

TOWN OF KILLINGTON ZONING BOARD OF ADJUSTMENT
Meeting of January 6, 2011

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

GUESTS: Barry Merrill, Charles Edgar, David Cooper, Kathleen Ramsay

Ron Riquier, Chair opened the meeting at 5:03 p.m.

1. **Application 10-056** – Ron Riquier 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. A vehicle repair shop had previously operated at this site as a home occupation.

Ron Riquier asked the Board to introduce themselves and asked each person present to introduce themselves and state their interest in this matter. He then administered the oath to the applicant and all who would be providing testimony.

Dick Horner provided some brief background information. He provided the Board with a copy of the Planning Commission minutes from July 15, 1980 when the Commission approved the construction and operation of Merrill's Garage as a home occupation in an R3 District. The property, which was made up of two lots, was owned by Milton and Madeline Merrill. They lived in the single family home located on one of the lots and Barry Merrill, their son, operated the garage located on the other. Madeline Merrill was the bookkeeper for the business. Milton Merrill passed away leaving the property to Madeline. After operating the business for 28 years, Barry took a job with the Town and closed the shop. Since that time the lots have been separated with the one lot with the home remaining under ownership of Madeline Merrill and the other with the garage transferring to Barry and his wife Nancy. Barry is looking to sell this property. If this variance is granted, Dave Cooper will purchase the property and will operate it in the same manner as Barry operated it for 28 years. Ron opened the floor for comments.

Charles Edgar noted that he hopes the variance will be granted because having a garage up the street is more convenient and less expensive than taking his car to Rutland.

Barry Merrill noted that the business had operated for 28 years with no harm done to the Town.

David Cooper advised that he has been working at the Killington Resort for 20 years and has been in vehicle maintenance for 19 of those years. He brought trucks from the Resort to Barry for inspections. He has known Barry for 20 years and is no stranger to the Town of Killington. If he does buy the property, which he hopes to, he plans to operate the business in the same manner as Barry operated it for 28 years as a service to the community.

There being no further input or discussion, the Board moved into review of the applicable variance criteria:

Criterion A. Ken Loeliger-Myers moved that there are unique physical circumstances or conditions, including irregularity, narrowness or shallowness of lot size or shape or exceptional topographical or other physical conditions peculiar to the particular property and that the unnecessary hardship is due to such conditions and not circumstances or conditions generally

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created by the provisions of the Zoning Regulations in the neighborhood or district in which the property is located. Charlie Demarest seconded. Discussion.

Dick Horner noted that the unique physical circumstance is that at one time this property did comply as a home occupation. Barry went to work for the Town and Barry's mother could no longer support the two properties and had to separate them and Barry had to buy it. Dick advised that he has never seen this situation occur in Town, which is what qualifies it as a unique circumstance. Charlie Demarest noted that he would like to grant the variance, however, did not know how it could be granted given the variance criteria that must be satisfied. Dick noted that these five criteria are all "Catch 22" because of the way they are written. If the ZBA approves the variance, it is open for appeal by anyone that may choose to do so.

Vote on motion as stated. 3 in Favor, 1 Abstained. Motion Passed

Criterion B. Charlie Demarest moved that as a result of such physical circumstances or conditions there is no possibility that the property can be developed in strict conformity with the provisions of the Zoning Regulations and the authorization of a variance is therefore necessary to enable the reasonable use of the property. Ken Loeliger-Myers seconded. Discussion.

Dick noted that as Zoning Administrator and Town Planner a number of people have come in and spoken to him about this property. Since the only permitted use would be as a residential property and due to the past use as a service station, no one really wants to buy the former service station and convert it into a residential use. For this reason, he does not believe this property can be developed in strict conformity. Charlie Demarest added that since the properties have been separated the garage can no longer be used in its current state without a variance since it no longer qualifies as a home occupation.

Vote on motion as stated. 4 in Favor. Motion Passed

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

Dick noted that the unnecessary hardship was created by the appellant's mother for financial reasons. Dick also pointed out that looking ahead to Criteria D, granting the variance does not change the essential character of the neighborhood. The garage has been there for 30 years. The Town Garage, the sand pile and the Library are just down the road. The Recreation facility and Town Office are across the street. These are all non-residential/semi-commercial uses. The garage has not negatively impacted River Road. Looking at it from that point of view, he feels a variance is warranted.

Charlie questioned whether another property on River Road had been refused a variance to run a firewood business as a home occupation. Dick responded that property owner had not applied for a home occupation for that business. He just started it, Dick then sent a violation and the matter went to court. This same property owner later applied for a home occupation to run a maple sugaring business and that was granted.

Vote on motion as stated. 1 in Favor, 2 Opposed, 1 Abstained. Motion Failed

Dick expressed his disappointment that the Board did not grant this variance, noting that the garage has been there for 28 years. He again noted that Barry did not create the hardship, his mother created the hardship because she was forced to for financial reasons. He noted the Board could have conditioned the variance so that the garage could only operate in the same manner as it had been operated in the last 28 years. Charlie asked how the Board could have granted the

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variance, without opening the door to other people who may want a variance. Dick advised that there are no precedents in the ZBA, each application is reviewed and considered on a case by case basis. Further, if someone has an issue with a decision of the ZBA, they can appeal. When there is a circumstance where something has already existed for a long period of time such as the garage, it's been an asset to the community, it hasn't hurt anyone, it had operated as a home occupation and could continue to do so if the lot hadn't been separated, that is a unique situation that should be given consideration. Charlie asked whether the zoning could be changed. Dick responded that the Planning Commission is currently looking at making some changes to the zoning regulations, however, that is a long process and then you start to get into spot zoning. Ken noted that if you really look at it, it never really was a home occupation since the garage and the home were not attached. He further noted that it has been here for 28 years, although it is in a residential district, this particular area of River Road is semi-commercial with the Town Offices, Town Garage, etc. and the repair garage was an asset to the Town. Charlie stated that he does not disagree and he agrees with everything that has been said, unfortunately as a quasi-judicial board we have to apply the five criteria to the situation at hand. Dick noted that the State allows variance hearings to take place yet they give you five criteria that you cannot possibly find in the affirmative on all five of them. He has never seen such a situation and the Courts in Vermont have never upheld an appeal, but the State allows the hearings to take place probably for the reason that there may be some fluke or community situation that merits it and if someone feels strongly enough against it, then they have the right to appeal. This is why you have citizen boards so that you can really look at a situation and determine what is for the betterment of the community. All the feedback he has heard from the community regarding the sale of the garage and that the new owner would look to open it again has been positive.

The Board continued discussion to see if there was some way to grant a variance within the confines of the criteria. Charlie asked Dick to call the Town Attorney, Kevin Brown, and ask him to find a way to make this variance possible within the requirements of the variance criteria, particularly Criterion C.

Charlie Demarest moved the vote on Criterion C be recinded pending opinion from legal counsel. Jay Hickory seconded. Ron Riquier was not comfortable recinding a vote shortly after having made it. He felt it was best to wait until the next meeting when the Board would have the opinion of counsel to consider. After some further discussion, Charlie withdrew his motion and Jay withdrew his second.

Charlie Demarest moved to recess the hearing on Application 10-056 to January 12, 2011 at 5:30 p.m. Ken Loeliger-Myers seconded. 4 in Favor.

2. **Other Business** – None.

The meeting was recessed at 6:10 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.