



**WHEREAS**, Ms. Stephanie Man has applied for a use variance to operate a business from her residential property at 129 State Street; and

**WHEREAS**, the business requested is not a permitted or accessory use in a residential zone; and

**WHEREAS**, the four standards for granting a use variance, *No reasonable return, Affected by unique circumstances, hardship is not self-created, and will not alter the essential character of the neighborhood*; have not been proven; and

**NOW, THEREFORE, BE IT RESOLVED**, that this application be **NOT GRANTED** to allow Ms. Stephanie Man to operate a business from her property at 129 State Street.

**BE IT FURTHER RESOLVED**, that the Code Enforcement Officer will notify Ms. Man to stop doing business at 129 State Street and enforce any necessary legal action and fines needed to fulfill this decision.

The above resolution was put to roll call vote and thereupon duly adopted.

Chairman Mordue announced that the second hearing of the evening is for John Barry, Co-Owner of Four Clovers Inc. and that he has been previously before the ZBA. He has a proposal before the Planning Board for the 13.75 acres of vacant land south of State Street that is currently owned by Thomas Abbott. Mr. Barry has a contingent offer into Mr. Abbott to purchase the acreage. Mr. Mordue explained to the listeners that at this time, Mr. Barry would like to put up a 72-unit apartment complex off of State Street. It is the lot behind the houses on State Street that use to be a cornfield. Apparently, Mr. Barry incurred an obstacle of a wetlands issue. There is less land to be used than previously expected.

Mr. Barry - In going through the process, the wetland was re-staked and brought further into the land that their original proposal was going.

The board at this time is reviewing the new sketch plans showing the expansion of the wetlands.

Chairman Mordue stated that Mr. Barry is seeking an area variance that does not meet village code Section 100-54 G. (1)(a) of the Village of Manchester Zoning Ordinance for Multiple-family developments: *Setback requirements. Setback for front and rear is seventy-five (75) feet.* The application shows fifty (50) for a front setback.

Mr. Joe Pullen, Engineer for Four Clovers Inc pointed out that an additional variance is needed for one building that cannot meet the 75' setback from the right of way of the private road. (Note: Section 100-54 G. (4) states *Every building shall have a minimum setback of twenty-five (25) feet from all interior roads, driveways and parking areas.*) *This variance request may not apply.* The two buildings in question, one is 54' and one is 50'. All other buildings are 75' or further.

ZBA Member Patrick Beaton – Stated that Mr. Barry had met the setback requirement prior to the wetlands being made larger.

Chairman Mordue addressed the listeners that the discussion this evening will be on the setback variance.

Richard Cirulli – He feels a different avenue of approach is needed in regard to this property. First he feels that an environmental impact study should be done in comparison to the wetlands. Second, he feels that there are two major problems within the village that ZBA members should be aware whether these would be an impact, and Mr. Cirulli feels that definitely one would. Mr. Cirulli mentioned the sewage treatment plant.

Chairman Mordue – Stated that this meeting is not a Village Board meeting, or a Planning Board meeting, that they are only here to discuss a variance for setbacks on this proposed site. The ZBA and this variance request for setbacks have nothing to do with sewer systems. Mr. Mordue advised Mr. Cirulli to go to the Village Board meetings and the Planning Board meetings and talk with them.

A discussion followed between Mr. Cirulli and Mr. Mordue.

Chairman Mordue reiterated that the Zoning Board of Appeals discusses variances.

Mr. Cirulli – Asked if this sets precedence for all setbacks.

Chairman Mordue – No. Each one is addressed individually.

Doreen Angeline – Inquired if this evening had anything to do with the building of these units.

Chairman Mordue – No. The Planning Board will be reviewing these plans. This is just at a proposal stage and they needed a variance to proceed. If Four Clovers cannot get the variance then it stops here.

Doreen Angeline – Inquired as to when it will be going to the Planning Board. It was her understanding that this evening was when this proposal was going to be accepted or rejected.

Chairman Mordue – No.

The Deputy Clerk explained that the public would be notified as to when the Planning Board has a public hearing on this proposal, but that everyone is welcome to attend any meetings in the village. At this time she stated the boards and their meeting times.

Deborah Frederick – Stated that she doesn't understand, but that she feels that the "Neighbor Law" (a popular book) has anything to do with asking for this variance. She stated that these laws are in effect to protect the community. She feels that the 75' was put there for a purpose and a reason. That the ordinances and regulations are present for a reason. She feels that 75' is should be observed because at the time of making the ordinance, the 75' must have been a compromise at that time. She requests that the ZBA take the suggestion of the law as it was written at the time.

Judy Robinson – In response to Ms. Frederick. Ms. Robinson interprets also that the laws are in place to protect, but feels they are also made to be flexible. She feels that it can't be one size fits all. She states that the board is here to evaluate each proposal as it comes up as to whether or not that code should be enforced or if not. She doesn't feel that the board is using the law to their own use, but to evaluate these things as they come up. They are appointed to make fair, sane, logical decisions based on individual projects.

Richard Cirulli – He feels that many variances are denied within the village.

John Barry - He addressed some issues. In his experience 75' is a rather large setback for this area. He sees mostly 50' setbacks. His thoughts are whether it is 75' or 50' or 150', this development will be a quality development. If a bad plan were presented, no number of feet would help it look better. He is asking for the opportunity to get this variance cleared, to go to the Planning Board with a quality development.

Richard Cirulli – Feels that if a quality development can be done, and it doesn't make a difference, then a variance isn't needed.

Chairman Mordue – Explains to the people present that the reason Mr. Barry is here this evening is because the state stepped in and said the wetlands are bigger than they thought. That is how the hardship was created. Mr. Barry did not create his own hardship.

Richard Cirulli – Questioned if New York State was involved.

Chairman Mordue – These are Federal Wetlands, excuse me. The Federal Wetland line was moved further into the land. So that is where the hardship comes in. Mr. Mordue explained a conversation with the Mayor, and making sure to get a written recommendation from the Planning Board.

The letter from the Planning Board states Mr. Barry's *hardship was caused by the federal wetlands delineation line being moved closer into his property. We are giving a positive recommendation to allow this variance contingent upon public response. Additional buffering may be required which we will address before site plan approval is given.*

Chairman Mordue stressed that the Planning Board is directing this project and not this board.

Richard Cirulli – Asked if the Planning Board approved this proposal already.

Chairman Mordue – No, nothing has been approved.

Richard Cirulli – Inquired as to what did the Planning Board do at their meeting.

Chairman Mordue - Explained that Mr. Barry has a proposal, and he is trying to *work out the kinks*, before he can even bring it to the Planning Board. The Zoning Board is trying to work out some of those kinks. Whatever happens here tonight is a step in the process, to get to an end result that is either to build this complex or not building the complex. The Zoning Board is not part of the Planning Board, and our board basically is involved in variances. Sometimes recommendations come from the other boards whether they support or not support different proposals. The Planning Board recommends that we go ahead.

Mr. Cirulli – That is their recommendation, not the Zoning Board's.

Chairman Mordue – That is their recommendation to the Zoning Board.

ZBA Member Muscolino – Asks if anyone else needs clarification.

Charlie Goodberlet – Asks in regard to the variance, before that's granted, has anything been looked at in regards to drainage issues by moving that line 25 ft closer, because it is a wetlands on the back side. There is going to be excessive water, what's going to happen as far as the houses along State Street when that comes in and drainage is on the road. Is that something that is a concern before that is granted?

Chairman Mordue asks Deputy Code Enforcement Officer if he can answer that.

Don Eastman, DCEO – No, it hasn't been taken into consideration as yet.

Chairman Mordue – That is something that gets addressed by the Planning Board.

Judy Robinson – She thinks preliminarily the "cart is still being put before the horse" because those types of things will be addressed at the Planning Board meeting. Her comment on the wetland, she stated that she works for the Army Corp of Engineers. She has delineated that wetland for Thomas Abbott, and is familiar with it. It slopes down and is high and dry, and is pretty well defined. Everything is going to flow down towards the stream that runs through the property. It is not going to run towards State Street because it will have to run uphill.

Charlie Goodberlet – But it does drain off that wetlands across State Street and out in back.

Judy Robinson – States that a culvert drains it out. Those are issues that will be addressed down the road when it gets to the Planning Board. Ms. Robinson then asked Mr. Barry about his first delineation and inquired where the line came from.

John Barry – USDA

Judy Robinson – That was just a map line.

John Barry – Right.

Judy Robinson – That is a Federal Wetland, not a State Wetland. So you (Mr. Barry) have not had that jurisdictional boundary confirmed by the Army Corp of Engineers, have you?

John Barry – Stated that it was just delineated by Fishers Associates.

Judy Robinson – In process, Fishers Associates are putting together a delineation report to send to the Army Corp of Engineers, so that you (Mr. Barry) can get jurisdictional determination in hand that state these are the survey boundaries. This has not been done yet. Ms. Robinson stated she was not here representing the Corp.

Deborah Frederick – Since a wetland is present, she asks if it is possible to get a guarantee from the builders who would be responsible if there were a problem.

Chairman Mordue – This is a Planning Board issue.

Member Muscolino – The ZBA does not address this type of issue. They (ZBA) don't make any determination on whether this proposal is approved or not. They (ZBA) only take what doesn't meet village code and make a determination if it can go back to the Planning Board for the overall proposal. They (ZBA) have no authority to approve a site plan.

Judy Robinson – Mr. Barry's proposal could end up being revised multiple times before getting to any final stage. Presented is just a sketch of what they (Mr. Barry) would like to do. It is not final.

Richard Cirulli – Asked Ms. Robinson if she was at the Planning Board meeting last night.

Judy Robinson – Yes.

Richard Cirulli – Asked why she would let this go to the Planning Board, and give a recommendation to approve it, when there are so many other variances to be presented. There are a lot of issues, traffic etc.

A discussion and explanations followed about the responsibilities of the Zoning Board of Appeals in comparison to the responsibilities of the Planning Board.

Frank Gorgonzola – Feels that the complex will be in his living room. Mr. Gorgonzola would like to stay with the 75’ setback. He would like to have the space and distance between his property and that what is proposed. He doesn’t want a lot of neighbors disturbing the peace of his back yard.

Chairman Mordue resumed order. Stated to Mr. Gorgonzola to attend Planning Board meetings.

Frank Gorgonzola – He felt 75’ was not enough, and now proposed is 50’. He feels problems will arise from the impact of having people live too close. He requests that the board stay with the 75’.

Richard Cirulli – Stated that the board should take into consideration the amount of people present that spoke against the setbacks.

Chairman Mordue – Stated that they would.

Jason D. – Inquired where the right of way starts in regard to the setback.

Chairman Mordue directed Jason D. to approach the table and look at the presented map. The board showed and explained location. Others also approached the table to look at the map at this time. A discussion followed showing the various homes and their locations.

Member Muscolino – The variances that are being looked at tonight regarding the 54’ and 50’ on the interior of the proposal is in compliance according to code, the 75’ required setback at the front portion towards State Street is the one to be looking at being only 50’. The 50’ is not their self-impose hardship. It is a hardship imposed by the Federal government. That hasn’t even been determined to be correct. It is still yet to be determined. Once the correct and final line is given, the Planning Board will determining and taking into consideration where the plans would go. This type of development would help all the village move forward. Mr. Muscolino quoted the village comprehensive plan ...*establish more of a community, by utilizing lands behind State Street as residential...*

Chairman Mordue – Stated the Village of Manchester wants to grow. We have limited land with which to do so. We try and do the things that will help the village. Chairman Mordue went on to explain what he feels is happening within the Village. That ways must be found to improve the village. This is a proposal only. It is possible that this is something that could improve the Village of Manchester.

Judy Robinson – Inquired to Mr. Barry that if this variance wasn’t granted, he wouldn’t go out of business. Since the proposal is not a final site plan, just re-do the sketch to show the 75 ft.

Joseph Pullen, Consultant Engineer for Mr. Barry – The preliminary numbers for the construction and the density of this project, the project needs 72 units. If Mr. Barry has to build less it will not pay for the infrastructure, the roads, utilities that have to go in there for the long term financing of the buildings. It may not be able to go further.

Chairman Mordue – Inquired as to any other questions.

After discussing the request, the following resolution was offered by Chairman Mordue, seconded by Mr. Beaton and carried:

**WHEREAS**, Mr. Barry has applied for a variance to be able to build a 72 unit apartment complex off the south side of State Street; and

**WHEREAS**, Mr. Barry is requesting a 50 ft setback to the north property line so to utilize space; and

**WHEREAS**, Mr. Barry did not self- create the difficulty with the wetlands at the property site; and

**WHEREAS**, the members of this board are familiar with said location and the conditions and circumstances under which said variance is requested; and that the character of the area would remain unchanged; and

**WHEREAS**, a strict application of the village zoning law would result in a practical difficulty; and

**NOW, THEREFORE, BE IT RESOLVED**, that this application be **GRANTED** to allow Mr. Barry to pursue his proposal to build a 72 unit Apartment Complex.

**BE IT FURTHER RESOLVED**, that the Apartment Complex will not be constructed until the Planning Board deems final site plan approval and the necessary fees have been paid and permits have been obtained from the Code Enforcement Officer.

The above resolution was put to roll call vote, which resulted as follows;

Tony Muscolino	Voting	“AYE”
Patrick Beaton	Voting	“AYE”
Donald Mordue	Voting	“AYE”
Thomas Coyne	Voting	“AYE”
Michael Haley	Voting	ABSENT

The resolution was thereupon declared duly adopted.

The public hearing and meeting were adjourned on motion at 9:00 PM.

Respectfully submitted,

Rita J. Gurewitch  
Deputy Clerk/Treasurer