

**TOWN OF NEW HAMPTON
ZONING BOARD OF ADJUSTMENT
MEETING MINUTES
TOWN OFFICES
NEW HAMPTON, NH 03256**

April 3, 2013

- MEMBERS PRESENT** Mrs. Erler, Mr. Hofling, Mr. Frazier, Mr. Orvis, Mrs. Fraser, Mr. Tierney, and Mr. Smith
- OTHERS PRESENT** Mrs. Vose
- CALL TO ORDER** Mrs. Erler called the meeting to order at 7:00 PM.
- PUBLIC HEARING** Anthony Randall (surveyor), Paul Rossi (applicant), and Onorio Rossi (owner) were present to represent the application.
Paul Rossi, 322 NH Route 104, Tax Map R-11, Lot 10, for a Variance, Article IV, Section C.4.ii, of the New Hampton Zoning Ordinance
- Mrs. Erler advised that the applicant, Paul Rossi, has requested a Public Hearing in accordance with RSA 676:7, for a Variance under Article IV, Section C.4.ii., of the New Hampton Zoning Ordinance for property belonging to Onorio and Filomena Rossi. The applicant's proposal is to use 6,000 sq. ft. of outside area for the display of used autos. The used auto sales business will utilize 660 sq. ft. of space within the existing structure. The applicant is proposing that the outdoor area to be used for business purposes (6,000 sq. ft.) will exceed the 10% limit of the gross floor area of the primary structure. The property is located at 322 NH Route 104, Rossi's Restaurant, Tax Map R-11, Lot #10, in the Mixed Use District.
- Mrs. Vose advised that all abutters were notified and none were present. One abutter, NH DOT, had submitted a letter stating they remained neutral toward the request for the variance, with the exception that there be no increase in water runoff flowing into the state's ROW, that there be no alteration or construction in the ROW, or that if an excavation permit is necessary that it be obtained from NH DOT.
- Mrs. Erler advised that the town had received a copy of an Application for a Driveway Permit that has been submitted to NH DOT for the change in use.
- Mr. Randall provided some plans, which add a revision block, but are similar to the plans provided with the application. He explained

that at one time there was a Dunkin Donuts in the empty portion of the restaurant, who have since relocated to a new building, and are trying to find a way to utilize that space and generate more income. Paul Rossi wishes to sell used automobiles and would like to use the empty space for an office. They found this type of business has a problem with the 10% rule in Article IV, Section C.4.ii of the ordinance. As the office area would be 660 sq. ft. this rule would allow only 3 automobiles to be displayed. Mr. Randall advised they have also submitted a Site Plan application to the Planning Board. He stated his plans show the display area and 2 parking spaces for customers. He said that Paul Rossi has explained to him that he will sell used vehicles during the day and then Mr. Rossi will close that and go to the restaurant for the night. No new construction or outdoor lighting will be added.

Mrs. Erler said it appears the driveway has no changes, but asked why they applied to NH DOT for a driveway permit. Mr. Randall said it was required as this would be a change in use. He said the Planning Board had suggested that this property should have one driveway in and another driveway out. Mr. Randall said he doesn't think it will work and feels having in and out at each driveway will not create a problem, and speaking with a rep from NH DOT, they seemed to agree.

Mrs. Erler asked about the proposed relocation of signage (see note 6 under "Notes & References" on Site Plan for Onorio & Filomena Rossi, prepared Feb.2013). Mr. Randall said there is an existing sign at the SE corner and they are proposing to relocate this to the westerly entrance. This sign would be used for advertising the used autos. Mr. Randall stated that the sign to be relocated is currently not being used. Mr. Orvis asked if the size of the grandfathered sign can still exist if it is moved. Mr. Tierney advised that it cannot. It will require a new sign application, which will have to conform to the ordinance requirements.

Mr. Tierney asked how many vehicles this may be and Mr. Randall said there is potential for about 30 vehicles.

Mrs. Erler asked if there would be adequate space for vehicles to drive through. Mr. Randall said it will be about 32' at its closest point, which will be enough room for 2 cars to pass each other.

Mrs. Erler asked about lighting and Mr. Randall stated that only existing lights will be used (see note 3 under "Notes & References" on Site Plan for Onorio & Filomena Rossi, prepared Feb.2013) and that Mr. Rossi will be working at the restaurant at night.

Mr. Tierney asked if it was part of the application that the 2 businesses will not be open at the same time and Mr. Randall said they still have to go to the Planning Board. Paul Rossi said that Dunkin Donuts, when it had been located next to Rossi's, was open at night also, and there was never an issue of both businesses being open at the same time. Mr. Tierney pointed out that it has been stated during this hearing the used auto sales would not be open at the same time as the restaurant. Mr. Rossi said there may be a ½ hour between 4:30 pm when the restaurant opens, and 5:00 pm when the auto sales close, but stated he was willing to close the auto sales business at 4:30 pm if that was required.

Mr. Smith asked if there would any repair work done on-site. Mr. Rossi said there wouldn't be, and that the existing garage area would be used for washing and waxing vehicles in preparation of sales.

The Variance will not be contrary to the public interest because:

Mr. Randall wrote: *the variance will not be contrary to the public interest because it is the utilization of existing space and does not require any new construction, building addition, or lighting. The proposed area for display of vehicles will be in an organized manner and has no environmental impact or impact to town services.*

Mr. Frazier said there may be a need for increased Police patrols in the lot.

Mr. Hofling asked if these were separate businesses. Paul Rossi stated it would be a separate entity. Mr. Hofling asked if this means he will obtain a separate license for the business and Mr. Rossi said he would. He has not applied for it yet as he was waiting for the outcome of the ZBA and Planning Board hearings.

Mr. Orvis asked if the garage had a drain and Onorio Rossi stated that it did. Mr. Orvis confirmed with Paul Rossi that he would only be washing and waxing in the garage, though Mr. Rossi said he would do it outside on a nice day.

The spirit of the ordinance is observed because: Mr. Randall wrote: *The spirit of the ordinance is observed because the vehicles will be displayed in an organized manner and not scattered around throughout the property. There will not be any unsightly tall stacks or unpleasant packaging.*

Relative to the spirit and intent of the ordinance, Mr. Tierney said that the limitation for use of outdoor areas for business purposes being limited to 10% of the gross floor area of the primary structure was put into the ordinance during its restructuring when the Mixed Use District

was created. He said Mr. Randall's statement does not address the spirit of the ordinance. Mr. Randall responded by saying he interprets the spirit of the ordinance was to prevent unsightly outdoor display.

Mr. Orvis asked if this was in the Mixed Use zone and Mr. Tierney said it was. Mr. Smith said across the street where the nursery is, is mixed use also, and that was approved, so he feels this justifies approval of this variance. Mr. Tierney stated that the nursery doesn't have an indoor application as it is agricultural products which was one of the reasons that variance was granted, as it was a good use of the property. He pointed out that the garden/loam distributor on the Hiltz lot on Route 104 was granted, due to economic conditions, and has a time limit of 3 years.

Mrs. Erler asked if there was anywhere in town where an auto dealership would be allowed and Mr. Tierney said there isn't further east, on Route 104, but he was not sure if that was the case in the BC1 district on Route 132N. Mr. Hofling said that most dealerships have a fairly large building, for repairs and office space but pointed out that this is contrary to what most used car businesses have for structures. Mrs. Erler asked if this limitation is for the purpose of maintaining the rural feeling and creating a pedestrian friendly area does *not* allowing this use cause the restaurant to be replaced by something that fits the literal enforcement of the ordinance but not the intent of the rural character. The board agreed that there doesn't appear to be a mixed use feeling along Route 104 in the MU district, which includes residential.

Mrs. Fraser asked if it made a difference that this variance is for a lesser percentage of outdoor display to building size than the nursery percentage to building size, as at the time of approval there was no building. Mr. Tierney pointed out this was due to the agricultural nature of the product and in the case of the Hiltz it was a 3-year approval, but in both cases the product is one that would not be inside. Mrs. Erler stated her understanding of the restriction's intent, but that is not what is on the ground, on 104.

Substantial justice is done because: Mr. Randall wrote: *Substantial justice is done because it will allow for vacant business space of 660 sq. ft. to be utilized. It will also assist the business owner to diversify his property use in a difficult economic climate and provide for an adequate selection of used automobiles to be presented to prospective patrons so that the business will be successful.*

Mr. Hofling stated that the 660 sq. ft. could be used for another business. Mr. Rossi advised of some other businesses that had occupied the building but did not last, some outgrowing the space. Mr. Hofling said he did not feel it was substantial justice as other businesses could locate there. Mr. Randall pointed out that it is his opinion this is substantial justice as it allows the owner to use the

property in a manner that is profitable while trying to survive in this economic climate. Mr. Orvis asked how much outdoor display there is at the Goode Shoppe Lollipop and Mrs. Vose pointed out that is a grandfathered use. Mr. Frazier asked if the outdoor display at Country Cottage was allowed and Mr. Tierney advised that is compliant with previous approvals.

The values of surrounding properties are not diminished because:

Mr. Randall wrote: *The values of surrounding properties are not diminished because the use is consistent with the zone in which I lies and in line with property uses along the Route 104 strip and abutting properties. Some of the businesses currently exceed the requirements of Article IV, Section C.4ii of the New Hampton Zoning Regulations within this Multi-Use zone.*

Mrs. Erler expressed concern with the town's vision is of this area being homes and businesses, connected by sidewalks, and asked if there had been any plans in creating this. Mr. Tierney advised that there is a plan at NH DOT that shows the area with 2 "backage" roads. One coming off of NH Route 132N, through along the Hwy Dept/Transfer Station, along NH DOT land to the Park N Ride area. The other "backage" road would run from the Mobil station & Hiltz property back to the KGI Property and 104. There was discussion of a round-a-bout at the Route 132N intersection. Mr. Tierney said the plan is still active but due to economic conditions has not been developed yet.

Mr. Orvis said he doesn't want to see an empty building because a business can't survive, and feels a vacant business would decrease property values nearby.

Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship because Special Conditions of the property distinguish it from other properties in the area:

(A)ii. No fair and substantial relationship exists between the general purposes of the zoning ordinance and the specific application of that provision to the property because: Mr. Randall wrote: *The selling of used automobiles requires the ability to display the automobiles outside for potential customers to view which is an industry standard. A large office space is not necessary to operate the business; therefore, making it difficult to be able to display the product makes the 10% rule unreasonable.*

The proposed use is a reasonable one because: Mr. Randall wrote: *The proposed use is a reasonable one because the existing lot and building space allows for the display of vehicles without the need for disturbance and expansion of the existing lot or building. In order to conform to the ordinance the building would need to be increased in size to contain 60,000 sq. ft. of gross floor space. The use is a*

reasonable one to be conducted in the Multi-use zone.

Mr. Randall said he doesn't think the mixed use district is anything other than a commercial strip with no residential. Mrs. Erler said she feels that at this time the used auto sales seems to be a reasonable use as the area exists right now, but if the area changes and becomes more mixed in use, this use may not fit in with the district.

Onorio Rossi explained their restaurant business is suffering so they need to do something in addition to that business. Mr. Tierney expressed concern that the used car business could do really well and then the Rossis could sell the property and a buyer may wish to make the entire property – a used car lot. Mr. Smith suggested the ZBA could, if they approved the variance, add a condition that the variance be only for the current property owner and not transferred if the property is sold.

Mr. Hofling asked Paul Rossi if he was agreeable to a time limit to the variance and he said he was. Mr. Hofling explained that after the time limit Mr. Rossi would have to reapply for the variance. Mrs. Erler advised she felt more comfortable with this because if there was development in the future, relative to mixed use, then the used auto sales would be reviewed again to see how it fits into the district.

Mr. Hofling said that car lots are not viewed as visually appealing and if this variance is approved he would like to see an organized, upbeat car lot. He pointed out that this is the gateway to New Hampton and many people travel by this location. Paul Rossi agreed that it should look nice. Onorio Rossi said they have always tried to keep the restaurant looking nice.

The board agreed they did not need to go through all the criteria again, as there has been enough discussion to move forward with a decision.

Mr. Orvis said he would like to see a condition of a 3-year time limit and after that period of time Mr. Rossi can come back to the board for a variance, adding that allowing this will do substantial justice to the applicant's economic situation. Mr. Frazier agreed as he does not see the mixed use idea being created in the near future. Mrs. Erler stated her support in the vision for this area so doesn't want to approve the variance without the condition of a time limit. Mr. Smith agreed that the mixed use vision may not take place for many years to come but doesn't see that this used car lot will make the area look any worse than it is. He said he liked the time limit and condition that if the business sold the variance would no longer apply. Mrs. Fraser asked what the applicant would have to do after the time limit if they wanted to renew. Mrs. Erler advised it would

be new application. Paul Rossi said he would like the approval to be for 5 years so he can establish the business. Mr. Hofling said he felt 3 years was reasonable. Mrs. Erler advised Mr. Rossi that he would not be going through Site Plan review again, just applying to the ZBA, and that process would likely be simpler than this first hearing.

Mrs. Erler asked for the input of Mr. Smith and Mr. Tierney as they were past Selectmen. Mr. Tierney advised he would like to see the stipulation that if the business fails they surrender the variance, which Mr. Hofling stated his agreement on. Paul Rossi said he was agreeable to this condition. Mrs. Erler asked Mr. Tierney if he felt the time limit should be a condition also and Mr. Tierney said it should. If at the end of the time limit the Rossi determine the used car business it not working for them it becomes null and void, and cannot transfer to anyone else. The board agreed. Mr. Randall agreed it would be specific for them as they own the property. Mr. Tierney advised this decision will allow the property owner to try to produce income, with limitations on it, and with further review by the ZBA and/or if the business does not succeed then it stops. Mrs. Erler stated that Rossi's restaurant has been in New Hampton for many, many years, has been a good citizen, and if the property were to sell and a new applicant comes in wanting to create a used car lot, she feels it would *not* be approved. She said this situation is different. Mrs. Fraser pointed out that the applicant may not wish to continue this business after the time limit.

There was some concern and subsequent discussion on whether or not the condition if approved, relative to the transfer to a different owner, was enforceable. Mr. Randall pointed out that if they business doesn't work out for the Rossis or if someone buys the property and continues the use, it would still expire after the time limit, so his thought was that this condition of the variance not transferring to another owner doesn't need to be a condition because there is the condition of the time limit. Mr. Tierney stated again, that if the business ceases the variance ends and any continuation comes back to the ZBA in the form of a new application. Mr. Tierney advised he did not want to see the Rossis decide they are no longer interested in running the used car lot and let someone else take over that business. Onorio asked what if Paul were to pass away tomorrow, does that mean he can't take over the business and the board said he could as he would own the business, but that if both Paul and Onorio were to pass away and someone else wanted to run the business they could not. Paul Rossi stated he was okay with that.

Mr. Hofling made a motion, seconded by Mr. Orvis, to approve the variance as presented on the plan, with the following conditions:

1. The variance will have a time limit of four (4) years. If the applicant wishes to continue the operation after the specified 4 years, they must re-apply to the Zoning Board of Adjustment.
2. If within the 4 year time period, the business that was presented to the board tonight, being a used car business with 6,000 sq. ft. of outdoor display should cease operations and go out of business, the variance will cease to exist.

Vote was unanimous.

The board agreed that if the 2nd condition was could not stand legally, they would reschedule and hold a meeting, voting to rescind the condition.

Mrs. Vose confirmed with the board that did not put any conditions on times of operation. Mr. Randall stated he thought that would be for the Planning Board to determine. The board agreed, though Mrs. Vose advised them that they could address this if they chose to. Mrs. Erler pointed out that it has been stated in the record and shows on the plan that there will be no additions to lighting. Mr. Orvis pointed out that the hours of operation were discussed and Mr. Tierney advised it was not part of this application or plan.

There was further discussion on the legality of the 2nd condition. Mr. Hofling made a motion, seconded by Mr. Frazier, that if the legal opinion means the ZBA must strike the 2nd condition and there is no other alternative wording to accomplish the same the board will strike condition #2. Vote was unanimous.

MINUTES

A motion was made by Mr. Frazier, seconded by Mr. Smith, to accept the minutes of February 6, 2013, as written. Vote passed.

OTHER BUSINESS

Mrs. Vose advised that the board would have to meet in May even if there was no application, for the purposes of electing officers. She said that it is likely an application will be submitted to create a bed and breakfast by special exception.

ADJOURNMENT

Mr. Orvis made a motion, seconded by Mrs. Fraser, to adjourn at 7:47 pm. Vote was unanimous.

Respectfully Submitted,

Pam Vose
Secretary