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MINUTES OF THE HEARING ON THE PETITION OF

HEARING # 11-08

GARY HAMEL, SR. & JILL PRIMMER, FOR 100 WILLOW STREET

A public hearing of the Acton Board of Appeals was held in the Town Hall on Monday, June 6, 2011 at 8:00 PM in Room 126 of the 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 April 21, 2011 determining that a second two bay garage structure cannot be built on the property located at 100 Willow Street. 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, their counsel, Louis Levine and a few abutters and interested parties.

Ken Kozik opened the hearing read the contents of the file. He asked Scott Mutch, Zoning Enforcement Officer why they are here tonight. Scott Mutch began by saying Mr. Levine, Roland Bartl and himself had some conversations regarding Section 3.8.1.2 talks about a home occupation being conducted entirely within a dwelling or an accessory building, the discussion was if they built a garage, kept the equipment in there would that be sufficient. In the photos from the previous hearing you can see that there is a garage structure and/or pole barn and that is the structure in question. Scott said the applicant's attorney suggested Mr. Hamel build another garage but in the bylaw your allowed a garage, singular in nature, you cannot construct multiple garages on a property as accessory buildings. You could add on to this garage but they cannot build a separate garage that stands alone.

Ken asked Mr. Levine to begin. Lou said in an attempt to resolve the two truck issue with Scott Mutch and Roland Bartl he wrote them an email appealing to them if Mr. Hamel were to construct a free standing building to garage the two trucks would the Zoning Enforcement Officer then confirm that it's a home occupation. Lou received a response to his email from Scott Mutch dated April 21st, which says you can't have a garage because they already have a second structure. Scott also believed that DHCD might have to get involved because it was an affordable unit and he believed they might need permission to do anything. Mr. Levine emailed DHCD and got a response from DHCD stating they wouldn't have any involvement or interest as to what was or wasn't constructed to the property. Lou then sent a final email to Scott with an attached copy of the building permit for the pole barn that was issued around 1971. He basically said it was a barn that was not used for the storage vehicles and would not be used for the storage of vehicles. They would be willing to enter into an agreement of covenant

that it would not be used for the storage of vehicles. When he got no response to the email they appealed the decision. Lou asked Gary to explain what they use it for. Mr. Hamel said his tools are stored in the pole barn, the equipment he works with, and his tractor but that's about it. Lou said again, there are no vehicles in the barn or being stored in the barn. They replaced the sliding door on the pole barn with garage looking doors. They only use it for storage. Mr. Hamel will confirm in writing that the pole barn is not and will not be used for the storage of

vehicles. Mr. Hamel said he would build a garage and store the two vehicles in question within the garage and then it would clearly fall within the parameters of a home occupation being conducted by a self-employed person with no employees within a building either the primary building or an accessory building. The bylaw permits a barn, the bylaw also permits a garage so that's what they are trying to accomplish.

Ken said what he believes is the town believes the pole barn is a garage. If the Board upholds the Zoning Enforcement Officer's decision that the pole barn is a garage the petitioner could still add on to the existing pole barn for storage of vehicles. A garage cannot exceed four bays. Lou said it's not what it looks like, it's what it's being used as.

Ken asked if the Board members had any questions or concerns. Marilyn believes the issue is if they can put up a garage or not. The Board is struggling with what the definition of a garage is. John asked Scott whether he has an opinion if they can park the commercial vehicles in that new garage if it is in fact built. The appeal is that they cannot erect a separate garage structure. Jon Wagner asked Scott if they can park the commercial vehicles in that new garage structure since this is in a residential zone. Scott said they cannot.

Lou said in the first hearing said you have to clean up the property with a letter of home occupation, the second part is the vehicles and if they can garage them. The only response is if that barn is a garage and if it is you can't have a second building. Lou in closing added that the barn was never used and never will be used as a garage.

Ken asked for a motion to close hearing #11-08. Marilyn so moved and Jon seconded the motion. The hearing was closed.

Ken asked for a motion to overturn the Zoning Enforcement Officer's decision that the petitioner cannot build a second two bay garage structure. Marilyn so moved and Jon Wagner seconded the motion. The Zoning Enforcement Officer's opinion is upheld. The Board voted 2-1 to **UPHOLD** the Zoning Enforcement Officer. Jon Wagner to write decision.

Respectfully submitted,



Cheryl Frazier,

Board of Appeals Secretary



Ken Kozik,

Chairman of the Board of Appeals