

Franklin Zoning Board of Appeals  
For Meeting Held On  
Thursday, February 4, 2010  
355 East Central Street  
Franklin, MA 02038

Members Present  
Bruce Hunchard  
Robert Acevedo  
Bernard Mullaney  
Seth Jackson  
Philip Brunelli

**7:30PM – 71 East Central St – Bassam Younes (Leemilt's Petroleum, Inc.)**

**Applicant is seeking approval to sell motor vehicles in a CI zone where it is not permitted.**

**A variance/special permit for use will be required from the ZBA**

Abutters Present

Appearing before the board is Attorney Craig Ciechanowski and Bassam Younes the operator of the property at 71 East Central Street. Believe this board has some history with the property, some time ago requested a variance but I was not involved at that time. We re-filed and our initial thought was to seek a variance/special permit and change the number of vehicles to sell on the property. But upon reflection I have written a letter to the board and you should have it, indicating I am of the opinion that a variance/special permit for this is not necessary but instead we are asking the board for a determination that the sale of no more than three vehicles would be considered an accessory use to the primary use of the service station. His primary operation on the property is the repair of vehicles, not gas. I have seen the memo that Town Counsel Cerel has submitted to the town Planner to the board. I respectfully disagree with his conclusion. I believe that the fact that there is a specified use in the zoning tables of auto sales if not by itself meaning it can't be an accessory use. So they can be 100%. We recognize that this is one step in this process. Abutters Michael and Elaine Costello speak but they thought the public hearing was for a different property so they have no further comment. Board - He's looking for a determination from this board that if we agree that the sale of used cars is an accessory use to the property from what they currently do their now. Everyone would have to agree that the primary use of the property is a gasoline station, he does some repair work. At the hearing is Beth Dahlstrom, Town Planner who states she understands the argument but also wants to point out that the gas station in CI zone might be something that's there but it is a use that's allowed in a Commercial I zone by a special permit. Board – I can guarantee that they never got a special permit to operate a gas station. Planner - If you are considering an accessory use just keep in mind that a gas station is not a use that's allowed now. Board – Then we will have to consider it a pre-existing non-conforming use, but it's the use. Planner – It's not a use in the downtown that we would like to promote. Towns in the process of revitalizing the downtown. Board – With the accessory use is that a special permit? Response: No, he's looking for a finding that the board determines that the sale of used motor vehicles is considered an accessory use to an automotive repair and filling station. If you look at the code there are three general sales accessory use categories in the code and they are all allowed in the C1 district. If you find it an accessory use there is no need to grant a special permit. Planner – There is not enough room as it is, it's not comply with the site plan now, not enough room to turn around, not enough room to park cars. The site plan shows spaces. Attorney Ciechanowski says there has never been a violation. Planner – If you were to submit this right now there is no way I could review this and submit to the Planning Board with a favorable outcome. Board – Beth is there any difference in the last nine years as to how they operate the garage? Response: No, but in regards to the site plan you ask to put another use to this site that has how many uses? A crowded site, a gas station, repair facility, inspection, numerous cars at that site already that are crammed in there. It's not easy and cars are not in legal parking spaces. Board – For the record do you own the building on the property? Response – No. Letters read into the minutes from the Planning Board dated December 29, 2009 and Mark G Cerel Town Attorney dated January 22, 2010. Attorney Ciechanowski wants to make one point in respect to the conclusion of Attorney Cerel's letter that the majority of establishments do not sell motor vehicles. We researched the number of used car

licenses that are issued in the town and at present there are eight (eighth one seems to be at the same location) of the eight, five of the eight offer repairs, so it's not just a clear demarcation. Board – Incline to grant a finding that the sale of motor vehicles is an accessory use to the property which would be submitted irregardless whether it's a permitted use or an accessory use to a non conforming use that currently exist. Because, onetime the use must have been zoned properly otherwise it would not be there. Board member - he has been there nine years and hasn't been any cars sold in two years and you go beyond the two years you lose the right to sell cars. Board – Yes, he doesn't have the right to sell because he doesn't have a license, because we make a decision or grant a finding that we determine he has the right to sell them that doesn't mean he has the right to sell cars tomorrow. He will need a license from the town. He makes his site work. Motion by Bernard Mullaney to close the public hearing. Seconded by Robert Acevedo. Unanimous by the board. Motion by Bernard Mullaney to "Take Under Advisement". Seconded by Robert Acevedo. Unanimous by the board.

Motion by Robert Acevedo to grant a "Finding"

The ZBA has made the following findings and determination based on the foregoing documents, plans and the evidence submitted to it at the public hearing.

## II. Findings

1. The site is located within the "C1" zoning district and directly abuts East Central Street (also known as Route 140).
2. Younes operates an automobile service station on the site, including both gasoline filling and automotive repair.
3. Under the Town of Franklin Zoning By-law, an "accessory use" is "[a] use...on the same lot with and of a nature customarily incidental and subordinate to the principal use..."
4. Within the "C1" zoning district, certain accessory uses are allowed as a matter of right, including:
  - (a) retail sale of nonagricultural products manufactured, warehoused or distributed on or from the premises;
  - (b) other customary accessory uses; and
  - (c) other retails sales, services.
5. The sale of no more than three (3) automobiles by Younes at the Site constitutes an allowed accessory use to Younes' principal use of the site as an automobile service station.

Seconded by Bernard Mullaney. Discussion: One board member feels it should not be a Finding but a Special Permit. Robert Acevedo votes to approve. Bruce Hunchard votes to approve. Bernard Mullaney votes to oppose. Finding passes on a two to one vote.

General Discussion:

Motion by Bernard Mullaney to accept the rewritten Special Permit verbiage for the in-law apartments. Seconded by Robert Acevedo. Unanimous by the board.

Motion by Bernard Mullaney to accept the minutes of January 21, 2010. Seconded by Robert Acevedo. Unanimous by the board.

The board is in receipt of a letter dated February 4, 2010 from The Community Builders, Inc. requesting a return of the 5,000.00 bond. Motion by Bernard Mullaney to confirm with William Yadisernia that everything is complete. Seconded by Robert Acevedo. Unanimous by the board.

The board is in receipt of a letter dated February 2, 2010 from Equivise requesting return of unused funds. Motion by Bernard Mullaney that based upon an opinion from the town attorney if the court case is completely done we will return the balance. Seconded by Robert Acevedo. Unanimous by the board.

Motion by Bernard Mullaney to adjourn. Seconded by Robert Acevedo. Unanimous by the board.

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Signature: \_\_\_\_\_

Date: \_\_\_\_\_