

A Special Meeting of the Malone Town Board was held Saturday, May 2, 2009 at the Malone Town Offices, 27 Airport Road, Malone, New York, commencing at 10:55am, for the purpose of reviewing the findings of the Malone Town Board of Variance & Appeals and the recommendation of the Malone Town Planning Board as they relate to the Holiday Inn Express project proposed by Branch Development, LLC, and any other business to come before the Board.

PRESENT: Supervisor Howard Maneely  
Deputy Supervisor Paul Walbridge  
Councilor John Sullivan  
ABSENT: Councilor Irving Caplan  
Councilor Louise Taylor  
ALSO PRESENT: Susan Hafter, Town Clerk  
Andrea Stewart, Budget Officer/Bookkeeper  
Lillian-Anderson Duffy, Town Attorney  
Matt Kerwin, Special Counsel  
Bob Crossman, Code Officer

***Town Planning Board***  
Mark Gonyea, Chairman  
Ann Farden  
Lee Mulverhill  
John H. McCarthy  
Nancy Legacy  
Chastity Miller

***Board of Variance & Appeals***  
John Glazier, Acting Chairman  
Cheryl Douglas, Secretary  
Chris Kelley  
Richard Traynor  
Craig LaVigne (alt)  
Michael Hosler (alt)

Chris Labarge, Malone	Nathan Race, Malone	Bruce Burditt
Hugh Hill, Malone	Bob Fellion, Malone	Joe Dingle, Malone
Shawn Glazier, Malone	Connie Jenkins, <u>Malone Telegram</u>	

At 10:55am Supervisor Maneely reconvened the Town Board, which met earlier this morning on a related matter. A Waiver of Special Meeting was not necessary as After the earlier Town Board session, the Malone Town Board of Variance & Appeals met and a meeting of the Malone Town Planning Board followed. Each of these meetings dealt with aspects of the Holiday Inn Express project approval process.

**Zoning Compliance** –

\* On the motion of Supervisor Maneely with a second thereto by Deputy Supervisor Walbridge:

**Resolution #11-2009**  
***Authorizing the issuance of a Notification of Compliance***  
***for a proposed development on NYS Route 11***  
***in a Planned Development District***

**Whereas**, the Town of Malone Town Board (“Board”) received an application and supporting materials from Branch Commercial Development, LLC (“Applicant”) requesting approval to subdivide into three lots tax map parcel #'s 112.-1-1.300 and

112.-1-7, which are located on the north side of Route 11 approximately one third of a mile from the Village of Malone western boundary (“project site”), for the purpose of developing a Holiday Inn Express Hotel and Suites, as well as a convenience store/gas station and restaurant on the project site (the “Action”); and

**Whereas**, the project site is zoned Planned District; and

**Whereas**, pursuant to section 79-12 of the Town of Malone Code, the Board is required to make a determination as to whether a notification of compliance shall be issued for the Action; and

**Whereas**, the Board conducted a coordinated environmental review of the Action under the New York State Environmental Quality Review Act (“SEQRA”) and issued a negative declaration for the Action on May 2, 2009; and

**05/02/2009**

**Whereas**, pursuant to section 79-12 of the Town of Malone Code, the Town of Malone Planning Board adopted Findings of Fact and Conclusions (as attached) regarding the action and determined that the Board should issue a notification of compliance for the Action; and

**Whereas**, the Town of Malone Board of Variances and Appeals approved the Applicant’s request for a variance for the height of the proposed hotel on 5/ 2/2009; and

**Whereas**, the Town Board has examined all applicable materials concerning the Action, including the findings and determinations of the Planning Board and Board of Variances and Appeals;

**Now, Therefore, Be It Resolved that:**

1. The Town Board agrees with the determination of the Planning Board and hereby authorizes the issuance of a notification of compliance for the Action pursuant to Section 79-12 of the Town of Malone Code.
2. The Town Board authorizes the Supervisor or his designated appointee to execute and file as necessary a notification of compliance for the Action.
3. This Resolution shall take effect immediately.

**CARRIED WITH ALL MEMBERS PRESENT VOTING BY ROLL CALL:  
Supervisor Maneely – Aye; Deputy Supervisor Walbridge – Aye;  
Councilor Sullivan – Aye (3-0)**

**Attachment:**

**TOWN OF MALONE PLANNING BOARD  
Findings of Fact and Conclusions regarding the  
Application of Branch Commercial Development, LLC to**

**Develop a Holiday Inn Express and Suites,  
Convenience Store and Restaurant**

DATED: May 2, 2009

- 1) *Branch Commercial Development, LLC (the "Applicant") proposes to subdivide tax map parcel #'s 112.-1-1.300 and 112.-1-7 (totaling 5.9 +/- acres) in the Town of Malone into three (3) new tax parcels to allow for the commercial development of the property. The subdivision will result in the creation of a 2.6 +/- acre parcel on the northern end of the project area to be developed with a four story, 81 room, 49,000+/- sq. ft. Holiday Inn Express Hotel and Suites ("Hotel"), which will include a paved parking area to accommodate 97 vehicles. The remaining two (2) parcels will be located on the southern end of the project site with frontage along Route 11. The western parcel will consist of 1.4 +/- acres and is proposed to be developed with a 5,000 +/- sq ft. convenience store and gas station with a drive-thru window for take-out food service, which will include a paved parking area to accommodate 17 vehicles. The eastern parcel will consist of 1.3 +/- acres and is proposed to be developed with a 5,000 – 6,000 +/- sq ft. full service restaurant and bar, which will include a paved parking area to accommodate 62 vehicles (collectively, the "Project").*
- 2) *The Project will be located on tax map parcel #'s 112.-1-1.300 and 112.-1-7 on Route 11 in the Town of Malone, Franklin County, New York, approximately one third of a mile west of the Village of Malone western boundary ("project site").*
- 3) *While the project involves the subdivision of 2 existing lots into 3 new lots, subdivision approval is not required pursuant to Chapter 59 of the Town of Malone Code as the subdivision involves less than five (5) lots.*
- 4) *The project site is currently zoned Planned Development and is located within the AH-1 District (i.e., airport approach district) of the Airport Approach Protection Area that surrounds the Malone-Dufort Airport.*
- 5) *In furtherance of the Project, the Applicant has provided the Planning Board with copies of all relevant application and related materials, including, but not limited to, the following: a completed Application for Permit to Erect Building form; a complete set of construction drawings prepared by the Applicant's architect; various site, grading, utility and road plans for the project prepared by the Applicant's engineer; a Stormwater Pollution Prevention Plan for the entire project site; a Notice of Intent concerning the State Pollutant Discharge Elimination System ("SPDES") SPDES General Permit for Stormwater Discharges from Construction Activities that is required to be obtained from the New York State Department of Environmental Conservation ("NYSDEC"); a full environmental assessment form*

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*pursuant to the State Environmental Quality Review Act ("SEQRA"); a traffic assessment prepared by the Applicant's traffic engineer; color photos depicting the proposed building and monument signage, as well as the building materials to be used on the exterior of the Hotel; aerial photos depicting the location of the project site within the Town, particularly with respect to the Malone-Dufort Airport and Route 11; the Technical Specifications for the project; and correspondence and related materials concerning the project.*

- 6) *The Planning Board has reviewed and analyzed the aforementioned project materials and finds as follows:*
  - a) *The construction drawings prepared by the Applicant's architect are specific to the Hotel portion of the Project, and the drawings prepared by the Applicant's engineer contain site, utility, grading and other plans for the entire project. While the Applicant has not finalized the specific uses proposed for the eastern and western parcels, the site, grading and related plans prepared by the engineer provide a conceptual overview of the future development of these parcels. To the extent the final site plans for the development of those two (2) parcels differ from that which was presented to the Planning Board in connection with the Project, the Applicant will be required to obtain the Planning Board's approval of such differences or modify the plans accordingly.*

- b) The commercial/retail land uses proposed by the Project (i.e., hotel, convenience store/gas station, and restaurant) are consistent with the surrounding land uses in the area and are compatible with the development of the Route 11 commercial corridor.*
- c) A Stormwater Pollution Prevention Plan (“SWPPP”) has been prepared to address and adequately mitigate drainage issues associated with the Project. The SWPPP calls for the construction of a detention pond along the northwestern portion of the project site to serve the entire Project. In addition, the NYSDEC SPDES General Permit for Stormwater Discharges from Construction Activities required for the Project mandates sediment and erosion control measures be implemented. The SWPPP also requires the successful contract bidder or contractor to prepare and implement in accordance with all NYSDEC regulations and permit conditions an Erosion and Sediment Control Plan, which will address any erosion concerns during the construction phase of the Project. Together with the site grading plan, these measures will mitigate drainage and stormwater impacts associated with the Project.*
- d) The Applicant has consulted with the New York State Department of Transportation (“NYSDOT”) regarding acquisition of a highway work permit for the Project. The Planning Board has been provided with copies of all relevant correspondence and will defer to NYSDOT regarding the configuration of driveways for the Project.*
- e) The Applicant has provided a traffic assessment for the Project that was evaluated by the Town Board in connection with its review of the Project under SEQRA. As a commercially developed corridor, Route 11 can adequately accommodate the projected traffic volumes and resulting impacts to the project site intersections. The Project’s resulting impacts will be addressed through mitigative measures, which will include but not be limited to, the installation of a right turn only exit driveway at the westerly project driveway and the use of ingress and egress improvements that have been conceptually approved by NYSDOT, the agency with exclusive jurisdiction over Route 11 traffic issues.*
- f) The architectural design and appearance of the Hotel is tasteful and does not represent a departure from accepted norms within the Town. Further, the building and stand alone signage proposed for the Hotel are consistent in terms of size and appearance with other similar commercial/retail uses along Route 11.*
- g) The Applicant’s landscaping plan for the Hotel will reclaim any undeveloped lands and enhance pervious areas. Topsoil and upper soil will be stockpiled for reclamation. A landscaping plan was not provided for the remainder of the project site as the precise use and occupancy of the eastern and western parcel have not been finalized. The future development of those parcels will require that the Applicant provide a final site plan and landscaping plan to the Town for review and approval. It is anticipated that the landscaping plan will be consistent with the types of vegetation used for the Hotel and that are common to the area.*
- h) May 1, 2009, the Federal Aviation Administration (“FAA”) determined that the Hotel would not result in a hazard to air navigation provided certain conditions are met, including that the Hotel be marked and/or lighted in accordance with FAA requirements.*
- i) On May 2, 2009, the Town Board completed its coordinated environmental review of the entire project under SEQRA, which included the Hotel, and issued a negative declaration for the Project.*
- j) On May 2, 2009, the Board of Variances and Appeals granted a variance from the height limitations within the AH-1 District for the Hotel.*
- 7) Upon due consideration of all the evidence presented to it, the Planning Board hereby determines that the Project is in the public interest for the following reasons:

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- a) *The Project is consistent with the scope and type of land uses that are permitted and are present in the vicinity of the project site and would be compatible with the character of the community in that regard.*
  - b) *The Project will further revitalize the Route 11 corridor by developing previously underutilized parcels and promoting economic growth in the area with the introduction of the Hotel, as well as the proposed restaurant and convenience store.*
- 8) *The Planning Board hereby determines, pursuant to Section 79-12 of the Town of Malone Code, that a notification of compliance for the Project be issued by the Town of Malone Town Board.*
- 9) *Further, the Planning Board recommends that the Town of Malone Town Board issue a permit for the Project under Section 4-7 of the Town Code regarding development within an Airport Hazard Protection Area.*

**Airport Hazard Protection Area Permit –**

\* On the motion of Deputy Supervisor Walbridge with a second thereto by Councilor Sullivan:

**Resolution #12-2009**  
***Authorizing the issuance of a permit***  
***for a proposed development on NYS Route 11***  
***in an Airport Hazard Protection Area***

**Whereas**, the Town of Malone Town Board (“Board”) received an application and supporting materials from Branch Commercial Development, LLC (“Applicant”) requesting approval to subdivide into three lots tax map parcel #'s 112.-1-1.300 and 112.-1-7, which are located on the north side of Route 11 approximately one third of a mile from the Village of Malone western boundary (“project site”), for the purpose of developing a Holiday Inn Express Hotel and Suites, as well as a convenience store/gas station and restaurant on the project site (the “Action”); and

**Whereas**, the project site is located within the AH-1 District (*i.e.*, airport approach district) of the Airport Approach Protection Area that surrounds the Malone-Dufort airport; and

**Whereas**, pursuant to Section 4-7 of the Town of Malone Code, no material change may be made in the use of land and no structure shall be erected in the Airport Hazard Area unless a permit for such activity has been issued by the Board; and no permit shall be granted that would allow the creation of an airport hazard or would permit a structure to be made or become higher or become a greater hazard to air navigation; and

**Whereas**, the Board conducted a coordinated environmental review of the action under the New York State Environmental Quality Review Act (“SEQRA”) and issued a negative declaration for the Action on May 2, 2009; and

**Whereas**, the Federal Aviation Administration (“FAA”) has reviewed the Action specifically the height of the proposed hotel, and determined on May 1, 2009 that the hotel would not result in a hazard to air navigation provided certain conditions are met, including that the hotel be marked and/or lighted in accordance with FAA requirements; and

**Whereas**, the Town of Malone Board of Variance and Appeals approved the Applicant’s request for a variance for the height of the proposed hotel on May 2, 2009; and

**Whereas**, the Town of Malone Planning Board adopted Findings of Fact and Conclusion regarding the Action and recommended that the Board issue a permit for the Action pursuant to Section 4-7 of the Code; and

**Whereas**, the Board has examined all applicable materials concerning the Action, including the findings and determinations of the Planning Board and Board of Variance and Appeals:

**05/02/2009**

**Now, Therefore, Be It Resolved that:**

- 1) The Action, and particularly the hotel, will not be a hazard to air navigation.
- 2) The Town Board concurs with the recommendation of the Planning Board and

Grants to the Applicant, pursuant to Section 4-7 of the Town Code, a permit for the Action to be located on the project site in the Airport Hazard Protection Area.

- 3) The Town Board authorizes the Supervisor or his designated appointee to execute and file as necessary a notification of compliance for the Action.
- 4) This Resolution shall take effect immediately.

**CARRIED WITH ALL MEMBERS PRESENT VOTING BY ROLL CALL:**

**Supervisor Maneely – Aye; Deputy Supervisor Walbridge – Aye;  
Councilor Sullivan – Aye (3-0)**

**Attachment: TOWN OF MALONE BOARD OF VARIANCES AND APPEALS  
Findings and Determination regarding the  
Application of Branch Commercial Development, LLC to  
Develop a Holiday Inn Express Hotel and Suites,  
Convenience Store and Restaurant**

1) Branch Commercial Development, LLC (the “Applicant”) proposes to subdivide tax map parcel #'s 112.-1-1.300 and 112.-1-7 (totaling 5.9 +/- acres) in the Town of Malone into three (3) new tax parcels to allow for the commercial development of the property. The subdivision will result in the creation of a 2.6 +/- acre parcel on the northern end of the project site to be developed with the 4-story, 81 room, 49,000+/- sq. ft. Holiday Inn Express and Suites (“Hotel”), which will include a paved parking area to accommodate 97 vehicles. The remaining two (2) parcels will be located on the southern end of the project site with frontage along Route 11. The western parcel will consist of 1.4 +/- acres and is proposed to be developed

with a 5,000 +/- sq ft. convenience store and gas station with a drive-thru window for take-out food service, which will include a paved parking area to accommodate 17 vehicles. The eastern parcel will consist of 1.3 +/- acres and is proposed to be developed with a 5,000 – 6,000 +/- sq ft. full service restaurant and bar, which will include a paved parking area to accommodate 62 vehicles (collectively, the “Project”).

2) The Project will be located on tax map parcel #'s 112.-1-1.300 and 112.-1-7 on Route 11 in the Town of Malone, Franklin County, New York, approximately one third of a mile west of the Village of Malone western boundary (“project site”).

3) The distance from the proposed Hotel to runway 32 of the Malone-Dufort Airport is approximately 1,175 feet, and project site is located within the AH-1 District (i.e., airport approach district) of the Airport Approach Protection Area that surrounds the airport.

4) Pursuant to the Section 4.4(A)(1) of the Town of Malone Code, no structure may be erected in the AH-1 District to a height that would exceed 1/40<sup>th</sup> of the distance from such structure to the end of the runway. Therefore, absent a variance, the maximum height allowed for the Hotel is approximately 29’5”.

5) The elevation of the proposed Hotel is 54’10”, and as such, requires a variance from the Board of Variances and Appeals (“BVA”) from the height limitations within the AH-1 District. Specifically, the Applicant requests a variance of approximately 25’5” for the height of the proposed Hotel.

6) On April 16, 2009, the Town Board denied the Applicant’s request for a permit for the Project under Chapter 4 of the Town Code regarding the Airport Approach Protection Area as the Hotel exceeded the height restriction for structures located within the AH-1 District.

7) On April 21, 2009, the BVA held a special meeting at which it scheduled a public hearing for May 2, 2009 to consider the Applicant’s request for a variance from the height restrictions in the AH-1 District concerning the Hotel.

8) On May 1, 2009, the Federal Aviation Administration (“FAA”) issued its determination regarding the height of the Hotel and its proximity to runway 32 of the Malone-Dufort Airport. The FAA determined that the Hotel would not result in a hazard to air navigation provided certain conditions are met, including that the Hotel be marked and/or lighted in accordance with FAA requirements.

9) On May 2, 2009, the BVA held a public hearing, during which the public was provided with an opportunity to comment on the Applicant’s variance request. The Applicant presented oral statements in support of its request for an area variance. The BVA’s decision in this matter is based on the record before which consists of the Applicant’s request for a variance and related documentation, including drawings and plans depicting the proposed Hotel and project site that are the subject of the relief requested.

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Upon due consideration of all the evidence presented to it, and for the reasons set forth below, the BVA hereby determines that the Applicant has presented evidence sufficient for the BVA to grant the requested area variance, subject to certain conditions. The BVA’s determination is based upon the findings set forth below.

1. Pursuant to the State Environmental Quality Review Act (“SEQRA”), an area variance qualifies as a Type II action and thus requires no further environmental review by the ZBA. It should be noted that the Town Board conducted a coordinated environmental review of the entire project under SEQRA, which included the Hotel, and issued a negative declaration on May 2, 2009.
2. The BVA analyzed and considered the following criteria in determining whether to grant the requested area variance:

- a) *Whether the benefit can be achieved by other means feasible to the applicant*  
*The BVA determined that compliance with the Town's height requirements could not be achieved by any feasible or practical means other than the requested area variance. The BVA discussed the potential lowering and/or reconfiguration of the Hotel, but it was determined that neither alternative was feasible or reasonable.*
  - b) *Undesirable change in the character of the neighborhood or to nearby properties*  
*The requested variance will not create an undesirable change in the character of the neighborhood or be a detriment to nearby properties. The FAA determined that the Hotel would not result in a hazard to air navigation provided certain conditions are met, including that the Hotel be marked and/or lighted in accordance with FAA requirements. Further, the project site is otherwise surrounded by commercial/retail and agricultural land uses. (BVA should cite examples)*
  - c) *Whether the request is substantial*  
*While the percentage of deviation from the permitted height could be considered substantial, the request is not so substantial as to warrant denial of the area variance when considering the totality of the aforementioned facts and circumstances surrounding the request, including the fact that a key agency charged with responsibility for aviation safety, the FAA, determined that the Hotel would not be a hazard to air navigation.*
  - d) *Whether the request will have adverse physical or environmental impacts on the neighborhood or district*  
*The requested variance will not result in any adverse physical or environmental impacts. The construction of the Hotel was considered by the Town Board during its environmental review of the project under SEQRA, and the variance request qualifies as a Type II action under SEQRA that requires no further review. Further, the FAA determined that the Hotel would not be a hazard to air navigation.*
  - e) *Whether the alleged difficulty is self-created*  
*The Applicant created the need for the variance when it designed the Hotel to exceed the height limitations within the AH-1 District.*
3. *Based on the evidence presented, as well as a balancing of the area variance criteria discussed above, the BVA hereby determines that the Applicant has presented evidence sufficient for the BVA to grant the relief requested by the Applicant, with the conditions described below:*
- a) *The BVA grants to the Applicant the requested variance from the Town's height limitations for structures located within the AH-1 District to allow for the construction of the Hotel in accordance with the plans submitted for the Project.*
  - b) *The Applicant shall be required to comply in all respects with the conditions set forth in the FAA's May 1, 2009 determination regarding the Hotel.*
  - c) *The variance shall be valid as long as the Hotel is located on the project site.*
  - d) *the variance shall not grant to the Applicant or any subsequent owner the authority to expand or alter the height of the Hotel. Such changes will require the successful completion of a separate, new approvals process.*

**ADJOURN:**

\*At 11:02am, on the motion of Deputy Supervisor Walbridge with a second thereto by Councilor Sullivan, there being no further business to come before the Board, that it duly adjourn, with the next regular meeting to be held Wednesday May 13<sup>th</sup> 2009.

**CARRIED WITH ALL MEMBERS PRESENT VOTING IN FAVOR (3-0).**

**Respectfully submitted,**

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**Susan M. Hafter, Town Clerk**  
**May 11, 2009**