AREA VARIANCE FINDINGS & DECISION
MIDDLESEX ZONING BOARD OF APPEALS on *September 6, 2018*

NATURE OF REQUEST

Applicant: _Justin DeMitry_

Address: _877 St. Rt. #364, Middlesex NY 14507_

Telephone: *(585) 554-4130*

Property Location: _Tax ID #12.04-1-3.2_

Applicable Section of Town Zoning Code: _Sec. #403, Schedule II_

Variance No: _#080818-Z_

Zoning District: _(HB)_

Published Notice on _DM (8-30-18)_

Notice to County sent on _N/A_

County Hearing held on _____

Applicant is requesting an Area Variance from Sec. #403, Schedule II of the Town Zoning Code to locate an earthen buffer berm 56 ft. from the centerline of the road, requesting a 44 ft. variance request. Current zoning in Highway Business requires 100 ft. from centerline of the road.

FACTORS CONSIDERED:

1. Whether an undesirable change would be produced in the character of the neighborhood or a detriment to nearby properties would be created: Yes ___   No _X_

   Reasons: *Just the opposite will occur. The 5 ft. earthen berm with arborvitae plantings on top, will create a visual barrier from #364, plus provide protection from water runoff to the building created by the slope of the land causing drainage concerns to the building and surrounding fields during seasonal rain events.*

2. Whether the benefit requested by the applicant could be achieved by some method, feasible for the applicant to pursue, other than a variance: Yes ___   No _X_

   Reasons: *This is the only feasible one as water run-off will be controlled channeling water south and east from the building and into the nearby gully. This berm provided a visual buffer from Rt. #364 as required in granting of his Special Use Permit for "364 Power Sports" commercial business annual operating permit.*

3. Whether the requested variance is substantial: Yes _X_   No ___

   Reasons: *I believe the variance request is substantial, as although 44 feet is requested out of the 100 ft. by zoning, is substantial, the drainage resolved by the berm is a great benefit to the landowner and to the public as well, providing a visual buffer from #364,*

4. Whether the variance would have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district   Yes ___   No _X_

   Reasons: *The variance will not have an adverse effect on the neighborhood, in fact the physical impact will be beneficial*

to both landowner and to the general public providing a natural buffer screen from a parking lot used to store small engine

vehicles from the commercial business.

5. Whether the alleged difficulty was self-created: Yes _X_ No___

Reasons: *I believe the difficulty was self- created, but I base my findings on the advantages of the requested setback from*

the centerline of the road to be more important than any existing difficulty. Seasonal water run-off damage to building and

property needs to be resolved for the benefit of the landowner's business.

DETERMINATION OF THE ZBA BASED ON THE ABOVE FACTORS:

The ZBA, after taking into consideration the above five factors, in a motion made by *Richard DeMallie* and seconded by *Win Harper* , finds that:

X   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.**

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.

CONDITIONS:

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

_____*Arthur Radin*   *September 6, 2018*
Chairperson, Zoning Board of Appeals   Date

RECORD OF VOTE

	MEMBER NAME	AYE	NAY
Chair	*Mr. Arthur Radin, Chair*	*X*	____
Member	*Mr. Win Harper*	*X*	____
Member	*Mr. Ted Carman*	*X*	____
Member	*Ms. Elizabeth Grant*	*X*	____
Member	*Mr. Richard DeMallie*	*X*	____
Member	*Ms. Rebecca Parshall (alt.)*	*absent*	____

(Version update: May, 2011)