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MINUTES OF THE HEARING ON THE PETITION OF

HEARING # 11-07

GARY HAMEL, SR. and JILL PRIMMER, 100 WILLOW STREET

A public hearing of the Acton Board of Appeals was held on Monday, June 6, 2011 at 7:30 PM in Room 126 of the Acton Town Hall on the petition of Gary Hamel, Sr. and Jill Primmer for a PETITION FOR REVIEW under Section 11.1.1 of the Zoning Bylaw to overturn the Zoning Enforcement Officer's decision as set forth in a letter dated March 10, 2011 determining that the proposed property located at 100 Willow Street is in violation of the Town of Acton Zoning Bylaw under Section 3.7. Map G1/Parcel 86.

Present at the hearing were Ken Kozik, Chairman; Jon Wagner, Member; Marilyn Peterson, Member; Scott Mutch, Zoning Enforcement Officer and Assistant Town Planner; and Cheryl Frazier, Board of Appeals Secretary. Also present were the petitioners Gary Hamel, Sr. and Jill Primmer and their counsel, Louis Levine. Also present were abutters and interested parties.

Ken Kozik opened the hearing read the contents of the file.

Ken asked Scott Mutch, Zoning Enforcement Officer what he objected to and why they are here tonight. Scott began by saying a written request was submitted to the Zoning Department office regarding 100 Willow Street asking for an investigation because they were concerned with activity that was happening on the property. Scott went out looked at it and that is what resulted in the March 10th letter. The letter had photos attached to it and you could see by the photos that it looked like a storage salvage yard, and a contractor's yard and this use is not permitted under the zoning bylaw. Ken asked what was there now. Scott said the applicant did in good faith clean up the property, met with Scott in his office and requested to maintain the trucks on the site. Scott informed him he could not do that and he had until the end of that week to move them and if the property was not brought into compliance the town would move forward with enforcement. The petitioner then got his attorney involved.

Ken said the assumption is that the auto wrecker, salvage truck and the yellow piece of equipment all still there but the tanks and the other materials have all been removed and cleaned up. Ken asked Jon Wagner for comments if any. Jon said the issue now is really the parking of commercial vehicles. Jon asked Scott if he has gone back to check the site to see if these vehicles were gone or still there. Scott did do a drive by and the materials were cleaned up but the vehicles were still there. Jon asked Scott if he was aware that there is a stockade fence there now. Marilyn asked Scott what the size of the lot is. Scott said the property is approximately and acre and a half.

Ken asked the petitioner to begin. Louis Levine introduced himself as representing the petitioner. He began by giving a little background. He said this petition is to review the March 10, letter from the Zoning Enforcement Officer written at the request of the Broker of the adjoining property. The owner of the adjoining property did not want the broker to write the letter but the broker recommended it be written. Mr. Levine said Mr. Hamel has lived there for the past 11 years. Shortly after they moved in Mr. Hamel began doing what has been described here. Scott Mutch's letter raised the issue of it being used as a contractor's yard. Scott stated in his letter that there were various items in open view that made it look like a contractor's yard. Lou said his client has debris, that isn't kept or used there and then he has the basic debris that people normally have in their backyard. Mr. Hamel cleaned up the yard instead of arguing whether he could or could not have it there. Lou presented pictures to the Board taken of the property today. He said with respect to the March 10th letter from Zoning, whatever was objectionable has been removed and if they all agree then that part of the petition could be resolved. At this point with respect to this petition and if everyone agrees the only thing he was doing wrong was the storage yard and the storage yard doesn't exist anymore. Ken Kozik said Lou wants the Board to believe that his argument is that this yard is just a messy yard.

Jon Wagner asked if the cleanup was accomplished and that were the only issue they wouldn't be here. Scott said that is only one of the issues. He said the second issue is the storage of the vehicles and that is why they are really here. Scott said what they believe is that it is not a home based occupation. Lou believes the vehicles can be there as part of a home occupation. Ken asked Lou what is Mr. Hamel's home occupation. Lou said he has the two vehicles and what he does is he picks up scrap metal and delivers it to a scrap yard. Lou said the definition in the Zoning bylaw of a DBA is that you have no employees and the business is conducted on the premises. He's a sole proprietor. In terms of the definition of home occupation he has two vehicles on the property which he uses to conduct his business.

Ken said there are two provisions they are looking at. Section 3.7 which is resolved and then section 3.8.1.2 to determine if this is an acceptable home occupation. Ken started with section 3.7 of the zoning bylaw. In the first paragraph it says all uses that pose a present or potential hazard to human health, safety, welfare or the environment through the emission of smoke, particulate matter, noise or vibration or through fire or explosive hazard or glare are expressly prohibited in all zoning districts. Ken said even if they didn't go any further than that, wouldn't you say a Peter-built truck in a residential neighborhood emits, smoke noise and vibration and particulate matter. Mr. Hamel said he's not a salvage yard he's a handler of salvage. All he does is pick up and deliver from one place to another. Jon Wagner asked Lou if he is asking if Mr. Hamel has the right to park the vehicles in the yard because he's conducting a home occupation. Marilyn asked how often he comes and goes from the property. He leaves in the morning with the vehicle and returns before 5:00 in the afternoon.

Dave Schaffer 114 Willow Street is a neighbor and never even knew the vehicles were there. He has had no problems with them at all.

Another abutter owns 88 and 90 Willow and has no problem with the property.

Mary Wilson lives at 93 Willow has no problems at all and doesn't see it to be an issue.

Ken asked his fellow Board members if they had anything else to add. Marilyn and Jon did not.

Ken asked for a motion to close 11-07. Marilyn so moved and Jon seconded the motion.

Ken asked for a motion to overturn the ZONING ENFORCEMENT OFFICER'S decision that this was a salvage yard. The ZONING ENFORCEMENT OFFICER was UPHELD 2-1 that the property was being used as a salvage yard.

Ken asked for a motion to overturn the decision of the ZONING ENFORCEMENT OFFICER with respect to this occupation is not a home occupation under 3.8.1.2. Jon so moved and Marilyn seconded the motion. ZONING ENFORCEMENT OFFICER'S decision was UPHELD in both instances.

Respectfully submitted,



Cheryl Frazier, Board of Appeals Secretary



Ken Kozik, Chairman Board of Appeals