

Town of Washington
Zoning Board of Appeals

A meeting and public hearing of the Zoning Board of Appeals was held on September 21, 2010 at 7:30 P.M., the Town Hall, 10 Reservoir Drive, Millbrook, New York to consider the application of Robert Kulpa for area variances from the Town Zoning Code, Article III, Appendix B, Schedule of Area and Bulk Regulations to allow construction of an addition to the tool/storage shed at 4249 Route 44. The property is zoned RR 10.

Members Present: Chairman, Jerry Baker, Peter Audia, Donald Marshall, Diane Parker.
Absent: John Parisi.

The meeting was called to order by Chairman, Baker at 7:30 P.M., read the meeting's agenda.

A motion to approve the August 17, 2010 meeting minutes as submitted was made by board member Audia, and seconded by board member Marshall. 4 ayes, 1 absent.

Previously submitted to the board for the Kulpa application were completed Application to Board of Appeals, Short Environmental Assessment Form, and a 8 x11 ½ xeroxed copy of Survey Map Lot 1, Filed Map, Subdivision Lands of Cynthia Cogswell, under the signature of Kirk Horton, L.S., Amenia, New York.

Chairman, Baker referred to the SEQRA rules as written 1) the action is subject to SEQRA if there is any local agency who has the authority to issue a discretionary permit, license, or type of approval then it is subject to SEQRA Review 2) if the SEQRA type action is an action that is less than 4,000 square feet, home, residential, it is a Type II Action, does not require further review. This application falls under the second rule. **A motion to declare the Kulpa application a Type II Action having no SEQRA Review, was made by board member Parker, and seconded by board member Audia. 4 ayes, 1 absent.**

Robert Kulpa appeared before the board, presented a copy of Survey Map Lot 1, Filed Map, Subdivision Lands of Cynthia Cogswell showing the existing shed dimensions, overlay of what would be an as-built when completed and a sketch of the shed. Said, he indicated on the survey the linear footage to the shed that is 63 feet from the property line to the north; looking at the as-built drawing it will be 53 ft. going out ten feet beyond the existing structure. Chairman, Baker remarked that it was difficult to find the property lines on the survey map. Mr. Kulpa pointed out the property lines said that it will be 53 ft. when the addition is completed.

Chairman, Baker read the required setbacks for the RR 10 zone, 100 ft. front and side yard setback, 75 ft. rear yard setback, the lot is a two acre parcel. Route 44 is considered the front yard, the house is located to the east. Said, a 22 ft. variance is needed.

Board member Audia questioned if the property in the rear are stables? Mr. Kulpa said they are public stables and a set of garages. The closest proximity is the set of four garages. Mr. Kulpa said he presently has a one car garage. Board member Audia questioned the dimensions of the shed? Mr. Kulpa said the existing shed is 10ft x 10ft, he is adding ten feet to the existing shed, after the addition the size of the shed will be 20ft x 10ft. Said, the shed is not visible, has been there forever, is constructed of a soft board that flakes off; he will put up more substantial walls. The overhead door will be on the side facing Kennels Road, will not be visible to any neighbor. The addition will be on a cement slab similar to a pole barn. The existing shed houses electric and a pump for the swimming pool.

A motion to open the Kulpa public hearing was made by board member Parker, and seconded by board member Audia. 4 ayes, 1 absent.

No one from the public appeared to comment on the application.

A motion to close the Kulpa public hearing was made by board member Parker, and seconded by board member Marshall. 4 ayes, 1 absent.

A motion to grant the Kulpa application a 22ft. variance from rear yard setback requirements for construction of a ten foot addition/expansion to the existing shed was made by board member Audia, and seconded by board member Parker. 4 ayes, 1 absent.

Fee Status: \$150.00 application fee paid

Jean Meyer and Wes Burlinghoff appeared before the board for discussion on the September 10, 2010 Cease and Desist Order to William A. Meyer, 3716-3718 Route 44, Mabbettsville issued by Building Inspector, Jack D. Neubauer stating that the Planning Board will not be issuing a Special Permit for *Wes Auto Body Works*. The current operation of the business is in violation of Zoning and are hereby requested to immediately cease and desist from further operation of the business.

Board member Audia requested a copy of the Cease and Desist Order from secretary Caul.

Jean Meyer's opening remark was that she never asked for/applied for a special use permit because she already had one. Board member Audia remarked that the current special use permit is for a truck repair. Mrs. Meyer said the permit doesn't say that, says a repair shop, doesn't say Diesel repair shop.

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Chairman, Baker related that he talked with Building Inspector, Neubauer relative to the Cease and Desist Order, he is alright with the shop going ahead and work for awhile to clean up while a decision is being made on suspending the Cease and Desist Order. Chairman, Baker said there

are two issues that do not change, working on vehicle repair, parking of vehicles. The two issues where there may be a change 1) any change in the noise level 2) sensitivity of the Mabbettsville area due the aquifer is much more sensitive about the use of chemicals, particularly paints, strippers, solvents. Mr. Burlinghoff said he doesn't do any stripping. Chairman, Baker remarked that all of the things that go into working on engines, solvents are used. In working with engines solvents are used to clean parts, etc. are used a little differently. Said, these are the two areas that might be construed as some kind of change.

Board member Audia remarked on knowing the history of the business long before Sutherland's business; it was a very delicate subject because it was more of a private enterprise. Mr. Sutherland was discouraged from operating such a business because of any change that would be involved in a special use permit. Board member Audia expressed that his knowledge about the former business and the subject business is not the same type of business. The subject business is not a repair business it is a different type of business, it's a body shop. Said, knowing what the special use permit was initially meant to do, this is a different use.

Mrs. Meyer said, Sutherland's special permit talks about compressors, air compressors, repair machinery. Said, she lives there, now after five o'clock it becomes quiet, as a residential community should, feels great that it is busy during the day, and is quiet at night.

Chairman, Baker referred to the Sutherland special permit, said the term "repair service" was used and the same question about the noise level, hours of operation, stockade fences, was brought out. Board member Audia spoke to the noise level, not having three units running at night since Mr. Sutherland was involved with big trailers. Said the special use permit is vague about being a repair service.

Mrs. Meyer expressed when the special use permit was granted it was granted for a repair shop. Both the diesel repair shop and Wesley's shop registration from the State says, "repair shop" the special permit says, repair shop, it doesn't say anything in particular.

Chairman, Baker read from the December 12, 2000 Town of Washington Zoning Administrator, letter under the signature of Ruthe' Fiore, "that the Special Use Permit issued by the Planning Board on August 5, 1986 to operate a vehicle repair shop at the above premises is valid and remains in effect. Please also be advised that any change in the use of the premises, and any physical changes to the site, will require an application and review by this Office and possibly a review by the Town Planning Board and/or Zoning Board of Appeals." Chairman, Baker said he is unsure that this part is enough of a change to negate the permit that has been in place.

Board member Audia questioned Mr. Burlinghoff if he received any approvals from the Town for his permits? Questioned if the EPA gave approval without a site visit? Mr. Burlinghoff said he doesn't need a SPEDES permit. Board member Audia also questioned if he has a spray air

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permit or a stack permit? Mr. Burlinghoff said he telephoned, tried, to get it from the DEC or EPA; the person he was trying to get it from was on vacation for two months so he doesn't have it in his possession yet, Board member Audia expressed that the only way to obtain it is to have the Town sign off on it. Mr. Burlinghoff said, "that's not what he said." Board member Marshall,

questioned if Mr. Burlinghoff does a lot of painting? Mr. Burlinghoff said, “actually not a lot, does repair work also.”

Board member Audia asked to see a copy of the registered repair license where the item for body workshop is checked. Mrs. Meyer interjected that when Mr. Burlinghoff applied to the State, if there was an existing repair shop for over ten years, zoning was not required. Board member Audia said he thought that when you registered as a repair shop you had to check mark for the repair shop and a check mark for a body shop even though it is the same license, even if one repair shop number is used.

Mr. Burlinghoff suggested the board conduct a site visit to check what chemicals are in his shop, said he has a lesser amount of chemicals in his shop than one has in their garage. Said, his shop is environmentally friendly.

Board member Audia remarked that the bottom line is whether the Wes Auto Body Works is interpreted as a repair shop.

Chairman, Baker said he will request board consultant Neil Wilson to interpret and compose a list of approved materials that can be used.

Board member Parker questioned what prompted this appearance by Mrs. Meyer and Mr. Burlinghoff? Chairman, Baker spoke to the planning board workshop appearance. Mr. Burlinghoff related that planning board chairman, Josh Mackey planned to make a site visit, did not hear anymore about it, later received the Cease and Desist letter from Building Inspector, Neubauer. Board member Audia questioned if Chairman, Mackey or Neil Wilson from the planning board visited the shop, said, he also attended the workshop meeting? Mr. Burlinghoff responded in the negative.

Board member Parker remarked that the Cease and Desist Order is on something that was not applied for. Board member Audia spoke to the special permit as having been written and interpreted as the business was at the time. The question remains if the business is a different business or is not a different business? Board member Parker asked who brought up the question of the business being a different business or not being a different business? Chairman, Baker explained that Mrs. Meyer and Mr. Burlinghoff appeared at the planning board workshop; the planning board has said that they would not issue a special permit for the change in use of the business. Board member Parker questioned when the property was purchased if the special use permit was already in place as part of the conveyance? Mrs. Meyer responded affirmatively. Chairman, Baker said the special permit is to operate a vehicle repair shop. Board member Parker commented there is no repair specificity if you can work on the front end of the vehicle as opposed to the back end of the vehicle. Chairman, Baker said the special permit talks about hours

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of operation, not leaving trucks running, nothing specific. Board member Parker expressed when the property was purchased having the special use permit, working within the special use permit, have given no indication that you are not working within that special use permit, then the conveyance goes to the next owner.

Board member Audia explained that the planning board reviewed the uses, an auto body repair shop is not a permitted use. Secretary Caul expressed that the planning board made the determination that the business being conducted now is not a permitted use. Board member Parker, questioned, "how?" Mrs. Meyer expressed that the planning board chairman has said it is a different form of a business, however, the State says it is a repair shop, the special use permit says it's a repair shop. Mrs. Meyer said she had a repair shop there for ten years, if it is said to be a different kind of repair shop in the Zoning it should state that or should have stated that on the special use permit.

Chairman, Baker related that he talked with Building Inspector, Neubauer, asked him if there was any urgency on the Cease and Desist Order, if there is a safety issue, if they have vehicles to work on, has any problem suspending the Cease and Desist Order for a couple of weeks so that the work in the shop can at least be cleared.

Board member Parker questioned if the board is dealing with an interpretation of the special use permit? Chairman, Baker responded affirmatively. Said, as mentioned earlier, it is the sensitivity of the noise level and 'biggest issue being the sensitivity of the Mabbettsville area due to the aquifer. The regulations in the Mabbettsville area are about no storing of petroleum products, exception of the gas station that was already in existence. These are the issues. To his knowledge there have been no complaints.

Board member Parker remarked that if the special use permit doesn't detail the uses then why supercede the special use permit? Chairman, Baker said that people use terminology that could be implied as to making it more restricted. Board member Audia commented that the special use permit just says "repair", doesn't specify "turning the bulbs, or banging a fender." Board member Parker remarked that the ability of anyone to interpret is limited. Board member Audia commented that it is known for the last twenty years that it was a repair garage, it wasn't a body shop. Board member Parker questioned if it is a body shop? Chairman, Baker said they are doing more of that work now. Said, in 1986 the planning board issued a special permit to operate a vehicle repair shop on the premises. There was some question because the business stopped operating for awhile, then it was questioned if the permit was still valid or could be grand fathered. The business started as a vehicle repair shop, along the way someone said they wanted to operate as a Diesel Repair Shop when the business was purchased. Mrs. Meyer said the permit did not say Diesel Repair, said repair, when she applied for the special permit it was not specific to Diesel Repair. Chairman, Baker referred to the January 5, 1998 letter under the signature of Fredric A. Volino, Village Construction Company, Inc. to Michele West, Planning Board Chair, who was interested in purchasing the property, questioned if this ever took place? Mrs. Meyer responded negatively, said she purchased the property in 2000.

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Chairman, Baker referred to the Vicki and David Sutherland Special Use Permit application that was adopted by the planning board in August 5, 1986 that specified that part and parcel of the service station use would be a limited truck leasing business operated by the Sutherlands with their exclusive customer being Carvel Corp., questioned if Mrs. Meyer had the contract with Carvel Corp.? Mrs. Meyer said she didn't but the Sutherlands had the contract. Chairman, Baker commented that Carvel had five large trucks that were serviced by Sutherland. Board member

Parker said she recalls them being at the Sutherland business.

Board member Audia requested to see a copy of the DEC permit, remarked that there are different permits that are required from the DEC to operate different types of businesses under certain conditions. It may not be a factor because there may not be a proper ordinance in place or the town doesn't require it. Mrs. Meyer said they are waiting for the actual certificate.

Board member Parker questioned what action the board needs to take? Chairman, Baker stated what is taking place is for discussion only. Board member Parker questioned if there is a town ordinance, anything that says that the ZBA should require these permits? Board member Audia expressed that these permits are dictated by the DEC. Mrs. Meyer is contesting the language in the special use permit as the repair garage. Mrs. Meyer agreed.

Board member Parker questioned if Chairman, Baker plans to confer with consultant Neil Wilson on the issue. Chairman, Baker said he is also suggesting to give a three month trial period relative to the noise issue, allowing the business to operate for ninety days, having the Cease and Desist Order lifted for that period of time. The board would then have a formal public hearing for comments. Board member Marshall questioned, since no one has complained why this issue is being brought up? Chairman, Baker read the July 13, 2010 letter to Mr. William A. Meyer, 3716 Route 44, under the signature of Building Inspector, Jack Neubauer, "It has come to my attention that an automotive repair business may be moving into the space formerly occupied by the diesel repair business. Please know that pursuant to local zoning, this is considered a change of use and must receive Planning Board approval prior to the opening of the business. To be placed on the agenda for the Planning Board you should call the Board Secretary, Nikki Caul, at 677-8080."

Board member Audia questioned if Mrs. Meyer asked that this business is a change in use? Mrs. Meyer said she saw her lawyer, Greg Fuchetti, Carmel, NY asked him, "can I do this kind of business under my special use permit?" Her attorney said, "yes, went through the Zoning, said he couldn't find anything that says if you have a special use permit you can't do this or can't do that." Chairman, Baker reiterated that this, the most sensitive area, has to do with chemicals. Generally, the position that has been taken is if the appropriate agencies approve the handling, venting, storage, then the board usually goes along. Regarding the gas Mobil station that was grand fathered was the same kind of issue, once the DEC gave it new tanks, gave it a clean bill of health, it was difficult for the Town to take issue with that. Board member Parker questioned Mr. Burlinghoff if he went to the DEC, went through the proper steps? Mr. Burlinghoff responded affirmatively, said he doesn't have the certificate in hand from DEC.

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Chairman, Baker commented that since the whole neighborhood is not up in arms about this issue perhaps Mr. Burlinghoff can operate the business for a period of time until a decision is made. Board member Audia, remarked that the Town of Washington Planning Board in 2000 issued a letter that if there was any change in use, physical changes, would require an application or review. The building inspector has called the business Wes Auto Body Works, said the planning board will not be issuing a special use permit for that particular business. Their interpretation is different than Mrs. Meyer. The Town knows that it was a repair garage working on trucks, is now a body

shop. The Zoning Board needs to confer with consultant Wilson, chairman Mackey, building inspector Neubauer, it's their call, if they say another special use permit is required, then the Cease and Desist Order needs to be appealed. Chairman, Baker remarked that a change in use is handled by the ZBA; the two issues that the ZBA handles are area variances and use changes.

Chairman, Baker expressed that this board will confer with building inspector, Neubauer, planning board chairman, Mackey and consultant Neil Wilson and will notify Mrs. Meyer and Mr. Burlinghoff of their decision.

Alexander T. Leventhal, Little Lake Farm, North Chatham, New York and prospective buyer of the property at 31 Hammond Hill Road appeared before the board, submitted a letter outlining his intent for use of the property. The letter states that Mr. Leventhal and his wife Stephanie are in the process of selling their home in North Chatham and purchasing the property at 31 Hammond Hill Road. The property currently contains a small, 1,300 sq. ft cottage, built circa 1930. They plan to make this their permanent, primary residence and home, live in the small cottage while building a larger 2,500 sq. ft. residence on the property. Once the new home is constructed, they plan to discontinue the residential use of the small cottage. However, since it is a lovely old cottage they hope to maintain it on the property-it would be a shame to tear it down. A portion of the purchase and construction of the new home is being financed. Their lender requires them to have a building permit in order to close on the property. It is his understanding that the Town of Washington will grant them a building permit for their new house while they live in the existing cottage upon the consent of the Zoning Board.

Mr. Leventhal is requesting that the Zoning Board will allow them to be granted a building permit and to live in the existing cottage while they build their new home, with the commitment from the Leventhals that they will discontinue the residential use of the cottage once the new home construction is completed. Said, an inspection has been done on the cottage, is a habitable structure that would be used while building the new residence. Mr. Leventhal does not plan to clear any of the sixteen acre land.

Mr. Leventhal spoke to his relocation, said, a subdivision is being planned for seventy-three houses encroaching his farm; there are three hundred-fifty acres behind his farm. They want to move someplace where they will be protected from this type of occurrence.

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Mr. Leventhal expressed that he is not entirely clear what needs to be done to the cottage to make it a nonresidential use. Board member Parker remarked about removing the plumbing. Chairman, Baker said that the Comprehensive Plan Committee is working to define a guest house, pool house, accessory apartment, at the present time it appears that a kitchen makes it a residence.

Board member Audia questioned if the cottage is a habitable structure? Mr. Leventhal said they plan to live in it, someone has already lived there. Board member Audia questioned if Mr. Leventhal will need to return to the board when the new house becomes the primary residence, the current cottage becomes an accessory structure? Chairman, Baker expressed that in order to have

two residences twenty acres would be required, the property contains sixteen acres.

Board member Parker questioned if the board could allow Mr. Leventhal to use the cottage for the duration of the construction, at the end of the construction period revisit the property. Mr. Leventhal reiterated that his lender is requiring him to have a building permit in hand in order to close on the property. Building Inspector, Neubauer has said he will issue a building permit if the zoning board meeting minutes reflect that the board allows him to live in the cottage while a new residence is constructed.

The board, after discussing with Mr. Leventhal his desire to live in the existing 1,300 sq. ft. cottage while a new residence is constructed on the property (approximately 2, 500 sq. ft.) adopted the following: **A motion to allow Mr. Leventhal to live in the structure that is currently on the property located at 31 Hammond Hill Road until a certificate of occupancy is issued for the new residence to be built on the property, at which time Building Inspector, Neubauer will void the Certificate of Occupancy for the existing structure, was made by board member Parker, and seconded by board member Audia, 4 ayes, 1 absent.**

The special permit form was completed by secretary Caul and submitted to Building Inspector Neubauer's office on September 23rd, a copy of same was mailed to Mr. Leventhal at Little Lake Farm, Old Chatham, New York.

There being no further business a motion to adjourn the meeting was made by Chairman, Baker and seconded by board member Audia. The meeting was adjourned at 8:56 P.M.

Respectfully submitted,

Nikki Caul, secretary