

TOWN OF KILLINGTON ZONING BOARD OF ADJUSTMENT
Meeting of January 12, 2011

Present: Ron Riquier, Charlie Demarest, Jay Hickory, Ken Loeliger-Myers
Richard Horner, Zoning Administrator

Guests: Barry Merrill

Ron Riquier, Chair opened the meeting at 5:38 p.m.

1. Approval of Agenda

Charlie Demarest moved to approve the agenda. Jay Hickory seconded. All in Favor.

2. Approval of the Minutes

Charlie Demarest moved to approve the Minutes of January 6, 2011 as presented. Jay Hickory seconded. All in Favor.

3. Application 10-056

Ron Riquier re-opened the hearing on Application 10-056 by Barry Merrill for a variance to permit the operation of a vehicle maintenance and repair shop at 2749 River Road which is located in a Residential-3 Zoning District and had previously operated at this site as a home occupation.

As requested by the Board, Dick Horner contacted the Town Attorney and received an opinion regarding Variance Criterion C (whether the applicant has created unnecessary hardship), which he distributed. Charlie questioned who the actual applicant was. Dick advised that David Cooper signed as the applicant and Barry Merrill signed as the owner. Charlie wanted this to be clear since the legal opinion stated that there was a ruling by the Vermont Supreme Court “that buying or acquiring property with knowledge of a restriction imposed by a zoning regulation does not run afoul of criterion C”. Ron noted that New Hampshire looks at variances a little differently by breaking them down into two categories—a use variance or an area variance. He questioned why Vermont’s variance criteria cannot do the same. Horner explained that the difference between Vermont and New Hampshire is that Vermont is an enabling State—they tell you what you are allowed to do, whereas New Hampshire points out the things that you cannot do.

Charlie Demarest moved to recind the vote made on Criterion C on January 6, 2011. Jay Hickory seconded. All in Favor.

Criterion C. Ken Loeliger-Myers moved that such unnecessary hardship has not been created by the appellant. Jay Hickory seconded. Discussion.

Charlie noted that the appellant in this case is clearly David Cooper and asked Dick to confirm this. Dick again noted that David Cooper signed as the applicant and Barry Merrill signed as the owner. Charlie voiced three thoughts: i) Based on the attorney’s opinion, the appellant buying the property with the knowledge of a zoning issue does not run afoul of this criterion and the appellant is David Cooper and not Barry Merrill. ii) Although the attorney also

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noted in his opinion that a ZBA decision does not create precedent, he is concerned over the next variance application that may come in that may not be approved and the consequences that may have. iii) He would really like for Barry to be able to sell his building and have it operated as a garage.

Jay Hickory agreed with Charlie noting he would really like to see the garage operating again. Although there may be another variance application down the road the Board does need to consider each application on a case by case basis and should render a decision accordingly.

Vote on Criterion C as stated. All in Favor. Motion Passed

Criterion D. Charlie Demarest moved that the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent property nor be detrimental to the public welfare. Jay Hickory seconded. Discussion.

Horner noted that the garage is a part of the essential character of this neighborhood. Ken Loeliger-Myers also noted that it would be a benefit to the public to have an operating garage in Town.

Vote on Criterion D as stated. All in Favor. Motion Passed

Criterion E. Ken Loeliger-Myers moved that the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the zoning regulations and of the comprehensive plan. Jay Hickory seconded. All in Favor. Motion Passed

The Board placed the following conditions on this variance: i) Screening is to be maintained as it currently exists. ii) Car storage is limited to a maximum of 12 cars at one time, of which only 3 can be non-registered vehicles. iii) The garage will be operated in the same manner as it was operated in the past 28 years. iv) Signage is limited to the current area of 9 sq. ft.

Jay Hickory moved that the variance as conditioned is approved. Ken Loeliger-Myers seconded. All in Favor. Motion Passed

4. **Other Business** – None.

The meeting was adjourned at 6:15 p.m.

Respectfully submitted,

Lucrecia Wonsor
Recording Secretary

NOTE: These minutes have not been approved by the Zoning Board of Adjustment and are, therefore, subject to change.