

VILLAGE OF HARRIMAN ZONING BOARD OF APPEALS

January 6, 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
- Barbara Singer – Deputy Clerk/Secretary
- Joseph McKay, Esq

PUBLIC HEARING

WILLIAM HAUPT

106-1-2

INTERPRETATION OF ZONING CODE

Present: William Haupt, Owner

Chairperson Miller asks if the notice of Public Hearing was published in the Times Herald Record, and what date was it published.

Ms. Singer replies it was published on December 28, all of the Notices were mailed and twenty-four of the thirty-eight were returned signed.

Mr. Haupt states as most of you know I've owned the property at 22 Maple Ave for twenty years and I've run a small automobile repair business and during that period of time I've purchased cars from customers, used them myself, sold cars to customers. My predecessor, Mr. Schneider, whom you know was down here was also a repair shop. He's the one who established the original non-conforming use. He also sold cars and trucks as he testified in the last meeting and he also sold snow plows, snow blowers, lawn mowers, farm implements basically bulldozers, tractors. This is what he said and I used to be one of his customers as well, I bought a chainsaw from him. Throughout the years I have bought and sold a few cars, and nobody knew any difference if, I'd keep it under five cars a year. I don't display any cars; it doesn't look any different than a customer's car sitting out there.

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The last few years, things have changed a little bit and certain repair service work will die off, for example engine jobs. Twenty years ago we used to do a lot of engine jobs. Has anyone had an engine put in their car in the last two years? Nobody, well that doesn't surprise me because there isn't much work like that anymore. However, a few years back more of my customers asked me to help them to get rid of their cars, their Porsche or whatever, I was servicing them already so I helped them sell their cars. I transacted sales for them. It worked out very good for me. It works out excellently for the community because there's zero impact, nobody sees any displayed, creates very little traffic. For a \$3000 commission, I generated about three vehicles, which I stated before if I would have to do 100 oil changes to make that much money, which would generate far more traffic in the community and on my driveway which is a shared driveway. I try to keep traffic down to a minimum to avoid any confrontation with my neighbors. And I've done that for the last couple of years. My last tenant was in there and when he got a little bit too large, he moved out. A year ago I applied for a dealer's license because essentially cars are getting too expensive. When I was buying cars for \$1000 to \$2000 the sales tax wasn't that much on them. But when you're buying cars for \$20,000 - \$30,000, that's over \$2000 worth of sales tax, not to mention the delay because you have to wait for the title to come back. So I applied for the dealer's license from the state, I was awarded it because basically they looked at it as it was an accessory use license. I was licensed for both the auto repair and the inspection station. It's the same license number; same sign just a different color. It's basically just an accessory to what I already have. So that's the only thing that you're going to see is an extra sign on the building. None of the neighbors will notice anything different from what I've been doing all along; only the red two by three sign that the state requires. I would be happy not to put it up if I didn't have to, but the state requires that it has to be visible when a customer drives up to the building. If you have any questions, I would be happy to answer them.

Mr. McKay states, Mr. Haupt maybe you could address one issue. You're indicating that both you and your predecessor both sold about five cars a year on average. When you were here last I think that you indicated to the Board that you wanted to sell more than five cars a year. Can you estimate what you anticipate?

Mr. Haupt replies since I haven't, it's hard to, but I think that I could easily without showing any impact, without any of the neighbors noticing anything different, without effecting traffic flow, I could probably move three cars a month. I have the room to store them inside. That, I think would be zero impact. Any more than that and I would have to evaluate that. But then, of course, if I did really well with this I would be willing to sell this place and buy a place in a commercial zone and move into a more suitable type of place. Basically I'm just trying to continue what I'm doing now and making a living. I simply want to make a living. And

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satisfy my customer's needs. I brought Mr. Gornstein here because he's a neighbor, customer. He's purchased a car from me. He actually asked me to find him a car. I can't find him a car unless I have a dealer's license and have access to the auctions. Otherwise there's no incentive for me to find him a car retail. It doesn't work. I need to have access to the wholesale auction for which you need a dealer's license. I figure who's better than me, I'm a master technician, I can find a good car just as good as anyone else. I keep my place clean and will continue to do so. I will continue to do everything the right way.

Bill McAllister, Kearney Ave, states you're talking about Schneider selling snow plows, cars, and I must have been sleeping for years because he didn't sell trucks. He was a small engine repair. I have lived here since 1971, he repaired Skidoos, lawn mowers, he never sold trucks. He may have sold an odd car, but I have never seen any cars sitting there for sale.

Mr. Haupt replies that's the idea. He never put one out there for sale. He sold them to his customers and that's the same thing that I would do.

Mr. McAllister replies you already said that you want to sell three cars a month. You're looking to get bigger. You're going to find some other place to go. Who wants to buy your building if you're not making a living there? If you can't make a living there, then the next guy won't. Schneider was employed by the Monroe-Woodbury School District for thirty-seven years. That was a part-time thing for him at night.

Mr. Haupt replies back to your point about how did Schneider do it without seeing any cars for sale. Schneider's son was full-time there.

Nettie Scherne, Maple Ave, states Herm Schneider was there as a small engine repair shop. That's what it was. And then when you came in, I have no objections with what you have, you keep a nice building, but I don't want to see a car dealer shop there. I don't want to see any more traffic than what we already have. I'm not in favor of anything big. If you do anything other than what you're doing now.

Mr. Haupt replies I understand that. That is exactly what I plan on doing. The only thing different that you're going to see is that one sign. There is absolutely no change. Actually, Nettie, I'm sure that you noticed it, traffic has been quite low. You're lucky if you see more than a couple of cars in that driveway most of the time.

Robert Gerard, 20 Maple Ave, states I share a driveway with Mr. Haupt. One of the problems that I see is if you allow Mr. Haupt this expanded use, there's nothing to stop the next owner

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from continuing with this and he's going to get bigger. You can't keep it in check, once you let the cat out of the bag, it just goes. I don't trust Mr. Haupt, I have a letter here that I would like to give to you. This is a letter that he wrote twenty years ago when he bought his property, on what he was going to do with the property, and I have some picture to show you of what he's done with the property. What they did, him and Mr. Schneider, rather than come before the Zoning Board, when they changed it over from small engine to auto repair they worked it out with the Building Inspector and they got the Building Inspector to sign off on it. So it never came before the Zoning Board. So he writes in his letter how he's going to work approximately forty hours a week, and how he's going to work on vehicles indoors only and keep things in a neat and orderly manner, among other things. If you look at these pictures, they are from my driveway looking down, and the Building Inspector has all of these pictures and a lot of documents. I tried to get them for you but I couldn't get them yesterday, the Mayor said that you could request them and have them all. These pictures are from 2007 approximately. He had two businesses in there at one time. He had his auto repair and a second auto repair.

Mr. Haupt explains I had a tenant in there with his own license. When I got sick with Lyme disease I brought a tenant in.

Member Daly asks was that allowed? How long was the tenant there?

Mr. Haupt explains actually no. There was another interpretation and they said no and then that tenant promptly left after that. He was there exactly two years.

Mr. Gerard replies you can see the nightmare, the mess. The trucks night and day. Nothing like what he said in his letter. And also there's a tenant in there now doing work. So if the tenants in there now doing work and then he's going to start selling cars. That seems to me to be two businesses also.

Member Schneider asks in regard to the tenant, is that George?

Mr. Haupt replies George isn't a tenant, George works for me. It is a single business. There's only one sign, and there's only one business there.

Mr. Gerard replies when he had the last tenant there, he had one sign and it was his sign, but he had his own business, European Motors.

Mr. Haupt explains the idea was for the last tenant to buy the building from me. But once he got bigger and he had such problems with the Gerards, he basically didn't want me there, him

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here or anyone there, he just decided to vacate. So I basically lost a sale on the property because of my neighbors sharing a driveway.

Member Sainato asks Is this your only source of income, this particular garage?

Mr. Haupt replies at the moment no, I have a second job. I work for a company that does contract work for BMW. Technical support. I basically deal with on the computer technical support to dealer technicians.

Member Sainato asks so if they have a problem car, you go and help out? That's a full time job then with a company car and all then?

Mr. Haupt answers a case comes and then I go help them out. I don't have a company car, its full time at the moment but let me explain, in the last six years that I've had that job, which is mainly for the medical benefits, I have also been laid off three different times.

Member Sainato asks you're going to have the tech job for BMW, the repair shop and the car dealer job?

Mr. Haupt explains basically the repair shop, George handles that, I don't do repairs anymore but it's under my business name. The BMW contract is probably going to go away within the year. At my age I don't think they are going to hire me back. I don't get assigned a company car. I had a car from the company but it's called a familiarity car, just for me to drive and become familiar with the car. I have my own car today. I may get a company car to drive one week out of a month.

Member Daly asks if you're not repairing anymore is George repairing all of the Porsches that you have over there.

Mr. Haupt explains I help him out, I'm teaching him how to fix the Porsches.

Member Schneider states you told us when we were over at our site inspection that you work about fifteen hours a week. When do you work these fifteen hours a week with your full time job?

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Mr. Haupt replies I work one shift. Sometimes if I work the 12 to 8 shift at BMW, I'll come in for four hours at my shop before I start there. Other times I'll work a full day on Saturday, so that's eight hours and sometimes a little bit after work during the week.

Member Daly states I remember distinctly that you said that you only worked on Saturdays when we went to visit you.

Mr. Haupt states I do stop by sometimes after work but I don't get much done during the week, quite frankly. I'm tired after a day's work.

Member Schneider states on your site plans it says that your hours 8am to 1pm, but I thought that when you were before us the hours were reported Monday through Friday 8 to 5 and Saturday 9 to 12. I just wanted to clarify that.

Mr. Haupt replies yes those are the hours that are open for business. I'll be there after hours doing paperwork with the doors closed. But we're not generating customer traffic. We are open for business Monday through Friday 8 to 6. Most of the time we're gone before 6 though. And then Saturday it's a half day.

Mr. Gerard states there's been at least two other times this property has come before the Zoning Board, in 1988 and in 2006-2007. We would hope that you'd look at the minutes and see what's been determined in the past. Thank you very much.

The members were given pictures of the property by Mr. Gerard and it's stated that they are from 2007.

Member Schneider asks these pictures are from 2007, since then have you seen any improvement

Mr. Gerard replies it improved with the last tenant there, his name was Ralph. He was pretty busy, we had some issues with him but he's moved out a year or so ago, maybe more. The new tenant, George, is fine. He's quiet, everything's good. I just don't want to see what it was once, happen again and if you allow it to happen, you can't put it back in the bag down the road. Once it's allowed, it's allowed forever. The next owner, ten owners from now and it's not fair. Our property value is important to us.

Member Schneider states I would like to ask you a couple of questions. You share a driveway with Mr. Haupt? Have you ever had an issue with not being able to access your property?

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Besides this situation due to tow trucks? Have these things still been happening? Has George been there for about two years now? Do you ever have incidences where there are cars left out in the parking lot at night? I'm just trying to understand the situation as you see it or how you feel. If there's a hindrance there at this time or if it's been rectified somewhat.

Mr. Gerard answers yes we share a driveway. There have been cars parked in the driveway at night. And I have had to zigzag through the cars to get up the driveway. There have been times when flatbeds drop off in the middle of the night right at the base of my driveway so that when I come down I have to swerve to get out. Things have been pretty good since George has been there I can't complain. I don't want to go back. It was very frustrating and aggravating to us. I don't think George has been there two years. He leaves cars outside but not to excess. I think it was 2007-2008 the Zoning Board allowed him to have parking for eight cars. Once in a while it goes to eight maybe nine but not usually. It's been good so we're not complaining about George. I just don't want it to go back to what it was.

Mr. Haupt adds I agree the Bell was out of hand and we got rid of him. That was not what I intended to have in my place but sometimes when you're in a tough position sometimes you do what you have to do to try to survive. He was not the right guy to be there. Ralph was a really nice guy and I'm going to agree again with Mr. Gerard once he started getting big and once he started getting busy it was time for him to go too. He found a bigger place. And if we got too big, that would be it for us too. I don't enjoy this. If I got big enough or George gets big enough, we'll move on out too. We'll find someone to buy that place or we'll be back in here trying to put apartments in there or something. We'll do something with the property.

Member Schneider asks you said if I get too big or if George gets too big then we would move. Isn't George you?

Mr. Haupt explains yes George is with me. But let's face it; George is looking out for George. I know that he's looking at other places too. He'll go where the best deal is. He used to work for Ralph. He's looking to get the best deal that he can. I can't guarantee that I can keep anyone working for me. I just try to maintain a certain integrity with whoever I get and so far I took a big spanking with Mr. Bell and I've been pretty good since.

Member Schneider asks you have about nine cars go through your garage daily.

Mr. Haupt replies that sounds about right, I mean it's something, in all honesty, and this is the part that I don't understand people will converge all at one time and a lot will look. If you

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just happen to get that snapshot at the moment when we're trying to get a customer to park. But especially these days very far and few between. George is good about having people park in the right spot and I've always been good at it. It's a struggle sharing a driveway but I think that we're committed to doing it and we've been doing a good job at it.

Sharon Gerard, 20 Maple Ave, states I share a driveway with Mr. Haupt. I took most of those picture and hundreds more. There's a lot of smoke and mirrors here. Mr. Haupt wants you to feel sorry for him. I don't understand why if you have a business and it's not successful, it's really not the responsibility of your neighborhood to take the heat for it. It's not our fault that his business wasn't successful and that he had to rent out to what he must have known a very successful and very large auto repair business that repaired any type of vehicle and left junk cars outside. His letter clearly states that he works on high end cars and that he deliver and pickup most of his vehicles, which my husband did with him for quite a few years when we first moved I there. We had a decent relationship for the first ten years. But when he allowed Mr. Bell to move into that lot and destroy our quality of life and endanger my children, my pets, and myself every time we tried to come down that driveway our relationship went out the window. And it took us two and half years living in that filth to try to clear this up while he went to the Supreme Court and tried to keep it and then maybe a year went by when it was quiet because he couldn't find anybody to rent to. He found Ralph and rented to him and we had the eight limitation spaces. It didn't last. Ralph had over a dozen cars in there every day, outside, all night long, all weekend long. Flatbeds coming and going at all hours of the night and day. I would say almost every other day flatbed trucks coming down our little street that the Monroe-Woodbury bus garage won't even allow a full sized bus to pick our children up with because they deem that street too small. We've had tractor trailers, flatbeds, delivery trucks, fuel trucks you name it and it's been in that lot down there blocking our right of way and Mr. Haupt's solution is to tell us to drive across that grass when we couldn't get out which is not really a solution in the winter at all and why should we have to drive across the grass. This went on for a very long time. We also found out that Ralph of European Motors was working Monday through Friday 8am to 7pm and all day Saturday. Mr. Haupt's letter had stated forty hours, no more. So I did actually bring that to the attention of the Building Inspector at the time and they stopped working Saturdays. Now George is working Monday through Friday early in the morning until the evening as well as Saturday, Mr. Haupt and George are there all day long. So don't let him tell you that it's 9 to 12, it is not. We are there, we live there, and we see what goes on every single day. People show up with very loud car with high performance motors and they rev them and they zip up and down our street and they test drive these cars. This is not Route 17 this is Maple Ave, a quiet little side street. We own our home, we've improved our home, we've invested in our home we also have a right to get something out of it. He only sees his side of

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the story where he wants to get some money out of this shop which he's stuck with. It is not our fault he is stuck with this shop. We didn't do this to him but we have a right to a decent quality of life and to get something out of our home and everyone in this room who lives on Maple Ave has a right to get some money out of their home. It has degraded the quality of life on Maple Ave for the past ten years, seriously degraded our quality of life. We bought our home in 1996 and like I said the first ten years we got along, we talked, I took care of his shop cats when he was away on vacation, I had a key to his shop because he trusted me. It all went out the window when he allowed Jim Bell to do what he did to us. It was horrific. That was 2007 then Ralph came in a year later, maybe 2010, and that was another four years. Ralph was a smaller version of Bell. There wasn't junk or garbage outside, there wasn't junk cars but there were more cars than the eight spaces that they were allowed to park in and working more hours than what they had intended. And then he moved, I guess that was our fault too, because Mr. Haupt doesn't seem to take the fault for anything, and now George is in there and honestly, yes it has been much better. The spaces are not filled to capacity all of the time but now if we're going to start selling cars at that residence, you're going to have for sale cars in those spots and when George's customers come in, where are they going to park? They are going to park in spots that aren't designated.

Chairperson Miller asks in all of the years that you've had problems did you complain to the Building Inspector or to the police? And what did they do? How long have you lived in your home?

Ms. Gerard states absolutely, I have written letters of complaint, I have signed them like he asked me to. Not a lot happened. He would go down there and talk to him, tell him he has too many cars, you're over the limit. There are a lot of pictures and not just snapped at the moment that I thought was convenient like he's trying to insinuate. But cars that sat there all day long, up on jack stands, cars with their hoods up because they were working on them outside. Cars with smog running out of the tailpipe. Just disgusting. I have lived in my home for twenty years.

Mr. Haupt add there's a huge file on this regarding Mr. Haupt and us. There are a lot of pictures.

Steven Gornstein, Monroe, Bill Haupt is my mechanic. Bill called me about a month ago and told me he was going to a Hearing tonight and asked me if I would show up and attest to the fact that I had bought a car from him back in 2002. I said I would be happy to come. I wasn't expecting to step into an adversary situation and as a home owner I can appreciate everything that is being said. I wouldn't want my comments to feel like I was going against the local home

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owners I can well understand their point of view. I'm sort of surprised, I met Bill in 2000 I saw his 1970 yellow Garmagia in the parking lot, I left a note on it saying if you want to sell the car please give me a call. I have an old Volvo and people leaving me messages on my car. He did call me back and said he was thinking about selling the vehicle to buy a tractor, this and that, and we made a deal, I showed up with the cash and he said you're going to kill me because he said he wasn't ready to part with the car yet. So I asked him to do me a favor, when you're ready to sell the car give me a call, he did, I bought the car, etc. I found out that he was a mechanic and I've been using him ever since. I drive old cars. I have three Volkswagens, Land Rover and a Volvo. Bill fixes all of my cars, I won't let anyone else touch them for the most part, unless they're working with him. I'm surprised at his characterization because we're friends kind of via the mechanics but we're not personal friends. I have a tremendous amount of respect for him, I've been going to his shop since 2000. All my cars get fixed there and old cars break down all of the time. He must love me; I always say I know how you're eating tonight because I'm buying your dinner. But I choose to buy old cars and I really trust him to fix my cars. His shop is immaculate, it's unbelievable, you could down a breakfast blanket and sit on the floor in the middle of the garage and have lunch there. And as far as his conscientiousness about the outside, he's really a pain about that because there are time when I've been in a tow truck and I've said to Bill I'm coming to the garage and dropping off a car and this goes back over the last sixteen years, and he's said you can't drop the car off over there, drop it off at your house. And I'll work it out again, if I need to tow it again, or I'll come to your house and check it. I don't want the car in front of my shop. That's been a consistent theme with him over the years. He'll pick up a car at my house, drop one of his Porsches off at my house, drive my car to his shop, and deliver it back again. No mechanic is going to do that for you and it's not because we're best friends, he doesn't want the car sitting at his shop. I can't drop it off the night before, or the morning. He just won't let me do that. I respect that. It's been his wishes all along. From my perspective as a customer he's be nauseatingly conscientious about the deal he has with the cars in the lot. That's been my experience with him. I bought his personal car, he's the only one who can touch it because he knows exactly how it runs and I've had him check out two land rovers over the years for me and an Audi that I saw others places, I drove them over there, he would inspect them, and counsel me not to buy those cars because he didn't think it was worth it. I have him looking for an Audi for my wife the last year and a half. Again I can respect the neighbor's point of view and the dynamics of the community, but as a personal point of view, as a customer, I'm not speaking as a best friend, he's been a conscientious, upstanding, concerned citizen. That's my experience with him. And my experience with his shop, it doesn't look like a shop but more like somebody's house with a garage door. It's been well kept. I've been through Jim Bell and Ralph and George. Jim Bell was probably a mistake, his style is too different. I've been to Jim Bell even after that and he brings your car back three weeks later. I

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stopped going to him as a result of that. Ralph came in and he got too big, he became very successful and then he moved out. George is a very nice guy and he's working to build up the business. So again, I'm not trying to counter anything that was said, I just wanted to give a customer's point of view, and this goes back to 2000. I can't speak for the neighbors but I can speak as a mechanic and someone I trust with my vehicles, never felt once that he overcharged me. I felt that it was important to speak on the counter side of Bill's business.

Mr. Gerard states I'm sure that Bills' a fabulous mechanic there's probably nobody better. But that's not my concern. My concern is our neighborhood and home values. It was a small engine repair shop. That's what Schneider had; it's in the previous Zoning Board minutes. They allowed an auto repair shop now we can't go back. So now that it shouldn't have been but now it's too late, it's an auto repair shop. It's forever now. If we allow a used car lot then that's forever also and that's what our concern is. We don't want to keep going forward, we want to keep it where it is because our values and our quality of life are at stake.

Mr. McAllister, Kearney Ave, asks Mr. Gornstein if he lives in Monroe.

Mr. Gornstein replies yes

Mr. McAllister states these people live right there. You can go back to Monroe. We're there 24/7. We don't go back to Monroe after we drop a car off. And I have heard flatbeds in the middle of the night.

Mark Stevenson, 5 Maple Ave, I have seen the midnight traffic when I first moved in 1996 and they pulled into a lot, dropped a flatbed off and they would move things. But what I'm worried about is what Bob said about changing the community. Once you grant something, you can't go back. It was already stated that he would move on. Now that's grandfathered into the next owner. So now we have to live with the next owner developing and I don't know any dealership, any car mechanic any place that doesn't want to boom their business, make money. And especially, you do brake jobs, how do you test them? You run around the block. I get my brakes done; they run around the block with it. I go to Freeman's, they have cars all over. You go up and down 17M they have cars out there, where they might be an auction person and they put them out there for sale. Now if you go to a dealership, you're going to have much traffic is going to come in to look at your cars if you have to display out there. Or do you hide them in the garage somewhere and say yeah they're in the garage behind the curtain so that nobody sees them. No, you're going to display them out there. Now you're going to bring clientele in there to look at them. But once you make that grant and put it in, I don't know how

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the variance went from small engine to auto mechanic. Who granted that? How it was granted but we have a neighborhood where we used to see lawnmowers and skidoos, and now you see cars out there. It's gotten bigger. I have a neighbor who moved in over the garage, the variance says that it can only be an office, he's got a dj booth up there, and he blasts it from 8am to 10pm. I hear it through my window, I complain, nothing gets done. I have videos of him doing it for his competitions. So now you have this and you grant Bill, granted everyone wants money, everyone wants their business to boom, and have their quality of life and great things but not in the neighborhood. I bought here under the assumption that it was small engine, I wasn't looking to see cars or anything around. I really didn't know. I liked the nice, quiet neighborhood and it changed and I keep seeing it change. If you grant something, for Bill where we bought into there as homeowners knowing that his shop was there. I knew that there was an office next door to me, that's all that they can have there and things have changed. I don't know if the Board has granted this, but once you grant something. Think about it, can you go back? A homeowner comes back here and says no it's gotten too big; I'm going to change it. Bill's already stated that if it went too big, he's going to sell because he doesn't want to hurt the community. So he's going to sell to another business that knows that they have a booming business, they can do this, and they've already gotten it granted in there.

Patricia Smith, 14 Maple Ave, I don't really see an effect on the street with his business there. I don't think there's any more traffic and as far as big trucks coming on the street, I get my oil delivered from SOS, monthly and they're huge trucks and they go up Maple Ave and they've been doing that since the houses were built.

Member Daly asks do they use one of the long trucks or a short one.

Mr. Gerard answers they use short trucks.

Ms. Smith replies if you ask me it's a long truck. So I don't see the difference between that and a tow truck. I don't see any impact nor do I hear any noise, I think he keeps his place very neat. It's been a positive effect on me and my family, he's been a mentor to my children and I think he's a good neighbor and I see no negative impact and I'm not really worried about my quality of life or any financial effect on my house, it hasn't depreciated since he's been there or since I've owned it for the last twenty-five years. It's fine now.

Nettie Scherne, 20 Maple Ave, as long as it stays that way. As long as it stays the way it is now.

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Mr. McAllister asks how many oil trucks go up Maple Ave in a month? How many tow trucks go up Maple Ave in a month?

Mr. Gerard adds and the Pollard Springs truck. They deliver to you as well. I would like to also say that her son also works for Bill or does stuff down there so maybe she's a little biased.

Ms. Smith states I maybe a bit biased because he has been a good neighbor and you have not been a good neighbor.

Discussion broke out.

Mr. Stevenson adds Bill, I have nothing wrong with Bill, it's just a variance that's being created here to expand. Bill and I waved in the beginning and we said hello as we passed. I didn't get into his business. I did bring a Chevy Nova over there when I first moved in, it wouldn't start, I brought it over there to have him look at it and he told me that he didn't work on American made cars, it was only the European so I couldn't bring it to him and I found out it just needed an alternator so that's where my conversation with Bill stopped. I couldn't bring my car there because I had to go to somebody else. I went to Loyal. I don't have a problem with Bill, we don't talk. We drive past we might wave and that's about it.

Mr. Haupt states what I'm getting at is this and I do think they think I have feelings. They don't think that I work really hard to keep their quality of life. What I see here is a mistake was made once, in 2007, and I had a bad tenant in there for a while. He did make it rough on them for a short time. That was remedied. In the meantime I have done a good job and I have addressed all the situations and as far as the addition I would like to see more compensation I'm not adding to the size of the building, I'm not adding to the people working there, traffic. There's zero impact from me to be able to transact the sale of a car just the way I have been anyway but I didn't have that sign up. I've been doing that all along. All it is the State's rubber stamp to say I can sell that car. If I sold that building to a guy who repaired computers, you can bet that he would sell a used computer. Or maybe even a new computer. The auxiliary sale of what you're working on is not really out of the ordinary, in my opinion.

Member Daly asks you said people working there, or is it just George that is working there? Multiple times tonight you've said people and I was questioning how many people really do work there.

Mr. Haupt replies George only works there and I work there.

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Ms. Gerard adds can I just say that computers don't come in on flatbeds.

Mr. Haupt adds I also understand Mark was there ten years before we even met, I think. Most of these people came in after and they didn't even realize there was any issue because the place didn't even look like a garage. It was only when Bell came in for a short time and made it look messy that all of a sudden it raised everyone's attention to it. And he's gone.

Mr. Stevenson adds then just keep it that way. You want to expand into a dealership and all these other things. I can sell a car from my driveway; you can sell a car from your house. You're looking for a dealership variance and all these things to expand. That's what I'm seeing and you even stated that if gets too big . You might be planning that it gets a little bigger, making a couple extra dollars. I know that it's been hard with the economy so you're looking to expand on that. You are looking at expanding but it's not working out for the neighborhood, can we go back to a small engine shop? Can the Board grant a small engine shop to the next owner? Before they buy or after they buy? Because once you grant it , it's there. Now you have to have a Hearing to bring it back, I don't know if you can.

Mr. Haupt states you can put restrictions in though.

Mr. Gornstein adds it was my experience two years ago Bill checked out this Audi for my wife. I brought the car down, he checked it out, and he said Steve I can find you a car but I'm not really in a position to do that for you. It would be illegal I can't go to an auction, get you a big car and sell it to you because I need a dealer's license. It was my understanding that was what he was looking to do. He's a high end dealer, he doesn't deal in crap, he deals in high end cars and it's not like he's going to have twenty-five Chevy's outside. He's going to have two or three Porsches that he's going to be looking to sell, at least that's my impression from talking to him. He's looking to turn over \$50k to \$70k vehicles and those are used cars and he can't do that legitimately without a dealer license. It's not like he necessarily wanted to get that, from my understanding, he was forced into that by the law. It is my understanding that he just wants to be the middle man, he comes up with a hot car, he wants to be able to buy it or say to the guy I can transact that deal officially for you and sell it to Steve down the road because I know that he's looking for a 944 Porsche. That's my understanding of what Bill's intentions are, not to open a dealership where he has 55 cars outside. The whole Village of Harriman and the Town of Monroe don't deal with Porsches, it's not a high end town. He can't open up the lot with 5, 6,7,10 cars out there. He knows he would be wasting his time. He's not looking to turn over \$3k Volkswagons, he's looking to turnover vehicles of some importance in terms of they're quality cars and he would be officially be in a position to do that.

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Mr. Gerard asks why can't he get the dealer license in his own home in Monroe, why get the license there. It's an expanding of a pre-existing non-conforming structure.

Ms. Gerard states all the sign does is devalue our properties to have sign after sign all over this building.

Member Schneider states Mr. Haupt there is some evidence that the Board had asked you to submit to us that there were continuous sales of three to five cars every year prior to 1988.

Member Daly replies I thought that it was from 1995 that he had to show us.

Mr. Haupt states I have only been there from 1995.

Member Schneider replies you gave us this packet and I'm having a hard time understanding exactly what you're showing us.

Mr. Haupt replies basically what I gave to you are bill of sales and old registrations of cars that I've purchased, sold to other customers. I actually did an excel spreadsheet, and there's a copy of it, what customer I purchased the car from and what customer that I sold it to. After twenty years, I have to admit, I don't have a record of every car that I sold. And I wasn't doing that as a business, I couldn't. Those cars were being put in my own name and I was selling them in my name out of that building. (Mr. Haupt explains the spread sheet to the Board members).

Molly McAllister, 9 Kearney Ave, I'm listening to this stuff about a spreadsheet and does this have anything to do with what we are here for.

Member Daly replies we had asked him to provide his receipts for his sales since 1995 going forward and this is what he sent us. And we're having a hard time understanding what he sent to us. So we're asking him to explain it.

Mr. Gerard adds he makes it sound like it's just a natural progression for him to want to sell cars and be a dealer. I went on the NYS DMV website and there are two retail sales establishments in Harriman, him and OC BMW. All the other repair shops, they're not dealers, and there's a lot bigger repair shops than Mr. Haupt's. They're not selling cars.

Mr. Haupt add I would also like to point out Tuxedo Park doesn't allow any car dealerships, but there are two in Tuxedo, right on 17. I know both of the owners and what the Building

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Inspector in Tuxedo said is as long as you don't display cars for sale and make it look like a used car lot, you can have your license and still sell cars.

Ms. Scherne asks could we be guaranteed that. Is there something that would guarantee us that nothing will change what we have right now?

Mr. Haupt replies I think that is a great question, I think we could put restrictions in there. Exactly what I've stated so that you don't have to trust me, you could restrictions put in there just like you have for me not working on cars outside, I'm only allowed eight cars in the parking lot, and we could put that restriction in, no cars displayed. If a car got displayed, I would be fined. Basically I would be willing to live under these restrictions because I'm true to my word. I do not want to change anything.

Ms. Scherne states I live right next door to Bill and I don't want any expansion. Other than what he's doing right now I don't want to see any other changes. I don't want to see a lot more cars there and I don't want to see a lot more traffic. And not a lot of signs all over.

Ms. Gerard states even though it is smaller now, we still have cars with the hoods up outside, sometimes battery cables are hooked up to them. Someone is working on them outside. It's still going on. It is definitely not true to that original letter, no matter who is there. Trying to make guidelines for him just doesn't work.

Member Daly asks have you seen anyone other than George working on car over there.

Ms. Gerard replies no, but all day Saturday Mr. Haupt and George are there. I don't know what they're doing but their hours are definitely not limited to forty. Our Saturday is still spent with cars zipping in and out of the lot.

Mr. Stevenson replies the restrictions, the fines, this and that, once you grant it you can't go back. And you disrupt what we bought when we first moved in there. What we thought we had, we purchased our property and it's changed. It's changed through the times. Can I open up a dealership or something over there? Bill can have great intentions for what he wants but he has stated already that he has had some mistake employees or business partners or people in his shop working with him that he couldn't control. It got out of hand. I don't know how long it lasted before it got rectified. A car dealership if something goes wrong, how long do the neighbors have to put up with it before it get rectified, two years? Three years? I mean you're seeing this in front of you and we as a neighborhood purchased property of what we assumed

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we have. And it's going to be changing if you grant him this, and that's what I would like you to look at. I understand coming in and owning a business wanting the business to boom and make money. And employees and everything to work out fine with your neighbors but sometimes it doesn't.

William Smith, 14 Maple Ave, we're discussing a car dealership but we're really not but talking about a dealer license which is a very big difference. A license allows you to transact, a dealership is a physical setting. Nobody's asking for a dealership. Asking for a license to conduct the business already being done, nothing more. We need to take the dealership out of this because it's not car dealership but a dealer's license. A license to do something legally. There's a very big difference there.

Mr. Gerard states I'm sure that Bill has good intention but what's to say that you grant him this expansion of his non-conforming use and now he's got a car dealership and auto repair and next month's he's selling the place and he's listing it as a car dealership and an auto repair. You can't stop him, we can't stop him, the next owners coming in and that's what he's got. He bought a dealership.

Mr. McKay replies my job is to give legal advice to this Board not to the audience. I think everyone is under a misimpression. Everyone seems to think that Mr. Haupt is in here for a variance to expand the use of his property. That's not what he's here for. He's here seeking an interpretation of the Village Code. The question is whether or not this property has been used for auto sales in the past and if it has what he would be doing is not expanding the use, he may be increasing the intensity of the use but he would be legally allowed to do that. If that's what the Board finds. That is partially a legal determination and factual determination. That's why I was very careful to make sure the Board had their questions answered and the people were speaking to the Board and not to each other. It's more than just a distinction in words, it's a true distinction in the legal process that Mr. Haupt is going through. He's here for an interpretation of the Village Code, not to expand the business. If the interpretation is in his favor then he may be permitted to increase the intensity of the use of his property but that doesn't mean he can add another building, so there's an legal distinction between the extension or the expansion of the non-conforming use and the increased intensity of an non-conforming use.

Ms. Gerard asks in the beginning when Herm Schneider had it, believe me it was not sales. He did not sell equipment or cars or anything.

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Mr. McKay replies Mr. Schneider was here. He testified.

Mr. Gerard replies if you go back through all of the Zoning Board minutes from 1988 to 1995 to his letter of intent, never was sales in there, it was repairs, and that was it. He never said that Schneider sold cars or did automotive repair. Schneider never did that. Schneider is a liar. Bill sent a letter in 1995, then there was a letter from Schneider's attorney to the Building Inspector in 1995.

Mr. McKay asks at this point does the Board want to get copies of the information that Mr. Gerard has. Does the Board want to take those into consideration?

Ms. Gerard states this is all documentation that came from the Village of Harriman, you have all of this. There are packs of photos in the Building Inspector's file that I gave to him. The last time they interpreted the Code it went from small engine repair to auto repair. That's how they interpreted the Code. That the change and the expansion was okay. So we're just a little gun shy here about the interpretation of the Code. And that's what you need to understand. It's what allowed this to happen in the first place is the way that Code was interpreted by a Building Inspector and a property owner then it came before the Board.

Mr. Stevenson asks what was the Board's interpretation of the license for his shop, as Schneider had it. What was his property? Commercial? Residential? What was his shop considered? Before I moved in here I really didn't know. I just wanted to know if the Board had it in paper.

Member Crover states I don't think that it was ever presented to this Board. His business was there before zoning according to the documents that were presented to this Board in the past. We have copies of it. It was a small engine repair shop before there was zoning.

Mr. Stevenson asks once the zoning was in effect, what happened then.

Member Crover explains the business can stay and keep going, it got grandfathered in.

Ms. Gerard states they interpreted the zoning when Bill Haupt wanted the auto repair and it got interpreted from small engine into auto repair somehow and it keeps expanding.

Member Crover states we had documentation that was presented to this Board in the past from a letter from Wayne Ward, the Building Inspector; his interpretation was that it was still a

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non-conforming use similar to what was granted when the zoning was established. It wasn't brought to this Board at the time of the sale.

Mr. McAllister if I understand this right you want to get a license to sell cars from there. You want it legally and you were probably doing it illegally.

Mr. Haupt replies I already have a license. What I would like to have is some interpretation that I can transact a sale on a car there, yes. Legally. You are allowed to sell up to five cars a year in your own name. That's what I did before. I have also been consigning vehicles. A customer will come to me and say they no longer want their car, can you find a buyer for it? I put an ad in a publication, most of the time all the work is done on line, finally a person comes to look at the car and buys it. I've been selling cars. Those consignment cars would be in addition to the ones in my own name.

Mr. Gerard adds I would like to say in the Zoning Board minutes from 1988 Mr. Schneider came before the Zoning Board, the chairperson of the Zoning Board at that time, Alice Cobb, she asked Mr. Schneider some questions on how his business was run and if you could get those minutes and read it. It doesn't say anything about sales, states exactly what he was doing.

The Board asked for these files to be copied and distributed to them by the Secretary of the Board.

Mr. Haupt states Mr. Schneider didn't need an auxiliary license to sell snow blowers. He repaired them but he also sold them because I know people who bought them from him. And he testified that he sold them.

Mr. McAllister replies when Schneider went in there the only ones from around here at that time were Nettie and myself. Nobody got a license for everything, people did whatever they wanted to do. I don't even think they had a Zoning Board of Appeals in those days. They had a Mayor and three trustees.

Member Crover asks Mr. Haupt, if this interpretation went in your favor and it allowed you to publicly display your dealer license and transact ion used car sales that would allow you to do more than the five cars per year, legally, out of your shop down there. But they would be in your business name not in your personal name.

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Mr. Haupt replies that is correct. I couldn't put them in the business name before. If I get the dealer's license I can. I will stop doing it personally. I have to pay sales tax if I do it in my personal name. In the business name I can defer it back.

Mr. McKay asks will this also permit you to go to auctions. Or can you do that without the license.

Mr. Haupt replies yes, it would. I have to have that license to get in the door at the auction.

Member Crover states if there are no more public comments, I would like to close the Public Hearing and move in to our meeting. We still have the option of adjourning the meeting to next time so we could look over all of the documentation. There's been testifying of pre-existing documents, we could request those from the Building Inspector and review those documents before we make a decision. We don't have to make a decision tonight.

Ms. Smith adds as far as our neighborhood it's changed. When I first bought it and we moved in, Nepera was there, Walmart wasn't there. All those stores weren't there. I mean the neighborhood has really changed so much. The whole area has changed. Changes are going to happen, that's the normal process. And last month when the old owner said he was working on engine, well life has changes and Bill's trying to keep himself in business, you don't repair engines, you buy new cars. He's trying to keep up with the day.

Member Daly replies we understand that but we have to take everything into consideration, what's best for the community, not for one person. So that's why we're looking for more information so we can make a good decision for everybody. We just need to look at all of the facts.

Motion was made by Member Crover to close the Public Hearing, seconded by Member Daly. All in favor.

OPEN THE REGULAR ZONING BOARD OF APPEALS MEETING OF JANUARY 6, 2016

Adoption of Minutes

- **Motion** to approve the minutes from the December 2, 2015 Regular Meeting was made by Member Schneider and seconded by Member Daly. *All in favor.*

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WILLIAM HAUPT

106-1-2

INTERPRETATION OF ZONING CODE

Mr. McKay states I think that the Board is going to have legal questions. You deliberate in public. I provided the Board with a memo. What you might want to do is go into an attorney/client session and we can talk about the law, the legal principles that you have to apply. If you are going to discuss facts, testimony of the Hearing, that would be in public.

Member Crover states I think we should discuss, deliberate, I'm not ready to make a decision tonight because I've been here a while, I've seen some of those old documents. I don't have them in my possession anymore, but I've seen them and I know that they exist. The rest of the Board should see them. They're in their file, Haupt and Gerard.

Mr. McKay replies we did discuss the last time that there was a very large building department file and we discussed the fact that when people do come in as a matter of standard practice, we should get copies of what is in our own records because there could be things that people come in on of things that happened many years ago.

Member Crover replies it was provided to us the previous decision, along with the decision from the Article 78. That was on our interpretation of the expansion of the business by having two businesses in there. From when Bell was there. At that time some of the previous documentation from 1988 with Schneider and Haupt with the Building Inspector wrote a letter. Some of that we have tonight, there's a couple pieces that we don't have. I would like to just clarify that we're here for an interpretation but at the same time the interpretation is whether Mr. Haupt's car sales is part of the auto repair business and what he's doing is not an expansion of his business but it would create more intensity of his business. I think that's what we need to interpret. Frankly, my opinion is that he has never done sales as Haupt Motors, there was never sales as Bell Motors. There have never been car sales out of the business name. It's all been done, he admitted it tonight in his testimony, all of his sales have been done in his personal name. By the looks of these documents, it's been more than five. A lot of them have been done through consignment so the state doesn't pick up on it. Or it never goes into his name, it goes from the seller to the owner. What I gathered from him, especially when he was up here explaining the spreadsheet, telling me what was done in consignment, what he bought and resold. I think what he bought and resold was definitely done through the lot because somebody comes in, they get the bill to fix their car, the estimate is \$3k, the car is only worth \$2k, and the customer decides they don't want to fix the car, pay to have it towed, they hand over the title. So the mechanic has the car and the title, they fix the car, they sell it. It's the

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quickest way to get it off their lot. They recoup what money they can out of it. Most of the time they're still losing money. He's dealing with high end stuff, he's not doing it to lose money, he's doing it to help his clients and make a profit out of it. I think that's what's happening. Some of his other customers want to buy a new car from him so the deal is, sell my old car for me. So he advertises in various publications, gets a phone call, has the person come to his shop to look at it, he said that tonight, and he makes the transaction between one of his customers and the new owner. He would get paid a 10% commission plus the cost of advertising. So in those cases it didn't go through his name. Is he supposed to be doing that there, in my opinion, no.

Member Daly asks wouldn't he be expanding his business if we let him have the license outside. Is that expanding from being underneath his name and doing it with friends.

Mr. McKay explains the question that you need to determine is whether Mr. Schneider was telling the truth or not. He clearly came in and testified he engaged in car sales. Everyone here tonight seemed to say no it was just small engine repair. What the law says if you have a pre-existing non-conforming use and it's not discontinued it remains in place. If you expand the pre-existing use generally codes prevent that. Expansion can be simple. You can't put another building on the lot, which is already non-conforming. Scenarios like that are simple.

Member Crover states Scenarios with this case, he had a second business in there, we said that was expanding and he couldn't do it, it was upheld in a higher court, that's another version of an expansion.

Mr. McKay continues here, the way that I analyze it, if you credit Mr. Schneider's testimony that he sold four to five cars a year and that's been continuous then the cases would say that it's not an impermissible expansion of the use. It's an increase in the intensity of the use. Basically what the courts are saying is if it's basically the same business just because there's more intense use you can't prohibit. But you can prevent a physical expansion. You can find cases that go either way, it's a very difficult call. The terminology is tough because what seems like an expansion of a pre-existing use is sometimes called a more intense use.

Member Crover states I understand that part of it as long as he can prove that he's always been doing that. If he can prove that he's always been selling cars through the business name and the previous owner did the same then I think that we have no choice but to say through interpretation what you are doing is not an expansion of your business. But here's what I feel, I don't feel that there's any proof. I wasn't here when Mr. Schneider gave his testimony but I know what Mr. Schneider had here, I lived here. Mr. Schneider did not sell cars. He fixed my

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lawnmower. He didn't fix cars. So I discredit that. Mr. Haupt is trying to say that he's been selling cars since he owned it. Therefore he's not expanding the business he's just becoming more intense. Not one of these documents, in my opinion, showed Haupt Motors selling a car.

Mr. McKay asks is that the way the property was used? And is being used?

Member Crover replies that doesn't make it right. Just because you've been doing it and breaking the law doesn't mean that we have to keep allowing you to break the law. Because Schneider didn't do it. Looking through these previous documents that you're going see when they're presented plus if you look at the copies that were given to you, the letters from the Building Inspector, Mr. Schneider, there was a letter for Mr. Haupt to get a mortgage that the Building Inspector had to write claiming that it was a permitted use. They wouldn't give him a mortgage. They were all for small engine repair/ auto repair, not one documentation in the past has had anything to do with sales. That's my proof that there has never been sales there in the past. Mr. Haupt's been selling out of there, he's been doing it illegally and he was expanding the use without the permission of this Board. It wasn't part of the non-conforming use from 1958; or 1965 when the zoning was approved because Mr. Schneider had a small engine repair and I believe the documents say since 1958. So when zoning came around in 1965 they said you're non-conforming as a small engine repair this Building Inspector interpreted it in 1985 when Mr. Haupt bought it to auto repair. Nothing in the past was said about sales. And I don't think that we should look at Mr. Haupt's sales and say that he's always been doing it, my opinion he's been doing it illegally. And he's been doing it under the radar, no one knew, there was never a sign that said he was doing sales, it's always been repair. Every picture that was ever presented to us from when Bell was there all of the signage were about repair, none of them were about sales. I have never seen a car there with a for sale sign in the windshield.

Mr. McKay asks would it be illegal if he sells them on the lot using his personal name opposed to the business name.

Member Crover replies I wouldn't think that would be illegal because any of us could do that on our property. But there's a limit of five per year. I think that if he's claiming it was Haupt Motors was doing it then he was doing it illegally. Whose to say that this spreadsheet of sales didn't take place in his house on Mombasha.

Member Sainato asks does that qualify as continuous if he's doing it personally instated of his business.

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Member Crover replies in my opinion, no. The original non-conforming, in my opinion, did not allow him sales. It only allowed him repairs. And even in his letters to the Board in his past visits to the Board. At one point Schneider wanted to put a second story on and then when Mr. Haupt was here in 1995 with the Building inspector to purchase the property and then when he was here in 2007 all regarded repair not sales.

Mr. McKay replies that is true. I did review all of the documents. I couldn't find anything about sales in there. The only thought that I had was that that litigation didn't concern sales. In some of the documents we have in the file, since it didn't concern sales, the fact that they didn't talk about sales is really more of an inference. It wasn't defined that there were no sales being done. It really wasn't the issue in that Article 78 is what I'm saying.

Member Crover replies it wasn't part of the issue in the Article 78. The documentation that they were presenting there was showing why they were non-conforming, which did state what the business was. It didn't say repair and sales, just repairs. I think any business that was in the business of repair and sales, I think somewhere from 1958 to now we would have seen something that said repair and sales, whether it was lawnmowers, snow blowers. Mr. Schneider sold used chainsaws. If someone dropped off a chainsaw and never picked it up, he would fix it up and sell it. He wasn't advertising sales.

Chairperson Miller states he could have sold lawn mowers and snow blowers.

Member Crover states I'm sure he did. They were used and it wasn't the intention of the non-conforming use. There was nothing in writing that they were selling anything, it was always repair. Personally I think that's what needs to be looked at here because once we interpret that this has been a part of his business all along we have no choice but to say since this has been a part of your business all along, go ahead and display your dealership sign. He's already got his dealership license, they gave it to him because New York considers sales a part of repair.

Member Daly asks does it cost money to get this license. If he's so poor, wouldn't you think he would have gone to the Village first to see if you can get this before you get the license.

Member Sainato replies \$450 to become a dealer.

Member Crover replies he thinks this is part of his business because a lot of auto repair shops when somebody gives them a car and doesn't pick it up because they don't want to pay for the repair, they need to sell it to recoup his money.

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Mr. McKay replies he said tonight that it's an ordinary thing that repair shops do.

Member Crover replies I think it's under his assumption that it is. If you go up to Loyal there are a dozen cars outside there for sale. Apparently somebody looked up and Loyal doesn't have a dealership license.

Member Sainato states that person was referring about Harriman. There are one or two in Harriman, Loyal is in Monroe,

Member Crover states I know that Harriman Auto sells cars but I think he sells them through the previous owner name not through his name. You don't see any for sales signs out there, it's an incidental part of the business to get your money back from the repair. If you look at AB Citgo, Harriman Auto, Freeman's you don't see any for sales signs out front and we don't see dealership signs on the front of their building either. What I'm afraid of, like most of these homeowners, if we allow him to do this publicly, which I believe is an expansion of his business. I don't think there's enough proof saying that it's always been there. To display his dealership license and start selling there's nothing to prevent him or another owner from parking three or four cars out there in those spots along the road with for sale signs on them and price tags on them. If he's willing to put stipulations in to it, like you're not allowed to publicly display your cars for sale.

Mr. McKay states the problem there is that he's asking for an interpretation, not an appeal.

Member Crover states that's why we can't allow those restrictions. I think if he was to come in here and ask for an additional variance for his non-conforming to allow him to sell then we could do that. We can't do those restrictions because he's here for an interpretation not a granting of a variance. In my opinion I don't see enough proof that sales have always been there. I don't believe Mr. Schneider, even though I wasn't here, I read the minutes. Mr. Haupt even admitted that none of his sales were done through Haupt Motors. Most of them were consignment. It never went through his books because he didn't want to pay the sales tax on them.

Member Schneider states I matched these papers up and it's not as much as you would think when you first look at it. He made this spreadsheet of all of these cars that he sold but he doesn't have the Bills of Sale to back up everything on the spreadsheet.

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Member Sainato asks if he can prove that he sold five cars since 1995 to today but they're through his personal name, does that count?

Mr. McKay replies one step at a time, and you discount or discredit Mr. Schneider's testimony, then you don't need to get to that point. Because then we would have to interpret how Mr. Schneider sold the vehicles. It's a use that runs with the land. Did Mr. Schneider have a corporation? Was he a sole proprietor? Maybe he did sell them in his own name. If you believe that

Member Crover states the problem with that is there's no documentation when you sell a snow blower or lawnmower. When they were talking about the backhoes that he was fixing, he was doing that for the school district where he worked. They were the school district's backhoes. The homeowners that are all saying that Mr. Schneider didn't sell, the only one that was here during that time frame were Bill and Nettie. The rest of the people bought after Mr. Haupt so you can't necessarily believe when they say Mr. Schneider didn't sell autos, but we do have two people that testified, one was a next door neighbor, Nettie Scherne, and Bill McAllister. Those two people saying that he didn't, I think that discredits Mr. Schneider who basically said what he had to for him to sell the property. He told the Building Inspector what he needed to hear in order to sell his property. He had everything to gain for the sale of his property to mislead the Village Building Inspector which wasn't his authority to make that decision, it should have been sent to this Board to change it from small engine to auto repair. That was a very hot discussion when he was here in 1995; most of the discussion got away from the two businesses and it got back to why is he even fixing cars when the original non-conforming was for fixing small engines. Most people argued that that was a change in the non-conforming use that should have been brought back to this board in 1995 and it wasn't. The Building inspector took it upon himself to sign it. I know personally as a member of the Board at that time we felt that we couldn't fix the Village's mistake. The Village Board should have fixed that mistake, but there was a catch there. It went from 1995 to 2007 before there was a complaint about that. I think that somebody should have complained in 1996 about the change in use.

Chairperson Miller states that's why I asked the lady how long they had been complaining about what was going on there and nothing was done.

Mr. McKay states certainly by the time that they got there it was an auto repair shop. Based on what Haupt was doing in 1995 and 1996 by that time that's the way the business is being run. Nobody appealed the Building Inspector's decision in 1995. The statute of limitations is about 19 years and 9 months overdue.

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Member Crover states that's why in 2007 when Nettie Scherne and Bill McAllister were complaining about the two businesses, they were saying this is not part of the original non-conforming use. We said the Building Inspector signed a letter in 1995, here it is 2007, the statute on that is gone. The only thing that we could look at was if having two businesses there was an expansion that's how we looked at it. We said yes it is an expansion, you can't have it, he filed an Article 78 and our decision was upheld. That's not why we're here today but I believe if we interpret in Mr. Haupt's favor, we're allowing a non-conforming use that has not shown to have always there from Schneider. Not one document says that sales have been done out of there. Mr. Haupt's spreadsheet doesn't say that it was Haupt Motors. He admitted it wasn't Haupt Motor sales, it was him selling. There's no time frame on that, it could have been consignment. I don't think there's enough documentation to say that the pre-existing non-conforming included sales. Unless a document shows up to show that sales have been done there. I think we should get some of those papers out of Schneider's old file and in Mr. Gerard's file. All of those pictures and the documents that were with the previous Building Inspector, Ron Walker in 2007 but before that there's was another Building Inspector after Wayne Ward. Mr. Schneider actually lived in the house that the Gerards live in now. He lived in the house on top with the shop at the bottom. Somehow he got them to agree to allow him to subdivide that land and he sold, in the same year, the house to the Gerards and the shop to Haupt.

Mr. McKay states we were going to include the Village's records as part of the record of Public Hearing. The Public Hearing is closed, you deliberated. Obviously if you want to take a look at everything before you make a decision.

Member Crover states we have to deliberate more at the next meeting because we have to have a chance to look at these other documents. Is there anything that anybody else would like to add to Mr. Haupt's interpretation of the Zoning Code?

Member Daly states I would like to wait for more documentation. I agree with you, I don't think it was ever really sales under Haupt Motors. To me that would be an expansion because he's been selling cars under his own name or under consignment. And it would be on him to prove that there were sales with documentation.

Member Sainato states we have to confirm that there were no sales all of those years and there's going to be sales now so that would be an expansion.

Mr. McKay replies one issue if you decide that Mr. Schneider was not credible and that car sales never was a pre-existing use I don't think that you need to go any further because really what you're deciding is that car sales were not a pre-existing use.

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Member Sainato asks is it car sales or sales.

Mr. McKay states it seems as though there were small engine sales, but no auto sales.

Member Crover replies I don't think there was any proof of any small engine sales. I know that he sold used chain saws but there is no documentation saying that he did. At least none has been presented to us. So we have to go under the assumption that no sales were done even as a small engine. He didn't sell new anything. It's up to them to provide proof to us. It's not for us to go look for proof. We have to decide what's handed to us and what's credible.

Mr. McKay replies in all fairness at the last meeting I did tell him just so that you're not surprised it is your burden to demonstrate that the sales occurred before and continued. And that there hasn't been a discontinuance in that time because that would be a substitution of use. I understand why he may not have more documentation.

Member Crover asks do you feel that this could be overturned if we say that he has not shown proof that Haupt Motors or Schneider sold autos. Can we discredit this information and say that it was personal sales not sales done on that property?

Mr. McKay states I would need to do some research on that. I don't know if I would find that answer. The general question is how is the property used. Has the property been used for auto sales? Let's say we get past Mr. Schneider and we determine that property was used for auto sales but the auto sales weren't through the business on the property but if he owns the property in his personal name, and he's selling them in his personal name.

Member Crover replies we need to find out who the owner of that property is, William Haupt, an LLC or Haupt Motors. The bills of sales have West Mombasha Road as an address and the checks are all made out to William Haupt. To me he hasn't shown proof even since he had the business that he hasn't made the sale off that property or through Haupt Motors.

Discussion between Member Schneider and Member Crover regarding the spreadsheet and sales of the autos.

Mr. McKay explains you can essentially find that this is not part of the pre-existing non-conforming use. It says non-conforming use shall not be changed to another non-conforming use without a special permit from the Board of Appeals. This is the only Code that I know of that gives this Board authority. But he didn't ask for that. It sounds like under that section of

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the Code this Board could decide later if he sought a special permit. This is almost an in between, it's a special permit from the Board which you could grant if the new non-conforming use was of the same or more restricted nature. You could still find that it never was and that it's not more restricted and maybe you could find that it's not the same use. Maybe it was always small engine repair so it's not the same.

Member Crover states he didn't ask for that in 1995 when he purchased the property because he got the Building Inspector to do it for his mortgage company. If we interpret that sales is not part of the non-conforming basically he can't put the sign on the building. He could come back and ask us for a use variance to allow him to do that.

Member Daly states to me he hasn't shown us proof.

Mr. McKay replies the documentation was difficult to follow.

Member Schneider agrees. When I was asking him about it, it kind of got caught up in this neighbor to neighbor dispute.

- **Motion** was made by Member Schneider to approve the minutes of December 2, 2015, seconded by Member Day. *All in favor.*
- **Motion** was made by Member Crover to close the regular Zoning Board of Appeals meeting of January 6th 9:30, seconded by Member Schneider. *All in favor.*

Minutes Respectfully Submitted by:

Barbara Singer – Deputy Clerk/Secretary