

ZONING BOARD OF APPEALS

**Town Hall 1375 Ridge Road Lewiston New York
Thursday – September 12, 2019
ZB 2109-9**

Present: Conti, DeCastro, Heuck Machelor, Maggard, Muzzi

Presiding: Norman Machelor

Pledge of Allegiance

Machelor: I would like to call the meeting to order.

A motion to approve the minutes of August 8, 2019, was made by Heuck, seconded by Maggard and carried. 1 abstention

Machelor: We are going to go in order.

The first item on the agenda was a request from James Gandt, 4358 Porter Center Road, SBL# 75.00-1-37, for a variance from Section 360-185E, Accessory uses and structures to allow for a pole barn from the maximum height of 18' to be 23'. The property is presently zoned RR, rural residential.

Machelor: Please come up and state your name and address.

James Gandt, 6951 Colonial Drive, Niagara Falls New York.

Machelor: Mr. Gandt please explain what you want to do.

Gandt: I would like to build a pole barn on my property. 50' wide by 60' long and 23' tall.

Machelor: Do you have any site plan with you where on your property you are going to do this?

Gandt: I have a survey. It will be about 20' away from the barn that is there now. There is an existing barn and this will be the new one.

Conti: Are you taking the barn that's there now down?

Gandt: No. There are a couple garages there that will be coming down.

Machelor: How far back from the road will you be?

Gandt: Probably 123', even with the one barn.

Machelor: What are you going to put in there?

Gandt: I have an RV and I collect old cars.

Machelor: Will there be a driveway to it?

Gandt: Currently there is a driveway going to the center behind the pole barn that will lead over to the new barn.

Conti: You have the height at 23' for the reason of getting the actual RV in there?

Gandt: I need a 12' door for the RV, which the walls will be 14' and being that wide to get up that high.

Machelor: Mr. Gandt we've had almost a half a dozen of these pole barn type structures in the last year. Everyone comes with a different architectural thing about it and why they have to be the height they are and the pitch of the roof and the size of the door. We've approved 22' pole barns, 23' pole barns, even 24' pole barns more than once. I'm beginning to listen to the builders and saying if you're going to put a roof on a barn it has to have a pitch to help it. I don't know how you came up with the size but I would like to consider giving you 24' barn instead of a 23' barn.

Conti: You're only asking for 23' right and that's all you need?

Gandt: As far as what she told me it would be 22.5'.

Heuck: Is there a concrete floor?

Gandt: There will be a concrete floor yes.

Heuck: It may raise it up a bit.

Machelor: I don't want you to be short when the builder gets there and says we need another whatever. We can make it conditional; you can build it up to, I'm in favor of building it up to 24'. If you need 24' then you and your builder can say okay we have 24' if we need it.

Gandt: That sounds good.

Machelor: Any questions?

Heuck: Before we proceed you should do the SEQRA.

Machelor: I read the SEQRA, it's a negative declaration. I would like a motion to accept the declaration prepared by the Town.

**A motion to accept the SEQRA was made by Heuck, seconded by Conti and carried.
Heuck Aye, Conti Aye, Machelor Aye, DeCastro Aye, Maggard Aye**

Machelor: We still have the public hearing open is there anyone that wants to speak to this issue?

Public hearing closed.

A motion to close the public hearing was made by Conti, seconded by Heuck and carried.

A motion whereas the Zoning Board of Appeals finds pursuant to the prior discussions that the benefits to the applicant outweigh the detriment to health and safety and welfare of the community to approve a height variance of up to 24' was made by Conti, seconded by Heuck and carried.

Maggard Aye, DeCastro Aye, Heuck Aye, Machelor Aye, Conti Aye

The next item on the agenda was an appeal of Christopher Danielewicz, 2799 Ridge Road, SBL# 76.00-2-2.1 pursuant to Chapter 360-163 of the Code of the Town of Lewiston, challenging a decision of the Town Building Inspector Interpreting Chapter 360-49, Uses Permitted in the rural residential zone.

Public hearing opened

Machelor: Is there someone here to speak to this?

DeCastro: I am recusing myself.

Conti: Damon is being excused, Anita Muzzi.

Seaman: Just let the record reflect that Mr. DeCastro has recused himself in this matter and has stepped down from the podium and Anita Muzzi who is the alternate of the Zoning Board of Appeals is taking his place.

Machelor: So, the public hearing is open. Is someone here to represent Mr. Danielewicz?

My name is John Bartolomei, I'm an attorney and I represent Mr. Danielewicz in his application for either an interpretation or a use variance related to his property at 2799 Ridge Road. When the application was first submitted it was submitted as a variance application and when I looked at it and I looked and did the research on the Code it looked to me as if it was an allowable use in the zoning ordinance itself. So we withdrew the application and resubmitted the current application to you asking for first if you would an interpretation that agrees with my opinion and interpretation that it is an allowable use in the zoning ordinance and it is and the zoning district. If not, if you don't agree with me which sometimes happens that you grant a use variance in that all of the 4 tests for the use variance would be applicable here. What the use is, is to store certain vehicles which come within the definition of the vehicles that are allowed to be stored in a barn on a piece of land that is in this zoning district. The vehicles are vehicles which are used in all of the possible definitions of the vehicles that can be kept there and that would include, let me list them, vehicles used in forestry, conservation uses and activities and structures, agricultural vehicles used in tree management, tree farm management. They all fall within the definition of the ordinance which I laid out, specificity in the new application and addendum with my letter with the application. I think it's usually preferable if you can interpret the ordinance to allow the use that's requested that you would rather do that than grant a use variance. I represented this Board for some time and that is how it was then. Also, by the way the way it was then was the chairman always voted last. That's the way it was, the protocol. That's the way it was then, so he had the last vote. It was also the Zoning and Planning Board which we eventually split up in to two Boards. I don't see the barn is certainly a building that belongs in this district. The use of the barn was restored to store his equipment and that's what is being done there. I don't, I understand that the building inspector does work very hard interpreting these laws. I just don't see his interpretation of it that it's a use other than one that is allowed in the ordinance. If you have any questions on that point, I would be happy to take them. If you want to go right in to the use variance?

Conti: We have to go through the interpretation first.

Bartolomei: Okay, that would be fine.

Muzzi: I have a question. You were kind enough to look up definitions for different words, specifically wood lot, conservation and things like that in the paperwork that you have. The one thing I did find that was missing though was forest. I took your lead and looked up on Webster's Dictionary and it says a large tract of land covered with trees and underbrush. That would be in my opinion what forestry would encompass, the upkeep, the management of a forest or a wooded lot. Are you with Parkhill by any chance?

I'm Chris Danielewicz.

Muzzi: Oh, you are, I'm sorry.

Bartolomei: Ms. Stumpf is my assistant from my office.

Muzzi: I had specific questions about their forestry. Can you answer those? Are you able to answer those?

Bartolomei: Let me just suggest that forestry is a much wider definition than the narrow one that you are giving to it. The State Edwards in New York has a school of forestry.

Muzzi: I actually looked at your definition of forestry that you had supplied to us and you have it that forestry is defined as the science of planting, managing and using combining and repair trees. Then you give your sources. My question is how much work is actually being done in forests or wooded lots?

Bartolomei: The work that these vehicles are used in are tree conservation, tree management and they fall, wood lot management and conservation.....

Muzzi: Maybe not, it could be at a personal residence which would not fall under forestry or wood lots. It could be a personal residence which would not fall under those categories in my opinion. It's specific to forests and wood lots, like if you went to Alleghany or something, forests. How much of the business is actually being specified for work in forestry?

Bartolomei: I don't know the percentage that is for forestry. I know that forestry is one of the terms that is included in the zoning ordinance as a term that a vehicle that is stored in this rural residential district is allowed to be stored for. But also, any one of the other definitions of the uses of the vehicle which are located in the ordinance are also allowable uses for the vehicle. So, if I told you the percentage of forestry is zero and the percentage of tree conservation is 100, it wouldn't really matter.

Muzzi: Well it matters if I could interrupt you because the Code is pretty specific, it says forestry and conservation uses. It's pretty defined as far as forestry and conservation.

Bartolomei: If you look at A above that, it's a pretty broad definition agriculture, including and not limited to farm and farm related operations, animal husbandry and raising of crops, livestock and livestock products, together with customary buildings and structures associated with such uses.

Muzzi: Are you suggesting Parkhill is doing any of those?

Bartolomei: I don't know what you said that time?

Muzzi: Is Parkhill involved in any of those activities?

Bartolomei: They all fall under that.

Muzzi: I understand, those are permitted uses.

Bartolomei: If you're looking for a broad definition it is in here as well as the limited definitions.

Muzzi: I would agree there are uses that are permitted under that code. But I also would point out that specifically in B, it says forestry and conservation uses. I want to be really clear in my mind that that's what's going on with the barn.

Bartolomei: I'll ask you since you asked all these questions. If part of the business that these vehicles are used for is the conservation and preservation of trees, is that not conservation? If they do conservation 95% conservation or 80% conservation and they do 2% forestry does it matter? Is this a vehicle.....

Muzzi: It does matter.

Conti: We're not looking at whether that's a vehicle, we're still looking at the fact of is that area allowed, the interpretation that Mr. Masters gave do we agree with that or do we agree with what you're saying? We're kind of going right in to the use variance, we're kind of sliding right in to this use variance here. We're kind of mixing the two up right now. We're kind of flowing in and out.

Bartolomei: The use is the storage of vehicles in a barn that is allowed on the property.

Conti: That's the use variance.

Bartolomei: That is the use under the ordinance because the ordinance allows the use of storing farm vehicles and vehicles that are used tree lot management, for conservation and for forestry. Let's not confuse this. The use is can we store these vehicles in this barn? That's the use.

Muzzi: That would be one aspect.

Bartolomei: The question is are these vehicles of a type that are allowed to be stored in the barn.

Machelor: I want to interrupt and ask how big is this property Mr. Danielewicz?

Bartolomei: 293 acres.

Machelor: The use of the property is what we are talking about right. We're not talking about the vehicles that are stored in that barn being used in forestry on somebody else's property. Are we talking about the use of these vehicles to farm another property somewhere else? In other words, they would leave this property, go to a different property and do their farming and then come back and be stored at this property.

Bartolomei: Sir you know what a columbine is right?

Machelor: Yes.

Bartolomei: So, what happens with a columbine is not one farmer can afford that type of machinery. Sometimes they all pitch in and buy one or sometimes one farmer has it and as you know with all this equipment it's used on all the farms. It goes back and forth and all that stuff but it's stored in one place. It goes over night to one place. Are you saying that that would be a problem storing a columbine in a farm because it's used as a columbine on other properties?

Machelor: Used or purchased for use in other words. In other words, the business is here and the use of it is somewhere else. Is that what you're saying? Is it person A buys a columbine and rents it to person B and then part of the deal he drives the columbine to part B and then comes back and stores it in this barn?

Bartolomei: That is what happens in every farm and every.....

Machelor: These people have business relationships with the people that they get the columbine from. That's a business, in other words farmer A buys a big piece of machinery and sells it, leases it whatever to farmer B to uses to do his property. What we're talking about here is whether or not the equipment that you're talking about will be used on the 293 acres that Mr. Danielewicz owns. Is he going to do forestry on his property because that's what the use is?

Bartolomei: On his property of course and possibly on other properties. You're saying two things, you're making two distinctions, one you're saying that if he's the owner and purchaser of these vehicles it's different and that's not the case. The other saying if these vehicles are used on other farms that could be a problem or in other areas that could be a problem and third you're saying if the vehicles are only used for one of the allowable uses of the vehicle that that would prevent being.....none of that makes any sense to me.

Machelor: It makes sense to me. If I own this piece of machinery and I was going to collect money for the use of it that would be what I call a business. The place where the equipment is stored would be a business place. We're talking about a use permit. We're talking about use of 293 acres. We're not talking about cumbines or anything else. We're talking about the use of that property. That's why it's called a use variance.

Bartolomei: I'll come and harvest your hay for you.

Muzzi: Can we keep it specific to what's in front of us?

Bartolomei: I need to get this out. I know you like to interrupt me but I want to get this out. If I come and harvest your hay for you and I roll it up and I put it in your silo for you. My equipment goes home with me that day. It stays in my barn even though it's used on your territory and on your property. There is no difference. That's an allowable use. That is my business I'll harvest your hay.

Machelor: Exactly you're running a business.

Bartolomei: Are you saying that I would need a business permit?

Conti: We're not saying that. We're talking farming, now we're talking tree cutting. We are getting away from the interpretation that's in front of us first. We're constantly mixing and matching the use variance with the interpretation. Let's take care of the interpretation and then we will see if we need to go to the use variance. That's what we need to do is to take a vote on the interpretation and then determine if we are going to the next step. We're sitting here just going back and forth over the same thing. We're mixing up the use variance along with the interpretation. I think we need to take a vote on the interpretation.

Muzzi: I would like to think about that.

Machelor: I would like to think about that too.

Seaman: My recommendation would be that you guys hold the public hearing open for both issues, the interpretation as well as the use. Let them mix or intermingle if they need to be but make sure that the applicants get as much information as they need to have in front of you to fill out their application as much as necessary. When that's completed then you can close the hearing. What I would recommend is on this particular one, it's not a simple area variance, it's a more difficult analysis, I would recommend that you close the public hearing and someone makes a motion at the next meeting. In the meantime, what we would probably do is draft something in writing that would describe what you're voting on exactly and then you should do the vote at that point in time. That would be my recommendation.

Machelor: Also, we could give Mr. Danielewicz an opportunity to submit anything further if he would like to submit.

Seaman: Certainly, make sure if there needs to be extra time then I recommend you keep it open for that as well.

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Conti: Since we are going to mix and match then I have a question. Parkhill Tree Conservation or whatever the name of the company is, who is that owned by?

Bartolomei: William Parkhill.

Conti: Is there any business relationship and that business with Mr. Danielewicz? As far as him having any kind of business with him in that company in Parkhill Tree?

Bartolomei: No.

Conti: You don't own part of the business?

Danielwicz: No not at all.

Conti: That is what I want to know there is no, you don't own part of the business?

Danielewicz: Not at all.

Machelor: Does he pay you to park his vehicles?

Danielewiz: Yes.

Bartolomei: It's in the application he pays rent yes.

Conti: He's saying yes, you're saying no, which one is it?

Danielewiz: What he did is when we redid this building, he did a lot of work cutting trees down and so his labor going to pay the rent now. Once his money gets worked off then he will start to pay rent. He did about \$20,000. worth of tree cutting there and stump grinding and clearing the property. Right now, that is his rent because it started the first of January. He will be up the end of this year and his rent will start so I can re-coup some of the funds that were....

Conti: So, before the use variance ever got approved you've, so everything is already going on right now. You're already storing vehicles there and everything else before the use variance or anything got approved?

Machelor: Accepting labor in lieu of rent?

Bartolomei: No.

Conti: He just said yes.

Bartolomei: Let's do this, are we talking about the use variance now?

Conti: He said we are going to mix and match everything now.

Bartolomei: Ask me the questions. I represent him here.

Conti: Are you trying to say he doesn't know what he's talking about?

Bartolomei: I didn't say that at all. He took the time to hire an attorney let me do my job.

Conti: Ok so we asked you the question, are they already parked there and you're receiving rent right now?

Bartolomei: Yes.

Conti: That was the question I asked and you said no and he said yes so that's why we are going back and forth.

Bartolomei: He explained the difference.

Conti: But you said no, that's why we didn't know where we were going with this.

Bartolomei: No, he's not collecting cash as rent.

Conti: Services in lieu.

Machelor: Services in lieu of rent which he says are worth \$20,000.

Bartolomei: Not labor sir, yes services.

Machelor: \$20,000. worth of services.

Bartolomei: That's what he said yes.

Machelor: That establishes to me a business relationship between your client and Parkhill.

Bartolomei: You guys have your own definition as I see they sometimes differ from others. What is business and what is....renting a place to store his vehicles and the relationship between him and the person who owns the place where the vehicles are stored. Is that a business relationship?

Machelor: They are not father and son, are they?

Conti: What would you consider it?

Bartolomei: I don't think if you rent a place that it's a business relationship under the type of business definition that you're looking for. It's not a commercial business.

Conti: Sure, it is.

Machelor: It is exactly.

Maggard: What is that mountain alongside the barn? There is a big mountain of what?

Conti: There is a mound of something next to the barn.

Danielewicz: Wood chips, all wood chips.

Conti: From Parkhill?

Danielewicz: Yes.

Machelor: They are stored there?

Danielewicz: The wood chips.

Heuck: To be used in the future?

Danielewicz: He's not sure what he is going to do with them yet but Canal Side took a bunch.

Heuck: The trees he cut down, what did they do with them?

Danielewicz: The trees are all chipped in to wood chips.

Machelor: Who owns the chips?

Danielewicz: He does. I have no part or use of his business at all. It's all him. It's just my building.

Muzzi: I have a couple questions that pertain to the financial sheet that you submitted if I can get some clarification on a few things if that's okay. Just real short answers. We don't have to go in to.....the initial, when you obtained the property your initial investment on the property was \$1 in 2003 correct?

Bartolomei: It was a family transfer yes.

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Muzzi: I'm a little perplexed on the roundness of the numbers you submitted. Normally we would get dollars and cents proof of different things, so when you're submitting on your form a \$90,000. cost in the spring of 2018 to retain the frame and entire barn structure, when you come up with the \$90,000. where are you getting that number from?

Bartolomei: If he thought this was not an allowable use.....

Muzzi: We're not talking about that I want to know where \$90,000. Is?

Bartolomei: Let me finish the sentence and you may get an answer. Exact receipts would have been kept if he thought he would be presenting them to the Board.

Muzzi: That is what he has to do. He absolutely has to.

Conti: In a use variance he has to do that.

Muzzi: I will read you the law sir, in seeking use variances New York State Law requires an applicant to prove all of the tests. One of them sir is dollar and cents proof must be submitted as evidence. We have nothing, just these numbers. My question is, is \$90,000. That the first thing that was put forward where are you getting that figure from and is that high, low, is that just an estimate?

Bartolomei: It's his recollection. If we need to get receipts together or whatever proof then let's keep this open.

Muzzi: I also noticed on here that you have an annual maintenance expense of \$8,000.? Can you break that down to what that would entail?

Bartolomei: That's an estimate.

Muzzi: For what services?

Conti: For what?

Bartolomei: Maintaining the barn.

Muzzi: \$8,000 on a new.....I also see that #8 in your section the appraised value you put unknown. We are going to need all of that. The application is incomplete without that. It needs to be done by a certified real estate appraiser not a realtor.

Bartolomei: You want the 293-acre parcel appraised?

Muzzi: No, that is what the State requires we get from you.

Bartolomei: Cite me the section.

Muzzi: I just read it to you. Do you want to read it?

Bartolomei: Cite it to me, what site?

Muzzi: I don't understand what you want from me?

Bartolomei: What section are you reading?

Muzzi: I am reading under the use variance the financial return on investment section. The very first one. It's all the financials.

Bartolomei:you want an appraisal of what the entire property is required.

Heuck: It doesn't say that.

Muzzi: It doesn't say that. It's asking what the appraised value is and that document needs to come from a certified real estate appraiser and we don't have that. That would be something we would get.

Bartolomei: Are you reading that somewhere?

Muzzi: It says unknown and blank.

Bartolomei: Read me the section that says an appraisal of the entire property....

Muzzi: The applicant cannot realize a reasonable rate of return on initial investment for any currently permitted use of the property. Dollars and cents proof must be submitted as evidence. Property in question cannot yield a reasonable rate of return for the following reasons: We have to determine if this property can realize a reasonable rate of return. Without that figure it would be extremely difficult for us to do that.

Bartolomei: I understand that but tell me where it says that an appraisal of the property is necessary to be submitted.....

Muzzi: It is not. If you want to leave it as unknown....

Bartolomei: It doesn't say that does it?

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Muzzi: It asks you for the appraised value. If you feel you don't want to give it to us that's fine. That's up to you. I'm saying its vacant right now. You just put unknown.

Bartolomei: I think we did that. Physically because he lost both his legs in a farming accident so he needs to derive revenue as best he could without his personal and physical involvement in the operation of the farm.

Muzzi: Right but we are talking about realizing a reasonable rate of return for the property. In other words; if he wanted to go out and sell it, he would not realize a rate of return at all on it and what I'm saying to you is according to your application the property was purchased for \$1. And the market value now because we don't have an appraised value of it, I'll use this figure of \$588,709.68. How do you not realize a rate of return on that?

Bartolomei: I think you're confusing rate of return with sale price. Rate of return is not that. It's the ability to earn money in an efficient way.

Muzzi: So even if he sold it for \$2.,

Bartoloemi: That's selling again.

Muzzi: He's whatever, anything is worse than \$1.

Bartolomei: You can't require him to sell his property.

Muzzi: I'm not.

Bartolomei: Don't look at the sale or the fair market value of the sale of the property. Look at what the income is able to revenue, able to generate from the property as it is.

Muzzi: That is not being asked of us. Without that figure I mean I know you think I'm being very harsh but without that appraised value figure we have nothing. We will have to figure it out on that.

Bartoloemi: I can't say that there have been times when I've heard from our Board the interpretation of the law that is coming out of it now. I don't know what you're talking about. This is an application for a use variance. The financial hardship is cited as the inability to generate sufficient revenue to that reasonable rate of return on the amount invested in the property.

Muzzi: I would disagree with you.

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Bartolomei: We would not have to do an appraised value; it does not have to do with the sale of the property.

Muzzi: Understood. We would agree on that. But even at him spending \$200,000 and using your market value price on here, he still would realize.....

Bartolomei: If he sold it, that's what you're saying and I'm telling you, you don't have toto sell his property.

Muzzi: That's not what I'm saying. I'm looking at what New York State requires us to do. He has to not yield a reasonable rate for the following conditions and you gave us just round numbers here, I don't even know where the numbers came from.

Bartolomei: I think you're correct, it requires proof of the amount invested which we will provide proof to the Board, that is a reasonable request. I'm going to say this, once again that we will not be obligated by you to sell his property.

Muzzi: No one even suggested that.

Conti: Nobody is saying that to you.

Bartolomei: No, then how you answer the question that she raises of if the fair market value is \$576,000. How can he not realize a reasonable rate of return on the property?

Machelor: When your client spent \$200,000. repairing this barn; it was not for the purposes of running a retail or commercial business.

Bartolomei: It was in the hopes that he could operate a farm and he's unable to.

Machelor: Someone else could operate a farm on that property with that barn, someone that he hired.

Bartolomei: Well sir you probably know, I don't know that you're in to farming but you probably know what farm acreage brings when someone else does the farming.

Machelor: I haven't any idea. I don't look at his....

Heuck: Mr. Danielewicz are you renting out your airable land for cultivation?

Danielewicz: Yes, to my family.

Heuck: But still you will get a rate of return on that?

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Danielewicz: The only thing I get on it is that they pay the taxes.

Machelor: That is a rate of return. According to you it's over \$12,000. a year.

Bartolomei: 300 acres.

Danielewicz: If I were to rent it to someone else; I could get five times that.

Conti: I was just going to ask that question.

Heuck: Milt Haseley did it in his last years that he was alive. He rented it out and you knew Milt.

Machelor: This hardship that we would eventually have to rule on, the hardship part of use variances, says that the hardship hasn't been self-created. It has been self-created in the sense that you decided to invest that much money in a barn and then after the fact you said well if I invested that much money in a barn; I will have to find a way to reimburse myself for that expense.

Bartolomei: That decision to invest that money wasn't made when he undertook the construction. As the construction went on, he required more and more expense unanticipated in order to restore the barn. It was notthat it would have cost \$200,000. Otherwise he wouldn't have done the barn. But as each step went on and he spent so much money in order to preserve the money he already spent he had to spend more. You see the result is the barn. It's a beautiful barn.

Muzzi: It is, it's very nice.

Heuck: It's very nice.

Machelor: So a person could buy a piece of property anywhere in the Town of Lewiston, invest money in it, regardless of the zoning and then come to the Board and say well it's a fact on the ground I've already done this and now what I would like you to do is zone it so I can do what I want.

Bartolomei: Well I suppose someone could come for that someone is coming to you now. What he's saying is my intention was to invest this much money and as it turned out I had to invest this much money. I didn't create this hardship. It actually was thrust upon me as I started to do this construction, it got overwhelming.

Conti: I guess at that any point to say okay this has gone.....If you look at the point where he said he could make easy five times what he is making now from renting to family, let me finish

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like you like to finish, if he can make five times what he is making now, is that over and above what he would be making by renting a storage unit out?

Bartolomei: It's not a storage unit.

Conti: It's a storage unit. It absolutely is.

Muzzi: Sure it is.

Bartolomei: Don't.....it's a barn on a farm.

Conti: No what he wants Parkhill to do is store his vehicles there yes?

Bartolomei: Farm vehicles.....

Conti: No.

Bartolomei: You don't call a barn a storage unit because farm vehicles are parked there.

Conti: These aren't farm vehicles. We're talking about using that as a storage for

Bartolomei: They are farm vehicles. They are vehicles used in farming. Vehicles used in tree lot management; vehicles used in tree conservation.

Conti: They are just renting that storage unit; they are renting that barn to store vehicles and wood chips on the outside of it correct? He's using it to store vehicles.

Bartolomei: At this time.

Conti: He said he can make easy five times what he's making with family.

Bartolomei: My apologies, he misspoke.

Conti: So you're saying he can't make that?

Stumpf: He doesn't know what he can make.

Danielewicz: I was just throwing; I mean I can make a lot more if I rented it out.

Machelor: I think the \$12,000. that you receive already is a substantial amount of money. It's certainly more than \$1.

ZB 2019-9Q

Danielewicz: It's not.

Machelor: If they didn't reimburse you for those taxes you would have to pay out of your pocket right?

Bartolomei: I think we have gone astray here. I don't know what we are talking about anymore. Are we in to the use variance?

Conti: Didn't we already discuss the fact that we're mixing and matching the use remember that?

Bartolomei: Oh that's right. So we've covered financial hardship, you want more material then. The self-creation of the thing which is another test, we told you all we can tell you. If you want more, we can probably give you more elaboration on how the construction of the barn actually generated additional costs.

Muzzi: That in itself is self-created. You allowed the construction to go in phases.

Bartolomei: Self-created means intentional. This was not intentional. It was thrust upon him by the construction as it went on. If you've ever done anything, any restoration which I've done a lot of, I can tell you, you start out with a budget which is sometimes okay and many times it is not.

Maggard: If you're building a house and I'm going off the deep end so to speak, but if you're building a house and that construction guy tells you it's going to cost \$100,000. and it ends up costing you \$300,000., something is wrong here. You certainly wouldn't put \$300,000. in to one that you had contracted with a guy for \$100,000. I don't understand how this figure got so large without realizing it ahead of time.

Bartolomei: It's not a good comparable to building a house. You want to restore an existing house then that might be more appropriate. Take it from me I've restored a lot of old mansions and your initial budget is sometimes on and sometimes you find circumstances and you find conditions that drive you to spend more.

Maggard: I understand that but not to this degree.

Machelor: We should get back a little bit and talk about Tim Masters and the Town and their interpretation of the regulations which we started out with.

Bartolomei: If you want to touch on the other 2 tests for the use variance?

Muzzi: That would be good.

ZB 2019-9R

Bartolomei: The fact that it is unique to this parcel is obvious it is. The fact that it would not change the character of the area that is also fairly obvious. We listed various different....

Machelor: The barn is there. We're not really talking about the barn whether it's in the right neighborhood. It is. It's a rural residential neighborhood so the barn is fine. It's the commercial use of the barn that's the issue here.

Bartolomei: Don't make judgement on commercial use. What is the issue here is storing vehicles in the barn. That's the use.

Machelor: No, it's a business. That's the issue. The issue is it's a business. So for instance further on it says the requested will not alter essential character of the neighborhood.

Bartolomei: It will not.

Machelor: Well that's an opinion.

Bartolomei: Will it? We could store vehicles on the side of the barn....

Machelor: Because the farmer down the street takes his vehicles and equipment out of the barn and uses it on his property and puts it back in there, what you're suggesting is that this barn will be used by someone else where, that these trucks will go elsewhere to do this. If you said to me I want to use this property to do the things that are allowed forestry, stables and all these things we can say sure you can do those things here. That's what barns are for. But what we're dealing with a barn that is used as part of a commercial business to do business elsewhere with the equipment being stored there and have a business relationship with the guy and run a business out of there.

Bartolomei: Maybe we should hold this open. In fact; I'm asking you to do it. What I would like to submit is maybe some testimony from farmer's in the area that will make it very clear to you that the vehicles go off of their farm to do work on other farms and come back to be stored in their barns.

Maggard: But they also do work on their own farm.

Bartolomei: If you want some testimony to that I can put it together for you.

Conti: Do they do work on their own farms also?

Maggard: Yes.

Bartolomei: Sure, if they have work to do.

Machelor: We will have to look in to that. That will be interesting and see what they get paid to do or is it out of the goodness of their heart. A business is a business. It means exchanging one thing for another, money for a service.

Bartolomei: A lot of times the hay that they harvest they get some of it or a lot of times they get paid for it.

Machelor: It doesn't have to be cash.

Bartolomei: Does that make it a commercial business that they are operating?

Machelor: It doesn't have to be cash it could be a business relationship.

Bartolomei: Does that make it these farmers are in a commercial business?

Machelor: It might be. It depends on how much of it they are doing. Have them come in and tell us all about it.

Bartolomei: Sir, are there any farmers on the Board? There are none. What you're calling and requesting is farming itself.....

Muzzi: Let's get back to if it's a business or not. Can I just ask some basic questions here about the business that's being performed right now as a storage facility?

Bartolomei: You can stop calling it a business.

Muzzi: Do you carry insurance sir on the barn and the contents of the barn currently?

Danielewicz: Yes.

Muzzi: You do. What other services do you provide other than the storage of the equipment to Parkhill, anything?

Danielewicz: Nothing.

Muzzi: Is there gas or diesel being stored there currently for Parkhill?

Danielewicz: There is a diesel tank there.

Muzzi: Do you have a permit for that?

Danielewicz: I got it from Wendt's gas. I talked to Paul about it, everything is....

Muzzi: Just out of curiosity. It's not before us but. Just because we've seen things like that I would.

Stumpf: It's scheduled to be removed. It has to be emptied.

Muzzi: You've never sold gas to them out of that tank?

Danielewicz: No.

Muzzi: Did you have to create an LLC or C Corp. for the use in your payment that is coming down the line for that storage facility?

Bartolomei: It's not a storage facility.

Muzzi: I'm going to call it a storage facility. Do you have that?

Bartolomei: No is the answer.

Machelor: I would like to follow up on the insurance issue also and that question is does Mr. Danielewicz have a certificate of insurance from Parkhill that protects Mr. Danielewicz from unanticipated acts by Parkhill and does Parkhill have insurance on their vehicles as it is?

Bartolomei: That's a good question. I don't think there is any relevance.

Machelor: We are dealing with costs here. If you're going to bring farmers testimony that....i'm sure the farmers have insured their barns and equipment. The question is, is Mr. Danielewicz insuring those pieces of equipment and what are they anyways. You've made a mention earlier that they were trucks, a lot of them were trucks and you said you can use a truck in all kinds of places which obviously half the country drives trucks. The question is whether those trucks are for hire and whether they are using that barn as a basis to be hired somewhere else. That is the issue.

Bartolomei: It's not a truck rental facility.

Machelor: No.

Muzzi: I would just say for the record on the character of the neighborhood it would be my opinion that having crews coming and going off of a property in large trucks that are pictured in these pictures would change the character of the neighborhood, noise levels, coming and going and different hours of operation etc. What are the hours of operation for Parkhill sir do you know?

ZB 2019-9U

Bartolomei:provided you photographs but we have names of the businesses that are within 2 miles of this facility.

Muzzi: I'm just talking about the business use of this barn right now and how it would change the character of the neighborhood. It is a rural residential.

Bartolomei: I gave you the names of the businesses that are within with similar size.....

Machelor: The businesses you sent us are in the Town of Cambria.

Bartolomei: That's right, two are one is in the Town of Lewiston.

Machelor: Which one?

Maggard: They are all in Cambria.

Stumpf: We were just saying that they are within 2 miles.

Muzzi: That is zoned rural business. We have rural residential.

Bartolomei: It is rural business but it is in this area.

Conti: But what I'm... where his property is rural residential.

Machelor: He knows.

Bartolomei: Exactly but the rural business use is in the character of this area.

Muzzi: I'm sorry can you please repeat that. Maybe you could speak in to the microphone that would help.

Bartolomei: There is a large horse farm that is located in the Town of Lewiston that is zoned rural business but that doesn't take it out contributing to the character of this area.

Muzzi: Actually, that is a permitted use under rural residential is a private stable as well as a farm stand, as well as a one family detached dwelling which would also create revenue. That is a permitted use the stables.

Bartolomei: It certainly.....which is not rural residential, it's rural business and is a permitted use in rural business as it's zoned but it has nothing to do with what's it's contributing to the character of the area. It does contribute to the character of the area and uses large trucks in and out all the time.

ZB 2019-V

Muzzi: We're going to just focus on this piece of business I think is good. As far as the character of the neighborhood again if I lived next door to this and there were trucks coming and going, crews coming and going early in the morning with cars and things like that would definitely change the character of my neighborhood absolutely.

Bartolomei: If you had a house next door you would probably be in a different area than this one. There is no house next door. The character of this area is different than what you're talking about your neighborhood.

Muzzi: Correct.

Machelor: Any further questions from the Board?

Seaman: I would like to address because I don't think it's been addressed yet the uniqueness that you are arguing. The hardship related to the property in question is unique. I don't think that has been flushed out between you and the Board yet. The test of uniqueness.

Bartolomei: I did say it's unique.

Seaman: You did say it's obviously unique but you didn't say anything beyond that. I thought that that is the one topic that hasn't been addressed or flushed out between you and the Board yet so I'm asking you and the Board to do that please.

Bartolomei: It's a barn on a 293-acre site. The barn is near the street and the use of the barn is unique to this site and no other. It's not intended that the vehicles will be stored on any other site just strictly unique to this site. It would not require a use variance.....

Machelor: Continuation of that comment about the, it says and does not apply to substantial portion of district of the neighborhood. In other words, there is nothing unique about a barn in a rural residential neighborhood.

Bartolomei: The use sir, the use variance that is being applied for is unique to this parcel, that's what the issue is.

Machelor: He is currently using the property to farm and that's permitted. What is unique about that?

Bartolomei: Forgive me but I understand the use of the word unique in that test for a use variance means that the use would only be for this parcel and would not apply to other parcels surrounding it. That's as I understand the use of the word unique in the law.

ZB 2019-9W

Seaman: It's a question of hardship. It's that the alleged hardship is unique. That is the question that needs to be answered.

Bartolomei: I don't think there is anybody else out there who has put \$200,000. In to a barn, lost his legs in a farming accident and is unable to farm 293-acres of land and unable to recover a reasonable return on the money that he spent. If you want a hardship that's unique....

Conti: Was the rebuilt or repair of the barn prior to the accident?

Bartolomei: After.

Conti: It was after the accident.

Muzzi: I just wanted to get back because I don't know if we've gotten a clear answer on this, it specifically says the financial hardship related the property is unique and does not apply to a substantial portion of the neighborhood. I'm wondering if you could elaborate on your answer a little bit so that it gives us a clearer thought on where you're coming with that.

Bartolomei: There is no other hardship in this neighborhood like this one.

Muzzi: It has to be related to the property though.

Bartolomei: Related to this property. No one else has rebuilt a barn and spent this kind of money on it and is unable to get a return from it because of the physical injury. We can beat this thing to death but I don't know what you're doing up there.

Machelor: It's about the property sir, the property itself, not the people on the property. The map that shows the zoning....

Bartolomei: He said it was the hardship, she says it's.....I would agree with you sir that it's the property uniqueness that it's about but they say it's the hardship. It is a unique use variance that we're applying for, one that would not apply anywhere else in the neighborhood.

Machelor: You've made a statement in public that other barns and other farms within I guess Lewiston are doing this. In other words, they are running a business also right?

Bartolomei: No, I didn't make that statement at all. You referred to it as running businesses. I referred to it as farming. I don't know where you got your idea of what a business is.

Machelor: Because he is renting it to a commercial business and that is what they use in order to conduct their business. So that makes it a business.

Bartolomei: It doesn't make any sense for me to argue with you at all sir. You have an attorney he can advise you.

Machelor: It's not an argument.

Bartolomei: I will tell you this that farm vehicles, vehicles that are identified and qualified in the ordinance as vehicles that are allowed to be stored in barns in this district are stored in barns. Whether those vehicles do work only on that farm or they do work on any other farm anywhere around. That is what goes on. If you want to question that I will see that we can do that too.

Heuck: This business doesn't just go from farm to farm. This goes to city, the suburb and where ever their services are required to do stump grinding, tree removal correct?

Bartolomei: I don't know.

Conti: What do you mean?

Heuck: I think you should take a look at Parkhill Tree Services and see what they do.

Bartolomei: I did.

Heuck: They go off site.

Bartolomei: They do all the things that I said they do.

Conti: He just said that they go to cities and suburbs and allover Western New York almost to do removal of trees, removal of stumps etc. and you just sat there and said I don't know. We can go back to the recorder and listen to it. There's not a whole lot on this. He brought up a point and you told him you didn't know. But they do, their work is out in Western New York. Their work is not on the farm or down the next farm over because I'm helping Norm do a job and I'm going to help Gary do a job. Their job is to go around Western New York and they provide services of cutting trees down, removing stumps, some spraying of trees. It's strictly, their main thing on their web site identifies cutting down trees, removal of trees, removal of stumps.

Bartolomei: That's all allowed uses for the vehicles to be stored on the farm.

Conti: The question got brought out that do they go out in to the world to do this work and you said no.

Bartolomei: One of you or some of you seem to have the idea that in order to store a vehicle on a farm the vehicle can only be used on that farm. That is the idea you are giving me, otherwise it's a business.

Conti: Farming is a business. I don't understand how you say farming isn't a business. If I farm for my own personal consumption then you're right it's just me going out there with my green thumb and growing some stuff.

Bartolomei: The farming out has to take place in a business district yes?

Machelor: A farming district is actually what we do. We have a farming district and you farm in them.

Bartolomei: You can farm in rural districts.

Machelor: Farm where it's permitted.

Bartolomei: Farm in rural residential districts and they're not business districts. Farming is a business.

Machelor: He is farming on his property which is permitted.

Bartolomei: Here is what I can do. I can give you more material, I can give you testimony if you would like but I can't in any way educate you on the law because I'm not your attorney.

Seaman: The Board is not asking for you to bring in any farmers in to give testimony. If you would like to do that, that will be your decision. It's the decision of the applicant and the Board will keep open this hearing if you would like if you would like to submit more information.

Bartolomei: I would.

Seaman: That will be the decision of the applicant.

Maggard: The other thing too is on down the road when this gets resolved is you must have the actual dollars and cents that has been submitted.

Bartolomei: I told you I would do that too.

Conti: Receipts.

Seaman: I would ask you sir how you would like to proceed because I think the Board is indicating they are keeping the hearing open for more information if you would like.

ZB 2019-9Z

Bartolomei: Keep it open until the next meeting and we'll make additional submittals and we will see where we go.

Seaman: Are we anticipating just documentary submittals or are we anticipating farmers coming and attending?

Bartolomei: I don't know. I'll go another step would you be willing to do an affidavit that I could submit or do you want to come and be heard on whether or not you could store vehicles in your barn that are used on other farms?

Seaman:to your submissions then. I guess we will leave it open.

Machelor: Ok, with that we should close the public hearing.

Seaman: We are leaving it open.

Muzzi: We are leaving it open.

Seaman: It will just be resumed at the next meeting. There won't be a need for another notice or anything along those lines in the paper. It will just be simply resumed at the next meeting. In the mean time I recommend you give me a call and we can sort out what other evidence you might want to put in.

Bartolomei: I might want to also in addition to farm testimony, I might want to submit a memorandum of the law to you on the things that I have said here so you can then use that knowledge.

Muzzi: Absolutely.

Machelor: Thank you.

A motion to table the motion until next month was made by Muzzi, seconded by Conti and carried.

Conti Aye, Heuck Aye, Machelor Aye, Muzzi Aye, Maggard Aye

Conti: Is there any other discussion tonight?

Muzzi: Can we meet with our attorney on a legal matter?

Seaman: Did you close the meeting? We can go into executive session if that's what you're talking about, if you need to consult with your attorney on a legal matter.

ZB 2019-921

Muzzi: Yes I do.

Seaman: You need to make a motion to go in to executive session. When the executive session is over, we make a motion to come out of executive session. Then we make a motion to close the meeting.

A motion to go in to executive session was made by Heuck, seconded by Conti and carried.

A motion to come out of the executive session was made by Maggard, seconded by Conti and carried.

A motion to close the meeting was made by Conti, seconded by Muzzi and carried.

The next meeting will be October 10, 2019, at 6:30 P.M.

Respectfully submitted,



Sandra L. VanUden
Zoning Secretary



Norman Machelor
Zoning Chairman

NOTICE OF PUBLIC HEARING

Notice is hereby given that a Public Hearing will be held by the Zoning Board of Appeals of the Town of Lewiston on September 12, 2019, at 6:30 P.M. in the Town Hall, 1375 Ridge Road, Lewiston, New York to act on the following applications:

Christopher Danielewicz, 2799 Ridge Road, SBL# 76.00-2-8.1, requests a use variance from Section 360-49, Uses permitted to be able to operate a commercial business in a rural residential zone. The property is presently zoned RR, rural residential.

Appeal of Christopher Danielewicz, 2799 Ridge Road, SBL# 76.00-2-2.1, pursuant to Chapter 360-163 of the Code of the Town of Lewiston, challenging a decision of the Town Building Inspector interpreting Chapter 360-49, Uses Permitted in the rural residential zone.

James Gandt, 4358 Porter Center Road, SBL# 75.00-1-37, requests a variance from Section 360-185E, Accessory uses and structures to allow for a pole barn from the maximum height of 18'0" to be 23'0". The property is presently zoned RR, rural residential.

Information concerning these requests are on file and available for inspection during normal business hours at the above-named office. All citizens and persons of interest will be given an opportunity to be heard.

Norman Machelor
Zoning Chairman

#N255609

9/5/2019