

A Meeting of the Zoning Board of Appeals for the Town of Moreau, Saratoga County, State of New York was held at the Moreau Town Hall, 351 Reynolds Road, Moreau, NY 12828 on the 25th day of May, 2016 at 7:00 PM.

ZONING BOARD MEMBERS PRESENT:

Gerhard Endal, Chair

Kevin Elms

John England

Richard Kubis

Scott Fitzsimmons

ZONING BOARD MEMBERS ABSENT: None

Also Present: Atty. Malcolm O'Hara, Attorney for the Town; Atty. Dennis Phillips, Attorney for the Zoning Board, Tricia Andrews, Recording Secretary.

Chairman Endal called the meeting to order at 7:10 p.m. Due to the expectation that the meeting would be longer than usual, the Chairman deferred the approval of the minutes to the next meeting. The Chairman moved to appoint Dennis Phillips Attorney for Appeal No. 768 & 770, and Mr. Elms seconded. Roll Call vote resulted as follows: Mr. England, Yes; Mr. Kubis, Yes; Mr. Elms, Yes; Mr. Fitzsimmons, Yes; Chairman Endal, Yes. Motion carried 5-0.

Old Business

Appeal No. 769

Appeal of Determination for the application from Maurice Combs of 96 Van Dusen Street, Queensbury, NY 12804. Applicant is proposing to expand an existing Manufactured Home Park with an additional four (4) Manufactured Homes in a C-1, General Commercial District. This property is located at 2-14 Fawn Road and 16-18 Fawn Road and is designated as 77.1-1-13 and 77.1-1-28 on the Town Assessment Map.

Mr. Combs was not present, but the Appeal is continued and he may pursue it next

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month if desired.

Appeal No. 768 & 770

Gardner Congdon, Individually and as Supervisor of the Town of Moreau, has filed a Notice of Appeal from the Town of Moreau Zoning Administrator's decision determining that the use of the property located at 1323-1325 Route 9, Moreau, NY 12828 as a propane distribution facility was a permitted use within the Town of Moreau Zoning Regulations and Comprehensive Land Use Plan.

English Village, LLC has filed a Notice of Appeal regarding the Town's Building Inspector/Code Enforcement Officer/Zoning Enforcement Officer's determination regarding use of the property located at 1323 -1325 Route 9, Moreau, New York 12828 as a propane distribution facility was a permitted use within the Town of Moreau Zoning Regulations in a C-1, General Commercial District and Comprehensive Land Use Plan.

Tom Shephardson, lawyer for English Village , presented as Atty. O'Connor had asked that they go first. They own 90 acres, including English Village Apartments which are 111 units with families and children in a residential setting, 42 acres of vacant land that will hopefully be developed in the future and abuts the Blue Flame site. As such, the residents would feel the effect of odors, noise, pollution & potential contamination and other risks inherent in such an operation. They have rights to develop in the future and their ability to do so will be stifled if this use is built because no developer would build next to 60,000 gal. of propane gas and no one would move in there if someone did build it. They would like to see the Zoning Administrator's decision reversed. English Village is a PUD and the rest is C-1, and this is not a use permitted in the list of Schedule of Regulations for a C-1 Zone. The building inspector made a decision that the fuel depot is a permitted use as a business which primarily services highway traffic, and they have no idea how they could come to that conclusion since it will be an office, two 30,000 gal. tanks, and Blue Flame Company trucks. This is nothing like a business that services highway traffic like bar, restaurant or diner, which part the Zoning Administrator apparently neglected to read. The words in the regulations are clear and unambiguous

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and the Town Board has provided guidance as well that makes it clear that this use does not come near a credible interpretation of the Zoning law. This Board should also consider an expert report/opinion from the LA Group, municipal Planning and Zoning experts who helped the Town make the Comprehensive Plan and has a unique perspective on the Zoning in the Town. The LA Group doesn't think this is a permissible use either. The Board ought to rely on the LA Group opinion and give it great weight. Blue Flame says not to because it wasn't written by a lawyer, but that isn't required. Blue Flame sent 25 lbs of paper and says it is a permitted use because their trucks use the highway, but that is not what the Zoning Law says, and it shouldn't carry any weight in the interpretation of this matter. He anticipates Blue Flame's lawyer would like to point out procedural issues such as the Appeal not being timely, (but the decision in question was made on March 22, 2016 so they are, in fact, timely) will say they have no jurisdiction, and will say they do have review rights over the Zoning Administrator's decisions.

The Chairman asked why they (English Village representatives) weren't at the Planning Board meetings that addressed this use. Atty. Shepardson said that the notice they received from the Town wasn't adequate, didn't say that there would be two 30,000 gal. storage tanks and amounted to an industrial storage tank. Also that's not the function of the Planning Board, they don't decide permitted uses. Members had different understandings of the Zoning ordinances and don't make those decisions. If they had denied site plan approval based on use, Blue Flame could have sued them and would have won. So complaining to the Planning Board about the use wouldn't have made a difference.

To the idea (he expects Blue Flame will raise) that there are other propane facilities in the general area, Suburban Propane has been there 50 years, it was pre-existing non-conforming use. Shaw Fuel, also services trucks there. Also, just because the Town made a mistake allowing that, doesn't mean they should be allowed to make another one now. Blue Flame will say that there was a decision in October of last year, a decision by the previous Inspector, who had a secret meeting with the fire company and others but nobody knows what he saw and there was no record or written approval of that. That Zoning Administrator has since retired. The Planning Board hedges about use (in the

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minutes) and then issues approval. New inspector on March 22 finds it's a permitted use. Now, he has resigned also. Atty. Shephardson doesn't want to say there's anything nefarious, but his client is wary of what's going on and is prepared to protect their property rights. Now a building permit has been issued, for which an application was filed on Monday before the April meeting. Blue Flame wouldn't agree to a stay, they had already filed a building permit application disregarding this Board's procedures, and the Inspector issued a permit on his way out the door. So if the Board doesn't act tonight, they would ask that at least they oppose or suspend the building permit, pending decision of the Board.

Daniel Horowitz, one of the owners of English Village and Sr. Vice-President of Cold Group Realty. This would be economically devastating to their project. Of 111 residents, they signed 90 names on their own to a petition for relief indicating this will destroy their peaceful, quiet enjoyment of what they have rented at and lived in for multiple years. It will be devastating for them to live with this in their back yard and to us, we would not build on the remaining acreage. It is a disaster waiting to happen and we would never do it.

I don't know if there was ever a safety plan put in place for this, there are woods all around there. In case of an explosion that will go up, how do we get all those residents out of there? I don't know what position it puts us in if work gets started, but we are prepared to take legal action.

Rob Barnes, resident of English Village Apartments who got the petition, had everyone from English Village attending the meeting stand up. Mr. Barnes also had a concern with how close Blue Flame would be to the traffic light, as traffic at the end of the day backs up badly in that area. He is also concerned for kids, his own disabled wife and other disabled people in the apartments and their ability to evacuate in case of emergency.

Atty. O'Connor: Attorney for Gardner Congdon and he agrees with English Village. He wishes to clarify that this is not an Appeal of something this Board has done, but of a decision made by the acting Building Inspector. Not an argument with this Board, but with the acting Building Inspector. He wishes the Board to apply with common sense their own Zoning Ordinance. It's not hard to see that fuel depots are not a permitted use

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in the C-1 Zone, especially since it is listed as a permitted use in the M1 zone. A fuel depot or fuel distribution facility was indicated to belong in an M1 Zone, so the Zoning Administrator should have decided that a Special Permit was needed. This Appeal is to decide if he was right to say that it was a permitted use and didn't have to come for a Variance. Counsel was told it was already decided, we've heard it was decided perhaps by Joe Patricke, but there's no written record of that. Towns can require a decision like that to be filed in the Town Clerk's office, but Moreau only has it required to be in the Building Dept. Determinations by the Zoning Administrator have to be on file and made public, there's no record of that determination written or on file. The second determination, the one we are appealing, was made by the acting Zoning Administrator and that is the one we and English Village are appealing.

Chairman Endal: What is your sense that he refers back to previous decisions when he makes that decision?

Atty. O'Connor: I don't think it shows that it was actually an older determination. I don't think the acting Zoning Administrator knew how to go about it, and he relied on what Blue Flame said about a prior determination being made. If you look at the actual regulation, there are 15 principal uses allowed in the Commercial Zone. Somebody tried to tell us this was a retail use, and those are allowed in the C1 Zone. You have to look at the ordinance and the record. He told the Planning Board that there was not retail. This is not where you bring a gallon tank to refill. This is where they bring in large tanks and unload it into storage tanks. The only people on site are the drivers of their trucks, who fill up and spend the day delivering. It is a distribution center, it is a fuel depot.

Chairman Endal: I think of a Distribution Center like the facility Target has in Wilton. They (Blue Flame) are selling to individual homes.

Atty. O'Connor: Yes, but they are not on site as you would be at a restaurant, diner and bar. Common sense says it goes in a M1 zone, regardless of what's happened in the past.

Chairman Endal: Everyone here understands, as we have had an Appeal of Decision before, we understand it's not against our decision. Anything more from English Village or Supervisor Congdon?

Supervisor Congdon: I think the facts have been pretty well presented, and I would like to see the Board act on the facts of the law, it'd be a shame if you didn't.

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Michael Naughton, Attorney for Blue Flame: Starting where Atty. O'Connor left off. There is a discussion in the (Planning Board) minutes about whether they will have people coming in to fill individual tanks, and it shows that they don't want to do that. They are told that they will need another permit visit to do that, to control traffic. But, this is not wholesale distribution. It is mostly a retail purpose to provide to homeowners, who don't consume it there, but it does go to residences. The Board has a legal issue to decide, they have a lawyer, they don't know if they have legal jurisdiction. The Zoning Board of Appeals would be in trouble if every time someone had a problem with a Planning Board decision, they came to the Zoning Board of Appeals to challenge it. Town law says that a challenge to a Planning Board decision has to be heard in a court. So I cited a case called Vizio vs. Wright which says the Zoning Board of Appeals doesn't have jurisdiction over something that a Planning Board did. It's not up to a sister Board of the same Town to make that decision. Mr. Congdon was advised of that, you can see it in Planning Board and Town Board minutes, May 24th it expired, and he was told he'd have to file an Article 78. The Town Board didn't support his effort, and this is an effort to find a cheap way about it, so he instructed Mr. Marcantonio to write a letter about his decision. He was asked to by the Supervisor. It was an end run around the statute of limitations. This Town doesn't want to set that precedent and allow these decisions to be revisited over and over. They have missed the opportunity to file an Article 78.

Chairman Endal: We are hearing an Appeal for an interpretation of the Zoning Administrator decision.

Atty. Naughton: They are arguing that, but they actually should have challenged the decision of the Planning Board. If the Building Inspector issues a Certificate of Occupancy, does that restart the statute of limitations? No. There is a table of all the cases we have cited, and so that's where all the statute of limitations conversation comes in, it's a bad idea to allow these things to be opened back up. Issues should have been raised at the outset. The Zoning Administrator has to decide if something has to go to the Zoning Board of Appeals, he is the gatekeeper. He made a determination it as a permitted use, and the Planning Board held meetings, the applicant and Board spent time and money planning, coming to meetings, over the course of months. Objections

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should have been raised then, and none were. Neither English Village nor Mr. Congdon showed up for those, even though they were notified/knew. We believe you don't have jurisdiction and should dismiss for those reasons.

If you are concerned about the residents of English Village, there was notice in the paper. They hinted that the notice was confusing somehow. I attached a copy of the notice to our paper, it's Exhibit B, and it clearly says, a this is for liquefied petroleum facility and it will have LP storage tanks etc. No one showed up, sent a letter or objected. If they had questions, they should have asked them. Questions were raised about the permitted use, by Mr. Antis, they looked it over and made a decision that it is a permitted use. It was discussed. The courts will give deference to that decision. The deliberations that the Planning Board made in their meeting, I showed you some precedents where the courts would give deference to that. They (Planning Board) do deal with Zoning Issues all the time and they have the skills, and had counsel. They had good reasons when they decided it as permitted. With regard to Shaw Fuel and Suburban Propane. They are not grandfathered. They were approved in 2004- by Mr. Patricke for Special Use, that it was permitted, and I gave you a copy of the minutes. They came back for another 30,000 gal. tank in July 2009, and again the Planning Board approved it. This is on the same road. Shaw Fuels, was approved in Oct 2008, same zoning, it was approved for a propane distribution facility. They know the Town and made that determination.

The LA Group was said to be an expert. To some extent, these are legal issues about what is permitted, whether it's vague, this 'business that primarily services highway traffic' is ambiguous. Courts will find in favor of landowner or developer when it's ambiguous, because Zoning in itself is a derogation of property rights. The Board does have the power to review these determinations. You have the power to make that decision on a timely Appeal, not a determination by some expert with the LA Group. You may take their report as guidance, but guidance of counsel is better than guidance of a planner.

There's a history in the Town. I am sure you sometimes consider precedent setting when you made decision. And there is precedent for allowing these propane distribution facilities in the Town and that has values. The application for a stay seems

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to imply someone isn't doing their job, that something nefarious was going on. He)Mr. Patricke) actually got Fire & EMS in beforehand in order to avoid wasting the Board's time by sending it on if it were a concern. The Board did their job. No one objected to the facility. People can't come in after the fact and reopen; all this goes against a sense of fairness. NYS Legislature made a 30-day rule and a court rule in place for just that reason and the Board is in a awkward position to second-guess what another Board did. In response to the application of stay, I filed with Kathy Perez, three cases that say that the stay provision in Town Law applies to Appeals by developers and property owners, not third parties like English Village and Mr. Congdon. Those are decisions from high courts in this area. The Zoning Board of Appeals doesn't have the power to issue a stay, or jurisdiction to hear the Appeal. English Village didn't site any cases in support of that. A stay would be a restraining order and court would have to issue that in accordance with an Article 78. We have a building permit, we have signed mylars, we are doing what has to be done. There are steps and we took them. We are not rushing out to bulldoze anything.

Atty. Naughton asked if the Board would make a decision tonight.

Chairman Endal: I want to have a public hearing, I am not sure if we will make a decision, my feeling is we probably we will not. Your argument on the stay is that we don't have jurisdiction.

Atty. Naughton: Yes.

Chairman Endal: And that there's a time limit that's expired on the Zoning Administrator decision?

Atty. Naughton: The jurisdiction threshold I talked about is, what's the harm. That's what the courts are going to look at. The Appelants were not harmed by the decision of the Zoning Administrator, not by anything but the Planning Board decisions. The March 22nd memorandum was made up after the fact. They are really after the Planning Board decision, which this Board doesn't have the power to do. Our Site Plan approval will stay valid because it's up to the courts to annul it, they are trying to back-door you. You can't make a decision on his memo, because we already had the Site Plan approval, so his memo didn't accomplish anything. Mr. Marcantonio said it was decided in October.

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Chairman Endal: So you're saying because the Planning Board reviewed it, it became a permitted use?

Atty. Naughton: Yes. Mr. Marcantonio's letter didn't do anything for us.

Chairman Endal: It's the only written determination.

Atty. Naughton: There's a written determination in the minutes of the Planning Board.

Mr. Kubis: It's a complex situation. I spent a lot of time reading the memoranda. We have zoning, it's intended to group like land uses. We have Zones. We do that by identifying uses that are acceptable and excluding everything else. Within that, the Zoning breaks the broad zones down even further so we have a list of 15 specific uses. We have this broader "primarily servicing highway traffic" which you address in your memo. You address that the propane distribution center is related to highway because they will use the highway. If we accept that simply having related vehicles to the business meets that criteria, what commercial uses would still be excluded?

Atty. Naughton: Your Zoning ordinance says that a gas station, which is liquid gas, is permitted in a C-1 district, but requires a Special Use Permit. You can drive up and down, there are lots of gas stations, and they can blow up, too. There are many uses on the highway allowed over the years. New people may be in office and want a different zoning scheme. You go through the legislative process and tighten it up. But the Comprehensive Land Use Plan says that this is a part of town where intense commercial development is encouraged and should go. And your Route 9 corridor study says the same thing. This is the part of Town where this stuff is supposed to go and form a tax base and be near the interstate. English Village are in a PUD that used to be part of the Commercial District. They are going to border a commercial establishment no matter what, be it McDonalds or whatever. If the definition is not real tight and defended, you look to general information and the list, but the list is not exhaustive.

Mr. Kubis: We created this Zone because there are things we don't want there. This language allows some and excludes others. Some are allowed automatically, some require Special Use Permits. What would still be excluded under the "primarily servicing highway traffic" standard? That's everybody.

Atty. Naughton: Residences...

Mr. Kubis: But commercially.

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Atty. Naughton: You have industrial zones that have a truck once or twice a week and not constantly. I haven't given it a lot of thought, but if this were outside of plan, why are there two others already approved? Why didn't anyone challenge that?

Chairman Endal: Why is this not a fuel depot?

Atty. Naughton: Depot is not defined in law. If there were a definition, and it matched, it might be harder. But there isn't, and someone already decided that this isn't one, it's a distribution facility. Nothing's coming in by rail, like a large tanker. That's a depot. It's not like you see in the Port of Albany.

Atty. O'Connor: We wasted time talking about jurisdiction because we are talking about the Zoning Administrator decision. You are making a determination about the Zoning Administrator decision that it's a permitted use, as the Asst. Building Inspector put in his determination. We are not challenging that decision of the Planning Board. There's no deference to a determination, if there were it would be to the Zoning Administrator determination. You can't give deference to it and say that controls what you've got to do. Your questions were on point. You have to look at the list of permitted uses, and the only one that comes near is "primarily servicing highway traffic." It's not public highway traffic, not their own vehicles. It's not traffic created by their employees. The minutes say that their people coming in are the traffic they generate. That's not public traffic, it's their traffic, it's not highway traffic. The other question that was important is how do you distinguish this from a fuel depot. That is your job. The fact that it's not defined is not an excuse, you have to decide. You have to rationally decide what that means. If you look at the terminology in their application, they call it a fuel distribution facility, and if you use common sense, it is the same thing. They say in the future they may consider retail use, but on the record they said that they will not. In common sense it is your jurisdiction, your task to decide if this is permitted, regardless of what the Planning Board did. There's no evidence there that anything written stands. The fact that someone hasn't challenged it, doesn't matter. Your task is complex but simple.

Mr. Elms: When you argue about the vehicles. If I were buying property and I was going to have a fleet of ice cream trucks coming in and out of there, that wouldn't be permitted in your eyes?

Atty. O'Connor: I don't think that's a conflict. You have to look at your ordinances in

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its totality. Fuel depot is on the schedule in M1.

Mr. Elms: The Attorney General's office gave me a definition, I called them, and it's different what I heard here.

Atty. O'Connor: I think the common sense definition is that it's where you gather it and distribute it.

Mr. Elms: I have looked into it to determine it as best we can and the information I got is different from what I heard there.

Chairman Endal: What's your reply to their argument that it's not disallowed, but it says "such as..."?

Atty. O'Connor: It says "The following are permitted," and it never says "such as." Only "primarily servicing highway traffic" says "such as..." and that refers to people doing business on the premises.

Supervisor Congdon: The point of sale for propane will not be there. The trucks are metered and they have a device to print a bill. So the point of sale is at the residence where it's delivered. There's no retail transaction occurring on the site. The check or credit card purchase that's made will be in Washington County or over in Glens Falls. I think you could lose sight of what is retail. Traffic comes off the road and makes a purchase. Counsel mentioned the Town's Attorneys, Bartlett, etc., made the decision it was a permitted use. Are you aware of any decision made by your people? (to Atty. O'Hara)

Atty. O'Hara: Karla Buettner did not give an opinion.

Supervisor Congdon: You should be aware that the Town Law requires the building inspector be a resident of the Town. While Mr. Marcantonio is acting as building inspector in the interim, he lives in Queensbury, so he doesn't legally hold the position. He's issued building permits, which have not been challenged, and we can challenge the legality of this one as he's not eligible to be the building inspector legally.

Chairman Endal: We're hearing an Appeal of a Determination that's been made, that might be another Appeal.

Atty. O'Connor: I believe you are aware of 149-82 stay of proceedings. It's different from Town Law. Counsel said you didn't have jurisdiction but it says in Appeal you can stay unless the Zoning Administrator certifies that a stay would cause imminent peril to

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life or property, otherwise it requires a restraining order. You can have an ordinance that goes beyond the Town Law, and you have done that.

Chairman Endal: Would like to hear from our Attorney. Is that our call?

Atty. Phillips: I want to see the language. It appears to say that there's an automatic stay in place, in which case you wouldn't have to do anything....I would give the cautionary opinion that there is an automatic stay relating to the action appealed from, but that action has yet to be determined. You seem to be unsure whether you are hearing an appeal from the Zoning Administrator decision or the Planning Board decision. Likelihood is they won't do anything, even though they have a permit. I would say that unless there are further proceedings, it appears there is a stay in effect.

Atty. O'Hara: You have to decide you are hearing the Appeal of Determination, otherwise the stay won't apply.

Atty. Naughton: That's been interpreted, and that should be reviewed before you decide. I have a comment I want to respond to about the retail.

Mike Ruggiero from Blue Flame: I was involved first hand with Planning Board. To the retail question vs. fuel depot. We are retail by the fact that propane is being delivered to the home. He's correct. But anyone who wants to do business with propane delivery, the truck doesn't magically show up. People come to or call the office to set up service, set up schedules. We are retail in that space. It's just that happens to be the way propane is sold. It is 100% retail.

Atty. Naughton: Blue Flame has other facilities like this, there's an office there and that's because they are engaging in business and handling accounts there.

Mr. Ruggiero: We had that conversation and about the traffic at that intersection. Not a lot do drive in but they can and they do, that was misinterpreted to mean no one comes on site.

Chairman Endal: We need to talk as a Board on how they want to move forward. If we close the public hearing, the public needs to hear where we are on this. I want to make sure the public has a change to speak. If we are going to deal with this as a permitted use issue.

Atty. Phillips: This was advertised as a public hearing, you've heard comment, it's up to you to decide whether you want to close it because you received all that you need, or you

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could hold it open if you are going to make a decision another night.

Chairman Endal: I think everyone has had an opportunity to speak.

Robert Brown: Will we have an opportunity to see the site plan and all the info that goes with it and what the Fire Marshall says and signs and everything?

Atty. Naughton: It's public record. You can come to the Building Dept and see it.

Mr. Brown: Out of courtesy, you would have a print with the location and a readout of what's going to be there.

Chairman Endal: That would have been available at the public hearings that were held in January & February. We are not reviewing their decision.

Mr. Brown: What about what he said about the imminent danger to life in the zoning?

Atty. O'Hara: Mr. Brown it's the opposite. It's about the stay. We can't make a stay if the stay's going to cause peril to life and property.

Mr. Brown: Then I appeal to your own good conscience. I work in industry and I am very aware of the hazards with this.

Atty. Shephardson: If there is an automatic stay, then the Building Permit was issued against that stay, and you should stop it.

Chairman Endal: That's not our jurisdiction.

Atty. O'Hara: You have to decide whether you're hearing an Appeal of Determination to decide of that applies automatically.

Mr. Elms: Motion to close the public hearing for Appeals Nos. 768 & 770 at 8:40pm and to reserve decision on those Appeals. Mr. Kubis second. Roll Call vote resulted as follows: Mr. England, Yes; Mr. Kubis, Yes; Mr. Elms, Yes; Mr. Fitzsimmons, Yes; Chairman Endal, Yes. Motion carried 5-0.

Chairman Endal: Our formal decision will come at our next meeting; we will deliberate and consult with counsel. We need time to think about it.

Appeal No. 771

A request of Richard Casey of 4 Michael Road, Moreau, NY 12828 for an Area Variance pursuant to Chapter 149, Article V, Section 149-59(A) and Town Law 267-b. Applicant is requesting to construct a garage that will not meet the required side yard setback in an R-2, One and Two Family Residential District. This property is designated as 63.19-

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1-7 on the Town Assessment Map.

Mr. Elms offered to recuse himself because he lives close to this house, but said he believes he will be impartial. No neighbors objected. John LaRock is putting on an addition coming closer to the applicant's house on the south, they want to buy the old garage from Mr. Larock and move it 30 feet onto their property. In order to keep the gable line through the house, he will turn the garage and line it up to the driveway- to keep the 15ft. side setback, he would have to go behind the house which doesn't make sense. Additionally there are drains back there.

Mr. England: How are you going to handle that difference in grade?

Mr. Casey: I have large stones I will move at the end of the driveway.

Mr. Elms: So you want 15 ft. relief, so the setback will be 5 feet. To the gable? This is a two car garage?

Mr. Casey: John Larock is eager to sell it.

Chairman Endal: It's very substantial.

Mr. Elms: Can you get it any further from the line? It's 5 ft.

Mr. Casey: There is a fence. Stop in and see it.

Chairman Endal: We have.

Mr. Elms: I have. I wasn't sure what was going on, but I thought this might be it.

Chairman Endal: One of the standards for giving this is it should be the least we can give. It's not going to interfere with your well. It won't line up with your driveway, but you could curve your driveway. That's not a huge hardship.

Mr. Casey: It's the offsets of the gables, from the road, you will see half a gable, that isn't going to fly.

Mr. England: Could you get it 7.5 feet from the line, 50%?

Mr. Casey: I'm already a foot off the line with the fence.

Mr. Elms: We're being good if we do that. The Town makes rules for a reason. I understand why you want to do it. I would be inclined to consider it at 7.5 ft. from the line.

Chairman Endal: Which is about the max. It is your property and we want to be accommodating. The person there now might not mind but someone in the future.

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Could you buy some land?

Mr. Casey: I hadn't thought of that. He's getting rid of this to build an attached two car garage, but he has a lot of land there.

Chairman Endal: That might be a way to do it and not worry about a Variance.

Mr. Casey: Let me check this and get back to you.

Chairman Endal: We can table it.

Atty. O'Hara: If you can do a boundary line adjustment you don't need to come back here.

Mr. Elms: Motion to table Appeal No. 771 Second Mr. England. All in favor.

Appeal No. 772

A request of John Clear of 10 William Street, South Glens Falls, NY 12803 for an Area Variance pursuant to Chapter 149, Article V, Section 149-59(A) and Town Law 267-b. Applicant is proposing to construct a garage that will not meet the required side yard setback in an R-1, One Family Dwelling Residential District. This property is designated as 50.1-1-1 on the Town Assessment Map.

Mr. Clear would like to tear down one car garage and build a two car garage.

Mr. England: Car port coming down?

New garage to property line will be 6 ft. off property line.

Chairman Endal: The carport encroaches on the setback?

Mr. Clear: I didn't measure it.

Chairman Endal: Is the new garage bigger than the garage and carport?

Mr. Clear: Within a foot.

Chairman Endal: Is this even necessary? Is that a structure? How long has it been there?

Mr. Clear: It's always been there, this was my wife's parents' house built in the 60's or so and we inherited it.

Mr. Elms: If he took down what was there and built on the same footprint he wouldn't have to be here.

Mr. Clear: It's going to be wider.

Atty. O'Hara: He's looking for a foot because he's expanding a pre-existing non-

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conforming setback by 1 foot.

Mr. Fitzsimmons: They are currently 14' and 16'6 ft. ?

Mr. Clear: 16'6" on the drawing is a measurement from the property line to garage, it's not size of the carport.

Mr. Elms: If you are taking down a non-conforming structure and building in the footprint, but one foot over, you only need a foot's relief.

Mr. Clear: Not sure it's a foot.

Atty. O'Hara: Your application is more likely to be viewed favorably if you are not asking for so much. The full Variance isn't necessary, the first 5 ft. are grandfathered in.

Mr. Elms: But we need exact measurements.

Mr. Clear: Top the roof or the pole?

Mr. Elms: Always the roof line. We need to know where you are now and where you will be then.

Chairman Endal: Are we looking at an Area Variance, or a Special Use for a pre-existing non conforming lot?

Mr. Elms: That would be the way to handle it, it works better if you can do that for us.

Mr. Clear: I can come to the next meeting if you can get me in at the front.

Chairman Endal: You need to do a new application for expansion of a pre-existing non-conforming use.

Mr. Elms motioned to table Appeal No. 772, Mr. England seconded. Roll Call vote resulted as follows: Mr. England, Yes; Mr. Kubis, Yes; Mr. Elms, Yes; Mr. Fitzsimmons, Yes; Chairman Endal, Yes. Motion carried 5-0.

Appeal No. 773

An Appeal of David Hall, 9 Grover Avenue, South Glens Falls, NY 12803 for an Area Variance pursuant to Chapter 149, Article V, Section 149-59(A), and Town Law 267-b. Applicant is proposing to construct a garage that will not meet the required front yard setback in an R-1, One Family Residential District. This property is designated as 50.1-1-20 on the Town Assessment Map.

Merton LaBounty, speaking for the applicant, wants to build a garage with a ramp inside

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it, as he is a disable veteran. The septic is behind the garage and they don't want to expand on the side, it's tight. This is a two car garage with room for a ramp inside.

The Board reviewed the criteria for granting an Area Variance and found:

(1) That the strict application of dimensional requirements would result in a specified practical difficulty to the applicant;

(2) That the difficulty cannot be alleviated by some practical method feasible for the applicant to pursue; Mr. LaBounty said that for the pitch of the ramp to go to Code he needs space to the front, not the side.

(3) That the variance is not substantial; it is 4 ft.

(4) That there would not be substantial change in the character of the neighborhood or a detriment to the adjoining properties; and

(5) That the alleged difficulty is not self-created.

Brian McLane of 8 Grover: He is elevating the roof line 8 ft above existing homes in area. The neighborhood is full of ranches with limited second levels, he has a concern about the character of the neighborhood.

Annette Newcomb, was not aware it was a two-story garage. There are 30 houses in there, 25 built before 1970. 1960's ranches and then this roof line will look like this, it's like a barn, it's right in the middle of the neighborhood.

Chairman Endal: I'm not sure we have anything to say about that.

Mr. Elms: It's under the Town Code. There's a set height for structures and it doesn't exceed.

Mrs. Newcomb: You just talked about the aesthetics of the neighborhood.

Chairman Endal: In terms of the Variance, which is for 4 ft. from the front setback.

Mr. Elms: So we're looking at how does it look to have it closer to the road.

Chairman Endal: You can call the Town and talk to the new Zoning Administrator about it if you don't like how it looks. I apologize for not asking for public comment.

Mr. Labounty: I will talk to the resident about your concerns.

Mr. Elms motioned for 4 ft. relief for the front setback to the closest part of the eaves and Mr. Fitzsimmons seconded. Roll Call vote resulted as follows: Mr. England, Yes; Mr. Kubis, Yes; Mr. Elms, Yes; Mr. Fitzsimmons, Yes; Chairman Endal, Yes. Motion

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carried 5-0.

The Chairman wanted to talk to the Board with regard to Town meetings on the subject of updated Zoning, etc that were missed. He suggested ZBA Members should meet and talk outside the meetings about the Zoning and send a representative, as such a large number of people are invited to these meetings. Mr. Elms expressed his disappointment that no one showed up.

Mr. Elms motioned to adjourn the meeting at 9:20 p.m., Mr. Kubis seconded and the motion passed unanimously.

Respectfully submitted,

Tricia S. Andrews