

**Minutes**  
**Town of New Scotland**  
**Zoning Board of Appeals**  
**Notice of Meeting**  
**March 22, 2016**  
**7:00 PM**

*Zoning Board Members:*

Robert Johnson, *Chairman*,  
Steve Crookes, Lance Moore, Heather Dolin, Edie Abrams  
Lori Saba, Planning Board Secretary, Jeff Pine, Building Inspector  
Jeffrey Baker, Zoning Board Attorney, Dave Hansen, Town Engineer (Stantec  
Engineering)

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**Regular Meeting:**

**New Business:**

- 1) **Variance Application # 511:** Application Submitted by Todd Jackson requesting relief from Article II, Section 190-13 (B) and Article XIII, section 190-99 of the Town of New Scotland's Zoning Law to allow for an accessory structure to be constructed within the front setback on a parcel. The parcel is located within the "MDR" district at 532 Font Grove Road. The parcel is owned by Todd Jackson, is identified as New Scotland Tax parcel id # 73.-1-23. The "MDR" district has a front setback of 40 feet. This request is for 25 feet of relief to allow for structure to be located 15 feet from the property line. Accessory structures require a 10 foot setback from the dwelling. The applicant is seeking 3 feet of relief to construct the garage within 7 feet from the house.

Mr. Jackson explained that he is renovating his property as 532 Font Grove Road; would like to construct a two car garage.

Referred to the Planning Board meeting on April 5<sup>th</sup> and then back to the ZBA on April 26, 2016 for a public hearing.

**Public Hearing:**

- 1) **Continuation: Variance Application # 507:** Application submitted by Charles Shufelt requesting an appeal of determination given by the Building Inspector. The applicant would like the ZBA to determine if the use of the accessory structure for automobile repair is impermissible. The parcel is located in the RA Zoning District, at 173 North Road, and is identified as New Scotland Tax Parcel # 105.-3-6.10.

Mr. Jamison representing Mr. Shufelt explained that he has submitted all the information that the Board has requested.

Mr. Johnson opened up the meeting to the public. No public comments. Mr. Moore moved to close the public hearing and Ms. Abrams seconded the motion; all in favor; motion so carried.

Mr. Moore explained that he is in favor of Mr. Cramer's determination.

Ms. Abrams also agrees with Mr. Cramer's determination.

Ms. Dolin also agrees with Mr. Cramer's findings.

Mr. Crookes agrees with Mr. Cramer's determination.

Mr. Johnson stated that he also agrees with Mr. Cramer's determination.

Mr. Johnson read into record the ZBA determination for variance application #507:

WHEREAS on or about August 20, 2015, Jeremy Cramer the Town of New Scotland Building Inspector served upon Charles Shufelt, the owner of the property located on 173 North Road in the Town of New Scotland with a Notice and Order to Remedy Violation informing him that the use of his premises as a vehicle or equipment repair shop is not allowed within the RA zoning district; and

WHEREAS, Mr. Shufelt filed a timely appeal of that determination arguing that the property was a legal non-conforming use that had not been abandoned for a period of one year pursuant to Sec. 190-30(D) of the Town of Zoning Law; and

WHEREAS, Mr. Shufelt argues that the Town previously approved the use of the property when it issued a building permit on June 26, 2014 for certain work on the property and did not determine that Mr. Shufelt was operating an illegal use; and

WHEREAS, a public hearing was held on the appeal on November 17, 2015 and continued on December 15, 2015 and March 22, 2015.

WHEREAS, the Zoning Board of Appeals has reviewed the documentation submitted by Mr. Shufelt and considered the comments made at the public hearings.

NOW THEREFORE, the Zoning Board of Appeals makes the following findings:

1. The property in question was previously operated by Domermuth Petroleum as oil related business that stored vehicles associated with the business.
2. Domermuth ceased operations at the property sometime prior to 1998 and thereafter Albany County acquired the property for delinquent taxes on or about January 6, 2009 and thereafter sold the property to Chuck's Woodworking Products, LLC on or about April 9, 2009. On or about June 30, 2015 Chuck's Woodworking Products, LLC conveyed the property to Charles Shufelt.
3. The operation of the property by Domermuth as a facility for the oil services business may have been a non-conforming use at the time.
4. More than one year has passed since Domermuth ceased using the property for its previous use.
5. At no time was the property used for a commercial automobile or truck repair facility and has never been permitted to operate as such by the New York State Department of Motor Vehicles.
6. Mr. Shufelt proposes to use the property as commercial automobile or truck repair facility.
7. The Town Zoning Law prohibits one non-conforming use to be changed to another non-conforming use. Sec. 190-30(C)(1).
8. Automobile repair facilities are not permitted uses in the RA District.
9. The building permit issued to Mr. Shufelt in 2014 was for the conversion of the existing building from an office use to a residential use, which is permitted in the district. Issuance of the building permit did not constitute an approval of other uses on the property.

NOW THEREFORE IT IS FURTHER RESOLVED that the determination of the Building Inspector is upheld and the appeal is denied on the grounds that the previous non-conforming use of the premises was abandoned for more than one year and that the current and intended use of the premises would constitute a change from one non-conforming use to another.

Ms. Dolin moved to approve this motion and Mr. Moore seconded the motion; all in favor; motion so carried.

**2) Continuation: Use Variance Application # 508:** submitted by Charles Shufelt for a use variance to allow for the operation of a public garage in an existing accessory structure. The building is located in the RA district at 173 North Rd. and is identified as tax parcel # 105.-3-6.10. The former use of tenancy space was a storage and repair shop for Kleen Resources, an environmental petroleum equipment and repair company. This request is for a variance to Article II, Section 190-12 of the Town of New Scotland Zoning Law.

Mr. Jamison has submitted all the necessary paperwork for this variance application #508.

Mr. Johnson opened up the meeting to the public.

Mr. Baumgartner, 167 North Road, has concerns with this variance application #508. Feels there are hazardous waste on the property. He has environmental concerns, question #20, said no, it should be yes, site has been a site of remediation for hazardous waste. There were renovations on #181 and #173 was exorbitant and false. There should be documentation for such expenses. Appraised value of residential use is quite low, especially in light of the many upgrades made to garage. The information submitted and statements made by the Shufelt's demonstrate a pattern of disregard for rules and dishonesty. This history, especially when accounting for the history of the property and the nature of the business they propose (and already, admittedly, currently operate without licensure), would require a high level of oversight to prevent contamination and other safety hazards. I am sorry that I have to report this. I want to be a good neighbor. I am a concerned neighbor.

Mr. Moore moved to close public hearing and Mr. Crookes seconded the motion; all in favor; motion so carried.

Mr. Johnson explained that the Board is required to answer a few questions and we will review those:

1. Under applicable zoning regulations the applicant will not realize a reasonable return provided the return is substantial as demonstrated by competent financial evidence.
  - a. We see that the applicant demonstrated through an affidavit from a certified real estate appraiser that the garage on the property is a unique structure. It cannot be reasonably used or marketed as a residential accessory structure. The only reasonable use of the garage is for commercial garage purpose as proposed by the applicant.

Ms. Abrams commented that it depends on your imagination I would imagine.

2. The alleged hardship relating to the property in question is unique and does not apply to substantial portion of district or neighborhood;
  - a. I think that we found that the garage is part of the pre-existing commercial use which was abandoned for more than a year and lost its status as a non-conforming use. However, the garage is unique in the neighborhood, it is a commercial scale facility that is uncommon in the district and not replicated in the neighborhood. The hardship is unique for this property and is unlikely to be replicated elsewhere in the district.

Ms. Abrams added some comments; the reason that I agree with Mr. Cramer's assessment was that it was not a pre-existing commercial use. It was a private use. I don't think this statement is accurate.

Mr. Baker explained that it was previously used as a commercial use, but it was abandoned. It lost the non-conforming status it had and then as you previously found out on the other one it's also being proposed to change to another non-conforming use. You can't go from one to another.

3. Requested use variance if granted will not alter essential character of the district or neighborhood;
4. The alleged hardship has not been self-created the ZBA finds that because the property was purchased through the County at a tax foreclosure sale that the applicant's hardship was not self-created, but a consequence of purchasing a property with existing buildings that could not be reasonably used for residential purposes due to the size of the garage. Due to the nature of the acquisition by the applicant which allows the ZBA to determine that the hardship was not self-created. The ZBA further conditions the granting of the use variance as being personal to the Charles Shufelt and that the transfer of ownership to the property to any other person or entity will terminate this use variance. Any subsequent owner must use the property in conformance with the Town's Zoning Law in effect at the time and apply for necessary zoning approvals for its intended use.

In granting this use variance the ZBA is exercising its authority to under Section 190-77 impose conditions which include:

1. Screening on both sides of property interior and exterior. We would like to have a 2-foot berm with a 6-foot stockade fence.
2. Photo inspection of property and garage interior and exterior

3. All license to be in place before site inspection for granting Certificate of Occupancy
4. Limit of four customer vehicles outside of garage.
5. All vehicles to be located at rear of structure
6. Hours of operation limited to Monday through Friday 8:00 a.m. to 6:00 p.m. and Saturday 8:00 a.m. to 1:00 p.m. which are open to the public. He is allowed to work inside garage after hours, but with no noise coming out of the garage. If an emergency occurs he may take the vehicle in, for example, snow plows, garbage trucks, Town of New Scotland vehicles, County Sheriff cars, fire department cars and trucks are allowed to be worked on outside of public hours.
7. Doors to garage to remain open during hours of operation.
8. All exterior lighting to be shielded and directed down to garage.
9. Employees include owner and a maximum of one additional employee.
10. Drainage of property shall not be directed to adjacent properties.
11. Variance, if granted, shall cease if applicant sublets, leases and/or sells the property.
  - a. Ms. Abrams would like a note put on the deed that there is currently a use variance on the property that does not run with the land.
12. Applicant shall install a new driveway with proper drainage for neighbor Baumgartner.

Mr. Moore moved to grant use variance #508 with above conditions and Mr. Crookes seconded the motion; Ms. Dolin voted no, Ms. Abrams and Mr. Johnson voting yes. Motion so carried.

2) Local law A of 2016 discussion/comment. Mr. Johnson asked the Board members to write up their comments and e-mail him their concerns. Overall the ZBA seems to be in support of Local Law A of 2016 with no objections to the law.

3) Discussion/Action minutes of January 26, 2016. Mr. Moore moved to approve the January 26, 2016 minutes and Ms. Abrams seconded the motion; all in favor; motion so carried.

4) Discussion/Action regular meeting dates 2016: **May and June** have conflicts with the 4<sup>th</sup> Tuesday; new date for May is 5/17 and new date for June is 6/21.

**Motion to adjourn:** At 8:30 p.m. Mr. Moore moved to adjourn and Mr. Crookes seconded the motion; all in favor; motion so carried.

Respectfully submitted,

Lori Saba