ZBA

#### Town of Epsom

**Zoning Board of Adjustment**

**10/31/2018**

**In Attendance:** Glenn Horner, Chairman; George Carlson, Vice Chairman; Mike Hoisington, Planning Board Rep; Alan Quimby, Member; Mike Bussiere, Alternate; Leann Fuller, Recording Secretary

**Not In Attendance:** Gary Kitson, Alternate, Andrew Ramsdell, Member

**Also in Attendance:** Virginia Drew, Selectman; Tim Emery, Sr.; Tim Emery, Jr.; Joe Wichert

**7:01 PM** Glenn called the meeting to order and introduced the members of the board.

The minutes of 10/03/18 were reviewed.

***Mike H. made a motion to approve the 10/03/18 meeting minutes as presented. Alan seconded the motion. All in favor.***

Glenn reviewed the procedure for the meeting.

**Case 2018-12 (A&T Enterprises, LLC – SE & Var)** - Tim Emery, on behalf of A&T Enterprises, LLC, has applied for a **Special Exception** per Article II, Section C; Table of Uses; #5 (Motorized vehicles sales) and #10 (Automotive repair) to establish a motor vehicle sales and repair facility in an existing commercial building. The applicant also seeks a **Variance** to Article II, Section E; [Creation of a motorized vehicle sales facility closer than one thousand (1000) feet of another such facility or establishment.] due to the fact that vehicle sales will be made within 1000 feet of an existing vehicle sales facility. The property is located on the Suncook Valley Highway (Route 28N) within the Residential/Commercial Zoning District and is identified on Epsom Tax Map U8 as Lot 106.

Glenn reviewed the meeting procedures.

Glenn advised that this public hearing was published in the Concord Monitor, posted at the Town Office & the Post Office and all abutters were notified by Certified Mail. All certified receipts were received back.

Joe Wichert presented the case for a Variance to Article II, Section E; [Creation of a motorized vehicle sales facility closer than one thousand (1000) feet of another such facility or establishment.] Tim’s Truck Capital would like to repurpose Herbie Bartlett’s old building located at 984 Suncook Valley Highway. It is a 40x80 existing building. It was created in 1999 with a septic design already approved with a 300 gallon per day system. This building has been used for a multitude of uses including a consignment shop and a salon. Lastly it was automotive. Tim believed that it had the automotive use which was listed and they had an approval to sell 6 vehicles at that lot.

Glenn Horner reviewed the history of the property. In 1992, it was a non-conforming lot as it had less than 2 acres and was approved to be used as a plumbing supply company. In 2006, there was a Special Exception approved for the repair of heavy equipment and sale of aerial lifts. In 2014, there was another Special Exception approved for a motor vehicle repair facility. In 2014, Tim had to get a variance because of this property have the right to sell “motor vehicles”. A motor vehicle is defined as anything with a motor in it.

Joe went through what history he was aware of. In 1999, his office did a site plan for this property. When he looked at the tax records, the building was built in 2000. There was an older building there before but it must have been demolished and put up a 40x80 or renovated to expand it. The configured site is compliant to the approved site plan. Tim owns Tim’s Truck Capital. The original shop started in 1983. In 2013-2014, they received approval for their location at 59 Sawyer Avenue. It was renovated and is functioning well. They are running out of space, which is a good problem to have. This building became available and it was purchased with the intent of renovating it as a satellite facility for 59 Sawyer Avenue and the sales at the circle. This isn’t going to be a location where there will be a lot of retail traffic. It will mostly be overflow parking and service. The plan is to do mostly automotive detailing and reconditioning. All display vehicles will be at the previous sites. The site as it sits today will remain the same except for some cosmetic changes. They are looking at a total of 4,500 square feet of gravel area with 2,900 square feet on the north side of the parking area and 1,600 on the south side. They are asking for the capacity of 45 vehicles on site including 6 employees. The septic is able to handle well above the amount of employees at that location. There is transient traffic that is possible. They are here for relief of automotive sales and service with a Special Exception and Variance because they are less than 1,000 feet from across the street and to the circle. This has been good for Tim and good for the Town tax base. This property has fallen on rough times lately. Should the Special Exception and Variance be approved it would allow the property to increase in value and improve on the appearance. It will be storage for vehicles and they are not necessarily looking at lining them up like a automotive sales lot. More like waiting to be detailed and preparation for sold vehicles.

Glenn Horner asked about the rumors of Tim’s Truck Capital buying M&M Ford.

Tim Emery, Jr. discussed the new location and that they plan on having some vehicles there for sale. They are not looking for a vehicle sales facility but intend to leave the South shop and do more detailing and light maintenance at this new location. It would mostly be used for an overflow lot. They do not plan to have customers there. They plan on taking half of the office space as data storage. The right hand side will be converted to data storage. There will be the Controller, Office manager and two accounting girls at that location and one or two guys in shop and a sales person. They are not sure what is happening with M&M Ford, but it has nothing to do with this. The realistic expectation is they can put data records and office people in this building.

Glenn asked if sales were an afterthought. Tim stated that because there is not a lot of room, they can’t put a lot of people there.

Mike Bussiere asked how many vehicles would be at the location at most.

Tim stated 45.

Mike B. asked what the plan for the parking lot is and Tim brought in pictures that were passed on to the board members and submitted into the record. Mike B. stated that he had a concern regarding the wetland behind that property and Tim clarified that it goes through the campground.

Mike B. asked about the cross traffic going to the location from their other location and its vicinity close to where the speed limit increases and if they had a plan for that.

Tim stated that they have not seen anything to cause concerns yet. He does not believe there will be any but a sign could go up possibly.

Joe mentioned that they do want to discourage people from walking across the highway. Employees may do it; it is just going to happen. It is not something that would be encouraged.

Tim mentioned that this has been talked about with the staff already.

Mike B. questioned when the last time the septic was addressed and Joe said the last approval was in 1999. Mike asked why it was never installed and Joe clarified that the approved system was to up the sewage flow from 300 to 550 gallons per day. The well was going to have to be relocated and they never build it. He is not sure if it was due to the function of the salon but that did not last.

Glenn spoke about his concerns regarding the Variance. There is a situation here where it is the same exact business right across the street and the only argument was it is for the expansion of the business. With that argument, the entire route 28 could be Tim’s Truck Capital. Glenn then questioned what the special conditions of the property are and what the hardship is.

Joe clarified his understanding of a hardship as a question of “is what you are proposing reasonable?” and “does it fit the character of the neighborhood?”

Glenn reiterated his question as what are the special conditions of that property compared to other properties in the surrounding area.

Tim stated that with the property, there is a garage built for automotive. It was already used to fixed vehicles and was already an inspection station. It would have to be completely taken down and start over if we wanted it to be anything else. He would like to move the office there. The permit from the State must be listed for that address so the paperwork can be stored there. The State says that it has to be part of the automobile sales and service building.

Mike Hoisington clarified that maintenance and service is not the problem. The Sales side of it is the issue.

Tim stated that he can’t put the sales records and paperwork there unless that location is a registered NH dealer to sell cars. To afford this building, they require that income.

Glenn mentioned that he understands the data is over there but the sales business can be across the street. That would avoid the question. It really flies in the face of the ordinance. The identical business is across the street.

Joe stated that every ordinance is going to have some exceptions and flexibility.

Glenn mentioned that if they set precedence here then it may go to court in the future. The Board can’t pick and choose the people they like.

Joe Wichert mentioned that it comes down to looking at the questionnaire; if they are denied then they have a hardship. The hardship is the property was purchased just because of the proximity of the other property across the street.

Tim explained that one reason they acquired the building is because they had no parking and when they had an open house they had to move cars. The business is growing and they are trying to keep it in town. If there are not sales there, there will still be vehicles there.

Joe stated they understand the intent of the ordinance. The answer is just service will not work. They need the sales component to get the State license and employees in there. There were sales in that building previously. Sales are not the focus point of this operation.

Mike H. mentioned that if there are sales tags in the window of cars, people will stop in. He asked if they would end up sending them across the street.

Tim would like to have a sales department in that building so they don’t have to do that.

Joe added that this component will not be like driving up route 3 in Hooksett. They are not complying with the ordinance that is why they are asking for the variance request.

Mike B. asked that it is a cramped lot, where will the customers park?

Tim stated the employees and customers would park up front.

Mike B. asked if they would be opposed to a lesser number of vehicles approved.

Tim replied that it depends how much less. It was previously a duplex and they could have rented out the other side. They are trying to get a Variance for a whole new place and create jobs and keep the money in town.

Glenn explained that he had to be able to say yes to the following:

**E.** Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. For purposes of this criteria, “unnecessary hardship” means that either:

**F. (1)** Owing to special conditions of the property that distinguishes it from other properties in the area:

* No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and
* The proposed use is a reasonable one.

The ordinance reads there shall not be another dealership within 1000 feet. If it was a different type of dealership, then there is some flexibility.

Joe reiterated that the building exists and has an automotive component.

Glenn stated that there is no question it is a reasonable use. The issue is with the sales component. It can be used for service and if this were for sales of aerial lifts, this would not be an issue. Glenn then read the second part to letter F of the Variance checklist:

**F. (2)** Owing to special conditions of the property that distinguishes it from other properties in the area, the property cannot be reasonably used in the strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

Joe stated that the overall intent of the ordinance is to prevent a used automotive strip mall or mile. In theory that is what they thought the ordinance was in place for. This location was previously used for service. They are just replacing the service vehicles parked out front with sale vehicles. There was already a variance granted. Tim stated that the plan is to move out of the 28 South service location. They do not do sales there.

Virginia Drew’s comment is that she can see there is a hardship and Tim’s Truck Capital is a good business here in town and has done a lot. They are here because they want to do things right but could have just gone over there and not sold anything. In essence, if they are working on vehicles, people will come over. She applauds them for trying to do this the right way. They are presenting the different hardships they could have. To maintain the ethics of their business practice, it is going to put them in a really hard place because people will not be able to separate it. She does not want to see the whole town be car dealerships. She is in favor of it.

Joe explained that if the property north of Tim’s became available, they could have expanding and created one lot. However, because they are 100 feet across the street, they can’t do that.

Tim stated that they had the opportunity to buy the neighbors lot and build a big garage.

Glenn stated that he understands they have a hardship.

Tim asked if the hardship was for the property or the owner and Glenn replied it is for the property. Tim stated that they did not have to say sales but why make it a gray area. They have a sales permit at the 28 South location but they are giving up that location. They need more space. They are caught between a rock and a hard place. To have a permit for storage of files requires the same permit for sales from the State. When he went back to buy the property it had a Motor Vehicle Sales license listed because it is the same State permit for aerial lifts as it is for cars.

George Carlson thought that when that approval was given, they gave him an approval for 6 cars as he had those aerial lifts and those were considered “motor vehicles”.

Joe stated that he understands the intent. He questioned if the board could find the Notice of Decision for that.

***Short recess for Glenn to locate the Notice of Decision***

Glenn produced the Variance for the Aerial lifts and the Special Exception for sales.

Joe returned and stated their request is for the 45 vehicles. They are not looking for all sales. That is for an onsite vehicle count, to include sales, maintenance and employees.

Glenn stated that approving this would be avoiding the ordinance.

Tim asked if they could withdraw the sales portion and come back as he would like to research more.

Joe stated they are going to withdraw the automotive sales and would like to continue with the Special Exception for repair only.

***George C. motioned to approve the applicants request to withdraw the Special Exception per Article II, Section C; Table of Uses; #5 (Motorized vehicles sales) and the Variance to Article II, Section E; [Creation of a motorized vehicle sales facility closer than one thousand (1000) feet of another such facility or establishment.], seconded by Mike B. Motion passed.***

Mike H. specified that there is no need to limit employees.

Glenn told the applicant to make sure to follow up with Jay regarding the need for a site plan review with the Planning Board.

***Glenn opened the public hearing for public comment at 8:30pm.***

There were no comments from the public.

***Alan Q. motioned to close the public hearing at 8:31pm, seconded by Mike H. Motion passed.***

The checklist for a Special Exception per Article II, Section C; Table of Uses; #10 (Automotive Repair) was reviewed:

Question 1. All members answered yes.

Question 2. All members answered yes.

Question 3. All members answered yes.

Question 4. All members answered yes.

Question 5. All members answered yes.

Question 6. All members answered yes.

Question 7. All members answered yes.

Question 8. All members answered yes.

Question 9. All members answered yes.

***Alan Q. made a motion to conditionally approve the Special Exception to Article II, Section C, Table of Uses #10 (Automotive Repair) to establish a motor vehicle repair facility in an existing commercial building submitted by Tim Emery, on behalf of A&T Enterprises, LLC, seconded by Mike B. Motion passed.***

The Special Exception was granted with the following conditions:

1. All hazardous chemicals and materials created as a part of the vehicle service business shall be stored and disposed of using “Best Management Practices” and be in compliance with any other applicable State and Federal regulations;
2. The total number of vehicles on the lot shall be limited to a maximum of 45 vehicles which includes vehicles for service, employees and customers;
3. Business exterior lighting within the site shall be designed for “downward” illumination;
4. All service of vehicles, with exception of minor maintenance (e.g. wiper replacement), shall be performed inside of a building;
5. There shall be no outside phone ringers or public address systems utilized which can be heard in adjacent residential neighborhoods.

***Other business:***

Glenn informed the board that there is a joint meeting with the Planning Board, Zoning Board and Economic Development Committee on November 14th at 7pm to discuss streamlining the processes.

***Mike H. made a motion to adjourn at 8:45 pm, seconded by George C. Motion passed.***