

Cazenovia Zoning Board of Appeals

Meeting Minutes

January 23, 2023

Members present: Thomas Pratt; David Silverman; Gary Mason; David Vredenburg; Luke Gianforte; Michael Palmer, Alternate Member

Members absent:

Others present: John Langey; Chuck Ladd; Michael Basla; Bill Joseph; Jon Loftus; Marc Packard; Edward Perry Esq; Stephanie Niewieroski, Michael Fedor; Nancy Sagar Loffredo; Lawrence Loffredo; Robin Curtis; Sara Freda; Neal Parker; Robert Ridler; William Smith; Michelle Hebert; Michael Hebert; Mike Decker; Daniel Mongeau; Kyle Reger

T. Pratt called the meeting to order at 7:30 p.m.

Roll was taken.

Motion by L. Gianforte seconded by G. Mason, to approve the December 27, 2022 meeting minutes was carried unanimously.

The next regularly scheduled meeting will be Monday, February 27, 2023.

There will be a work session Tuesday, February 21, 2023.

All requested information must be received prior to the work session.

T. Pratt asked that the rustling of papers, the clicking of pens, and other background noise be limited for the benefit of the recording.

T. Pratt said regarding public speaking, please come forward, provide one's name and address, present to the Board not the Applicant(s), refrain from asking questions but rather make statements, and refrain from repeating items if they have already been stated once during the time for public comment.

Henneberg, Shirley - #04-243 – Special Use Permit Renewal – 2001-B Delphi Road, Cazenovia

T. Pratt said this renewal was located in the Rural A (RA) District and was for a special use permit to sell furniture and collectibles which was (originally) issued in 2004. He asked Mr. Ladd if he had a chance to inspect the property and if there had been any complaints regarding the use.

C. Ladd responded that he had received no complaints and he had not inspected the property since Ms. Henneberg had not operated the endeavor (since her husband passed away) the last couple of years, but wished to keep the special use permit in place.

Motion by D. Vredenburg seconded by D. Silverman, to renew the special use permit with the original conditions was carried unanimously.

*Maples of Madison County, LLC/Madison County Distillery LLC - #22-1444 –Area Variance – 2410 US
(Thomas Pratt) Route 20 East, Cazenovia*

*Maples of Madison County, LLC/Madison County Distillery LLC - #22-1445 – Special Use Permit -
(Thomas Pratt) 2415 US Route 20 East, Cazenovia*

Michael Basla was present to represent the file.

L. Gianforte was recused for this file and M. Palmer assumed the role of a voting member.

T. Pratt said the project was in the RA Zone with the Wellhead Protection Overlay and the Commercial Overlay. He said the request was for a storage building in front of the main building requiring an area variance as well as a modification to the special use permit. He said the General Municipal Law Recommendation Report (GML) from the Madison County Planning Department had been received October 24, 2022. He reminded the Board that two votes would be used for this project. One vote would be for the area variance allowing the building to be in front of the primary use structure, and one vote would be for the amendment to the special use permit.

T. Pratt asked if Mr. Basla had updated drawings noting an updated floor plan had been circulated earlier in the day.

M. Basla displayed the drawing entitled *AI Plan & Elevations New Storage Barn Madison County Distillery 2412 Route 20 East Cazenovia New York 13035* dated January 2023. He thought this drawing included the details he had been asked to provide regarding the windows, doors, and the interior of the proposed structure. He mentioned he may erect a cage in the future “to protect the more valuable items,” but that was not part of the proposed construction at this time.

T. Pratt suggested installing a door on the backside of the building for exiting.

M. Basla responded he could certainly do that, but that was the side of the building that the Board had requested additional plantings, which he said Matt Vredenburg had included on the revised site plan.

T. Pratt said an outstanding item had been site and storm drainage, and that was reviewed by the Engineer for the Town, John Dunkle, December 30, 2022.

T. Pratt affirmed the Board had requested additional plantings along the back side of the proposed structure to screen the building as one traveled west on US Route 20 from The Maples. Plantings had also been requested behind the existing vegetation along the road side of the structure to thicken that area as well.

T. Pratt asked if an exact location was given for the proposed structure.

M. Basla did not have those measurements with him, but said it was marked on the plot.

T. Pratt said if he scaled the drawings, he estimated the building would be about 40 feet from the east property line.

M. Basla responded he had Matt Vredenburg position it so that it would be at least 25 feet from that side yard line.

T. Pratt estimated the front of the structure to be 197 feet from the road. He said that would be approximately 42% between the road and the existing building.

T. Pratt reminded the Board that no Town Planning Board site plan review would be done for this project so they would be overseeing some of those details.

T. Pratt said he understood there would be no water or electric provided for the new construction, however a conduit under the road would be installed for those services in the future.

M. Basla affirmed that was the case.

M. Palmer recalled talking about an outside wall hydrant.

T. Pratt mentioned if there were to be lighting, it must be dark-sly compliant, shielded, and low-level.

T. Pratt asked the use inside the proposed building, recalling it would be dry storage.

M. Basla answered, “Correct.”

T. Pratt believed there would be no alcohol stored in it.

M. Basla replied, “Not at this time.”

T. Pratt asked if the color and style would match the existing building.

M. Basla responded that it would. He elaborated that it would have a red metal roof and board on batten sides, “very close to what we have right now.”

T. Pratt noted it was not expected to have impact on traffic since it was just being used for supply.

T. Pratt asked if there would be any odors or noise associated with the use.

M. Basla answered, “No.”

T. Pratt asked if there would be exterior storage or equipment.

M. Basla answered, “No.”

T. Pratt asked if it would be used for only distillery use.

M. Basla replied, “Yes.”

T. Pratt said the Board would like a surveyor to locate the corners of the proposed structure to ensure it will be built as proposed.

T. Pratt asked if the Board wanted the Applicant to review the planting plan with the Cazenovia Area Conservation Commission as it moves through the Code Enforcement or should the Board tell Mr. Basla he needs to plant trees with a minimum of 2 ½ inch caliper, it must be full in three (3) years, and anything dead must be replaced.

M. Palmer said he was fine with that.

D. Silverman felt the Applicant has addressed all his concerns and he thanked him for his service.

G. Mason felt the application had been thoroughly reviewed and said he was “good.”

M. Palmer thought the Board was “done.”

D. Vredenburg agreed.

T. Pratt invited public comment at this time.

There were no comments.

Motion by M. Palmer, seconded by D. Silverman, to close the public hearing was carried unanimously.

J. Langey reminded the Board this was a Type I Action and the Zoning Board of Appeals was the Lead Agency. He then led the Board through Part 2 of the Full Environmental Assessment Form (FEAF). Upon review of the 18 items, it was found that all impacts were either small or none.

Motion by M. Palmer, seconded by D. Vredenburg, to affirm the matter a Type I Action and make a Negative Declaration, based upon the Planning Board’s review of the FEAF, was carried unanimously.

T. Pratt reviewed the criteria for an area variance to place the building in front of the primary structure. He said regarding an undesirable change to the neighborhood, it was in a Commercial Overlay, and did not believe a significant change to the character of the neighborhood would result from the addition of this structure. He said regarding an alternate solution, the Board looked at an alternative to locate it to the south of the main structure, but the operation of the Distillery is better served locating it in the front. Regarding physical or environmental impacts, he thought the storm water would be mitigated and if there were any lighting, it would be required to be low-lighting, so he felt no impacts would result. Regarding the size of the variance, it would be about 45% which could be considered substantial, but he felt under the circumstances it works for the operation and for the building, being the better location overall. He said ultimately it was a self-created hardship, but he did not feel that was a significant consideration for this particular review.

T. Pratt said conditions for the area variance should include no water and electric at this time, but a conduit will be provided for the future.

M. Palmer felt electricity should be provided for safety reasons. He thought a frost-free hydrant with a garden hose would also be advisable, but there should be no bathroom or kitchen facilities associated with the proposed structure.

T. Pratt said water and electricity would then be allowed, under limited circumstances. He asked if Mr. Langey got that condition.

J. Langey affirmed he did.

T. Pratt said lighting shall be dark-sky compliant, shielded, and low-level.

T. Pratt said the use shall be for dry storage.

T. Pratt said the color and style shall match the existing building, with a metal roof and board and batten siding.

M. Basla interjected that was the plan, explaining the current building does not have batten, but he does want to match it. He said the planks were horizontal, and he said that was what the picture depicted as well. He asserted it would match the existing building. The roof would be red.

T. Pratt said there shall be no odor or noise associated with the new building.

T. Pratt said there shall be no exterior storage or outside equipment storage.

T. Pratt said it shall be for distillery use only.

T. Pratt said the east corners shall be located by survey to certify the proper location, which were approximated to be 197 feet from the road and 40' from the east property line.

T. Pratt said the plantings would be reviewed by CACC during the Code process, with a 2 ½ inch caliper minimum, to be full in three (3) years, and the requiring the replacement of any that die.

M. Basla asked how long would he have to plant the screening after the structure was built.

M. Palmer said building permits were good for a year from issuance. He asked the start date for the project.

M. Basla responded, “When weather permits, I want to go.”

M. Palmer and T. Pratt thought within a year was sufficient time.

C. Ladd asked that the survey be provided and the location confirmed before the permit is issued.

T. Pratt agreed.

M. Basla said that would have to be weather-permitting as well.

C. Ladd agreed.

M. Palmer asked how one involves the CACC as mentioned.

T. Pratt said Mr. Ladd would request that.

Motion by G. Mason, seconded by M. Palmer, to approve the area variance the placement of an accessory building in front of the primary use structure as most recently proposed and with the stated conditions was carried as follows:

Thomas Pratt Voted Yes

David Silverman	Voted	Yes
Gary Mason	Voted	Yes
David Vredenburg	Voted	Yes
Michael Palmer	Voted	Yes.

T. Pratt said the Board now needed to amend the special use permit to align with all the conditions for the storage building.

Motion by D. Vredenburg, seconded by G. Mason, to amend the special use permit to reflect the conditions of the proposed structure was carried as follows:

Thomas Pratt	Voted	Yes
David Silverman	Voted	Yes
Gary Mason	Voted	Yes
David Vredenburg	Voted	Yes
Michael Palmer	Voted	Yes.

*Loftus, Jon - #22-1447 –Area Variance – 3380 Pompey Hollow Road, Cazenovia
(David Vredenburg)*

Bill Joseph of Joseph Enterprises was present to represent the file, as was the homeowner, Jon Loftus.

T. Pratt said this application was in the RA Zone and was an area variance for an addition on a small, existing out building which is on the property line.

D. Vredenburg explained there was now was an existing barn, two (2) existing out buildings, the existing house, and what was once a tobacco drying shed.

B. Joseph said the tobacco shed was now used as recreation.

D. Vredenburg explained the proposal was to add a 10' X 12' addition to the east section of the former tobacco shed.

T. Pratt asked the use of the interior.

B. Joseph responded, "Recreation."

T. Pratt asked if there was any intention for a Bed & Breakfast or anything else.

B. Joseph answered, "No."

T. Pratt asked to see the enlarged drawing showing the footprints of the buildings dated January 10, 2023.

T. Pratt believed the addition would be located on the north east side of the building which was adjacent to the fence. He asked why it could not be relocated farther from the property line, either more to the south east side of the building, or on the south side of the building, or on the south west side of the building.

B. Joseph responded the south side of the building was where the entrance was located.

D. Vredenburg asked why the location proposed was chosen.

B. Joseph said it would best fit the dynamics of the courtyard between the house and the carriage house. He also said moving it to the southeast side of the building would require moving two (2) windows, and a gas stove. He also showed where an approved septic system was to be located.

T. Pratt noted structural issues would result from moving it to the south.

B. Joseph said it would also impede a door for a nearby building

T. Pratt asked if the sanitary system had been installed.

B. Joseph answered, "No."

T. Pratt asked if it had been approved for installation.

B. Joseph displayed the septic plans.

J. Loftus explained it had been submitted right before the pandemic. He said it was not up to date and he needed to resubmit it.

T. Pratt asked if there was any exterior lighting on the building.

B. Joseph replied, "Not currently."

T. Pratt asked if any would be added.

B. Joseph said typically one would put a light outside each door. He said they would put a light outside the new door, and they could easily put one outside the existing door.

T. Pratt instructed them to have the lighting dark-sky compliant, shielded, and low-level so it would not impose on the neighbors.

T. Pratt asked the character of the addition, asking if it would match the existing.

B. Joseph answered it would be matching the existing and he displayed a photograph on his phone of the existing red buildings.

T. Pratt opined, “that would be nice to match.”

T. Pratt reminded the Board that the Planning Board would not be doing a site plan review of the project so they would need to perform those duties as part of this review.

G. Mason wondered if it could be moved a couple feet because of the nearness to the lot line.

L. Gianforte asked the dimension from the outside wall to the first window on the east side.

B. Joseph said it was approximately 10’ 6”.

T. Pratt said the addition would be 10’ X 12’.

B. Joseph said that was correct; the addition would be just short of the window, with enough room for the trim. He said it was five feet to the post, so if they moved the addition, the door would be impeded by the post as would the rest of the design for the interior.

T. Pratt wondered if the addition could be 9’ X 12’ to have a little buffer between the property line and the building.

J. Loftus thought the property line slanted away from the building.

L. Gianforte said that was based upon the assumption that the drawing they were looking at was correct. He said that was the Board’s concern, the accuracy of depiction. He thought the diagram was good, but because it was so tight to the line, with such a small margin, they could not be sure just how close it was.

T. Pratt stated he would require that the lot line be surveyed.

G. Mason said if the line were confirmed, he would be comfortable with the proposal.

D. Vredenburgh said if the Applicants could get verification that the closest corner would be 1.2 feet from the property line, it would be satisfactory.

M. Palmer agreed. He said the Board’s concern was that the addition might be built on the wrong lot, but if it was surveyed, and the addition was shown to be in the confines of the proper lot, it would be acceptable.

T. Pratt asked if the Board wanted the survey before an approval.

M. Palmer thought if the Applicants verified it before Mr. Ladd issued a permit, that would be adequate.

T. Pratt clarified that it would be a condition if they proceed.

M. Palmer agreed. He said that would satisfy his concern.

D. Vredenburgh said the survey should show the offset of the existing building as well as the offset for the proposed addition.

C. Ladd added he would also do a site evaluation before issuing the permit.

Motion by L. Gianforte, seconded by G. Mason, to open the public hearing was carried unanimously.

T. Pratt invited comments at this time.

Hearing no comments, motion by L. Gianforte seconded by D. Vredenburgh, to close the public hearing was carried unanimously.

J. Langey said this was a Type II Action regarding SEQR, which does not require further SEQR review.

T. Pratt then reviewed the criteria for granting an area variance. Regarding an undesirable change to the neighborhood, he said it would be a small addition on an existing small building which seemed to fit in the character. Regarding alternate solutions, it was found that sanitary and other spatial issues made the proposed location the better choice. Regarding physical and environmental impacts, he did not believe any significant impacts would result. Regarding the variance being substantial, it would be 92% or more. Regarding being self-created, it was, but it would be an addition on an existing building for its use.

T. Pratt listed conditions he felt were needed.

1) the addition should match the other buildings,

2) the addition will be located on a survey and submitted to Code Enforcement prior to the issuance of a permit for verification and certification of the exact offset from the north property line; and to ensure it is built in the proper location, it should be surveyed, property line marked and sited on the lot itself (Mr. Ladd shall witness and meet the surveyor on site when the property line is marked),

3) construction should comply with New York State Building Codes and Town Codes,

4) any lighting associated with the structure should be low-level, dark-sky compliant, and shielded,

5) there will be no B & B use associated with the structure, and

6) there will be no kitchen within the structure.

D. Vredenburgh thought updated septic system drawings should be another condition.

Motion by D. Vredenburgh, seconded by G. Mason, to approve the area variance for the addition to the accessory building as most recently submitted was carried as follows:

Thomas Pratt	Voted	Yes
David Silverman	Voted	Yes
Gary Mason	Voted	Yes
David Vredenburgh	Voted	Yes
Luke Gianforte	Voted	Yes.

*Packard, Marc - #22-1451 –Area Variance – East Road, Cazenovia
(Michael Palmer)*

Edward Perry Esq. of Perry Law Firm was present to represent the file and Marc Packard was in the audience.

T. Pratt said the request was for an area variance in the RA Zone. He said the GML was received January 13, 2023.

T. Pratt said his first question was regarding wording in the application that appeared to request an area variance for the building as well as for the building’s setback. He asked if they were indeed asking for the area variance for side yard setback relief and to have an accessory building without a primary structure.

E. Perry responded, “No, certainly not.” He explained currently there is an existing accessory building on the property that is within the (south side yard) setback. They are seeking an area variance for the setback. The property is currently under contract with an individual who is also in attendance this evening who would be putting up the primary structure. His client, the current owner of the property, for financial reasons is not going to proceed with the construction of a primary structure, but he wanted to address the concerns of the Board and the community and to confirm and assure that going forward there is a plan to put up a primary residence in compliance. He said when this situation occurred, a

permit was issued in May 2021, construction on the accessory building was started in July 2021 with the presence of Roger Cook, the Codes Enforcement Officer at the time, and there is correspondence between Mr. Cook and Mr. Packard “with the plan and the understanding that the accessory building was going up then the residential building would be shortly following.”

T. Pratt wanted it to be clear that the only request being sought was the area variance for the location of the accessory building.

M. Palmer said the situation was that a structure was built too close to the (property) line. He said a significant variance was being sought to bring the building into compliance. He expressed bewilderment about how a building was constructed without knowing where the lot line was located.

E. Perry said he had the same question. He said when Mr. Packard purchased the property it came with a survey. E. Perry said, “when he put boots on the ground, he looked at the property and determined back in 2019, this lot was actually cultivated to a certain extent, there is a stake right there (displaying a photograph), this is the existing building right here (also indicating on the photograph), the contractor saw flags back here. Not a surveyor, but there was no requirement for the survey to be done as been indicated here this evening, at that particular moment in time, it did not have to be plotted on that, so when they were up there and he can see where the neighbor was mowing here (pointing to the photograph), they unfortunately misunderstood that as the property line.” He explained the stake on the west line was correct, but the property cut back at an angle. The flags were misconstrued as being the line based upon “what was being maintained by the neighbor.” He admitted, “It was a mistake, a straight mistake. In fact, during the process, again the permit was issued in May, they began construction on this project in July, there was no known complaints, no questions raised as to the location on that, and during that process, Mr. Cook was present there as well. Not that he had a duty or an obligation, I don’t believe, to make sure that was the case, but there was no concerns regarding that, and I think that was candidly, just by being present under the conditions of the property as it was set forth.” He continued, “When they measured that, with the understanding, they actually went back an additional ten (10) feet just to be safe even though the setback on the approval was only 25.”

T. Pratt questioned, “They thought they were 35 feet from the property line?”

E. Perry answered they thought they were well within 25 feet away “based upon what was observed on the property as well as looking at the stake”. He said the builder was not a surveyor, but the builder was doing the best he could. He admitted it was a self-created hardship, but he asserted it was not intentional.

M. Palmer asked Mr. Perry what options he saw for his clients.

E. Perry said the individual interested in buying the property who was a neighbor a few properties away on behalf of Mr. Perry’s client approached the neighbor (who is being encroached upon) about purchasing a strip of land to make the structure in compliance by means of a lot line adjustment. That was an attempt that was made. It was not rejected, but it was not acted upon. He believed the adjacent

neighbor was waiting to see what the Town would do about the situation. He said it might still be an option. He said there was “a considerable cost into the building.” He said it “was a nice building.” He did not see many other options other than the request for a variance. He said, “To comply with everything that was going on with this property at this point in time, in the event that a variance was given, ... the neighbor who would buy the land acknowledges and accepts the fact that he has to construct the primary building within the time allowed pursuant to the permit.” He said, “There was the possibility that his client might even post a bond so in the event it didn’t comply this building would be moved or torn down.”

M. Palmer did not think that was in the Board’s purview.

J. Langey responded “in one sense it could be.” He explained everyone was here to talk about a substantial area variance and the Board would use their normal area variance criteria to make that decision, but should the Board approve it for any reason, they would have to condition the approval upon a primary structure bring constructed. He believed Counsel was offering a submission of a bond to be forfeited in the event that the primary structure was not constructed in the specified period of time. He said that was one solution that presupposes that an area variance in the first instance be granted. He repeated the Board has to use their balancing test to decide that. The second part would be any conditions that would accompany an approval. He said if another solution were found, the Applicants would not be before the Board. He said the only way an approval could be considered would be that a primary structure would have to be built after the fact. He said, “If they don’t get the variance, it’s academic.” He said Mr. Ladd “would direct them to please take the building down if they don’t get the variance or, you know, challenge the decision.”

M. Palmer guessed the Town “would want some kind of a security” (for the removal if an approval were given).

J. Langey responded, “There would have to be some sort of a solid bond estimated for the amount of the tear down, and no recourse to the Town, and probably a license to actually go on the property if they do it ourselves.” He said those details would have to be determined. He said the Board did not “have to figure it out tonight,” but counseled the Board to be thinking about it.

E. Perry answered, “Absolutely.”

T. Pratt said he “would want to see some sort of evidence that something was in the works besides just..”

E. Perry interjected understanding. He explained the potential buyer whose offer was contingent upon the Board’s discussion was being represented by Jennifer Basic who not only is a local attorney but is also a neighboring property owner.

J. Langey wanted to remind the Board the variance being requested should be evaluated on its own merits. In the event an approval was given, those conditions would then need to be addressed.

M. Palmer believed the best solution was to purchase sufficient property from the neighbor to make it conform.

E. Perry agreed. He said his concern was the potential for an inflated cost due to the circumstances. He believed a reasonable value would make great sense saying he preferred resolving matters without conflict or having adversarial situations. He believed his client would be agreeable to that solution as well, but he was uncertain if that would be a practical option.

T. Pratt asked about “the ultimate use of this facility.”

E. Perry responded, “Storage.” He believed the confusion about the use was because another potential buyer of the property in early spring of last year had hoped to use the building as a woodworking shop. He said the property was zoned agricultural and not commercial. He asserted “it would not be used as a commercial property; it would be used as homeowners’ storage.”

D. Silverman believed Mr. Perry was speaking with the assumption the potential buyer would be the owner, and Mr. Perry was assuming the neighbor wanted to sell (the needed property).

E. Perry answered he was not assuming that (the neighbor would sell).

D. Silverman said the Board could not force that (the sale of property). He indicated properties sell many times. He said he appreciated how Mr. Perry was endeavoring “to go about it” but said “down the road things change” and spoke about unforeseen circumstances arising in the future.

E. Perry responded if in the event an area variance were issued, the conditions would have to be such that there would be guarantees for all involved parties. He believed the Town’s “highly qualified attorney’s” satisfaction with any agreement would ensure the merits of the agreement.

G. Mason said his concerns were the same as had been stated and he was interested in the comments that would be made from the public. He wondered if a formal written offer had been made.

E. Perry said he was not present, but he believed Dan Mangeau who has a contract on the property subject to the Board’s discussion had a conversation (with the neighboring property owner about the sale of additional land).

M. Palmer noted if 23 ½ feet can be obtained, there was no need for an area variance.

J. Langey repeated that the ZBA does not have the power to force that sale. He reiterated that the area variance needed to be evaluated on its own merits, which is what the ZBA will do. He said, “If it’s denied, it’s denied.” He explained if it were approved after the Board does its work, he recommends the Board establish those conditions to make sure a primary structure is added, otherwise it remains an enforcement issue. He said, “The building would not be allowed to be there, even if it gets a variance, unless a primary structure is constructed there to take it out of the violations.” He explained the building was “in violation on two levels – one is its accessory nature which is not allowed in and of itself, and two it’s way too far up on the line.” He said the Applicants are asking for relief on the setback and they

are making their case to the Board and then the Board will make their decision. He wanted it to be clear “there was no pressure being put upon the owner of the parcel next-door to do anything.”

D. Vredenburgh said obviously the best solution was to purchase additional land. He said it did not need to be a 25-foot strip; they could create a triangle. He said if there was a concern about the acreage, trading land was another option. He said he understood the misunderstanding and the assumption that the mowed area was the property line, saying it was a common mistake but a bad assumption to make. He wanted to wait to proceed until there was some assurance or indication that additional property might be acquired.

L. Gianforte said he struggled with the closeness and understood swapping land was not part of the Board’s decision as Mr. Langey had stated. He said he struggled with the variance as it was now which was all the Board “could look at.”

M. Palmer stated the variance was significant, it was self-created, and it was out of character with the neighborhood.

T. Pratt added there were alternate solutions available.

M. Palmer thought there were four (4) out of five (5) negative considerations. He asked the fifth criterion.

T. Pratt answered environmental impacts.

J. Langey responded the Board would utilize the balancing test and thought the Board would want to hear public comment before determining their “final thoughts.”

E. Perry questioned if the building was out of character for the neighborhood. He said it was an agricultural area with the Holmes farm down the road with significant barns, and four (4) lots away was another property with a similar garage. He thought a year from now, it would not be viewed as out of character (if a primary structure existed). He stated, “It was so not out of character for the neighborhood, it was approved to be built.”

M. Palmer questioned “approved.”

E. Perry explained the plans had been approved.

M. Palmer countered, “Not where that’s located though.”

E. Perry agreed.

M. Palmer said there were 10-acre lots in the vicinity and they had a structure right on the property line. He was unaware of a similar situation there.

E. Perry answered he was not disputing that point.

M. Palmer added Holmes' use was agricultural whereas this was residential.

D. Vredenburg commented the building was not out of character, the location was. He said there were barns "all the way down through."

M. Palmer did not believe many of the existing barns resembled the one in question which has a 12' X 12' overhead door in the front. He thought most of the existing barns "were old dairy barns or agricultural accessory buildings."

Motion by L. Gianforte, seconded by D. Silverman, to open the public hearing was carried unanimously.

T. Pratt reminded the public of the instructions for public speaking which were stated at the beginning of the meeting. He added if one had a letter, not to read it, but to summarize it, saying the letter will be available in the file.

Stephanie Niewieroski was the first to speak saying:

"Good evening, my name is Stephanie Niewieroski. I own and reside at 3128 East Road in the Town of Cazenovia. My residence is the single-family home located directly west of the applicant's garage. As a matter of fact, the recently constructed garage is located just 2 feet 4 inches from my side property line.

In case of a subsequent Article 78 proceeding, I am submitting the following four documents into the official record:

1. First, a copy of a survey dated October 11, 2022, depicting Mr. Packard's garage and its relationship to my side property line. As you can see, the garage maintains a 2 foot, 4 inch side yard setback along my property line.
2. Second, a copy of the site plan that Mr. Packard submitted with his building permit application that depicts a 25-foot side yard setback.
3. Third, a copy of my letter to the Zoning Board of Appeals dated January 6, 2023, outlining my concerns with the proposed area variance request, and my conclusion that the project actually requires a use variance, as has already been discussed, prior to the board acting on the area variance. I am not obviously going to read that as I know you all got a copy. I just wanted it to be part of the official record.
4. And finally, a copy of my presentation to the Board on January 23, 2023.

My letter to the ZBA clearly describes how the project does not meet the four required criteria for a use variance as stated in NYS Town Law Section 267-b:

1. There is no financial evidence submitted demonstrating the applicant cannot realize a reasonable return by building a primary use prior to an accessory use;

2. There is nothing unique about requiring accessory structures to be associated with a primary use. As a matter of fact, most municipalities in our county require exactly this. This criterion is part of the definition of an “accessory structure”;
3. The freestanding garage, by itself, alters the character of the neighborhood. The surrounding properties include single-family residences as primary structures in addition to their accessory structures (garages or barns);
4. The entire situation is self-created because the applicant chose not to build a primary use (a house) as he indicated he would on his building permit.

Therefore, this board should not grant a use variance for the project.

As for the area variance request to reduce the side yard setback, my letter also addresses the 5 tests for an area variance as stated in NYS Town Law Section 267-b, and how the project does not meet the 5 tests for such an area variance:

1. The garage being located just 2 feet 4 inches from our property line detrimentally impacts our property and our property value. We can easily hear what goes on inside and outside of the garage. If someone were to exit the “man” door located on our side of the garage, they would probably step onto our property. In essence, it feels like an invasion of our privacy. If a kennel were to be subsequently approved within this garage, we would be further impacted;
2. The applicant’s lot is over 8 acres in size, thereby allowing him plenty of area to construct both a residence and garage without needing dimensional relief from the Town’s Zoning Law. He was aware of the setback requirement because he depicted it on his own site plan that he submitted with his building permit application;
3. The requested variance is substantial. It represents over a 90% reduction of the required setback, on an 8-acre parcel;
4. The project does have an adverse impact to our property. No one wants a newly constructed garage 2 feet 4 inches from his property line in a rural neighborhood such as ours. As previously stated, the applicant has over 8 acres to locate the garage on;
5. The applicant admits the alleged difficulty is self-created. He failed to verify his property line prior to construction and as a result, he built his garage 2 feet, 4 inches from my property line instead of the required 25-foot setback.

In conclusion, I encourage the Board to deny the requested area variance due to the applicant not demonstrating that the project meets the five tests for an area variance as stated in NYS Town Law Section 267-b. Furthermore, I encourage the Town to conclude that the garage requires a use variance because the use is not permitted. An accessory structure requires a primary structure, which this property does not include.

Finally, I respectfully request the town find Mr. Packard in violation of his approved, yet expired, building permit; refuse a Certificate of Occupancy for his garage; revoke his building permit; and require that the garage be demolished. Relocating the garage to meet the setback is not an acceptable option since the garage requires a use variance, which it does not warrant.

I am happy to answer any questions you may have. Thank you for your time and the work you do for the Town of Cazenovia.”

S. Niewieroski asked if the Board had any questions for her.

T. Pratt responded, “I don’t think so.”

Sara Freda of 221 Paddock Street in Watertown was the next to speak. She said she was a very good friend of Ms. Niewieroski, having known her all her life. She noted the garage was constructed on a County road, so she believed it required review by Madison County Planning Board under General Municipal Law 239-M. She contacted Madison County Planning Department who provided with their determination from the Planning Director, Scott Ingmire. She said the recommendation basically reaffirmed what Ms. Niewieroski said about a use variance; if the use is not permitted being an accessory use without a primary use structure, or as a storage facility, this trumps all other discussion. An area variance should not even be discussed. She asked that the use variance determination be addressed. Additionally, she questioned some comments by the Applicant’s attorney. He mentioned there was a neighbor interested in buying the property and spoke about a lot line adjustment. She wanted it to be clear Ms. Niewieroski was not the neighbor interested in buying the property, but her property would be by default the property involved in a lot line adjustment. Ms. Niewieroski was not considering a lot-line adjustment at this time, nor was it ever discussed. Also, the attorney for the Applicant indicated the building would be used for storage. She wanted it to be clear that was not a permitted use.

J. Langey responded personal storage was allowed if it was accessory to a residential structure. He agreed no commercial use could happen there.

S. Freda said regarding mowing at the property line, this was “country living” and with over eight (8) acres, homeowners do not customarily mow to the property line, nor is it required or expected that they do. She said the due diligence rested upon the property owner (doing the building). She believed the attorney for the Applicant stated the plans (for the permit) were approved; the building permit was approved with a 25-foot setback. She did not think the Town was in error at all in that regard.

Mike Decker of 2128 Main Street, New Woodstock spoke out on behalf of Ms. Niewieroski. He said being in the code and zoning enforcement industry, he was frustrated that the permit “took place in the first place.” He felt the proper setback was not vetted to issue the building permit. He believed there was “a bit of negligence on that side” which “partially led to this current situation.”

T. Pratt responded, “the plans say there is a 25-foot setback.”

M. Decker replied, “They do? I apologize – I apologize.”

M. Palmer added, “it’s not up to the Zoning Enforcement Officer to make sure the building is where it is supposed to be; it’s incumbent upon the owner.”

M. Decker countered that where he works, that is something that he checks, and once that structure is built...”

M. Palmer asked if Mr. Decker was a surveying engineer.

M. Decker answered, “No.”

M. Palmer asked how Mr. Decker knows where the property line is.

M. Decker replied he asks for as-builts once it’s built.

M. Palmer and others noted that was after it was built.

M. Decker said he did not know if the building permit was finalized.

M. Palmer asked what “finalized” meant.

M. Decker asked if a certificate of occupancy was issued.

T. Pratt answered, “No.”

M. Decker said he found it disturbing that the primary residence was not required to be built first.

J. Langey responded, “They’ve acknowledged that you’re right.” He said everything people have been saying tonight is basically true. He said it was known that there is a problem.

M. Decker said there were “quite a few other things going on in this town – this is one of many”, and he “would like to see the proper outcome.”

Billy Smith of Canastota, NY said he did all the work on the property, and they were “the ones who laid the building out.” He said during the process of laying the building out, the adjacent neighbors “were present, they were outside, they watched us lay the building out – we’ve done it many, many times, walked the property line, we’ve even talked to them as far as drainage because their driveway is this high and there’s a hole on the side, and there were several discussions with them, and nobody ever mentioned about us incringing (sic) on their property or anything. We actually went 45 feet from the grass line.” He said they “gave ten (10) feet to accommodate” saying that was a discussion between himself and Mr. Packard. He stated, “At the end of the day, it was an honest mistake.” He thought it was clearly stated that Ms. Niewierski would not sell land, so he felt the Board “had to push forward with giving the variance or not giving the variance.” He said regarding the use issue, the Town’s Code Officer approved the construction. He felt the issue was the property line. He repeated “it was an

honest mistake that turned into a bad situation” and felt people were “spending money on attorneys for nothing.” He stated Mr. Packard has lost two (2) sales for the property.

D. Silverman agreed mistakes had been made and said that was why they were here. He asked if Mr. Smith realized the mistake had diminished the value of the neighbors’ property.

B. Smith indicated that he was not sure it diminished the value saying it would have to be appraised after the house was built.

B. Smith said regarding the discussion about the character of the neighborhood, if one looks at Google Earth, one would see “a huge pole barn out back” three (3) doors down. He said it was all farmland all around. He agreed with the Applicant’s attorney that the building was not out of character.

D. Silverman said he had heard many good points, but the one that sticks with him was the one stating if one goes out the man door, in 1-2 steps one is on the neighbors’ property.

B. Smith suggested that door be “closed off” and moved to the other side of the building. He said “throw a fence down that side.”

T. Pratt responded the Board was not here to design a solution to the problem.

M. Palmer said the Board understands their role very clearly.

B. Smith questioned, “Why waste time on it; either give the variance or don’t.”

M. Palmer answered they were not wasting time; they were going through the process.

B. Smith retorted the Board wasted 20 minutes talking about the neighbor selling land when the neighbor “was sitting there shaking her head.”

T. Pratt thanked Mr. Smith for his comments and asked if there was anyone else wishing to speak.

There were no other comments at this time.

T. Pratt believed Mr. Perry had a sense of the Board’s thoughts.

J. Langey informed the public that this was an area variance request, and that was the only request that was made for this evening. The extent of the Board’s jurisdiction was for the area variance; however, the Board by New York State Law has 62 days (from the close of the public hearing) to make a decision. He said this was a well-attended public hearing with a lot of good comments from all parties, and his recommendation to the Board was that they continue the determination/decision until the next meeting so he could work on some potential findings for a future resolution “rather than vote instantly tonight after just hearing everything from everyone.”

M. Palmer was not in favor of closing the public hearing tonight.

T. Pratt said he was not in favor of closing the public hearing either, nor did he think any of the other Board members were.

D. Silverman asked to return to the point of the nearness of the man-door to the neighbors' property. He said the reason that was an issue for him was because storms and other needs for maintenance and repairs where equipment might be needed would only have two (2) feet before they would be trespassing on the neighbors' property. That would be the case if they needed to paint, to repair, to install, or to modify the door. He said it was a liability issue for the neighbor. He believed it would be a continuous problem even if the door was relocated "for the next 100 years."

E. Perry said he was a firm believer in working with people rather than opposing them or bringing an Article 78 or doing anything like that, and stated this Board was incredibly capable of doing the right thing. He said he was not worried about that, believing the Board would make a determination based upon solid historical and future concerns. He said historical issues did arise during this process. He reiterated a permit was issued in May of 2021 for a house with emails referencing going forward with the accessory building prior to a primary building. He said, "there were feet on the ground inspecting that ancillary building being conducted." He believed the neighbor possibly came to the Town during that process in July asking if everything was okay with the response that everything was okay. He believed both parties were harmed. He said, "it would be interesting to see how it shakes out."

T. Pratt said his thought at this point was the Applicants should look at the options and find one that works.

E. Perry responded that he would love to do that.

T. Pratt asked Mr. Perry to return next month with an update.

E. Perry replied, "Absolutely," and he verified the date of the next meeting which was February 27th.

S. Niewieroski asked to respond to some comments that were made. She said they did mow to the property line until the property was purchased and she was told by the Applicant that they "should plan on it being kind of loud" and that they should plant some trees. She said that was when they "started leaving a little bit of a buffer there." She also said there was foundational gravel that was already on her property from when the neighbors were building, which was another concern. She said the gravel is already over the line. She said regarding the Builder's comments that she was never concerned at the time they were laying the building out, she stated she was concerned and was in contact with Roger Cook over the phone a few different times. She stated they called to see why a home wasn't being built first and also questioned the close proximity of the accessory structure. She said she was told "to back off, there would be inspections," but upon looking into the file, she found no copies of inspections, except for one regarding "running into shale too soon." She wanted to make those clarifications

Motion by D. Vredenburg, seconded by L. Giaforte, to continue the file and the public hearing was carried unanimously.

Motion by L. Gianforte, seconded by D. Silverman, to adjourn the meeting at 9:00 p.m. was carried unanimously.

Sue Wightman, Zoning Board of Appeals Secretary – January 24, 2023.