



BOARD OF ADJUSTMENT

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

Zoning Board of Adjustment Minutes August 24, 2010

Board Members

Mark Samsel – Chairman
Tom Murray – Vice-Chairman (Excused)
Dianna Fallon – Secretary
Elizabeth Dunn – Member
Heath Partington – Member
Jim Tierney – Alternate
John Alosso – Alternate (Absent)
Mike Scholz – Alternate
Salvatore Basile – Alternate

Staff

Tim Corwin – ZBA/Code Enforcement Administrator
Patricia Kovolyan – Administrative Assistant

Seat Alternates

The Chairman appointed Mr. Scholz to replace Mr. Murray for this meeting.

Lot #13-B-75, Case #40-2010

Applicant – Bruce Wilson, Trustee
Owner – B&B Realty Trust
Location – 40 Rockingham Road
Zone – Business Commercial A

A variance is requested from Section 605.1.4.2 of the Zoning Ordinance to permit the short term storage of vehicles and from Section 704.4.1 to permit the parking of more than one (1) unregistered vehicle.

Mrs. Fallon read the case into the record.

Mrs. Dunn advised the Board that she has had her vehicle repaired at Wilson's Repair Shop, but not in recent years. Mrs. Dunn mentioned this to see if the Members thought this was reason for her to recuse herself. Chairman Samsel said that he also has had his car repaired at Wilson's. No one thought this was reason for recusal.

Mr. Bruce Wilson presented his case. Cars are left at his site for repairs not storage. Mr. Wilson referred to Town Planner, Elizabeth Wood's memo of June 28, 2010. In her memo Ms. Wood



BOARD OF ADJUSTMENT

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

states ... *there is a reasonable amount of time that a car can be stored while it awaits repair, which I feel is a period of 2 weeks, after that point I feel the car is considered to be stored for junk yard usage, which is not an allowed use of your property.* Chairman Samsel questioned the *reasonable amount of time...a period of two weeks* mentioned in Ms. Wood's memo. The Chairman asked if this was a reasonable amount of time, especially if someone is waiting for parts. Mr. Wilson said he didn't know how Ms. Wood came up with that amount of time and there are reasons a repair could take more than two weeks. Most cars are in and out daily and weekly. One vehicle has been on the property for ten months because the owner is in Iraq. Mr. Wilson went on to explain that 25% of his business is repairing vehicles for numerous used car lots. These vehicles are not registered, but come and go the same as those that are registered. This has been the practice since the shop was built in 1984. Mr. Wilson read the supporting facts into the record.

Mrs. Dunn said that if Mr. Wilson is granted a variance he will be going in front of the Planning Board for site plan review and one of the questions that will come up will be the amount of cars that could be physically stored on the lot at a certain time. Mrs. Dunn asked if that has been worked out with anyone. Mr. Wilson said that at the TRC meeting everything was fine with the Police and Fire Chiefs and the Building Inspector. A maximum number of cars was not mentioned at the TRC meeting, but if everything is approved Mr. Wilson will have the lot striped and all cars will be in a parking space.

Mr. Partington asked how many cars are on the lot currently. Mr. Wilson replied approximately 25. Mr. Partington said that there are other repair businesses in Windham and there doesn't seem to be as many cars on their lots. Chairman Samsel said maybe the other repair shops aren't as good. Mr. Partington asked if the car dealers could store the cars on their lot. Mr. Wilson said that it doesn't make sense to tow a car back to the dealer or someone's home while waiting for a part and then have to pay again to have it towed back to Wilson's shop.

Mr. Scholz questioned parking on unpaved areas. Mr. Wilson said that there are two areas that have crushed pavement. Mr. Scholz asked if a variance was granted with the condition that parking would not be allowed on unpaved areas would that be acceptable. The Chairman said that is a Planning Board issue and it is not an ordinance.

Mr. Tierney said that there is a conflict between the sSections of the ordinance that the applicant is requesting relief from. Mr. Tierney said that the applicant does not need relief from Section 605.1.4.2 because he is allowed to store vehicles that are in the process of being repaired. Mr. Tierney read Section 605.1.4.2 into the record. *There shall be no storage of motor vehicles, appliances and equipment on the premises other than those in process of repair or awaiting delivery or in an enclosed structure or required in the operation of the service stations, garages or repair shops.* The applicant has not been cited for Section 605.1.4.2. Mr. Tierney said that he feels the request for relief from Section 605.1.4.2 was an afterthought.



BOARD OF ADJUSTMENT

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

Mrs. Fallon and Mr. Tierney expressed a desire to see the site plan that Mr. Wilson submitted to the Planning Board. Mr. Samsel questioned what the relevance of the plan would be to the issues before the Zoning Board.

Brenda Wilson of B&B Realty Trust spoke in favor of this request. Mrs. Wilson said that the vehicles are not there for storage they are there for repairs.

Mr. Joseph Armano of 38 Rockingham Road, owner of Armco Flooring, spoke in favor of this request. Mr. Armano said that the cars that are parked in the unpaved area are actually parked on crushed stone.

The Members discussed the two week time period mentioned in Ms. Wood's memo and the need for relief from Section 704.4.1 of the Zoning Ordinance. Mr. Samsel and Mrs. Dunn agreed that a two week period is not adequate. Mr. Samsel stated that he would be surprised if the Town challenged the Board's determination that two weeks is not an adequate period of time.

Mr. Scholz stated that he did not think a variance would be required from either Section. The Board considered whether Section 704.4.3 would apply to exempt Mr. Wilson's storage of unregistered vehicles.

Mrs. Dunn suggested that a variance from Section 704.4.1 may be needed to park cars in the setbacks but suggested the Board could approve the variance subject to Planning Board approval.

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

Deliberative Session, Case #40-2010

Chairman Samsel said that relief is not needed from Section 605.1.4.2 because it specifically exempts repair shops and a two week time period is not reasonable, relief is necessary from 704.4.1, and that -and- parking is a Planning Board issue. Mr. Partington questioned whether Town staff would continue to interpret the provision in the same manner. Mrs. Dunn suggested the Town could request a rehearing. Mr. Samsel stated that he did not believe the Town would enforce the provision in a manner inconsistent with the Board's interpretation.

Mr. Samsel stated that the Board is entertaining unnecessary requests for relief and that the Board has spent a significant amount of time discussing an issue that should not be before them. Mr. Scholz stated that clearly there is a specific exemption for service stations, garages, and repair shops and that should be the basis for not requiring the variance. Mr. Samsel believes there's a communication issue between the Board and staff to prevent cases from coming to the Board that do not need relief.



BOARD OF ADJUSTMENT

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

The Board considered whether to provide a maximum number of unregistered vehicles that could be parked on the property. The Board agreed to condition approval of the variance on the Planning Board's approval of the parking of vehicles on the Property.

Mrs. Dunn motioned and Mr. Partington seconded the motion to grant a variance for Case #40-2010 from Section 704.4.1 to permit the parking of more than one unregistered vehicle on the property, conditioned upon site plan approval of the Planning Board that determines the number and placement of parking spaces for all vehicles and the Zoning Board further determines that relief is not required from Section 605.1.4.2 because all vehicles on the lot are in the process of repair or waiting delivery. **Motion passed 5-0.**

Approval of July 27, August 4, August 5 & August 10, 2010 Minutes

Mrs. Dunn questioned the motions listed in the July 27, 2010 minutes for Cases 34 & 35. Mrs. Kovolyan said that she would check the DVD and report back to the Board. Mrs. Dunn said that she would like to see at least a passing reference to the criteria; we have to say that we did what we were required to do. Chairman Samsel said ~~in that he was aware of~~ two cases ~~in which~~ the ~~judge court determined that the applicant's reading of the five criteria are sufficient to demonstrate that the Board has considered the five criteria in their determination. has qualified the supporting facts by the fact that the applicant states them.~~ The fact that they're written means we have acknowledged them in our determination.

Mr. Partington mentioned that there are two words spelled incorrectly in the joint Planning & Zoning Board meeting held on August 4, 2010. The Planning Board secretary will correct the August 4, 2010 minutes.

Mrs. Dunn motioned and Mr. Scholz seconded the motion to accept the August 5, 2010 minutes. Motion passed 5-0.

The August 10, 2010 minutes will be reviewed at the September 14, 2010 meeting.

Continuation of Deliberations regarding changes to ZBA Bylaws

Chairman Samsel requested that the discussion regarding the Bylaws be moved to another night.

Miscellaneous Board Business

Mrs. Fallon, Mrs. Dunn and Mr. Samsel said they would like to register for all three law lectures presented by the LGC at the Derry Municipal Center on October 13, 20, & 27, 2010.

Mrs. Fallon, Chairman Samsel and others mentioned that they liked the layout of the old agenda and notices.



BOARD OF ADJUSTMENT

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

Mrs. Fallon read Attorney Kathleen Sullivan DiFruscia's August 12, 2010 letter regarding the Cobbetts Pond Watershed Protection Ordinance into the record. Attorney DiFruscia's letter states that she welcomes any constructive suggestions from the Board concerning revisions to the Ordinance. Attorney DiFruscia will be working with the sub-committee appointed by the Planning Board concerning revisions to the Ordinance.

Correspondence

- August 12, 2010 Letter from Kathleen DiFruscia regarding the Cobbetts Pond Watershed Protection Ordinance.

Mr. Scholz motioned and Mrs. Dunn seconded the motion to adjourn. **Motion passed unanimously.**

The next meeting of the Zoning Board of Adjustment is scheduled for September 14, 2010 at 7:30 PM in the Community Development Department.

These minutes are in draft form and are respectfully submitted for approval by Patricia Kovolyan and Tim Corwin.