

SPECIAL USE VARIANCE FINDINGS & DECISION

MIDDLESEX ZONING BOARD OF APPEALS on 6/17 & 7/1/2010

Applicant: Mr. Justin DeMitra

Variance No: # 060310-Z

Address: 1181 Upper Hill Road, Middlesex, NY 14507

Zoning District: HB

Telephone: (585)507-9092

Published Notice on 6/09/2010

Property Location: 877 Route #364, Middlesex, NY 14507

County Planning Approval 6/28/2010

Applicable Section of Town Zoning Code: Article V, Section # 502.2.7

County Hearing held 6/24/2010

PB Site Plan Approval Date: 6/02/2010

502.1. GENERAL REQUIREMENTS

502.1.1 That the proposed land use or activity is to be located, constructed and operated so that the public health, safety and welfare will be protected

Yes No Reasons: It has been determined that all requirements have been met within the scope of the proposed project as presented and because the existing property was previously operated as a business and current business plans conform to existing zoning codes.

502.1.2 That existence of the proposed land use or activity will not cause substantial injury to the value of other property in the surrounding neighborhood.

Yes No Reasons: The proposed land use will not cause substantial injury to the property value of neighboring land parcels because of the specific conditions placed on the application during Site Plan Approval and because the land was previously used as a business prior to this application.

502.1.3 That adequate landscaping and screening is provided.

Yes No Reasons: As part of the conditional Site Plan Approval set forth by the Planning Board on June 2, 2010, this project will be required to create a landscape screening of substantial size trees to cover the dumpster placement and business entrance on the southeast corner of the business entrance. A tree-line buffer currently exists between the closest neighboring parcel and the business.

DETERMINATION OF THE ZBA BASED ON THE ABOVE FACTORS:

The ZBA, after taking into consideration the above factors, in a motion made by Arthur Radin, and seconded by Don Burkard, finds that

The benefit to the Applicant DOES NOT outweigh the detriment to the character, health, safety, and welfare of the neighborhood and therefore the variance request is **denied**.

NOTE: SEC. 908.0 of the Town of Middlesex, NY Zoning Law states:

Any person or persons jointly or severally aggrieved by any decision of the Zoning Board of Appeals, or any officer, department, board or bureau of the Town, may apply to the Supreme Court by proceeding under Article 78 of the Civil Practices Law and Rules. Such action must be instituted within thirty (30) days after the filing of a decision in the Office of the Town Clerk.

The benefit to the Applicant DOES outweigh the detriment to the character, health, safety, and welfare of the neighborhood and therefore the variance request is **granted**.

CONDITIONS:

The ZBA finds that the following conditions are necessary in order to minimize adverse impacts upon the neighborhood or community:

The ZBA requested that the proposed "Test Rides" would not be applicable in performing on Sundays. The following Site Plan Conditions were placed by the Planning Board on June 2, 2010:

- 1 Test ride hours will not commence before 9 am nor continue after 5pm Monday through Saturday.
- 2 Firewall to be installed and rated between the repair and retail portions of the building
- 3 Adequate ventilation provided within all areas of enclosed business.
- 4 Landscaping providing a buffer noted on Site Map must be large enough to provide visual cover to dumpster and business entrance .
5. Property must continue to aesthetically uphold the Town's Code requirements, remain visually clear of debris, and all lighting must be contained within the site with noise & odor kept to a minimum.

Arthur Radin
Chairperson, Zoning Board of Appeals

7/01/2010
Date

RECORD OF VOTE

	MEMBER NAME	AYE	NAY
Chair	<u>Arthur Radin</u>	<u>X</u>	___
Member	<u>Elizabeth Grant</u>	<u>X</u>	___
Member	<u>Richard DeMallie</u>	<u>X</u>	___
Member	<u>Don Burkard</u>	<u>X</u>	___
Member	<u>Ted Carman (alternate)</u>	<u>X</u>	___