



Mr. Schadow said he would be willing to accept a stipulation to limiting the number of cars or anything related. Mr. Schadow said that the traffic is minimal because most of the business is referral and on line.

Mr. Schadow stated the Saratoga County Planning Board comments said No Significant County Wide or Inter Community Impact w/comment. Mr. Schadow said storing vehicles would create a negative neighborhood impact. Mr. Schadow agrees, but a lot of things can create a negative impact. Mr. Schadow said with the toxic fluids, anti-freeze, oil, and refrigerant in the air conditioning is reclaimed.

Mr. Schadow said the well on the property has been tested and no problems were found.

Mr. Schadow said with regards to the ground water comment, there has been machinery, farm equipment, and trucks parked there since moving in, and with the actual cleanup the amount of iron is actually being reduced.

Mr. Schadow said the neighbors, Mrs. Palmer. Jim and Linda Peek said they have no complaints with the proposal because it is on a small scale, and Mr. Ellms' concern was the front of the garage and asked that no bright colored flags be displayed and asked that part of the approval to make improvements to improve the look and clean up with front yard.

Mr. Schadow said in his opinion there will be no negative impacts based on the information provided which contradicts the comment letter from the Zoning Board Attorney.

Ms. Kane asked if the excavating business is in operation. Mr. Schadow replied yes, but said his health is a factor. Ms. Kane asked if the excavation business is a full time job. Mr. Schadow said the excavation and automobile sales would be considered part time. Ms. Kane asked if all the equipment and vehicles that surround the storage area are part of the excavation business. Mr. Schadow replied no, that some of the stuff still needs to be cleaned up.

Ms. Kane asked Mr. Schadow if he had employees. Mr. Schadow replied no.

Ms. Kane said in her opinion the place looks disgusting and would not want to look at it, but is charged by the town to make it not look offensive to anyone.

Ms. Kane asked how many vehicles will be left after the cleanup. Mr. Schadow said that there will be several completed vehicles parked out front. Mr. Schadow said that he is in the process of remodeling the shop and when this is done, all the vehicles will be put inside.

Ms. Kane asked Mr. Schadow if his operation is a licensed motor vehicle repair shop. Mr. Schadow replied no. Ms. Kane asked if a license would be required. Mr. Schadow said that he would not be required to be a licensed motor vehicle repair shop and believes that the vehicles that were purchased can be rebuilt without a license since he is not working for someone else.

Ms. Bell asked why this has to be done at this location. Mr. Schadow said because of the cost and cannot afford to rent or purchase another piece of property that will duplicate the current asset.

Ms. Bell asked the applicant if excavation and car repair is one in the same. Mr. Schadow said since the property has been used commercially feels that he should be able to have a dealer's license. Mr. Schadow said that the property has



been used for several different businesses over the years in several different capacities. At one time, the property was used as all commercial with the house being used as an office; the property went back to residential once moving in.

Ms. Bell said that the zoning may not have been as well defined as it is today in the prior use.

Mr. Lesniak said the Moore Oil business is not applicable to what is being proposed which is not allowed in the rural district.

Mr. Lesniak read a portion of the comment letter from the Zoning Board attorney. "Al Schadow – 429 Charlton Road. The applicant is seeking 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 Town 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 would be a use variance or a validly existing nonconforming use. The applicant is seeking an interpretation from the Board that his intended use of the property qualifies as a pre-existing nonconforming use. My opinion it does not."

Mr. Schadow said the property could be used for another use because the property has been used commercially for several years.

Mr. Groves asked if the vehicles be purchased from an auction for the planned enterprise. Mr. Schadow said that he has purchased vehicles from southern auctions and plans on rebuilding them. Mr. Schadow said the business will be conducted on the internet.

Mr. Groves said that after presenting the case and given some of the vehicles are in front of the garage leads him to believe that this is more of a recycling business salvage yard with a pile of tires recycling oil and antifreeze, than a sale of automobiles. Mr. Schadow said that there is a certain component that will look like a salvage business only because parts are being used off of other trucks to rebuild others. Mr. Schadow said that the salvage part of the business is only to reuse the anti-freeze and dispose of the tires.

Mr. Groves said in acquiring unserviceable vehicles or salvage vehicles for parts, invariably will end up with a carcass in the end. Mr. Schadow said no that it will be sold for scrap.

Mr. Northrup asked where all the scrap came from. Mr. Schadow said the scrap accumulated from the excavation business in 1982.

Mr. Northrup asked if the excavation business was for land or vehicles. Mr. Schadow said in the 1980's the work performed was commercial; apartments and waterlines and presently performs residential work.

Mr. Schadow said that 15 loads have been taken off the property.

Mr. Northrup asked if there were results from the water tests. Mr. Schadow said no that it was done about ten years ago.

Mr. Northrup said that it appears that there is repair being done on cars that are already totaled. Mr. Schadow said that he plans on using parts off some of the vehicles to rebuild others.



Mr. Northrup asked Mr. Schadow if this business will be his primary source of income. Mr. Schadow said that he can envision a 50/50 split between the two businesses.

Mr. Northrup asked the number of cars to be placed out front. Mr. Schadow said it is open to negotiation based on a possible approval. Mr. Schadow said that he does not intend to work on vehicles outside once the inside of the garage is remodeled.

Mr. Lensiak opened the public hearing at 8:02pm

Mr. Pott asked how long the property was occupied under the land contract. Mr. Schadow said approximately six years.

Mr. Pott asked if this was under a lease agreement to pay so much per month and also asked if there was a deed. Mr. Schadow said that he did not have a deed, but had a land contract. Mr. Pott asked if there was a point in time for an option under the contract to purchase the property and have the payments applied to the purchase price. Mr. Schadow said that they reduced the principal by making monthly payments on the land contract. Mr. Pott said that there is an excess of one year without any commercial use on the property. Mr. Schadow said that it was used as a trucking, excavation, and farming business immediately. Mr. Pott said that there was an interruption of the commercial use on the property. Mr. Schadow said that was not true, because there was a trucking, excavation, and oil business. Mr. Schadow said at that time, the oil business moved to Burnt Hills and a deal was made with Mr. Kowsky to acquire the property under land contract, moved into the residence, and used the shop for the farming and trucking business.

Mr. Pott said as far as using commercial use as a mechanism for getting approval favorable to what will be applied for, is a variance use.

Mr. Reilly said that assuming even if a case could be made for a continuing non conforming use, his interpretation of the town's ordinance and the New York State Law is that the applicant may have a validly existing non conforming use; does not give that property owner the right to change the use or add to it. Mr. Reilly said even if established, that would not give the applicant the right to do what is proposed without a use variance.

Mr. Pott feels that this property is the front door to the Town of Charlton and does not know if there is another property in Charlton like this one.

Mrs. Pott said the Planning Board approved a subdivision on Charlton Road in the Ag District totaling four houses on a plot of land in her opinion is not DEC wetlands, but wetlands. Mrs. Pott said last week Mr. Merchant hayed that field and had to leave a swath down the center because the field was too wet. Mrs. Pott said that there was standing water in the ruts until yesterday. Mrs. Pott said there is a constant pressure and encroachment on the Ag District. Mrs. Pott said in 2006 the town firmed up the master plan and tightened the zoning, and yet continues to see the bombardment of the Ag District. Mrs. Pott said if a variance is offered on this land, you will open a door to the next owner. Mrs. Pott said there is only so much land left in the Ag District and the Board is at risk to set a precedent.

Mr. Lesniak closed the public hearing at 8:10pm

Mr. Schadow added that his property is not in the Ag District and does not abut his property on either side.

Mr. Lesniak polled the Board on their interpretation:



Ms. Bell said that she sees the nonconforming excavation and trucking operation and the request for a car dealer operation are two separate distinct operations.

Mr. Groves is in agreement with Ms. Bell.

Mr. VanDeCarr said that he does not perceive the prior commercial use as justification for future nonconforming use.

Ms. Brown is in agreement with Ms. Bell

Ms. Kane said that she feels they do not have anything to do with each other.

Mr. Northrup is in agreement with Ms. Bell.

Mr. Lesniak is in agreement with Ms. Bell and said that what is being proposed is not even allowed in the rural district.

Mr. Lesniak told Mr. Schadow that he could apply for a use variance, meet the four criteria, or ask the Town Board to rezone the property. Mr. Reilly said that the applicant has a legal right to ask for rezoning.

Mr. Schadow asked that this application be tabled until next month.

Ms. Bell read through 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. Ms. Bell said that reasonable return means that the applicant has tried to sell the property, and have pursued all the avenues, and therefore must have both the trucking operation and the car dealership on this property with your residence. Ms. Bell also said that the Board would be requesting some form of financial backup associated with that.
- 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. Lesniak said the applicant would need to meet each of the criteria.

Mr. Schadow reiterated what Ms. Bell said prior to the granting of a use variance would have to try to sell the property where the shop sits and if the property cannot be sold, will have to apply to the Planning Board for a Lot Line Adjustment, and try to sell that piece of property before returning to the Zoning Board.

Mr. Schadow asked that the application be tabled for six months until an application can be presented to the Planning Board for a Lot Line Adjustment to sell that piece of land.



MOTION: Mr. Groves made a motion to table the application for a term of six months allowing Mr. Schadow the gather the appropriate information, data, and attempt to sell the property so he can apply for a use variance. Ms. Kane seconded the motion.

Ms. Brown voted in favor

Mr. Groves voted in favor

Ms. Bell said that Ms. Schadow has received a violation notice from the zoning office on April 11, 2008.

Ms. Bell asked what happens with the violation of cease and desist during the six month interval. Ms. Bell asked if this would allow Mr. Schadow to continue selling, repairing cars, and keeping more than one unregistered vehicle on the property.

Mr. Reilly said once a citation has been issued, if the applicant is making a good faith effort to comply by way of a special use permit, use variance, or whatever relief is necessary, enforcement has been held in abeyance pending the determination of the appropriate body. Mr. Reilly shares concern with the term of six months.

Mr. Johnson said that would be up to the Zoning Enforcement Officer.

Mr. Lensiak asked Mr. Schadow what property he would be trying to sell. Mr. Schadow said there are two lots presently, but unfortunately the property line runs through the house and an application would need to be made for a lot line adjustment to cut the shop land off from the house.

Mr. Reilly recommends that a dialogue be conducted between the Zoning Enforcement Officer and Mr. Schadow as far as what can be cleared up in the meantime. Mr. Reilly said that from the description of some of the members there are materials on the property that even if this were approved as a use, it would not be used in that use. Mr. Reilly said that there is no legal prosecution to go forward.

Mr. Pott said out of the four criteria of an area variance the last one which relates to hardship has to be presented to prove.

Mr. Schadow said he can sell the shop for a trucking or excavation business. Mr. Reilly said that he does not know enough about what evidence exists to prove the continuous use.

Mr. Lesniak closed the public hearing at 8:25pm

Mr. Reilly said that if the Board tables the application, there is no legal impediment stopping that.

Mr. Schadow said that if the Board proceeds with this action, he will find every zoning violation in the town and if necessary, will get an airplane to take the pictures. Mr. Schadow said that he was being singled out by the Zoning Enforcement Officer because there was no signed complaint on this issue.

Mr. Grove suggests bringing that issue up with the Town Board.

A further discussion was held on properties in the town having two unregistered vehicles.



Mr. Lesniak asked the Board to continue with the motion.

Ms. Bell voted in favor

Mr. VanDeCarr voted in favor

Ms. Kane voted in favor

Mr. Northrup voted not in favor.

Mr. Lesniak voted in favor with the six month extension and asks that a meeting be held between the Zoning Enforcement Officer, Mr. Schadow, and Mr. Reilly. **CARRIED.**

NEW BUSINESS:

Stephen Le Van, 45 Lundy Lane for an area variance pursuant to section 138-11.1 for the construction of a 29' x 34' garage. Greg Murphy, contractor was present on behalf of the applicant.

Mr. Lesniak said the applicant is requesting a 10,478 sq. ft. area variance and a 75' lot width variance.

Mr. Murphy said the proposed garage will be used for the storage of three boats.

Mr. VanDeCarr asked how to get to that location. Mr. Murphy said right next to the garage is a pathway to the location; presently where the boats are being stored.

Mr. Lesniak asked if this proposed garage will have living quarters. Mr. Murphy replied no electricity or water.

Mr. VanDeCarr asked if there is access for emergency response to the proposed site of the garage. Mr. Murphy replied yes, that is where the boats are currently stored.

Mr. Rogner asked if the properties on Lundy Lane are 100ft. wide. Mr. Murphy said that most properties are not that wide.

Mr. Lesniak opened the public hearing at 8:40pm

Mr. Lesniak closed the public hearing at 8:41pm

No one wished to speak.

Ms. Bell went through the five criteria of an area variance:

1) Whether an undesirable change will be produced in the character of the neighborhood or a

detriment to nearby properties will be created by the granting of the area variance. Mr. Murphy replied no.



2) Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance. Mr. Murphy replied no.

3) Whether the requested area variance is substantial. Mr. Murphy replied no.

4) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood of district. Mr. Murphy replied no.

5) Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance. Mr. Murphy replied no.

MOTION: Mr. Groves motioned to name The Town of Ballston Zoning Board of Appeals the Lead Agency in the SEQR process. Ms. Kane seconded the motion and all present voted in favor. **CARRIED.**

MOTION: Mr. Groves motioned to declare this a Type II action under SEQR and therefore exempt from review. Ms. Bell seconded the motion all present voted in favor. **CARRIED.**

MOTION: Ms. Bell made a motion for an area variance pursuant to section 138-11.1 for the property at 45 Lundy Lane for the construction of a 29' x 34' pole barn is granted with a lot area variance of 10,478 sq. ft. and a lot width variance of 75' with the restriction of no residential living quarters, no commercial operation; building for storage use only. Mr. Rogner seconded the motion and all present voted in favor. **CARRIED.**

Bradley Callahan, 1 Manning Road for 280A Relief for the creation of one building lot. Duane Rabideau of VanGuilder and Associates was present on behalf of the applicant. Mr. Lesniak said the applicant is submitting a two lot minor subdivision at 1 Manning Road requesting a variance of 280A Relief so the minor subdivision can move forward to the Planning Board. Mr. Lesniak states that the applicant is proposing to subdivide a 12 acre parcel of land into two single residential lots. Mr. Lesniak said that lot #1 consists of 4.7 acres with an existing home and lot#2 consists of 7.8 +/- acres for the proposed single family dwelling.

Ms. Kane asked if the gate shown on the subdivision map will be removed. Mr. Rabideau said that the reason for the additional private road is to make the lots compliant with the current zoning. Mr. Rabideau said the gate is set up for lot #2 while lot #1 will have access prior to the gate. Mr. Rabideau said the will need to be widened or moved and/or have a knox box on it. Ms. Kane asked for clarification of a knox box. Mr. Rabideau said it is a box which has a key for emergency personnel.

Ms. Kane asked Mr. Johnson what the width requirement is for a fire truck to access the road. Mr. Johnson said that a normal fire truck is 8ft. wide and one fire truck could pass through the gate. Ms. Kane asked if the local fire department is open to having a key to get through gate. Mr. Johnson said that the fire department has one key that fits every knox box in their district.

Mr. Reilly said this Board only has to be concerned for 280A Relief up to the property line because if the 280A Relief is granted, the applicant still needs to go to the Planning Board for the subdivision and the new private road is part of that approval. The Planning Board under the new zoning ordinance can allow for private roads.

Ms. Bell asked for clarification on where the roads were going and what they are accessing. Mr. Rabideau said the extension of Hawkwood Avenue.



A further discussion was held on the proposed private road.

Mr. Lesniak said this Board only needs to be concerned with Hawkwood Avenue to the property and not get involved with what is on the property.

Ms. Kane said that the Zoning Board of Appeals does not know if the Planning Board will approve the private road. Mr. Johnson said that all the new private roads do not need 280A Relief because the new zoning permits the Planning Board to allow the creation of private roads.

A further discussion was held on private roads.

Mr. Reilly suggested making a stipulation that if 280A Relief is granted, it would be contingent upon Planning Board approval for the continuation of a private road to its residence.

Mr. Groves asked who is responsible for maintaining the road primarily in the wintertime for emergency vehicles. Mr. Rabideau said a maintenance agreement.

Ms. Bell said Mr. Callahan has a tractor and maintains along Hawkwood Avenue.

MOTION: Mr. Groves motioned to name The Town of Ballston Zoning Board of Appeals the Lead Agency in the SEQR process. Ms. Bell seconded the motion and all present voted in favor. **CARRIED.**

MOTION: Mr. Groves motioned to declare this an Unlisted action under SEQR and therefore does not require any further review. Ms. Bell seconded the motion all present voted in favor. **CARRIED.**

MOTION: Ms. Bell made a motion that the property at 1 Manning Road be granted 280A Relief to create a building lot off of Hawkwood Avenue with the provisions the Town Planning Board approve an appropriate private road continuation off of within the confines of the property. Mr. Groves seconded the motion and all present voted in favor. **CARRIED.**

MOTION: Mr. Groves made a motion to adjourn. Ms. Kane seconded the motion.

CARRIED.

Meeting was adjourned at 9:05pm.

Respectfully submitted,

Michelle L. Dingman