



BOARD OF ADJUSTMENT

PO Box 120
Windham, New Hampshire 03087
Telephone (603) 432-3806

Zoning Board of Adjustment Minutes March 11, 2008

Mark Samsel – Chairman
Jim Tierney – Vice-Chairman
Dianna Fallon – Secretary
John Alosso – Member
Tom Murray – Member
Bruce Richardson – Alternate

Lot #9-A-400, Case #20-2008

Applicant – Edward N. Herbert Associates, Inc.

Owner – Brian Bauchman

Location – 120 Haverhill Road

Zone – Rural

A variance is requested from Section(s) **602.1 & 704.4** of the Zoning Ordinance to permit a 50' X 100' building and associated parking and storage areas to be built and used for the existing towing company and a new auto repair company.

Mrs. Fallon read the case into the record. Attorney John Cronin, representing the owner, submitted binders (marked as Exhibit A) containing the following:

1. Copy of the Zoning Board Application.
2. Copy of the Rockingham Superior Court Order of March 10, 1997.
3. Permitted uses in the Rural Zone form the Windham Zoning Ordinance.
4. Route 111 Traffic Report from the NH Department of Transportation.
5. Excerpt from Deposition of Al Turner dated March 29, 2007.
6. January 28, 2008 report from Mark Fougere, a certified planner. of Fougere Planning & Development, Inc. to Attorney John Cronin.
7. March 10, 2008 report from Mark McKeon of McKeon Appraisal Services to Attorney John Cronin.
8. Letters of support from Fire Chief McPherson, Jr., Jack McCartney, Windham Highway Agent, William & Mary Ann Abraham of 15 Galway Road, Kevin Cyr, President of Cyr Lumber Company, Joseph & Zalfa Raad of 113 Haverhill Road and Philip S. Park, Jr. of 109 Haverhill Road.

Attorney Cronin went on to present Case #20-2008 and give a brief history. Currently there is a house and garage with towing vehicles on the five-acre parcel. After the court order was issued the towing service worked for both the public at large and the police and fire and public works



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departments. Some auto repairs were being done on the site. After Mr. Turner's car was serviced and returned with a service order he was concerned that the use may not be allowed. Mr. Turner was asked by the NH Superior Court if there were any complaints about repair services being undertaken at Mr. Bauchman's property during the period of 1997 to 2002 with respect to the tow trucks or service business. In Mr. Turner's deposition his reply is *no*. Attorney Cronin provided information from NH Department of Transportation to address questions that have been raised regarding noise and traffic counts. Route 111 is a busy highway; by last count the state projects 16,000 cars per day travel that route. When taking into consideration site specific conditions of traffic, location (the lot is .6 miles from the Neighborhood Business District and .9 miles from an industrial district) and visibility this property is not really a rural zone.

Mr. Peter Zohdi of Herbert Associates also presenting for the owner submitted two plans, one showing existing conditions and one showing proposed conditions. There is an existing driveway, dwelling and garage. The proposed plan shows a 50' X 100' garage with a breezeway between existing and proposed garages with an area for tow parking in the front. The proposed garage complies with the required setbacks; on the northwesterly side 143' to the property line northerly side 101, northeasterly 102 and 103 ½ to the property line from the parking area. There will be a barrier between Mr. Bauchman's property and the property in the back that will be discussed with the Planning Board because that is their jurisdiction.

Attorney Cronin said currently there are five tow and two recovery trucks on the site with one dispatching person. The repair operation ceased in 2002. If the proposed garage is built 10 trucks could be housed in the building. Mr. McKeon's appraisal report states that Mr. Bauchman's business would not have a negative effect on house values in the area. Attorney Cronin read the supporting facts into the record. When Mr. Bauchman purchased the property there was an outdoor mechanic's pit on the property which suggests uses similar to those proposed are not wholly out of character for the lot.

Mrs. Fallon read into the record the names and addresses of the seven letters of support (listed above) that were in the binder submitted by Attorney Cronin. The following residents spoke in favor of this request:

- Ms. Clemmere of 126 Haverhill Road.
- Mr. Robert Young of 115 Haverhill Road.
- Ms. O'Brien of 19 Balmorra Road.
- Mr. Jeff Mitrou of 118 Haverhill Road.
- Mr. Bob Devlin of 98 Londonderry Road.
- Sergeant Michael Caron of the Windham Police Department.
- Sergeant Glen Record of the Windham Police Department.



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Mrs. Fallon read into the record the names and addresses of the letters of opposition:

- Justin & Kara Belair of 13 Galway Road.
- Rebecca & Lewis Zachas of 22 Faith Road.
- Marc Sneider of 5 Galway Road.
- Heath & Tracey Partington

The following residents spoke in opposition to this request:

- Daphne Kenyon of 11 Faith Road.
- Joe Collins of 9 Galway Road.
- Justin Belair of 13 Galway Road (letter also submitted).
- Dan Bergstresser of 11 Galway Road.
- Lew Zachas of 22 Faith Road (letter also submitted).

Attorney Cronin discussed market values of surrounding properties, stated that the current use was not illegal and that repairs could be limited to Monday thru Friday from 8:00 AM to 5:00 PM.

The Board decided to vote on the towing business and the repair business individually.

Mr. Zohdi advised the Board that there are 27 proposed parking places with 7 overnight spaces in the front of the lot.

The Chairman granted a five-minute recess.

The Chairman called the meeting back to order.

Mr. Alosso motioned and Mr. Tierney seconded the motion to go into Deliberative Session. Motion passed 5-0.

Deliberative Session, Case #20-2008

Mr. Murray motioned and Mr. Alosso seconded the motion to grant a Use Variance for Case #20-2008 as requested from Section 602.1 of the Zoning Ordinance for expansion of the existing Towing Company with a restriction limiting to 10 vehicles relating to the towing business and a solid 8' high wood fence to be placed on the rear lot line. Motion passed 5-0.

Mr. Alosso motioned and Mr. Murray seconded the motion to approve a variance for Case #20-2008 from Sections 602.1 and 704.4 of the Zoning Ordinance to permit a new auto repair company.



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Mr. Alosso withdrew his motion.

Mr. Alosso motioned and Mr. Murray seconded the motion to continue Case #20-2008 to the April 8, 2008 meeting in order to have more of a business plan presented showing hours of operation, number of vehicles etc. Motion passed 3-2. Mrs. Fallon and Mr. Tierney voted against the motion because they felt they had enough evidence to make a decision.

Approval of February 12, 2008 and February 26, 2008 Minutes

Mr. Murray motioned and Mr. Tierney seconded the motion to approve the February 12, 2008 minutes as written. Motion passed 5-0.

Mr. Murray motioned and Mr. Alosso seconded the motion to approve the February 26, 2008 minutes as amended. Motion passed 4-0-1. Mrs. Fallon abstained because she did not attend the February 26, 2008 meeting.

Other Business

Mr. Samsel advised the Board that questions to Attorney Campbell must go thru Mr. Turner or Mr. Sullivan. The Board discussed legal counsel and the 2009 budget. The Board requested a report showing the number of Zoning Board applications and the total fees collected for 2007.

Mr. Alosso motioned and Mr. Murray seconded the motion to reimburse Mrs. Fallon \$45.00 for the registration to attend the OEP Conference. Motion passed 5-0.

The Board discussed reviewing the By-laws and the possibility of making changes and additions.

Mail

- Copy of March 3, 2008 letter from Attorney Campbell to David Sullivan regarding 3 Woodvue Road.
- Copy of February 21, 2008 letter from Attorney Campbell to Al Turner regarding Bauchman Variance application.
- Copy of letter from David Sullivan to Attorney Campbell regarding contact with Town Counsel.
- Notices of Appeal to the NH Supreme Court regarding 3 Woodvue Road.