

**Town of Danby Planning Board  
Minutes of Special Meeting  
July 2, 2014  
Draft**

**Present:**

Joel Gagnon  
Anne Klingensmith  
Frank Kruppa  
Ted Melchen  
Jim Rundle  
Naomi Strichartz

**Absent:**

Steve Selin

**Others Present:**

|                  |  |
|------------------|--|
| Acting Secretary | Patty Jordan   |
| Code Officer     | Sue Beeners  |
| Town Board       | Leslie Connors   |
| Public           | Verna Little, Nancy Kotmel, Anne Kline, Rick Kline, Vince Kotmel,<br>Edward Shay, Garry Huddle, Robert Roe, Elizabeth Owens Roe,<br>David Cady, Bill Kuhns, Selene Kuhns, Melissa Cady |

**The Special Meeting was opened at 7:02 p.m**

Kruppa stated that the purpose of the special meeting was to further consider the special permit request for the proposed Eagle Automotive Repair Shop, 1753 Danby Road. He indicated that the public would have a chance to speak during privilege of the floor and then the Board would step out for an executive session.

Documents received prior to the meeting:

- Two maps prepared by Sue Beeners showing the ½ mile radius around the Kuhns property. One map marked the properties within that range that expressed support of the Kuhns proposal. The other map marked the properties within that range that expressed opposition to the proposal. According to these maps, seven properties expressed support and four expressed opposition within the ½ mile radius. In addition, there were four properties in support and four in opposition located outside the ½ mile radius. Both of these maps were based on petitions that had been submitted to the PB prior to the Public Hearing on June 19, 2014.
- An eleven-page memorandum from Guy K. Krogh, Town of Danby Attorney, to the Planning Board. The memo was in regards to site plan review and special permitting issues regarding the Eagle Automotive Proposal.

**Privilege of the Floor**

Robert Roe (1976 Danby Road) gave the Board a flier that he stated had been put in his mailbox by an unknown person. The flier is a one-page document addressed to “Members of the Danby Community” that encourages residents to attend the special meeting and support the opposition to the proposed automotive repair shop. Roe gave his opinion that the flier appears as if it was distributed by the Planning Board. Kruppa stated that the flier did not come from the Planning Board. Roe brought up the fact that the aquifer in that area is contained and stated his opinion that the proposed automotive shop is not in conflict with either the Comprehensive Plan or the zoning ordinance.

Elizabeth Owens Roe (1976 Danby Road) stated that she wants services in the Town and that she is in support of the proposed automotive repair shop. She would like to see business and opportunity succeed in Danby. Melchen asked her how the noise from Lane's Automotive affected her as a neighbor. She replied to say that there was no noise from Lane's.

Bill Kuhns distributed a 3D sketch of the building. He had also done a map showing the properties within a ½ mile radius. He said that his map showed 53 properties in support and 3 properties in opposition. He also showed a petition in support with 96 total signatures representing 71 separate households. He stated that the petition in opposition had 43 signatures representing 21 households. Beeners asked Kuhns two questions: Were the 53 properties within the ½ mile radius? Were there any changes to his "portfolio" since the last meeting? Kuhns answered yes and no, respectively.

Verna Little (1758 Danby Road) stated that she is concerned about Danby's potential and feels this is an opportunity to do what she would like to see, which is no loud motors. She stated that she feels strongly that Kuhns is infringing on her rights. She said that his freedom to run an automotive shop will cost her \$20,000-\$35,000 in the asking price of her house.

Melissa Cady (127 Hornbrook Road) said that Kuhns has the right to put in the proposed business because it is a commercial zone. And she also feels that people who live along a highway have to listen to loud traffic noise and that it will be no different with the automotive shop there.

Selene Kuhns (1753 Danby Road) brought up the Email from the Audrey Edelman realtor to the Kotmels that was part of the packet that Vince and Nancy Kotmel handed out to the Board at the last meeting. Selene Kuhns gave her interpretation that the realtor meant only that the Kotmels may have fewer buyers if they decided to sell, not that their property value would decrease.

#### **RESOLUTION NO. 32 OF 2014 – ENTER EXECUTIVE SESSION**

**Resolved**, that the Town of Danby Planning Board entered executive session at 7:21 p.m. to discuss the memorandum from Guy K. Krogh, Town of Danby Attorney, regarding site plan review and special permitting issues related to the Eagle Automotive proposal.

**Moved by Rundle, Second by Klingensmith.**

**Approved: By Acclamation.**

#### **RESOLUTION NO. 33 OF 2014 – CLOSE EXECUTIVE SESSION**

**Resolved**, that the Town of Danby Planning Board closed executive session at 7:54 p.m.

**Moved by Gagnon, Second by Strichartz.**

**Approved: By Acclamation.**

### **Consider Granting Special Permit for Automotive Repair Shop**

Gagnon stated that the issue is whether or not the negative impacts can be adequately mitigated to allow a use that is specifically provided for in the zone. He said that he was on the fence regarding this issue at the end of the last meeting. He asked himself if this were his neighbor, would he be able to live next door. His conclusion was, with the appropriate mitigation, yes. He feels the applicant has done a good job identifying accommodations he's willing to make in order to reduce the impacts. He said that goes a long way in making the business compatible with the residential area given that it has been zoned for heavier commercial uses.

Kruppa agreed and stated that the automotive repair shop is an identified use as acceptable within the zone. He pointed out that there is already this same use in the community and so it has been established that it can be compatible in the neighborhood. This is an appropriate use in zone "C" and he would want to grant the special permit with mitigation.

Strichartz stated that she is stuck on the size of the plot and can't see that it won't be injurious to the neighbors. She read Sec 901(2) of the zoning ordinance and stated that she "can't get past this." She also feels it impedes orderly development because it's not what we wanted according to the Comprehensive Plan. She feels it's a shame that this business which might be an asset couldn't be placed where it wouldn't destroy the lives of other people. She would not want to live there. She also

feels that Krogh's memo is open to interpretation. She is concerned with this decision profoundly affecting other humans and with the possible loss of equity.

Klingensmith stated that 901(2) is the sticking point but feels it could be mitigated, possibly. Some mitigation suggestions she had were that the special permit should not transfer, there should be a fence installed, the dumpster should be moved away from the property line, a sound engineer should advise on the enclosure for the air compressor, hours of operation can't be expanded, and a water test should be done prior to building to get a baseline.

There was some discussion of whether or not Krogh's memo could be shared with the public. Kruppa will check with Krogh to find out.

Rundle said he is still open to discussion but at this point, he would have to deny based on 901(2). He said that he applied the same analysis as Gagnon, would he want to live next door, but came to the opposite conclusion, based on the idea that it would be as close to his house as this will be to the Kotmel's. If the property were larger or more separate from the neighbor, he would approve. But it is too close and that creates a serious problem. He said that the visual issue has been addressed by the trees and the fence. The traffic has been addressed and is not an issue. He recognizes the effort by the applicant to mitigate noise and possible smells but it is hard for him to imagine that noise wouldn't affect the neighbors that close.

Sue Beeners stated that she has done all of the measurements and the site plan is in compliance. There is no residential zone within 200 feet of the proposed automotive repair shop and so that special regulation of the zoning ordinance does not apply.

Gagnon moved to approve the special permit with conditions, Kruppa seconded. Before the vote there was a discussion of the conditions that will be required including the fence between the Kuhns and Kotmel properties, hours of operation, the air compressor enclosure and location, elimination of the back bay, external lighting, sound insulating of the walls, requiring bay doors be kept shut, number and location of parking spaces, drainage, odors, and that the special permit will not transfer.

There was also discussion of having the water tested to get a baseline and whether the Board should impose safety conditions and spill prevention conditions, and if a shorter fence should be installed along the front of the property to screen parking. It was agreed not to require a pre-build water test and that the DEC will regulate safety and spill policies. The Board also decided not to require a fence along the front of the property. It was also noted that the footprint of the building on the site plan has not changed. The changes are interior only in that the former back bay will now be a customer waiting area.

Kruppa warned of over-encompassing mitigation conditions. The Board should be careful not to put so many conditions in place that it impedes on the business's success. Gagnon said the mitigation conditions should be reasonable and directly related to the impacts. Strichartz stressed that the mitigation conditions should make it possible for the neighbors to live their lives in their house.

The Board also discussed the general considerations for all special permits listed in Section 901 of the zoning ordinance. Number 1 and number 2 have been addressed through the mitigating conditions. Number 3 has been addressed because it is a commercial zone and automotive repair shop is specifically listed as an allowed business. Number 4 has been handled with parking conditions. Number 5 has been addressed by directing the drainage in gutters toward Route 96B. Sue Beeners stated that there are no significant drainage issues. Number 6 is handled by the Tompkins County Health Department and the septic permit is currently pending. Number 7 is addressed because there are other commercial properties in the area and the visual for this one would not be inconsistent with the area. Number 8 is addressed in that there is room for the garbage truck to turn around and parking is limited to four spaces. Number 9 is true. Number 10 - there has been documentation provided to that effect. Number 11 is irrelevant.

**RESOLUTION NO. 34 OF 2014 – CONSIDER GRANTING SPECIAL PERMIT FOR AUTOMOTIVE REPAIR SHOP, 1753 DANBY ROAD**

**Whereas**, this action is to Consider Granting a Special Permit for a proposed Automotive Repair Shop, proposed to be located next to an owner's residence at 1753 Danby Road, Commercial Zone "C", Tax Parcel 7.-1-93; William E. Kuhns, III, Owner/Applicant; and

**Whereas**, this is a Type II action which requires no further environmental review, pursuant to 6NYCRR Part 617 and Town of Danby Local Law No. 2 of 1991; and

**Whereas**, the Planning Board has reviewed the site plans and other application materials for this proposal; and

**Whereas**, the Planning Board has reviewed the General Considerations Required for all Special Permits provided in Section 901 of the Town of Danby Zoning Ordinance; and

**Whereas**, the Planning Board on June 19, 2014 has held a public hearing on the matter;

**Now, Therefore it is**

**Resolved**, that the Town of Danby Planning Board grants a Special Permit to William E. Kuhns, III for a proposed Automotive Repair Shop, 1753 Danby Road, Commercial Zone "C", Tax Parcel 7.-1-93, with the following conditions:

1. There shall be a fence between the properties located at 1753 Danby Road and 1763 Danby Road that shall be as high as allowable by law and that maintains a continual barrier (no visibility between fence slats) for the entire length.
2. The hours of operation shall be limited to the hours stated in the Special Permit request of Monday – Friday, 8:00 a.m. to 5:00 p.m. and Saturday 8:00 a.m. to 12:00 noon, by appointment only.
3. All automotive repair work shall be conducted during the stated hours of operation (see number 2 above).
4. The air compressor shall be enclosed and located on the North side of the building.
5. There shall not be a car bay facing the South side of the property.
6. A sound-insulated interior wall shall be installed on the South side of the building.
7. All doors (including both bay doors) shall remain closed when automotive repair work is being conducted.
8. All exterior lighting shall be downcast and shall illuminate only the subject property.
9. There shall be no parking spaces located behind the structure.
10. Parking spaces shall be limited to the four that are on the Site Plan.
11. The Special Permit shall be personal to the applicant, and not transferable unless a modified Special Permit is granted by the Planning Board.
12. The structure shall be guttered and all drainage directed to the West of the property toward the ditch on Route 96B.
13. The dumpster shall be maintained in a sanitary manner such that no noxious odors are present.

**Moved by Gagnon, Second by Kruppa. The motion failed.**

**In Favor: Gagnon, Melchen, Kruppa.**

**Opposed: Klingensmith, Rundle, Strichartz.**

There was more discussion regarding Sec 901 of the zoning ordinance.

Rundle stated that it only takes the finding that one of the conditions hasn't been met. He feels that every condition has been met except for No. 2. Strichartz stated that she cannot in all conscience do this to people who are living in that area and pretend that it will not spoil their quality of life. Rundle said that given the fact that it is a commercial zone "C" he would have to vote yes if there were more space, but he feels there is not enough space.

Kruppa said that it is zoned commercial "C" and an automotive repair shop is specifically listed as a permissible use. The Kotmel property has a commercial operation to its south, a commercial operation to its west, and a state highway running in front of the house. He feels it is unfair to state that this proposed business is going to more dramatically affect the quality of life than the others that are already in place. Gagnon agrees with Kruppa.

Melchen feels that he can only go by his interpretation of what the attorney gave them, and he feels that he can't vote against the special permit unless he can find something more substantial that

says absolutely this is forbidden, so he must stick with his vote of yes for approval of the special permit.

Klingensmith feels the fact that there is a state highway and two existing businesses could also be used as an argument for not allowing this business because it would surround the Kotmel's property in a way that would be injurious to their enjoyment of their property.

Gagnon stated that he feels this use is the "contemporary" version of the old-fashioned way of having a business on the bottom of a building with the residence upstairs. And so he feels this is very compatible with what Danby should be and with the currently allowed usage for that zone.

**RESOLUTION NO. 35 OF 2014 – CONSIDER GRANTING SPECIAL PERMIT FOR AUTOMOTIVE REPAIR SHOP, 1753 DANBY ROAD**

**Whereas**, this action is to Consider Granting a Special Permit for a proposed Automotive Repair Shop, proposed to be located next to an owner's residence at 1753 Danby Road, Commercial Zone "C", Tax Parcel 7.-1-93; William E. Kuhns, III, Owner/Applicant; and

**Whereas**, this is a Type II action which requires no further environmental review, pursuant to 6NYCRR Part 617 and Town of Danby Local Law No. 2 of 1991; and

**Whereas**, the Planning Board has reviewed the site plans and other application materials for this proposal; and

**Whereas**, the Planning Board has reviewed the General Considerations Required for all Special Permits provided in Section 901 of the Town of Danby Zoning Ordinance; and

**Whereas**, the Planning Board on June 19, 2014 has held a public hearing on the matter;

**Now, Therefore it is**

**Resolved**, that the Town of Danby Planning Board denies a Special Permit to William E. Kuhns, III for a proposed Automotive Repair Shop, 1753 Danby Road, Commercial Zone "C", Tax Parcel 7.-1-93.

**Moved by Strichartz, Second by Rundle. The motion failed.**

**In Favor: Klingensmith, Rundle, Strichartz.**

**Opposed: Gagnon, Melchen, Kruppa.**

Sue Beeners passed around an aerial picture to show the density of the area in question. She pointed out a pattern of more density and less distance between buildings than one might realize. Strichartz proposed that the Town Board consider doing away with Commercial Zone "C" and changing it to either Zone "A" or Zone "B." Kruppa indicated that he would pass that along to the Town Board but reminded everyone that this proposal must be considered under the current zoning laws.

Kruppa will contact the Town Board and the Town Attorney to seek advice regarding the next steps.

**Adjournment**

The meeting was adjourned at 9:38pm.

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Patty Jordan, Planning Board Recording Secretary