



Peter G. Crummey
Town Supervisor

TOWN OF COLONIE

Zoning Board of Appeals
Public Operations Center
347 Old Niskayuna Road
Latham, New York 12110

Phone (518) 783-2706 Fax (518) 783-2772
<https://www.colonie.org/boards/zba/>

Peter R. Crouse
Chairman

MINUTES OF MEETING ZONING BOARD OF APPEALS January 2, 2025

Chairman Peter R. Crouse called the meeting of the Town of Colonie Zoning Board of Appeals to order on **January 2, 2025, at 7:00 p.m.** at the Public Operations Center, 347 Old Niskayuna Road, Latham, New York.

Present:	Chairman	Peter R. Crouse	Absent:	Member	Tracy Swanson
	Member	James Campbell			
	Member	Christopher Rueckert			
	Member	George Vogt IV			
	Counsel	E. Guy Roemer, Esq.			

The meeting minutes of **December 18, 2024**, were reviewed. Member Campbell made a motion to approve the minutes. Member Vogt seconded the motion. Upon roll call, the minutes were approved unanimously.

A public hearing was held on the application of **Starlite Associates LLC** for the premises located at **85 Coliseum Drive**. Member Vogt made a motion to approve the variance as presented. Member Rueckert seconded the motion. Upon calling the vote, the motion to approve the variance as presented passed unanimously.

There being no more business, Member Campbell made a motion to close the meeting at 7:06 p.m. Member Rueckert seconded the motion and, upon roll call, the motion to close passed unanimously.

Approved: _____ Date: _____
Chairman Peter R. Crouse



Peter G. Crummey
Town Supervisor

TOWN OF COLONIE

Building Department
Public Operations Center
347 Old Niskayuna Road
Latham, New York 12110

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www.colonie.org/departments/building
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Chretien T. Voerg, P.E.
Director

Date: December 20, 2024
To: Members of the Zoning Board of Appeals
From: Chretien T. Voerg, P.E., Director
Subject: **Zoning Board of Appeals Agenda – January 15, 2025**

New Hearings:

24-050 11 Arch Street (aka 2 Guy Lane) – Kim Emmons (Emmons Metro LLC)
25-001 24 Lincoln Avenue – Paul Rinella



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Peter R. Crouse
Chairman

TAKE NOTICE that the Town of Colonie Zoning Board of Appeals will hold a public hearing at the Public Operations Center, 347 Old Niskayuna Road, Latham, in the Town of Colonie, on the **15th day of January 2025**, at **7:00 p.m.** to hear the appeal of **Kim Emmons (Emmons Metro LLC)** from the decision of the Building Department Director for the Town of Colonie denying the applicant a Building Permit for the premises located at **11 Arch Street (aka 2 Guy Lane)**. The proposed construction of a new 22,900-square-foot building with a 25-foot front yard setback is not compliant with the required 50-foot minimum allowed front yard setback in an Industrial (IND) zoning district as stated in the Town of Colonie Land Use Law, Article VI Sections 190-24, 190-25, and 190 Attachment #2 – Dimensional Table. The Zoning Board of Appeals will hear the request for variance from the provisions of the Code of the Town of Colonie, Chapter 190 to permit such construction and use and a SEQR Determination for such appeal. The public may view and listen to the Zoning Board of Appeals hearing on the Town's website by typing <https://colonienny.iqm2.com/Citizens/Default.aspx> in your web browser. The public may present comments to the Board in person or by emailing infozba@colonie.org. (Emailed comments must be received at least 24 hours in advance). Such comments will be read and addressed by the Chairman during the hearing.

ZONING BOARD OF APPEALS
PETER R. CROUSE, CHAIRMAN

DATED December 24, 2024



Peter G. Crumme
Town Supervisor

Commercial Zoning Verification

Town of Colonie Building and Fire Services Department
Public Operations Center, 347 Old Niskayuna Road
Latham, New York 12110

Phone (518) 783-2706
www.colonie.org/departments/building

RECEIVED

SEP 06 2006

BUILDING DEPT.

THIS APPLICATION IS FOR ZONING VERIFICATION FOR ANY COMMERCIAL PROJECT
FEES ARE DUE AT THE TIME OF APPLICATION
THIS FORM WILL BE ON FILE FOR 1 YEAR

Any proposal which requires a Town of Colonie Building and Zoning Permit or an approval issued by the Town of Colonie Planning Board/Department must first be reviewed by the zoning enforcement officer of the Town of Colonie to determine whether the proposal violates any provision(s) of the Town of Colonie Zoning Laws. The Officer's determination is based solely upon the information submitted on/with this form and such determination is subject to review and change if the project is modified or further information becomes available at a subsequent date. The officer reserves the right to request further information as deemed necessary. A disapproval of the application by the zoning officer means the project, as designed, cannot proceed for the reasons provided. If you the applicant disagree with the zoning officer's determination you may appeal said determination to the Town of Colonie Zoning Board of Appeals. A new Application for Zoning Verification may need to be submitted if the applicable zoning laws change before the proposed action is completed.

NOTE: IF OWNER IS NOT THE SIGNEE, THE SIGNEE SWEARS THAT THE PROPOSED WORK IS AUTHORIZED BY THE OWNER AND THAT THE SIGNEE IS AUTHORIZED TO MAKE SUCH APPLICATION.

1. GENERAL INFORMATION: AKA 2 Guy Lane CASE # Z 202400998

Address of site of proposed action:

11 Arch Street Watervliet NY 12189
Number Street City State Zip

Name of applicant Kim Emmons, Emmons Metro, LLC

453 North Pearl Street Albany NY 12204
Number Street City State Zip

Applicant's phone (W) 518-694-0404 (Cell) _____

Email Address kemmons@emmonspump.com

Contact person Luigi A. Palleschi, P.E., ABD Engineers & Surveyors, LLP

Email Address luigi@abdeng.com

Phone number (W) 518-377-0315 (Cell) _____

Property owner(s) The Structure 4 Companies, LLC

2 Guy Lane Watervliet NY 12189
Number Street City State Zip

2. Describe the present use of the building and property. (If vacant, so note and list last prior use & tenant).
Office, heavy industrial storage yard

3. APPLICANT'S PROPOSED ACTION:

A. Is the proposed action a:

- ☐ New building ☒ Addition ☐ Renovation ☐ Accessory Structure ☐ Other
☒ New tenant (business name) Emmons Metro, LLC ☐ (Including Alterations)
☐ Change of use (new use) _____
☐ Temporary tent (Date tent will be erected) _____ (Date tent will be removed) _____
☐ Site change or other (describe below) _____

B. Proposed use (check where applicable):

- | | | | | |
|--|---|--|---|---|
| ☒ Office | ☒ Warehouse / Storage | ☐ Motor Vehicle Repair Shop | ☐ Supermarket | ☐ Massage |
| ☐ Bank | ☐ Fast Food Establishment | ☐ Motor Vehicle Service Station | ☐ Wholesale | ☐ Messieur |
| ☐ Retail | ☐ Restaurant / Bar | ☐ Motor Vehicle Sales | ☐ Industrial | ☐ Police Handout |
| ☐ Bakery | ☐ Convenience Food Store | ☐ Mini Mart | ☐ Day Care Child/Adult | |
| ☐ Hotel | ☐ Personal Service Business | ☐ Multifamily Dwelling | ☐ Nightclub | |
| ☐ School | ☐ Wireless Telecom Facility | ☐ Place of Worship | ☐ Other | |

4. DESCRIBED THE PROPOSED USE IN DETAIL IN A COMPLETE DESCRIPTIVE NARRATIVE.

Build 22,900± SF addition to existing 4,200 SF office building for needed warehouse space.

OVER

4. Parcel is located in a IND - Industrial zoning district (refer to Town of Colonie Zoning Map)

5. SITE INFORMATION: IF THE APPLICANT PROPOSES ONLY A TENANT CHANGE, THIS SECTION MAY NOT BE REQUIRED TO BE COMPLETED. HOWEVER, THIS SECTION MUST BE COMPLETED AND TWO (2) COPIES OF THE PROPOSED SITE PLAN MUST BE SUBMITTED FOR ANY PROPOSAL WHICH INCLUDES A CHANGE OF USE, TEMPORARY TENT, ADDITION, ACCESSORY STRUCTURE OR NEW BUILDING.

A. TEMPORARY TENT: Plan may be hand drawn by the applicant and must depict the existing structure(s), if any, the proposed structure/tent, the lot layout, and all new and existing building setbacks.

B. MAJOR/MINOR OR NONCONFORMING COMMERCIAL SITE OR USE: Plan must be drawn by a licensed N.Y.S. engineer, architect, surveyor or landscape architect and have upon it; the address of the property, all easements, area of the parcel, abutting public highways, frontage of the lot on public highway, all building setback dimensions, the proposed structure, parking, building heights, and all zoning districts within 300 feet of the site. In OR, COR, HCOR and NCOR zoning districts, the site plan must show existing buildings and front yard setback dimensions for abutting properties on each side.

NOTE: MAJOR/MINOR/NONCONFORMING USE Site Development Proposals are defined in the Town of Colonie Land Use Law Section 190-11(A)(B).

C. Area of Property: 4.06 acres and 176,964 square feet Lot Size width 217± depth 600±
Length of property on a developed street 740± feet
Is this a corner lot? Yes ☒ No ☐ Frontage on each street 217 ft. 523 ft.
Is this a through lot? Yes ☐ No ☒ Frontage on each street N/A ft. N/A ft.

Building setbacks: <u>Existing</u>		<u>Proposed</u>		<u>Existing</u>		<u>Proposed</u>	
Front yard	<u>54.9</u> ft.	<u>25</u> ft.	Right side yard	<u>439.2</u> ft.	<u>203</u> ft.		
Rear/Front yard	<u>N/A</u> ft.	<u>N/A</u> ft.	Left side yard	<u>55.6</u> ft.	<u>55.6</u> ft.		

Existing Building Height (at peak) 30± ft. 1 stories New Building Size: Length 225 ft. Width 100 ft.
Proposed Building Height (at peak) 30± ft. 1 stories Density Sq. Ft. per acre 5,640 Units per acre N/A

Gross floor area: existing 4,200 sq. ft. proposed 23,000± sq. ft. total 27,200 sq. ft.

6. SIGNATURE OF APPLICANT [Signature]
PRINTED OR TYPED APPLICANT NAME Kim Emmons DATE _____

If DISAPPROVED "Such appeal shall be taken within sixty days after the filing in the town clerk's office of any order, requirement, decision, interpretation or determination of the administrative official charged with the enforcement of such ordinance or local law, from which the appeal is taken".

XXXXXXXXXXXXXXXXXXXXXXXXXXXX FOR OFFICIAL USE ONLY XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

I, Chris Mastrosianni zoning officer of the Town of Colonie do hereby find that the proposed action as described and any attachments hereto,

IS IN ACCORDANCE _____ APPROVED DATE _____
IS NOT IN ACCORDANCE _____ DISAPPROVED DATE 9/11/24
SIGNATURE OF ZONING OFFICER

with Chapter 190 of the Colonie Land Use Law that is effective as of this date.

The proposed construction of a new 22,900 square foot building with a 25-foot front yard setback is not compliant with the required 50-foot minimum allowed front yard setback in an (IND) Industrial zoning district as stated in the Town of Colonie Land Use Law, Article VI Sections 190-24, 190-25, and 190 Attachment #2 – Dimensional Table.

DISAPPROVED
BY TOWN OF COLONIE BUILDING DEPT.

TO THE APPLICANT: THIS IS NOT A BUILDING AND ZONING PERMIT. IF YOU WISH TO PROCEED, PLEASE SUBMIT AN APPLICATION FOR THE FOLLOWING:

- ☒ BUILDING AND ZONING PERMIT APPLICATION (Building Department)
- ☐ APPLICATION FOR ZONING VARIANCE OR INTERPRETATION (Building Department)
- ☒ APPLICATION FOR PLANNING DEPT. APPROVAL (Planning and Economic Development)
- ☐ SPECIAL USE PERMIT USE _____

**APPEAL FROM DECISION OF ADMINISTRATIVE OFFICIAL
APPLICATION FOR INTERPRETATION/VARIANCE**

Zoning Board of Appeals
Town of Colonie
Appeal and Petition for Interpretation/Variance
Under Building Construction/Zoning Law

To the Zoning Board of Appeals
Town of Colonie

Date: September 30, 2024

(being) (owner)

1. The undersigned, (representing) the (lessee) of (identify property by lot and block or otherwise) SBL #20.20-2-25 located at 11 Arch Street aka 2 Guy Lane hereby gives notice of appeal from the decision of the (Bldg. Dept. Manager) made on the 6th day of November, 2024 in refusing to issue a Building and Zoning Permit on the ground that the same would be in violation of the provisions of the Code of the Town of Colonie for the following reason(s):

The proposed construction of a new 22,900 square foot building with a 25-foot front yard setback is not compliant with the required 50-foot minimum allowed front yard setback in an (IND) Industrial zoning district as stated in the Town of Colonie Land Use Law, Article VI Sections 190-24, 190-25, and 190 Attachment #2 - Dimensional Table.

2. Appellant alleges:

a. That there are unusual circumstances and conditions affecting said property that are peculiar to said property and do not apply generally to other property in the vicinity, which circumstances and conditions are as follows:
The front yard setback in question is not a true front yard because it fronts a side street. The building actually fronts Arch Street.

b. That by reason of the aforesaid unusual and peculiar circumstances and conditions, there are (practical difficulties) (unnecessary hardships) in carrying out the strict letter of the aforesaid provisions of the Building Const./Zoning Law as follows:
It is unfair to limit the development of this lot by treating, what is from a practical standpoint, a side yard, as a second front yard.

3. Because of the aforesaid alleged facts, appellant petitions the Zoning Board of Appeals, in acting on this appeal, to vary or modify the strict application of the aforesaid provisions of the Building Const./Zoning Law to said property, to the following specific extent:
The Applicant requests that the west side fo the property adjacent to Guy Lane be treated as a side yard instead of a second front yard

Attached hereto is a plot plan of said property, showing the proposed building addition, including setbacks

together with _____

4. Appellant further alleges that such variance would be in harmony with the spirit of the Building Const./Zoning Law and would not be detrimental to property or persons in the neighborhood and that the public safety and welfare would be secured and substantial justice done by the granting of such variance, for the following reason(s):

The proposed building addition will be within already used storage area and will not cause any issues
From a public safety standpoint. This building addition will actually create less visual and noise than
its current use and the mature trees along Guy Lane will remain, acting as a vegetated buffer to the
existing residents on Guy Lane.

5. FOR APPLICATION FOR INTERPRETATION ONLY. State grounds upon which appellant asserts that the order, requirement, decision, interpretation or determination of the Building Department Manager as stated in paragraph 1. above, is incorrect.
(Attach additional pages if necessary) _____

SALLY A. LENNON
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 01LE4992173
Qualified in Schenectady County
Commission Expires Feb. 24, 2026

STATE OF Schenectady
COUNTY OF Schenectady ss:

Subscribed and sworn to before me this 23
day of October 2024

12/10/14

The undersigned, being duly sworn, deposes and says that he has read the foregoing document and knows the contents thereof and that the facts set forth therein are true to the best of his knowledge, information and belief

Signed Kim E. Emmons
Print Name Kim E. Emmons
Address 453 N. Pearl St
Albany, NY 12204

Owner or lessee if other than above

Name _____
Mailing _____
Address _____

Short Environmental Assessment Form

Part 1 - Project Information

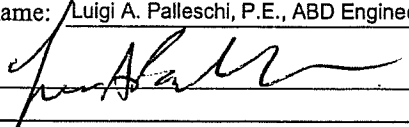
Instructions for Completing

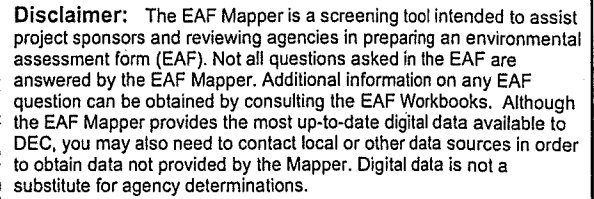
Part 1 – Project Information. The applicant or project sponsor is responsible for the completion of Part 1. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification. Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information.

Complete all items in Part 1. You may also provide any additional information which you believe will be needed by or useful to the lead agency; attach additional pages as necessary to supplement any item.

Part 1 – Project and Sponsor Information			
Name of Action or Project: Office/Warehouse Addition			
Project Location (describe, and attach a location map): 11 Arch Street (2 Guy Lane), Watervliet, NY 12189			
Brief Description of Proposed Action: Construct a 22,900± SF addition to the existing 4,200± SF office building. The addition is to be constructed over existing impervious surface. Impervious surface and minor green space modifications will be made. New water and sewer laterals are proposed. Lighting, landscaping, and stormwater will also be proposed.			
Name of Applicant or Sponsor: Kim Emmons, Emmons Metro, LLC		Telephone: 518-694-0404 E-Mail: kemmons@emmonspump.com	
Address: 453 North Pearl Street			
City/PO: Albany		State: NY	Zip Code: 12204
1. Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulation? If Yes, attach a narrative description of the intent of the proposed action and the environmental resources that may be affected in the municipality and proceed to Part 2. If no, continue to question 2.		NO ☒	YES ☐
2. Does the proposed action require a permit, approval or funding from any other government Agency? If Yes, list agency(s) name and permit or approval: Town of Colonie Zoning Board of Appeals, Planning Board, NYSDEC Stormwater Permit		NO ☐	YES ☒
3. a. Total acreage of the site of the proposed action?		4.06± acres	
b. Total acreage to be physically disturbed?		3.5± acres	
c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor?		4.06± acres	
4. Check all land uses that occur on, are adjoining or near the proposed action:			
5. ☐ Urban ☐ Rural (non-agriculture) ☒ Industrial ☒ Commercial ☒ Residential (suburban) ☐ Forest ☐ Agriculture ☐ Aquatic ☐ Other(Specify): ☐ Parkland			

5. Is the proposed action,	NO	YES	N/A
a. A permitted use under the zoning regulations?	☐	☒	☐
b. Consistent with the adopted comprehensive plan?	☐	☒	☐
6. Is the proposed action consistent with the predominant character of the existing built or natural landscape?	NO	YES	
	☐	☒	
7. Is the site of the proposed action located in, or does it adjoin, a state listed Critical Environmental Area?	NO	YES	
If Yes, identify: _____	☒	☐	
8. a. Will the proposed action result in a substantial increase in traffic above present levels?	NO	YES	
	☒	☐	
b. Are public transportation services available at or near the site of the proposed action?	☐	☒	
c. Are any pedestrian accommodations or bicycle routes available on or near the site of the proposed action?	☐	☒	
9. Does the proposed action meet or exceed the state energy code requirements?	NO	YES	
If the proposed action will exceed requirements, describe design features and technologies: _____ _____	☐	☒	
10. Will the proposed action connect to an existing public/private water supply?	NO	YES	
If No, describe method for providing potable water: _____ _____	☐	☒	
11. Will the proposed action connect to existing wastewater utilities?	NO	YES	
If No, describe method for providing wastewater treatment: _____ _____	☐	☒	
12. a. Does the project site contain, or is it substantially contiguous to, a building, archaeological site, or district which is listed on the National or State Register of Historic Places, or that has been determined by the Commissioner of the NYS Office of Parks, Recreation and Historic Preservation to be eligible for listing on the State Register of Historic Places?	NO	YES	
	☒	☐	
b. Is the project site, or any portion of it, located in or adjacent to an area designated as sensitive for archaeological sites on the NY State Historic Preservation Office (SHPO) archaeological site inventory?	☐	☒	
13. a. Does any portion of the site of the proposed action, or lands adjoining the proposed action, contain wetlands or other waterbodies regulated by a federal, state or local agency?	NO	YES	
	☐	☒	
b. Would the proposed action physically alter, or encroach into, any existing wetland or waterbody?	☒	☐	
If Yes, identify the wetland or waterbody and extent of alterations in square feet or acres: _____ _____ _____			

14. Identify the typical habitat types that occur on, or are likely to be found on the project site. Check all that apply: ☐ Shoreline ☐ Forest ☐ Agricultural/grasslands ☐ Early mid-successional ☐ Wetland ☒ Urban ☒ Suburban		
15. Does the site of the proposed action contain any species of animal, or associated habitats, listed by the State or Federal government as threatened or endangered? Atlantic Sturgeon, Shortnos...	NO	YES
	☐	☒
16. Is the project site located in the 100-year flood plan?	NO	YES
	☐	☒
17. Will the proposed action create storm water discharge, either from point or non-point sources? If Yes,	NO	YES
	☐	☒
a. Will storm water discharges flow to adjacent properties?	☒	☐
b. Will storm water discharges be directed to established conveyance systems (runoff and storm drains)? If Yes, briefly describe:	☐	☒
On-site stormwater areas and overflow to State ditch.		
18. Does the proposed action include construction or other activities that would result in the impoundment of water or other liquids (e.g., retention pond, waste lagoon, dam)? If Yes, explain the purpose and size of the impoundment:	NO	YES
	☒	☐
19. Has the site of the proposed action or an adjoining property been the location of an active or closed solid waste management facility? If Yes, describe:	NO	YES
	☒	☐
20. Has the site of the proposed action or an adjoining property been the subject of remediation (ongoing or completed) for hazardous waste? If Yes, describe:	NO	YES
	☐	☒
I CERTIFY THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE Applicant/sponsor/name: <u>Luigi A. Palleschi, P.E., ABD Engineers & Surveyors, LLP</u> Date: <u>September 3, 2024</u> Signature: <u></u> Title: <u>Professional Engineer</u>		



Part 1 / Question 7 [Critical Environmental Area]	No
Part 1 / Question 12a [National or State Register of Historic Places or State Eligible Sites]	No
Part 1 / Question 12b [Archeological Sites]	Yes
Part 1 / Question 13a [Wetlands or Other Regulated Waterbodies]	Yes - Digital mapping information on local and federal wetlands and waterbodies is known to be incomplete. Refer to EAF Workbook.
Part 1 / Question 15 [Threatened or Endangered Animal]	Yes
Part 1 / Question 15 [Threatened or Endangered Animal - Name]	Atlantic Sturgeon, Shortnose Sturgeon, Bald Eagle
Part 1 / Question 16 [100 Year Flood Plain]	Yes
Part 1 / Question 20 [Remediation Site]	Yes



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Town Supervisor

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<https://www.colonie.org/boards/zba/>

Peter R. Crouse
Chairman

TAKE NOTICE that the Town of Colonie Zoning Board of Appeals will hold a public hearing at the Public Operations Center, 347 Old Niskayuna Road, Latham, in the Town of Colonie, on the **15th day of January 2025, at 7:00 p.m.** to hear the appeal of **Paul Rinella** from the decision of the Building Department Director for the Town of Colonie denying the applicant a Building Permit for the premises located at **24 Lincoln Avenue**. The proposed construction of a 45 ft. x 45 ft. (2,025 sq. ft.) three-bay residential storage building on a vacant 7,500 sq. ft. corner lot with a 20 ft. front yard setback does not comply with the required 30 ft. minimum front yard setback as stated in the Town of Colonie Land Use Law, Article VI, Sections 190-24, 190-26, and 190 Attachment #3 – Dimensional Table for Prior Established Lots. Furthermore, the proposed construction of an accessory structure on a vacant lot is not a permitted use in a Single Family Residential (SFR) zoning district as stated in the Town of Colonie Land Use Law, Article V, Sections 190-18 and 190 Attachment #1 – Table of Permitted Uses. The Zoning Board of Appeals will hear the request for variance from the provisions of the Code of the Town of Colonie, Chapter 190 to permit such construction and use and a SEQR Determination for such appeal. The public may view and listen to the Zoning Board of Appeals hearing on the Town's website by typing <https://colonienny.iqm2.com/Citizens/Default.aspx> in your web browser. The public may present comments to the Board in person or by emailing infozba@colonie.org. (Emailed comments must be received at least 24 hours in advance). Such comments will be read and addressed by the Chairman during the hearing.

ZONING BOARD OF APPEALS
PETER R. CROUSE, CHAIRMAN

DATED December 24, 2024

Application for Zoning Verification and Building/Zoning Permit

10/18/2024

RESIDENTIAL

TOWN OF COLONIE

Public Operations Center

347 Old Niskayuna Road

Latham, NY 12110-2286

Building Department

518-783-2706

Fax 518-783-2772

Permit No. _____

2202401120

INSTRUCTIONS

Any proposal which requires a Town of Colonie Building and Zoning Permit must first be reviewed by the zoning enforcement officer of the Town of Colonie to determine whether the proposal violates any zoning provision(s) of the Town of Colonie Land Use Law. The zoning enforcement officer's determination is based upon the information submitted on this form and such determination is subject to review and change if the project is modified at a subsequent date. The zoning enforcement officer reserves the right to request further information if deemed necessary. Disapproval of the application by the zoning enforcement officer means the project, as designed, cannot proceed for the reasons provided. If you disagree with the zoning enforcement officer's determination, you may appeal said determination to the Town of Colonie Zoning Board of Appeals.

A new Application for Zoning Verification may be required if applicable zoning laws change before the proposed action is completed.

SITE PLAN REQUIRED

If the proposed action includes a garage, pool, shed, addition, other accessory structure or a new building, a site plan must be submitted with this application. Site plan requirements are as follows: Depending on the type of construction, a hand-drawn plan may be done by the applicant. The plan must depict the existing structure(s), if any, the proposed structure, the lot layout, and all new and existing building setbacks.

APPLICATION IS HEREBY MADE to the Building Department for the issuance of a Building/Zoning Permit pursuant to the N.Y.S. Uniform Fire Prevention & Building Code for the construction of buildings, additions or alterations, or for removal or demolition, as herein described. The signer and/or owner agrees to comply with all applicable laws, ordinances, and regulations, as well as any conditions expressed on this application, and will allow all inspectors to enter the premises for required inspections.

THIS FORM WILL BE ON FILE IN THE BUILDING DEPARTMENT FOR 1 YEAR.

Address of Site: 24 LINCOLN AVE
WATERVILLE NY 12189
 City State Zip
 Property Owner's Name: PAUL RINELLA
 (Applicant)
 Address: 13 LOIS LANE
LODGEVILLE NY 12111
 City State Zip
 Phone W _____ H/Cell 518-783-9486

Property Owner's Email: RINELLA055@yahoo

Contractor's Business Name: TED DEUCIA
 (insurance must match business name)

Address: P.O. Box 442
NEWTONVILLE NY 12128
 City State Zip
 Phone W _____ Cell 518-857-4486

ESTIMATED COST \$ 90K Flr. Area 2,205

PERMIT FEE \$ _____

(This fee is not refundable)

*all permits, co's and cc's will be issued to the property owner

INSURANCE INFORMATION REQUIRED

Owners performing work must submit a CE-200 obtained from www.buinessexpress.ny.gov

By signing this application, the owner/contractor doing work acknowledges their responsibility for verification of all required subcontractor insurance.

Contractors must prove compliance with Section 57 of the Worker's Compensation Law by producing one of the following:

☐ C-105.2 ☐ U-26.3 ☐ SI-12 ☐ CE-200

Contractor's General Liability

Insured's Name _____
 (must match business name)

NOTE: IF OWNER IS NOT THE SIGNED, THE SIGNED SWEARS THAT THE PROPOSED WORK IS AUTHORIZED BY THE OWNER AND THAT THE SIGNED IS AUTHORIZED TO MAKE SUCH APPLICATION.

ADVISORY NOTE: THERE ARE SEVERAL PARCELS OF LAND IN THE TOWN OF COLONIE THAT CONTAIN FEDERAL WETLANDS. BEFORE EXCAVATING, WE ADVISE CONTACTING THE ARMY CORP. OF ENGINEERS AT (518) 270-0588.

YOU MUST CALL FOR REQUIRED INSPECTIONS. SEE PERMIT CARD FOR INSPECTIONS NEEDED

FOR OFFICIAL USE ONLY

The application of _____ Dated _____, 20____
 Is hereby approved (disapproved) and permission granted (refused) for the construction, reconstruction, or alteration of a building and/or accessory structure as set forth on this application.
 Reason for approval (refusal) of permit: _____

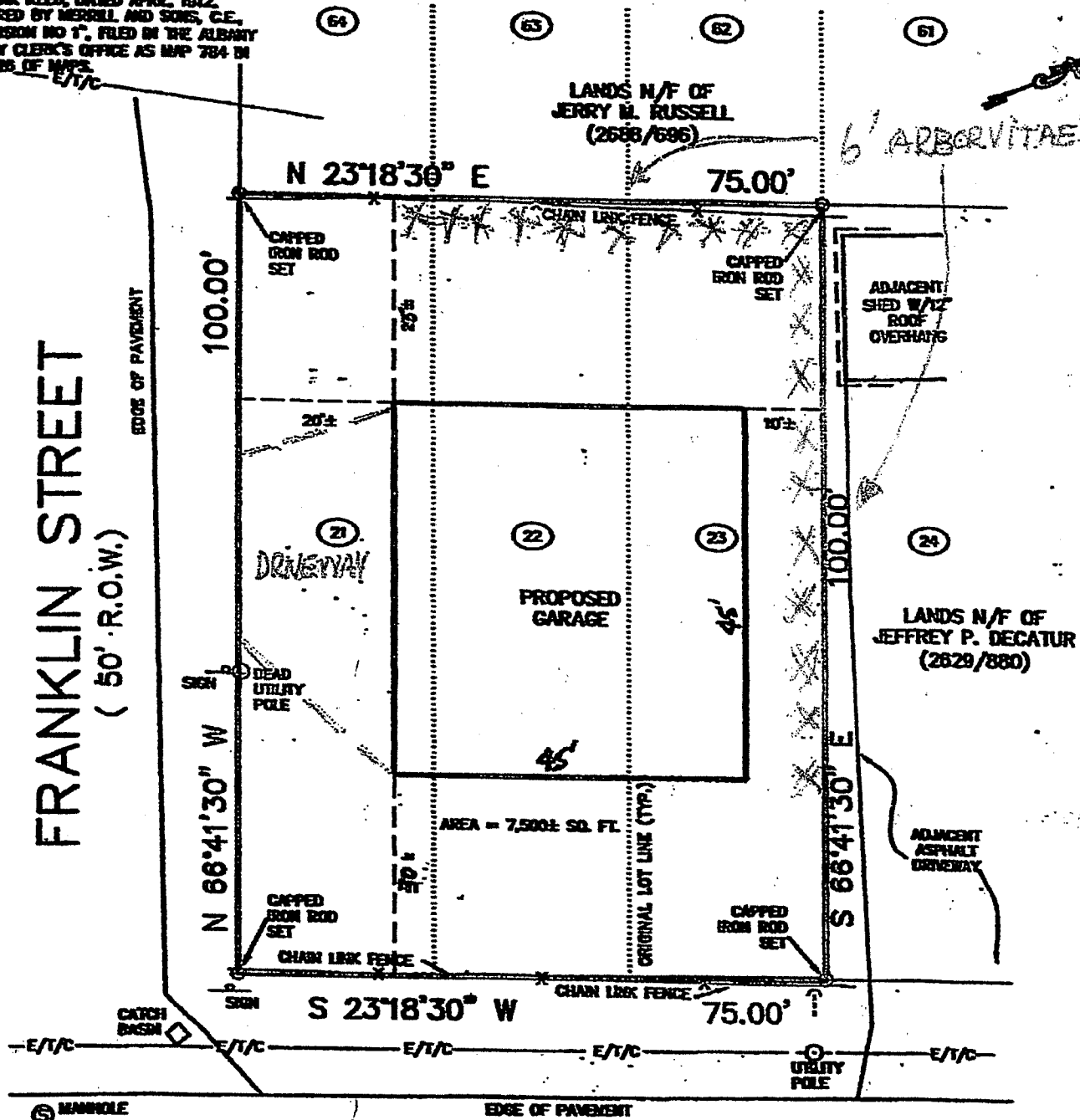
Proposed use: _____

Variance Granted # _____

Dated: _____, 20____

REFERENCE MAP:

1) MAP ENTITLED "PLAN OF SUBDIVISION IN COLONE, NEW YORK, OWNED BY C. FRANK REED, DATED APRIL, 1912, PREPARED BY MERRILL AND SONS, C.E., SUBDIVISION NO 1", FILED IN THE ALBANY COUNTY CLERK'S OFFICE AS MAP 784 IN BOOK 28 OF MAPS.



LINCOLN AVENUE



BUILDING
EXAMPLE

**APPEAL FROM DECISION OF ADMINISTRATIVE OFFICIAL
APPLICATION FOR INTERPRETATION/VARIANCE**

Zoning Board of Appeals
Town of Colonie
Appeal and Petition for Interpretation/Variance
Under Building Construction/Zoning Law

To the Zoning Board of Appeals
Town of Colonie

Date: December 10, 2024

(being) (owner)

1. The undersigned, (representing) the (lessee) of (identify property by lot and block or otherwise) SBL # 44.6-4-23 located at 24 Lincoln Avenue hereby gives notice of appeal from the decision of the (Bldg. Dept. Manager) made on the 18th day of October, 2024 in refusing to issue a Building and Zoning Permit on the ground that the same would be in violation of the provisions of the Code of the Town of Colonie for the following reason(s):

The proposed construction of a 45 ft. x 45 ft. (2,025 sq. ft.) three bay residential storage building on a vacant 7,500 sq. ft. corner lot with a 20 ft. front yard setback does not comply with the required 30 ft. minimum front yard setback as stated in the Town of Colonie Land Use Law, Article VI, Sections 190-24, 190-26, and 190 Attachment #3 – Dimensional Table for Prior Established Lots. Furthermore, the proposed construction of an accessory structure on a vacant lot is not a permitted use in a Single Family Residential (SFR) zoning district as stated in the Town of Colonie Land Use Law, Article V, Sections 190-18 and 190 Attachment #1 – Table of Permitted Uses.

2. Appellant alleges:

- a. That there are unusual circumstances and conditions affecting said property that are peculiar to said property and do not apply generally to other property in the vicinity, which circumstances and conditions are as follows:

SEE ATTACHMENT

- b. That by reason of the aforesaid unusual and peculiar circumstances and conditions, there are (practical difficulties) (unnecessary hardships) in carrying out the strict letter of the aforesaid provisions of the Building Const./Zoning Law as follows:

SEE ATTACHMENT

3. Because of the aforesaid alleged facts, appellant petitions the Zoning Board of Appeals, in acting on this appeal, to vary or modify the strict application of the aforesaid provisions of the Building Const./Zoning Law to said property, to the following specific extent:

SEE ATTACHMENT

Attached hereto is a plot plan of said property, showing _____

together with _____

4. Appellant further alleges that such variance would be in harmony with the spirit of the Building Const./Zoning Law and would not be detrimental to property or persons in the neighborhood and that the public safety and welfare would be secured and substantial justice done by the granting of such variance, for the following reason(s): _____

SEE ATTACHMENT

X **FOR APPLICATION FOR INTERPRETATION ONLY.** State grounds upon which appellant asserts that the order, requirement, decision, interpretation or determination of the Building Department Manager as stated in paragraph 1. above, is incorrect. (Attach additional pages if necessary) _____

The undersigned, being duly sworn, deposes and says that he has read the foregoing document and knows the contents thereof and that the facts set forth therein are true to the best of his knowledge, information and belief.

Signed [Signature]
Print Name Ed J. [Signature]
Address _____

STATE OF
COUNTY OF

SS:

Owner or lessee if other than above

Subscribed and sworn to before me this 18th
day of December

Name _____
Mailing _____
Address _____

Victoria Normandin
Notary Public State of New York
Qualified in Albany County #01NO6190776
Commission Expires 08/04/2025

Zoning Board Variance Appeal for : 24 Lincoln Ave

Appeal form attachment :

2 (a) Appellant alleges: There are unusual circumstances and conditions affecting said property that are peculiar to said property and do not apply generally to other property in the vicinity, which circumstances and conditions are as follows:

There are several unusual circumstances affecting this property. The parcel even though it's zoned residential is within a highly industrial area. It is located on a very busy roadway that is heavily traveled by tractor trailers, dump trucks and concrete trucks going to and from there commercial business's including traveling into and out of the railyard. The parcel is also directly across the street from a very busy commercial vehicle repair shop and down the road from several industrial business's to mention a few is Gallo Construction, Bonded Concrete etc.

2 (b) That by reason of the aforesaid unusual and peculiar circumstances and conditions, there are practical difficulties , unnecessary hardships, in carrying out the strict letter of the aforesaid provisions of the Building Construction & Zoning Law as follows:

To require this parcel to be used as solely a residential use is not reasonable based on the surrounding conditions and industrial environment. This parcels location is not in a typical residential area for a family to build a house and raise a family.

3) Because of the aforesaid alleged facts, appellant petitions the Zoning Board of Appeals, in acting on this appeal. To vary or modify the strict application of the aforesaid provisions of the Building Construction & Zoning Law to said property, to the following specific extent:

We are requesting the property to be developed with a storage building for residential storage of the owners large RV, snowmobile trailer and utility trailer. There will be no commercial work out of this building. The building will have no water or sewer service.

4) Appellant further alleges that such variance would be in harmony with the spirit of the Building Construction & Zoning Law and would not be detrimental to property or persons in the neighborhood and that the public safety and welfare would be secured and substantial justice done by granting of such variance, for the following reasons:

By allowing this building to be built with this storage use it actually fits in with the surrounding charter of the neighborhood whereas, a residential use will be totally be out of place. The storage building will not create a safety concern or harm the welfare of this industrial area.

617.20
Appendix B
Short Environmental Assessment Form

Instructions for Completing

Part 1 - Project Information. The applicant or project sponsor is responsible for the completion of Part 1. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification. Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information.

Complete all items in Part 1. You may also provide any additional information which you believe will be needed by or useful to the lead agency; attach additional pages as necessary to supplement any item.

Part 1 - Project and Sponsor Information							
Name of Action or Project: 24 Lincoln Ave - proposed residential storage building							
Project Location (describe, and attach a location map): 24 Lincoln Ave. Watervliet NY							
Brief Description of Proposed Action: Build a new storage building for the owners residential vehicles, boat & RV							
Name of Applicant or Sponsor: Vision Planning Consultants LLC		Telephone: 518 857 4486					
		E-Mail: visionplanningconsultants@gmail.com					
Address: PO Box 442							
City/PO: Newtonville		State: NY	Zip Code: 12128				
1. Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulation? If Yes, attach a narrative description of the intent of the proposed action and the environmental resources that may be affected in the municipality and proceed to Part 2. If no, continue to question 2.			<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 2px;">NO</td> <td style="width: 50%; padding: 2px;">YES</td> </tr> <tr> <td style="text-align: center; padding: 2px;">☒</td> <td style="text-align: center; padding: 2px;">☐</td> </tr> </table>	NO	YES	☒	☐
NO	YES						
☒	☐						
2. Does the proposed action require a permit, approval or funding from any other governmental Agency? If Yes, list agency(s) name and permit or approval: Building Permit			<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 2px;">NO</td> <td style="width: 50%; padding: 2px;">YES</td> </tr> <tr> <td style="text-align: center; padding: 2px;">☐</td> <td style="text-align: center; padding: 2px;">☒</td> </tr> </table>	NO	YES	☐	☒
NO	YES						
☐	☒						
3.a. Total acreage of the site of the proposed action?		7,500 Sq. Ft. acres					
b. Total acreage to be physically disturbed?		2,000 Sq. Ft. acres					
c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor?		7,500 Sq.Ft. acres					
4. Check all land uses that occur on, adjoining and near the proposed action. ☐ Urban ☐ Rural (non-agriculture) ☒ Industrial ☒ Commercial ☐ Residential (suburban) ☐ Forest ☐ Agriculture ☐ Aquatic ☐ Other (specify): _____ ☐ Parkland							

5. Is the proposed action, a. A permitted use under the zoning regulations?	NO ☒	YES ☐	N/A ☐
b. Consistent with the adopted comprehensive plan?	☐	☒	☐
6. Is the proposed action consistent with the predominant character of the existing built or natural landscape?	NO ☐	YES ☒	
7. Is the site of the proposed action located in, or does it adjoin, a state listed Critical Environmental Area? If Yes, identify: _____	NO ☒	YES ☐	
8. a. Will the proposed action result in a substantial increase in traffic above present levels?	NO ☒	YES ☐	
b. Are public transportation service(s) available at or near the site of the proposed action?	☒	☐	
c. Are any pedestrian accommodations or bicycle routes available on or near site of the proposed action?	☒	☐	
9. Does the proposed action meet or exceed the state energy code requirements? If the proposed action will exceed requirements, describe design features and technologies: _____	NO ☐	YES ☒	
10. Will the proposed action connect to an existing public/private water supply? If No, describe method for providing potable water: _____	NO ☐	YES ☒	
11. Will the proposed action connect to existing wastewater utilities? If No, describe method for providing wastewater treatment: _____	NO ☐	YES ☒	
12. a. Does the site contain a structure that is listed on either the State or National Register of Historic Places?	NO ☒	YES ☐	
b. Is the proposed action located in an archeological sensitive area?	☒	☐	
13. a. Does any portion of the site of the proposed action, or lands adjoining the proposed action, contain wetlands or other waterbodies regulated by a federal, state or local agency?	NO ☒	YES ☐	
b. Would the proposed action physically alter, or encroach into, any existing wetland or waterbody? If Yes, identify the wetland or waterbody and extent of alterations in square feet or acres: _____	☒	☐	
14. Identify the typical habitat types that occur on, or are likely to be found on the project site. Check all that apply: ☐ Shoreline ☐ Forest ☐ Agricultural/grasslands ☐ Early mid-successional ☐ Wetland ☐ Urban ☒ Suburban			
15. Does the site of the proposed action contain any species of animal, or associated habitats, listed by the State or Federal government as threatened or endangered?	NO ☒	YES ☐	
16. Is the project site located in the 100 year flood plain?	NO ☒	YES ☐	
17. Will the proposed action create storm water discharge, either from point or non-point sources? If Yes, a. Will storm water discharges flow to adjacent properties? ☒ NO ☐ YES	NO ☐	YES ☒	
b. Will storm water discharges be directed to established conveyance systems (runoff and storm drains)? If Yes, briefly describe: _____ Town approved systems _____	☐ NO ☒ YES		

18. Does the proposed action include construction or other activities that result in the impoundment of water or other liquids (e.g. retention pond, waste lagoon, dam)? If Yes, explain purpose and size: _____	NO	YES
_____	☒	☐
19. Has the site of the proposed action or an adjoining property been the location of an active or closed solid waste management facility? If Yes, describe: _____	NO	YES
_____	☒	☐
20. Has the site of the proposed action or an adjoining property been the subject of remediation (ongoing or completed) for hazardous waste? If Yes, describe: _____	NO	YES
_____	☒	☐
I AFFIRM THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE Applicant/sponsor name: <u>TEA Deuch</u> Date: <u>10/9/23</u> Signature: <u>[Signature]</u>		

Part 2 - Impact Assessment. The Lead Agency is responsible for the completion of Part 2. Answer all of the following questions in Part 2 using the information contained in Part 1 and other materials submitted by the project sponsor or otherwise available to the reviewer. When answering the questions the reviewer should be guided by the concept "Have my responses been reasonable considering the scale and context of the proposed action?"

	No, or small impact may occur	Moderate to large impact may occur
1. Will the proposed action create a material conflict with an adopted land use plan or zoning regulations?	☐	☐
2. Will the proposed action result in a change in the use or intensity of use of land?	☐	☐
3. Will the proposed action impair the character or quality of the existing community?	☐	☐
4. Will the proposed action have an impact on the environmental characteristics that caused the establishment of a Critical Environmental Area (CEA)?	☐	☐
5. Will the proposed action result in an adverse change in the existing level of traffic or affect existing infrastructure for mass transit, biking or walkway?	☐	☐
6. Will the proposed action cause an increase in the use of energy and it fails to incorporate reasonably available energy conservation or renewable energy opportunities?	☐	☐
7. Will the proposed action impact existing: a. public / private water supplies?	☐	☐
b. public / private wastewater treatment utilities?	☐	☐
8. Will the proposed action impair the character or quality of important historic, archaeological, architectural or aesthetic resources?	☐	☐
9. Will the proposed action result in an adverse change to natural resources (e.g., wetlands, waterbodies, groundwater, air quality, flora and fauna)?	☐	☐

Points of interest regarding a variance for: 24 Lincoln Ave

- This parcel is within a Single Family Residential zoning district. No structure was ever built on this property since the subdivision was created in 1912. However, the records show the property has been used decades for storage uses. Here is a brief history of the former uses. Back in the 1970's till apx. 2011 this parcel was an open boat storage area for Gabry's Marine Sales. Their store for sales and service was across the street at 16 & 20 Lincoln Ave and 15 & 19 Homewood Ave. See attachment (1) the 1978 building permit application for Gabry's Marine Sales which shows boat storage on 24 Lincoln Ave. Also pictures of vehicle and boat storage in 2007 & 2011. Then Nature Care Landscaping had their business at the same location and used our parcel for storage of vehicles and equipment. The most recent industrial/commercial business which is still in operation is J & S Upholstery. Many times during this time frame this property has been used to park vehicles based on the letter attachment (2) from Mr. Jerry Russell residing next door. This use stopped after Mr. Rinella purchased the property. So the history clearly shows the property has only been used for storage use which seems to indicate it was suitable for this without any problems until Mr. Rinella purchased the property and stored his RV, snow plow and utility trailer.
- As you may recall based on the storage use issue, we presented a use variance appeal on January 17, 2024 which was withdrawn. Basically the reason we withdrew the appeal was we needed to clarify in more detail why the allowed number of SFR uses were not appropriate and show how Mr. Rinella satisfied his due-diligence before purchasing the property for a storage building.
- Before we present answers to these two questions, I feel it is important to recap the history of Mr. Paul Rinella owning this property which began in 2014. Prior to his purchase he went to the Building Dept to ask about getting a permit for a storage building. This is something he has done before and was familiar with based on several years earlier he also went to the building department to build a garage at 13 Lois La. his residence. At that time the inspector advised him a setback variance would be necessary to build the garage which Mr. Rinella understood and completed the variance process and was approved. So, when Mr. Rinella considered purchasing 24 Lincoln Ave he again went to the building department to ask questions to build a storage building and was told for this location to meet with the commercial division which he was given a commercial application and was told this use is permitted, but needs to go through the permit process. After hearing this he moved forward with the purchase to secure the property. Unfortunately, sometime later when he returned to the Building Dept. after

the purchase he was told the property was a residential parcel and not a commercial parcel. So, the storage building is not a permitted use. This was totally different and obviously was a shock to Mr. Rinella that he received misinformation from his previous visit. What else is a resident to do other than meet with the inspectors for the proper information who know and enforce the zoning law and building code requirements before they proceeded to do anything further as Mr. Rinella did with this property and as he did with his previous project?

- Reluctantly, Mr. Rinella only option next was to apply for a residential use variance which he did in June 2014. Mr. Rinella tried his best at the ZBA meeting but there was no decision rendered and the variance case was closed. Subsequently, since this time he has stored in open space his RV, snow mobile and utility trailer, with jersey barriers and a chain across the driveway entrance to prevent any theft. The Building Dept. red tagged the property based on the storage is not permitted in this residential zoning district. So, based on Mr. Rinella's limited experience he thought he should ask for the property to be rezoned to commercial/industrial. This requires both Town Board and Planning Board approvals. Mr. Rinella attempted to do this in May 2023. As a result of the meeting, the Planning Board understood his concerns however a rezoning process would be an uphill climb to meet all the criteria that is needed and not an appropriate method. Their suggestion was to first reapply again for his use variance with a few changes and additional information. Mr. Rinella has reached out to me and we discussed how we can proceed with his variance. What I would like to point out are many facts regarding this area which was not addressed in his first variance application.
- For decades this area has been both industrial and commercial uses with residential uses predominantly on the interior streets and not on Lincoln Ave. By example, on the easterly side the entire length of Lincoln Ave. across for this parcel is zoned industrial which is a railroad yard, Luzzi's Development and Watervliet Arsenal. Mr. Rinella's parcel is on a corner and directly across the street not only from the railroad yard but from JS Upholstery a commercial industrial business that does all kinds of services and repairs to cars, big commercial trucks and boats including, mechanical repairs six days a week. This complicates parcels that are zoned residential next to highly industrial zoning uses to be developed correctly. This area also has several industrial/commercial uses like the old Dapper's Bar, Muddy's Bar, Gallo Construction, Dzembo's Dairy business and storage yard, Bonded Concrete and close to the old Altec Steel Company which was recently demolished but we feel still carries speculation as to the remaining contamination levels. Due to all of the existing industrial use, a new residence or any residential use doesn't fit in with the character of this parcel. (see attachment 3)

- As mentioned we are proposing to build a new storage building for the owners inside residential storage of his cars, RV, boat, snow mobile trailer etc. The site plan shows the entrance is on Franklin St. the side street as to not interfere with Lincoln Ave. traffic. Also, we will do several plantings of arborvitaes along the neighbor's property lines. An example of the building is shown as well which we feel will not detract from the neighborhood. The owner is not looking to have any water or sewer services to the building. The purpose is just to keep his items inside out of the weather and not make this into a business or repairs. Oddly enough, if he did do repairs it would not be out of character within this area. The general area as pointed out is commercial/industrial and is not a typical residential neighborhood environment. (see attachment 4)
- This is a brief overview and look forward to returning for further discussion.

Use variance criteria for: 24 Lincoln Ave

Pursuant to New York State Town Law §267-b, a Zoning Board of Appeals (ZBA) may not grant a use variance unless the applicant demonstrates that "applicable zoning regulations and restrictions have caused unnecessary hardship." In order to prove "unnecessary hardship" the applicant must demonstrate to the ZBA that for each and every permitted use under the zoning regulations for the particular district where the property is located, (1) the applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence; (2) that the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood; (3) that the requested use variance, if granted, will not alter the essential character of the neighborhood; and (4) that the alleged hardship has not been self-created.

As discussed more fully below, the application for a Use Variance for the property located at 24 Lincoln Avenue, demonstrates satisfaction with these criteria and justifies the issuance of the requested Use Variance.

This situation is not very different from the circumstances in *Jones v. Zoning Board of Appeals of the Town of Oneonta*. The decision in *Jones v. Zoning Board of Appeals of the Town of Oneonta*, 90 A.D.3d 1280 (3rd Dept. 2011), articulates the detailed evidence necessary to satisfy the requirements for a use variance. The ZBA in *Jones* granted a use variance to operate a sand and gravel mine that had been inactive for 5 decades. Specifically, the court held (i) the applicant satisfied its burden of showing the absence of a reasonable return if the property were used for permitted purposes; (ii) substantial evidence supported finding that hardship resulted from unique conditions peculiar to and inherent in the property; (iii) substantial evidence supported conclusion that a use variance would not alter the essential character of the neighborhood; and (iv) hardship was not self-imposed.

With respect to the first requirement under Town Law §267-b, an applicant must produce "dollars and cents" proof establishing that the land cannot generate a reasonable return if used for a permitted use. The applicant in *Jones* presented a potential reasonable rate of return and a real estate appraiser's analysis of the current market conditions that established that the market value of the property, as subdivided and sold for residential purposes, was substantially less than the investment in the property. Similar evidence is outlined below for the Applicant for 24 Lincoln Avenue, as discussed below. (See Attachment 5)

In *Jones*, an engineering report was presented which reviewed the soil conditions of the property, confirming they were not suitable for the development of the Project. It also demonstrated that the prior use of the property for agriculture generated less than \$700 per year and that the quality of the soil was not conducive for more lucrative cultivating crops. The applicant further established that the balance of the property was not adaptable for any permitted use under the Town's zoning code. (See Attachment 6)

The court also found that the ZBA reasonably concluded that the variance would not alter the essential character of the neighborhood. The property was not located in a "conventional neighborhood" and the

nearest residence was located 700 feet from the property line. Finally, the court found that the ZBA appropriately found that the hardship was not self-created. "A hardship is considered self-imposed if the variance applicant purchased the property subject to the restrictions and was aware of the zoning restrictions at the time that it purchased the property." *Id.* at 1283. As discussed below, the Applicant for 24 Lincoln Avenue was NOT aware of the zoning restrictions related to the Parcel, after inquiry about the applicable zoning classification at the Town.

Based on the foregoing, the court in *Jones* confirmed the granting of the use variance. (Contrast with *Matter of Hejna v Board of Appeals*..., 2013 NY Slip Op 02395, 2011-08146, Index No 29063/07, 2nd Dept 4-10-13).

One of the additional findings for a variance is that a "unique physical condition" is inherent in the property. What would qualify?

Typical examples include small, shallow or irregular lots, sub-surface soil conditions, including high water table, rock or contamination, or the inability to reuse obsolete buildings. The unique condition that leads to a hardship cannot be a pervasive condition in the general area; however, it need not necessarily be the only site that has the unique condition. As discussed more fully below, the Parcel at issue here is unique in character in alignment with most of these typical examples – it is small compares to neighboring properties, and has deficient soil conditions which preclude the development for any agricultural use.

The hardship relating to this property is unique and does not apply to a substantial portion of the district or neighborhood:

The hardship creating the need for the requested Use Variance for the property at 24 Lincoln Avenue (the "Parcel") derives from the fact that this one small parcel is zoned strictly residential and has been vacant since the residential subdivision creating the Parcel was approved in 1912. Since that time, substantially all other parcels which were also created in that 1912 Subdivision have been re-zoned to commercial/industrial properties. Therefore, the current residential zoning classification which would only permit development of the parcel for a single family home, is clearly unlikely to be a feasible option for use of the parcel and would likely not be marketable for such Use given the surrounding neighborhood character which is dedicated to the commercial and industrial environment.

This Parcel remains vacant since the subdivision was created in 1912. There are several reasons why this has not been developed for a single family dwelling which is the only use permissible under the Town's Land Use Law for this parcel. Based on the character and existing commercial attributes of the surrounding area (all of which is industrial and commercial) building a new one family home in today's

economy is not feasible. Moreover, it can not be understated that a single family home is simply incompatible with the very active high level of industrial and commercial uses right next door and across the street from the Parcel. This Parcel is virtually surrounded with commercial / industrial uses.

The Parcel is on the corner with a very busy commercial vehicle repair business across the street. Also, it is located on a roadway that services many tractor trailers coming and going to Bonded Concrete, Gallo Construction, the railroad yard across the street and the new Luzzi business complex etc. Furthermore, Lincoln Ave is constantly in use for heavy industrial and commercial traffic coming and going from the rail yard, Luzzi's businesses, Bonded Concrete, Dzambo's Dairy, Gallo Construction etc. Other commercial uses in proximity to the Parcel include Muddy's Tavern and the old Altec Steel plant. It is noted that the Altec Steel Plant is the site of historic contamination, and although efforts have been ongoing to remediate the site, it is contraindicated for nearby residential development, including on this Parcel.

The circumstances of the neighborhood surrounding the Parcel have fairly dictated the lack of opportunity to develop the Parcel for residential use. Around 2005 the Town hired an outside firm to do a comprehensive zoning study the results of which changed several zoning districts throughout the entire Town. With regards to the majority of commercial or industrial zoning districts along roadways throughout the Town, the commercial or industrial zoning boundaries include all properties that have frontage along said roadways with some distinct exceptions which were subsequently corrected with additional zoning changes (Such as, for example, a few parcels along Troy Schenectady Road) . Lincoln Avenue is one of the roadways which ended up having mixed zoning along its frontages. On the easterly side the entire roadway length is zoned industrial which is a railroad yard, Luzzi's Development and Watervliet Arsenal. Whereas on the westerly side of Lincoln Ave, where the Parcel is located, there is a mix of industrial and residential zoning parcels. This complicates parcels that are zoned residential next to highly industrial zoning uses to be developed correctly.

This Parcel is on a corner and directly across the street not only from the railroad yard but from JS Upholstery, a commercial industrial business that does all kinds of services and repairs to cars, big commercial trucks and boats including, mechanical repairs six days a week. (see attachment 1) all of which is inconsistent with the development of a single family home on the Parcel.

Other permitted uses are equally unavailable for use of the Parcel as follows:

- **Farm** – A parcel needs to be 5 acres to comply with the requirements to be a farm and this Parcel does not comply with this requirement. . Even if it is allowed to be smaller, the soils are not suitable to do so. Ironically the owner is in the produce business so he knows this first hand.
- **Fire station** – This parcel is not large enough for a fire station and the need of an additional station needs to be determined by the municipality.

- **Golf Course** – Obviously the property is not large enough for a golf course and is not suitable in this area.
- **Municipal uses**- There are no feasible municipal uses on this very small parcel. Nor has the Town approached any previous or current owner for such a use.
- **Nursery** – The property is not large enough or a suitable for this potential use, just as it is not suitable for a Farm.
- **Park** – Once again this property is not large enough or in a suitable area for use as a Park and no interest has been expressed by any party to use the Parcel for a Park.
- **Place of worship** – Development of the Parcel for this use is again not a reasonable use based on the property size and location within the highly commercial / Industrial area.
- **Portable storage structure**- This use would allow storage on the residential parcel but only on a temporary basis. The allowance of this use does support the proposed use in that it allows storage on the property. The Applicant seeks to build a permanent storage structure rather than to maintain only a temporary structure. The permitted use generally is for owners who are selling or buying said property and need these types of containers to hold their belongings for a short period of time. That is not what is proposed in this instance.
- **School** – Obviously this use is not suitable for reasons similar to the situation for a Place of Worship (such as property size to small) , but also because it is not an appropriate neighborhood for school children given the magnitude of the commercial and industrial uses and associated traffic and other environmental factors.
- **A solar energy system** – This use needs a vast amount of land and is not suitable for location on the Parcel.
- **Truck Garden** – This use is honestly a somewhat out dated use classification but nonetheless not suitable for this property. As well as it's a poor location, and limited size, it would not serve as financially realistic.

The requested variance, if granted, will not alter the essential character of the neighborhood:

Our proposed storage building is for the Applicant's personal, residential vehicles which will definitely not alter the character of this neighborhood based on the surrounding commercial and industrial uses. Although a more benign use than the uses conducted on the adjacent and proximate parcels, it is entirely consistent with the character of the existing neighborhood. In fact a residential use of a new home would be out of character.

The Applicant is proposing to build a new storage building for the inside residential storage of his cars, RV, boat, snow mobile trailer etc. The site plan shows the entrance is on Franklin Street, the side street as to not interfere with Lincoln Avenue traffic. Also, we will do several plantings of arborvitaes along the neighbor's property lines. An example of the building is shown as well which we feel will not detract from the neighborhood. The owner is not looking to have any water or sewer services to the building. The purpose is just to keep his items inside out of the weather and not make this into a business or repairs. Oddly enough, if he did do repairs it would not be out of character within this area. The general area as pointed out is commercial/industrial and is not a typical residential neighborhood environment.

The alleged hardship has not been self-created:

This hardship is not self-created because zoning of the Parcel is ultimately not consistent with the surrounding community and not adaptable for the permitted uses as discussed above.

Further, the owner of the Parcel and Applicant here, approached the building department prior to the purchase of the Parcel and asked if he could build a storage building on this vacant parcel. Prior to his purchase he went to the Building Dept to ask about getting a permit for a storage building. This is something he has done before with respect to improvements at his personal residence and he was thus familiar the Town's review processes based on the prior experience.

So, when the Applicant considered purchasing 24 Lincoln Avenue, he again went to the building department and this time was told for this location to meet with the commercial division from which he was given a commercial application and was told the proposed storage use was a permitted, but development of the Parcel for that use would need to go through the permit process. After hearing this he moved forward with the purchase of the property. Unfortunately, sometime later when he returned to the Building Department, after the purchase he was told differently, that this was a residential parcel and not a commercial parcel. So, the storage building was consequently not a permitted use. This chain of events brings the Applicant to this appeal and request for a variance.

The Applicant definitely would not have made an investment on vacant property to build a storage building on speculation that would need a variance to build. He would have entered into a contingency purchase if such a variance was known to be needed.

The lack of a reasonable financial return:

The owner has spent \$25,000 for the property which included paying off a private loan that the former owner had. Total taxes since the purchase is \$12,375, survey cost \$1,150, building plans, application fees etc. \$1,500, cleaning the debris and dumping fees \$1,350. The majority of these fees were expected for the owner to use the property for a storage building as he originally intended. Based on the surrounding negative impact of industrial/commercial uses and the heavily travelled commercial truck route on Lincoln Ave. a new residential home is highly unlikely to be a use as well as the owner getting any return on his investment to sell it. Please keep in mind there never was an intention to purchase this property to resell it. This residential property has remained vacant since 1912 we feel for good reason, because it's not suitable for a family residence based on all the industrial uses as their neighbor.

Mr. Rinella investment to date is over \$45,000. If he is only allowed to build a one family home the average industry construction cost based on the lot is already owned is \$232.00 per sq. ft. If the Applicant built a modest 1,500 sq. ft. house the cost would be \$348,000; add to that the \$45,000 that has already been invested so the total is \$393,000. No recent one family sales came up on Lincoln Avenue after a search, but sales were noted on the neighboring streets towards the rear of the Parcel. The attached recent sales on these streets only range from 170K to 315K, even though the median sale price of a home in Colonie was \$339K last month, Therefore, to build a new home on this parcel which is located in a much more industrial location and on heavily traveled commercial route is not a viable use or financially possible.

Zoning Board Variance Appeal for : 24 Lincoln Ave

Appeal form attachment :

2 (a) Appellant alleges: There are unusual circumstances and conditions affecting said property that are peculiar to said property and do not apply generally to other property in the vicinity, which circumstances and conditions are as follows:

There are several unusual circumstances affecting this property. The parcel even though it's zoned residential is within a highly industrial area. It is located on a very busy roadway that is heavily traveled by tractor trailers, dump trucks and concrete trucks going to and from there commercial business's including traveling into and out of the railyard. The parcel is also directly across the street from a very busy commercial vehicle repair shop and down the road from several industrial business's to mention a few is Galb Construction, Bonded Concrete etc.

2 (b) That by reason of the aforesaid unusual and peculiar circumstances and conditions, there are practical difficulties , unnecessary hardships, in carrying out the strict letter of the aforesaid provisions of the Building Construction & Zoning Law as follows:

To require this parcel to be used as solely a residential use is not reasonable based on the surrounding conditions and industrial environment. This parcels location is not in a typical residential area for a family to build a house and raise a family.

3) Because of the aforesaid alleged facts, appellant petitions the Zoning Board of Appeals, in acting on this appeal. To vary or modify the strict application of the aforesaid provisions of the Building Construction & Zoning Law to said property, to the following specific extent:

We are requesting the property to be developed with a storage building for residential storage of the owners large RV, snowmobile trailer and utility trailer. There will be no commercial work out of this building. The building will have no water or sewer service.

4) Appellant further alleges that such variance would be in harmony with the spirit of the Building Construction & Zoning Law and would not be detrimental to property or persons in the neighborhood and that the public safety and welfare would be secured and substantial justice done by granting of such variance, for the following reasons:

By allowing this building to be built with this storage use it actually fits in with the surrounding charter of the neighborhood whereas, a residential use will be totally be out of place. The storage building will not create a safety concern or harm the welfare of this industrial area.

Application for Building and Zoning Permit



Town of Colonie
COLONIE MEMORIAL TOWN HALL
534 Loudon Road
Newtonville, New York 12128

Building Department
518-783-2706

Date

11/9

1978

1

Permit No. _____

APPLICATION IS HEREBY MADE to the Building Department for the issuance of a Building Permit and Zoning Permit pursuant to the New York State Building Construction Code for the construction of buildings, additions or alterations, or for removal or demolition, as herein described. The applicant or owner agrees to comply with all applicable laws, ordinances, regulations and all conditions expressed on the back of this application which are part of these requirements, and also will allow all inspectors to enter the premises for the required inspections.

NOTE - READ INSTRUCTIONS ON REVERSE SIDE

Applicant's Name GABREYS MARINE Sales, Inc. Zoning District T-10 F

Address 16 LINCOLN AVE
WATERVLIET N.Y. 12189

Phone 273-6888

Owner's Name EDWARD GABREY KWIET
Address SAME

Phone: 273-6888

Property Location of Proposed Construction

16 LINCOLN AVE

Existing Use SALES & SERVICE
BOATS, ETC

Intended Use _____

Lot Size 150 X 200 Area 30,000 Sq. Ft.
Existing Building Size 24140
New Building Size 1.5 X 40

NEW BUILDING YARDS: Zoning-Set Backs:

Fill in plot diagram on back SEE PLOT PLAN

Front Yard Depth 8 Feet

Right Side Yard Width 84 Feet

Left Side of Yard Width _____ Feet

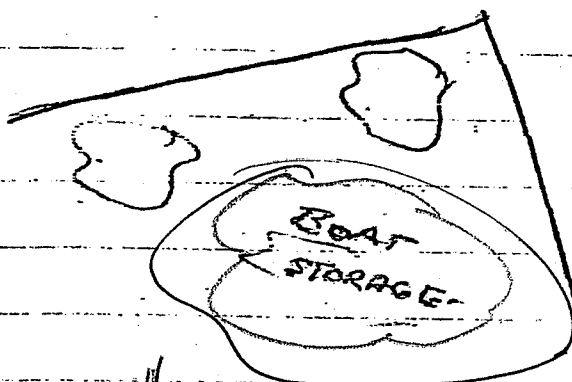
Rear Yard Depth _____ Feet

Bldg. Height 12 Feet 1 Stories

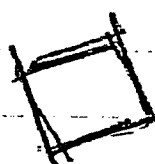
SITE STORAGE 1978

Shade Tree

Lincoln Ave



24



16

Lincoln Ave

Google Maps 24 Lincoln Ave

Watervliet, New York

Google Street View

Sep 2007

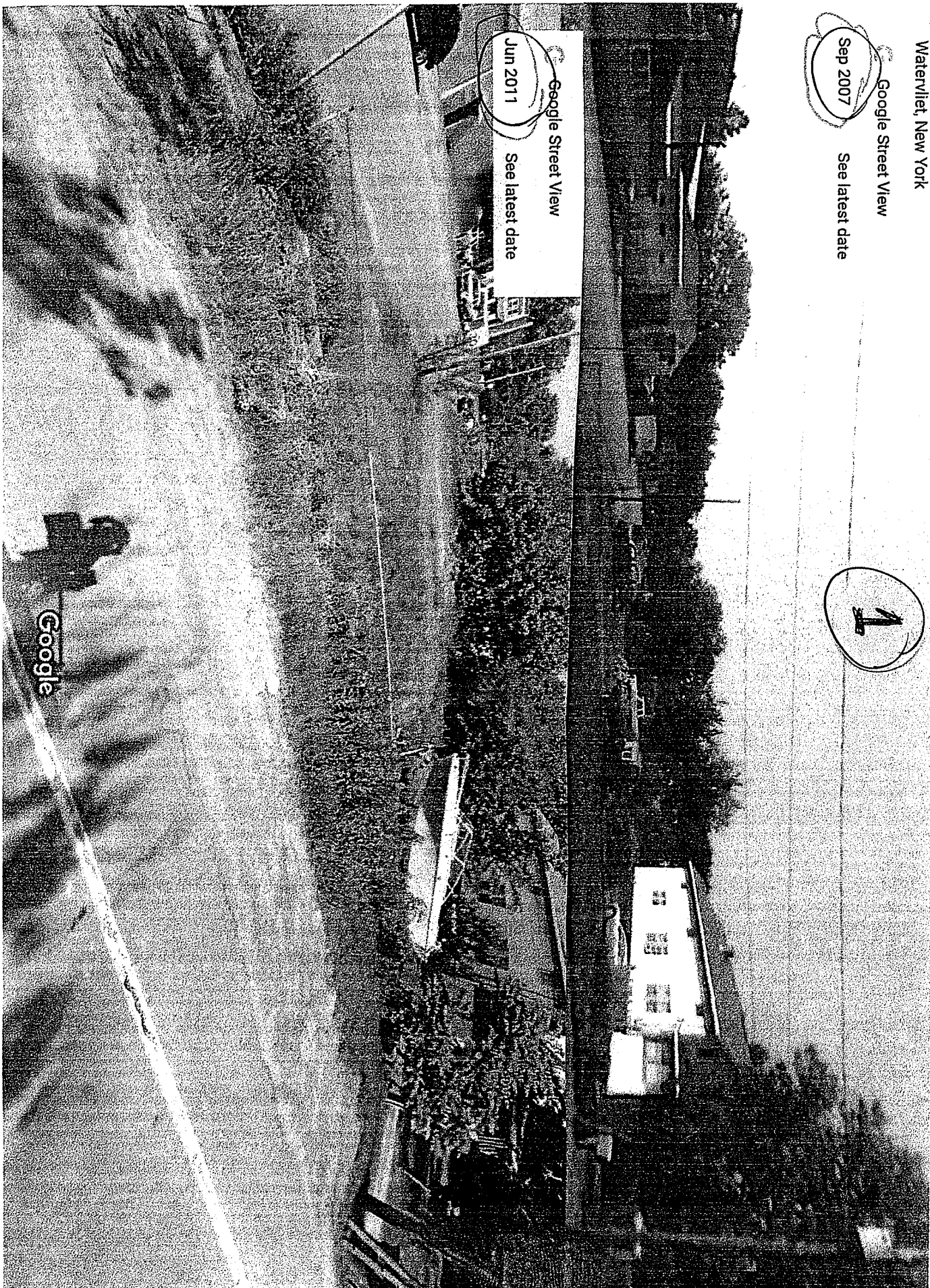
See latest date

1

Google Street View

Jun 2011

See latest date



Google

Jerry Russell

**21 Homewood Avenue
Watervliet, NY**



June 9, 2024

Town of Colonie
Zoning Board
534 New Loudon Road
Latham, NY 12110

I, Jerry Russell, own and reside at 21 Homewood Avenue, Watervliet, NY for 51 years owning 21 Homewood Avenue for 24 years. I am backing Paul Rinella's request to be approved to build a storage building at the property he owns at 24 Lincoln Avenue, Watervliet, NY.

In the 51 years of living at 21 Homewood Avenue, I have seen three (3) boat dealers at 18 Lincoln Avenue using 24 Lincoln Avenue as boat storage.

The recent owner of 18 Lincoln Avenue rent out the building and a tenant used 24 Lincoln Avenue as storage of his equipment and debris. Another tenant used the property for car storage while detailing to go to auction until Paul Rinella bought the property in 2014.

It would be an improvement of what is at 24 Lincoln Avenue and more on the tax base.

Please feel free to contact me if you have any questions.

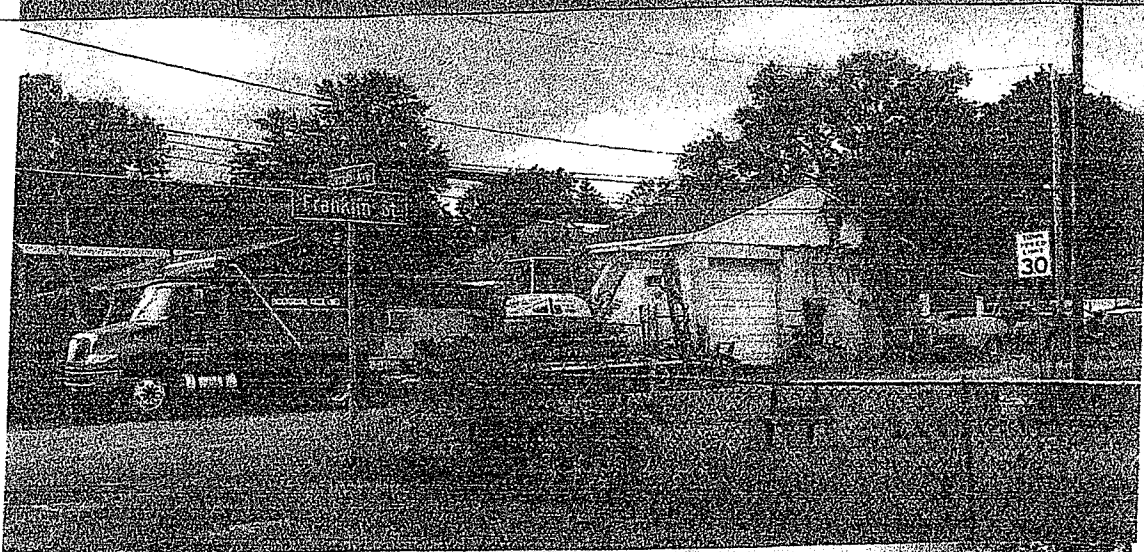
Sincerely,

A handwritten signature in black ink, appearing to read 'Jerry Russell'. The signature is stylized with a large, looping 'J' and a cursive 'Russell'.

Jerry Russell

ACROSS THE STREET

3



JUST DOWN THE ROAD

3



REFERENCE MAP:

1) MAP ENTITLED "PLAN OF SUBDIVISION IN COLGEE, NEW YORK, OWNED BY C. FRANK REED, DATED APRIL, 1912, PREPARED BY MERRILL AND SONS, C.E., SUBDIVISION NO 1", FILED IN THE ALBANY COUNTY CLERK'S OFFICE AS MAP 724 IN BOOK 26 OF MAPS.

E/T/C

FRANKLIN STREET

(50' R.O.W.)

EDGE OF PAVEMENT

E/T/C

CATCH BASIN

N 66°41'30" W

12'

DEAD UTILITY POLE

CAPPED IRON ROD SET

CHAIN LINK FENCE

S 23°18'30" W

AREA = 7,500± SQ. FT.

ORIGINAL LOT LINE (TYP.)

CHAIN LINK FENCE

75.00'

UTILITY POLE

S 66°41'30" E

100.00'

ADJACENT SHED W/12' ROOF OVERHANG

LANDS N/F OF JEFFREY P. DECATUR (2629/880)

ADJACENT ASPHALT DRIVEWAY

N 23°18'30" E

75.00'

4

LANDS N/F OF LARRY M. RUSSELL (2688/696)

6' ARBORVITAE'S

DRIVEWAY

PROPOSED GARAGE

45'

45'

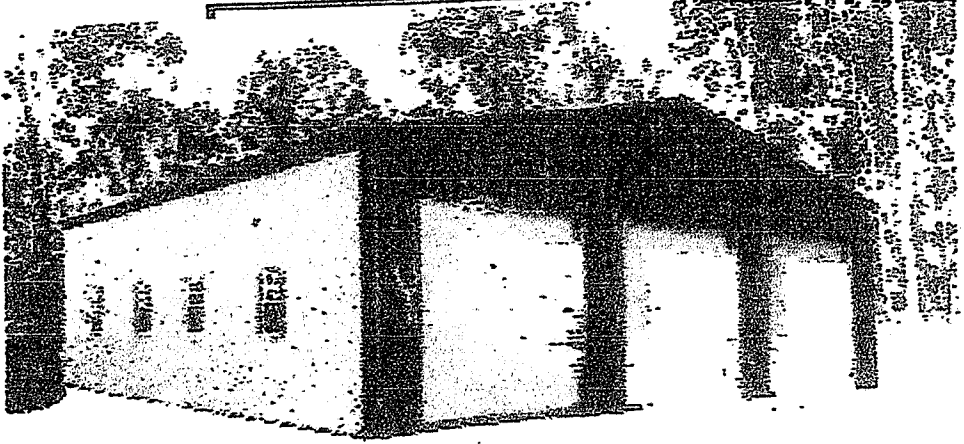
(21)

(22)

(23)

(24)

LINCOLN AVENUE



BUILDING EXAMPLE



THE MOFFATT GROUP
REAL ESTATE

5

Town of Colonie
Zoning Board of Appeals
RE: 24 Lincoln Avenue Use Variance

I have been requested to prepare a market analysis to determine the viability to build a new one family home on this parcel.

24 Lincoln Ave is a vacant .17-acre parcel located in the Town of Colonie, on the corner of Franklin St. Currently, this parcel is zoned Single Family Residential and in the North Colonie School District. It's surrounding parcels are currently zoned either Single Family Residential or Industrial with various business uses.

Located within close proximity to 24 Lincoln Ave are several commercial and industrial establishments including, but not limited to, Muddies Tavern, Dzembo's Dairy, Bonded Concrete, Luizzi's Industrial Site, a rail yard and the Arsenal. Directly across the street is Touch of Class Upholstery which has multiple cars and trucks being worked on 7 days a week. Also, the storage of these vehicles are all along the street.

I have reviewed Lincoln Ave and the surrounding subdivisions for previously sold single family residences since September of 2019. Below are a list of several properties sold in this time frame:

1. 22 Homewood Ave, which sold for \$221,450 on September 21, 2023
2. 19 Grenada Terr, which sold for \$210,000 on January 16, 2024
3. 79 Homewood Ave, which sold for \$296,000 on July 12, 2024
4. 23 Grenada Terr, which sold for \$315,000 on July 1, 2022

Upon reviewing Lincoln Ave and its surrounding streets, the majority of the homes are selling for \$250,000 or below. Additionally, no single-family home has sold on Lincoln Ave (per Flex MLS).

It is my professional opinion, due to Lincoln Ave being a heavily traveled major roadway with industrial and commercial use vehicles, it's surrounding commercial and industrial businesses and current construction costs, that a newly constructed single-family home would not be financially possible, feasible or suitable. This is based off my professional experience as a licensed real estate salesperson, personal knowledge of construction costs, land costs and a market analysis of the surrounding area.

I am able to provide further information if need to support these facts.

Tyler R. Moffatt
The Moffatt Group, Inc.



Advance Engineering & Surveying, PLLC

Consulting in: Civil & Environmental Engineering • Land Surveying • Land Development
11 Herbert Drive
Latham, N.Y. 12110
Phone: (518) 698-3772
Email:ncostape@gmail.com

Nicholas Costa, PE



MEMORANDUM

To: Ted Delucia
From: Nicholas Costa
Date: September 16, 2024
Re: 24 Lincoln Avenue, Town of Colonie - Soils

As requested, we have completed a review of the Natural Resources Conservation Service Soil Map for Albany County, New York for the subject parcel located at 24 Lincoln Avenue in the Town of Colonie and the following is the summary of our findings:

- The project area appears to be approximately 0.17 acres;
- The soil type at the parcel is all in one soil unit: Nassau Channery Silt Loam, undulating (NaB);
- This type of soil is found in: Till plains, ridges, benches;
- The typical profile is: 0-8 inches channery silt loam; 8-16 inches very channery silt loam; 16-20 inches unweathered bedrock;
- Soil properties & qualities: slope-3 to 8 percent; depth to restrictive features- 10 to 20 inches to lithic bedrock; drainage class- somewhat excessively drained; capacity to transmit water: very low (0.00 to 0.00 in/hr); depth to water table- more than 80 inches; frequency of flooding- none; frequency of ponding- none; available water supply, 0 to 60 inches- very low (about 1.8 inches);
- Hydrologic Soil Group: D;

For your reference & file attached are the pertinent printout pages of the information reviewed from the soil database.

C:\jobs\2024\#24143-24 lincoln ave, t delucia\memo...09.16.24.docx

Soil Map—Albany County, New York
(24 Lincoln ave)

