

Minutes of the February 12, 2008 Zoning Board of Appeals Meeting Minutes held in the Meeting Room of the LaFayette Commons Office Building at 2577 Route 11 in the Town of LaFayette at 7:30 p.m.

Present: Stephen Beggs, Chairman  
Daniel Kuhns, Member  
Jerry Doolittle, Member  
Christine Keenan, Member

Absent: Robert Drumm, Member (Recused)  
Jim Butkus, Alt. Member

Recording Secretary: Mary Jo Kelly

Others Present: John Langey, ZBA Attorney  
Anne Sweeney-Nakas  
Jim Nakas  
Tim Frateschi, Attorney  
Sheila Kelley, Applicant  
Jacqueline McIntosh  
Greg Scammell, Supervisor  
Karen Hughes  
Bruce Donohue  
Joan Belmont  
Sue Soares  
Dave Anthony

Chairman Beggs called the meeting to order at 7:37 p.m. Everyone introduced themselves.

Chairman Beggs asked if there were any corrections or additions to the December 11, 2007 Meeting Minutes. There were none.

**Member's Doolittle moved and Keenan seconded the motion to accept the December 11, 2007 Zoning Board of Appeals Meeting Minutes as submitted by the secretary. Motion passed.**

**Public Hearing for Sheila Kelley regarding interpretation of non-conforming Uses for property located at 2386 Route 11A. (Tax Map No. 017-02-07.0)**

Tim Frateschi was present to represent the applicant, Sheila Kelley. He just spoke with Ms. Kelley and she is on her way. The last time we met the Board asked for a survey of the property and a floor plan. He believes Ms. Kelley has brought a floor plan that was prepared by Jason Olander. The survey continues to be an issue. They have had a difficult time getting a surveyor out there to look at the property. He has a letter explaining why the surveyor is having a difficult time surveying the property. They are having a difficult time finding historical documents to find posts, etc. on the property. This property has not been surveyed in probably 100 years so it will take some time. He submitted the letter to the Board from the surveyor. Jason Olander did do a site plan of the property. He thinks for the purposes of this Board it provides them with what they

are looking for. This is simply for an interpretation of the code. He is hoping this will be sufficient for the Board to interpret the code. He reviewed the site plan and the floor space of the building. For purposes of tonight, he would like to reemphasize a couple of points he has already made outlining why they think the operation of a construction office in the barn is a continuation of an existing use that has always been on the property. Before the code was in place, there was a business operating on this property and after the code was implemented the business could continue unless there was a break in service. Ralph Lamson determined going from a repair business to a construction business is a change in use. They don't feel there was a change of use. When Ms. Kelley's grandfather operated a refrigeration repair business, he had an office in the barn and kept his records in the barn. Ms. Kelley's operation is a continuation of the use that was always there. Assuming this Board decides it was a change in use, they still believe the non-conformance does go away. Under your code, Section D #1, it states "Within the districts established by this Ordinance, there exist lots, structures, and uses of land which were lawful before this Ordinance was originally passed or amended but which would be prohibited, regulated or restricted under the terms of this Ordinance or further amendment. It is the intent of this section to permit these nonconformities to continue until they are removed or abandoned..." They have provided proof that a business was operating there. He doesn't have proof that it's ever been abandoned. "...It is further the intent of the Town that nonconforming uses shall not be enlarged upon, expanded, extended nor that they be used as grounds for adding other structures or uses prohibited elsewhere in the same district..." They allow that even if you believe it's a change in use, the change is not an enlargement, expansion or extension of the former business. They believe one employee that shows up during the day and leaves at night is far less intrusive. The old code was changed in 2004. The language in the same paragraph used to read like this "...A non-conforming use may be continued subsequent to the adoption of this Ordinance or subsequent to the adoption of any amendment to this Ordinance, but shall not be enlarged or altered so as to increase its non-conformity, nor be reconstructed or restored by and expenditure in excess of its current replacement value, nor be changed to a different non-conforming use, nor be resumed after six months discontinuance, except upon Specific Permit approval of the Board of Appeals in accordance with the standards and procedures of Article IV..." Your Town Board changed this law and removed that phrase. By removing that phrase they demonstrated they weren't so much concerned with a change in non-conforming use. They want to be sure the non-conforming use wasn't any greater than it was before. He submitted a copy of the old code for the record. Finally, there was some discussion about how do you know they meant use and not structure when they talked about expansion. First of all, the code reads "...A nonconforming use may be expanded into any portion of a building that existed as of the date of provision of this Zoning Ordinance, which would otherwise prohibit such use..." The Town Board didn't seem to be concerned about extending the use within the building as long as it wasn't more intrusive than the prior use. If this is a change of use, which they don't believe, it should be allowed because it's no more intrusive or burdensome to the community than what had previously existed on this site. He believes it has been undisputed that the use of the property for business has always existed. The real issue before this Board is not where it's on the site as long as it's in the structure but whether or not the use itself is so much different than the previous uses that would break its nonconformity. One employee goes there and leaves every day. There has been a lot of talk about construction material on site and it being taken on and off the site. If it is, it shouldn't be. He has been told it is not. If it's a construction site then the CEO should go

out and stop it. He has been told the only use of this office is for one person who answers the phone, files and does bookkeeping. He asked the Board if they had any questions for him.

Member Doolittle asked him to go through a couple of dates. In 1967 Mrs. Belmont came back from Florida. What was the date that Tom Belmont became unable to work or ceased doing the business?

Joan Belmont said he went into the hospital at the end of June 2005 and died in August.

Member Doolittle asked when Ms. Kelley started her business.

Sheila Kelley said it was moved to the barn in 2003. Before that it was running out of the house.

Tim Frateschi believes this is all in the affidavits of Joan Belmont and Sheila Kelley.

Chairman Beggs said he understood Tom Belmont was an employee of Sears. Did he retire from Sears or work until the end?

Joan Belmont said Tom Belmont retired at age 65 and he was still working for Sears when he died. They would call him back every summer to do refrigerant work. The rest of the year he worked on his own.

Member Keene asked Joan Belmont if she has any business records. He worked on his own for many years, do you have any records?

Joan Belmont said she doesn't. She destroyed them all. She could probably go back with her tax consultant. She doesn't know what records she has.

Chairman Beggs said this Board has requested any documentation and has nothing at this point.

Sheila Kelley said they have affidavits from people.

Tim Frateschi said they have affidavits and testimony.

Chairman Beggs said but no financial documentation. This Board must deal with facts and we don't have any facts.

Tim Frateschi asked if he doesn't believe the testimonies and documentation.

Chairman Beggs said he advised in earlier meetings that the Board wanted written documentation. He asked if anyone in the audience wished to offer documentation supporting the applicant.

Sheila Kelley asked him to explain.

Chairman Beggs said he would like anything that can support what the counsel is saying.

Sheila Kelley said they are here in support.

Susan Soares is a daughter of Joan and Tom Belmont and said when she moved back in 1999 there was a man named Dick Dodge who had his car serviced on the property. A week later maybe Paul Burt would come in about his tractor. She went with her father many times on service calls. She has been to Rita Bush's house, Mary Jane Scammell's house, etc. She went to these people's houses with her father on service calls. As far as paperwork, she doesn't have any. He probably worked on something for half the people around here at their residences or if they dropped air conditioners off at the house.

Member Keenan asked if he charged sales tax. Did he have a sales tax number?

Sue Soares said yes he did.

Member Keenan asked if he filed his tax records quarterly.

Joan Belmont said they filed annually.

Member Keenan asked if they could find these records.

Joan Belmont said she can check into this.

Chairman Beggs asked if anyone else wished to speak in support of the application. No one came forward.

Chairman Beggs asked if anyone wished to speak in opposition of the application.

Anne Sweeney-Nakas said she has stated a lot of information before but would like it part of the record. They moved into their home at 2390 Route 11A in 1980. They are the house immediately north of the Belmont property. At the time when they moved into their home they met their neighbors Tom and Joan Belmont. Sheila was a child, she isn't even sure Sheila was there yet. They were not aware of any business per say in terms of thinking there was a business next door. To their knowledge Tom Belmont worked full-time for Sears, many times on Saturday's. Even as Sue Soares said, many times this involved going to someone else's home. Not that sometimes people didn't drop off an air conditioner but certainly this was not a full-time occupation. This was work done necessarily around his other work. The scope and level of the activity was never anything that those of us who lived in the neighborhood thought to be an issue or again never felt like she lived next door to a business. They knew Tom Belmont repaired air conditioners and refrigeration but never had the sense that they were living next door to a business. Tom Belmont worked out of a workshop at the bottom of the barn and it was nothing in size compared to the work area now. She is a little confused about the business being started in the house in 1998. There were long periods of time when Sheila Kelley wasn't even there. The business is incorporated in Missouri where she spent most of her time. There was no worker in the home.

Sheila Kelley said it was just her when she was there.

Anne Sweeney-Nakas said there were long periods of time when she wasn't there and the property was for sale for about 6 months in 2006. When the barn was renovated, it was extensive and the barn was enlarged in size on both the north and south with additions. A stable was added on the north end and a lean-to type area on the south. They are aware of extensive renovation in the office part of the barn. The footprint of the barn has changed due to the business. The business except for the storage area is in the barn but the barn did undergo extensive renovations. In terms of what seems to be the crux here in terms of the activity, despite this being presented as a simple office in the top of the barn with one employee who comes and goes, she takes exception to this. There is no other site for this construction business. Anything to do with the business has to happen at this address because there is no other place for it to happen and indeed that is what occurs. The business started out with two full-time employees but when this issue came to light, one was dropped. Is the scope of this business the same in relation to the business Tom Belmont had? Between 8:00 a.m. and 9:30 a.m. Fed Ex deliveries, DHL delivery trucks, etc. now occur and to her recollection Tom Belmont's business never demanded those types of deliveries up and down the driveway from delivery trucks. There are other people who come to the site who go up to the office. She has seen at least on one or two occasions a gentleman who gets out of his car with his briefcase and goes around to the back of the barn. Anything that has to occur with the business has to occur at this site. There is no other place for it to occur. This is a construction business office et al. This past summer there was housing of employees who are friends with the family but are nonetheless employees of the business. There is a white SUV that arrives daily and a man gets out of it and goes behind the barn. She would have to presume that a friend would not arrive every day at 8:00 a.m. and leave at 4:00 p.m. This has been occurring for the past 4 – 6 weeks. She would think this was related to the business. This summer there have been trucks taking materials from the barn other than Sheila

Kelley's personal vehicles. She has pictures of this. This is a construction business and everything that needs to occur has to occur here. The activity level that is required for this job is far greater than the activities Tom Belmont carried out. It's this that they object to. Her greatest concern is just because it hasn't had to happen up until now, since there is no other place to conduct the business, if something has to happen in the future, it will happen here as there is no other place to go. If this is approved, they will have a construction business next door to them with the blessings of the town. This concerns her. Things that have been requested in the past by Judge Knapp to have the worker use the southern driveway which hasn't happened yet. This does not give her great confidence that anything that is going to be approved or things that might be agreed to are going to be carried out. She registers her objection on this basis on behalf of herself and her husband.

Karen Hughes said she and her husband Patrick own the house directly west of the Belmont property. They moved there in 1986 and like the Nakas's they never knew there was a business working out of the Belmont property. Everyone knew Tom Belmont fixed things. There was not a lot of traffic. There were no deliveries. There is a huge amount of traffic now. They are directly across the street from the north driveway so they see it constantly. There are employees there. In the summertime there are always extra people there. It's not just one person. There's a group of people that are there. She understands everyone needs to make a living but Tom Belmont's business was a small little air conditioning part-time business. Quite honestly the property has changed owners and this is a totally different business. It's a bigger business. There is at least one full-time employee. They are also concerned about what if the business gets bigger. Will the amount of employees grow? Will they have construction equipment across the street? Will there be more traffic? That is not why they moved here. The neighborhood is a quiet area. They are concerned like a lot of other people that it will get out of hand. It's uncomfortable now and it will be intolerable if it gets any worse.

Jacqueline McIntosh said she lives across the street north of the Hughes's. She has also noticed the increase in traffic. She moved here in 1997. She wasn't aware there was a business there at that time. The house has been expanded to twice the size it was before and now that they have all this, there's more traffic, especially in the summertime when it's so bad Anne Sweeney-Nakas can't open her south windows. She moved here because it was quiet and peaceful. She would be very unhappy if the business continues or gets bigger.

Chairman Beggs asked if anyone else wished to speak in opposition to this application at this time. No one came forward.

Sue Soares said she is Tom Belmont's daughter and it's boggling to her because they were all friends. When she was 7 or 8 they were forced to move to LaFayette. Her grandfather died in Florida of a heart attack. Vern Jeffery was known by a lot of people. He had a fruit stand out front. He had Native American's working there. There were tractors, plows, ponies. It was an old time farm. She would like to know how they would react if it was back in that time and the tractors were up and down the driveway during dry conditions. The difference between then and now, as far as traffic, she doesn't really see any difference. If there was construction, she would be up in arms. She lives around the corner going up Ortloff. If you are outside and stand in her front yard, you can hear people talk just because of the location. She can see this is breaking some good friendships. She knows she's on the bad side of this situation but she was thinking of this earlier because she has pictures of her grandfather in the front yard.

Joan Belmont said her grandfather ran a roofing and siding business there from 1948 on. Before that there was a stage and bed and breakfast out of there. She doesn't think there is a concern. The business that is running from the office is for work done in Florida and all the southern states. It's not here. He did 2 jobs here. The people that were here during the summer did not work for us. They did work on the house and live with them. They found them work with Ryan Smith Construction. When a job came up, they left. As far as she is concerned, she would have them back any day. A lot of things that people are concerned about or they have a complaint about are really because they don't know what is behind them.

Sheila Kelly said there is discussion about the business growing but as long as they have one employee, it won't grow. She orders a lot of stuff online. She gets horse stuff delivered. When the Board makes its decision, they need to see how much of the traffic is for business or just her going in and out for the horses or running to the store, etc. She is 32 and likes to go out. She is ramming the roads all the time. The traffic will not change whether the company is there or not. There will not be any equipment up here.

Joan Belmont said a lot of the workers that work for them are friends. A lot of them drive company trucks here to visit their families. They park the trucks at the Belmont property and when they leave, they drive them away. The construction equipment that is being stored there is material that was left over from two jobs Jason did in the state. They have stored items there when a job fell through then he took them out when a job came up. This won't be happening again. She will honestly say to Anne and Jim Nakas that it's not worth the friendship. 27 years of friendship. It isn't worth it.

Sheila Kelley said she is making a living. She has a child and this is what she does. She owns a lot of vehicles.

Joan Belmont said they can't do anything about the driveway until spring. There are ruts and it can't be used right now.

Tim Frateschi said he appreciates everything that was said. He doesn't think it's anything different than what's been said previously. The issue of traffic is certainly something the neighbors are concerned with. What's before this Board is an office which they are stating has one employee. He can't control whether Sheila Kelley's or Joan Belmont's friends go to the property during the course of the day. Whether the office is there or isn't there, those individuals may or may not be coming. They will stipulate to one employee of this office. Regarding the issue of construction material on the property and fearful that trucks will come and bring construction supplies on and off the property, every job that Springhill Construction does or has done is at least 150 miles from the city of Syracuse. The likeliness of construction material being on this site for a job is unlikely. If it's there, it shouldn't be there and the CEO should go out and stop it. They have said he can go there and see what construction material is appropriate for a house of that size. Regarding Tom Belmont operating a business, everyone knew he ran a business. It doesn't matter whether it was a part-time or full-time business. We have hard testimony from individuals and affidavits stating a business has been run from the site. We have found out there was a sales tax number. He has asked for these records before and was advised the records had been destroyed in 2005 when Tom Belmont passed away. The fourth thing he heard about was concern about what it might be in the future. We can't base an opinion on what might happen in the future. The opinion must be based on what is happening now. Conditions can be made that would satisfy concern about what might happen in the future.

Anne Sweeney-Nakas said she understands about the one employee. Her concern is the times that other people have gone to the office to conduct business. That does happen. People have arrived that do not go into the home but go into the business. They might be friends but it still is the fact that the business office is there and she has no way of knowing if they are friends or not if they have a briefcase and go up to the office that would lead to the reasonable assumption that it's business related. She doesn't know who's coming in the white SUV at 8:30 a.m. and staying until 4:00 p.m.

Sheila Kelley said they have people coming around to help with things. Brian was there before.

Anne Sweeney-Nakas said the 7 personal vehicles get driven by people who are at least sometimes employees of the business whether they are considered on or off the payroll becomes unclear. She knows the white SUV is Sheila's yet someone comes every day in it. She doesn't know if this person is being paid personally or by the business. It gets very murky. The level of people coming and going is greater than it was when Tom Belmont had his business. She believes it's an expansion of what was there. As far as the deliveries, some of them certainly may be personal. On the other hand, when they honk the horn and someone comes out of the office to sign or she sees people going up to the office, it's not all personal. The deliveries occur and business has increased.

Jacqueline McIntosh said she moved here in 1997 and was never aware that Tom Belmont had a business. It's noticeably different to that extent.

Jim Nakas thinks he drank more red wine and smoked more cigarettes on his back porch with Tom Belmont than anyone else he can think of. Tom Belmont liked to fix things. He cared for people and his neighbors. When he fixed something for you, half the time he didn't take any money for it. That was the type of business he ran. That was the level of his business. There is no comparison to what it there today.

Dave Anthony asked how the one employee becomes a factor in all this.

Tim Frateschi said he would assume primarily to the intensity of the business. If there is many employees, there is much more traffic. One employee generates less traffic. Their argument is if you have just one employee who answers the phone, files, etc., it's much less of an impact than someone who fixes air conditioners or refrigeration as the traffic resulting from this would be much higher. They have affidavits that Tom Belmont had employees.

Dave Anthony confirmed Tom Belmont had employees.

Sheila Kelley said yes.

Dave Anthony said they should be able to have a payroll expense on the tax returns. The IRS should have records.

Sheila Kelley said not if he paid cash. He did things by a handshake.

Tim Frateschi said they have a letter from an individual stating he was an employee during a period of time. He is not here to determine what Tom Belmont's business practices were. All they are saying is a business was run out of that barn. People have said a business was run out of that barn. Joan Belmont has said in her affidavit that Tom Belmont did receive money for his business.

Anne Sweeney-Nakas said we are really talking about two businesses. Some of the traffic is related to Springhill Construction and some to Springhill Quarter Horses. This is a property that actually has two businesses operating out of it. If you have a construction business, horses, deliveries and at times employees coming to take care of the horses when they are there, it's more employees coming up and down the driveway. When there are horses there it's typical for someone to come morning and night to take

care of the horses which is additional traffic up and down the driveway. To reiterate from the first time they appeared before the Zoning Board of Appeals and Town Board, they advised it was not their intent to put them out of business. They had a right under the Zoning Ordinance to have an office in their home. Sheila Kelley stated she did not want the office in her home. She wanted it in the barn. She chose to put the business in the barn. She chose not to check the Zoning Ordinance before she did this. She chose to continue it. Everything that has happened has been their choice.

Chairman Beggs asked John Langey if he had anything to add to this.

John Langey said no.

Member Kuhns said prior to the office being put in the barn, what was the space used for?

Sheila Kelley said nothing. The floor was rotted and they restored it and put the office up there. She confirmed there was nothing there before they renovated it. It was just used for storage.

Tim Frateschi said that is why he addressed the code stating the ordinance reads as long as it's still within the structure of the barn, the extension would be O.K. He heard some comments about the expansion of the barn but the office is in the original section of the barn.

Member Kuhns asked where the stuff is that was in this area.

Sheila Kelley said they have moved it around.

Member Kuhns asked where the things that were displaced when they created the office were put.

Sheila Kelley said they are still in the barn.

Tim Frateschi said the barn is 3 levels.

Joan Belmont said her husband built a shed on the south of the barn when they had a motor home. They put another addition to the north of the barn that was put on for a birthing room for the mares.

Member Keenan asked when the additions were put on .

Sheila Kelley said for the horses it was put on in 2000. The floor of the barn was fixed in 2003.

Joan Belmont thinks the addition to the south of the barn was put on in 1991 or 1992.

Tim Frateschi said these issues are not before the Board tonight. What is before the Board tonight is the office.

Chairman Beggs asked for any further questions or comments from the Board. There were none.

Chairman Beggs asked for any further questions or comments from the public.

Supervisor Scammell said that Tim Frateschi stated items regarding the ordinance that were the intent of the Town Board. As a Member of the Town Board he doesn't recall having a discussion with anyone regarding the intent of the Board. He has not spoken to anyone about the intent of the Board.

Tim Frateschi said he is only one member of the Board.

Supervisor Scammell said he hasn't a conversation with the other Members of the Town Board about the intent of the Board regarding this matter.

Chairman Beggs closed the public hearing.

Chairman Beggs advised he and John Langey have discussed this application and he has asked John Langey to put together a recap of the items for his use tonight. He is going through this list as the case has been going on since last spring and he wants to be

sure all the Board Members are aware of what has been going on since that time. The Chairman offered some proposed findings of fact for the Board's consideration.

- The application seeks an interpretation of Article V of the Ordinance to support the allowance of a new non-conforming use of a full-time commercial construction office by Ms. Sheila Kelley from the old non-conforming use of a part-time repair operation conducted by Mr. Thomas Belmont at the premises. The application seeks recognition of a legal non-conforming use consisting of a limited office space of 600 square feet located in the second story of the barn structure located on the premises as related to a commercial construction business known as Spring Hill Construction, Inc.
- The subject premises are located at 2386 Route 11A, LaFayette, New York and consist of 20.10 acres with multiple structures, including a single-family home and barn structure.
- The subject premises is accessed from Route 11A by a horseshoe shaped - two point access driveway, including access driveways to the north and south of the property.
- The subject premises include an existing parking area.
- Historically, the applicant's grandfather was a full-time resident of the premises.
- The applicant has produced an Affidavit of Ms. Joan Belmont sworn to November 13, 2007 in which Affidavit, Ms. Belmont alleges that a part-time appliance repair activity has been operated out of the barn on the subject premises prior to 1967. Ms. Belmont's Affidavit indicates that Mr. Thomas Belmont operated his part-time appliance repair operation from the subject barn since 1967.
- The above-referenced Affidavit of Ms. Joan Belmont states that Mr. Thomas Belmont continuously operated the aforesaid appliance repair activity at the premises until his death in 2005. It is further alleged that there was no cessation or suspension of the operations of the repair activity on the premises until the time of his death.
- Ms. Belmont's Affidavit further alleges that her granddaughter, Sheila Kelley, the applicant herein, has continuously operated the administrative office of Spring Hill Construction, Inc from the barn on the subject premises immediately prior to and since the death of Mr. Thomas Belmont.
- Ms. Belmont's Affidavit states that it is her understanding that repair activities have been operating out of the barn for more than fifty (50) years.
- The applicant has further submitted an Affidavit of Sheila Kelley dated November 13, 2007.

- Ms. Kelley alleges in her Affidavit that she is the owner and a resident of the subject premises.
- The premises are zoned as an Agricultural-Residential District (A-R). The allowed uses as identified in the Town of LaFayette Zoning Ordinance (as amended) do not include a construction office in A-R Districts. Allowed uses are limited to farms, farming, single-family dwellings and their accessory uses. Certain other uses are allowed in A-R Districts upon issuance of a Controlled Site Approval or Specific Use Permit.
- Ms. Kelley alleges in her Affidavit that she operates a full-time administrative office for a construction business, identified as Spring Hill Construction, Inc., a corporation organized and existing under the laws of the State of Missouri.
- Spring Hill Construction, Inc. was incorporated on or about June 2, 2005.
- Ms. Kelley alleges in her Affidavit that none of the construction operations of Spring Hill Construction occur in Upstate New York.
- Ms. Kelley alleges in her Affidavit that the operation of Spring Hill Construction from the subject barn is limited to the following specific uses:
  1. filing;
  2. storage of office supplies;
  3. ordering of supplies and materials; and
  4. administrative work of an office.
- Ms. Kelley has represented to the Board verbally and through her representatives that there is and shall be no storage of commercial or residential construction materials related to Spring Hill Construction at the premises.
- It is further stated by Ms. Kelley that Mr. Belmont was a full-time employee of Sears during the relevant periods herein.
- The applicant has further submitted signed correspondence from various individuals who claim to have been customers of Mr. Belmont with relation to a limited appliance repair business.
- The applicant was requested to, but provided no business records from the former claimed repair “business of Mr. Belmont”.
- The applicant has submitted signed correspondence from Jason Oleander stating that Mr. Oleander constructed improvements in the subject barn in the year 2004.
- Mr. Oleander’s correspondence states that the improvement to the barn was placed above the bottom portion of the barn where Mr. Belmont was operating his appliance repair activities.

- Testimony from the applicant and/or the applicant's representatives indicate that the construction office use is approximately 600 square feet, located on the second story of the barn.
- The previous use by Mr. Belmont was on the first floor of the barn.
- Ms. Sheila Kelley has represented that she is a principal and officer in Spring Hill Construction, Inc.
- The applicant has represented that the office use consists of two full-time employees with personal vehicles, who arrive for work on weekdays at 8:00 a.m. and leave between the hours of 5:00 to 8:00 p.m.

John Langey said there has been a lot of mention about one employee. This topic is a potential issue that can be rejected or modified. In the past we had heard there was 2 full-time employees and Ms. Kelley works there. Up until tonight he thought there was two full-time employees including Ms. Kelley.

Sheila Kelley said they let one employee go.

John Langey said he guesses it's how you look at it. If he works at his office with one employee, is there one employee or two? This is up to the Board to decide.

- The applicant has represented that the business is related to office use with no construction material deliveries.
- Neighbors have presented evidence that deliveries of business materials and work trucks occur at various day time hours.
- No evidence was presented to the Board to indicate that the previous uses of the premises included the delivery or storage of any commercial materials related to the business enterprises conducted on- or offsite.
- No evidence was presented to the Board to indicate that the previous uses of the premises was full-time or that there were any full-time employees.
- Minutes of the Town of LaFayette Town Board Meeting dated April 23, 2007 indicate that the owners have stated that employees of Spring Hill Construction, Inc. on occasion (approximately two (2) weeks out of the year) stay at the premises. Neighbors have registered written complaints and have testified that Spring Hill Construction, Inc. employees stay overnight at the premises.
- The applicant has represented that the Spring Hill Construction business office located in the barn receives business related paperwork, including contracts, blueprints and payroll via Federal Express, UPS and other such delivery services approximately twice per week.
- The applicant represents that deliveries occur between 9:00 a.m. and 12:00 p.m., Monday through Friday.

- Visits from outside parties to the business premises have been documented by neighbors.
- Ms. Kelley stated to the Zoning Board of Appeals on April 10, 2007, that certain construction materials from a prior job in North Carolina were stored at the Barn at the premises, but were not then being used for a business purpose. Later Ms. Kelley recanted that statement.
- Evidence was presented to the Board that use of the driveway for the office-business has resulted in multiple-vehicle traffic making deliveries to the Office and material deliveries.
- The applicant has acknowledged the presence of more than seven (7) vehicles associated with the property in addition to the one (1) offsite full-time employee.

Chairman Beggs said these are the things he asked John Langey to put together.

John Langey said the basis of these findings are facts for any decision. The Chairman wanted them to be balanced for the people who are applying and those who voiced their concern. We sort of heard everything tonight. We did hear from some of the neighbors and Joan Belmont who wasn't here until tonight. There may be some additional findings after tonight. The Board has two jobs. The counsel for Ms. Kelley has asked for an interpretation of the code and they have also mentioned the notion that the current use is of a lesser intensity. If the Board interprets it is a new use, the applicant would ask they agree it's a less intense use.

Member Kuhns said it looks like we really have 3 uses of the property. One use is the home owner with automobiles, a child and friends, etc. In addition we have a business use with clients and an employee. We also have the horses. He doesn't see any way to differentiate between each use. When Tom Belmont was a full-time employee of Sears and had a part-time business, the statements tonight are that the neighbors didn't really feel intruded upon and there was not an operation that was offensive to their living standards. Having the activity level where it's at obviously reached the point that the neighbors felt it was necessary to ruin a friendship to bring this in front of the Zoning Board of Appeals. He has to think they wouldn't have done this just on a whim. We don't really have clear evidence of the aptitude of the previous business. He would have a hard time overlooking what he has heard and stating this is not an expansion of a non-conforming use. He tries to be accommodating. He is a business man and tries to think from that perspective but this particular thing he cannot support.

Member Doolittle said he agrees with a lot of things from both sides. He thinks we have come down to one issue. It's not the purpose of this Board to regulate the use of the driveway. Even though the barn itself hasn't been expanded beyond the original barn or a new barn built to house the office, he thinks the business or the use of the barn has expanded. He thinks what we have here is that it was a part-time business in the past and became a full-time business which to him would be an expansion of use.

John Langey said Tim Frateschi has also asked for an interpretation if the code allows you to have one business that has been a non-conforming substituted with a different kind of business. You went from a part-time employee to a full-time construction company. Ultimately this Board interprets the language of the code.

Chairman Beggs advised that he looked at the code and he feels the intent was not necessarily to allow for new nonconforming uses to replace old non-conforming uses.

He believes the intent of the code was to eliminate and not encourage non-conforming uses over the years. He noted in # 1 under Section D of the Zoning Ordinance states “.....It is the intent of this section to permit these nonconformities to continue until they are removed or abandoned; but not to encourage their survival. It is further the intent of the town that nonconforming uses shall not be enlarged upon, expanded, extended nor that they be used as grounds for adding other structures or uses prohibited elsewhere in the same district...” This would say you can’t have one nonconforming use to get another non-conforming use. Counsel for the applicant interprets this differently. How does the Board read this? Counsel for the applicant noted we eliminated some language from what the Ordinance was before and the Board needs to interpret this.

Member Doolittle said let’s say there was a house in a residential area and way back a person decided he wanted to sell ice cream on the weekend. He did this and it became a nonconforming use when the code was established. If someone decided they were buying this residence and wanted to run a bakery on the weekend, it’s a change of the specific thing being done but not what is being done. What happens if the new owner decides it’s going well selling the baked goods on the weekend and he decides to start a grocery store? To him it wouldn’t matter if it was a lesser business. You are replacing a repair business with a construction business. What matters is that it went from a part-time business to a full-time business.

Chairman Beggs said first of all he would like to comment that Tom Belmont was a full-time employee of Sears. If you are doing the same type of work on the side it is called moonlighting. In Tom Belmont’s case when he wasn’t working full-time at Sears, it was a hobby. Joan Belmont stated her husband was a workaholic. It was a type of hobby shop. The Ordinance reads “...nonconformities to continue until they are removed or abandoned; but not to encourage their survival...” Tom Belmont had his repair business that he operated at other peoples houses or people brought their cars to his house. That was his office. As Jim Nakas pointed out, half the time he didn’t take any money. He interprets this as a hobby and that Tom Belmont just liked to be busy. In response to the question can you change the type of nonconformity, his interpretation is no. The repair business could continue as long as it existed. When that business ceased to exist, that was the end of it. That was the end of the nonconforming use. For another nonconforming use to take its place, he is sorry. The Board has asked several times for business records to indicate the activities of Tom Belmont. There was discussion about the intensity of the old business vs. the new business. This Board has no way of knowing the intensity of the old business. As he listens to people’s comments and reads letters that were submitted and knowing the refrigeration business as he knows it, he would call a service man up to come to his house to repair something. Someone might have a smaller air conditioner they could take to the property but he would think the bulk of the business was off site. The spirit of the law is to allow nonconforming uses to exist until they are abandoned or end. The intention was not to put new nonconforming uses in place of old ones. He believes it is the job of the Zoning Board of Appeals to interpret the code.

John Langey said as long as it’s a reasonable and rational interpretation.

Chairman Beggs asked if any Member of the Board had any other comments or questions.

Member Kuhns said originally he struggled a little bit with the change of wording in the code. With the wording “It is the intent of this section to permit these nonconformities to continue until they are removed or abandoned; but not to encourage their survival.” and with what we have heard from Supervisor Scammell about the

process, he would have to agree that even though those other words were removed, this still considers the same base.

Chairman Beggs would agree. The spirit of the law is to allow that the nonconforming uses go on at the time the law was adopted and to live out their normal life and not to force anyone out of business. He interprets the law that those businesses would be allowed to live out their normal life.

Member Kuhns would agree.

John Langey asked the Board if they are ready to vote on this case tonight.

The Board believed they were.

John Langey said he has brought two resolutions with him tonight as he usually does. One resolution denies the application and the other approves it. Many of the findings Chairman Beggs read tonight are in both resolutions. Many of the findings were very similar.

He reviewed the findings with the Board.

John Langey said at one point on 4/10/07 Sheila Kelley said some construction material came back from a job in North Carolina and was stored there but wasn't being used for a business job. At a separate meeting that was not the case, the material wasn't from a job. Then Joan Belmont indicated that there were job construction materials dropped off at the property when jobs fell through or didn't happen and was removed when new jobs came about.

Sheila Kelley said that was tools.

Member Doolittle asked if the motion would read denial based on the following evidence as we are not making the decision on just one item but on several items.

John Langey said the findings support the position of whether you approve or deny the application.

Member Kuhns believes you also can't put other structures on the property for the business.

John Langey hasn't heard any testimony that the expanding area is for any of this business.

Chairman Beggs said the way he interprets the Ordinance as he reads it is you can expand within the structure and not beyond. By the same token of expansion, we are talking employees. You can't put two employees in the area of the footprint you expand on. You can't change the number of employees that are occupying that space. His interpretation is that you can expand within the area but not increase the number of employees. He could expand the area for more tools that he is using but he could not expand the business in terms of material output or employees, etc.

John Langey thinks the point he is making is regarding counsel asking if it was a less intensive use could the Board consider it. It is within the Zoning Board of Appeals discretion to decide this as they have asked the Board to.

Chairman Beggs said previously this work was a hobby and now it's gone to a full-time primary construction office and that is an expansion and more intensive use than the hobby. He has heard Joan Belmont say Tom Belmont quite Sears several times. He probably spent more time on his hobby and with people he liked and then maybe he went back to Sears.

Joan Belmont said he retired at 65 and died at 76 and during the summers, Sears called him back.

Chairman Beggs confirmed after he retired, he hired back to Sears for a short time during the summer.

John Langey read a draft of the resolution for the Board to consider and modify, change, etc. He confirmed the decision is totally up to the Zoning Board of Appeals. The Zoning Board of Appeals can change any of the language they wish to.

Member Doolittle said one of the points John Langey made earlier is that the Zoning Board itself does not allow a change of use.

John Langey said to a different nonconforming use.

Member Doolittle asked if there hasn't been cases where one business has changed to another.

John Langey said not in the Town of LaFayette. You are guided by your local ordinance.

**Member Doolittle said based on what John Langey read, he would make the following motion changing the following two items. 1) He would eliminate the part regarding changing the use; and 2) He would change the word "hobby" to "part-time".**

John Langey said his motion would be to deny the application and take out the word hobby and his interpretation is that the ordinance as written does allow for people to change from one nonconforming use to another.

Member Doolittle said as long as it's not an expansion.

John Langey said the ordinance reads it can be expanded within the footprint of the building.

Member Doolittle thinks there is a statement which states the code does not allow change of use which he take out.

Member Kuhns said if we leave that out, have we satisfied counsels request for determination?

John Langey confirmed Member Doolittle thinks you can have different nonconforming uses to occur. If you have a hotdog stand today and the day the hotdog stand ends the car repair shop can go forward because you can switch in a nonconforming use.

Chairman Beggs said he doesn't agree with this.

Member Kuhns confirmed Member Doolittle is proposing we do not state that as one of the reasons for denial.

John Langey said the counsel has asked this question.

Member Kuhns asked if it needs to go in the resolution.

John Langey said counsel has asked for the Board to interpret this. Ralph Lamson has issued a decision stating you can't do what you are doing because it's a different use. They have appealed this and they have come to the Board for two things. The way they read this code, the words were taken out of the old code that said you can't change a nonconforming use and they felt since the words were taken out the intent was that you can. The applicant has asked for this interpretation.

**Member Doolittle said he would amend his motion to include this wording.**

Chairman Beggs the thing that leads him in this direction is the statement "...it's the intent of this section to permit these nonconformities to continue until they are removed or abandoned; but not to encourage their survival. It is further the intent of the town that nonconforming uses shall not be enlarged upon, expanded, extended nor that they be used as grounds for adding other structures or uses prohibited elsewhere in the same district..." An operation was taking place at this location when the ordinance was adopted. They are not going to force them out of business. He thinks that is the spirit of the law. However, for whatever reason the business is caused to go away, that is the end.

The spirit of the law is that these nonconforming uses will not be continued by changing the use. That is how he reads the law and interprets it. To him it's very plain.

Member Kuhns said when Chairman Beggs talks about the business being abandoned or ceasing to continue, at the time of Tom Belmont's passing is when that would have occurred. This business would have been occurring at that time but it's a different business.

John Langey said abandonment would not apply here as it's a different business.

Member Kuhns believes the wording must be in the motion for the determination.

Member Doolittle said the only change he would make is taking the word hobby out.

Member Keenan thinks the intent of the law is plain. It's hard for her to believe that a gas station could become a florist shop. As she read the law the intent is that the business would end. She isn't sure when Tom Belmont had the business that it was a bonified business as there are no records. It's hard for her to believe the intent of the law is that one business can follow another business can follow a third business in a residential area.

**It was noted the word "hobby" will be replaced with "part-time" business. Dan Kuhns seconded the motion for the following Resolution:**

**RESOLUTION OF THE ZONING BOARD OF APPEALS  
OF THE TOWN OF LAFAYETTE**

**No. 600 - SHEILA KELLEY -- Appeal for an interpretation, approval and recognition of a Legal Non-Conforming Use of an office space relating to a construction business in an existing structure in an Agricultural-Residential (A-R) District - DENIED**

**February 12, 2008**

**J. Doolittle moved and D. Kuhns seconded the following Resolution:**

**WHEREAS, Sheila Kelley (the "Applicant"), as the owner of property located at 2386 Route 11A, LaFayette, New York in the Town of LaFayette (the "Property"), appealed to the LaFayette Zoning Board of Appeals (the "Board") on or about October 31, 2007 for an interpretation, approval and recognition of a legal non-conforming use of approximately 600 square feet of office space (for a construction business) on the 2 floor of an existing structure and at the property in an Agricultural-Residential (A-R) District pursuant to Article VI, Section (B) and Article V §(D) of the 1970 Town**

**of LaFayette Zoning Ordinance, as amended (the "Ordinance"); and**

**WHEREAS, the Town of LaFayette Zoning Enforcement Officer has issued his determination dated October 3, 2007 that the operation of the construction business office space is not a legal non-conforming use under the circumstances and the applicant has applied or otherwise challenged this determination by way of interpretation; and**

**WHEREAS, the Board has the power to make such interpretations and to recognize such legal non-conforming uses upon findings of fact supporting such a recognition; and**

**WHEREAS, a public hearing on the application was held by the Board at its regular meeting on February 12, 2008 and after due notice by publication in the Syracuse Herald Journal and due notice to the Petitioner, neighboring landowners and Board members, in accordance with the law and the Ordinance; and**

**WHEREAS, the applicant and members of the public have provided testimony in various forms and have submitted evidence to the Board; and**

**WHEREAS, the applicants' request and approval was considered fully by the Zoning Board of Appeals and upon such consideration the Board finds, among other things, the following facts:**

- **The application seeks an interpretation of Article V of the Ordinance to support the allowance of a new non-conforming use of a full-time commercial construction office by Ms. Sheila Kelley from the old non-conforming use of a part-time repair operation conducted by Mr. Thomas Belmont at the premises.**

- **The application seeks recognition of a legal non-conforming use consisting of a limited office space of 600 square feet located in the second story of the barn structure located on the premises as related to a commercial construction business known as Spring Hill Construction, Inc.**

- **The subject premises are located at 2386 Route 11A, LaFayette, New York and consist of 20.10 acres with multiple structures, including a single-family home and barn structure.**

- **The subject premises is accessed from Route 11A by a horseshoe shaped - two point access driveway, including access driveways to the north and south of the property.**

- **The subject premises include an existing parking area.**

- **Historically, the applicant's grandfather was a full-time resident of the premises.**

- **The applicant has produced an Affidavit of Ms. Joan Belmont sworn to November 13, 2007 in which Affidavit, Ms. Belmont alleges that a part-time appliance repair activity has been operated out of the barn on the subject premises prior to 1967. Ms. Belmont's Affidavit indicates that Mr. Thomas Belmont operated his part-time appliance repair operation from the subject barn since 1967.**

- **The above-referenced Affidavit of Ms. Joan Belmont states that Mr. Thomas Belmont continuously operated the aforesaid appliance repair activity at the premises until his death in 2005. It is further alleged that there was no cessation or suspension of the operations of the repair activity on the premises until the time of his death.**

- **Ms. Belmont's Affidavit further alleges that her granddaughter, Sheila Kelley, the applicant herein, has continuously operated the administrative office of Spring Hill Construction, Inc from the barn on the subject premises immediately prior to and since the death of Mr. Thomas Belmont.**

- **Ms. Belmont's Affidavit states that it is her understanding that repair activities have been operating out of the barn for more than fifty (50) years.**

- **The applicant has further submitted an Affidavit of Sheila Kelley dated November 13, 2007.**

- **Ms. Kelley alleges in her Affidavit that she is the owner and a resident of the subject premises.**

- **The premises are zoned as an Agricultural-Residential District (A-R). The allowed uses as identified in the Town of LaFayette Zoning Ordinance (as amended) do not include a construction office in A-R Districts. Allowed uses are limited to farms, farming, single-family dwellings and their accessory uses. Certain other uses are allowed in A-R Districts upon issuance of a Controlled Site Approval or Specific Use Permit.**

- Ms. Kelley alleges in her Affidavit that she operates a full-time administrative office for a construction business, identified as Spring Hill Construction, Inc., a corporation organized and existing under the laws of the State of Missouri.

- Spring Hill Construction, Inc. was incorporated on or about June 2, 2005.

- Ms. Kelley alleges in her Affidavit that none of the construction operations of Spring Hill Construction occur in Upstate New York.

- Ms. Kelley alleges in her Affidavit that the operation of Spring Hill Construction from the subject barn is limited to the following specific uses:

- filing;
    - storage of office supplies;
    - ordering of supplies and materials; and
    - administrative work of an office.

- Ms. Kelley has represented to the Board verbally and through her representatives that there is and shall be no storage of commercial or residential construction materials related to Spring Hill Construction at the premises.

- It is further stated by Ms. Kelley that Mr. Belmont was a full-time employee of Sears during the relevant periods herein. This was further established at the public hearing by way of testimony of Mrs. Belmont.

- The applicant has further submitted signed correspondence from various individuals who claim to have been customers of Mr. Belmont with relation to a limited appliance repair business. This was also stated at the public hearing by members of the Belmont family.

- The applicant was requested to, but provided no business records from the former claimed repair “business of Mr. Belmont”. Those records were destroyed according to Mrs. Belmont, soon after her husband’s death.

- The applicant has submitted signed correspondence from Jason Oleander stating that Mr. Oleander constructed improvements in the subject barn in the year 2004.

- Mr. Oleander’s correspondence states that the improvement to the barn was placed above the bottom portion of the barn where Mr. Belmont was operating his appliance repair activities.

- Testimony from the applicant and/or the applicant’s representatives indicate that the construction office use is approximately 600 square feet, located on the second story of the barn.

- The previous use by Mr. Belmont was on the first floor of the barn according to the applicant.

- Ms. Sheila Kelley has represented that she is a principal and officer in Spring Hill Construction, Inc.

- The applicant has represented that the office use consists of Ms. Kelley, and at one time, two full-time employees with personal vehicles, who arrive for work on weekdays at 8:00 a.m. and leave between the hours of 5:00 to 8:00 p.m. There is now one employee, plus Ms. Kelley on a full-time basis.

- The applicant has represented that the business is related to office use with no construction material deliveries.

- Neighbors have presented evidence that deliveries of business materials and work trucks occur at various day time hours.

- No evidence was presented to the Board to indicate that the previous uses of the premises included the delivery or storage of any commercial materials related to the business enterprises conducted on- or offsite.

- No evidence was presented to the Board to indicate that the previous uses of the premises was full-time or that there were any full-time employees.

- Minutes of the Town of LaFayette Town Board Meeting dated April 23, 2007 indicate that the owners have stated that employees of Spring Hill Construction, Inc. on occasion (approximately two (2) weeks out of the year) stay at the premises. Neighbors have registered written complaints and have testified that Spring Hill Construction, Inc. employees stay overnight at the premises.

- No evidence was presented that employees of Mr. Belmont's use stayed at the premises for extended periods of time.

- The applicant has represented that the Spring Hill Construction business office located in the barn receives business related paperwork, including contracts, blueprints and payroll via Federal Express, UPS and other such delivery services approximately twice per week.

- The applicant represents that deliveries occur between 9:00 a.m. and 12:00 p.m., Monday through Friday.

- Visits from outside parties to the business premises have been documented by neighbors.

- Ms. Kelley stated to the Zoning Board of Appeals on April 10, 2007, that certain construction materials from a prior job in North Carolina were stored at the Barn at the premises, but were not then being used for a business purpose. Later Ms. Kelley recanted that statement. Mrs. Belmont, on February 12, 2008, indicated that job construction materials were delivered to the property when jobs were cancelled and then when new jobs were found, those materials were removed from the premises. Ms. Kelley has stated that construction tools are stored on-site.

- Evidence was presented to the Board that use of the driveway for the office-business has resulted in multiple-vehicle traffic making deliveries to the Office and material deliveries.

- The applicant has acknowledged the presence of more than seven (7) vehicles associated with the property in addition to the one (1) offsite full-time employee.

- Gregory Scammell, Supervisor of the Town of LaFayette, testified to his understanding of the intent of Section D of Article V, at the time of its amendment; and

WHEREAS, it is the intent of the Town of LaFayette Zoning Ordinance to permit nonconforming uses to continue until they are removed or abandoned, "but not to encourage their survival"; and

WHEREAS, legal non-conforming uses in structures in the Town of LaFayette may continue to exist and may be maintained and repaired; and

WHEREAS, in accordance with Subsection 1 Section D of Article V of the Town of LaFayette Zoning Ordinance as amended, it is the intent of the Town that non-conforming uses "shall not be enlarged upon, expanded, extended nor that they be used as grounds for adding other uses prohibited elsewhere in the same district"; and

WHEREAS, Subsection 3 of Section D therein provides that "[n]on-conforming uses are hereby declared to be incompatible with permitted uses in the districts involved"; and

**WHEREAS, in accordance with Subsection 3 of Section D of said Ordinance, it stated that a non-conforming use may be expanded into any portion of a building that existed as of the date of provision of this Zoning Ordinance, which would otherwise prohibit such use, however it is further provided in Subsection 3 of Section D that in all other cases, the existence of a legal non-conforming use shall not serve as grounds for adding other uses otherwise prohibited in the same zoning district; and**

**WHEREAS, the intent of Subsection 3 is reasonably interpreted to allow only the expansion of the previously existing legal non-conforming use in the form of its physical size and occupation in an existing structure or buildings (under limited circumstances), but does not provide for other, different non-conforming uses (regardless of type) to be legal “expansions”; and**

**WHEREAS, Subsection 4 of Section D of Article V of the Ordinance addresses the extension and enlargement of pre-existing legal non-conformities in the Town and such provision is specifically limited to “structure[s] or building[s]” and does not allow for extensions or enlargements of different non-conforming uses.**

**NOW, THEREFORE, BE IT RESOLVED, that the Town of LaFayette Zoning Board of Appeals hereby disapproves and declines to recognize a legal non-conforming use of a 600 square foot commercial office space located on the second floor of the existing barn structure at the premises of the applicant located at 2386 Route 11A, LaFayette, New York, for Spring Hill Construction, Inc. as a legal non-conforming use in place of the previously occurring part-time appliance repair activities undertaken by Mr. Thomas Belmont for the following reasons:**

- **It is the Board’s reasonable interpretation that Article 5, Section D of the Town of LaFayette Zoning Ordinance does not provide for the transfer or swapping of different non-conforming uses as Article 5 states clearly that the existence of a legal non-conforming use not be grounds for adding new non-conforming uses.**

- **The Board’s reasonable interpretation is that the language of Section D prohibits property owners from changing from or adding to one non-conforming use to another new non-conforming use and this interpretation is supported by the wording of Article 5 and its stated intent. It is specifically noted that the intent of the Non-Conforming Lot, Structure and Use section states clearly that the survival of nonconforming uses are not to be encouraged.**

- **Furthermore, the Board interprets the language of Section D (wherein it states that “it is further the intent of the Town that non-conforming uses shall not be enlarged upon, expanded, extended nor that they be used as grounds for adding other structures or *uses* prohibited elsewhere in the same district”) is a clear indication that there should be no changes in non-conforming uses.**

- **Here there is a request to allow for a change from one non-conforming use to another separate and new non-conforming use. The Board’s interpretation prohibits allowing such an approval.**

- **The Board has fully considered the arguments of the Applicant that the present application reflects a less intense use than the previous legal non-conforming use of the premises rather than a change from one non-conforming use to another nonconforming use.**

- **The Board rejects that contention, and, given the above interpretation of the Ordinance, believes that such contention is irrelevant based upon the factual information provided to the Board.**

- A previous non-conforming use was demonstrated to be conducted on a part-time weekend basis in the form of Mr. Belmont's weekend repair activities. The new nonconforming use has been admitted to be a full-time multiple employee commercial construction business. Additionally, the functions conducted on the premises are distinctly different and the testimony and evidence received has shown that it has resulted in an increase in traffic and activity at the premises, even in the short time it has occurred.

- The evidence and testimony presented to the Board has shown that the previously existing legal non-conforming use conducted by Mr. Belmont was limited to a part-time repair operation. Additionally, while Mr. Belmont apparently utilized some part-time help, the extent of the "business" was more likely associated with weekend activity at the premises, rather than a full-time office-business as requested in the present application.

- As noted above, since it is our interpretation that the Code itself does not allow for the replacement of different non-conforming uses, the issue of the intensity of the new use may be considered irrelevant.

- However, even if the Board had determined that different and new non-conforming uses could be switched to those of a lesser intensity, it is not so found in this matter. Testimony and evidence presented to the Board by both the Applicant and other interested persons indicated that Mr. Belmont held a full-time job with Sears and on the weekends undertook repairs of various appliances. While the Board requested documentation of the true business nature of the repair business, none was forthcoming, leading the Board to believe that the "business" was more inline with a part-time low intensity activity by Mr. Belmont. Conversely, Ms. Kelley has admitted that Spring Hill Construction, Inc. is a full-time business with multiple fulltime employees. In fact, neighbors have testified that prior to Ms. Kelley's construction business, they were unaware of Mr. Belmont's activities.

- While the Board is sympathetic to the Applicant's plight, the Applicant has acknowledged that she had at one-time moved her construction office outside of the main home into the barn. The result has been an increase in activity at the premises and disruption of the previous quiet nature of the immediate neighborhood.

- The Board further believes that its interpretation of the Zoning Ordinance prohibiting a change in non-conforming uses is supported by multiple subsections of Section D, most particularly the statements that non-conforming uses are deemed to be incompatible with permitted uses in the district involved; that non-conforming uses of structures and land shall not be extended or enlarged upon nor shall the existence of a legal non-conforming use be used as a grounds for adding uses otherwise prohibited in the same zoning district, and that the provision allowing for expansions of non-conformities is limited specifically to structures and buildings but not to uses (Subsection 4).

- For all of the above reasons and upon the findings adopted herein, the Applicant's request is denied; and

**BE IT FURTHER RESOLVED**, that the applicant shall comply in all other respects with the Ordinance; and

**BE IT FURTHER RESOLVED**, that no portion of this resolution validates or approves of any additions or other improvements to the property, either in the future or in the past; and

**BE IT FURTHER RESOLVED, that the Zoning Officer is hereby authorized to take such other action as may be required to effectuate and enforce this Resolution; and**

**BE IT FURTHER RESOLVED, that this Resolution shall be effective as of the date of its filing with the Town Clerk.**

**Upon a canvass of the Board, the votes of its members upon the Resolution were as follows:**

<b>Mr. Doolittle, Member</b>	<b>Voting</b>	<b>Aye</b>
<b>Mr. Kuhns, Member</b>	<b>Voting</b>	<b>Aye</b>
<b>Ms. Keenan, Member</b>	<b>Voting</b>	<b>Aye</b>
<b>Mr. Butkus, Alt. Member</b>	<b>Voting</b>	<b>Absent</b>
<b>Mr. Beggs, Chairman</b>	<b>Voting</b>	<b>Aye</b>

**The Chairman, Mr. Beggs, then declared the Resolution to be duly adopted.**

Tim Frateschi thanked the Board for the time it took on this matter.

Bruce Donohue was present to discuss various uses in the Hamlet District.

**Member's Kuhns moved and Doolittle seconded the motion to adjourn. Motion passed unanimously.**

Meeting adjourned at 10:28 p.m.

Respectfully submitted,

Mary Jo Kelly  
Secretary