

Town of Winchester
Zoning Board of Adjustment
Minutes
8-29-19

Meeting opened: 7pm.

Members present: Lou Fox (Chair), Jason Cardinale, Becky Roy, Brandon Day, and Bill McGrath (V. Chair). Mike Doherty is an alternate present. Margaret Sharra is the Land Use Administrator.

Public: John Hann, Larry & Deb Hill, Carol & Phil Howe, Mitch Shakour, Seth Wiggin, Steve & Julia Wiggin, and one other couple.

First order of business: The board reviews the minutes of 8-8-19 for approval. **B. Day moves to approve, B. Roy seconds. The vote was 3 yes.**

Second order of business: The board continues the public hearing on the application submitted by Steve Wiggin for a variance. Mr. Wiggin explains he now wants to operate his business differently than what he has been doing. He wants to do trucking, repair his equipment and vehicles, and snow plowing. This includes moving loam and mulch, and lawn maintenance.

J. Cardinale asks why is a variance required? It is because the zoning ordinance is silent on trucking. When the ordinance is silent, a variance is required.

Mr. Wiggin describes his operation. He hires trucks out and he uses them to haul loam; they leave in the morning and return at night. J. Cardinale does not see it as motor freight trucking. He says motor freight trucking is FEDEX, UPS, Ross, etc. He doesn't see the need for a variance. L. Fox disagrees, says a variance is needed. J. Cardinale thinks a special exception is required at most.

B. Day asks where the screening and mixing of mulch and loam will be? Mr. Wiggin replies, on his property in MA. He confirms most activities will occur in MA.

L. Fox struggles with criteria #4 diminished values. Mr. Wiggin does not think there will be diminished values. The public wants to know why it will not diminish values. Mr. Wiggin says the noise is only from starting diesel trucks. Mr. Wiggin said he been working hard on cleaning up the property. All the metal is gone. The LUA/CEO confirms that a lot of cleanup has occurred. She submits photos taken.

Julia Wiggin states that since this all began, they have reduced the size of the fleet, sold off equipment and materials, and cleaning up the property. Mr. Wiggin adds, all this happened the last couple of years. Most of this is over one big job I did. That won't happen again. There will also no longer be piles of used asphalt on the property.

L. Fox explains that in determining a variance, the board must remember a variance runs with the land. Mr. Wiggin said Leroy Austin told him years ago that since he was in the agricultural district, he could do anything he wanted.

B. McGrath states this is a unique property; part in NH and part in MA. He confirms that Mr. Wiggin will only park trucks and repair them in the garage. Yes.

J. Cardinale strongly feels this is not a motor freight trucking operation like Ross. These are his own trucks that leave once a day to do work. Many other businesses park their business vehicles and equipment in their yards.

The LUA informs the board of court cases in the state where towns argued parked business vehicles are prohibited and won the case.

B. McGrath asks Steve what work was he doing prior to this application?

Mr. Wiggin replies, that's the problem. I did too much and now have stopped and cleaned up. The LUA, as CEO, confirmed she has permitted the existing stock piles of loam and piles of logs are not part of the cleanup. Nothing else.

B. McGrath asks, what category does this business correspond to in the ordinance? The LUA suggests for the board decide. The board discusses this application and what business type is this and how to connect it to the Zoning Ordinance. The board also discusses if this use will diminish values of the surrounding properties. The last 3-5 years the business activity substantially grew.

The LUA/CEO said there were 8 trucks parked there today. J. Cardinale questions why this application really needs ZBA approval. The LUA reminds him this is a commercial business in the AG district.

B. McGrath agrees with J. Cardinale that auto repair only requires an SE in the AG district.

L. Fox notes the business plan has changed since the last meeting. The board discusses changing this to an SE application. Since an SE is a lower threshold to meet and the previous application was on SE, the board is comfortable addressing this application as an SE and not a variance.

B. McGrath moves this proposal is for a repair garage and parking of business vehicles and landscaping equipment and to revert back to an SE application, J. Cardinale seconds. The vote is 5 yes.

Mr. Wiggin agrees.

Public comment: Deb Hill, neighbor, says the board can call the application whatever it wants but it is still a commercial business. This was quiet neighborhood and now it is noisy. What is going to stop him from growing again? She doesn't know about property values but knows they have been affected. There is not a magic line between NH & MA; there is not difference in noise.

L. Fox suggests address the noise issue with Northfield, MA.

Larry Hill reads aloud the purpose of the AG district from the Zoning Ordinance. Any businesses must be compatible with the area, this business is not. The area is residential use. The neighbors cannot enjoy their property. He has watched this business grow over the last 30 years. He acknowledges Mr. Wiggin has been a benefit for the town and the neighbors, but the business got out of hand. Good for Mr. Wiggin that his business is doing so well and has grown, but at what cost? The noise and traffic do diminish the neighborhood. We like Mr. Wiggin but we cannot enjoy our property.

Carol Howe, abutter, requests that her previous letter submitted at the previous hearing be included in the hearing. Yes. The letter states her and her husband's opposition to this operation.

L. Fox asked if noise comes from the NH or MA side? Carol, the noise comes from the garage on the NH side. Deb Hill says both sides, there is no magic line. Larry Hill says he is disturbed by slamming tail gates and the dust clouds.

Carol & Phil Howe submit a new letter and it is read aloud. (See file) The highlights of concerns are: Mr. Wiggin does not accurately portray the operation, dozens of homes are affected, the business is very noisy, it does not meet proper setbacks, the heavy traffic is not good for the town roads, diesel fuel and cleaners are on site, the spirit of the ordinance is not observed, this is a thickly settled area, this area should be zoned residential and not AG, a business should not outweigh the rights of the neighbors, this operation is located over a known aquifer, this has adversely affected the real estate values in the area, there is more of a hardship to the neighbors than to him, and the use has far exceeded the description.

Seth Wiggin, he disagrees values have diminished. He describes a recent sale for \$150k, where it previously sold for 100k.

B. McGrath asks the size of the lot? It is 3.78 acres with about 250 ft of road frontage. What are the setbacks of the operation? 500-600ft, and 200ft for the garage.

L. Fox confirms the PB can set hours of operation and address traffic and noise concerns during the site plan review process.

B. Day asks Mr. Wiggin to confirm that the majority of operations have been moved to the land in MA. Mr. Wiggin, the loam operation has been moved. The business is also incorporated in MA.

B. Day, while reviewing the Zoning Ordinance sees that a variance is required for "open lot storage accessory to a business". Isn't this open lot storage?

L. Fox doesn't want to go down that rabbit hole. The board is focusing on the trucking and auto repair which requires an SE.

B. McGrath calls it contractor equipment.

There are no other comments or questions.

B. McGrath moves to close the hearing, J. Cardinale seconds. The vote is 5 yes.

B. McGrath reviews an OEP publication describing SE's and how the board should understand the process, reasons and the specifics listed in the ordinance. He re-reads the purpose of the AG district and feels this use is compatible to the district. The lot size meets the current requirements, but as B. Day pointed out tools and machinery are not permitted. This is what the people voted for and it is up to them to change it.

L. Fox and J. Cardinale do not see it as "open lot storage". J. Cardinale asks B. McGrath how would you see an auto repair garage as open lot storage? Most businesses of this type have open lot storage. There are many in town.

B. Roy thinks of it as construction equipment, like loaders, backhoes, etc.

L. Fox says the board keeps going back and forth. The board needs to address the SE.

B. Roy says the existing business got out of hand for the past 3-5 years; this will go before the PB who will put conditions on it.


The LUA informs the board that the intent of "auto repair" for example is Ronnie's, J&G's, etc.

The majority of the board feels this is open lot storage but as B. McGrath said, if they are just parking the vehicles and repairing them an SE is ok.

B. McGrath moves to approve the SE for Mr. Wiggin subject to relying on the PB to impose limits on hours of operation and for the owner to continue cleaning up the NH property (including the abutters used for storage) and removing the unregistered and uninspected motor vehicles. J. Cardinale seconded. The vote was 5 yes.

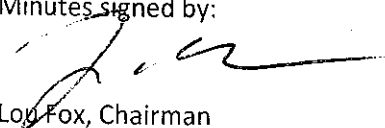
J. Cardinale moves to adjourn, B. Roy seconds. The vote is 5 yes. 8:30pm.

Minutes respectfully submitted:

Margaret Sharra, LUA 

Minutes approved by the board on: 10/10/19

Minutes signed by:



Log Fox, Chairman