

A Meeting of the Zoning Board of Appeals for the Town of Moreau, Saratoga County, State of New York was held at the Moreau Municipal Building, 351 Reynolds Road, Moreau, NY 12828 on the 28th day of May 2014 at 7:00 PM.

**ZONING BOARD MEMBERS PRESENT:**

Chairman Gerhard Endal

Kevin Elms

John England

Richard Kubis

Scott Fitzsimmons

**ZONING BOARD MEMBERS ABSENT:**

None

**Others Present:** Joe Patricke, Code Enforcement Officer; Malcolm O'Hara, Attorney for the Town  
Tricia Andrews, Recording Secretary

The meeting was called to order at 7:05 p.m.

The Board did not review the minutes of the Feb. 26, 2014 meeting. The secretary changed the date in the header of those minutes to 2014.

The Board reviewed Appeal No. 743, A request of K & D Laundry Equipment, LLC of 201 Maple Avenue, Saratoga Springs, NY 12866 for a Use Variance pursuant to Chapter 149, Article X, Section 149-59(B) and Town Law 267-b. Applicant is requesting to purchase 30 Bluebird Road that is owned by Steamfitters and Plumbers Local 773. The Applicant proposes the use of the site will be for offices, garage, customer showroom and warehouse for commercial laundry equipment. This property is located in an R-2, One and Two Family Zoning District and is designated as 49.76-3-15, 16 and 21 on the Town Assessment Map.

John Cromie, Attorney representing K & D Laundry Equipment, spoke. The building is in an R-1 Zoning District which he had mixed up and the application says R-2. The Use Variance is for a building which started out as a grocery store and has since been modified to be used as offices and a training center for the Steamfitters Union. Members of the union were present in the audience. Their activities had been in the evenings. K & D Laundry has an existing business in Ballston Spa dealing with commercial laundry equipment for hospitals, prisons, etc. They do no laundry on site. They sell and repair equipment. They are not associated with any dry cleaning. Work is done on other sites except for very large items. Generally need service trucks that are ¾ ton service vans with a one-ton and a box truck used for deliveries.

Office space is larger than what they would need and they might rent some of that out. R-1 means that only day care is a permitted use, with a Special Permit, but there isn't demand for day care in the area. Other than that, there is no other permitted use in the R-1 that the building would accommodate. If the

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Variance isn't given (and Mr. Cromie thinks Plumbers & Steamfitters must've had one too), the property would probably go unused. Nothing planned to change the building, parking area, or anything except maybe landscaping. Use will be less intense than by the union, as it is only during the business day and not in the evening and never outside. The highest assessed value of a house in the neighborhood was built on land next door purchased from the union, so the presence of this building has not affected property values in the neighborhood.

Mr. England: How many vehicles?

Mr. Barnes, President: We have 3 service vans and one larger, one box truck 27ft., with a tailgate. One car trailer. So not a high volume of traffic. 4 employees who come in, load trucks, go out for the day in service vehicles. It is a mom and pop business.

Mr. England: Hazmat on site?

Mr. Barnes: None. No venting fumes. Once or twice a year we do an equipment show that might get 10 vehicles on a Saturday.

Mr. Elms inquired about their normal hours which are 8-5 and there is a showroom too, but customers don't ordinarily come to the shop. They come for small parts pickup occasionally. Now they are located in a residential area and have no problems with the neighbors. They will close that and this will be the main area. Can't afford property in Saratoga but they can grow into this one, they have contracts in this area.

Chairman Endal asked whether they had looked into other uses and was told that they might like to rent out office space, but it's not really the plans right now.

Mr. Elms asked about correspondence, and any that was received was in the packages received by the Board.

Realtor for the seller explained that neighbors who were at the Board meeting last month that was postponed expressed concerns about tractor trailer traffic but they left happy after the project was explained to them.

There was no additional public comment.

Chairman Endal: Can you use it for its intended use? What attempts have been made?

Realtor: It was on the market for a year with another company and then over a year with her before this contract was found. All sorts of people came in, but nothing was proposed that would have been able to use it without needing a similar permit. Everything that was brought in would have made too much noise, etc. to get into the neighborhood. This property has been on the market nearly 2.5 years with both companies.

Mr. Elms: It was a grocery, there was a fire in it, that was all before zoning and it wasn't given a zoning

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Permit.

The Plumbers Union had a Special Use Permit for a school which was added later.

This is a Use Variance. It is a unique situation. They could raze the building and put in houses.

Realtor: That's an expensive building to take out, and that would pose a financial hardship to the union.

Attorney Cromie: I looked at those numbers for that possibility and could not make them work.

Larry Dinali, Local long term union member and financial secretary. We bought the building in 1972, when we had about 60 members in Local. In 1986-87 we added a welding shop for training apprentices. 130 members. In 1999 another addition was added towards Lynch's lot with a variance for the side setback). The Local has 460 members now, 70 apprentices there and a full parking lot for years, traffic was bad. Laundry will be a lot less use, as will hours of activity.

Now, at Local retirees come and go in the daytime to pay dues, etc Monday-Friday. They had no complaints from neighbors.

They have outgrown this place and they built a building in Glens Falls. They did look into adding a second floor to this building, but it wouldn't work.

Chairman Endal: We need to address turning it back into a residential use and that it can't be done because of the losses they would incur.

Mr. Kubis: Besides selling, did you look into leasing or renting?

Realtor: The same issues applied, any use would have to be approved and no one has suggestions for anything that the Board would have allowed, they would still be here, and those proposals were more intense. Someone wants to add garage doors to back into every day, there were small industrial use proposals. People have tried. When told they would have to come to the Town, people didn't want to. They looked for lessors as well as buyers. Limited use was an issue every time. This was the first plausible idea.

Mr. Barnes: It looks commercial at first glance, and the Variance need makes people think twice.

Mr. Kubis: I ask because the requirement is that there not be another feasible use. I've seen that you've made attempts to sell it, but no documentation that you tried to lease or rent it and can't do it.

The Realtor insisted that she had but Mr. Kubis was concerned that she didn't have proof that it was listed as a rental, and had not answered the question if it's not sellable, is it leasable?

Mr. Cromie: It goes back to the concept of Variance regards to use.

Mr. Elms: No one's going to spend the money to come to this Board to rent.

Chairman Endal: What I'm hearing is that they should have tried, but I am also hearing that they've always had that as an open option and couldn't get there.

Mr. Patricke: I agree with them 100% percent. We got lots of inquiries at Code Enforcement and this is

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the lowest impact business we've met, and anyone who wanted to rent it would've been in front of this Board anyway.

Chairman Endal: The question is whether it can be leased for a *permitted use*.

Mr. Patricke: And I've talked to all the day care centers, no one wanted it and some are not at capacity or are closing. We've only talked to people representing less desirable uses.

Mr. Elms: This will have less impact on the community that the Steamfitters did.

Mr. Patricke: Universal Pre-K we talked to, found space at one of the school buildings. No one permitted is interested. It's kind of a shame, they have maintained it beautifully, don't tear it down.

Atty. Cromie: The hardship, you could say, is the building itself because it is so different and has been kept so well that they can't responsibly tear it down.

Mr. Patricke: A church would have been permitted, but we didn't get any interest there either.

Tom Giorgianni, a resident of Old Saratoga Road: I am hoping you can keep up the appearance of it. I think it would be a great thing to have in Town.

Chairman Endal: We have an Environmental Impact Statement to review. Public hearing closed 7:40pm. Short Form EAF. The form is new. Page 2. Not consistent with the Comprehensive Plan, because it doesn't fit the Zoning. Doesn't fit with landscape either. They have public water and private on-site septic system. Part 2- No comments of note.

Mr. Elms motioned to make a negative declaration regarding the Short Form EAF and Mr. Fitzsimmons seconded. A roll call vote proceeded as follows: Mr. England, Yes; Mr. Kubis, Yes; Mr. Elms, Yes; Mr. Fitzsimmons, Yes; Chairman Endal, Yes. Motion carries unanimously.

Mr. Endal motioned to declare lead agency for this Appeal and Mr. Elms seconded. Motion carried unanimously with no roll call.

Mr. Kubis under further discussion said that a warehouse use in a residential area concerns him because someone else who buys it in the future will keep this use and could sell cars or have 18-wheelers rolling in and out.

Mr. Patricke said that the ZBA could put conditions on it and that it should go to Site Plan Review, and that could put more conditions on it. The Use Variance does stay with the property.

Mr. O'Hara said that site plan review had been recommended by the County.

Chairman Endal: How much stock?

Mr. Barnes: At any given time 18 pieces and some used equipment. Not a big warehouse. Often it's already sold and waiting for an installation appointment.

Mr. Elms: We have given Use Variances before with conditions.

Mr. Patricke: Yes, you can do that.

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Attorney Cromie: We would like a Use Variance that allows them to have a commercial laundry business. If you just approve a commercial laundry equipment business it would eliminate that problem. Anyone else who came in would have to come back here.

Mr. Kubis: Isn't this the issue of self-created difficulty?

Mr. Elms: We've done Use Variances before, we don't want to open it up to just anything, but this was a commercial building before zoning and they didn't create that, we have to look at it case by case. It's in an area that is R-1 but there is a Stewarts and a restaurant/bar not that far away. I am comfortable as long as we limit the use to this use only.

Chairman Endal: Self created is a difficult concept, but they didn't do anything wrong here. They built a nice, expensive building and it's impractical to ask them to knock it down when they did something good. They did a good thing in that building.

Mr. Elms motioned to grant Appeal No. 743 on the condition that the Use Variance only applies to Commercial Laundry Equipment Sales and Service. Usual business hours are 8-5. All work and storage will be done inside. This Board did not refer to the Planning Board for Site Plan review per recommendation from Saratoga County because there were no changes planned to the site. The motion was seconded by Mr. Fitzsimmons. The Board discussed whether site plan review is necessary and decided that if the applicants decide to do anything to the site they have to go to site plan. In a commercial district this is always required. A roll call vote proceeded as follows: Mr. England, Yes; Mr. Kubis, Yes; Mr. Elms, Yes; Mr. Fitzsimmons, Yes; Chairman Endal, Yes. Motion carries.

The applicant was advised that signs are restricted differently in a residential area, so they would have to come back if what they want doesn't fit. It might have to be smaller than what was there for the union.

The Board reviewed Appeal No. 744, a request of James and Heather Aiken of 2 Nancy's Way, Gansevoort, NY 12831 for a Special Use Permit pursuant to Chapter 149, Article V, Section 33. Applicants are requesting to operate a dog grooming business out of their residence. This property is located in a PUD Zoning District and is designated as 89.6-1-1 on the Town Assessment Map.

Atty. Matt Fuller of Meyer & Fuller, PLLC in Lake George /Hudson Falls representing the Aikens. A violation letter came referencing a letter from December which his clients say wasn't received. Mr. Aiken was in the Code Enforcement office in January, meeting with Mr. Marcantonio, and didn't know he was in violation then.

In March, the Aikens were made aware of complaints by neighbors to address, they talked to their Real Estate Attorney and filled out a Variance application, but when they came to file it were told they needed

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a Special Use Permit. This Attorney was just added to the case. This was not a willful disregard for the Town, rather it's after the fact application for a home occupation. He looked at their deed covenants for issues, as well as at zoning.

There is a list in the zoning of acceptable home occupations. This use is similar to a beauty parlor which is listed, the definition is worded as "including but not limited to."

Photos of the house were provided showing a gated grooming room. It is not a run around. It is standard to always double gate an animal use to prevent escape. There are inside pictures as well. Steps were taken not to impact septic, such as a double trap for hair. Operation is one dog in, one dog out. No crates. Mr. Fuller cited the criteria for Special Use Permit.

- (1)** The use shall be of such location, size and character that it will be in harmony with the appropriate and orderly development of the district in which it is situated and will not be detrimental to the orderly development of adjacent districts or reduce property values.

Mr. Fuller argued that the house looks like every other house in the area. From the outside you would not notice anything but the gate. There is no sign, not a large number of cars. Deed covenants allow anything that the Town does for home occupations and everyone who lives there has that in their agreements. It is a limited scope operation.

- (2)** The location and size of the use, the nature and intensity of the operations involved in or conducted in connection therewith, its site, layout and its relation to streets giving access to it shall be such that traffic to and from the use and the assembly of persons in connection with it will not be hazardous or inconvenient to the neighborhood or conflict with the normal traffic of the neighborhood.

According to Mr. Fuller This property is the first lot in off Old Saratoga Road and there is plenty of access. There is no impact to pedestrian traffic and there is plenty of room in the driveway for parking. Home occupation use guidelines say it must not endanger health, safety, morals and welfare in the neighborhood. The development (PUD) allows home occupations. Mr. Fuller presents emails he got that are not in the Board's packet. They are from patrons, friends etc. in support of Mrs. Aiken's business. Pictures have been taken of too many cars in the neighborhood but that is not the nature of the business, it was probably taken at a family party. The Developer also stated it wasn't an issue as it's contained and one at a time service.

Mr. Fuller said that the use will not cause undue traffic congestion or present a hazard, there's not a large

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impact.

EAF has been submitted.

Chairman Endal: The petition you presented is interesting. It's very limited.

Attorney Fuller: All the houses aren't built yet.

Chairman Endal: One possibility is limiting the hours of operation.

Attorney Fuller: This is something she schedules around her kids and she has no employees, it is supplemental income.

Chairman Endal: Do you plan to get some employees?

Mrs. Aiken: No, no plans.

Chairman Endal: You don't have a sign?

Mrs. Aiken: No signs. That was agreed with Mr. Cerrone before they moved in.

Mr. Elms: No double bookings?

Mrs. Aiken: Individual appointments.

Mr. England: It isn't impossible that another dog would be there.

Mrs. Aiken: If one family has multiple dogs, they may bring them all. There are never two or three different families. I don't want dog fights or any of that.

Penny Moore: I'm a client, my dog is very anxious and she goes there because it is so quiet. She doesn't see a bunch of people or commotion. From a business perspective, Ms. Moore's salon has allowed Heather to use their space recently. People like it to be quiet for their salon treatments as well, and no one knows she is even there with the dogs in the next room. This client is not a neighbor.

Justin St. John, lives across the street at 1 Nancy's Way. He bought the vacant lot last August, it has been 3.5 months since he closed, he sent the letter to Mr. Patricke because he wanted a quiet subdivision. He has small kids and is concerned for their safety. He is the most effected person, there is traffic congestion, there are a number of clients at the same time, going in and coming out. He has pictures and surveillance to prove it, if people get there early they walk up and down the street, 2-3 cars at a time, they use his driveway as a turnaround, he thinks his property value is endangered. Every shop you can imagine will apply to open there. They have less than one acre. He believes they are supposed to have 3. There is no buffer zone. They built it with the builder knowing they were going to do this with it and have since day one. Chapter 149-33 home occupations factors are not met to grant this permit.

Michael Manning, dog trainer, a client with 2 Newfoundlands says that there is not a lot of traffic, when he comes he puts the car in the driveway, and he brings the dogs in on a leash. Not everybody likes dogs, and this is the issue. Being a dog trainer, he knows their setup is perfect. He couldn't even find it

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the first time he went there. He has never seen a dog come out when his are there. She gives a half hour between so she can clean up after them. They didn't do this intentionally and they are doing this right. She's good but she also is doing things right.

Shelly Walker, another client, says she barely ever sees another client. No one is on the road. It's very professional. We don't hang around. She has been a client for several years.

Penny and David Kovacs, who have been clients several years, never had any problems, clean, caring, can't say enough good about the place. They left a previous groomer because of the way she treated the dog.

Kamil Kuriplach 3 Abbey's Way believes it is him on the videos. He has also spent money on his house and has a small child and a dog. He doesn't see traffic problems, they are very professional, he is more afraid of car traffic on the street. He is not worried about values.

Mary Beth Giorgianni, 391 Old Saratoga Road stated she has been impacted by traffic. The Development never said they would have businesses. The houses all have wells. Hers has become sulfur water since all this development took place. Traffic is horrible on Old Saratoga Road. She walks frequently and some of the vehicles that affect her as she walks are for the business.

Mike Jarvis, lives in Queensbury. The Aikens lived across from them before they moved to this location. When he was home they had no traffic conditions, loose dogs, dangers to children etc. He saw no impact whatsoever in about ten years.

Janet Kropp, of 471 Old Saratoga Road. When the PUD went through we did a lot of work, where do you draw the line having businesses in there? It could grow and where do you draw the line, what's acceptable? I too wonder about the water. I would not buy a house across from a dog grooming business and I love dogs. Working in our yard 500 ft. north of Aikens, there is barking all day long. I don't know if it's from them. If the Garcia's sell that big house, what would we be looking at as to what would be allowed there? Day care? We worry about the next issue, that's my concern.

Chuck Rosen: How many of these people live in the subdivision? They shouldn't vote if they don't live there. Dogs are going to bark when they see others and that's a lot of noise.

Dr. Patricia Fording: comes from Saratoga weekly as a client. She comes up here when other places are close by because this is not a commercial business, she has two show dogs and she brings them both because it is a 5-6 hours day and they are the only dogs in there. She was late once when there was an accident on the Northway, other than that she's never seen anyone else. It's not commercial.

Christine Jarvis, an old neighbor. She was never concerned for safety, brings her dogs there one at a time. Very professional. Never sees anyone.

Tom Giorgianni would love to have her groom his dog, but not on Old Saratoga Road. Plenty of

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businesses are running on Old Saratoga Road that shouldn't be and this is a resource protected area, this is too much traffic.

Chairman Endal: The issue for the Board is whether this is a home occupation or not. That's what we are looking at.

One neighbor mentioned that George Terpening, a neighbor who couldn't be here, was once denied a residential business a few years ago.

Chairman Endal: Each case is separate.

Doug Dockendorf, not a neighbor, a friend and client. This is not a commercial business, it is a home occupation, and I have been through similar process to prove my home occupation in Wilton for-1-888-chuck-it. It's a home occupation because the Board listened and established that it's not a large commercial business. A home occupation is different from a commercial business. I would like her as my neighbor.

Mr. St. John: If the number of people here for the meeting are clients, that indicates this is a business. Karen and Joe Rogge, clients, have been to both her locations, hardly ever saw a car coming or going. If there were the traffic the neighbors were saying there is, someone here would have said so. The place is clean, you would never know they are there. Her own dogs don't bark.

Joe Rogge: Mr. St. John had more cars in his driveway than the Aiken's did.

Justin St. John: These are all her clients. She had a 300 ft. driveway before, this is different. It is non complaint, they operated after they found out it was a problem. They also don't have proper setbacks for fence and height for fence.

Mr. Patricke: We typically don't issue citations, we look for voluntary compliance.

Chairman Endal: We're here because you got complaints?

Mr. Patricke: Yes, and we have a video here but no means to show it. We can look at it down in the office, it's pictures from Mr. St. John. Just making you aware it's here.

Mr. Elms: How long is it? We should take a look at it.

Mr. Kovacs: I'd like to see it and know if I am on it. Is this surveillance?

Chairman Endal: That's not a matter for the Board. We just have pictures.

Mr. Patricke: I think you should, but you should table it until we can get it so the whole audience can see it.

James Aiken: Can we get a description of the contents?

Mr. Patricke: Photos.

Neighbor: How can you prove what the cars were there for?

Chairman Endal: We want anybody here to be able to see it.

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Mr. Elms: The petition should be made public, that there are names that agree with the home occupations.

Chairman Endal: There are 3 names from Nancy's Way, and Abbey Lane is on there too. They are in support.

Mr. St. John: They are all clients.

Mr. Elms: But they live there.

Chairman Endal: The fact that people come here who are not neighbors doesn't make their comments invalid. We are looking at the home occupation issue.

Mr. England: "provided that" is in the conditions, to see if it fits. It talks about limitations too, it can't be some of the other things you are concerned about. There are clear standards. It's not spelled out but it is a possibility.

Attorney Fuller: That fear of other developments being allowed, the real estate attorney should have told you when you bought it what was allowed, and none of those things people fear are allowed. Minimum acreage is not required for a home occupation. The quarry doesn't have the minimum lot size. Neighbor across the street brought up that the room was built with the builder. Yes, he knew what was going on, he could have advised them, but things happened and now they are here to rectify that. Someone said the ZBA decides allowed use, I know you are working with what you are handed, it is not under referendum here, you have to apply the criteria you were given. It's not about what we like. Zoning changes go to the Town Board. And you can limit it to this use or allow it in perpetuity. We are not here to determine whether it meets the definition of the home occupation, Joe has already determined that it does or they would not be here now, that's established.

Mr. Patricke: Based on what I just heard, I am going to pull the files out and see if the builder built it according to the way it was designed and whether the septic was designed for this type of operation. And you have always asked for MSDS sheets for anything used in home occupations.

Mr. Elms: Motion to table this appeal, public hearing remain open.

Motion was seconded by Mr. Fitzsimmons.

Chairman Endal: The comment was made that it's up to the Board to decide home occupation, but when Appeals come to us for home occupation that definition is the first thing we need to decide, we can disagree with Joe.

Attorney Fuller: This isn't an appeal, it's an application.

Mr. Patricke: But it's operating today.

Mrs. Aiken: No it's not. I'm at Total Eclips.

Attorney O'Hara: I want to look into that issue.

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Chairman Endal: That's always been the first thing we do when we get these.

Attorney O'Hara: The ZBA definition isn't all inclusive, so that may be due more review.

A roll call vote on the motion to table proceeded as follows: Mr. England, Yes; Mr. Kubis, Yes; Mr. Elms, Yes; Mr. Fitzsimmons, Yes; Chairman Endal, Yes. Motion carries unanimous.

Mr. Patricke informed the public that the next meeting will be June 25<sup>th</sup>, and there will be no new public notification.

The Board reviewed Appeal 745, a request of Donald Lindsey of 1587 Route 9 Moreau, NY 12828 for a Special Use Permit pursuant to Chapter 149, Article IX, Section 52(D). Applicant is proposing to construct a 2<sup>nd</sup> story to the residence, replace an existing garage and add a front and rear covered porch to a residence that is located in a C-1, General Commercial Zoning District. This property is designated as 63.2-1.11 on the Town Assessment Map.

Mr. Lindsey bought the house from family, and it is paid off and needs updates. It's a small lot so they would like to go up and open it up some.

Mr. Patricke explained we are here because a residential home is in a Commercial district and to expand it, He has to have a Special Use Permit. The regulations want us to take an extra hard look at it because all the uses permitted around him could become commercial. This is a hard decision. He's thought everything out, but we are here because it's required before he can get a building permit. If he gets that, he also needs an Area Variance for what he wants to do, but he needs the Special Use first.

Mr. Lindsey's wife grew up in the house.

When Keylock Storage was approved next door and there was the issue of the septic being on the adjoining property, and that has all been corrected. It's not everything it should be, it's over the line as it is now in one place.

Mr. Elms: That puts us in a strange position too.

Mr. Patricke: If you approve what he proposes, he actually becomes more compliant. The Special Use is for expansion. Taking the porch off one side and adding it to the other makes it more compliant. The only thing impacted by the setback is the garage.

The setback on the garage is 8 ft. now, and will be 1.5 ft. He can't line it up with the house because it will be over the line.

Mr. Patricke: One other thing we need to think of is that you are allowed only a one-time 50% expansion of an existing facility.

Mr. Lindsey: Also have an active gas line under the third bay of the garage so that's why I want to move away from that.

Mr. Patricke: This applicant did not do that, he didn't put that garage over the gas line.

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Mr. England: Is the expansion more than 50%?

Chairman Endal: Substantially.

Mr. Patricke: I can't do anything on this without the ZBA no matter the size.

Mr. England: Is the garage included?

Mr. Patricke: We need to look at the total footprint and total area.

Mr. England: Existing is 30 by 30 and new one 30 by 28.

Mr. Lindsey: New footprint of the house will be smaller than it is now.

Mr. Patricke: Can you give us dimensions and square footage?

Mr. Lindsey: 26 by 42 now. Garage 30 by almost 31, additions on the back including sun porch about 20 ft by 24ft. remove all of that and put 10 by 22 in its place.

New garage 28 by 30,

Mr. Fitzsimmons: Essentially smaller, and going up one level.

Some discussion ensued as to the amount of expansion and the Board settled on a current size of 3,024 sq. ft. for the new one and 2,534 sq. ft. for the old.

Mr. Elms: My concern with property value is that this might not be a good idea for the applicant.

Mr. Lindsey said they have tried to sell it but can't get the money for it, they tried to sell it to Cerrone when he opened next door, can't. They have no problem with their (commercial) neighbors. That is the nature of building in a commercial district and I have discussed it with Joe, and we have already put so much into it.

Mr. Patricke: Malcolm, how do we address the Special Use before the Area Variance?

Attorney O'Hara: He's got to show a practical difficulty for the Area Variance. Would you still go forward if we can't let you move that garage?

Mr. Lindsey: Right now I am at 8 ft, it's not ideal but I can work with it.

Mr. Elms: If we agree to the first part it doesn't mean he can put the garage a foot and a half from the edge of the property.

Chairman Endal: I don't see any reason to deny the Variance, he seems to understand.

Mr. Elms: Let him make it more comfortable.

Chairman Endal: Why do we have an Environmental Impact Statement?

Mr. Patricke: That has to do with the Special Use, not the Area Variance.

Mr. England: Was this built before Zoning?

Mr. Lindsey: 1972.

Mr. Patricke: Just before Zoning.

The Board reviewed the Environmental Impact Statement. Chairman Endal moved to declare the Board

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lead agency and was seconded by Mr. Fitzsimmons. Motion passed unanimously. Answers for the EAF were reviewed and recorded. Mr. Elms motioned to make a negative declaration and Mr. Kubis seconded. Roll call vote proceeded as follows: Mr. England, Yes; Mr. Kubis, Yes; Mr. Elms, Yes; Mr. Fitzsimmons, Yes; Chairman Endal, Yes. Motion carries unanimously.

The Board reviewed the criteria for granting a Special Use permit and found that

**(1)** The use shall be of such location, size and character that it will be in harmony with the appropriate and orderly development of the district in which it is situated and will not be detrimental to the orderly development of adjacent districts or reduce property values.

**(2)** The location and size of the use, the nature and intensity of the operations involved in or conducted in connection therewith, its site, layout and its relation to streets giving access to it shall be such that traffic to and from the use and the assembly of persons in connection with it will not be hazardous or inconvenient to the neighborhood or conflict with the normal traffic of the neighborhood.

Mr. Elms motioned to grant Appeal No. 745 for a Special Use Permit allowing an expansion of less than 50% of the area of the existing structure. The applicant can only expand one time. Mr. Kubis seconded. A roll call vote proceeded as follows: Mr. England, Yes; Mr. Kubis, Yes; Mr. Elms, Yes; Mr. Fitzsimmons, Yes; Chairman Endal, Yes. Motion carries unanimously.

The Board reviewed Appeal No. 746, A request of Donald Lindsey of 1587 Route 9, Moreau, NY 12828 for an Area Variance pursuant to Chapter 149, Article X, Section 59 (A) and Town Law 267-b. Applicant is proposing to construct a garage that will not meet the required side yard setback for a C-1, General Commercial Zoning District. This property is designated as 63.2-1-11 on the Town Assessment Map. The applicant's current garage has a natural gas line running beneath the third bay. Lot size does not allow him to go flush with the house, and his proposal is 1.5 ft from the setback. He did not measure from the overhang, so his current setback is actually not at 8 ft, as he said on the application, the roof is 4 ft. so he is 4 ft. from the line. He is asking for 2 ft. more than he has.

Mr. Elms: If he does this, the garage will be smaller. That large roof extension adds to it. Applicant demonstrated on a map.

The Zoning is Commercial. An overhang is not required in the Code, but it's generally done. Setback

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requirement is 15ft in Commercial District, but this house was before zoning. He will be making it a foot and half setback.

Mr. England: If it should be 15 ft. and he wants to make it a foot and a half, that's extreme.

Mr. Kubis: If we don't allow the 1.5ft., it's going to be 4ft., because the current one doesn't have to come down.

Mr. England: But it was built before zoning and doesn't have to comply, where the new one does. So it is substantial.

Chairman Endal: We've used 50% but the word is substantial. But you have to look at the whole tiny property, he's getting away from the gas line and making the garage smaller so it fits with the house, to give him relief on the setback is not substantial, because he is reducing his footprint on a tiny lot, doing what he can with what he has.

Mr. Patricke: You are looking at an 85% variance.

Chairman Endal: This is on the Cerrone side?

Mr. Patricke: Yes, but it doesn't impact him at all.

Chairman Endal: You need to weigh the benefit to the applicant vs. the detriment to the community, so to me what's already there does matter. We have some leeway here.

Mr. Kubis: The question of substantial is a consideration, but not a disqualifier.

Mr. England: It sets a precedent.

Mr. Elms: I don't think it does, because it's all individual bases.

Chairman Endal: This is a unique property. The house is a foot off the land.

Mr. Patricke: They'd need an area variance for that too then. For his expansion going up, I'd be giving a permit too close to property line. The setback on new construction is 15ft.

Mr. England: We can't condemn the first house, but doesn't the addition have to comply?

Attorney O' Hara: I think we should table then, to see if he has to make another Area Variance application.

Mr. Patricke: I can't authorize building within the setback.

Attorney O' Hara will look into that issue as well.

Motion to table Appeal No. 746 in order to seek legal counsel regarding vertical expansion and whether setbacks apply to a second story was made by Mr. Elms and seconded by Mr. Kubis. Mr. Patricke will call Mr. Lindsey if he needs to submit an additional application for the next meeting. If Attorney O' Hara needs one week, that would leave time to get that paperwork in.

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Motion to adjourn was made at 10:17pm by Mr. Elms and seconded by Mr. Kubis.

Respectfully Submitted,

Tricia S. Andrews