steepness should be left in their natural state. Is there any other viable route along a path from Buckley Rd to the proposed building site that is currently owned by the Trust or the Trustees that could be used as a construction entrance? Please ask the applicants how they have actually been traveling from Buckley Rd to the proposed site and if that path matches the proposed access on their site plan. If not, why not? Despite presenting a plan that shows access to the building site from Buckley Rd, their activities over the past few weeks indicate that they are planning to use their right-of-way across 2 John Smith Rd as their primary construction entrance. The question of the extent and permitted uses of the John Smith ROW is now in Civil Court in an ongoing lawsuit commenced by the Abbey Family Trust against the Matthews after their application (V2020-12) was withdrawn in December 2020. We have repeatedly asked our neighbor for cooperation and to share their plans with us. Instead, they sued us. In 2020 when they proposed access from John Smith Rd, the Zoning Board stated that they would not approve any requests until that court case was resolved. We respectfully request that the ZBA honor that statement unless the applicants agree to use the access from Buckley Rd for their project as a condition of the variance. Please take note of the minutes and decisions made by the ZBA in December 2016 when granting a variance to create a 10 acre buildable lot at 24 Buckley Rd. At that time, the Abbey Family stated that it was impossible to drive across the Trust Property from Buckley Rd to the location of this second proposed house. As a condition of the 2016 variance grant, the Town Attorney (Mr. Walls) required the transfer of the ROW from 26 Buckley Rd to 24 Buckley Rd. That transfer happened in January 2017. The transfer was just reversed in September 2022. Addressing the five factors...

James Brewster: I have to cut you off, the five minutes are up. We do have this written down.

Theresa Matthews: You do. Have you had an opportunity to read our five factors?

James Brewster: Yes, today. We received this today.

Theresa Matthews: And then finally the summary.

James Brewster: Yes.

Theresa Matthews: Which is, we're just asking for some conditions if you decide that they have access to the Town road and it's not a ROW, if you can prove that or they can prove that then there's some conditions that we're asking for. And I'd ask someone else to read it, or if you've already read it I'm fine with that.

James Brewster: I have read it and one of the things that I think we're going to have to do without counsel present is, we're going to have to digest it. A lot of these questions are outside the scope of the ZBA, they're a lot of Planning and perhaps even some Town Board. So, we're going to need some advice on the documents you've provided us today with counsel. That's the best answer I can give you right now with the inability to address all of your points.

Theresa Matthews: Sorry, if I had known sooner I would've given you more time to look at them.

James Brewster: That's fine, we'll have time.

Theresa Matthews: Thank you very much. Anyone else?

Debra Raychel: I just have one comment. In 2016 we did have a problem on the road that we're calling the access road. We are part of a development and we have a deed signed by the Town when we built in '87 and so I think that we said back then the information might be there but I don't think anybody ever wrote to that.

James Brewster: Which property are you discussing? How close are you?

Debra Raychel: I'm actually 2 Leonard Ln which is actually after 26 and 24. The road used to be between 2 Buckley and 2 Leonard Ln. I don't know what to call it, Bunker Estates. We have rules that we can't even subdivide our property so it's kind of difficult but there's paperwork that should be on file with the Town that they approved when they approved the development. That addresses the right-of-way, easement, the access, all of the above.

James Brewster: Again, we're taking notes and that's something that the attorney will have to help us with and address. It touches the road in question, right? It touches the Buckley Rd extension?

Jay Abbey: It's not an extension, it's part of the plot plan.

Justin Abbey: Buckley Rd goes up and stops. Leonard Ln comes off of that to the cul-de-sac. It appears to be one road to a cul-de-sac but how it was broken up back in the day, how the Town broke it up and extended up, it's really confusing. We've put a lot of time in investigating this and there's actually a road at the end of the cul-de-sac that the Town owns. There's not even a road there but they own the property going back out to Brotzman.

Debra Raychel: And that was part of the development too.

Ben Perkus: Hi, I'm Ben Perkus, I'm down on State Rte 12 at the bottom of the hill. I just had a point of clarification if you guys could clarify when the notices for these meetings are supposed to be sent out? We didn't know until yesterday.

James Brewster: My understanding is that they were supposed to go out when we issue the notice, the legal notice which is the Tuesday before, the week before.

Kari Strabo: I got them Friday, I mailed them out Friday.

James Brewster: Who do they come from?

Kari Strabo: Nick.

James Brewster: Ok. I didn't even know where they came from, but it comes from the attorney so that's who I need to talk to.

Ben Perkus: Another point of clarification is, what is the legality of not having the attorney present, when you know that the attorney can't be present? Is it legal to still hold a meeting?

James Brewster: Yes, the public hearing, yes. But to go over the information we like to have, we need to consult with and just to make sure we're on track. When we have our discussion and decision, but the public hearing is for the public to provide us with comments, information, facts.

Ben Perkus: Is there a conflict of interest with the attorney giving any advice on this matter, if the attorney is also representing one of the parties?

Scott Smith: That's why he's not here.

James Brewster: Yes, the Town Board is hiring a special counsel so it'll be completely disjointed from..

Ben Perkus: You wouldn't think that that other counsel would benefit from hearing this?

James Brewster: That'll be in the record.

Ben Perkus: Ok, so everything is being recorded here then?

James Brewster: Oh yeah.

Ben Perkus: So he'll be able to hear everything.

James Brewster: Yes. Or read the transcript that comes out of it, or both. A lot of other jurisdictions will even run their meetings without the attorney present. That's just not a practice here.

Ben Perkus: Thank you.

Dominic: My name is Dominic, I live at 39 John Smith Rd. It's directly downhill from the proposed building site. The one thing everybody should know is that John Smith Rd is very sensitive to erosion. I know my property has considerable erosion every year. A lot of that water comes down off of the Abbey property. A lot of that water comes off of John Smith Rd. In the past there's been severe washouts, road washout several times in the past. As you're heading up the road on the left side there's a very unstable part of the road. There are slabs of concrete just setting in there, there's chunks of rebar sticking out of them. It's a very unstable area so I'm just thinking that with this new building there's a driveway in there already that's a right-of-way on the Matthews property, there's a lot of runoff coming off of that area already. Just adding another house up there, septic field, grading of the lawn areas, grading of the right-of-way areas, grading of the driveway, that's going to add a lot more pressure to that area up there. I know not just me but I know there's a lot of others in here that are in the same situation so I just want to get that out there and let everybody know.

James Matthews: I'm James Matthews, I live at 2 John Smith Rd. I'm directly below where they're going to put the house. I can see when they're tearing out trees, pushing them over by the roots. They are doing this without building permits in place and it's my understanding that you're not allowed to



do that. They have to wait until there's a building permit or at least some sort of permission before they do that and they haven't done that. The first time I heard all about what the Zoning Board is, is when Aleta Kinne came up and told me that there was a variance application, I didn't know. This was two years ago and she talked to me and said that this is what they're saying that the property lines are for the right-of-way and it was not accurate. Two a hours later Jay came up and said he wanted to put markers where the right-of-way was, that was in the middle of our property. It was in a completely different spot and he said he wanted Aleta, the lady from the Zoning Board, to think that our driveway started in a different place. I said you can put it where our driveway starts and he said well that's not going to help. It was really dismissive and it was deceptive and the same thing is going on where they're saying they're going to do one thing but really doing something else. This past Sunday Jay came up through our property with an excavator with a big blade on the end of it and started cutting branches on one of our trees that's been there for 25-30 years. It's on our property, not their property. They've told the court that that tree does not block their access so when they say it's not going to affect anybody it's extremely affecting to me. They come onto my property Sunday morning with a chainsaw to cut branches the size of my thumb. It's just harassment. The whole part of where the shale is now, they dumped that on our property without permission and they've admitted that they've dumped that on our property without permission.

Justin Abbey:

That's a lie. That's a blatant lie.

James Matthews:

That's already in the court record where Jay admitted he did it without permission. I called the police this Sunday. He told the police that he's planning to bring trucks across our property, that's why he cut the branches on the tree. So, when they are saying that they have access from Buckley, that's technical access and that doesn't qualify under Town Law 280-a. It's not actual access, it doesn't matter who owns it. If it's Town road, if they put a little line on the paper that doesn't make it legal access and by their actions, they've said that they're coming across John Smith Rd. In this past July they submitted a different proposal of where a driveway was going to go, a mile and a half long, something like that. It was going to go right up the edge of a cliff. They had to buy the 50-foot wide strip, they paid \$10,000 and then they're claiming they didn't know it was too steep to put a driveway there. They were saying they were going to do it, it's on the building permit saying proposed gravel driveway and it shows our right-of-way as the only other access. And now, they've put in a little line drawing that was completely absent from this Keystone drawing that's in the building permit so when we're saying please verify it, it means they're saying one thing and then a month later they're saying the complete opposite. It's not a little bit of we don't know about what's going on. In addition, it's not just where the house is going. They've been bulldozing over the entire 150-acre property for apparently no reason other than to make us concerned about what they're doing. Directly above the steepest part right above where our pond is, they are driving back and forth with a bulldozer, apparently just to make noise. It doesn't make any sense to me. They also cut out a whole bunch of trees last year and there's on the side going down towards 81 there's deep ravines. I don't know when they went in but for sure there hasn't been a lot of fixing the trails that went in. Some of those trails point directly at our property. When the water runs down those new trails, it's going to damage our property. When you ask for the stormwater plan, please do it for the entire 150 acres because they've already been doing new trails over the entire thing. Thank you.

Mike Lumsden: I don't have a horse in this race but Town Law 280, the Abbeyes do not meet that requirement, that's absolutely true and that's exactly why they're here for a variance. The other thing, all this talk about John Smith Rd, the ZBA is supposed to be listening and reviewing the application that is here tonight so if everything in the past on John Smith Rd I believe is not on the application so you need to be addressing the application that's actually here. As far as grubbing your property people are going to go down this road, I have 200 acres, the law allows me to grub my land. You can cut all the trees down you want. The property, when I had 200 acres, I've been through this a hundred times, the water falls on my ground I can cut the trees. I can do anything I want to that water as long as the discharge is where it was before so that's something that the ZBA, it really isn't your concern, you'll get that through the SWPPP. If you can't put up one single house on 160 acres, where is this ZBA ever going to give a variance to anyone? You have a precedence, many many precedence, of giving people to build a residential house when they have not enough road frontage. I have a large section of property, I have a gentleman that has an easement across my property from the Town of Barker. I also have one from the Town of Chenango. It's on their abstract, their title, their deed, the mortgage doesn't have a problem with it. But I urge this ZBA, you're supposed to be listening, judging on the application that is here tonight and the ZBA cannot resolve civil disputes. Thank you.

Thomas Eldridge: I'd first like to point out the many factors being discussed tonight should not pertain at all to your determination of his road frontage on this variance. Runoff, stormwater, grubbing your property, all of these things would be covered under a SWPPP which is a higher power than any of us sitting in this room. It doesn't matter if we're engineers or not. Next thing is Mr. Abbey how long have you lived in the Town of Chenango?

Jay Abbey: My whole life.

Thomas Eldridge: Your whole life. This man's lived here his entire life, owns hundreds of noncommercial acres along with multiple commercial acres in this town and pays taxes. He's looking to build a house on his own property to live in. He's not looking to build a gas station, a solar farm, a natural gas well pad, a cell tower, it's a house. It's a house, ok? Everyone here on the Board lives in a house, right? You possibly live in a house that you've built on a piece of your family's property that's been in your family for hundreds of years that you could subdivide for your children, right? He's looking to build a house. There's many people in this town, many pieces of property that fall under this same flagpole property, whatever you want to call it. The Town has grown up around these giant parcels, these family farms, family trusts, and now people are landlocked. They want to keep their kids close, they want to give their family members a place to build a house and they can't. I know that doesn't fall on you guys, it falls more on the Town Board to change some Town Laws to change some things in there. 240 is very excessive. When you look at building a gas station on a commercial lot where you're allowed to build a gas station on half an acre with 100 ft of road frontage. He's trying to build a house on 160 acres with 75 feet of road frontage. There's quite a gap there. The gas station, not to pick on the gas station, but they're looking for a 55% reduction in acreage. It's not their fault it's zoned something strange, he's only looking for a 70% reduction frontage. They're building a gas station, he's building a home on 160 acres. That's all I have, thank you.

Dave Fendick: I'd like to say, I see the point of why they went with the 240 ft of road frontage was so that we didn't overcrowd the properties and make everything all on top of each other. But again, he's got 160 acres but there's only 73 ft that is there to get road frontage. He can't get anymore. It's

impossible. That's the point of a variance is to, this is impossible, this isn't self-created, it was something that, that's all that's available. That's what a variance is for. Again, you're putting one house on 160 acres, I don't know where that's crowing anybody out and that was the whole purpose of the two or two and a half acres and 240 feet is so you didn't overcrowd and put everybody on top of each other. I see no reason at all why there should be any problem in letting this variance go through. Thank you.

James Brewster: Thank you. Anybody else? No, ok. Thank you everybody. Are we good, any questions for Mr. Abbey?

Aleta Kinne: I think a lot of what has been brought up here is Planning Board site plan issues, not ours. We need to focus on what our application is for. The Zoning Board does not write code.

James Brewster: We have to look at what's presented and what's testified.

Aleta Kinne: So, for what we are presented, application for a variance for the driveway, I see no reason why the Town has to go to all that extra expense for a counselor for us. The site plan situation might be something different but I think we're capable of making a decision.

Ed Miller: I agree with that.

James Brewster: That can be our prerogative.

James Matthews: 280-a is an extremely complicated law and even if it is owned by the Town, which I don't think it is, that still doesn't mean that it satisfies the requirements of 280-a. This is something that you need legal counsel to know if this is legal or not because even if it is owned by the Town, that still doesn't make it legal under 280-a and there has to be actual physical access and from that site plan there's no indication that there's an actual physical path there that they can use to reach the building. They said that they're going to come through John Smith Rd anyway.

Mike Lumsden: The public hearing is closed.

James Brewster: I did close it, I'm sorry, yes.

Mike Lumsden: If the public hearing is not closed then these people have a right to speak again. I thought you closed to public hearing.

James Brewster: I did.

James Matthews: I didn't realize that, I'm sorry.

James Brewster: I was in error.

Theresa Matthews: We couldn't hear you so we didn't hear it.

James Brewster: In fairness I probably should reopen it and give you an opportunity. All set? Ok. I don't know how that law applies to us.

Jon White: You closed the public hearing, that's fine. We've got 62 days to decide this. We can decide on it or ask any questions we need to ask to the counselor just to protect everybody's interests then we can make a determination from there.

Ed Miller: We've got no jurisdiction for civil matters and all of that.

Jon White: And the whole John Smith Rd thing is correct too because we're only talking Buckley Rd and Buckley Rd kind of seems like a disastrous surveying nightmare. I think we should consider some legal advice before any determination and go from there.

James Brewster: I would concur. There are some things we need to pore over and clear up to have a better discussion like you said, more comprehensive.

Jon White: Discuss it between us to come up with questions we need to ask and get those questions answered.

James Brewster: Well, we would have to do that tonight.

Jay Abbey: You can approve based on a contingency too.

James Brewster: We can.

Justin Abbey: I was approved contingent to septic.

Jon White: Yeah, but this is not a contingency-able thing.

James Brewster: No, this is sorting out land.

Ed Miller: In my opinion, if they own 73 feet of road front frontage and want a variance, that's the question, whether they own it.

Scott Smith: So, I guess we're into the discussion on V16 then.

James Brewster: Yes, we can be in the discussion on V16 to either plan out our questions or table it for counsel, pick it up next month where we can provide the questions to Nadine, she'll pore over this guidance, this information that's provided

Jon White: Plus the minutes of the meeting and all that, I say we table it and review it next month.

Ed Miller: I second it.

James Brewster: Ok, so that was a motion and second to table? Further discussion from us?

Aleta Kinne: Why can't we pass it tonight with the condition that it goes back to Planning and they take care of all that stuff that they have to take care of?

Jon White: Well yeah, I mean that's their own thing with that.

Scott Smith: All we have is the area variance for the road frontage thing.

Aleta Kinne: The road frontage which, we're not going to change the road frontage. It's 73 feet.

Jon White: And the Town owns the road.

Jay Abbey: The plot plan has to be submitted with the building application, not with the variance application.

Aleta Kinne: Yeah, and that is not our word.

Jon White: I was just concerned about the whole issue with the Buckley Rd, what the Town owns, what the Town doesn't own, that sort of thing.

James Brewster: We do look at lines on a map, actually. Gavin, when it goes back to him in building permit and all of the SWPPPs and all that permitting, that's the stuff you've got to look into, those legal questions about for emergency vehicles and the code and the state code.

Jon White: The guy's got 150 acres and wants to put a house on it, I don't see a problem with that. As long as the Town owns Buckley Rd, he's got 73 feet of frontage, then we're good to go.

James Brewster: Well are you confident enough to know that the Town owns Buckley Rd? We had testimony of that, yes, but we had counter-testimony of that too.

Jon White: That's the question.

Jay Abbey: Make it contingent on confirming that the road's theirs.

Aleta Kinne: Yeah.

Jon White: If you wanted to do that, we could do that.

James Brewster: you guys tell me what's up.

Jon White: I'd go along with that with the condition on the aspect that there's 73 feet of road frontage.

Scott Smith: Yeah, absolutely, contingent on him providing 73 feet of road frontage.

Jon White: Everything else is not our problem.

Scott Smith: Exactly.

James Brewster: So let's do the wordsmithing on that.

James Matthews: Have any of you read the words of Town Law 280-a?

James Brewster: We can't take any more comment from the public. But again, that's something that would go back to building code along with the SWPPP and the engineering and all that other study. So, do we also condition that, see I don't know where the site plan phase is. Planning gave us a favorable but there's no comment from Planning saying, we've figured this stuff out. It's just yup, you guys can approve the variance.

Aleta Kinne: I think they have to wait to see if we pass this variance before they can go further. There's Thomas right there, he's shaking his head yes.

James Brewster: Ok.

Aleta Kinne: We know the man knows how to build road and he has the equipment. He built a road across the swamp to get to his business.

James Brewster: Right. Well, here's the other thing. We do need counsel so we actually will have to table because we need to go through SEQR, we need resolutions drawn up.

Jon White: Yeah, we don't even have any of that.

James Brewster: So, we are kind of in a limbo without that. That has to be done by a counsel. I think that the expectation is that the Town Board is contracting with a counsel so we're going to spend the money anyway. I would certainly be for a motion but I don't think we can, we could agree to a conditional passage but we can't do SEQR.

Jon White: We have to table it because we don't have counsel and we don't have the resolution drafted.

James Brewster: Right. That'd be my recommendation.

Jon White: I concur.

Scott Smith: Is that a motion?

Jon White: I'll motion to table this until next meeting, when we have legal counsel available.

Ed Miller: I'll second the motion.

James Brewster: Motion made and seconded to table due to counsel for next meeting.

Kari Strabo: Ed Miller, Board Member Voted: Aye  
Jon White, Board Member Voted: Aye  
Scott Smith, Board Member Voted: Aye  
Aleta Kinne, Vice Chairperson Voted: Aye  
James Brewster, Chairperson Voted: Aye

The motion was thereupon declared adopted by a roll call of:  
Ayes – 5 Nays – 0

James Brewster: V16 is tabled until next meeting.

Aleta Kinne: With counsel.

James Brewster: Yeah, we're getting counsel.

Aleta Kinne: I mean if that isn't available to her that night we won't be able to do it.

Mike Lumsden: Will the public hearing remain open seeing as how you're postponing in?

James Brewster: No, we closed it. So, it'll just be our discussion.

Mike Lumsden: Ok, I didn't hear what you said.

Theresa Matthews: So this is postponed to another meeting? Do you know when that other meeting is?

James Brewster: November 29<sup>th</sup>. We did not change it. I floated the proposal that I wasn't going to be here the 29<sup>th</sup> and we have a vice chair so the decision up here was to continue on as normal so Aleta will be running the meeting next month. But it is the 29<sup>th</sup> because of Thanksgiving. They bumped it back a week. 2022-V17 now. All right, for the Byrne Dairy application I believe we are up for SEQR at this point. SEQR before discussion?

Nick Cortese: Whatever you want to do.

James Brewster: SEQR before discussion.

Nick Cortese: Ok, are we ready?

James Brewster: Short form?

Nick Cortese: Yes. So I'm assuming that you've all had the opportunity to review part one of the SEQR for Byrne Dairy. This is part two. You know the drill, I ask you a series of questions, if you answer no that means no or small impact environmentally. If you answer yes, it means moderate to

large impact and let's get going. Number 1--Will the proposed action create a material conflict with an adopted land use plan or zoning regulations?

Board: No.

Nick Cortese: Number 2—Will the proposed action result in a change in the use or intensity of use of land?

Board: No.

Nick Cortese: Number 3—Will the proposed action impair the character or quality of the existing community?

Board: Small.

Nick Cortese: Number 4—Will the proposed action have an impact on the environmental characteristics that caused the establishment of a Critical Environmental Area (CEA)?

Board: No.

Nick Cortese: Number 5 – Will the proposed action result in an adverse change in the existing level of traffic or affect existing infrastructure for mass transit, biking, or walkway?

Board: Yes.

James Brewster: We'll have to substantiate that.

Nick Cortese: I was going to say, yeah, we'll talk about that in a moment. Number 6 – Will the proposed action cause an increase in the use of energy and it fails to incorporate reasonably available energy conservation or renewable energy opportunities?

Board: No.

Nick Cortese: Number 7 – Will the proposed action impact existing:  
a. public/private water supplies?  
b. public/private wastewater treatment utilities?

Board: No to both.

Nick Cortese: Number 8 – Will the proposed action impair the character or quality of important historic, archaeological, architectural, or aesthetic resources?

Board: No.

Nick Cortese: Number 9 – Will the proposed action result in an adverse change to natural resources (e.g. wetlands, waterbodies, groundwater, air quality, flora, and fauna)?

Board: No.

Nick Cortese: Number 10 – Will the proposed action result in an increase in the potential for erosion, flooding, or drainage problems?

Board: No.

Nick Cortese: Number 11 – Will the proposed action create a hazard to environmental resources or human health?

Board: No.

Nick Cortese: Ok, so you've answered that a moderate to large impact may occur with respect to traffic or affect existing infrastructure for mass transit, biking, or walkways. I would suggest that you discuss that and help yourselves and the public to understand what you are basing that conclusion upon.

Scott Smith: It's obvious what we're basing the conclusion on. Would it be wise to have a condition on anything that we're going to approve, should we do a conditional on the DOT getting involved and taking a look?

Nick Cortese: They already have.

Scott Smith: Ok, they're already in? So they're going to do that anyways. Do we have that?

Christian Brunelle: They did it. There's a letter from the NYS DOT dated September 13<sup>th</sup> that this Board has.

Scott Smith: Ok.

Aleta Kinne: Do you think that the condition, Scott, should include that list from the County, that they have to do the SWPPP?

Nick Cortese: I would remind the Board that you're approving a variance, not a site plan.

Ed Miller: Exactly.

Nick Cortese: It has to be directly pertinent to the granting of the variance.

Aleta Kinne: I thought we could say we passed the variance with that condition that the Planning Board meets those requirements.

Nick Cortese: Yes, and I would suggest that you do that, if you were to approve any of these tonight that you make it contingent on site plan approval from the Planning Board and they would address all of those other conditions that people brought up this evening.

Aleta Kinne: I think that's what Scott was trying to point out.

Ed Miller: Yeah, I think that's all we really need to do is give them the variance and let those guys take care of business.

Jon White: Yeah well we're still discussing on number five here on the moderate impact.

Nick Cortese: I would suggest, it may be useful for you to ask the applicant to explain traffic mitigation such that it would lessen the impact if you're interested in issuing a negative declaration this evening.

Jon White: The one thing I would like to see would be nobody going up Hillside, just make a right-hand turn and go right to Front St because that's going to be close enough, it's gonna have minimal impact on Hillside Dr and the residents up above. Plus, if you start throwing a lot of traffic up there, it would start to...

James Brewster: That's Planning Board.

Jon White: I understand that, I'm just saying..

Christian Brunelle: In regard to traffic, as the attorney said, I can address that. A Byrne Dairy, this is factual, a Byrne Dairy is not a destination. A Walmart is a destination. Again, we are not a destination. We take existing traffic off the existing road onto our site. There's approximately 10,000 cars there a



day. I know the traffic count there, approximately 9,700. I'll get a last count. I can pretty much assure you over the last year there's been a decrease like all of New York State has. I've done these studies. Most of New York State has decreased over the years on any state road because of the population, everyone's leaving. The businesses as you go down Front St, a lot of them are closed. Down there I noticed they were there before, the Friendly's and whatnot. When we take existing traffic and put them onto our site, we're not creating, there's not going to be 15,000 cars there the first year we're there daily. We're not going to increase it. So at most, it's small to moderate, not large. Again, is it handling the existing traffic there today? It is. So again, we take and any traffic engineer is going to tell anyone that, that's why the DOT looked at this and said no problem. That's from the NYS DOT.

James Brewster: Yeah, that's why we have those advisories.

Christian Brunelle: Exactly. They're the ones that dictate traffic studies. If they wanted a traffic study, believe me they would've told me to have one in that letter and they did not. That was not their request. So, I'm not going to increase traffic. I wish I could say there's going to be 20,000 cars there tomorrow but there's not.

James Brewster: So, what are we doing? If we stick with that we've got to come up with a reason for a positive declaration.

Ed Miller: I think his explanation of the DOT approval is negative.

Jon White: DOT is saying it's not forcing any more traffic out there. DOT approved it so ultimately, and he is correct in saying he's taking existing traffic off so it makes more sense to say it would be a no to small impact than it would be, I would say small.

Nick Cortese: You can leave it the way it is but if you're interested in issuing a negative declaration we just have to explain why it would not in fact create an environmental impact that would necessitate the preparing of an Environmental Impact Statement, which is a document that is hundreds of pages long.

Jon White: I would change my mind in going along with DOT saying that it's not going to create heavier traffic.

James Brewster: Are we all in consensus on that?

Ed Miller: I am.

Scott Smith: Yes, the destination definition did that.

James Brewster: We can change that, I would agree to change that.

Aleta Kinne: Remember we have a double variance for joining six lots into one and reducing the width.

James Brewster: Right, that's when we get to the Resolution.

Nick Cortese: Ok, I just wrote this quick as an explanation to support your concerns and the discussion you just had with the applicant. With respect to question number five, with which the Board took some issue with respect to the potential traffic increase, the applicant who has led the construction of dozens of Byrne Dairy stores stated that Byrne Dairy is not a destination to which people travel but rather it is a location where people stop who are already on the road

and as a result would not increase traffic significantly above current levels. Additionally, NYS DOT has already given it's approval to the proposed driveway layout and traffic patterns to and from the site, thus impact for question five would not be environmentally significant.

Board: Good.

Nick Cortese: Ok, so with all of that in mind, I guess my presumption at this point is that you'd be making a negative declaration under SEQR. If that's the case you can make that motion now.

James Brewster: That's the case so I'll seek that motion for a negative declaration under SEQR.

Jon White: I will motion, Mr. Chairman, for a negative declaration under SEQR.

Scott Smith: I'll second.

|              |                               |            |
|--------------|-------------------------------|------------|
| Kari Strabo: | Ed Miller, Board Member       | Voted: Aye |
|              | Jon White, Board Member       | Voted: Aye |
|              | Scott Smith, Board Member     | Voted: Aye |
|              | Aleta Kinne, Vice Chairperson | Voted: Aye |
|              | James Brewster, Chairperson   | Voted: Aye |

The motion was thereupon declared adopted by a roll call of:

Ayes – 5      Nays – 0

James Brewster: Ok, negative declaration for SEQR. Let's do the lot size area Resolution please.

Nick Cortese: Ok.

James Brewster: Actually, do we have any discussion? Let's do discussion on lot size reduction.

Jon White: I mean it is significant or substantial but..

Ed Miller: Yeah, but from what I understand the right zone, if it was zoned commercial it would be no problem. I have no issue with it.

Jon White: Yeah, as I said it would meet the substantial requirement but that would be about it. I think everything else would fall in the guidelines.

Scott Smith: A good percentage of it is already commercial, isn't it?

Nick Cortese: PDD-C is a commercial zone. It's just that the lot size is extremely oversized for 99.9% of all parcels that currently exist in the PDD-C zone. I think every single PDD-C proposed project that I've seen since I've been with the Town for the past three years has required this type of variance.

Scott Smith: Yeah, we've seen quite a few of them.

James Brewster: Other factors, undesirable change?

Board: Will not.

James Brewster: Can they achieve the goal by some other method besides giving the variance?

Board: No.

James Brewster: We said yes to substantial. Physical or environmental conditions, adverse impacts in the neighborhood?

Jon White: I'd say no, I think they addressed it with the downlighting and keeping the trees in the back to control noise. They're willing to do stuff to help the neighborhood so, I'd say no, will not.

Board: Will not.

James Brewster: And self-created?

Board: Yes.

**ZONING BOARD OF APPEALS  
Town of Chenango, Broome County, New York**

In the Matter of the Application #: 2022-V17  
of Sonbyrne Sales Inc./Christian Brunelle o/b/o Smith Hill Properties, LLC  
for an area variance to construct a Byrne Dairy gas station & convenience store  
in the PDD-C District on a 2.70-acre lot, less than the minimum lot size of 6 acres in said District

**RESOLUTION ON AREA VARIANCE APPLICATION #: 2022-V17 (LOT SIZE)**

**WHEREAS**, on or about September 14, 2022, Sonbyrne Sales, Inc./Christian Brunelle ("Applicant"), the duly authorized agent of Smith Hill Properties, LLC ("Smith Hill") duly filed an application for an area variance for property owned by Smith Hill within the Town, located at 1115 Upper Front Street, designated as Tax Map No. 128.08-2-5 and located in a PDD-C District, wherein Applicant requested a variance to construct a Byrne Dairy gas station and convenience store on a 2.70-acre lot, which is less than the minimum lot size of 6 acres in said District; and

**WHEREAS**, pursuant to Part 617 of the implementing regulations of the State Environmental Quality Review Act, the Town of Chenango ZBA determined on October 25, 2022 that the requested variance constitutes an Unlisted Action as defined under said regulations. The ZBA has considered the possible environmental impacts of the requested variance and has determined that it will not have a significant adverse impact on the environment, and the ZBA adopts a negative declaration with respect thereto; and

**WHEREAS**, after due notice by publication in the official newspaper of the Town of Chenango, the ZBA held a public hearing to consider said application on October 25, 2022 at which hearing all persons desiring to be heard in regard to said application were so heard; and

**WHEREAS**, the ZBA has duly reviewed and considered all documents submitted by the Applicant, as well as the reports and recommendations, if any, of the New York State Department of Transportation, Broome County Department of Planning and Economic Development, the Town of Chenango Planning Board, Engineer, Ordinance Officer and Drainage Coordinator, and has carefully considered all of the information presented and received at the public hearing on behalf of the Applicant and the public with respect to Applicant's application.

**NOW, THEREFORE, BE IT RESOVED** by the Zoning Board of Appeals of the Town of Chenango, Broome County, New York, as follows:

1. The requested variance **will not** produce an undesirable change in the character of the neighborhood or cause a detriment to nearby properties.

2. The benefit sought by the Applicant **cannot** be achieved by another method, other than the grant of an area variance.
3. The requested area variance **is** substantial.
4. The requested variance **would not** have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.
5. The hardship giving rise to the variance request **is** self-created.
6. The entire record of this proceeding supports the conclusion that the benefit to the Applicant conferred by the granting of an area variance **outweighs** any potential detriment to the health, safety and welfare of the neighborhood or community posed by such grant.
7. Therefore, the Applicant's application #: 2022-V17 (LOT SIZE) for an Area Variance to construct a Byrne Dairy gas station and convenience store on a 2.70-acre lot, which is less than the minimum lot size of 6 acres in the PDD-C District, is **granted with the following conditions:**
  - Grant of variance conditioned on all separate lots at project site be combined into a single lot and site plan approval by the Town of Chenango Planning Board
8. This Resolution shall take effect immediately.

At a regular meeting of the Zoning Board of Appeals of the Town of Chenango, held on October 25, 2022 at Chenango Town Hall, 1529 NYS Route 12, Binghamton, New York 13901, the foregoing motion was made by Scott Smith and seconded by Ed Miller. The ZBA members voted as follows:

|                       |            |
|-----------------------|------------|
| James Brewster, Chair | Voted: Aye |
| Aleta Kinne           | Voted: Aye |
| Scott Smith           | Voted: Aye |
| Jon White             | Voted: Aye |
| Ed Miller             | Voted: Aye |

The motion was thereupon declared adopted by a roll-call vote of 5-0.

James Brewster: Ok, take us onto the width please.

Nick Cortese: Let me just ask this: Are your determinations on the factors any different for this particular variance, the lot width as opposed to lot size? Or will it all be the same as previous?

Scott Smith: Same.

Jon White: I don't know as if it's that substantial. 350' to 254.' I'd say no on the substantiality but the rest would be the same.

James Brewster: I was thinking the same thing.

Nick Cortese: So, insubstantial, that's the only change? Everything else is the same?

Board: Yes.

Nick Cortese: Ok, and then we'll use the same conditions for approval on this one as well?

Board: Yes.

**ZONING BOARD OF APPEALS  
Town of Chenango, Broome County, New York**

In the Matter of the Application #: 2022-V17  
of Sonbyrne Sales Inc./Christian Brunelle o/b/o Smith Hill Properties, LLC for an area variance to construct a Byrne Dairy  
gas station & convenience store in the PDD-C District on a lot  
254 ft. in width, which is less than the minimum lot width of 350 ft. in said District

**RESOLUTION ON AREA VARIANCE APPLICATION #: 2022-V17 (LOT WIDTH)**

**WHEREAS**, on or about September 14, 2022, Sonbyrne Sales, Inc./Christian Brunelle (“Applicant”), the duly authorized agent of Smith Hill Properties, LLC (“Smith Hill”) duly filed an application for an area variance for property owned by Smith Hill within the Town, located at 1115 Upper Front Street, designated as Tax Map No. 128.08-2-5 and located in a PDD-C District, wherein Applicant requested a variance to construct a Byrne Dairy gas station and convenience store on a lot 254 ft. in width, which is less than the minimum lot width of 350 ft. in said District; and

**WHEREAS**, pursuant to Part 617 of the implementing regulations of the State Environmental Quality Review Act, the Town of Chenango ZBA determined on October 25, 2022 that the requested variance constitutes an Unlisted Action as defined under said regulations. The ZBA has considered the possible environmental impacts of the requested variance and has determined that it will not have a significant adverse impact on the environment, and the ZBA adopts a negative declaration with respect thereto; and

**WHEREAS**, after due notice by publication in the official newspaper of the Town of Chenango, the ZBA held a public hearing to consider said application on October 25, 2022 at which hearing all persons desiring to be heard in regard to said application were so heard; and

**WHEREAS**, the ZBA has duly reviewed and considered all documents submitted by the Applicant, as well as the reports and recommendations, if any, of the New York State Department of Transportation, Broome County Department of Planning and Economic Development, the Town of Chenango Planning Board, Engineer, Ordinance Officer and Drainage Coordinator, and has carefully considered all of the information presented and received at the public hearing on behalf of the Applicant and the public with respect to Applicant’s application.

**NOW, THEREFORE, BE IT RESOVED** by the Zoning Board of Appeals of the Town of Chenango, Broome County, New York, as follows:

9. The requested variance **will not** produce an undesirable change in the character of the neighborhood or cause a detriment to nearby properties.
10. The benefit sought by the Applicant **cannot** be achieved by another method, other than the grant of an area variance.
11. The requested area variance **is not** substantial.
12. The requested variance **would not** have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

13. The hardship giving rise to the variance request is self-created.
14. The entire record of this proceeding supports the conclusion that the benefit to the Applicant conferred by the granting of an area variance **outweighs** any potential detriment to the health, safety and welfare of the neighborhood or community posed by such grant.
15. Therefore, the Applicant's application #: 2022-V17 (LOT WIDTH) for an Area Variance to construct a Byrne Dairy gas station and convenience store on a lot 254 ft. in width, which is less than the minimum lot width of 350 ft. in said District; and in the PDD-C District, is **granted with the following conditions**:
  - Grant of variance conditioned on all separate lots at project site be combined into a single lot and site plan approval by the Town of Chenango Planning Board
16. This Resolution shall take effect immediately.

At a regular meeting of the Zoning Board of Appeals of the Town of Chenango, held on October 25, 2022 at Chenango Town Hall, 1529 NYS Route 12, Binghamton, New York 13901, the foregoing motion was made by Jon White and seconded by Ed Miller. The ZBA members voted as follows:

|                       |            |
|-----------------------|------------|
| James Brewster, Chair | Voted: Aye |
| Aleta Kinne           | Voted: Aye |
| Scott Smith           | Voted: Aye |
| Jon White             | Voted: Aye |
| Ed Miller             | Voted: Aye |

The motion was thereupon declared adopted by a roll-call vote of 5-0.

- James Brewster: Both variances have been approved.
- Christian Brunelle: Thank you guys very much.
- James Brewster: All right, folks. On to the at least preliminary discussion on the interpretation as to where we should go from here.
- Scott Smith: Easy call.
- James Brewster: Are we going to get deep into it? We can discuss it and you can frame the documentation for later to be voted upon, right?
- Nick Cortese: Yeah. Basically, I'll just take notes on what you guys are talking about and use that combined with things that people said for and against to reach a decision, to the extent that what people said for and against is relevant.
- James Brewster: All right. The biggest thing for this is to be clear on the question. Let's start there.
- Aleta Kinne: Excuse me but, Kari or Gavin, do we have to be out by ten?
- Kari Strabo: I don't know. I lock the doors when I leave.
- Gavin Stiles: I'm not aware of any time constraint.
- Aleta Kinne: With it being as late as it is, can we table it?
- Scott Smith: It depends on how long it takes us to get done with our part.

Aleta Kinne: Ok.

James Brewster: Ok, so we need to be clear on the question. Let's start there.

Ed Miller: The question is whether the code enforcement officer interpreted the code correctly, right?

Jon White: He interpreted it one way and we have to look at the definition and interpret it that way. The million dollar question is, according to this a sea container does not have wheels under it, it does not have a hitch to hook on to to pull it out.

Ed Miller: That's the thing. In my opinion, it's a technicality and it's the way the law is written and interpreted, we all know that a container goes on a trailer and goes down the road but the way he interpreted it is the way that it's written so in my opinion, the way it's written is correct. Do I agree that it's written right? Maybe not.

Jon White: That's not for us to decide.

Nick Cortese: To frame the question, what you need to determine is whether a shipping container or storage container or whatever, you know what's being referred to, fits within the definition of temporary structure which is "a nonpermanent structure used for purposes other than residential and includes truck trailers, tents and structures of a similar nature," and then there's just a building permit requirement after that but it's that one sentence. Does a shipping container fall into that definition or does it not? That's what you're being asked to make a determination on, nothing more.

Ed Miller: Right. It doesn't say it does.

Jon White: I don't think it falls into a temporary structure.

Aleta Kinne: It fits more into a shed or an accessory.

Jon White: I'd say more a garage.

Ed Miller: I mean if you walked down the street and somebody said what is that, a garage or a container? The way it's written, I can see both.

James Brewster: Well, let's break it down. A nonpermanent structure.

Scott Smith: What's the definition of permanent?

Nick Cortese: There is none, it's just whatever is used in common parlance.

Jon White: Because a structure is "a combination of materials to form a construction that is safe and stable and includes, among other things, stadiums, stages, prop forms, radio towers, sheds, storage bins, tents, billboards, space signs, bleachers, ramps and seats." The definition of a building is "a structure wholly or partially enclosed with exterior walls and a roof, of a permanent or temporary nature, affording shelter to persons, animals or property." That is the legal definitions.

Nick Cortese: From where?

Jon White: From §54-2 of the Town of Chenango Code.

Dan Wolters: I can't see anything temporary about it. Yeah, you can get a crane to move it out.

Jon White: You need to have specialized equipment. You've got to have a specialized trailer. When they move a shed in, it's a specialized trailer.

Ed Miller: These are under DOT regulations. They're made to go over the road, there's a big difference between moving a house and moving a storage container. Trucks grab on to them and move them all the time.

Dan Wolters: If I put one on my property, it's there. I'm not going to be moving it, I don't plan on taking it out.

Ed Miller: I had a 20-yard dumpster dumped on my property. They delivered it and then picked it up and it's gone. And you can do the same thing, Abbey does that all the time.

James Brewster: One of the important words that I saw, unfortunately it's not in here. It's in other parts of our definitions in the Town Code is 'customary.' I think this is rather ambiguous because a container can be permanent or non. It's both, it's interpretive. It's not one or the other. But what is customary. I realize it's not in the definition but it's implied in what the testimony was about. It's customary to have them.

Ed Miller: I think if we make a container, I wouldn't want next door neighbor, I understand on acreage, commercial, industrial sites containers are part of the business but I can tell you I wouldn't want somebody wheeling up next door to my residential lot putting a container on the property because that's not a shed. It's not a garage. It's an eyesore, in my opinion. On a farm, on 100 acres, on Front St...

Aleta Kinne: I don't know if this is part of it or if not part of it.

Nick Cortese: It's not.

Aleta Kinne: They have not been coming in for permits and it should be through Ordinance when they come in to issue a permit.

Jon White: As I said, a trailer, the definition of a trailer is "any size platform structure with or without walls or guards, having wheels, that is pulled behind any type of motor vehicle." The container does not have that feature. It does not have wheels and it cannot be pulled behind by a motor vehicle because it does not have wheels. The container does not meet the definition of a trailer.

James Brewster: It does not meet the first sentence of the definition of a trailer.

Ed Miller: There's a specific set of wheels that's made for a container.

James Brewster: This also includes a similar vehicle/trailer not propelled under their own power drawn on the public highways by a motor vehicle as defined in this section. Again, ambiguity is here.

Scott Smith: Mr. Chairman, I think we can make this easy. If we were to send it back to the Town Board and say...

James Brewster: Can't do it. We have to make the call.

Scott Smith: We have to make the call? Ok, but we don't make law.

James Brewster: No, but we have to make the call on the existing definitions.

Nick Cortese: Right, you don't make law but you interpret existing law. So, to the extent that this is ambiguous it is your job to disambiguate this question and make a determination.



James Brewster: Or convince some of us that this isn't ambiguous.

Scott Smith: It is definitely ambiguous so I'm thinking maybe it ought to be written so it is not.

James Brewster: We can't do that.

Jon White: We can only do the definition of what's in front of us.

Ed Miller: How are we going to go about doing that?

James Brewster: One of the ways is you have to go back and try to figure out the intent of the authors. We got information but I also looked it up too and back to the Town records when these local laws were discussed and it's inconclusive at best. There's some nuggets in there but it's not something I think we could sink our teeth in to. The only thing that stuck out to me was a lot of this especially with the tractor trailer and the trailer part, a lot of the discussion in the minutes revolved around trailers idling and making fumes and that may have been the intent for these definitions. It's right around the time that they were defined so they actually were talking about wheeled vehicles hooked up to trucks idling in residential so that's...

Ed Miller: It's still ambiguous because that could be a container with a generator on the back of it.

James Brewster: The record keeping doesn't really reveal much unfortunately to get back into the heads of the writers which is something that we are required to do, it's ambiguous.

Ed Miller: It was probably written before containers were a big thing.

James Brewster: The update was in 2014.

Scott Smith: When was the original done?

Nick Cortese: Temporary structures, the definition was amended in 2006 so I don't know what it was amended from and what it ended up as but that's the annotation on ecodes.

Aleta Kinne: I visited all of these on that list except one. I did not get over to Kattelville Rd. I spoke to six of them. The other five were drive-by. One of them was not even there, it was the wrong name. It was Mary's Restaurant, does not own that one. But what I found out in asking the purpose of why they have it, everyone was storage, long-term for fuel, materials, equipment, and they were not going to move. They weren't temporary. I tried to tell some of you NYSERDA training and you were there, down at the Cutler house a few years ago, NYSERDA did one on the energy storage, batteries and what we were told that night was go back to your municipality and tell them to buy a shipping container. Put shelves on both sides and you could store the batteries there that expect to be coming down the road to store energy from the solar farms. I said, and I don't know if I'm supposed to be telling this, it's fireproof, it's theft-proof, there are no windows for breaking in, it's fireproof, there's a heavy door that you can lock and that was recommended. I brought that back to John Freer and left my books with him in the office there somewhere but that was from NYSERDA. They were not a temporary item.

James Brewster: So I think, if I may, you remember middle school english? Diagramming sentences, I think we need to do that in a talking way. Temporary structures. Is a shipping container, cargo container, a nonpermanent structure? Phrase one. What is our interpretation of that clause? Is it a nonpermanent structure?

Aleta Kinne: It can be or not.

Ed Miller: There's more of them on ships than there are sitting in back yards.

James Brewster: We have to decide. That phrase we come up with our Board-agreed-upon decision.

Scott Smith: Are they a permanent structure?

James Brewster: Are they a nonpermanent structure? And this is where I get back to the customary. They don't use it but a nonpermanent structure. What has been the custom, we can go back to 2006, it's not that long ago to now.

Jon White: Truck trailers and tents and structures of similar natures. That's what they're saying right here now.

James Brewster: Which is ambiguous. We don't know what that means.

Jon White: Well, truck trailers we do. And a tent we do.

Dan Wolters: What's your definition of permanent?

Nick Cortese: That's a very good point. Statutory interpretation is a large part of what I do for a living and this is exactly how you do it. You literally parse every relevant word. The idea behind drafting laws and regulations is that every word means something and every exclusion of words also means something. Everything means something and so if there's not a statutory definition of what permanent means, we look to the dictionary for what it's common meaning is because the word in and of itself is unambiguous if you put a real definition to it so the dictionary definition of permanent is lasting or intended to last or remain unchanged indefinitely.

Ed Miller: So it's not permanent.

Nick Cortese: That depends on your perspective.

Jon White: It depends on your use.

Ed Miller: What's permanent? If you build a deck, you've got to put footers in. You can't move it.

Nick Cortese: I can move a deck.

James Brewster: When people put in a cargo trailer as a garage, what is their intent?

Aleta Kinne: Storage. Long-term storage.

James Brewster: Right, I think the intent is its permanency.

Ed Miller: The intent of a container? No, I don't agree with that. They're designed for shipping.

James Brewster: When somebody puts it down on their property...

Ed Miller: But that's not their intent.

James Brewster: But it's their intent.

Ed Miller: Their intent but the intent of the manufacturer is to ship goods.

Webb Sisson: Not really.

Ed Miller: What do you mean, not really? Yes it is.

Scott Smith: They're built to be rented out too.

Ed Miller: They store goods, ship goods.

Scott Smith: To store things.

Ed Miller: But they're not intended to be a long-term, they don't last that long. The bottom of the container sits on the ground, it'll be rotten in 15 years, guaranteed.

Jon White: How long's a shed going to last?

Ed Miller: If it's on footers like it's supposed to be by Code, it lasts forever.

Jon White: A portable shed is on pressure-treated skids and it's moved in by a trailer. It's no different than a container that's dropped there, somebody puts it on a bed of stone and uses it to store cars, store small equipment. They use it as a garage. I'll be honest with you, I have one.

Ed Miller: I have one at our office space.

Jon White: It's cheaper, it's more economical and it lasts longer.

Ed Miller: But it's not designed and built as a permanent structure.

James Brewster: Straw poll. In the context of the use in this Town, is a cargo container nonpermanent? Yes or no?

Ed Miller: Yes.

Jon White: No.

Scott Smith: Nonpermanent you said. No.

Aleta Kinne: I like the definition you had on the computer this morning, it says cargo container is any container sufficiently durable for repeated use which, by virtue of its own particular design, permits the storage and protection of goods.

Scott Smith: Indefinitely.

James Brewster: Remember, I said nonpermanent and you said...yes, nonpermanent?

Ed Miller: Correct, I said nonpermanent.

Jon White: I said no to nonpermanent.

James Brewster: Which means it's permanent. No is permanent.

Scott Smith: No.

Aleta Kinne: No.

James Brewster: Ok, I say no meaning that we as a Board collectively in a straw poll believe that a cargo container is a permanent structure. That's the consensus.

Scott Smith: The container itself is permanent, yes. The location can change. But the container itself is permanent.

Webb Sisson: People move houses everyday.

Jon White: The intent to use that container is permanent.

James Brewster: Based on the definition of permanency having intent. Ok, used for purposes other than residential. So, what does that mean?

Scott Smith: Used for purposes other than residential.

James Brewster: Other than residential, other than residential use or other than it being a house?

Scott Smith: You're not going to live in one.

Aleta Kinne: The History Channel had an article, they're making little houses.

Jon White: There are people that do it.

James Brewster: That's not customary, but your correct.

Nick Cortese: It says used for purposes other than residential. It doesn't mean that it couldn't be used as residence, it's just is it used for purposes other than that.

Aleta Kinne: Yes.

Nick Cortese: I will point out that you've already made a majority determination that these things are permanent structures so if that's your determination, to be perfectly honest with you, the rest of the definition becomes irrelevant to your determination.

Scott Smith: I think we've determined that the containers themselves are permanent, but since it can be moved...

Mike Lumsden: So can an Amish shed.

Webb Sisson: And manufactured housing.

Ed Miller: Manufactured housing is the same thing. It's got wheels underneath it.

Mike Lumsden: That's not a manufactured house, that's a trailer. A manufactured house comes in on a rail, sir.

Ed Miller: It comes on a trailer.

James Brewster: Ok hold on, we're up here at the Board now.

Ed Miller: I think we should just go with it because it's a majority vote.

Nick Cortese: You can vote against it. There's nothing keeping you from voting against it.

Ed Miller: Yeah, exactly. Definitely the way it's written...

Aleta Kinne: Can we just word it that we agree with Gavin?

James Brewster: No, that's not how we do it. We just interpret it, right? We just state an interpretation, we don't do any kind of agreement or anything like that, right?

Nick Cortese: No. You just say this is our interpretation, and we give some kind of explanation why. Based on the discussion we've had this evening, I think that we have to point out that the idea of permanent or permanence is not defined in our Zoning Code. However, the dictionary

definition of permanent is as follows, it's blah blah blah, and then based on that the Board has made the determination that the character of a shipping container is permanent in nature and thus is not a temporary structure, something to that effect. Obviously, I would circulate a draft for all of you to review and approve and make comments and we can make edits and so on and so forth but I think it could be something that's that simple. It doesn't need to be something like some kind of major exposition on lexicography and the historical statutory interpretations and blah blah blah. At the end of the day, you can look back at legislative history but legislative history is only relevant if you can't read the language of the statute clearly and make an interpretation of what it says on its face and you would look at dictionary definitions and words how they are used in common parlance before you would look at legislative history. That's basically a backup if the language of the statute on its face cannot be interpreted based on what it said or its susceptible to multiple meanings. I don't think that the definition of temporary structures is susceptible to multiple meanings, there's just multiple objects that could fit into that box or not, that's all. The definition of temporary structures is unambiguous on its face, there's just lots of things that could or couldn't be temporary structures depending on how you analyze it and you've analyzed it in a particular way tonight and if you're comfortable with that you can move forward. If not and you want to discuss it further, you have 62 days from today to do it.

Aleta Kinne: I'm ready to make a decision.

Jon White: I'm good with what we just talked about.

James Brewster: Ok, so would we just approve what we said?

Nick Cortese: Don't do anything. Basically, what my suggestion would be is that I'll prepare a draft decision on your interpretation and I'll send it to everybody and everybody will have an opportunity to review it and make comments on it in between the meetings and then I will bring to the meeting what I believe to be the final draft and then we'll review that draft at the meeting and if further changes need to be made then we'll make further changes and we'll come up with something that everybody feels comfortable with. And then, we pass a resolution adopting that as the ZBA's formal interpretation. You do not need to do that tonight.

James Brewster: So that'll be automatically pushed to the next meeting or do we have to kick it there officially?

Nick Cortese: No, we're not obligated to vote on this tonight so basically we just adjourn this to the next meeting for additional discussion. If there's no vote then the matter remains open.

James Brewster: Just for the record since I'm out, what was your vote on that?

Dan Wolters: My vote was no.

James Brewster: Ok. You'll vote formally, but I just wanted to get your vote because I want you saying something because I'm out of the picture next month.

Scott Smith: Can it be included how it will or will not affect how code reacts to those units?

Nick Cortese: It should be self-evident because when you make the interpretation that a shipping container is not a temporary structure then Code reacts accordingly because that's the official interpretation of this entire Town in terms of how we process what fits into the temporary structure box and based on our interpretation of the language of the definition of temporary structures,

everybody seems in a majority agreement at least that a shipping container or a storage container, whatever you want to call it, is not one. So, Gavin would react accordingly because that's the definitive interpretation but we don't need to explain how Gavin should react to that nor is it in our purview to make those kinds of comments in a strict interpretation of statutory language. This is as dry and analytical as it gets. There's no policy behind this, there's no politics behind it. It's literally just looking at words on a page and then telling people what it says.

Ed Miller: Well yeah, based on words on a page, he's absolutely right.

Nick Cortese: You've got a whole month to change your mind and think about it.

James Brewster: Without objection this meeting is adjourned, the interpretation will be done next meeting.  
(10:17 PM)

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read "Kari Strabo". The signature is stylized and cursive.

Kari Strabo, Sr. Clerk