

ZONING BOARD OF ADJUSTMENT MEETING MINUTES

Tuesday, January 5, 2016

CALL TO ORDER:

D. Gravel called the meeting to order at 7:04pm.

ROLL CALL:

The following members were present: D. Gravel D. Day J. Marshall W. Rose

The following member was not present: C. Hodges

Staff Present: B. Regan, Planning Director, N. Decoteau, Admin Assistant

PUBLIC HEARING:

D. Gravel opened the Public Hearing at 7:04pm and read the following notice into the record:

Continued Public Hearing to consider the application submitted by property owners E. Pope and R. Tice for a Variance from Article V Permitted Uses in Various Zones: B. General Residence Zone to allow a NH Retail Auto Dealer in the General Residence Zone on property identified as Tax Map 16 Lot 7-62 located on NH Rt. 175.

D. Gravel asked if the applicant came with the information as requested at the Public Hearing on December 15, 2015.

K. French submitted "A Site Plan of Ed Pope Auto Sales owned by Elvira V. Pope Route 175, Thornton, NH" with a survey date of January 2016 into the record.

K. French reviewed the details of the plan with the Board members.

K. French noted the following on the plan:

- a) Parcel located on NH Rt 175,
- b) just over one acre of land,
- c) existing driveway,
- d) gravel area for display of vehicles,
- e) existing camper/office presently using as office
- f) Possible proposed 24' x 36' 3 bay garage area.

K. French noted that the State Inspector has indicated to R. Tice that the travel trailer presently being used as an office would satisfy the requirement of RSA 259:29-a III(b) for a permanent structure that has at least 750 sq. ft. or is primarily dedicated to the business of selling.

K. French stated that the 24' x 36' 3-bay garage is only shown on the plan to demonstrate that it could be possible to locate the structure on the parcel.

K. French added that there is no intention of building the garage.

K. French stated the following items are part of the NH State requirements:

- a) An application with fee to State of NH
- b) Surety bond renewable upon obtaining the NH State License
- c) Approval from local and state authorities which is the purpose of meeting with the ZBA
- d) Established place of business (as shown on plan) which will be open for 37½ hrs./week

- e) A service agreement
- f) Criminal background checks

D. Gravel asked about the 37½ hrs./week.

K. French explained that it is part of the NH State requirements and that someone will be present on site for 37½ hours a week to comply with the requirement.

K. French noted that no repairs/servicing of vehicles will be performed on site and that the service agreement is with A&H Auto.

K. French noted that the NH Retail Dealer Usage Requirements are listed on the plan as follows:

- 1) Plates may be displayed on the rear of a vehicle which is owned by the dealership and for sale or a consignment vehicle as long as there is a notarized consignment agreement on the premises.
- 2) These vehicles are not exempt from inspection unless they have a certificate of origin.
- 3) For demonstration – There shall be no obstruction in the windshield due to advertising etc. while the vehicle is being demonstrated.
- 4) Personal use is permitted by the dealer owner and family domiciled at the owner's home.
- 5) Full-time employees (employed at 37½ hrs./week), at the discretion of the owner, may have personal use of a vehicle with a dealer plate. Employee's family members do not have use of the vehicle. Contract employees are not considered full-time employees. Vehicles must display all legally required stickers.
- 6) Dealer plates may be use on wreckers, ramp trucks and service trucks if they are clearly marked, in 3 inch letters, not for hire (parts trucks are not permitted).
- 7) Upon approval, prior to issuance of plates, dealers must take a dealer/title review class of State laws and rules.
- 8) NH Laws pertaining to Retail Dealers:
 - i. RSA 259:29-a
 - ii. RSA 259:60-a
 - iii. RSA 259:89-a
 - iv. RSA 259:103-a

D. Gravel asked if there was a document from State Inspector Ramsey who met with R. Tice.

R. Tice stated he did not have a document to submit as the decision as to whether the camper trailer will meet the RSA 259:29-a III(b) requirement for a permanent structure that has at least 750 sq. ft. or is primarily dedicated to the business of selling will be decided by the Dealer Desk.

R. Tice added that Inspector Ramsey submits his findings but does not have authority to make a decision regarding the camper trailer.

K. French submitted the Pope Application for a Variance as follows:

1. *Granting the Variance would not be contrary to the public interest because:
There would be no change to the way business is not conducted. There would no additional traffic generated as the use remains the same, it would not increase any burden on any town services.*
2. *If the Variance were granted, the spirit of the Zoning Ordinance would be observed because:
There would be no changes to the ownership or expansion. The spirit of the neighborhood would not be changed as the use has coexisted in the neighborhood for years as a use conducted by residential owner living in the neighborhood.*

3. *Granting the Variance would do substantial justice because:
It would allow a family to support itself and the local community, by continuing a family business.*
4. *If the Variance were granted, the values of the surrounding properties would not be diminished because:
The business has been around since before 1970 and has not had a negative impact.*
5. *Unnecessary hardship:*
 - A. *Owing to special conditions of the property that distinguish it from other properties in the area, denial of the Variance would result in unnecessary hardship because:*
 - i. *No fair and substantial relationship exists between the general purposes of the Zoning Ordinance provision and the specific application of the provisions to the property because: Ed Pope Auto Sales has been operating since before zoning was in existence with no negative effects.*
 - ii. *The proposed use is a reasonable one because: It helps keep a small family business in operation.*
 - B. *Explain how, if the criteria in subparagraph (A) are not established, an Unnecessary hardship will be deemed to exist if, and only if, owing to the special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.*

The property is generally open and level with excellent visibility in both directions on a state highway (Route 175). Also, the property has been used in this manner for many years with no adverse effects.

D. Gravel asked if any new abutters to the property were present.

D. Gravel noted that none were present.

D. Gravel suggested the Board review and discuss each of the five criteria.

J. Marshall stated she questioned whether the ZBA has the legal authority to grant a variance in this situation.

J. Marshall stated that at the prior meeting she was going under the assumption that Pope Auto Sales was a non-conforming use and that after a review of the records it appears that the non-conforming use was established for the lot across the road from the current Pope Auto Sales lot.

J. Marshall stated that the operation of Pope Auto Sales moved to the current location sometime after that parcel of land was purchased in late 1998.

J. Marshall asked if a non-conforming use can be transferred from one parcel to another.

D. Gravel responded that a non-conforming use can not be transferred from one parcel to another.

W. Rose stated that the last time the ZBA addressed the issue in November 2014, documentation was presented showing the Board of Selectmen signature on the State of NH letter indicating the bonded dealer complied with local ordinances was dated in 1997.

W. Rose stated that was prior to Pope Auto Sales moving to its current location.

W. Rose added that this fact was brought to light at the December 15, 2015 meeting.

W. Rose confirmed that the question is not "do we allow a non-conforming use to continue?".

W. Rose clarified that the application is a request to operate as a car dealer on a parcel of land for which that use is not allowed.

D. Gravel stated that all five of the criteria must be met in order for the variance to be granted.

W. Rose noted that a majority vote (3 members) that all five criteria are met would be necessary to gain approval.

D. Gravel led the Board in a discussion of each of the five criteria.

1. Granting the Variance would not be contrary to the public interest because:

There would be no change to the way business is not conducted. There would no additional traffic generated as the use remains the same, it would not increase any burden on any town services.

W. Rose stated nothing has been submitted to the contrary.

W. Rose stated the NH OEP Zoning Board of Adjustment Handbook is available to reference how to deal with the five criteria than are to be met to grant a variance.

D. Gravel noted from the handbook that *"for the variance to be contrary to the public interest, it must unduly and to a marked degree violate the basic zoning objectives of the Zoning Ordinance. To determine this, does the variance alter the essential character of the neighborhood or threaten the health, safety, or general welfare of the public?"*

The Board members agreed that the first criterion is met.

2. If the Variance were granted, the spirit of the Zoning Ordinance would be observed because:

There would be no changes to the ownership or expansion. The spirit of the neighborhood would not be changed as the use has coexisted in the neighborhood for years as a use conducted by residential owner living in the neighborhood.

W. Rose referred to the handbook that *"when the ordinance contains a restriction against a particular use of the land, the board of adjustment would violate the spirit and intent of the ordinance by allowing that use. If an ordinance prohibits industrial and commercial uses in a residential neighborhood, granting permission for such activities would be of doubtful legality"*.

D. Gravel asked if the Zoning ordinance contains a restriction prohibiting this use in the General Residence zone.

W. Rose stated that if the Thornton Zoning Ordinance does not allow a certain use in a certain zone then it is restricted from that zone.

The Board referred to the Table of Uses in the Thornton Zoning Ordinance and found that the Auto Sales use is not permitted in the General Residence zone.

D. Gravel clarified that per the guidance from the NH OEP handbook the Zoning Board can not permit the auto sales use in the General Residence zone.

W. Rose noted that zoning has been in existence in the Town of Thornton for over forty years and no change has been made to allow the auto sales use in the residential zones.

B. Regan stated that there is no pending zoning amendment to address any rezoning of the area in question.

B. Regan stated that there are at least 23 types of businesses in place at the time the zoning ordinance was put into effect.

B. Regan stated that the current town administration is working on creating a record of those businesses which were in existence prior to zoning.

3. Granting the Variance would do substantial justice because:

It would allow a family to support itself and the local community, by continuing a family business.

D. Gravel read from the handbook, *"any loss to the individual that is not outweighed by a gain to the general public is an injustice"*.

W. Rose continued by reading the next sentence, *"The injustice must be capable of relief by granting a variance that meets the other four qualifications"*.

4. If the Variance were granted, the values of the surrounding properties would not be diminished because:

The business has been around since before 1970 and has not had a negative impact.

W. Rose noted that no evidence was submitted that demonstrates there is a negative impact to the surrounding properties.

5. Unnecessary hardship:

A. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the Variance would result in unnecessary hardship because:

- i. No fair and substantial relationship exists between the general purposes of the Zoning Ordinance provision and the specific application of the provisions to the property because: Ed Pope Auto Sales has been operating since before zoning was in existence with no negative effects.
- ii. The proposed use is a reasonable one because: It helps keep a small family business in operation.

B. Explain how, if the criteria in subparagraph (A) are not established, an Unnecessary hardship will be deemed to exist if, and only if, owing to the special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

The property is generally open and level with excellent visibility in both directions on a state highway (Route 175). Also, the property has been used in this manner for many years with no adverse effects.

D. Gravel questioned if under the law keeping a small family business in operation could be considered a reasonable use.

W. Rose stated that when looking at the conditions of the property to determine whether the proposed use is a reasonable one the handbook states *"In other words, the board needs to find that a use which otherwise must be considered unreasonable is rendered reasonable by the special conditions of the property"*.

W. Rose stated that in his opinion this is not the case for the current application.

D. Gravel commented that the parcel is level which is an unusual occurrence.

W. Rose stated that the condition of the property is not such that it restricts reasonable use.

D. Day stated that Pope Auto Sales submitted an application for a Variance in 2014.

D. Gravel stated that the Board determined a variance was not necessary when they considered the 2014 application.

D. Gravel added that the NH State regulations have changed.

W. Rose stated his opinion that the Board "kicked the can" last year and that it should have had the current discussion last year.

R. Tice stated that they were trying to include the garage used up on the house lot as part of the business. W. Rose noted that the board referenced the State of NH letter dated Feb 28, 1997 with Selectmen signatures that the bonded dealer complies with local ordinances.

W. Rose stated that when considering the 2014 application the board was unaware of the fact that the business moved across the street.

W. Rose stated that when considering the 2014 application the board was considering Pope Auto Sales to be a non-conforming use, and that now the board is aware Pope Auto Sales is not a non-conforming use.

D. Gravel stated that relocating to the current site negated the "grandfathered" status of the business.

D. Gravel asked if there was any other discussion on the matter.

MOTION: "To deny the application submitted by property owners E. Pope and R. Tice for a Variance from Article V Permitted Uses in Various Zones: B. General Residence Zone to allow a NH Retail Auto Dealer in the General Residence Zone on property identified as Tax Map 16 Lot 7-62 located on NH Rt. 175 based on the evidence submitted and review of the five criteria".

Motion: W. Rose

Seconded: J. Marshall

Discussion: None

Motion Passes: 3 – Yes, 1 – No

E. Pope asked what her option to appeal the decision is.

D. Gravel stated she has the option to seek relief in the NH court system.

D. Day asked what action the town would take if Pope Auto Sales continues to sell vehicles from the current location.

R. Tice stated they can not obtain a NH License but could still sell private vehicles.

E. Pope stated they could not go to the auction to buy cars.

R. Tice stated they could sell five cars per year per person.

D. Gravel stated that based on the evidence submitted the Board has no choice but to deny the request for a variance.

D. Day summarized that the current location of Pope Auto Sales is not grandfathered and should not have been operating an Auto Sales business there.

D. Gravel stated that Auto Sales is specifically restricted from the General Residence zone so a variance can not be granted.

D. Gravel added that when Pope Auto Sales moved to its current location it lost its grandfathered status.

E. Pope stated she did not receive a letter from the town stating that they lost the grandfathered status when they moved across the road to the current location.

R. Tice asked when exactly the grandfathered status was lost.

D. Gravel stated the grandfathered status was lost when Pope Auto Sales moved to the current location late 1998-early 1999.

APPROVAL OF MINUTES:

MOTION: "To approve the minutes of December 15, 2015 as amended."

Motion: J. Marshall

Second: D. Day

Discussion: D. Gravel confirmed the changes submitted have been incorporated into the document presented.

Motion Passes: 4 – Yes 0 - No

OTHER BUSINESS:

It was noted that the term of board members W. Rose and J. Marshall expire in 2016 and a letter of interest should be submitted to the Board of Selectmen if they are interested in being reappointed.

The Board reviewed the 2015 Annual Report of the ZBA.

MOTION: "To accept the 2015 Annual Report of the ZBA with thanks to the Chairman."

Motion: J. Marshall

Second: D. Day

Discussion: None

Motion Passes: 4 – Yes 0 - No

ADJOURNMENT:

The following motion was made at 7:50:

MOTION: "To adjourn."

Motion: D. Day

Seconded: J. Marshall

Discussion: None

Motion Passes: 4 – Yes, 0 – No

Respectively Submitted,

Nancy Decoteau

TOWN OF THORNTON
Zoning Board of Adjustment

AGENDA
Tuesday, January 5, 2016
7:00PM

CALL TO ORDER:

ROLL CALL: David Gravel, Chairman William Rose, Vice Chairman Dennis Day, Member
Joan Marshall, Member Chris Hodges, Member

APPROVAL OF MINUTES: December 15, 2015

PUBLIC HEARING:

7:00PM Public Hearing (*continued*): Variance

Public Hearing to consider the application submitted by property owners E. Pope and R. Tice for a Variance from *Article V Permitted Uses in Various Zones: B. General Residence Zone* to allow a NH Retail Auto Dealer in the General Residence Zone on property identified as Tax Map 16 Lot 7-62 located on NH Rt. 175.

COMMUNICATIONS AND MISCELLANEOUS:

OTHER BUSINESS:

1. Review final draft of 2015 Annual Report of the ZBA

ADJOURNMENT:

Zoning Board of Adjustment

January 5, 2013

SIGN IN SHEET (Please Print)

1	Robert Tice	25
2	KEVIN FRENCH	26
3	Alma Pope	27
4	Jessye & Sky Bartlett	28
5	Moselle Pope	29
6		30
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