

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

**MINUTES
December 13, 2016**

Present: Chairman Burt Riendeau, Lucky Evans, Renee Fales, Kristin McKeon and Alternates Chris Oot, Roland Vollbehr and Lance Zinn, Selectboard Representative Norman VanCor

Absent: Harriet Davenport

The Zoning Board of Adjustment met at the Chesterfield Town Office on December 13, 2016. Riendeau opened the meeting at 7:32 p.m. and explained the process of the meeting. He noted that Chris Oot will be voting in place of Harriet Davenport.

Nonpublic RSA 91-A:3 II(L)

Fales moved to go into Nonpublic RSA 91-A:3 II(L). The motion was seconded by McKeon and passed unanimously.

Fales made a motion to come out of nonpublic RSA 91-A:3 II (L). The motion was seconded by Evans and passed unanimously.

Hearings:

- **Mark Lanoue** requests a Variance from Article II Section 208.2 of the zoning ordinance to permit outside cleaning of vehicles. The property is located at 1763 Route 9, Spofford, NH 03462 (Map 10A Lot A5) Office/Retail Space/Service District.
(This application was continued from October 11, 2016)

Riendeau noted that this is an appeal from a request of a decision that was made that was granted in October and in November, Mr. Lanoue was out of town and couldn't come to the meeting and he requested a continuance, which gets us to this December meeting.

This application was heard in October and there were legal issues that required legal counsel and the hearing was continued until November to attain the information in the attempt to be able to make the best legal decision that the board can make. The ZBA obtained that information and are ready to proceed with the application.

Riendeau asked Lanoue to recap what was the intent of the application and what is being requested. Lanoue stated that he was given conditional approval to allow sales and inside service and outside storage of cars. In the October meeting, Lanoue pointed out the decimal noise levels that he uses, which are less than half of a lawn tractor. Lanoue stated that he has purchased an electric power washer.

Lanoue stated that at the last meeting (October) it was pointed out that the State gets involved when a business is washing vehicles, either inside or outside buildings. He invited "Mitch" come down from the State and showed him what he was doing where a 1,000 gallon holding tank will be installed. He added that he has now installed the 1,000 holding tank and rebuilt the drainage system with all new piping and installed the alarm that is necessary to tell you when the tank is $\frac{3}{4}$ full. Lanoue continued to state that "Mitch" looked up the chemicals and soaps the Lanoue was using for cleaning the automobiles. Lanoue stated that he will have to formally submit a complete list to him before the end of the week for his final

approval. He states that “Mitch” told him that there shouldn’t be any problems. Lanoue stated that the chemicals are over-the-counter chemicals that can be purchased from Home Depot or Walmart. Lanoue stated that there is a separate outside permit required, which he stated was a fee of \$1,000. Lanoue noted that he is waiting until spring to submit the \$1,000. When Riendeau asked Lanoue if he was given written documentation on the consultation, Lanoue replied that he was given a website to print out the forms for the wash bay inside. Lanoue stated that he has rebuilt the wash bay and installed new piping. Lanoue has dug out the old bay with an excavator and reburied pipes almost four feet down to get to the new tank and everything is brand new and functional. Lanoue stated that he will take care of all the State end of the process, which is almost done. When McKeon asked Lanoue, who is “Mitch”, Lanoue replied that he is the inspector from Concord for people with in-ground tanks and washing of equipment and he did not have any paperwork with him. McKeon then asked what department was he from, Lanoue replied that he is from DES. McKeon noted that she would assume that Lanoue has been to the Planning Board because he has gone to the State for the indoor washing, but he wouldn’t be in compliance with the State for outside washing and hope that he Lanoue has all his permits in place. Lanoue replied that there won’t be any outdoor washing until Spring and he is waiting for ZBA approval before he sends \$1,000 to the State.

McKeon asked why Lanoue would need to do outside washing of vehicles in the spring if he can do washing inside during the winter. He replied that he would have to pay to have the tank emptied out if it’s continuously being used and with chemicals that aren’t that harmful. It would be a financial hardship by having to have the tank pumped out on a regular basis.

Evans asked Lanoue if he washes the engines when washing the cars. Lanoue replied that washing engines is a “thing of the past” but he will do a wipe down with a rag. Lanoue is only asking for exterior wash of the vehicles and vacuum the interior of the vehicle and there is no decreasing going on. Lanoue stated that he might be cleaning about 10 vehicles per week.

McKeon asked Lanoue that if he is required to have a storage tank for wastewater for inside washing of vehicles, why he thinks that he wouldn’t be required to have a storage tank for outside. Lanoue replied that basic soaping and washing of a car will be approved for outside use and the water will go into the ground. He added that it’s not as easy to clean a car inside as it is to clean a car outside and the soaps run off into a porous area. He stated the wheel cleaning requires a harsher chemical and that would be done inside.

Evans asked if Lanoue has documentation on decibel readings of the machine noise levels and he said that he brought it up at the last meeting, being between 45 and 65 where the average lawnmower is 95. Lanoue stated that he does not have anything in writing. Lanoue added that he has to submit the application to get the final approval from the State. Evans requested if Lanoue has a MSDS list of all the chemicals that he is using now and Lanoue replied that he has to submit them to the State and doesn’t have them yet.

James Corliss noted that none of the site changes have been brought before the Planning Board during the past year. Corliss noted that any outside washing done requires a ground water discharge in New Hampshire for commercial use and will require the collection of the water and separation of the runoff of the water from washing of the vehicles. Those are issues that would be addressed by the Planning Board and would require an application. From what he is hearing, Corliss feels that the applicant may not feel the need to have one. Riendeau noted that in previous meetings, Lanoue was told, if his request was granted from the ZBA, that there is a Planning Board site requirement of the property. That is where

the site plan, drainage and lighting issues are addressed and that would be an additional process for the applicant. Lanoue replied that he does have a site plan that will be done very shortly to present to them. Riendeau instructed Lanoue that he should not be making changes without the site plans being approved by the Planning Board. Riendeau stated that the ZBA did not give him approval of any expansion of the lot or putting in a tank from the State and was not any sort any part of the ZBA including the site work that has been done. McKeon stated that the site plan that the applicant presented to the ZBA must be the same site plan that will be presented to the Planning Board. Riendeau added that the applicant had been instructed that the drainage and site plan issues was not approved by the ZBA. Riendeau asked the ZBA members to stay focused on the issue of whether to approve the outside washing of vehicles, in that it had already been decided not to approve the outside cleaning of vehicles and that this is a request for reconsideration to that decision.

Jeff Scott stated that there is legal action between the Town of Chesterfield and Lanoue. There has been a cease and desist order issued to Lanoue to stop. Scott requested that the ZBA not entertain any variances or any applications until all the legal issues have been worked out. Riendeau replied that the ZBA is a quasi judicial board and what it can and can't do and the ZBA has to look at the case that is being presented and must be non partial to everything else that is going on with the landowner of the request for application.

Lanoue stated that he received a letter stating not to add any additional parking and to remove all unregistered vehicles from the property or he will be fined. Lanoue added that he has complied with the letter.

Scott provided another set of environmental statements to Riendeau for the ZBA.

McKeon moved to close the public portion. Oot seconded the motion, which passed unanimously.

Alternates Vollbehr and Zinn sat in the audience area.

Discussion: Evans stated that outside washing chemicals and the noise are a concern in this application. There is no documentation of decibel levels for commercial use versus electric washing units, no chemical analysis on soaps being used of the ingredients for MSDS. Fales noted that the State will require the information for MSDS for outside and inside washing and the chemicals used for cleaning wheels.

McKeon questions where is the hardship for washing cars outside, especially given the fact that he can wash them inside. Evans stated that it is a convenience and additional cost of emptying and maintaining the tank. Financial cost for those issues does not constitute a hardship. Hardship has to be in the lay of the land or as a setback issue and is there an alternate issue.

Riendeau stated that if washing of cars can be done inside, then they should be washed on the inside or take them to a car wash. The ZBA is trying to keep the lot close to the ORS district like an ORS district without having industrial uses being done outside of the building.

McKeon moved to deny the request made by Mark Lanoue to request relief from Article II Section 208.2 of the zoning ordinance to permit outside cleaning of vehicles. This was a request for a rehearing on a decision made on August 9, 2016 where the ZBA approved a variance to approve the applicant to have a used internet car dealership. The details can be found in the Decision dated August 9, 2016. We find that there is no hardship. We find that the applicant has

the ability to wash vehicles inside the building and there is no land based need to wash them outside and there is enough room to wash them inside, which is apparently set up to handle washing cars inside.

Criteria for approval:

- 1. The variance is not contrary to the public interest. **No. Based on the fact that the applicant was already given a variance and the original variance and to keep the property as close to ORS and to have the cars washed inside. That will keep the property as close to ORS as possible, based on the variance already given.***
- 2. The spirit of the ordinance is observed. **Keeping the property as close to ORS as possible, based on the variance already given.***
- 3. Substantial justice is done. **The washing of vehicles needs to be kept inside to keep the property as close to ORS district as possible.***
- 4. The variance will not diminish the values of surrounding properties. **By keeping the washing done on the inside, it will not give the appearance of diminished values to surrounding properties. There is room to wash the vehicles inside.***
- 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:***

*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. **There is no need to wash the vehicles outside. The building is being designed to wash the cars inside.***

(a)

And

*(b)The proposed use is a reasonable one. **Proposing this change is not necessarily reasonable, given the fact that there has already been given a variance on the property. Special conditions of the property that distinguishes it from others and there are no distinguishing factors between that and other properties. The board hasn't been given any information that would lead them to change the original variance.***

Evans seconded the motion.

Vote called: Riendeau noted that an affirming vote is denying and a no vote is against the motion.

Fales – no; Oot – yes; McKeon – yes; Evans – yes; Riendeau – yes

The motion carries to deny the request.

Review Meeting Minutes

• September 13, 2016

Only three board members were present at this meeting: Davenport, Fales and Vollbehr (Alternate)

Fales moved to approve the meeting minutes of September 13, 2016. Vollbehr seconded the motion. Final vote of approval of Davenport is required for a third member approval.

- **(2) November 5, 2016 Site Visits (2)**

Fales moved to approve the November 5, 2016 site meeting minutes (for Deborah Metivier). McKeon seconded the motion, which passed unanimously.

Fales moved to approve the November 5, 2016 site meeting minutes (Larry & Kathleen Robbins). McKeon seconded the motion, which passed unanimously.

- **November 15, 2016 Meeting Minutes**

McKeon moved to accept the November 15, 2016 meeting minutes. Vollbehr seconded the motion, which passed unanimously.

Other Business

The board members reviewed the memo from the Board of Selectmen addressed to the Zoning Board of Adjustment and Planning Board dated November 30, 2016. The memo was a request to promote better communication of all town boards to better understanding of board/committee actions in references to expenditures. The memo requests when making a motion that would require expending monies, i.e. hiring the services of an attorney or an engineer for example, the motion include that there will be money expended. This would make it clear to the public that the outside source is an expenditure and not from the New Hampshire Municipal Association. When receiving advice and direction from these outside sources, please get this advice or direction in writing so that the document can be shared with the entire board.

Riendeau announced that Fales term as a ZBA member is expiring at the end of December. Riendeau thanked Fales for her time and dedication in serving on the board.

Next Meeting Schedule – January 10, 2017

Adjourn: *McKeon made a motion to adjourn the meeting. Oot seconded the motion, which passed unanimously.* The meeting adjourned at 9:20 p.m.

Respectfully submitted,
Patricia Grace
Secretary

Approved

Burt Riendeau
Chairman, Zoning Board of Adjustment

Date