

**TOWN OF CHESTERFIELD, NH
ZONING BOARD OF ADJUSTMENT**

**MINUTES
August 9, 2016**

Present: Chairman Burt Riendeau, Harriet Davenport, Lucky Evans, Renee Fales, Kristin McKeon, Alternates Christopher Oot and Roland Vollbehr, Selectboard Representative Norman VanCor

Riendeau opened the meeting at 7:30 p.m. and explained the process of the meeting.

Hearings:

Gordon and Jeanne Fuller request to rehear the **Mark Lanoue** Variance from Article II Section 208.2 of the zoning ordinance to permit commercial use to allow for the sales and servicing of vehicles with outside display of the vehicles. The property is located at 1763 Route 9, Spofford, NH 03462 (Map 10A Lot A5) Office/Retail Space/Service District. This application was approved at the June 14, 2016 meeting.

Present: Gordon Fuller, Jeanne Fuller, Mark Lanoue and Attorney Steve Bonnette
Voting on this application will be Riendeau, Davenport, Evans, Fales and McKeon.

Riendeau noted that when the board made the decision to have the rehearing, the decision was not made by any particular point on a consideration and it was decided to open it up completely on a rehearing. The rules of engagement will be directed to the chairman and the chairman will give you permission to speak.

Riendeau requested that the Fullers explain their issues and concerns for their request for a rehearing, including their letter that was submitted to the board in March and any new testimony. Riendeau noted that there is a 30 day period after the June 14 decision for requests that can be submitted for a rehearing, in which the board reviewed four requests that were submitted to have a rehearing. Those requests were reviewed by the board at the July 12 meeting to determine who had standing for a rehearing. The board decided that the Fullers did have standing for a rehearing and the board felt that there was a need for the board to consider some of the points that could have been discussed.

Riendeau explained that the board received legal advice from town counsel on the process and to get guidance on how to clean up the record. The board needed to set the meeting for a rehearing and that was the reason for the July 21 meeting. He noted that there was no timeline that the rehearing needed to be set. The board also received legal advice as to how a board member can request reconsideration, and not a rehearing, and how to proceed.

Jeanne Fuller noted that their letter dated March 10, 2016 states that they were not able to attend the March 15 hearing and they had concerns that they wanted to have covered during the hearing, i.e. lights being turned off by 9:00 p.m., will there be a limit to the number of cars that will be displayed outside, if the cars would be registered and in good working condition and if the auto repairs were going to be done inside the building. Another concern, she noted, was that they had requested information as to whether there would be a turning lane to entering the

common driveway for Hunter Security and Lanoue's property. She noted that they have witnessed many close calls with the school bus stop. She added that the traffic headed east is not prepared to come to a dead stop heading into this driveway. The Fullers asked the board to consider the affect that this will have on the homeowners living next to and across from Lanoue's business.

Jeanne Fuller noted the additional concerns, in their letter dated June 30, 2016, was that the ZBA did not address their concerns of the March 10 letter, copies of which were in each board application packet at the March 15 meeting. She asked if any consideration was given to the school bus stop that is just prior to Lanoue's property. She noted that there is a safety concern with drivers turning into that property and the increased concerns since the rumble strips have been added to Route 9. Fuller stated that the applicant did not feel that this additional used car lot would affect the value of the Fuller's home. She noted that Lanoue would not endure a hardship if his application was not approved, as he bought the property knowing that it was not zoned for a used car lot.

Fuller noted that Lanoue's request of June 10, 2014 was unanimously denied to allow outside display of new caps and trailers at this same location. The reason was that the intensity and use was a lot greater going from 20 vehicles to 25-30 trailers to potentially 80 truck caps. Lanoue's current request would be increasing the intensity to 65 cars.

On April 12, 2016 Riendeau had stated that Lanoue's property is in the ORS district and his application for auto sales falls under a commercial district use and Fuller felt that the property should be required to be rezoned.

Fales asked Fuller if she has gotten a real estate appraisal on her property, should the variance request be approved. Fuller replied that she had not.

Riendeau asked how the newly added rumble strips would have an increase safety concern if the variance was approved. Gordon Fuller replied that driver's are trying to avoid the rumble strips by driving up onto their vehicle and end up coming across the rumble strips, sending them into the bicycle lane. Fuller added that people are stopping in the rumble strip area to look at the cars and not driving into the lot.

Bonnette noted that Goddere's property was rezoned to commercial since the June 10, 2014 request of Lanoue, which the properties are adjacent to each other. He added that the character of the neighborhood is an important aspect of the ZBA when it comes to a variance request. Bonnette stated that Route 9 is a heavily traveled road. Bonnette replied to the additional lighting concerns of the Fullers in that the existing lighting placement will be used and new downward facing LED lighting will be installed. The lights will not be turned off by 9:00 p.m. because of security issues, but noted that he is not sure on any violation to the town's ordinance. Lanoue will be going to the Planning Board if the variance is granted. Bonnette stated that the lighting from the Lanoue property should not affect the Fuller property because of the buffer of trees. He added that the lighting should not create any health or safety issues with the public and should not affect the value of the surrounding properties. Bonnette stated that the number of cars allowed on the property should be a decision of the Planning Board, however, the minutes of April 12 reflect that Lanoue stated that he requested to have up to 65 cars and no more than that.

Bonnette noted that the vehicles will not be registered because the vehicles are for sale and all auto repairs/servicing will be done inside the building, as was stated at the April 12 meeting. The servicing will only be done on vehicles that are brought to that lot and sold by Lanoue. It is not going to be an auto repair facility. In regard to the turning lane, Bonnette stated that Route 9 is a State issue. That will be part of the review process when Lanoue goes to the Planning Board. Lanoue has stated that about 90% of his sales will be internet driven and he expects that there will be minimal people turning into the property.

Bonnette stated that in Lanoue's affidavit (dated August 8, 2016) the Fullers had not attended any of the prior meetings. As to whether the school bus stop was given any consideration by the Lanoue property, Bonnette stated that it was mentioned during the deliberations more than once. Regarding the traffic on Route 9, Bonnette replied that that may be a State issue. Regarding the increase of danger because of the rumble strips, there is no data to support the Fuller's statement, replied Bonnette. Bonnette stated that there should be no reduced value of the Fuller's home by having a car lot across the street.

Riendeau stated that all the board members have received copies of the affidavit from Lanoue, dated August 8, 2016.

In Bonnette's presentation he stated that on April 12, 2016 the application was considered complete. In that application, Lanoue asked for a variance on Article II Section 208.2 of the ORS District to permit a commercial use to allow for the sales and servicing of vehicles with outside display of vehicles. The property currently houses Manny's Appliances. The back part of the building has been vacant for a substantial period of time. The building in total is approximately 5,000 sq. ft. and Manny's uses less than 4,000 sq. ft. and their vehicles are parked on the east side of the property, which is the closest parking near Route 9.

The outside display of vehicles will be in the back part of the property and will not be in the setback. Lanoue will use the remaining 1,200 sq. ft of the building for servicing and sales of the vehicles and he would only service the vehicles that he sells with the servicing to be done on the inside of the building. There will be no junk or debris on the outside of the building. This business is for Lanoue to take cars in to turn them around to sell them. The sales office will be located on the inside of the building. The staff will consist of Lanoue and 2 or 3 other people. Lanoue will handle the sales and someone else will handle the servicing. The site plan, as presented on June 12, showed the location of the parking for approximately 65 cars. There will be no cars parked along Route 9 at any time, as that is reserved for Manny's and no cars will be parked in the setback.

Bonnette stated that Lanoue estimates that about 90% of his sales will be generated through the internet. Lanoue has had about 30 years experience in selling automobiles. He noted that there will be no tractor trailers coming onto this property. All parts would be delivered by regular pickup trucks or van, with a rare drive in by a car carrier. Most of the cars will be delivered by hired personnel. The anticipated hours of operation would be Monday through Friday - 9 a.m. to 7 p.m.; Saturday - 9 a.m. to 5 p.m. and Sunday - 11 a.m. to 3 p.m.

The lighting will be LED facing downward. There should be no issue with the lighting because the property is buffered by a wooded area.

Bonnette read the facts that were presented in the Application for a Variance that was submitted by Lanoue on January 20, 2016.

Fales asked if the Planning Board had a requirement on the number of parking spaces for Manny's. Lanoue replied "No". Fales asked Lanoue if the 10 spaces on the side of the building are set aside for Manny's and Lanoue replied "Yes". Lanoue confirmed that there would be nothing in the front or side setbacks.

Riendeau asked if the 10 spaces set aside for Manny's were set by Planning Board rules and regulations currently. Lanoue replied that it has not gone before the Planning Board and it is what they realistically would need. Lanoue added that they don't normally have more than two customers and two employees at a time. Vollbehr stated that the Planning Board figures parking per square footage of the building and the Planning Board will call out for a number of parking spaces but he doesn't know what that will be at this time.

Fales asked Lanoue what is the impermeable lot coverage. Lanoue replied that it would be about one quarter of the acreage. Fales noted that under ORS zoning there can't be more than 20%. She added that Lanoue is filling in a lot of the area to be able to make room for the parking. Lanoue stated that he has 4.17 acres. Riendeau noted that it is up to the applicant to calculate those numbers. Fales noted that the building size is 5,275 sq. ft.

Evans asked Bonnette what the town vote numbers were for the Goddere rezoning. Bonnette replied that it passed (no number was given). Evans asked what the increase in property value was if the variance request was passed. Bonnette replied that it would increase the value of Lanoue's property and increase the tax base for the town and it shouldn't affect the residential and abutters properties. Evans was concerned as to whether this property change fit in the town's master plan.

Oot noted that the drawing presented by the applicant only showed 49 parking spaces. He asked where were the other cars going to be parked. Lanoue replied that they would be parked on the back side of the building. Oot asked what the volume of sales per month would be. Lanoue replied approximately 18-23 cars per month. Oot noted that most car buyers require the chance to take a car out on the road and Lanoue said that that would be done. Oot asked Lanoue if he was considering the request to have the property rezoned, as was done with the Goddere property. Lanoue replied that he did not feel that it was necessary.

Evans asked if the chemicals and rubbish was going to be stored inside. Bonnette replied that Lanoue will install a fenced in area outside for dumpsters, which will not include oil cans or car parts. Bonnette noted that there will be no painting or auto body repairs done on the property. Lanoue stated that the unused tires will be moved off the property and no tires will be left on the property.

Riendeau noted that Bonnette did not take the approach of the variance set in 1992. Bonnette responded that during the deliberations at the April ZBA meeting, it appeared that that wasn't the case in the past and if there wasn't a variance for this specific use, one couldn't be granted. Bonnette stated that Lanoue went to the town and did his own research.

Riendeau requested further explanation of Bonnette as to whether he could review or gather information that was not presented in the public portion and use that in the decision making. Bonnette replied that he didn't have it until the board was in deliberation and Lanoue was going to do his own research.

Oot asked why Lanoue didn't go to the town to ask for a zoning change. Bonnette replied that Lanoue didn't want to wait until March of 2017 to get it on the ballot.

Lanoue stated that he acknowledged that the decision of the ZBA to deny the variance request for truck caps (June 10, 2014) was because his tenant was asking for the truck caps to be placed within the front and side setbacks. He added that his request is not to request that the cars be placed within the setbacks.

Fales noted that she calculated that the impermeable coverage is 43,200 sq. ft. and an acre is 43,560 sq. ft., impermeable coverage for building and parking.

Gordon Fuller noted that Lanoue has been doing all of his maintenance and washing of cars is being done in the parking lot. Lanoue has also moved his cars over the Goddere's property, is selling them from Goddere's property and his cars are parked next to the road. Fuller stated that the dealership would be a downgrade for the neighborhood. Lanoue replied that he currently is selling his cars from the Goddere property. Riendeau stated that that activity may be a code enforcement issue.

Riendeau asked Lanoue that if a variance was approved on this property, would he (Lanoue) request for commercial status from the town. Lanoue replied that he didn't feel that it was necessary.

The Fuller's stated that he recently contacted the town's code enforcement officer about the cars being parked too close to the road. He reported that vehicles were stopping in the break down lane while looking at cars and Fuller was instructed to "go to the State". Riendeau noted that if the property is not being used properly, the town can respond and take legal action to enforce the town ordinances.

Davenport asked that the violation concerns be explained. Grace replied that Code Enforcement Officer Greenwood responded to complaints on a number of unregistered cars on the Lanoue property and Lanoue was issued a violation notice (on April 27, 2015). Most of the vehicles were removed at that time. On June 14, 2016 code enforcement issued another violation notice to Lanoue due to reported complaints of several unregistered vehicles on his property. Lanoue replied that he had had 30+ cars in the back of the building. He stated that he now has approximately five cars there at this time.

Lanoue replied to Riendeau's question as to cars being borderline condition in that he (Lanoue) potentially wants to move inventory within 60 to 90 days.

Barbara Girs stated that she can't imagine that the light from the Lanoue property will not affect the abutters across from Route 9 with the increased lighting. Girs also stated that Goddere told residents that nothing was going to change on his property when he approached the town to change the zoning to commercial and he told voters that he couldn't get car funding because his business wasn't on commercially zoned property. Girs noted that the code enforcement letter of

June 14th had nothing to do with the cars after the June 14th ZBA meeting. The violation notice was sent because of the increased number of cars being parked on the property before June 14, 2016. She noted that this type of property change encourages strip malls in the Town of Chesterfield.

John Koopmann noted that with either Zoning or Planning Board, the approvals should be considered as to how changes will be made based on what the person wants to do at the time and changes of circumstances in the future. He notes that in some incidences, changes to the property or increase in the business, the plans that were created no longer fit the situation from the unintended consequences that are created. He used Big Deal as an example in that the Planning Board or the State should have, since the approval, insisted to go to three lanes because of the huge increase of traffic going in and out of that business. He noted that if Manny's were to go out of business, the entire building would be used as a used car dealership and all of the property would be used as such, all of the signage would be used as such and legally would be able to be done without a change of use without having to come back to the ZBA or the Planning Board. Riendeau noted that would be an enormous change and an unintended consequence. He noted that the ZBA should try to follow the Master Plan. He noted that the Mercedes dealership, that was at this property 30 years ago, was under different zoning regulations and under a different Master Plan.

Fales moved to close the public portion. Davenport seconded the motion.

Vote called: Davenport – Yes, Evans – No, Fales – Yes, McKeon – Yes, Riendeau – Yes

The motion passed by majority vote.

Discussion: Riendeau noted that the board made the decision to have a rehearing and in the process of a rehearing the board decided to take in all conclusive of everything. This is a new process and a new application from the testimony that was heard tonight.

McKeon asked Grace about the packet that was brought to the board pertaining to the history of the property. Grace stated that the material in the Lanoue file folder was research that Grace had provided to the board for the previous hearing. Lanoue came into the town office in late July and requested to review that file. Riendeau noted that the board had requested some background information on what had been approved on that property during the first hearing, based on the continuation and for getting information from town counsel.

Riendeau noted that testimony from an expert witness can be taken for property evaluations to determine whether the property value goes up or down. Fales stated that Fuller's property will have less of an impact if restrictions are put in place on the decision.

McKeon noted that the board determined that the variance for the Mercedes dealership was for a special exception and it stated that, and the Mercedes dealership is no longer there. There is not to be another dealership put in its place and the special exception would end, which was moved by Harry Winn. Riendeau noted that the zoning board started in the late 60's and early 70's. He noted that up until recently, the variance stayed with the property. He added that approximately two years ago that variances granted are only good for up to one year, unless there are acted upon.

Riendeau noted that on October 13, 1992 Mr. Ricci requested a variance for outside storage for boats and automobiles. Fales noted that at the June 12, 2016 meeting, sales were not included for the Ricci variance.

Fales noted that there are some noise issues from the pressure washer being used. McKeon noted that Lanoue is aware of the lighting issues and should consider taking that into consideration. The applicant has noted that the back lighting was going to be improved. The Planning Board should be doing a site plan review and decide if a turning lane should be added on Route 9 for the shared driveway. McKeon questioned whether there is a hardship and whether the building can be used without putting in a car dealership.

Kinds of conditions that were discussed for the use of this property:

- Cars must be in good working order and be sales ready
- Eliminate work being done outside to eliminate noise, including no outside power washing
- No outside repairs
- Site plan review at the Planning Board
- Place a maximum 65 cars per lot
- No cars in setbacks
- Put in screening of trees and/or shrubs
- No junk cars
- Limit the use to internet car sales only
- Spaces required for customer parking

Riendeau stated that the board use reasonable restrictions that are enforceable. He stated that if the car dealership doesn't fly and Lanoue goes out of business, a restriction can be added that someone else would have to come before the zoning board.

Fales moved to grant the variance for Mark Lanoue from Article II Section 208.2 of the zoning ordinance for the property located at 1763 Route 9, Spofford, NH 03462 to allow sales and inside service and outside storage of cars with the following restrictions:

- *There will be no outside repairs or cleaning of vehicles allowed*
- *All trash car parts fenced in dumpster area*
- *No junk cars on lot, allow only cars that are sales ready and in good working order*
- *Limit the number of 65 cars on the lot involved in the internet sales business*
- *Only a single row of cars for sale on the eastern border running north, starting past the 75 ft. front setback*
- *No cars for sale within the front or side setbacks*
- *Screening will be placed in the front setback, 75 ft. from Route 9 in the southeastern corner in the form of arborvitae or similar plantings screening the eastern row*
- *If this use is discontinued or this property owner changes, this variance will no longer apply to this property and no use for expansion will not be allowed without coming before the zoning board.*

Mark Lanoue has agreed that he will not go before the town to ask for this property to have it rezoned to commercial use.

Criteria for approval:

1. The variance is not contrary to the public interest. **This is an existing building which contains 4.17 acres located on Route 9 which had a number of businesses. The essential character of the neighborhood will not be changed by allowing this property because of the car sales will be internet based.**
2. The spirit of the ordinance is observed. **The spirit of the ordinance is to protect the public health, safety and general welfare of the community. The proposed used will be located in the outside in the rear of the building. The displayed vehicles will be located substantially off Route 9. The amount of traffic expected is to be light, due to the fact that this mostly will be internet sales.**
3. Substantial justice is done. **Allowing internet auto sales at this property provides the owner with income and is not outweighed by any gain to the general public as an injustice with the restrictions imposed.**
4. The variance will not diminish the values of surrounding properties. **The property owner has indicated that he will be changing lighting so that it will be facing downward. By constrictions imposed, noise will not increase from the business and the storage of the vehicles will be in the rear of the building with screening from general traffic.**
5. Literal enforcement of the ordinance would result in unnecessary hardship. Because of the special conditions of the property that distinguish it from other properties in the area:
 - (a) There is no fair and substantial relationship between the general public purposes of the ordinance provision and the specific application of that provision to the property. **Because there are special conditions associated with this property since it has been an automobile dealership in the past, a marine business and a retail woodworking shop.**
And
 - (b) The proposed use is a reasonable one. **Yes, with the restrictions being imposed and should not change the impact onto the neighborhood and will allow for internet sales of automobiles.**

Lanoue agreed that this business will be a neat and clean business with no debris or junk cars, will be conscious of the neighborhood with concerns that have been voiced of abutters and the business will be an asset for the town with very minimal impact and he had no intention of having a junk yard.

The motion was seconded by Davenport.

The vote was called:

Davenport – Yes, Evans – No, Fales – Yes, McKeon – Yes, Riendeau – Yes

The motion passed by majority vote.

Davenport noted that she wanted to address the process for the appeals to Lanoue that came in that motions for rehearing. She read the ZBA's Rules of Procedures for Motions for Rehearings:

“A Board meeting to consider a Motion for Rehearing shall be considered a public meeting subject to the minimum posting requirements of the Right to Know Law and no formal notice is required to the applicant, petitioner, or abutters.”

She noted that the only way the notice goes out is by public posting and that is why it was done the way it was done. She noted that this is what is in the ZBA’s Rules of Procedure. McKeon noted that the procedure was already discussed. Bonnette noted that it was a timing issue as to when Lanoue learned of the meeting to rehear his variance request. It was noted that the applicant received the decision notice of June 14 in which it states at the bottom of the page that any person affected has a right to appeal the decision and they must act within thirty days of the date of the decision.

Review Meeting Minutes

- **June 14, 2016**– Voting will be Davenport, Evans, Fales & McKeon.
McKeon moved to approve the meeting minutes of June 14, 2016 with one minor change. Fales seconded the motion, which passed unanimously.
- **July 12, 2016** – Voting will be Riendeau, Davenport, Evans, Fales & McKeon.
Fales moved to approve the meeting minutes of July 12, 2016 as presented. Davenport seconded the motion, which passed unanimously.
- **July 21, 2016** – Voting will be Riendeau, Evans and McKeon.
Riendeau moved to approve the meeting minutes of July 21, 2016 as amended. Evans seconded the motion, which passed unanimously.

ZBA Decision Postings

The board requested more information on what the cost would be to get the posting set up on the town’s website. To be discussed at the September 13, 2016 meeting.

Adjourn: *Riendeau moved to adjourn the meeting. McKeon seconded the motion, which passed unanimously. The meeting adjourned at 11:25 p.m.*

Respectfully submitted,
Patricia Grace, Secretary

Approved

Burt Riendeau , Chairman

Date