

Zoning Board of Adjustment
424 White Mountain Highway
Milton, NH 03851
January 28, 2016
Meeting Minutes

Members in Attendance: Lue Synder, Michael Tabory, Larry Brown, Stan Nadeau, Bruce Woodruff, Also in attendance Dana Smith, Land Use Clerk

Missing Members: Mike Beaulieu

Public Attendance: Bob Frizzell, Michelle Beauchamp

Chairman Tabory called the meeting to order at 6:00pm.

Public Comment: None

Chairman Tabory appointed B. Woodruff to fill the seat for the missing M. Beaulieu.

Case#2016-1: Request for a Special Exception from Article III, Section 3.5 (E), to utilize site for Auto Sales & Services. Site located at Map 45 Lot 73, 18 Commerce Way Milton, NH in the Industrial/Commercial Zone.

Bob Frizzell attended the meeting to present his case to the board. B. Frizzell questioned if the special exceptions run with the property? Chairman Tabory explained that they do, however if the use is either: one not implemented in two years then it expires or if it is being used in such a way that the business closes and left inactive for two years it expires and then would have to reapply after a two year period. B. Frizzell explained that the reason he asks is that in 2003 the Zoning Board approved a special exception for retail sales and services and food and drink service for all four lots 71, 72, 73 and 74, he was not sure if that meant anything today. Chairman Tabory replied that if it hasn't been in use he would interpret the zoning to say no, if it has not been used in that fashion. L. Brown stated he thinks the retail food and drink would have expired in the two years without use. Chairman Tabory read from the town's zoning ordinance section that talks of expiring use. L. Brown asked Chairman Tabory to check the zoning to see if retail sales covers car sales. Chairman Tabory answered that auto sales is separate. He then questioned if it depends on when the two year expiration was adopted into the zoning ordinance and if something was approved prior is it grandfathered. B. Woodruff agreed that it would be grandfathered in if it was approved prior to the two year expiration being added to the zoning regulations. B. Frizzell added that Atkins got approved for an auto repair service in 2004 and is still there. B. Woodruff noted that after a special exception was originally approved for a property like this they would have needed to go to the planning board for site plan review and approval, in the end whether or not the special exception has expired he does not believe this board has the ability to say it and the only person who has the ability to say it is the Code Enforcement Officer. Chairman Tabory questioned B. Frizzell on what brought him to the Zoning Board if it the Code Enforcement Officer. B. Frizzell replied that he did not bring him here but he suggested this is the route he should take and at the time he personally had not even found the 2003 approval, what he is saying that if it does not have any standing he would like to move forward with the application. S. Nadeau asked when the language was applied to the zoning ordinance on the expirations. Chairman Tabory replied that he did not think it was in place in 2003 but does not know when it was added. L. Brown commented that the present configuration of a building on the lot is irrelevant because once approved the entire lot becomes open to the use that is given by special exception and the site plan approval.

B. Frizzell commented that since 2003 or 2004 Atkins has been there, and in building E there is a guy who does a bit of body work, the guy who rents building C currently is a hobby guy, there are 3 guys who rent space who buy cars that have had fenders put on them, late model stuff and search out the parts they need, and then they sell them. He continued that they can't get titles for the cars to register the cars until they go to the DMV and get inspected for as a reconstructed vehicle. B. Frizzell added there is a person who comes around the property snooping around and taking pictures who apparently does not think the buildings are attractive enough and is an

eye sore to the community. He presented past letters of approval for special exception to the board. Chairman Tabory commented that the approval letter states that the requested use by special exception to operate a retail sales and service and/or food and drink service in the industrial zone, he continued that auto sales and service is a different category so unless there is one that says auto sales and services are approved there wouldn't be an approval for that yet. B. Frizzell replied that the approval for Atkins was for auto repair in 2004. B. Frizzell stated that he does not want to have a car lot there, they do not have cars sitting out front with for sale signs, very rarely there would be one, he does not let the tenants put cars out for sale up front, and they all deal over the internet. He continued that the problem he has is that there is a person who takes pictures of every unregistered car in his yard, he knows there is an ordinance on unregistered cars, but his tenants cannot register the cars, there are about a half a dozen that cannot be registered until they are fixed and inspected by the State, and he needs to have the income from the tenants renting space. Chairman Tabory commented that auto repair service is not a category in the current zoning, so it would be under auto sales and services, which was granted in 2004 for that property. L. Brown asked if the board has the authority to handle this under auto sales and services or if he is saying it does not exist. Chairman Tabory replied that since auto service alone is not in the zoning it would fall under auto sales and service which would suggest it was approved for that use that that property was approved for that use even if they chose not to sell, it was approved by the zoning board in 2004. L. Brown noted that it means that no vehicle that goes in there can be sold by the person who is servicing it. S. Nadeau does not agree, service is considered working on a vehicle. Chairman Tabory added that auto sales and services would suggest you can work on them and sell them. S. Nadeau asked if the approval is for the land owner or the tenant. Chairman Tabory replied it is for the property. B. Woodruff noted that it was understood when he got his approval that it would be multi-tenant buildings.

L. Synder asked if there was a limit on how many unregistered vehicles. Chairman Tabory speculated that it was under the purview of the Code Enforcement officer because there some rule of a number of unregistered vehicles which is about private residents and does not believe it has to do with approved businesses, a business approved for auto sales and services. S. Nadeau commented the key word is sales, when the applicant had gone to the planning board was there any restrictions on how many vehicles he could have on the lot for sale, because he is approved for sales. Chairman Tabory commented that he did not see any on the approval letter.

D. Smith presented to the Chairman minutes from the zoning board meeting in 2004 and read to the board the motion that was made in the decision 'L. Elder made the motion to approve with Planning Board recommendations that no unregistered vehicle be left there for more than five days'. B. Woodruff stated that they need to look at the site plan approval. D. Smith provided the minutes and approval letter from the planning board in 2004, she stated that the case first went to Planning Board for site plan review and then went to Zoning Board. Chairman Tabory read the Planning Board approval letter, which references the pending Zoning Board special exception approval and no vehicles offered for sale. S. Nadeau commented that it was wacky that he got a decision letter that he was approved for sales and services from zoning board and the planning board decision letter said no sales. Chairman Tabory replied that no the original decision letter states just service, he was looking at the current zoning definitions when he comes up with the sales and service, they were told no sales. S. Nadeau questioned if B. Frizzell should proceed with this hearing.

Chairman Tabory asked B. Frizzell what he wants to do. B. Frizzell replied that he wants the tenants to be able to have cars that can sit there while they are being repaired that are not registered. Chairman Tabory replied that he did not see that the Planning Board said they could not but Zoning Board a week later did. B. Frizzell replied he has a situation where a tenant moved out a year ago and left a truck behind that has rotted away and he cannot do anything with the truck because he does not have the title but in another year and a half he will.

S. Nadeau commented that they are by no means obligated to uphold what the previous decision was, the board can make a new one of their own, correct? Chairman Tabory comments that it has been years and zoning has changed and conditions have changed, because the zoning board put the restriction on it in the first place its leaves the board to be the ones who could potentially change it, Planning Board could not. L. Brown commented that an amendment that absolutely zeros out the special condition is not an amendment, an amendment is you get

an approval first for example for 1-10 an amendment drops it down to zero is not an amendment it negates the original approval, he does not see how you can have an amendment that reverses a decision. S. Nadeau replied that he does not think it is reversing the whole decision, they are just looking to amend the five days. Chairman Tabory added that it is amending a condition of a previous decision. L. Brown responded that amending a condition of cars would be amending it from one to five, amending a condition of no cars by putting in cars is not an amendment it is a change of category. Chairman Tabory noted that basically what the original approval is saying that the only repairs that can be done is if the vehicle is registered. L. Brown agreed to this point. S. Nadeau did not agree and pointed out that it states they can be unregistered for up to five days. L. Brown added that he admires the way the property has been developed, he likes the traditional New England style buildings that control what you can see behind the buildings, there is nothing in the way this is drawn and presented that says that the Milton School District Office could not be told to leave and the building could be torn down and a used car lot would go right out to the edge of the highway, the fact that it is for the steel building behind the office building means nothing because there is no restriction for location and view shed. Chairman Tabory commented he thinks that would go to site plan. L. Brown stated that if this board is amending conditions that they feel is inappropriate then that also says the board has the power to set the conditions without going to the Planning Board. S. Nadeau commented that the applicant can go to option B and apply as he is for a separate approval. Chairman Tabory questioned what happens if the board turns the whole thing down, what would happen to the existing approval. S. Nadeau replied he does not think they could touch that because it would not be part of the current application. Chairman Tabory added that this application is for auto sales and services. S. Nadeau commented that other than the fact that the applicant brought up the previous approvals, he is not basing his current application on that.

Chairman Tabory said this current application is for auto sales and services, but the applicant does not want to sell vehicles, they do not want the sales all they want is to be able to keep vehicles unregistered on the property longer. B. Frizzell commented that they sell vehicles, but not by putting them out by the road with a for sale sign, they deal over the internet. Chairman Tabory replied they have the ability to do basically all they want to, they just want to keep the unregistered vehicles there. L. Brown questioned if he were to bring forth an amendment that says that for the present configuration of map 45 lot 73 with the two buildings on it that the buildings C and E, that the conditions of use are amended so that businesses occupying buildings C and E may buy salvage vehicles, repair and sell without giving map 45 lot 73 permission to operate as a traditional use car lot. S. Nadeau commented that makes a fine line. L. Brown asked B. Woodruff if that meets the needs he has seen. B. Woodruff agreed it does, and replied that motion could be made but to remember that the request actually has a limit on the number of vehicles and would include that in the motion.

B. Frizzell stated he has four guys that work on cars and if they were each allowed 3 salvage cars that would be 12. S. Nadeau commented that once you include the word sales it adds a fine line. B. Woodruff added that he would not even use the word sales in the motion, just repairs. L. Brown stated that he likes cars, he has not seen the cars as being an eye sore. S. Nadeau commented that the key word is days. Chairman Tabory replied not necessarily if you limit the number of cars it would motivate them to keep the cars moving, and asked B. Frizzell if he is still trying to attract more renters. B. Frizzell replied that all of his bays are rented. Chairman Tabory questioned if the amendment could refer to the current existing businesses. L. Brown asked how many businesses are there in regards to this. B. Frizzell commented that he has 10 bays in the two buildings. L. Brown speculated that if there are 20 unregistered cars and it did not matter if there were two guys with ten each or four guys with five each, the having 20 unregistered vehicles neatly stacked, he questioned how many are there now. B. Frizzell replied there are probably not 20. Chairman Tabory commented that there are 4 businesses there that buy and sell, 4 sole proprietor businesses so 3 each would be 12 cars and that is what the request is. S. Nadeau commented that this does not count what is inside the buildings. B. Woodruff commented that there needs to be enough parking space to put not only these 12 unregistered cars plus the people that work there and the customers that come there, there is an incentive to get these things done. L. Synder commented that it sounds like they are already exceeding what was stated when they started because it said no cars for more than five days. Chairman Tabory agreed and commented that this is why they have been advised to come to this board. L. Brown does the phrase make sense that these are interior bay tenants. B. Frizzell commented that one tenant cannot leave the car

inside because it is also a machine shop, the cars are pulled in at night to be worked on. S. Nadeau commented there is still the problem of the five days, the applicant is asking us to change that. Chairman Tabory thinks they are talking about someone making a motion to adjust that to the 12 cars. S. Nadeau asked but how many days. B. Woodruff replied no days, they will not be there forever. B. Frizzell noted that they would be revolving. B. Woodruff added that there will be 12 there most of the time, you do not have to talk about buildings or inside businesses. L. Brown noted and we are not becoming a car retail sales and services. Chairman Tabory replied all previous conditions sit, all the board is saying is that they can have 12 unregistered vehicles on the property at any given time.

**S. Nadeau motions to amend the original 2004 special exception approval to allow 12 unregistered vehicles at any given time on lot 73. L. Brown seconds the motion. All in favor, motion granted.
(5-0)**

L. Synder comments that her reservations are that if they have not complied with no unregistered vehicles she just wonder if they will push it even further. S. Nadeau questioned whose job it is to enforce it. B. Woodruff noted it is code enforcements. Chairman Tabory added that code enforcement would issue a cease and desist which can lead to fines and result in financial hard ships, he added to B. Frizzell that he as a landlord needs to set his own rules to enforce this with the tenants because he is the one that will receive the cease and desist if there are more than the allowed cars. B. Frizzell noted he will have to make them sign a new lease with this in it and stated that he will not let it get out of hand.

Chairman Tabory explained that anyone has 30 days to appeal the decision and to move forward at the applicants own risk.

Minutes: November 19, 2015 meeting minutes, Page 1 change 'digress to explained.' Page 2 note that when M. Tabory offered to help D. Canfield it was if she wished. Page 4 change 'boarder to bordered' Page 5 change 'expressive to expressed' change litigation to mitigation throughout document. Also change in document that grey hound is one word rather than two. B. Woodruff moves to approve the minutes with corrections, L. Brown seconds. All in favor, November 19, 2015 minutes approved.

December 16, 2015 meeting minutes, change litigation to mitigation throughout the minutes, add 'the' before public welfare on page 2 and change 'culture to cultural'. S. Nadeau motions to approve with corrections, L. Brown seconds. All in favor, December 16, 2015 minutes approved.

Other Business:

The notice of appointment form from April when the board had B. Woodruff sworn in as an alternate never showed up in the Town Clerks Office. The Town Clerk was available to re-swear B. Woodruff in as an alternate member for the remainder of his 2016 term.

B. Woodruff motions to adjourn, L. Brown seconds, all in favor, meeting adjourned at 7:00pm.

Respectfully Submitted,
Dana Smith
Recording Clerk