

Danville Zoning Board of Adjustment
June 26, 2014
7:30 pm

Members present: Chris Stafford-chairman, Tara Burkhart-vice chairman, Joe Luna, Roger Denison, Curt Springer, Janet Denison-clerk

Excused members: Michelle Cooper-selectmen's rep

Case # 2014-3 for Craig Stowell, 2 Hampstead Road, Tax Map and Lot 3-129 and 3-131-A, request for variance from Zoning Ordinance article IV.B.2 to permit a NH dealer's license.

Chris explained that the applicant met with the Board of Selectmen and Planning Board and is now seeking a variance to continue a business in the Danville Village District (DVD) which does not necessarily allow that particular use. It was explained that the ZBA has very specific criteria which need to be followed and if the applicant meets all five, the variance is granted. If there is some grey area, the variance may be granted with conditions. Chris mentioned there were no abutters present.

Craig Stowell said that he met with each of the neighbors around his property. Each of them signed a petition stating they are familiar with the property and, in the past and recently, have seen vehicles for sale at this property. A copy of the petition was made for the file.

Mr. Stowell said he is the new owner of the property at 2 Hampstead Road, better known as Danville Auto Repair. He has a business in Hampstead and would like to transfer his dealer's license to the property in Danville. He said the use of the property to sell cars is more applicable to the Highway Commercial Light Industrial Zone (HCLI) rather than the DVD. He explained that its current uses have been grandfathered. He quoted RSA 259:60-A which defines a motor vehicle business as a business dealing with sales and repair of motor vehicles, etc.

Mr. Stowell explained how he came to meet with the ZBA. To apply for a dealer's license through the state, the state first approves the application, then it goes to the local municipality verifying compliance with local zoning or that the applicant has a variance to have the business. Neither one of these exactly fit this situation, which then led to his meeting with the ZBA.

He further explained that several uses have been grandfathered at this property and no one has ever had to seek a variance yet. Chris explained that a dealer's license is required to sell more than five vehicles per year. Mr. Stowell stated the property has been used for auto sales for decades and has sold more than five vehicles per year. Chris explained that the Board of Selectmen did not agree that the use as a dealership was grandfathered because Mr. Stowell could not prove there ever was a license issued at this property. He stated that since that meeting, further research found a Supreme Court trial record as stating the failure to obtain a license doesn't adversely affect the continuance of the business, or grandfathered position, on the land.

Mr. Stowell explained he originally had applied for the variance, but a selectman suggested he attend their board meeting to discuss the issue. After two Selectmen meetings, he is continuing with the variance application. The Board asked for clarification that the applicant disagrees with

the Selectmen's decision. He said yes, and after each meeting he has learned more about vesting and that it is largely in his favor. The Selectmen had asked why there was never a dealer's license issued at that property. Mr. Stowell explained licensure was either never required or, when it became a requirement, the state never sent this form to the town. After further inquiry, it was concluded that Mr. Stowell could also apply for an appeal of an administrative decision. Chris said the focus of this meeting is on the variance and not any vested use.

Some correspondence was received from Peter Loughlin regarding this property. Town counsel agreed that seeking a variance is a worthy option.

Chris suggested the applicant start with criterion #2 and explain each item in order. Typically, the first criterion follows if the others are approved.

#2—The Spirit of the Ordinance is Observed

The applicant read this portion of the application. He elaborated by saying a dealer's license requires state audits at least annually, often twice per year. This is very much in line with the spirit of the ordinance which strives for bettering public health and welfare.

Chris said the consideration here is why the town created the DVD, why is it located there, etc. The size and scope of the business could change if a variance is granted.

Chris asked if the applicant plans to modify the building. Mr. Stowell said he will cosmetically update the building and landscaping, including removing the junk cars. The footprint and configuration of the building will be unchanged. He stated that in his research, he's found that grandfathering limits growth of a business but does not stop the expansion entirely.

There was a discussion about the two lots in question. The building is on the northern lot and the cars are parked on the southern lot. Mr. Stowell said the previous owner purchased the southern lot from the town. He explained there are two entrance/exits to the business, one off Main Street and the other off Hampstead Road. He does not wish to change these access points. The map seemed to indicate someone else owns a sliver of land between his two lots.

A mortgage plot plan showed a right-of-way (ROW) and Bergeron Way. It also showed the south west corner of the garage being on the ROW. Joe said he remembers the angle of Hampstead Road to Main Street was corrected and a 90 degree angle was created. Joe pointed out the disclaimer on the plot plan stating it is not intended to be a survey, and is not to be used for building permits or any such use. It is unknown if the ROW is still there or if the tax maps are accurate. A survey will be helpful in determining any outcome to this application.

The question was raised about whether or not a site plan review could be required. Mr. Stowell said the only thing he will do is make the building look more presentable and nothing structural will be changed. It was pointed out that a site plan review can be required. Mr. Stowell said he already had intentions to have the properties surveyed.

Mr. Stowell said he has no plans to make this into a residence. There will be one to two employees. In prior years, the lot has had about 20-25 vehicles parked on it at one time; Mr. Stowell intends to keep the number of total vehicles on the lot to 15-20, including customer and employee vehicles, vehicles under repair, for sale, and in the building. The current hours of

operation are 8:30am to 6pm Monday through Friday. Saturday hours are 10am to 2pm. The shop is usually closed on Sunday. He explained that, during his discussion with the Planning Board, he was told the size and location of the sign on the building may remain unchanged.

Joe explained that the Hampstead Road border for the DVD and HCLI zone was not an arbitrary decision. Prior zoning did put some properties in multiple zones, therefore a new zone was created. Streets or property lines were followed to allow only one zone per parcel.

The ROW may be included in the deed description for one of the lots. Joe pointed out the ROW may have been abolished at some point. There was a short discussion of the two lots and Bergeron Way and that anything granted for these properties will impact the land when it is sold. It was pointed out that Mr. Stowell owns two lots, but only one was listed on the application. Since the abutters are identical, it was decided there is no issue with the legal notifications required and this hearing can encompass both properties.

#3—Substantial Justice

Mr. Stowell said again he does not plan to change anything except for the curb appeal. The building is structurally sound and it will be properly and legally licensed through the state to continue doing what's already been done at this location. He wants it to flow into the business district and not be a distinguishable difference from the attractive businesses further south. Curt pointed out the building could be cleaned up without the variance.

Chris asked if the area to store the cars is inside the wetland buffer. It is presumed the building and parking area are within 75' of the wetlands, but the exact location of the wetlands is unknown. A ground test was done for the property before it was purchased and the test results were favorable. Mr. Stowell said he does not intend to neglect the wetlands.

Joe reminded the Board that a prior variance application was approved with the conditions that the building not encroach further into the wetlands and that drainage is made to flow away from the wetlands. Also parking and storing of vehicles were required to be away from the wetlands.

Mr. Stowell said he does not intend to add to the existing parking spaces. Curt suggested the Board conduct a site walk. Joe said a survey protects the applicant and will clearly define the property and setback lines. It was stated that if the variance is granted, similar conditions could be placed on the property and it is in the best interest of the applicant to have those restrictions. Chris suggested that the applicant obtain groundwater testing to set a baseline in case an issue arises in the future.

Curt said the question to ask deals with the loss to the individual that is not outweighed by a gain to the general public. An injustice occurs when the individual's loss is not compensated by a gain to the public.

It was determined that a site walk and accurate map will be beneficial to the applicant as well as the community. If the variance is granted, conditions may be applied similar to the previous application and it is in their best interest to have these restrictions.

#4—Values of Surrounding Properties

Mr. Stowell reiterated that improving this lot will only improve the values of surrounding properties. Chris stated that there is no reason to believe otherwise.

#5—Unnecessary Hardship

Special Conditions of Property:

Mr. Stowell read the application for this section. Curt said what needs to be proven is that the zoning provisions don't make sense for this parcel and that the goals of zoning don't apply here. He gave the example of a residential lot surrounded by grandfathered industrial uses. There is probably a case for not continuing that parcel as only residential. He asked what the point is of literally enforcing the provisions of the ordinance on this lot, in light of how cars have been sold at this property for a number of years. He rephrased this and asked how denying the variance would advance the goals of the DVD. Chris said the point of this section is explaining what is unique about the property and why something can be allowed when normally it is not.

Mr. Stowell said this property is unique: its use involving the motor vehicle business is different than anything else in the DVD and has had that use for almost 100 years. There are no other garages allowed or in use in the DVD except for this one. He said a difference will be that the vehicles there will be clean and away from the wetlands. When he introduced himself to the neighbors he learned that the line-of-sight has been impaired by vehicles parked in certain areas of the property. He plans to improve that as well.

Proposed use is reasonable:

Chris said the key question here is: will the proposed use alter the essential character of the neighborhood? Mr. Stowell said it will not, it is unique and not related to any of the rules or restrictions for this zone. The proposed use is reasonable because it allows what has been done for years and no one will notice a difference except for a cleaner lot. Chris stated the issue is the scale. Clearly previous owners have sold cars but haven't sold hundreds at one time.

Mr. Stowell said he understands the lot is tiny and he does not expect it to be a huge business. He likes the small town feel and that it is a historic business. He wants to keep what is there now but make it presentable. He does not want to have a restriction on the number of cars he can sell per year as that will be limiting his revenue. Roger asked, and Mr. Stowell agreed, that he can understand the number of cars per sale at one time can be limited.

Mr. Stowell said he is a licensed dealer right now. His current business is smaller than the Hampstead Road property. The other place has one bay, no lift, and the rent is more than the mortgage here. He is selling about 12 cars per month which covers overhead and bills.

Chris told the Board that the abutter's property was discussed during the Selectmen's meeting. This lot was approved by the Selectmen and ZBA for a dealer's license. A letter in the property file dated 1993 from the Selectmen to Lenny Bergeron states it is approved for a dealer's license. It was in the Commercial/Retail and Service Zone at the time which did not allow vehicle sales.

Mr. Bergeron explained that he considered purchasing the Bergeron property because it had a valid dealer's license up until last year. He pointed out another letter dated 2002 from the ZBA which stated a garage on that property predates zoning.

Chris said the public hearing will not be closed yet. The Board discussed the criteria as presented so far. It was agreed the welfare of the community won't be impacted as this doesn't appear to be different than what has existed there previously. Curt said he hasn't heard anything yet that would seem to alter or threaten the community. Joe said 15-20 cars on the property will probably be no different than what has been there already.

It was agreed that the wetlands and ROW may be issues. The board discussed some restrictions that could be put on the property, but a survey is needed before a final decision is made. The Conservation Commission will be invited to a site walk.

Possible restrictions included no vehicles will be parked behind the building or near the wetlands and the number of cars for sale at one time will be limited. Mr. Stowell said he has no intention of making this a salvage yard. He may have one vehicle as a restoration project, but all the cars available for sale will be newer and in good condition. Roger pointed out that car sales may have less of an impact on wetlands than an auto repair shop and salvage yard.

Mr. Stowell was asked about the oil and propane tanks on the property, all used for heating. All the tanks were inspected before the property was purchased and all were reported to be in good condition. He plans to keep the propane tank and remove the oil tank.

He was advised to hire an engineer to review the lots and draw a plan that illustrates the wetlands with setbacks, location of the building, both parcel locations, and the possible ROW. It was noted that if the building location does not change, a variance is not needed for the wetland encroachment.

It was agreed to have a site walk, with the Conservation Commission invited, and continue the hearing. Curt made and Tara seconded a **motion to continue the hearing on July 22 at 7:45pm**. The motion **passed** unanimously. Joe made and Roger seconded a **motion to hold a site walk on July 22, 2014 at 7pm**. The motion **passed** unanimously.

Minutes

Curt made and Tara seconded a **motion to approve the minutes of May 13, 2014 as written**. Joe abstained. The motion **passed**.

Rules of Procedure

The Rules of Procedure were discussed briefly. This is the second hearing regarding two suggested changes. Curt made and Joe seconded a **motion to ratify the increase in fees, as previously discussed**. The motion **passed** unanimously. Chris made and Curt seconded a motion to change the meeting date as outlined. The motion **passed** unanimously.

At 9:40pm Joe made and Curt seconded a **motion to adjourn**. The motion **passed** unanimously.

Respectfully submitted,

Janet S. Denison-clerk