

VILLAGE OF HARRIMAN ZONING BOARD OF APPEALS
December 2, 2015
7:30pm

Opened the ZBA Meeting with the Pledge of Allegiance

Roll Call

The following persons were present:

- Laurine Miller – Chairperson
- Darrin Sainato - Member
- Carol Schneider – Member
- Sandra Daly - Member
- Barbara Singer – Deputy Clerk/Secretary
- Joseph McKay, Esq

Absent

- Chuck Crover - Member

Adoption of Minutes

- **Motion** to approve the minutes from the November 4, 2015 Regular Meeting was made by Member Schneider and seconded by Member Daly. *All in favor.*
- **Motion** to approve the minutes from the November 16, 2015 Regular Meeting was made by Member Daly and seconded by Member Sainato. *All in favor.*

WILLIAM HAUPT

106-1-2

INTERPRETATION OF ZONING CODE

Present: William Haupt, Owner; Herman Schneider, Former Owner; Ms. Patricia Smith, neighbor, 14 Maple Ave.

Mr. Haupt begins I'm sure you have a letter, I was issued a violation saying that being able to sell retail auto sales was an expansion of a non-conforming use and that my property is already a non-conforming repair use. My feeling is that I'm

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doing the same thing that the property was already utilized for, other than an accessory license which is required by the state of New York. I brought the previous property owner, Mr. Herman Schneider, who would like to tell you how he utilized the property, which is no different from how I am utilizing the property today.

Mr. Schneider states I had the property and Bill bought the shop from me. The shop has been there since late 1958. I sold cars, trucks, tractors, even sometimes heavy equipment. I never had a problem. I sold 4-5 cars a year. It's hard to remember all the details. He keeps it a lot neater than I did, no getting around that. My parents bought the property in 1941, we got along with the neighbors, had no problems there at all.

Mr. McKay asks Mr. Schneider you first opened the business in 1958 or 1959? And when did you sell it to Mr. Haupt? When you opened was it zoned residential at that time? Or was there some other zoning? Do you know what the zoning was there in 1958? Was this a register repair shop with NY State?

Mr. Schneider replies I started my business late 1958, early 1959 and sold it to Mr. Haupt in 1995. There was a residence up the hill and the shop was the shop. I got out of the service in 1955 and went on the GI Bill, for auto mechanics and repairs, I worked for a garage in Central Valley, that's no longer there, I worked there part-time until I got a full time job. I think the zoning came in around 1968 if I remember right. It wasn't necessary to be registered then. I think you had to sell more than five cars a year to be sales shop, I'm pretty sure that's the law. I stayed away from that for the simple reason that I know you have to be registered if you sold more than five cars a year.

Mr. McKay asks that remained that way until you sold the business to Mr. Haupt?

Mr. Schneider says yes.

Mr. Haupt asks Herman; you also sold bulldozers, backhoes, chain saws, heavy equipment at the same time as well, right?

Mr. Schneider says yes, my son has a small engine shop there and he did all of the small engine repairs.

Mr. McKay states this code came into effect in 1988, so in 1988 were you still selling about five cars a year?

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Mr. Schneider says oh, yes. What would happen is a customer would come in and didn't want to spend the money to do a repair. He would say I want to sell the car and if he had someone that was interested in the car, they would come to me and I would say here's what it's going to cost to fix it. It seemed to work out very good for the customer buying the car because now somebody's looked at it and fixed it.

Mr. Haupt states I would like to say one thing, I don't often sell five or six cars either. The reason I went for the accessory use of the auto repair place was because times change. When Mr. Schneider was buying a used car to resell, maybe the car cost \$1500 so he could register it in his wife's name. If he wanted to sell more than five cars in a year, he could have five cars in his wife's name, five in his name, five cars in his son's name but that's not the main problem. The problem is I've done mostly European cars since I've been there and I'm an ex Porsche factory award winning technician, so naturally I like to buy and sell Porsche's. The last Porsche I sold out of there, I could have bought, but I had to consign it because even though the car was 1989 it was worth \$25,000 and retailed for \$32000. And by the time I pay the sales tax, there goes half of my profit. As a dealer I can defer the tax until it's sold. You can't do that as an individual, it's against the law to jump the title from one person to another. It's really critical for me to do business and have this license. Several years back business got really slow, I called up my customers because I have a very close and personal relationship with them and I asked them, are you mad at me or did I do something? You're not spending any money with me. Fortunately none of them said that they were mad at me, they said this Porsche is our third or fourth car and we don't need this car. Do you know anyone that would like to buy it? At first I was like if I know of someone I'll let you know but then five or six people started telling me the same story and I thought I'm not doing much in terms of turning wrenches, I'll sell these cars for you. And I did. It helped me stay alive.

Member Daly asks how long have you been selling cars?

Mr. Haupt replies twenty years and again not many.

Member Schneider asks in addition to selling cars, what else are you doing?

Mr. Haupt replies primarily its auto repairs. You can't survive on that. The way I look at it is suppose Mr. Schneider never did repair cars, but instead repaired typewriters or office equipment and then I came in and started repairing PCs, you wouldn't be telling me that I could only repair those PCs; you can't sell a used one. Nobody would do that. It defies logic. And it's just natural when my customers trust me to repair their cars, they also trust me to go to the

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auction and buy them car. And they also trust me to sell their car for them. I'm just trying to make a living.

Member Schneider responds primarily you are doing auto repairs there, what was the intent when you purchased it? Do you do small engine repair?

Mr. Haupt replies primarily auto repairs; I tried to do the small engine repairs for a little bit but was just too busy to do both.

Chairperson Miller asks you buy cars at an auction?

Mr. Haupt responds I can but I haven't purchased any cars yet from the auction. I have only purchased them from customers and sold them to other customers. But that's an option that I want to explore but I can't tell you how much business I have lost with people coming to me saying my daughter needs a car for college, find me a nice Honda Civic. You can't walk in the door to an auction unless you're a dealer.

Member Schneider asks how many cars are you planning on buying and selling in a year now?

Mr. Haupt responds I would like to say three cars a month. I have never displayed a car and I don't ever intend to. It will not look any different than it does right now and it will never. And I'll tell you why because there's nobody going to go down Maple Ave and going to buy a Porsche, I can pretty much say that or anything that I usually sell. I'm not going to waste one of my few parking spots to put a car out there for display, even if I was allowed to. I sell cars via internet or just word of mouth.

Member Schneider asks where are you going to keep these cars if you go to an auction and buy them? These two bays can occupy eight cars? This property is only for your shop, you don't also live here?

Mr. Haupt explains as you can see from the plans I have storage for about eight cars interior. I'm not planning on having more than three cars in inventory so I have the room for inside storage. We can get eight cars inside the whole building, not in the service bays but in the back storage area. This whole property is just service and repair. The residence is behind and that's a different property.

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Member Daly asks are you working in the shop all by yourself. When did the last renter leave your business?

Mr. Haupt replies I had rented it out once to someone else but now I am there by myself, I have one employee and his wife sometimes helps him out too. My employee mainly does the repairs now. I am 55 years old; I am past my prime for wrenching. But I can sell a car. Ralph left in March 2014, he moved to Chester. This is my neighbor Pat. She lives in the neighborhood and her sons are customers of mine. If you would like to ask her anything.

Ms. Smith states I have raised three children there in the last 28 years when I bought my house and he's been a great neighbor and a great mentor to my children and for all of the kids on the street, when they had car problems they always went to Bill. He's been a great asset to the kids in Harriman and I think he maintains his property better than I do mine, to be honest with you. I've never seen a for sale sign on anything that's there and you don't even see the cars outside. So I have no problem with this. It's not an eyesore. I don't feel like it depreciates my value at all.

Member Schneider asks you would store these cars that you purchase here in these bays? And your customers would come to see because I would never buy a car without coming to see it. Also my concern is that your street is very narrow. I drove past your business this evening, and yes it does look very clean, how many parking spots do you have? Are they lined?

Mr. Haupt says of course, or I would take the cars to their house, or to their place of business. Also if they want to come after hours I would drive the car home with the dealer plate and they could meet me at my house. I have eight lined parking spaces, including a handicap spot, outside. We try to be respectful of our neighbors so we pull the cars inside at night. During the day the cars go in and out because they are being worked on.

Member Schneider asks how many cars come in and out during the day?

Mr. Haupt replies typically five or six a day. It depends on the work too. I've worked on one car for a week.

Member Schneider asks if you were to become a dealer what is the max capacity you have for storing cars inside.

Mr. Haupt states eight to ten cars inside.

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Member Sainato asks do you have your dealer license now.

Mr. Haupt replies yes, the state gave me the license because in the state's eyes if you're grandfathered for an auto repair license and inspection station, you're good with them for the dealer's license. I had to take the sign down to comply with the violation but I already am a dealer.

Member Schneider asks do you have your license with you.

Mr. Haupt replies no I can go get it, it's at the shop, I can bring the sign. I think back in January I got the license.

Member Schneider states no you can bring it next time.

Chairperson Miller replies so you have a dealer's license, and you had a sign up that the Building Inspector told you to take down.

Member Sainato asks is that a NYS repair facility in addition. So where's that sign?

Mr. Haupt replies no not in addition; it was always a repair shop. The sign is right next to it. They look the same, they're the same size. The state inspection sign is up, same number as the dealer sign. There are two signs up now, with the dealer sign there would be three. The one sign is down. No matter what my neighbor does to try to hurt me I always try to be respectful. Any time we get cars towed in, I always go out of my way to make sure that they don't block their right of way through the driveway, and I will continue to. They don't realize that this is going to be zero impact.

Member Schneider asks how does a tow truck manage on that street. It's such a thin, narrow road? Does it block the road while it unloads the cars?

Mr. Haupt replies typically what they do is go past the driveway, back in, move over 12' and drop it right in front of my place. It also depends on the size of the truck, some trucks can make the swing, other trucks will pull forward and then back up. It depends on the size of the truck and the skill of the driver. The other thing that my neighbor's concerned about is traffic and this is the part that I feel is counterintuitive to their complaint. Technically the last car that I sold I made \$3000 commission, if we did oil changes at about \$100 each and the car has to be

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dropped off, so that's 30 oil changes, that's 30 cars in plus another 30 cars in for pickup and then when they left that's another 30 cars. So in order to make the same \$3000 you have 90 cars worth of traffic coming into that driveway. In order to make that \$3000 commission one car came in to look at it, a second one to come in and pick it up.

Member Schneider states I do understand when a neighbor would be concerned about more traffic when you start selling cars. I've looked at a car to buy it, went on to the next one, then went back to look at it again. And so did ten other people. I do realize that you can make your money easier and quicker this way too though.

Mr. Dowd asks if this property is within 500' of state road, county highway, state or county park, municipal boundary or the boundary of state owned land.

Mr. Haupt replies I don't think so.

Member Schneider asks do you have room on your property to expand. I was wanted to make sure that one day I'm not going to find that you've paved extra or something.

Mr. Haupt replies I do but you're not allowed to expand on non-conforming use, without a variance anyway. I can do this without any expansion, just keep it a small business the way that I have been and it's not going to impact negatively any of my neighbors.

Member Schneider asks you're not going to have any outdoor storage, like tires. Because some repair shops if they change tires they stack them outside.

Mr. Haupt replies no we stack our used tires indoors.

Chairperson Miller states Mr. Haupt's property is always very clean and neat.

Mr. McKay states the zoning doesn't authorize auto sales, that's why you're here. One of the initial concerns that I had once I reviewed the property file was all of the information and data I saw on the file, including the last Article 78 you didn't mention anything about auto sales. That wasn't an issue then. Having Mr. Schneider here helps a lot because it's your burden of proof that since 1988 there has been continuous, no lapse for a year or more, auto sales approximately the same amount as before 1988. That's one issue that you would have to demonstrate.

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Mr. Haupt asks in other words I have to produce bill of sales? I wasn't a dealer at that time I don't have dealer documents that I can go dig up.

Mr. McKay states whatever you have is best. Mr. Schneider's testimony, I think, is the most powerful of all because nobody but him would know what the property or how it was used before. The other concern that I have is that you did mention that you have a non-conforming use. If that non-conforming use has always included the auto sales then you just want to be able to continue that. The second issue though is the code also prevents you from expanding a prior non-conforming use. So if you establish that five or six cars each year were sold continuously with no break of a year or more, what I heard you say is that you would like to sell three per month. So then you go from five to six sales per year potentially to thirty-six. That would be an expansion of a pre-existing non-conforming use. That's not necessarily fatal. But, quite frankly, this information came up in the Article 78 that you had several years ago, I will just want to review that and give the Board a memo on that because generally speaking and the cases are all over the place regarding what constitutes the expansion of a non-conforming use, sometimes it's simple if you never had car sales and you add car sales, that's pretty clear, if you add a new building, that's pretty clear, but in other situations where you have a restaurant that expands over the years, or a farm that expands over the years, the courts are reluctant to prevent someone from expanding the business. And essentially what the courts usually says is an increase in the volume or the intensity of the use is generally okay. There are cases that say that a particular type of expansion or a particular type of increase in the intensity of use is not authorized. I don't want any surprises, so the issue is continuous since before 1988 as many cars as five or six that you have any records, I doubt Mr. Schneider has any records, but whatever you have. The better records you make, of course the better it is for you. And the easier it is for the Board to make a decision.

Mr. Haupt replies even going back twenty years, I don't know what I have that far back.

Mr. McKay replies, understood but these are the things that you need to show. I don't know if you have any receipt, photos, but anything that you do have would help. Again, just to show if it was before 1988 it has continued since 1955 or 1956, whatever it was, the number of vehicles that were sold.

Mr. Haupt responds I would like to make a point about the five cars per years to the three cars per month. Things change in business, as you well know. Mr. Schneider and I were saying that twenty-five years ago we were all changing a lot of engines in cars. Engines used to go bad a lot and that's a big job on cars. Now a lot of cars rust out before the engine goes bad. So we don't

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do many engines jobs anymore. You're handling your customers' needs with a car whether it's putting an engine in the car or transacting a sale one car to the other. Basically you're in the car business and you're servicing your customer's needs. We're not increasing traffic, we're doing different things that we were doing twenty years ago. That's true. As Mr. Schneider said people get to the point where their car needs \$3000 worth of work, I don't want to do it, get rid of it and get me another car. I gotten years out of this car, and they don't want to put any more money into it. So basically it's just doing something different. I can only do so much in that little spot. I'm basically trying to keep pace and make a living.

Member Schneider asks what are your business hours. What is the sign that you want to put up?

Mr. Haupt replies Monday through Friday 8 to 5, Saturday 9 to noon. It's the same as the other 3' by 2'. That's the standardized DMW size. I had it hanging up until I was told to take it down, about nine or ten months.

Chairperson Miller asks in order for you to be a dealer, that sign has to be displayed.

Mr. Haupt replies yes it has to be displayed on the building. I could get a fine The Inspector hasn't been around otherwise I could get fined or lose the license, obviously I could just tell him that I was here and I was appealing it but it's supposed to be on that building. The customers have to see that sign when they pull up. If that sign could be hanging in my office, we wouldn't be here right now. Everything would be fine.

Mr. McKay adds my concern is to make sure that you understand what your burden to demonstrate. Assuming the Board wants to put this up for a Public Hearing. Anytime this Board acts there has to be Public Hearing. Unless the Board wants to see the information before the Public Hearing, that's up to them.

Discussion broke out.

Member Schneider states the Board would like to have that information before they set the Public Hearing. So in two weeks, December 16, we would need you to hand any information to the Village Hall for distribution.

Member Sainato states he has a repair shop with a NYS Inspection station. So now the problem is he wants to become a dealer. So where the problem lies is with the growth.

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Mr. McKay states the first issue is that he's a pre-existing non-conforming use for the auto repairs. He and Mr. Schneider is saying that in addition to auto repairs they have always done about five or six car sales per year going back to the 50's. When I spoke earlier I had a question whether they had any car sales there because everything we saw from the Building file didn't say anything about car sales. But I don't think Mr. Schneider would travel from Norwich, NY unnecessarily. You can draw your own conclusions, but he seems to be as honest as the day is long. I think you can take his testimony to the bank but it seems then according to Mr. Schneider they have been selling about five or six cars a year there. So if that use has continued without any change of the use then they would have the right to continue to sell those five or six cars per year. Which means he could put the sign up? What I pointed out to Mr. Haupt was he says he wants to sell about three cars a month, that's an increase in the intensity of a pre-existing non-conforming use. Generally speaking the cases say that as long as the character of the use has not changed it can continue even if there's an increase in volume. So like I said if a restaurant expands over time or a clothes store the character of the use did not change but there are cases that say there's a point at which an increase in the intensity of use essentially changes the character to a new use. There's a whole memo from Lisa Felicissimo from seven or eight years ago, which I'm sure the case load hasn't really changed, it's very specific. But if the character of the use is the same it can continue. Going from five car sales a year to thirty or forty a year, that's a 500-600% increase in the intensity of the use. So you might be on the outer fringes of whether that's permissible or not. One thing you might want to consider is whether you limit the number of sales on the property. There are cases that say there's a point at which an increase of intensity of use essentially changes the character to a new use.

Member Sainato states I'm concerned about how many cars will be on the property. First he was talking about high end car sales and then he said customers are always calling him because their daughter needs a car for college. So that's a whole other ball of wax. And then he also stated that when a customer doesn't want to fix their car due to expensive repairs, he's going to purchase that and sell that car. So he's all over the place. Is he selling the high end Porsches where you are truly going to sell one, two, three cars maybe a month or are you going to buy 2005 Honda Accords and Civics that will sell twenty-five a month. How would you regulate this?

Member Schneider says that's why I was asking him what his max capacity for storing cars was.

Discussion broke out.

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Mr. McKay states I was very clear with him when I explained right up front the first issue is whether you can establish that you've always sold five or six cars, and we have Mr. Schneider's testimony. Then you have that it has never discontinued for a year or more. Then I pointed out to him the increase of the intensity of the use and I was very specific. So I think that you place limitations on it if you find five or six was the historical approximation and now he's looking to increase that 500-600% I think that you could probably either limit the total number of sales from the property, he says that they have never been displayed outside so you may want to make that a limitation. If he sells them on the internet I don't know if you care how many sales he has but maybe you want to limit the total number of vehicles on the lot at any one time.

Member Sainato asks how can we. If we grant him permission to put the sign up, then he's a NYS registered dealer, there's no limit to that. I think that's the main issue traffic and the size of the property. The property is very small, like the tow truck access that was brought up.

Mr. McKay states you can set a limit. You control the use of the property. If he gets a property in a commercial zone he can sell 50000 cars a year. But on this property it's different.

Chairperson Miller states the property really is immaculate. There's no oil on the ground or anything. So Mr. Haupt has two weeks to get the information to us, if we get it then we are going to have a Public Hearing on January 6, 2016.

Mr. McKay states if Mr. Haupt doesn't meet the deadline then you can cancel the Public Hearing.

- **Motion** was made by Member Daly to adopt the Resolution, seconded by Member Schneider. *All in favor.*
- **Motion** was made by Member Daly to close the regular Zoning Board of Appeals meeting of December 3rd 8:50, seconded by Member Sainato. *All in favor.*

Minutes Respectfully Submitted by:

Barbara Singer – Deputy Clerk/Secretary