

**TOWN OF THORNTON**  
**Zoning Board of Adjustment**

Approved on: 5/2/16  
ZBA Initials: [Signature]  
Rec'd by Town Clerk on: 5/9/16  
Town Clerk Initials: [Signature]

**ZONING BOARD OF ADJUSTMENT MEETING MINUTES**  
**Tuesday, March 29, 2016**

**CALL TO ORDER:**

D. Gravel called the meeting to order at 7:00pm.

**ROLL CALL:**

The following members were present:

D. Gravel, Chairman    D. Day, Member    J. Marshall, Member    C. Hodges, Member  
S. Bartlett, Alternate

The following member was not present:    W. Rose, Vice Chairman

Also Present: C. Boldt, ZBA Attorney    N. Decoteau, Admin Assistant

**APPROVAL OF MINUTES:**

**MOTION: "To approve the minutes of February 23, 2016 as presented."**

Motion: J. Marshall

Second: D. Day

Discussion: None

Motion passes: 5-Yes, 0-No

**PUBLIC HEARING:**

At 7:02pm D. Gravel opened the Public Hearing to hold a rehearing of 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.

P. McGrath introduced himself as the representative for his clients E. Pope and R. Tice in the matter of the request for a Variance.

P. McGrath stated he would review the 5 criteria necessary to obtain a Variance.

P. McGrath stated the Variance being requested is a "use" variance because the property has been a used car lot prior to the adoption of the Zoning Ordinance which disallows auto sales in the General Residence zone.

P. McGrath stated the Variance being requested is only for the Map 16 Lot 7-62 and specifically for this use which is a very limited use.

P. McGrath began to review the criteria and began by allowing E. Pope to respond to questions he posed to her to make the case that a hardship exists.

It was suggested that the Public Hearing process could be simplified because it can proceed as an offer of proof and thus P. McGrath can simply present the applicants responses to the criteria without having them respond to the question he asks them.

P. McGrath summarized that the Auto Sales business allowed E. Pope to pay her taxes, put her daughter through college and pay her bills.

P. McGrath stated that Ed Pope died in 2004 and was the primary operator of the business and that the auto sales business was in existence prior to the adoption of the Thornton Zoning Ordinance.

P. McGrath stated that the Simplex case ruling showed that when reviewing an application for a "use" variance consideration must be given to specific property and the specific use given the area that it is in.

P. McGrath stated that the NH RT 175 area is a General Residential area with several small businesses.

P. McGrath stated that within four miles of Pope Auto Sales 20 other businesses exist such as a Day Care facility, restaurant and hair care facilities.

D. Gravel stated that it would be better for the Board if the review of the five criteria would follow the order as listed on the application.

P. McGrath agreed.

P. McGrath reviewed the first criterion: *"Granting the Variance would not be contrary to the public interest because"* as the court has said consideration must be given to the area the property in question is located.

P. McGrath stated that the property is located in the General Residential zone where several small businesses are also located and presented the argument that the public interest is to keep the area rural with small businesses.

P. McGrath stated the intent of the applicant is to continue to be a small business and not open a large car dealership with a huge glass fronted showroom which would require emergency services or other town services.

P. McGrath reviewed the second criterion: *"If the Variance were granted, the spirit of the Zoning Ordinance would be observed because"* at the time the Zoning Ordinance was adopted the spirit of the Ordinance for the area the property is located was rural with small businesses in existence and that Pope Auto Sales was one of several small businesses operating in the area.

P. McGrath stated that Pope Auto Sales did move across NH RT 175 in 1999, and continued to operate as a small business which was in existence prior to the adoption of the Zoning Ordinance in 1970.

P. McGrath stated the applicants are requesting to be able to continue the operation of their small business in an area with several other small businesses in existence.

P. McGrath stated the applicants are not requesting to change how they operate but rather to continue to operate a used car sales business in a limited capacity.

P. McGrath reviewed the third criterion: *"Granting the Variance would do substantial justice because"* since Pope Auto Sales has been in existence for over 45 years and has enabled E. Pope to pay her taxes and put her children through college it would be unfair to suddenly say in 2016 that E. Pope can no longer operate her business.

P. McGrath stated that to deny the variance requested would put Pope Auto Sales out of business.

P. McGrath stated the substantial justice in granting the variance would be that it would allow E. Pope to continue the operation of her existing business.

P. McGrath reviewed the fourth criterion: *"If the Variance were granted, the values of the surrounding properties would not be diminished because"* neighbors and abutters to the property have not submitted any comments regarding the existence of Pope Auto Sales diminishing their property values.

P. McGrath added that Pope Auto Sales would not be diminishing property values because it is not the only small business located in that area.

P. McGrath stated the other existing businesses within four miles of Pope Auto Sales include the following: hair care, restaurant, range free eggs for sale, The Falls at Millbrook, Mad River Learning Center, Marvel Signs & Designs, O'Connell Builders, Benton Enterprises, Deer Creek Farm, Valley Snow Dogs, golf range, Sugar Shack Campground, Benton Sugar Shack, Right Look Family Hairstyle and Benton Farm hay for sale.

P. McGrath stated that the NH Constitution is stronger on property rights than some other states.

P. McGrath stated that the Simplex case demonstrates that all persons have the right to acquire, use and possess their property as long as the use is reasonable as stated in Article 2 and Article 12 of Part 1 of the NH Constitution.

P. McGrath stated that the Pope Auto Sales business is a reasonable use for the area.

P. McGrath continued by stating the following unique characteristics of the parcel in question support the reasonable use of Pope Auto Sales business: it is a flat, non-paved parcel, with good frontage on NH RT 175.

P. McGrath stated other parcels in the area are hillier and have less favorable frontage.

P. McGrath stated that the law has generally relaxed regarding the granting of a "use" variance and cited a quote in the NH Bar & Journal page 18 summary as follows: "the chances for a use variance should be considered to increase so long as the number of prior similar uses in the immediate area in the applicable zone exists, but the odds for a first time applicant where there are not similar uses would be more difficult".

P. McGrath stated that because the Zoning Board of Adjustment members know the town of Thornton the best, if they agree that the criteria are met the courts should honor their decision.

P. McGrath stated the applicant is willing to offer up the condition that if the property were ever sold to someone outside the family that the Variance would not carry forward with the land.

P. McGrath stated the applicant does plan to replace the existing 10' x 20' camper/trailer which serves as an office with a 10' x 20' stick built permanent structure.

P. McGrath reviewed the fifth criterion part A and part B as follows: "

*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 public purposes of the Zoning Ordinance provision and the specific application of the provision to the property because:*

*ii And the proposed use is a reasonable one because:*

*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 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.*

P. McGrath stated that the first part deals with whether the zoning as applied given the use in the area interferes with the use being requested.

P. McGrath stated it would be an unnecessary hardship to prohibit E. Pope from operating Pope Auto Sales after it has been in existence for 45 years.

P. McGrath stated the second part deals with there being no fair and substantial relationship between the general public purposes of the Zoning Ordinance and the specific restriction in this area.

P. McGrath stated that Pope Auto Sales existed prior to zoning and that in his opinion the intent of the Zoning Ordinance was not to prevent the existing businesses from continuing but that it may have been to limit the number of new businesses coming in and/or limit the expansion of the existing businesses.

P. McGrath stated the third part considers whether or not others will be injured if the variance is granted.

P. McGrath stated that there have not been any statements in opposition to Pope Auto Sales during any of the Public Hearings held.

D. Gravel asked if any abutters were present and wanted to speak to the issue.

W. Peltier, J. Rousseau and E. Pope indicated they are in favor of granting the variance.

D. Gravel asked if board members had any questions.

C. Boldt asked that P. McGrath review the special conditions of the property so that the record is clear.

P. McGrath stated that the parcel provides 160 ft. of frontage with good sight lines for the existing business.

P. McGrath noted that the parcel is uniquely flat and other parcels in the area are hillier.

P. McGrath stated the front area of the parcel which is noted as the display area on the plan title "A Site Plan of Ed Pope Auto Sales" dated January 2016 would not be paved but would remain in its current condition.

P. McGrath stated the sign may be repainted but it will remain the same size and in the same location.

P. McGrath stated the applicant will be replacing the 10' x 20' camper/trailer on site with a permanent structure in the same 10' x 20' footprint.

P. McGrath asked the applicant regarding the 3-bay garage shown on the plan.

R. Tice stated the 10' x 20' camper/trailer would be removed and a 10' x 20' permanent structure put in its place and added that they do not plan to build the 3-bay garage.

D. Gravel asked regarding the restrictions that may be conditions of an approval if granted.

D. Gravel asked specifically regarding the fact that at the previous hearings the applicant stated the existing 10' x 20' camper/trailer would meet the state requirement to obtain a retail dealer license.

R. Tice stated that although the state inspector who visited the site indicated it was his opinion that the existing 10' x 20' camper/trailer would meet the state requirement they have since been informed by the state that a stick-built permanent structure would be required.

D. Gravel asked if it would be on a foundation or on a slab.

R. Tice stated it would be on a slab.

R. Tice stated that they would not be building the 3-bay garage.

R. Tice stated that Pope Auto Sales has a service agreement with A & H Auto in Campton which satisfies the state requirement.

R. Tice stated that Pope Auto Sales uses the garage at the house located on a separate parcel to do very limited work on the vehicles.

P. McGrath stated that they should revisit the issue later as it is his opinion that he didn't want his client to misspeak and give away any possibility of building the 3-bay garage.

D. Gravel asked about lighting.

R. Tice stated there would be lighting near the office but that the sales lot would not be lighted.

D. Gravel stated that the applicant would need to submit a Site Plan Application to the Planning Board for approval.

J. Marshall stated that the applicants should be reasonably sure that what they submit on a site plan for review/approval by the Planning Board meets all the State requirements for the license they need.

D. Gravel asked the applicant to confirm whether or not they plan to build an additional 3-bay garage structure on the sales lot.

R. Tice stated that they do not plan to build the 3-bay garage shown on the plan.

J. Marshall asked again about lighting.

R. Tice stated only the office area, which currently is the 10' x 20' camper/trailer, will be lit.

R. Tice stated that the sales lot would not be lit and that the lighting by the office is sufficient to allow customers to look at a car during the evening.

D. Day stated the lighting will also need to be shown on the site plan application for the Planning Board.

D. Gravel asked if any abutters wanted to speak in favor or against the application.

S. Pope stated she has purchased a couple of vehicles from Pope Auto Sales and is completely satisfied.

W. Peltier stated that as far as property values go, Pope Auto Sales has not caused his property value to decrease.

J. Marshall asked if the stipulations that may come with the approval for the variance requested should be discussed.

D. Gravel stated that the approval would necessitate a Site Plan Application be submitted to the Planning Board for review/approval.

D. Gravel asked what the maximum number of vehicles offered for sale on the lot at any one time would be.

After a brief discussion E. Pope and R. Tice agreed that the maximum number of vehicles offered for sale on the lot at any one time would be 20.

D. Gravel stated the lighting would just be for the office area and that the sales lot would not be lit.

E. Pope and R. Tice confirmed the lighting would just be for the area around the office and that the sales lot would not be lit.

D. Gravel stated the sign will remain the same size and in the same location.

R. Tice stated they may repaint the existing sign and make it a two-sided sign but that it would stay the same size and in the same location.

E. Pope stated there is a light that lights up the existing sign.

C. Hodges stated his opinion that the ZBA decision should not include a restriction on adding buildings in the future and added that additional buildings in the future would go before the Planning Board.

J. Marshall stated that the Variance is requesting to continue Pope Auto Sales as it exists.

C. Boldt stated the board members should keep in mind the application is for a specific variance.

C. Boldt added that the applicant is asking for approval for Pope Autos Sales as it is, not a different use or for something they may want in the future.

D. Day asked if the applicant would need to return to the ZBA if something were to change in how they operate.

C. Boldt confirmed that the applicant would need to request a new variance for the new use.

D. Gravel asked if one stipulation should be that when the property is sold the variance would only carry forward if the property stays in the family.

J. Marshall stated that would provide extra protection to the town.

S. Bartlett asked if the pavement issue should be discussed.

R. Tice indicated no paving is planned.

D. Gravel stated he didn't think it was necessary to stipulate the fact that the lot is to remain unpaved.

D. Day stated that if it is stipulated then there is assurance it remains unpaved.

D. Gravel closed the Public Hearing at 7:37PM and the board members began to deliberate.

J. Marshall stated the major stipulation is that Pope Auto Sales continue as it presently is and that the other stipulations can be added to that such as: paving, lighting, transfer only to family, site plan review and the other items discussed.

J. Marshall, D. Day and C. Hodges indicated they were ready to vote.

C. Boldt recommended the board members discuss the five criteria to determine if they are in agreement.

D. Gravel asked the board members if they agree granting the variance would not be contrary to the public interest and the spirit of the Zoning Ordinance would be observed.

C. Hodges stated his agreement because the abutters and neighbors present expressed their support of granting the variance and that no one was present to speak in opposition.

D. Gravel asked the board members if they agree granting the variance would do substantial justice.

D. Gravel summarized that the good achieved granting the variance supersedes the harm if denied.

J. Marshall stated that substantial justice would be served because the business has been in existence for so long.

D. Gravel asked the board members if they agree granting the variance would not diminish the value of surrounding properties.

D. Day stated that the Board heard testimony from the abutters that Pope Auto Sales does not diminish surrounding property values.

J. Marshall added that Pope Auto Sales has been in existence for so long and that allowing it to continue would not initiate a negative effect on the values of the surrounding properties.

D. Gravel asked the board members if they agree that literal enforcement of the ordinance would result in unnecessary hardship.

D. Day stated he agrees denying the variance would result in unnecessary hardship and referred to the testimony received regarding the hardship the applicant would go through if the variance was denied.

**MOTION to grant the request 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 submitted by property owners E. Pope and R. Tice subject to stipulations as discussed to include the following:**

1. The current conditions of Pope Auto Sales remain essentially the same,
2. A stick-built 10' x 20' structure will replace the camper/trailer currently on the lot,
3. Lighting will be provided only for the office area and to illuminate the sign,
4. The sign will remain the same size and in the same location but may altered to be read from both directions,
5. Site Plan review/approval by the Planning Board,
6. The Variance will remain in the family and not be transferred if the property is sold to anyone other than family and
7. A maximum of 20 cars will be for sale on the lot at any one time.

Motion: C. Hodges

Second: D. Day

Discussion:

The Board discussed the options presented by Attorney Boldt:

1. To continue the meeting to a date/time certain which will allow for a review of the draft Notice of Decision and to make changes to the document, or
2. To proceed with the motion and allow Attorney Boldt to serve as the board's scrivener and prepare the Notice of Decision based on the minutes of the meeting.

P. McGrath stated he prefers the second option.

J. Marshall questioned whether the Board included all of the stipulations in the motion.

C. Boldt reviewed the stipulations:

- Site Plan application review/approval process with the Planning Board prior to the Variance taking effect
- A maximum of 20 cars will be for sale on the lot at any one time.
- Lighting will be provided at the access of the new 20' x 10' stick built building
- The sign will remain the same size and in the same location but double sided
- The Variance will remain in the family and not be transferred if the property is sold to anyone other than family.
- The parcel stays as a sand lot – unpaved.

D. Gravel questioned the stipulation about the sign as it falls under the Planning Board Sign Regulations.

C. Boldt suggested that the stipulation concerning the sign be made to be subject to the approval of the Planning Board/Sign Regulations.

D. Day asked about hours of operation.

R. Tice stated that they currently operate from 4 p.m. to 9 p.m. on weekdays and 9 a.m. to 9 p.m. on weekends.

D. Gravel asked if there was any further discussion and hearing none the board voted.

Motion Passes: 5– Yes 0 – No

**COMMUNICATIONS AND MISCELLANEOUS:**

1. NH Office of Energy and Planning postponed the Annual Spring Planning and Zoning Conference to a future date.

The Board agreed to determine the next meeting date after Attorney Boldt has prepared the Notice of Decision.

D. Gravel stated that the board will need to have a regular business meeting without the need for posting for a Public Hearing.

**ADJOURNMENT:**

At 7:55pm the following motion was made:

**MOTION: "To adjourn."**

Motion: J. Marshall

Second: D. Day

Discussion: None

Motion Passes: 5– Yes 0 – No

Respectfully Submitted,

Nancy Decoteau

Zoning Board of Adjustment Admin Assistant