



# TOWN OF NORTHBOROUGH Zoning Board of Appeals

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Approved 2/24/15

## Zoning Board of Appeals Meeting Minutes November 25, 2014

**Members in attendance:** Richard Rand, Chairman; Mark Rutan, Clerk; Brad Blanchette; Fran Bakstran; Robert Berger

**Others in attendance:** Kathy Joubert, Town Planner; Nick Antanavica, Building Inspector; Elaine Rowe, Board Secretary; Amy Poretzky; Andrew DeWolfe

**Chairman Rand called the meeting to order at 7:00PM.**

### **Public Hearing to consider the petition of Andrew DeWolfe for a Variance/Special Permit to allow the use of pre-owned vehicle sales on the property located at 12-14 King Street, Map 82, Parcel 22**

Mr. DeWolfe discussed his plans for the property located on King Street, near Times Square Plaza. He noted that currently there is a towing company and auto repair business on the property, with two car lots located next door. He explained that he is seeking a permit to allow him to sell used cars and display 5 of those vehicles out front.

Mr. DeWolfe explained that he holds an auction every few months to auction off abandoned vehicles from his towing business. He noted that, because he is not a licensed used car dealer, it impacts the taxes levied against the buyer. He stated that, if approved, he will be seeking a class 2 license for the sale of used vehicles.

Ms. Bakstran asked Mr. DeWolfe if he needs the ability to display vehicles for sale on the property. Mr. DeWolfe stated that it is not an absolute requirement, but it will likely impact his ability to sell the vehicles if they cannot be displayed out front. Ms. Bakstran asked how the vehicles are currently being sold. Mr. DeWolfe stated that sales are done through periodic auctions and word of mouth.

Ms. Bakstran also questioned the application for a special permit when used car sales are not allowed. Mr. Antanavica explained that the primary use is a towing business, and used car sales are allowable as an accessory use. He noted that the board could opt to approve a variance instead, but a variance would attach to the property in perpetuity. Since a special permit applies only to the applicant, any subsequent owner would be required to come back to the board for re-approval. Mr. Antanavica voiced his opinion that it is in the town's best interest to consider a special permit rather than a variance.

Ms. Bakstran questioned Mr. Antanavica's interpretation of the bylaw. Mr. Antanavica stated that the way in which this section of the bylaw was written and due to the placement of a comma results in his interpretation that the sale of used cars requires a special permit.

Ms. Bakstran stated that, if the board opts to consider a special permit, she would like to see the layout of the land addressed in the decision. She noted the existence of a stockade fence to contain salvage

vehicles and questioned whether allowing storage of some vehicles outside of the fence is desirable. Mr. Antanavica commented that the board does have the ability to condition the decision as it sees fit.

Ms. Bakstran voiced her understanding that this business was originally a towing company with no onsite storage, with a special permit being granted in 2007 that allowed for vehicle repair and the storage of 10 – 15 vehicles. She also noted that, while she is not concerned with what lies behind the stockade fence, she does care about the aesthetics in the front of the building.

Mr. DeWolfe discussed his plan to locate cars on the flat area closer to the driveway. Ms. Bakstran reiterated her desire to include conditions in the decision to ensure that the property will not look unsightly and take on the character of an automobile graveyard. Chairman Rand commented that it is the Police Department's responsibility to police the situation. Mr. DeWolfe stated that he keeps his lot clean, and the only time a vehicle is parked outside the fence is when it is scheduled to be picked up by the salvage company. Mr. Rutan commented that it would be in Mr. DeWolfe's best interest to keep the area neat.

Ms. Joubert asked Mr. DeWolfe to clarify where he anticipates the vehicles will be parked. Mr. DeWolfe stated that there is a flat area of approximately 20 x 30 feet that he thinks is well suited for displaying vehicles for sale. Chairman Rand asked if the area will be left grassy or if it will be paved. Mr. DeWolfe voiced a preference to leave it as is so that he will not need to remove the trees. Mr. Antanavica informed Mr. DeWolfe that the bylaw requires a 10-foot parking setback. Ms. Joubert also voiced her understanding that the bylaw does not allow for a parking area that is grass. Mr. Antanavica suggested that the board can condition the decision to require that cars for sale be parked on a paved surface, to protect the groundwater from any potential fluid leaks.

Amy Poretsky noted that the business started as a towing company under a special permit granted in 2007, and now includes an auto repair component as well. She question what the primary use on record will be if the applicant is granted an additional special permit for the sale of used cars. Mr. Antanavica indicated that the primary use will not change because the board will include a condition in the decision that stipulates that the sale of pre-owned vehicles is an accessory use.

Ms. Poretsky asked if anyone discussed the issue of the erroneous comma with Town Counsel as it could change the entire bylaw. Mr. Antanavica noted that he has not read our entire bylaw, but stated that he has read through hundreds of zoning bylaw books and encountered other circumstances like this where a misplaced punctuation mark changes the meaning of the sentence.

Ms. Bakstran commented that Mr. DeWolfe was not the applicant that was granted the special permit in 2007, and questioned how he could continue to operate under it given Mr. Antanavica's statement that the special permit applies to the applicant and does not remain with the property. Mr. DeWolfe indicated that Bill Farnsworth, the Building Inspector/Zoning Enforcement Officer at the time, indicated that he would be permitted to continue that use because the special permit had already been granted. Ms. Joubert commented that it is not possible to change the previous Building Inspector's interpretation and, based on Mr. Farnsworth ruling, Mr. DeWolfe's business is legally allowed.

Ms. Bakstran mentioned that the application packet included pictures of the site. Mr. DeWolfe noted that the picture showing a pickup truck with trees to the left shows the flat area where he expects to locate the vehicles. Ms. Bakstran commented that this area is approximately 4 feet above Route 20.

Ms. Poretsky explained that she had provided a list of her concerns via email (copy attached). Mr. Berger discussed the punctuation issue in the current bylaw. He stated that when a regulation is going to include or impact items included above it, a semicolon is typically used to tie them in fully. He voiced his opinion that, since items A, B, C, D and E in this section end with a period, the comma is limited to just the sentence in D.

Ms. Bakstran asked how the board would need to proceed if the members feel that a variance is more appropriate, and questioned whether the board should do so. Chairman Rand commented that the application is for a special permit. Mr. Rutan suggested that the board would need to reject the existing application and have the applicant apply for a variance if that is the preference.

Ms. Bakstran suggested that the proposed use is not in substantial harmony with our master plan, and this is not an appropriate location for such use. She also voiced her opinion that this site does not have adequate and appropriate facilities for the use. She stated that the existing business is not allowed to have more than 4 cars displayed, but currently there are 6, and suggested that approval of this application will make the area even worse. She reiterated that she is not in favor of allowing the applicant to display a large number of vehicles but would like to provide him with the opportunity to obtain a Class II license.

Ms. Poretsky recalled that there was a great deal of discussion about the zoning bylaw in 2009, and the issue of used car lots was part of that discussion. She noted that there is a house between the applicant's property and another used car lot, and voiced concern that the house could be removed and an additional car lot could be placed in that space. Mr. Blanchette stated that the intent of the bylaw is to preserve Northborough's characteristics as a small town, and he agreed that approval of this special permit may be a detriment to the area.

Chairman Rand suggested that the board could grant a special permit with a condition prohibiting the applicant from displaying vehicles. Ms. Bakstran commented that she is reluctantly in favor of this approach so long as the board limits the applicant to a very few cars.

Ms. Joubert asked the applicant if he currently uses all of the space in the building located at 14 King Street. Mr. DeWolfe confirmed that he does. Ms. Joubert asked what the primary business function is at that location. Mr. DeWolfe stated that one bay is used for vehicle inspections and one is used for repairs to his own trucks.

Mr. Berger asked Mr. DeWolfe where he anticipates storing vehicles if the board prohibits him from displaying them outdoors. Mr. DeWolfe stated that he will likely put them across there street on his parents' property.

Brad Blanchette made a motion to close the hearing. Robert Berger seconded; vote unanimous.

## **DECISION**

Chairman Rand voiced his opinion that this use fits with other uses in the area. Mr. Berger voiced his understanding of the applicant's need for a Class II license but indicated that he is not in favor of any further display of cars outside. Mr. Blanchette & Mr. Rutan agreed. Ms. Bakstran suggested that allowing 2 or 3 vehicles to be parked near the bay doors where they are not visible from the street may not be detrimental.

Fran Bakstran made a motion to grant a special permit to allow the sale of used cars as an accessory use only on the property located at 14 King Street with the condition that said cars will not be displayed anywhere other than on the paved surfaces on the south side of the building, with no more than 3 vehicles displayed at any one time. Mark Rutan seconded; vote was 4 in favor and one opposed (Robert Berger opposed).

**370 Southwest Cutoff** – Ms. Joubert noted that the Site Plan for 370 SW Cutoff has been provided and is ready to be signed.

Chairman Rand noted that the board had received a handwritten memo from Don Lavin about this project, but it was difficult to read. Ms. Joubert explained that Mr. Lavin had come into the office yesterday, at which time Debbie Grampietro informed him that the hearing had already been closed. Mr. Lavin opted to jot down his thoughts anyway, so they have been provided to the board.

**Dunia Gardens** – Ms. Joubert noted that the board had granted a continuance of the Comprehensive Permit for the Dunia Gardens project on Hudson Street in 2011. She explained that an attorney working on the closing for one of the units will not move forward because not everything has been recorded. She informed the board members that she has written a note to file indicating the board's approval of the extension that will need to be signed by the Chairman.

**ZBA Meeting Schedule for 2015** – Ms. Joubert distributed copies of the 2015 ZBA meeting schedule.

**Adjourned at 8:00PM.**

Respectfully submitted,

Elaine Rowe  
Board Secretary