

TOWN OF GORHAM
REPORT OF THE BOARD OF APPEALS
OCTOBER 18, 2012

Chairman Mark Curtis opened the meeting at 7:00 PM. There were 20 members of the public present at the start of the meeting.

Roll Call: Chairman, Mark Curtis; Board members: Haws, Scontras, Kaufman, Shurtleff, Sunnell and Clark; Code Enforcement Officer Freeman Abbott, Deputy Town Clerk Jennifer Elliott and Town Attorney Natalie Burns.

Moved, Seconded and VOTED to approve the September 20, 2012 meeting minutes as printed and distributed. 7 Yeas.

Appeal # 12-03. The appeal of Insurance Auto Auctions, Inc. and Shawn Moody requesting a variance to expand an existing lawfully non-conforming automobile storage/salvage auction use already located on the Moody property, which is located at 200 Narragansett Street (Map 19, Lot 1) which is in the Suburban Residential District. This appeal was postponed from the September 20, 2012 meeting.

Mr. Katsiaficas, attorney for Insurance Auto Auctions, Inc. spoke on behalf of the appeal and referenced the packet of information that was sent to the Board members and how it addressed the criteria that was necessary for the appeal and also information that the Board was asking for from the last meeting in September. He addressed the last 3 criteria, as the first three had been voted on. He referred to an aerial photo of the property and explained that they have to meet DEP criteria and the Planning Board criteria, and addressed a letter from Maine Inland Fish and Wildlife. Scott Bodwell of Bodwell EnviroAcoustics LLC, presented information regarding a noise study that he determined would comply with the Gorham site plan review standard. He had a demonstration of a new back-up alarm so the Board members and the public could hear it.

Chairman Curtis referenced 3 emails from abutters and also stated that the company he works for does business with Moody's.

Moved, Seconded and Voted to allow Chairman Curtis to hear the case. 6 yeas, 1 abstained (Curtis)
The Public Hearing was opened and 4 people from the public spoke and voiced questions about site and one of the abutters presented an advisory petition to the Board to show their opposition. Shawn Moody spoke to the fact he is a responsible business owner that appreciates input from the neighbors. There were no further comments and the Public Hearing was closed.

The Board discussed the remaining criteria (4-6)

Board voted on each criteria, resulting in the following;

#4 Moved, Seconded and VOTED criteria has been met. 4 yeas, 3 nays (Clark, Sunnell, Kaufman)

#5 Moved, Seconded and VOTED criteria has been met. 7 yeas

#6 Moved, Seconded and VOTED criteria has been met. 6 yeas, 1 nay (Kaufman)

Moved, Seconded and VOTED to take a 5 minute recess 7 yeas

Meeting re-convened at 9:25 pm.

The Findings of fact and reason and conclusions were read aloud by the Town attorney. They are as follows;

TOWN OF GORHAM BOARD OF APPEALS FINDINGS OF FACT AND CONCLUSIONS

Insurance Auto Auctions, Inc. and Shawn Moody as joint applicants seek approval of the enlargement of an existing automobile salvage storage and auction use on property located at 9 Moody's Drive and 200 Narragansett Drive, further identified as Tax Map 19, Lots 1 and Tax Map 39, Lot 22.

The property is zoned Suburban Residential and Narragansett Development District.

The owner of the property is Shawn Moody. Insurance Auto Auctions, Inc. (IAA) leases a portion of the premises. The applicants have provided deeds and a memorandum of lease to demonstrate their right, title or interest in the property.

Currently existing on the property are, among other uses, Moody's Collision Center and IAA's automobile salvage storage and auction use. These uses are not permitted under the current zoning but are legally nonconforming uses because they were lawfully in existence prior to the adoption of the current zoning of the property. The proposed expansion would increase the capacity of the current auto storage area for up to 500 additional vehicles. The current storage area averaged approximately 1,225 vehicles in June of 2012.

The applicants seek approval of the expansion of the nonconforming automobile salvage storage and auction use under the provisions of Chapter I, Section II(4) of the Land Use and Development Code. This section authorizes the Board of Appeals to grant permission for the expansion of a use that is made legally non-conforming by the provisions of the Code. In reviewing the application for enlargement, the Board must utilize the special exception criteria set forth in Chapter I, Section IV.E of the Code.

In addition to the application, the applicants have submitted existing condition plans and a site plan prepared by Sebago Technics that was amended at the October 18th meeting. In response to a request by the Board, the applicant has submitted a copy of the Maine Site Location of Development Act approval for the existing operations on the site, the DEP Best Management Practices for Floor Drains, IAA's Best Management Practices Plan dated July 2007, they asked and presented evidence in support of their concerns, letters from the Maine Department of Inland Fisheries and Wildlife concerning fisheries and wildlife habitats, a 2006 Declaration of Restrictions establishing a 200-foot wide undisturbed buffer and area to remain undisturbed adjacent to Harding Road, a letter from IAA's Branch Manager setting forth noise control measures, information concerning broadband sound back-up alarms, a sound level assessment prepared by R. Scott Bodwell, P.E. of Bodwell EnviroAcoustics, and a letter from the Maine Department of Inland Fisheries and Wildlife dated October 15, 2012.

The Board held a public hearing on September 20, 2012. Several neighbors spoke in opposition to the project, citing concerns about noise, lighting, potential environmental impacts, potential negative impacts on the identified cottontail habitat, buffers, and views of the proposed operations from neighboring residences. They also presented evidence in support of their

concerns. Neighbors also testified about the incompatibility of the proposed expansion with the abutting residential uses. At the close of the public hearing, the Board began its deliberations, but postponed consideration of the application to allow the applicant to bring additional materials to address concerns about noise, wildlife habitat, and potential pollution.

The Board had a second meeting on the application on October 18, 2012. At that time, the Board reviewed the additional materials presented by the applicant. The Board reopened the public comment period to address the new materials that had been received. Neighboring property owners expressed continuing concerns about environmental impacts, the incompatibility of the use with the residential neighborhood, and the desire to stop future expansions of the use. The Board also received e-mails from several property owners opposed to the project and received a petition signed by many neighbors and other Town residents.

Special Exception Criteria:

1. The proposed use will not create or aggravate hazards to vehicular or pedestrian traffic on the roads and sidewalks, both off-site and on-site, serving the proposed use as determined by the size and condition of such roads and sidewalks, lighting, drainage, and the visibility afforded to pedestrians and the operators of motor vehicles on such roads.

The expanded use will utilize the existing site entry at Moody's Drive.

A 40-foot wide driveway will link the existing area of operations to the proposed expansion area. This will be wide enough to accommodate emergency vehicles and vehicles accessing the expanded area.

There will not be an appreciable difference in traffic resulting from the expansion. There currently are approximately six deliveries of vehicles per day and one auction per week. Many of the participants in the auction do not come to the site.

(The Board voted 7-0 that this standard was met).

2. The proposed use will not cause water pollution, sedimentation, erosion, contaminate any water supply nor reduce the capacity of the land to hold water so that a dangerous or unhealthy condition results.

The existing uses have received site plan approval from the Town and approval from the DEP. These reviews determined that the existing development would not result in any of the stated issues. The applicants will be required to amend those approvals to address the proposed expansion.

The applicant is required by its insurer to maintain Best Management Practices and has submitted a copy of those BMP's.

There are two monitoring wells on the property that are checked by the Maine Department of Environmental Protection each year.

The applicant made representations concerning construction of the expansion area to be similar or better than what exists in the existing area.

(The Board voted 5-2 that this standard was met).

3. The proposed use will not create unhealthful conditions because of smoke, dust, or other airborne contaminants.

The existing use and the proposed expansion do not generate smoke, dust or other airborne contaminants that would create unhealthful conditions.

(The Board voted 7-0 that this standard was met).

4. The proposed use will not create nuisances to neighboring properties because of odors, fumes, glare, hours of operation, noise, vibration or fire hazard or unreasonably restrict access of light and air to neighboring properties.

The proposed expansion will not create odors or glare.

The hours of operation will be 8:00 a.m. to 5:00 p.m. Monday through Friday, unless otherwise extended by the permission of the Gorham Police Chief in the event of an emergency situation.

No lighting is proposed for the expanded storage area.

There will be security fencing around the perimeter of the facility. There is an existing wooded buffer along the boundary with the Twilight Lane and Midnight Way properties that will remain unchanged. In addition, the applicant will install a 10-foot high vegetated earthen berm with a 2:1 slope along the westerly edge of the expansion area, near the residential lots on Twilight Lane and Midnight Way in order to reduce noise and visual impacts. The gravel storage area will commence approximately 130 feet from the property line.

The expansion will not create vibration or fire hazards and will not restrict access of light and air to neighboring properties.

The operations do not include auto repair and vehicles will not be dismantled on the site.

The applicant has submitted a noise study prepared by R. Scott Bodwell, P.E. that indicates that the proposed operations will meet the noise requirements of Chapter IV, Section IX.T of the Land Use and Development Code, which establishes noise standards for projects that require site plan review. This finding is based in part upon the provision of the vegetated earthen berm. In addition, the study reviewed the noise levels of loading operations, backup beeping alarms on the loader, and the alternative of a loader white noise backup alarm. Mr. Bodwell also presented detailed evidence on this issue at the hearing and provided a detailed explanation of his methodology. The applicant provided further information about the white noise backup alarm. The applicant will require that solid waste pickup will not occur prior to 8:00 a.m. There will not be an audible fence alarm.

The Board initially voted that this standard was not met. However, it then voted to reconsider that finding and postponed its consideration of the application to allow the applicant to submit additional information. After the presentation of the additional information and public comment on that information, the Board voted 4-3 that this standard was met (Clark, Sunnell, Kaufman).

5. The proposed waste disposal systems are adequate for all solid and liquid wastes generated by the use.

The proposed expansion does not include a structure and will not include any new waste disposal system for the site. The offices for IAA are located in an existing office building on the Moody property; the existing waste disposal system for that building has received all required approvals.

There is a DEP approved oil/water separator on the site. Solid waste will be removed by a private contractor. This issue is addressed by the management plan submitted to the Board.

The Board voted 7-0 that this standard was met.

6. The proposed use will not result in damage to spawning grounds, fish, aquatic life, bird, or other wildlife habitat, and, if located in a shoreland zone, will conserve (a) shoreland vegetation; (b) visual points of access to waters as viewed from public facilities; (c) actual points of access to waters; and (d) natural beauty.

The property is not located in a shoreland zone. There are no identified spawning grounds or fish, aquatic life, bird or other wildlife habitat in the area proposed for expansion. There is an identified potential New England cottontail habitat to the west of the existing facility that is protected by a deed covenant. The proposed expansion will occur outside of that protection area and is separated from the protection area by a berm. The applicant submitted a letter from Steve Walker, Acting Environmental Review Coordinator, for IF&W dated October 15, 2012. This letter stated that (i) the appropriate habitat conditions for New England cottontail are not present at the site; (ii) the Department has no data suggesting occurrences of other rare, threatened or endangered animal species within the project area; (3) there are no mapped Essential or Significant Wildlife Habitats or Fisheries Habitats that would be directly impacted by the project; and (4) a qualified biologist must conduct vernal pool surveys during the amphibian breeding season to verify the presence or absence of regulated vernal pools prior to finalizing project design and permit applications.

The Board voted 6-1 to approve (Clark).

Conditions of Approval:

1. This approval is dependent upon and limited to the proposals and plans contained in the application and supporting documents, including supplemental and revised plans, and oral representations submitted and affirmed by the applicant, and conditions of approval imposed by the Board. Any variation from such plans, proposals and supporting documents and representations, except a change determined by the Code Enforcement to be a minor change that does not affect approval standards or conditions of approval, is subject to the review and approval of the Board of Appeals prior to implementation.
2. The applicant shall use only white noise backup or similar or better technology alarms for loaders on the site or a vehicle with only a backup camera when available.
3. The berms shall be installed in accordance with the revised plan submitted at the October 18th meeting as part of the noise study. Changes to the berm will not require an amended approval as long as they meet or exceed the noise mitigation set forth in the noise study.

The Board voted 6-1 (Clark) to approve the project

The Board voted 6-1 (Sunnell) to adopt the conditions of approval.

The Board voted 7-0 to adopt the findings of fact and conclusions set forth in this document.

The findings as read aloud were Moved, Seconded and VOTED 7 yays

The Conclusions and Reasoning were Moved, Seconded and VOTED 6 yays, 1 nay (Clark)

The Conditions of approval were Moved, Seconded and VOTED 6 yays, 1 nay (Sunnell)

Moved, Seconded and VOTED to adjourn. 7 yays

Time of adjournment 10:05 pm

A True Record of Meeting

Jennifer Elliott, Deputy Town Clerk