TOWN OF BEDFORD

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AGENDA

BEDFORD ZONING BOARD OF APPEALS

425 Cherry Street, 2nd Floor Conference Room

Bedford Hills, New York 10507

WEDNESDAY, January 6, 2016

7:30 P.M.

MINUTES: November 4, 2015, December 9, 2015

NEW APPLICATIONS:

1 Nuda Sarcone, 107 Lakeside Drive, Katonah, NY 10536. Section 60.9 Block 2 Lot 1, R-1 Acre Zoning District. The applicants request a variance of Article V Section 125-50 of the Town of Bedford Zoning Ordinance to permit the construction of a 3-car garage with second story addition above to an existing single family residence resulting in a rear yard setback of 44eet where 50 feet is required in the R-1 Acre Zoning District.

2. Annie K. Harper, c/o Charles V. Martabano (Owner) and Goodfellas Auto Body, Inc. (Applicant), 125 Plainfield Avenue, Bedford Hills, NY 10507. Section 71.8 Block 2 Lot 16, LI Zoning District. The applicants request variance of Article III Section 125-19.4 (3) (1) of the Town of Bedford Zoning Ordinance to permit a public garage on property located within the Aquifer Protection Zone.

3. Annie K. Harper, c/o Charles V. Martabano (Owner) and Goodfellas Auto Body, Inc. (Applicant), 125 Plainfield Avenue, Bedford Hills, NY 10507. Section 71.8 Block 2 Lot 16, LI Zoning District. The applicants request a Special Use Permit in accordance with Article VIII Section 125-68 of Town of Bedford Zoning Ordinance to permit a "public garage" use of a portion of a pre-existing fully improved building for an auto body use where such building has previously been granted a waiver of site plan approval for an auto body use.

4. Michael Richman and Ruth Toporoff (Appellants), 12 Alice Road, Bedford Corners, NY 10549 for property owned by: Stefano and Suzanne Galli, 341 Succabone Road, Bedford Corners, NY 10549. Section 83.11 Block 2 Lot 2, R-4 Acre Zoning District. The appellants hereby seek an Appeal as requested by a letter dated November 23, 2015 from Ruth Toporoff, RA, representing Michael Richman and Ruth Toporoff, from (1) the Town of Bedford Building Inspector's September 29, 2015 determination that the plan last submitted by the Galli's-namely, the Keane Coppelman Gregory Plot Plan, last revised September 18, 2015 ("September Plan") meets the conditions of the Zoning Board of Appeals; and (2) any building permit issued to the Gallis concerning the proposed improvements depicted in the September Plan. Said appeal is filed with the Zoning Board of Appeals pursuant to Article XII Section 125-129 (C) (1) (b) of the Code of the Town of Bedford.

Adjourned

Supporting documentation for all items on this agenda is available at the Town of Bedford website www.bedfordny.gov. Town Government –Boards--Zoning Board of Appeals-Calendar of Meetings. Larger documents and plans are available at the office of the Board of Appeals

PUBLIC NOTICE

NOTICE IS HEREBY GIVEN, that the Board of Appeals of the Town of Bedford will hold a public hearing on the following:

Request of: **Nuda Sarcone**
107 Lakeside Drive
Katonah, NY 10536

for a variance of the Town of Bedford Zoning Ordinance to permit:

The construction of a 3-car garage with second story addition above to an existing single family residence resulting in a rear yard setback of 44 feet where 50 feet is required in the R-1 Acre Zoning District. This request requires a variance of Article V Section 125-50 for property owned by the applicants and located on:

107 Lakeside Drive
Katonah, NY 10536

designated as Section 60.9 Block 2 Lot 1 on the Tax Map of the Town of Bedford in an R-1 Acre Zoning District. Said hearing will take place on **Wednesday, the 6th day of January 2016,** at the Town House Offices, 2nd Floor, 425 Cherry Street, Bedford Hills, New York, at **7:30 P.M.** At this hearing all persons appearing in favor of or in opposition to the above application will be heard. Attendance at said hearing is not required. Applicants or his representative must be present.

DATED: December 15, 2015

Peter Michaelis, Chair
Town of Bedford Zoning Board of Appeals

Inquiry may be directed to:
Alexandra J. Costello, Secretary
Town of Bedford Zoning Board of Appeals
425 Cherry Street
Bedford Hills, NY 10507
(914) 666-4585; FAX: (914) 666-2026
acostello@bedfordny.gov
www.bedfordny.gov

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BOARD OF APPEALS

ZONING BOARD OF APPEALS

Town of Bedford, Westchester County, New York
425 Cherry Street, Bedford Hills, New York 10507
Alexandra J. Costello, Secretary
914-666-4585; 914-666-2026 FAX
acostello@bedfordny.gov

APPLICATION FOR A VARIANCE

1. Name of Owner: NUDA SARCONE

   Address: 107 LAKESIDE DRIVE

   Telephone/Email: NUDA@ANIMALMR.COM

2. Name of Applicant, if other than Owner: VIKTOR K. SOLAREK

   Address: PO BOX 696 KATONAH NY 10536

   Telephone/Email: 914-232 9828 / VKS@VKSA.COM

3. Name of Professional (New York State Licensed Architect, Engineer, Land Surveyor, Landscape Architect):

   VKS ARCHITECTS

   Address: PO BOX 696, KATONAH, NY 10536

   Telephone/Email: 914-232 9828 / VKS@VKSA.COM

4. Identification Property:

   Street Address: 107 LAKESIDE DRIVE

   Tax ID: 60.9-2-1 Zoning District: R-1A Total Land Area: 0.935 AC

   Age of the Building 42

   Is the property located in a designated Historic District? NO

   % of Building Coverage: 6.1 % of Impervious Surface 15.5 %

   Property Abuts a State or County highway, parkway, thruway or park: Yes ____ No X

   Property is within 500 feet of the boundary of the Town of Bedford: Yes: ____ No: X

   Property is on the WEST side of LAKESIDE DR. within the unincorporated area of the Town of Bedford.

ZONING BOARD OF APPEALS
APPLICATION FOR A VARIANCE

5. Request:
The applicant requests that the Board approve the issuance of a Variance under the following section of the Code of the Town Bedford:

Article: V Section: 125-50

To Permit:
CONSTRUCTION OF 3-CAR GARAGE / BEDROOM ADDITION TO EXISTING RESIDENCE

6. Plans required:
Include six copies of survey, site plan, building elevations and floor plans.

7. Public Notice:
Notice of the public hearing shall be published at least 10 days prior to the hearing in the Town newspaper and shall be mailed by the applicant at least 10 days prior to the hearing to all owners of property within 500 feet of the perimeter of the subject lot. The expense of publishing and mailing any notice shall be paid by the applicant, who shall file an affidavit of mailing with the Board Secretary prior to the hearing.

8. Fees: (make checks payable to the Town of Bedford)

Variance
(As required by Fee Schedule Town of Bedford Code)

Residential:	$350.00
Commercial:	$550.00

Signature of Owner — Date: 11/3/15

Signature of Applicant — Date: 11/3/2015

LETTER OF PERMIT DENIAL

Town of Bedford
Building Dept.
425 Cherry St.
914-666-8040

Application #:

Date: 12/14/2015

Parcel ID: **60.9-2-1**

Owner Information

Sarcone, Nuda

Applicant Information

Sarcone, Nuda
107 Lakeside Dr

Katonah NY 10536

Location: 107 Lakeside Dr
Parcel ID: 60.9-2-1
Permit Type: Additions & Alterations
Work Description: Addition of 3-car garage with bedrooms above; addition of front entrance; alterations

Dear Resident,
Regarding the application for a Building Permit on the property referenced above, the following facts are noted. This property is located in R-1A Zoning District. The requirements of the Zoning Ordinance of the Town of Bedford in comparison to your proposal are listed as follows:

The proposed addition of 3-car garage with second story will result in a front yard setback of 25.4 feet where 35 feet is required in the Residential 1 Acre Zoning District; and a rear yard setback of 44 feet where 50 feet is required in the Residential 1 Acre Zoning District. 12/14/15: Amended and corrected.

Because your project does not meet the requirements of the Town of Bedford Zoning Ordinance, your application for a building permit is DENIED. If you wish to proceed with your request, you may, within sixty days of this letter, apply to the of the above provisions

Very truly yours,

Steven Fraietta
Building Inspector

PUBLIC NOTICE

NOTICE IS HEREBY GIVEN, that the Board of Appeals of the Town of Bedford will hold a public hearing on the following:

Request of: **Annie K. Harper**
c/o Charles V. Martabano
9 Mekeel Street
Katonah, NY 10536

On Behalf of
Goodfellas Auto Body, Inc.
10 Edna Street
Bedford Hills, NY 10507

For a Special Use Permit in accordance with Article VIII Section 125-68 of the Town of Bedford Zoning Ordinance to permit a "public garage" use of a portion of a pre-existing fully improved building for an auto body use where such building has previously been granted a waiver of site plan approval for an auto body use on property located on:

125 Plainfield Avenue
Bedford Hills, NY 10507

Designated as Section 71.8 Block 2 Lot 16 on the Tax Map of the Town of Bedford in the LI Zoning District. Said hearing will take place on **Wednesday, the 6th day of January 2016,** at the Town House Offices, 425 Cherry Street, Bedford Hills, New York, at **7:30 P.M.** At this hearing all persons appearing in favor of or in opposition to the above applicants will be heard. Attendance at said hearing is not required. Applicants or their representative must be present.

DATED: December 15, 2015

Peter Michaelis, Chair
Town of Bedford Zoning Board of Appeals

Inquiry may be directed to:
Alexandra J. Costello, Secretary
Town of Bedford Zoning Board of Appeals
425 Cherry Street
Bedford Hills, NY 10507
(914) 666-4585; (914) 666-2026
acostello@bedfordny.gov
www.bedfordny.gov

PUBLIC NOTICE

NOTICE IS HEREBY GIVEN, that the Board of Appeals of the Town of Bedford will hold a public hearing on the following:

Request of: **Annie K. Harper**
c/o Charles V. Martabano
9 Mekeel Street
Katonah, NY 10536

On Behalf of
Goodfellas Auto Body, Inc.
10 Edna Street
Bedford Hills, NY 10507

For a variance of Article III Section 125-29.4 D. (3) (l) of the Town of Bedford Zoning Ordinance to permit a public garage on property located within the Aquifer Protection Zone on property located on:

125 Plainfield Avenue
Bedford Hills, NY 10507

Designated as Section 71.8 Block 2 Lot 16 on the Tax Map of the Town of Bedford in the LI Zoning District. Said hearing will take place on **Wednesday, the 6th day of January 2016,** at the Town House Offices, 425 Cherry Street, Bedford Hills, New York, at **7:30 P.M.** At this hearing all persons appearing in favor of or in opposition to the above applicants will be heard. Attendance at said hearing is not required. Applicants or their representative must be present.

DATED: December 15, 2015

Peter Michaelis, Chair
Town of Bedford Zoning Board of Appeals

Inquiry may be directed to:
Alexandra J. Costello, Secretary
Town of Bedford Zoning Board of Appeals
425 Cherry Street
Bedford Hills, NY 10507
(914) 666-4585; (914) 666-2026
acostello@bedfordny.gov
www.bedfordny.gov

LETTER OF PERMIT DENIAL

Town of Bedford
Building Dept.
425 Cherry St.
914-666-8040

Application #:

Date: 1/1/1900

Parcel ID: **71.8-2-16**

Owner Information

Harper, Annie

Applicant Information

Harper, Annie
PO Box 538

Mt Kisco NY 10549

Location: 123-129 Plainfield Ave
Parcel ID: 71.8-2-16
Permit Type: Commercial Renovation
Work Description: Commercial renovation of the lower level of an existing building to permit its continued use as an auto body repair shop

Dear Resident,
Regarding the application for a Building Permit on the property referenced above, the following facts are noted. This property is located in LI Zoning District. The requirements of the Zoning Ordinance of the Town of Bedford in comparison to your proposal are listed as follows:

The operation of a public garage on property located within the Aquifer Protection Zone will require a Special Use Permit from the Board of Appeals in accordance with Article VIII Section 125-68 of the Town of Bedford Zoning Ordinance and a variance of Article III Section 125-29.4 D. (3) (l) of the Town of Bedford Zoning Ordinance; as well as site plan approval from the Planning Board.

Because your project does not meet the requirements of the Town of Bedford Zoning Ordinance, your application for a building permit is DENIED. If you wish to proceed with your request, you may, within sixty days of this letter, apply to the of the above provisions

Very truly yours,

Steven Fraietta
Building Inspector

ZONING BOARD OF APPEALS

Town of Bedford, Westchester County, New York
425 Cherry Street, Bedford Hills, New York 10507
Alexandra J. Costello, Secretary
914-666-4585; 914-666-2026 FAX
acostello@bedfordny.gov

APPLICATION FOR A SPECIAL PERMIT

1. Name of Owner: Annie K Harper

   Address: c/o Charles V. Martabano, 9 Mekeel Street, Katonah, New York 10536

   Telephone/Email: 914-242-6200

2. Name of Applicant, if other than Owner: Goodfellas Auto Body, Inc.

   Address: 10 Edna Street, Bedford Hills, New York 10536

   Telephone/Email: 914-666-3260

3. Name of Professional (New York State Licensed Architect, Engineer, Land Surveyor, Landscape Architect): not applicable, waiver of site plan approval previously granted

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   BOARD OF APPEALS

   Address:

   Telephone/Email:

4. Identification Property:

   Street Address: 125 Plainfield Avenue, Bedford Hills, New York

   Tax ID: 71.8-2-16 Zoning District: light industrial Total Land Area: 22,152 square feet

   Age of the Building 50 plus years

   Is the property located in a designated Historic District? No

   % of Building Coverage: 22.7% of Impervious Surface 56.5%

   Property Abuts a State or County highway, parkway, thruway or park: Yes_____ No X

   Property is within 500 feet of the boundary of the Town of Bedford: Yes: ____ No: X___

   Property is on the west side of Plainfield Avenue within the unincorporated area of the Town of Bedford.

ZONING BOARD OF APPEALS
APPLICATION FOR A SPECIAL PERMIT

5. Request:
The applicant requests that the Board approve the issuance of a Special Permit under the following section of the Code of the Town Bedford:

Article: III Section: 125-68

The applicant proposes the following Special Permit:

public garage use of a portion of a pre-existing fully improved building for an auto body use where such building has previously been granted a waiver of site plan approval for an auto body use

Plans required:

Include six copies of a narrative, survey, site plan, building elevations and floor plans.

6. Public Notice:
Notice of the public hearing shall be published at least 10 days prior to the hearing in the Town newspaper and shall be mailed by the applicant at least 10 days prior to the hearing to all owners of property within 500 feet of the perimeter of the subject lot, The expense of publishing and mailing any notice shall be paid by the applicant, who shall file an affidavit of mailing with the Board Secretary prior to the hearing.

7. Site plan:
Include a Preliminary Site Plan Application form, fee, and ten (10) copies of a Preliminary Site Plan complying with all requirements of Article IX, Section 125-88 of the Code of the Town of Bedford.

8. Fees: (make checks payable to the Town of Bedford)

Special Permit Application	$350,00
Preliminary Site Plan: (As required by Fee Schedule Town of Bedford Code)	$_____
Total:	$_____

Annie K. Harper
Signature of Owner

11/27/15
Date

Signature of Applicant

12-2-15
Date

ZONING BOARD OF APPEALS

Town of Bedford, Westchester County, New York
425 Cherry Street, Bedford Hills, New York 10507
Alexandra J. Costello, Secretary
914-666-4585; 914-666-2026 FAX
acostello@bedfordny.gov

APPLICATION FOR A VARIANCE

1. Name of Owner: Annie K Harper

   Address: c/o Charles V. Martabano, 9 Mekeel Street, Katonah, New York 10536

   Telephone/Email: 914-242-6200

2. Name of Applicant, if other than Owner: Goodfellas Auto Body, Inc.

   Address: 10 Edna Street, Bedford Hills, New York 10536

   Telephone/Email: 914-666-3260

3. Name of Professional (New York State Licensed Architect, Engineer, Land Surveyor, Landscape Architect): not applicable, waiver of site plan approval previously granted

   Address:

   Telephone/Email:

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BOARD OF APPEALS

4. Identification Property:

   Street Address: 125 Plainfield Avenue, Bedford Hills, New York

   Tax ID: 71.8-2-16 Zoning District: light industrial Total Land Area: 22,152 square feet

   Age of the Building 50 plus years

   Is the property located in a designated Historic District? No

   % of Building Coverage: 22.7% of Impervious Surface 56.5%

   Property Abuts a State or County highway, parkway, thruway or park: Yes ____ No X

   Property is within 500 feet of the boundary of the Town of Bedford: Yes: ___ No: X___

   Property is on the west side of Plainfield Avenue within the unincorporated area of the Town of Bedford.

ZONING BOARD OF APPEALS
APPLICATION FOR A VARIANCE

5. Request:

The applicant requests that the Board approve the issuance of a Variance under the following section of the Code of the Town Bedford:

Article: III Section: 125-29.4D (3) (1)

To Permit:

use of a pre-existing fully improved industrial site for an auto body shop

6. Plans required:

Include six copies of survey, site plan, building elevations and floor plans.

7. Public Notice:

Notice of the public hearing shall be published at least 10 days prior to the hearing in the Town newspaper and shall be mailed by the applicant at least 10 days prior to the hearing to all owners of property within 500 feet of the perimeter of the subject lot. The expense of publishing and mailing any notice shall be paid by the applicant, who shall file an affidavit of mailing with the Board Secretary prior to the hearing.

8. Fees: (make checks payable to the Town of Bedford)

Variance

(As required by Fee Schedule Town of Bedford Code)

Residential:	$350.00
Commercial:	$550.00

Annie K. Harper
Signature of Owner

11/27/15
Date

Signature of Applicant

12-2-15
Date

CHARLES V. MARTABANO
Attorney at Law

9 Mekeel Street
Katonah, New York 10536
cmartabano@gmail.com
(914) 242-6200 Telephone
(914) 242-3291 Facsimile
(914) 760-9241 Cell

December 15, 2015

VIA HAND DELIVERY
Chairman Peter Michaelis and
Members of the Zoning Board of Appeals
Town of Bedford
425 Cherry Street
Bedford Hills, New York 10507

RECEIVED
DEC 15 2015
BEDFORD ZONING
BOARD OF APPEALS

Re: Application of Goodfellas Auto Body, Inc.
125 Plainfield Ave., Bedford Hills New York; Tax ID Number 71.8-2-16
Property owned by Annie K Harper

Dear Chairman Michaelis and Members of the Zoning Board of Appeals:

Please be advised that the undersigned represents the interests of the applicant, Goodfellas Auto Body, Inc., in connection with such applicant's desire to utilize the lower level of the premises referenced above (as shown on the site plan submitted to your Board) for an auto body repair shop, a use which has been in effect with respect to this portion of this property in one form or another for many years and most recently from June 2004 through June 2013 in accordance with a resolution of the Planning Board granting a waiver of site plan approval subject to certain conditions specified therein. The procedural history applicable to this application will be reviewed in detail below. Ordinarily, under such circumstances, there would be no need to seek approval from your Board for continuation of such use, which such use is classified as a public garage under the Zoning Code of the Town of Bedford (hereinafter "Code") and therefore requires a special permit from your Board as well as a waiver of the prohibition against public garages as set forth in the Aquifer Protection Zone (hereinafter "APZ") regulations. Unfortunately, despite the fact that the prior applicant properly applied for and was granted a waiver of site plan approval subject to conditions protective of the APZ, a diligent search of ZBA records by Town staff members failed to ascertain that a special permit was granted or a waiver of the APZ prohibition against public garages secured. For this reason, the applicant seeks issuance of a special permit for a public garage and a waiver of the prohibition against public garages being located in the APZ so that documentation of compliance with the Town of Bedford administrative regulations is made of record.

The subject property is located in the LI (Light Industrial) zoning district. The characteristics of the site are demonstrated by the submitted site plan. The existing site improvements have been unchanged for many years. The applicant does not intend to make any site changes, only interior renovations including installation of a fully approved and permitted spray booth. The applicant will, however, comply with all of those conditions imposed by the Planning Board in connection with its 2004 issuance of a waiver of site plan approval as set forth in more detail below.

In terms of relevant history, Planning Board records indicate that on June 7, 2004 then owner Anthony J. Monteiro applied for a waiver of site plan approval for a proposed mechanical and collision repair (auto body) use to be established in the lower area of the building located at 125 Plainfield Avenue, Bedford Hills New York, utilizing the site plan submitted to the Planning Board and now submitted to your Board. At a meeting held subsequent to the submission of the site plan with the aforementioned request for a waiver of site plan approval, discussion was had whereby a history of the use of the property was reviewed. A copy of those minutes is attached hereto for your review. As can be seen from the content thereof, the then applicant indicated that the property had always been utilized for mechanical and frame straightening in the past. It was further indicated that the applicant represented that there would be no changing of fluids at the location except in connection with what was necessary during auto-body repair. It was further indicated that previously existing floor drains had been cemented in to prevent escape of fluids. The minutes also reveal that then Planning Board Chairman Donald Coe suggested that a lip be installed at the garage door to the premises in the event of any spills because the property is located over the aquifer.

As also confirmed by the minutes, the application for a waiver of site plan approval was unanimously approved provided that the following conditions were met:

1. there were to be no changes in the plan dated 06/17/04 as a result of the approval;

2. a lip was be added to the garage door to keep any accidental spillage inside the building;

3. the sealed drains in the floor were to remain (i.e. the drains were required to remain sealed);

4. the executrix of the will (co-applicant Annie K. Harper, now the owner) was to be named in the application and all backup documentation was to be supplied to the Planning Board;

5. there was to be no changing of fluids at the location with the exception of what is necessary during auto-body repair.

These conditions were incorporated in the resolution adopted by the Planning Board on June 22, 2004 (Resolution No. 04/23). A copy of the resolution is also attached hereto for your review.

Subsequently, co-applicant Annie K. Harper became the owner of the property and therefore assumed the rights applicable to the owner under the aforementioned resolution. The then co-applicant (Robert Dellantesh/ IFM Auto Body) thereafter occupied the premises and utilized same for an auto body use pursuant to the aforementioned waiver of site plan approval from 2004 through 2013.

As noted above, the applicant seeks issuance of a special permit for a public garage. Section 125-3 of the Code defines a public garage as follows:

> "Any garage, other than a private accessory garage, available to the public, operated for gain and which is used for storage, major repair, body work, painting, rental, greasing, washing, servicing, adjusting or equipping of automobiles or other motor vehicles."

According to Code section 125 d and 125 attachment 4, public garages are permitted in the LI zoning district subject, however, to the issuance of a special permit by the Zoning Board of Appeals (hereinafter "ZBA"). Additionally, this property, in like manner other properties located on Plainfield Avenue and utilized for identical purposes, is located in the Aquifer Protection Zone (hereinafter "APZ") as defined by section 125-29.4 of the Code. Under section 125-29.4 D (3) (1) automotive service stations and public garages are prohibited uses for properties located in the APZ. Due to the sheer physical size of the APZ the existence of established industrial uses and properties zoned for light industrial uses within the APZ's permieter, in like manner to many other applicants as described below, the applicant will require relief from the ZBA in connection with the prohibition set forth in section 125-29.4 D (3) (1).

The Special Permit

Turning first to the standards applicable to the issuance of the requested special permit for a public garage, the Code specifies the procedure by which the ZBA may proceed to grant the requested special permit. Section 125-59 provides for Planning Board review of the application for the purpose of making a recommendation to the ZBA in connection with issuance of the requested special permit. The Planning Board is required to make the specific findings set forth in the Code in connection with the applicant's application to the ZBA for issuance of a special permit for a public garage, which such findings relate to the application's compliance with the legislatively prescribed conditions set forth in the Code. In this regard,

the Code provides that the Planning Board shall review the application and plans in accordance with the standards and requirements set forth in § 125-60 below and other applicable requirements of Article VIII of the Code, if any, and submit its findings and recommendations to the ZBA[1]. The applicable standards include only the following:

§ 125-60. General standards.

A. The proposed use will serve a community need or convenience and will not adversely affect the public health, safety and general welfare.

B. The location and size of the use, the nature and intensity of the operations involved in or conducted in connection with it, the size of the site in relation to it and the location of the site with respect to streets giving access to it are such that it will be in harmony with the appropriate and orderly development of the area in which it is located.

C. The location, nature and height of buildings, walls, fences and the nature and extent of existing or proposed plantings on the site are such that the use will not hinder or discourage the appropriate development and use of adjacent land and buildings.

D. Operations in connection with any special permit use will not be more objectionable to nearby properties by reason of noise, fumes, vibration, light or other characteristics than might be the operations of any permitted use not requiring a special use permit.

E. Parking areas will be of adequate size for the particular use, properly located and suitably screened from adjoining residential uses; and the entrance and exit drives shall be laid out so as to achieve adequate safety.

Due to the tight time constraints applicable to this application attributable in part to the holiday season and its impact on the scheduling of meetings, to ensure that members of the ZBA obtain the majority of my client's supportive narrative at the earliest possible time, this is being submitted prior to the receipt of the Planning Board's recommendation. The applicant is appearing before the Planning Board tonight and, upon receipt of the Planning Board's recommendation, I will provide a copy in a separate submission.

[1] There are other specific standards set forth in section 125-68 of the Code which, although the caption indicates are applicable to public garages, in fact only apply to the type of public garage which is defined as an automobile service station or gasoline filling station and this determination has been made by both the Planning Board and ZBA with the result that only the standards set forth in section 125-60 are the standards applicable to the type of public garage proposed by my client.

As members of your Board are aware, in New York State, the law applicable to the issuance of special permits (also sometimes referred to as a special exception) is clear and consistent. For example, in Nathan v. Board of Appeals of Town of Hempstead 125 A.D.3d 866, 5 N.Y.S.3d 127 (2nd Dept, 2015), the Appellate Division for the Second Department articulated the standards for issuance of a special permit as follows:

> "A 'special exception gives permission to use property in a way that is consistent with the zoning ordinance, although not necessarily allowed as of right" (citation omitted). The burden on an owner in seeking a special exception permit is, therefore, "considerably less" than the burden on an owner seeking a use variance (citations omitted). An applicant for a special exception permit need only show that it has complied with every legislatively imposed condition on the permitted use (citations omitted)."

Similarly, in Kabro Associates, LLC v. Town of Islip Zoning Bd. of Appeals 95 A.D.3d 1118, 944 N.Y.S.2d 277, (2nd Dept, 2012) the court stated:

> "Unlike a use variance, a 'special exception allows the property owner to put his property to a use expressly permitted by the ordinance ... subject only to 'conditions attached to its use to minimize its impact on the surrounding area' " (citations omitted). "The significance of this distinction is that the 'inclusion of the permitted use in the ordinance is tantamount to a legislative finding that the permitted use is in harmony with the general zoning plan and will not adversely affect the neighborhood' " (citations omitted). "Thus, the burden of proof on an owner seeking a special exception is lighter than that on an owner seeking a variance" (citations omitted). An owner seeking a special exception permit is only "required to show compliance with any legislatively imposed conditions on an otherwise permitted use"

See also White Castle System, Inc. v. Board of Zoning Appeals of Town of Hempstead 93 A.D.3d 731, 940 N.Y.S.2d 159, (2nd Dept, 2012).

Perhaps the best overview of relevant holdings pertaining to the issuance of special permits was set forth in the 2014 decision of Serota Smithtown LLC v. Town of Smithtown Board of Zoning Appeals 43 Misc.3d 1206(A), 990 N.Y.S.2d 440 (Sup. Ct. 2014)

"Unlike a use variance, a special exception allows a property owner to put his property to a use expressly permitted by the ordinance subject only to conditions attached to it to minimize the impact on the surrounding area. The significance of this distinction is that the inclusion of the permitted use in the ordinance is tantamount to a legislative finding that the permitted use is in harmony with the general zoning plan and will not adversely affect the neighborhood (citations omitted). The burden of proof is lighter than that on an owner seeking a variance, and an owner seeking a special exception permit is only required to show compliance with any legislatively imposed conditions on an otherwise permitted use (citations omitted). While the reviewing board retains some discretion to evaluate each application for a special use permit, to determine whether the applicable criteria have been met and to make commonsense judgments in deciding whether a particular application should be granted, such determination must be supported by substantial evidence (citation omitted). Although scientific or expert testimony is not required in every case to support a determination, the board may not base its decision solely on generalized community objections. Moreover, expert opinion regarding traffic patterns, when presented, may not be disregarded in favor of generalized community opposition (citation omitted). Generalized or unsubstantiated complaints from neighbors, unsupported by empirical or expert evidence are generally insufficient for a zoning board to base its decision (citations omitted).

As set forth above, the Code provides a specific procedure whereby, before the ZBA can act, the ZBA is to receive a recommendation from the Planning Board based upon the standards set forth in section 125-60. In my client's submission to the Planning Board, we set forth therein and restate herein our basis for our belief that the application complies with all the standards digested at section 125-60. Specifically, we requested that the Planning Board and now request that your Board take into consideration (1) the prior long-term and uneventful auto body and automotive repair use of this particular location both prior to and as subsequently approved by the Planning Board; (2) the characteristics of the LI zoning district (in terms of permissible uses) and the current development pattern and existing uses in the Plainfield Avenue /Edna Street/Green Lane area. Taking all of these factors into consideration, I believe that your Board has before it sufficient facts to support a determination to the effect that all of the standards applicable to issuance of the requested special permit have been met.

Initially, in connection with a requirement set forth in Section 125-60 A, there is no doubt that the proposed use at this location will serve a community need or convenience and will not adversely affect the public health, safety and general welfare. The community need or convenience is self-evident. The applicant's current location is located within approximately 200 feet of the proposed location and the applicant has always had a steady demand for its services. In terms of the impact on public health, safety and general welfare, the protective measures already required by the Planning Board in connection with its prior waiver of site

plan approval and the additional measures referenced below will continue to assure, as in the past, that this use at this location will not adversely impact the public health, safety or general welfare.

Subsections 125-60 B through E all relate to the suitability of the site for the proposed use and the appropriateness of the proposed use at the proposed location. In this regard, Subsection125-60 B requires a determination by your Board that "[t]he location and size of the use, the nature and intensity of the operations involved in or conducted in connection with it, the size of the site in relation to it and the location of the site with respect to streets giving access to it are such that it will be in harmony with the appropriate and orderly development of the area in which it is located". Subsection 125-60 C requires a determination that "[t]he location, nature and height of buildings, walls, fences and the nature and extent of existing or proposed plantings on the site are such that the use will not hinder or discourage the appropriate development and use of adjacent land and buildings". Subsection 125-60 D requires a determination that "[o]perations in connection with any special permit use will not be more objectionable to nearby properties by reason of noise, fumes, vibration, light or other characteristics than might be the operations of any permitted use not requiring a special use permit". Finally, Subsection 125-60 E requires a determination that "[p]arking areas will be of adequate size for the particular use, properly located and suitably screened from adjoining residential uses; and the entrance and exit drives shall be laid out so as to achieve adequate safety".

In respect of appropriateness for the area and the absence of a deleterious effect on other uses established on nearby properties or the appropriate and orderly development of the area, initially it should be recognized that in view of the multiplicity of public garage uses already existing or approved for this area of the Town, it is clear that establishment of this use at this location will be in harmony with the appropriate and orderly development of the area in which it is located. As noted above, the applicant's existing body shop is located on Edna Street, a short distance away from the proposed location. Additionally, in the immediate area, in terms of auto body uses alone, there exists Bedford Hills Glass and Auto Body, Northern Westchester Auto Body (two locations), North State Custom Auto Body, IFM Collision Center, and other auto repair related and collision related (towing services) uses as well as waste carting and other similar uses.

Recognizing that public garages are special permit uses and the standards make reference to the appropriateness of the proposed use and its impacts (such as noise, fumes, vibration, light etc) as compared to uses not requiring a special permit, it is to be noted that the schedule of principal permitted uses for the LI zoning district allows as principal permitted uses wholesale business storage or warehouse uses, manufacturing and fabrication uses and outdoor storage of commercial and industrial vehicles and construction equipment as well as printing plants. Accordingly, I believe that it is clear that this use will be in harmony with the

appropriate and orderly development of the area in which it is located and that operations in connection with this proposed use will clearly not be more objectionable to nearby properties by reason of noise, fumes, vibration, light or other characteristics than might be the operations of any permitted use not requiring a special use permit.

On a site specific basis, as set forth above, even in the absence of the Planning Board's recommendation at this juncture, it is to be noted that the Planning Board previously reviewed this particular site and approved it for this specific use subject to the conditions referenced above. This applicant will comply with all of the aforementioned conditions and, in addition thereto, this applicant will, in connection with business operations, also comply with relevant additional conditions referenced below that have been discussed with the Planning Board and your Board in connection with other recent applications including the condition that any waste fluids shall be stored in noncorrosive 55 gallon drums and be disposed of by a certified hauler/disposal firm in accordance with all applicable EPA/DEC/DOT regulations.

Request for Waiver of APZ Regulations Prohibiting Public Garages

As recently related to you in connection with another application, notwithstanding the prohibition of public garages for properties located in the APZ as referenced above, the records of the Town of Bedford confirm that the ZBA and the Planning Board, working together, have formulated a series of protective measures which, when imposed upon the granting of the special permit and waiver of the APZ regulations by the ZBA in the form of conditions, have permitted the operations of public garages on properties located in the AP'Z.

Because this information exists within the records of the Town of Bedford, the applicant, in an effort to be proactive, reviewed the Planning Board recommendations and the ZBA minutes and resolutions of approval so as to discern what protective measures have been required by the Planning Board and ZBA in connection with past applications for public garages in the APZ and the applicant determined to incorporate such protective measures as would be applicable to my client's proposed operations as part of this application (acknowledging, of course, that some of these protective measures were already imposed by the Planning Board as part of its waiver of site plan approval) so that there would exist no question as to the applicant's proffer of and compliance with protective measures already determined by the Planning Board and ZBA to be appropriate under the circumstances and wholly protective of the APZ. In this regard, the applicant has reviewed the records pertaining to the approval of the following auto body public garage uses in the APZ, all of which were issued for public garage facilities in the LI zoning district for properties located in the APZ:

1. December 1987 issuance of special permit to Brian Prato for public

garage/auto body facility at 201 Railroad Avenue, Bedford Hills New York (variance also granted for reconstruction of building in July of 2014);

2. June 1988 issuance of a special permit to Rennsport for public garage/automotive repair shop located at 353 Adams Street, Bedford Hills New York;

3. 1990 (exact date uncertain) issuance of a special permit to RAP Holding Corp. for a motor vehicle preparation and detail facility (Adzam) at 57 Plainfield Avenue, Bedford Hills New York

4. August 1993 issuance of special permit to Kernan for operation of an automotive garage at 364 Adams Street Bedford Hills New York;

5. November 1997 issuance of special permit to Beobide/Perez for operation of an automotive paint and body shop at 341 Adams Street Bedford Hills, New York;

6. February 2008 issuance of special permit to RAP Holding Corp, for operation of a motor vehicle service facility at 57 Plainfield Avenue Bedford Hills, New York;

7. September 2009 issuance of special permit to Nicola A. Soprano for operation of a motor vehicle sale and restoration facility at 350 Adams Street Bedford Hills, New York.

This list is not to be in any way exhaustive or reflective of the total number of special permits issued for public garages in the LI zoning district and in the APZ. This list was instead compiled and utilized by the applicant because the approved special permits listed above allow each and every use proposed by this applicant.

Certain of the conditions imposed upon prior applicants in connection with the issuance of their special permits were specifically incorporated by the Planning Board when the Planning Board issued the waiver of site plan approval in June of 2004. As noted above, this applicant will abide by terms of the resolution issued by the Planning Board in June of 2004 which imposed specific conditions upon the issuance of the waiver of site plan approval. Additionally, this applicant will abide by other conditions referenced in their submission to the Planning Board and the applicant is prepared to have those conditions (and other conditions as may be required by the

Planning Board following their review of this application) imposed upon the issuance of the requested special permit and waiver of the APZ regulations prohibiting public garages. Specifically, the applicant will, at a minimum, install/comply with the following protective measures:

1. There will be no use of floor drains in the building which would discharge to the ground and same shall be continued to be filled in with cement as they exist today;

2. The applicant will maintain a 1 inch lip at all doorways to prevent the potential discharge of fluids outside the building;

3. There will be no changing of fluids at the location with the exception of what is necessary during auto body repair;

4. Any storage of waste oil or fluids shall be in noncorrosive 55 gallon drums;

5. Any and all waste fluids shall be disposed of by a certified hauler/disposal firm in accordance with all applicable EPA/DEC/DOT/DOH regulations;

It is respectfully submitted that, as specifically proposed to be conditioned as referenced above, this application complies with all of the legislatively prescribed standards for issuance of the requested special permit and, taking into consideration all of the voluntarily proposed measures for the protection of the APZ, compliance with all applicable standards previously utilized by the ZBA for the issuance of a special permit for the operation of a public garage of this nature within the APZ. At the public hearing to be held in January, the applicant will provide additional information and photographs and be prepared to respond to any questions that members of the Board might have in connection with the applicant's proposed use of this property.

On behalf of the applicant, I thank you for taking the time to review the submission and we look forward to appearing before your Board in January in support of this application. If, prior to the meeting, any member of the ZBA has any questions with respect to any aspect of this application, please feel free to contact me.

Yours very truly,

Charles V. Martabano

cc: Goodfellas Auto Body Inc.
Whitney Singleton, Esq.

Minutes

Bedford Hills shown and designated on Town Tax Maps as Section 71.08 Block 2 Lot 16, LI Zone

Present was Robert Dellentash, applicant

Mr. Dellentash gave some history of the property. This property has always been utilized for mechanical and frame straightening. There are no changes proposed to the property. The area will be utilized for mechanical and body work on vehicles. There are times were suspension and starters will be changed, but there is no changing of fluids at the location. Generally when a vehicle is brought to the location the fluids have already drained out during the accident or the transportation. If there is a radiator that needs to be removed, the antifreeze is taken out and captured. The drains in the building have been cemented.

Mr. Coe suggested that a lip be installed on the door in case of any spills because the property is located over the aquifer.

Mr. Dellentash stated that there are to be no physical changes to the site. The upstairs portion of the building will remain as is, there is a pool supply store presently at the location. His current location is to the right of the proposal.

The Board reviewed the Environmental Clearance Form and determined that this proposal is a "Type II Action" under SEQR. Mr. Coe endorsed the Board's determination on the ECF.

Mr. Cacciato made a motion to grant the applicant's request for a waiver of site plan approval subject to the usual procedures and following conditions: there are to be no changes in the plan dated 06/17/04 as a result of the approval; a lip is to be added to the garage door to keep any accidental spillage inside the building; the sealed drains in the floor are to remain; the executrix of the will is to be named in the application and all backup documentation is to be supplied to the Planning Board; there is to be no changing of fluids at the location with the exception of what is necessary during the auto-body repair. Mr. Cacciato seconded the motion. The vote in favor of the motion was unanimous. A resolution entitled, "Resolution No. ??? - ???????????," is incorporated as part of these minutes.

Proposed Revision to Subdivision Lot 1 – Braewold Subdivision
Section 71.8 Block 1 Lot 4.2, R-2A Zone
Wood Road, Mount Kisco
Owner/Applicant – Wood Road 1, LLC
(Review request to modify driveway location)

PLANNING BOARD
TOWN OF BEDFORD
WESTCHESTER COUNTY, NEW YORK

RESOLUTION NO. 04/23

PROPOSED MECHANICAL & COLLISION REPAIR
IN LOWER AREA OF BUILDING
IFM SYSTEMS, INC
WAIVER OF SITE PLAN APPROVAL

WHEREAS, an application dated June 7, 2004 from Anthony J. Monteiro, 4 Foxwood Circle, Mt. Kisco, New York 10549, for approval of a waiver of site plan for the proposed mechanical & collision repair in lower area of the building located at 125 Plainfield Avenue, Bedford Hills, shown and designated on Town Tax Maps as Section 71.8 Block 2 Lot 16, in the Light Industrial District, was received by the Planning Board on June 7, 2004 and

WHEREAS, the Planning Board received a plan consisting of one (1) sheet entitled "IFM Auto Body, 125 Plainfield Avenue, Bedford Hills, New York," prepared by Martin Kravitt, Architect, dated June 4, 2004.

WHEREAS, the Planning Board determined the proposed site plan will not have a significant effect on the environment as defined in the New York State Environmental Quality Review Act (SEQRA), and

WHEREAS, on June 22, 2004 the Planning Board reviewed said site plan, and

WHEREAS, the above-described final site plan meets all requirements of the Code of the Town of Bedford, except as noted.

WHEREAS, a copy of the Power of Attorney dated November 12, 1999 was received by the Planning Department, June 17, 2004 designating Annie K. Harper, 61 Croton Avenue, Mount Kisco " Power of Attorney" for Anthony J. Monteiro.

NOW THEREFORE BE IT RESOLVED, that due to the fact that there will be no physical changes to the site shown on the above-described site plan, the requirement of preliminary and final site plan approval is hereby waived pursuant to Article IX Section 125-93 of the Code of the Town of Bedford with the following conditions:

1. There shall be no changes to the plan dated June 4, 2004.
2. A lip shall be added to the garage door to keep any accidental spills in the building.
3. The sealed drains in the floor are to remain.
4. There shall be no changing of fluids at the location with the exception of what is necessary during the body repair.

Proposed Mechanical & Collision in Lower Area of Building
IFM Auto – Waiver of Site Plan

APPROVED: June 22, 2004
DATED: November 3, 2004

The foregoing resolution is certified to be a true copy of the resolution, which was approved on June 22, 2004 by the Planning Board of the Town of Bedford.

Gail M. Amyot, Planning Board Secretary
Town of Bedford Planning Board