



**Town of Ballston Zoning Board of Appeals
July 2, 2008**

The following are the minutes of the Town of Ballston Zoning Board of Appeals hearing held on Wednesday, July 2, 2008.

ATTENDEES: Michael Lesniak, Chairman Murry Brower, Town Attorney
 Michael Groves Thomas Johnson, Building Inspector
 Robin Kane Members of the General Public
 Timothy Northrup, Alternate
 Jan VanDeCarr

Chairman Lesniak called the July 2, 2008 meeting at 7:30pm and Mr. Lesniak led the Pledge of Allegiance.

Mr. Lesniak said that Mr. Wood's resignation was accepted at the last Town Board meeting. Mr. VanDeCarr will resume his seven year term. Mr. Lesniak said that Mr. Northrup has taken the 1st alternate's position on the Board.

The Chairman asked for corrections to the June 4, 2008 minutes.

They were as follows: Page 9) 4th para; change "prosing" to "proposing"

MOTION: Mr. Groves made a motion to accept the June 4, 2008 minutes as amended. Ms. Kane seconded the motion and all present voted in favor. **CARRIED.**

Chairman Lesniak made the applicant aware there are only five members present this evening, and gave Mr. Schadow the opportunity to table the application.

NEW BUSINESS:

Al Schadow, 429 Charlton Road, Ballston Spa, NY 12020 for an Interpretation pursuant to section 138-10 to apply for a New York State Car Dealer's License.

Chairman Lesniak read the comments from Peter Reilly, Esq. regarding the proposal. "In the case of Al Schadow, 429 Charlton Road. The applicant is seeking an interpretation relative to his ability to sell automobiles from his residence located in the rural zone. The Board is given the power to interpret the zoning ordinance pursuant to New York State Law and Section 138-95 of the Town's zoning ordinance.

The sale of automobiles is not an allowed use in the rural zone. Accordingly, the only conditions that would allow for such a use a use variance or a validly existing nonconforming use. The applicant is seeking interpretation from the Board that his intended use of the property qualifies as a pre-existing nonconforming use. My opinion is it does not.

Based on the time line submitted by the applicant, it may very well be the case that the existing trucking and excavation business is a validly-existing nonconforming use. However, that existing use does not give the applicant the ability to change or add another type of use on the property. New York State law is clear, as is Section 138-5 of the zoning



ordinance, "[a]ny changes to a nonconforming use following the date of enactment of this chapter shall be subject to the provisions of this chapter." In other words, an existing nonconforming use can not be changed (or added to by another use) unless such change or use is in conformity with the zoning ordinance."

Chairman Lesniak said that in a rural area the sale of automobiles is not permitted.

Chairman Lesniak said that a use variance can be applied for, but very difficult to receive.

Chairman Lesniak read the four criteria of a use variance:

1) The applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence.

Chairman Lesniak said that for any approved uses within the Town the applicant cannot get a reasonable return on the property.

2) That the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood.

3) That the requested use variance, if granted, will not alter the essential character of the neighborhood

4) That the alleged hardship has not been self-created.

Mr. Schadow requested the consideration of the interpretation in August.

Chairman Lesniak asked the applicant to table the application. Mr. Schadow replied yes.

MOTION: Ms. Kane made a motion to table the application located at 429 Charlton Road until the August meeting. Mr. VanDeCarr seconded the motion and all present voted in favor. **CARRIED.**

MOTION: Ms. Kane made a motion to adjourn. **CARRIED.**

Meeting was adjourned at 7:40pm.

Respectfully submitted,

Michelle L. Dingman