

**ZONING BOARD OF ADJUSTMENT
PO BOX 310
MILTON NH 03851
(603) 652-4501 X5
Meeting Minutes
August 23, 2012**

Members in attendance were: Mike Tabory, James Smith, Bob Srnec and newly appointed member Mike Beaulieu. Excuse absence of Luella Snyder. Also present was Wendy Keane, recording clerk.

Public in attendance: David and Natasha Fifield, Wendell Brown, Mr. Sheldon Holmes and Mrs. Holmes.

Swearing in of James Beaulieu

Meeting called to order at 6:01

Chairman Smith made the applicants aware that since there are only 4 members of the ZBA present tonight they have the option to hold the meeting or to wait.

1. **Case 2012-4:** Request for Appeal from Administrative Decision: Appeal decision of Code Enforcement Officer to utilize a site for a sign whose size does not conform to Article XX Section 4 of the Milton Zoning Ordinance. Property located at Map 38 Lot 19, 621 White Mountain Highway, Milton, NH in the High Density Residential/Commercial Zone.

Mr. Wendell O. Brown opted to wait for the full Board.

2. **Case 2012-5:** Request for a Special Exception from Article III Section 3.5 E, to utilize site for Motor Vehicle Sales. Site located at Map 10 Lot 4, 1798 White Mtn. Hwy, Milton, NH in the Commercial/Residential Zone.

Mr. & Mrs. Fifield opted to continue with 4 members.

Mrs. Fifield stated that the subject property is a 4 acre parcel that was owned by Dave Fifields grandfather who passed away in March. They intend to rehab the home on the property to live in it. Mr. Fifield is looking to get his dealers license to sell vehicles from the site. The main use of the land will be to live but would like to sell 3 to 4 cars at a time from the property which will all be state inspectable. Most sales will be driven

through internet and there will not be people wandering around as you would see in a dealership. The state does require that there be a sign that will meet the State requirements. They want to stress the importance that the property will be primarily their home site, but would like to have 3-4 vehicles on site at a time for sale.

Mike Tabory inquired how the vehicles would be sold. Dave Fifield stated that they would primarily be sold via Craigslist and viewing would be by appointment only. He further asked how the signage would come in to play. Mrs. Fifield stated that the state requires signs and they personally do not want anything intrusive as this will also be their home.

Chairman Smith inquired if the cars would be on a paved site or dirt and grass. Dave Fifield said they would be on dirt and grass. Chairman Smith further asked if the sales will be solely by internet but would not turn down a person dropping by. Chairman Smith inquired how they would be sure they are state inspectable? Mr. Fifield said he will have someone with him who is knowledgeable to tell him if they would be workable to buy. Mr. Fifield also said that part of the state process is that they would have to have a licensed person who will be fixing the cars on file.

Mike Beaulieu asked if there will ever be vehicles on site that would not be in sellable order. David said that is not his intention but there may be times when it is necessary. Mrs. Fifield said she also does not want cars sitting around her yard and the idea is to turn them over quickly and sold within a week.

Public Comment session was opened.

Sheldon Holmes 1748 Whit Mountain Hwy, stated that it sounds harmless at this time but once it starts he would not like to see the property transferred and have a new owner turn this in to a big lot. He stated that once an exception is granted it follows the property and not the property owner. There have been businesses that have come and gone over the years but they are more agricultural which is more fitting for the area. He does not feel it is the right business for the land. He further stated that there is a crater like area on the land which may cause issues.

James Smith read a letter from Paul Wentworth Sr. into the record. See attached.

Motion: Bob Srnec made the motion to move in to executive session. Seconded by Mike Tabory. Motion carried 4-0.

1. The specific site is an appropriate site for use or structure. Bob Srnec asked if the site is appropriate for a car dealership. He asked Chairman Smith if there is an ability to put restrictions as the decisions are made. Chairman Smith affirmed

the ability to place restrictions, and stated that because even though that area is known for its residential old farm feel, that is not what it is zoned as and with a commercial/residential zone the use of the property as a car dealership is allowed with special exception per the ordinance. Bob Srnec also stated that the Town on its economic development plan would like to promote business along exit 18 and are working with the state for curb cutting as there is a lot of developable land. Mike Tabory stated that any industry would likely go up to the bridge and not beyond. Bob Srnec stated that the entire area is being looked at. Mike Tabory stated that the comments he has refer more to number #5 as far as the site being inappropriate, you can drive anywhere in Milton and see these types of business. Mike Beaulieu stated that it appears that it will be a private business, primarily by private invitation and internet sales and we can limit him to the quantity of vehicles on the site. Mike Tabory inquired if he can ask a question of the applicant. Chairman Smith allowed it. Mike Tabory inquired if most of business being done by Craigslist, then could he do the same without licensing why does he need to become a dealership. Mr. Fifield stated that without a dealers license, he cannot go to auctions or sell more than 5 vehicles a year.

All in favor that it is an appropriate location.

2. The use will not be injurious, noxious, offensive or detrimental to the neighborhood: Mike Beaulieu asked if there is anyone who will police this. Chairman Smith stated that if they were not living up to their end, a complaint could be made to the Code Enforcement and the Code Enforcement Officer would police the site per the ZBA decision including any stipulations. The Zoning Ordinance allows for penalties of non-compliance. Chairman Smith does not think the use would be injurious, noxious or offensive. Bob Srnec likened it to a family with 6 kids all having cars on site. Chairman Smith stated that the issue of leaky fluids and whatnot should be a non-issue based on the sale ability of the cars. Chairman Smith asked the Board what their opinion was on limits to the number of vehicles allowed at a given time. Mike Tabory stated that even if the board approved this and said no more than 5 vehicles on site at any given time. The decision follows the land and the intent of this individual today, may not be the intention of someone who may own the property in the future. His concern is that the next person to own the lot could say they want 10 or 20 vehicles at a time and the next Board may allow it. Mike feels that with a sign it may be detrimental to the neighbors and there is possibility for detriment to the property and what it could be in the future. Chairman Smith stated that he does not feel he could vote on a "possibility" of detriment down the road and needs to look at what is facing us now. Bob Srnec stated that we cannot look at the future; we need to

deal with what is allowable now by the ordinance. Mike Tabory said that again, we don't know what is going to happen in ten years and if in 6 months a dealership goes in and a big sign goes up then it could be detrimental.

3 pro 1 against

3. There will be no undue nuisance or serious hazard to pedestrian or vehicular traffic, including the location and design of access ways and off street parking: Chairman Smith stated that he does not think there will be any issues as there is already a driveway for the site. Bob Srnec stated that there is also a speed limit of 30 mph in that area. Mike Beaulieu does not see any problems either with the way this item is worded.

All in favor.

4. That adequate and appropriate facilities and utilities will be provided to insure the proper operation of the proposed use and structure so that the use will not be contrary to the public health, safety, or welfare: Mike Beaulieu stated that it was said that servicing will not be done at the property. Mike Tabory stated that would need to come back to the Board to be able to mechanic cars. Chairman Smith said that they do not need a building to house cars. Chairman Smith further stated that he does not feel there is a concern that public safety is being hurt.
5. That the proposed use or structure is consistent with the spirit of the Ordinance and the intent of the Master Plan: Mike Tabory stated that in his previous comments he was referring to the other allowable items in the area and that the allowable uses are primarily nursing homes, motels, B & B's, etc that lends to the intent of the areas with special exceptions being allowable. He continued to state that the intent of the Ordinance is that the allowable uses are people focused items and have a great purpose and to look at these items closely. He feels that a car dealership in that area does not meet the spirit of the ordinance or the Master Plan. Chairman Smith stated that his issue lies primarily within the Master Plan that says "bring us your business" but we don't want to place them anywhere. The plan wants growth but only in very targeted areas. Mike Beaulieu asked how it could be proved that the surrounding properties would be affected negatively. Mike Tabory said he looks at it as if "what if it were my house this wanted to happen in", and it is a largely residential area, mostly farm type areas. Bob Srnec stated that he thinks the restrictions that would be put on the property would prevent a lot of the issues, such as Mr. Fifield showing 4 spaces for vehicles and the Board can limit to 5 vehicles for sale on the lot at a time. If

restrictions are placed he has to turn them over or store others somewhere else and no maintenance to be done on site. Mike Tabory asked if there are limits in the number, does it then meet the spirit of the ordinance or the intent of the master plan. Bob Srnec stated that the area is already residential commercial and the master plan is set to promote business. Mike Tabory stated that the sole intent of the Master Plan is not to primarily generate business but also for residential areas. Chairman Smith stated that the Master Plan wants to keep a small town feel yet promote industry, the more that he thinks about it, he is not sure it is in the Master Plan to limit business in the areas where it is a commercial or industrial zone. The vast majority of the Zoning Map is white showing residential with small sections for commercial and industrial areas. Mike Tabory stated that if it were intended to be there then it would have been a permitted use, but is only allowed by Special Exception. Mike Beaulieu stated that the Fifields plan shows the vehicles right up front and car dealership or no car dealership they would be seen by the abutters. He inquired if the area for vehicles could be moved to another area on the site. He also said that working with the applicants for a solution would not be a bad idea as there are so many other things going on along 125 that are not permitted or have been to the ZBA or Planning Board. Chairman Smith stated that at this time it is the job of the ZBA to work with this applicant and the present situation.

3 in favor-1 against

Chairman Smith stated that there could be conditions that there are no forms of advertising on the site specifically except for the sign as required by the state.

MOTION: Chairman Smith moved that the application for Special Exception be approved with the following conditions: No more than 5 unregistered vehicles that are not to exceed 12k GVW sitting on the lot at any given time and no mechanical services or maintenance performed on the vehicles on the property. Furthermore, there is not to be any additional onsite advertising other than the sign as required by the state. Seconded by Bob Srnec. Motion carried 3 for 1-against.

Chairman Smith explained that the Special Exception has been granted and abutters have 30 days to appeal the decision.

He further made the applicants aware that they have 1 (one) year to begin the process of utilizing the special exception or it expires and the process would need to begin again.

Discussion was held on the process on how decisions are made. Should items be voted on individually or should items be discussed then one vote done at the end.

This will be decided at the next meeting.

MOTION: Bob Srnec moved to adjourn. Seconded by James Smith. Motion carried 4-0.

Respectfully submitted,

Wendy L. Keane
Land Use Clerk