

VILLAGE OF HARRIMAN ZONING BOARD OF APPEALS
February 3, 2016
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
- Chuck Crover - Member
- Sandra Daly – Member

Also Present

- Barbara Singer – Deputy Clerk/Secretary
- John Hager, Building Inspector
- Joseph McKay, Esq.

Adoption of Minutes

- **Motion** to approve the minutes from the January 6, 2016 Regular Meeting was made by Member Schneider and seconded by Member Daly. *All in favor.*

WILLIAM HAUPT

106-1-2

INTERPRETATION OF ZONING CODE

Present: William Haupt, Owner

Member Schneider states I went back and looked through all of the prior Minutes and evidence that were sent in 2007 before the Board. I wasn't on the Board at the time. I followed it from lawn mower repair shop to small engine to auto repair and followed the trail through but never in any of that did I see that sales were mentioned in any way. So I'm not sure where the past history of sales has come in because I haven't seen anything that supports that. The document that Mr. Haupt sent to the Board, the spreadsheet, that shows all of these names and addresses of sales, etc., as we looked through the packet it looks like everything was done in your own name and there isn't anything that supports that you were doing this through Haupt Motors.

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Mr. Haupt replies that this was done through consignment.

Member Schneider continues I personally don't see how, consignment, how you do that.

Mr. Haupt explains I would take the customer's car. The customer tells me that they want to sell a car. I take the car in, advertise it and represent it and conduct the sale with another person, usually another one of my customers. Both people come in at the same time, sign the paperwork over and I receive a commission for doing that. The other benefit of doing that is, since I used to like to specialize, and I still do like to specialize, I would not lose a car that I knew to some other part of the country. I keep that car in my fold even if it's with another owner.

Mr. McKay states I would like to make a point. At the last meeting the Board made a decision to close the Public Hearing. I know that Mr. Haupt is here and you might want to ask him some questions, but the Public Hearing is closed. One thing that the Board can do if other members have questions that they would like Mr. Haupt to respond to you could make a motion to reopen the Public Hearing that would have to be a unanimous decision. So I don't want the Board to stray too far but we have closed the Public Hearing.

Member Crover states I don't think that there's any reason to open the Public Hearing. This is an interpretation of the zoning code. Basically, the interpretation is whether the sales are part of the grandfathered zoning.

Mr. McKay replies I went back and I read the discussion at the last meeting. Certainly it is an interpretation, but it's also an appeal. There's a separate box in a different part of the application so the cover sheet does show that it's for an interpretation of the particular section of the Code and there's also an appeal of the decision that he was not permitted to post the sign because the car sales were not allowed. It's essentially the same question but one side of the coin is the interpretation and the other is the Building Inspector's interpretation and decision.

Member Crover replies looking through all of the past documents that we requested from the Building Inspector's office, right back to 1988 neither previous owner applied for a building permit or a variance to expand and was denied. Even in those documents there was no mention of sales it was all small engine repair, not even auto repair. And then in 1995 and 2007. I wasn't here at the meeting but I discredit Mr. Schneider's testimony. I read the minutes and heard it in the Public Hearing that he had always sold cars but there's no documents showing that and I lived here back then and I don't recall him selling cars there, so I discredit that. Reviewing our zoning and how grandfather zoning goes I have a business that is grandfathered in a residential area and I was not allowed to expand it or even change my use because a change of use would.

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be considered an expansion of the non-conforming. Since there's no documents showing sales of any type were ever done there, in fact there wasn't even any mention of small engine sales. It was all small engine repair, maybe some selling of used equipment that a customer didn't pickup. I think I saw one document about that. I personally don't think that the sales of the motor vehicles. I think for that to happen he would have to come back to us with a use variance request to expand the business to do that. So as far as the interpretation of the appeal I find it in favor of the Building Inspector. And the interpretation that selling vehicles would be an expansion and you would be required to come back to the ZBA for a use variance. And that's not what the application was for. That's not something that I'm ready to address tonight. If there are no other comments then I would move to make a motion as such.

Mr. McKay replies I have some questions to ask just to clarify the record. We did have some testimony both for and against. Chuck you just indicated that you didn't find essentially legal terms Mr. Schneider's testimony credible based upon your personal knowledge.

Member Crover states I wasn't here for that meeting and I didn't physically hear him speaking, but it wasn't a Public Hearing so he shouldn't have been speaking anyway. He should have been here for the Public Hearing if he wanted to be heard and credited.

Mr. McKay replies that is true. The Board has an option with respect to Mr. Schneider's testimony. He was here before the meeting, you are absolutely correct, he was not here for the Public Hearing, per say. He did give comments at an open public meeting which are in the minutes of the Village. So I think the Board, specifically, if you are going to make a determination regarding Mr. Schneider's creditability then I think what the Board really should do and can do as a matter of its discretion would be to incorporate the minutes from the time he was here into the record of the Public Hearing because as you say if you want to make a determination as to whether Mr. Schneider was creditable or not that testimony would have to be here considered part of your hearing.

Member Crover replies I understand what you're saying and we can do that but I don't even need that to evaluate that to make my decision. My decision was based on other matters of all the records that were provided and the testimony that was given. Even on this spreadsheet everything was based out of Mr. Haupt's Monroe address and I'm sure some of the dealings happened down here in Harriman through Haupt Motors but that doesn't make it right if it wasn't part of the grandfathered zoning. None of the other repair shops in the Village of Harriman have dealer licenses on the outside of their building. So I don't want to set a precedence here by saying it's part of the same like business. If a ruling came down from New York saying that if you repair cars you have to be allowed to sell them, there's no proof of that and that's not been brought to our attention. So my opinion would be that it's an expansion

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and that would require a use variance. Does anyone else on the Board have any comments? Disagree or agree with?

Member Schneider states I agree with what you just said.

Member Daly states I do also. I don't think that there's proof that there have been cars sold from that location because all of the paperwork provided shows the Monroe address.

Member Crover replies I looked further than that, whether there was proof of sales at that location. I don't think it was a pre-existing use before zoning was created.

Member Sainato replies I agree as well and I feel as though if we go forward with it the business will indeed grow. You can't put a limit on what you can sell. If you have an open door, things are going to change.

Mr. McKay replies for the record the real determination is whether or not that there is a pre-existing, grandfathered use, if you found that there was none the inquiry essentially ends. So I don't want the Board to confuse the two issues. If you find that there's no pre-existing right to sell autos from that location, then your inquiry ends. And you wouldn't then go on to consider what would happen in the future if there were additional sales and maybe additional cars on the lot. I don't want the Board to confuse those two issues. The second part that we just talked about if there were additional sales that might be a topic of discussion if you found that there was a right. The first point that you made was that you didn't believe that there was a pre-existing non-conforming right to sell motor vehicles.

Member Sainato states absolutely.

Mr. McKay replies I just want the record to be clear that that is the basis of your opinion and the other commentary that you made wouldn't directly relate to that issue. What we have essentially, if the Board believes, is the applicant has not met his burden to demonstrate that there was a pre-existing use to sell automobiles that is essentially the motion.

Member Crover asks do we just deny the appeal in a motion.

Mr. McKay replies there are two aspects of it. The interpretation of the Code is simply what everyone has said, they have reviewed the Code. I don't think the Code itself is unclear. The text of the Code states that a pre-existing, non-conforming uses can continue so I don't think that there's any dispute as to the text of the Code and you can agree that that's the proper

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interpretation of the Code. As the aspect of the appeal of the Building Inspector's decision, I think there would be a motion to uphold the Building Inspector's decision that the sign cannot permissibly be placed on the premises because the Board finds that there wasn't a pre-existing use for sales of autos at the premises. I think that your further point to continue your analysis, if that's what the Board determines, then Mr. Haupt would have the option to come back for the use variance.

Motion was made by Member Crover to uphold the decision of the Building Inspector with the violation of the auto sales and that we do find that the sale of autos was not part of the pre-existing use of that property, seconded by Member Daly. *All in favor.*

Mr. McKay states the last meeting was on January 6th. You've made your decision and I can provide the Board with a written decision, based upon your review and you can put that on the March meeting, I will circulate it beforehand and you can adopt the formal decision at that time. We closed the Public hearing on January 6th and we have sixty-two days.

Member Crover adds if you can get the decision drawn up sooner and e-mail it to the Board members as long as we let Barbara know that we agree that it's what we meant, then Laurine can sign the decision.

Mr. McKay replies we could do that because the Board has voted. My only concern is if anyone finds that the decision that I wrote has any significant problem, you'll have to come back and essentially clarify it. The vote as it stands tonight, you've made your decision, and I'll follow up and put that in writing. If there is any problem and the decision needs to be amended in some way we would have to do that and correct it by Tuesday March 8.

- **Motion** was made by Member Crover to close the regular Zoning Board of Appeals meeting of February 3, 2016 at 7:50pm, seconded by Member Schneider. *All in favor.*

Minutes Respectfully Submitted by:

Barbara Singer – Deputy Clerk/Secretary