

The ***Zoning Board of Appeals*** of the Town of Schaghticoke met at the Town Hall, 290 Northline Drive, Melrose NY 12121 on Thursday, January 5, 2023.

Public Hearing

There were 2 Public Hearings scheduled:

Al's Towing Zoning Interpretation (Tax Map #51.3-1-6) @ 7:05
Mason's Place Dog Grooming Area Variance (Tax Map #32.-3-19.11)
@ 7:30

Regular Meeting

Chairman McDonough opened the meeting at 7:00 with a roll call.

Present

Ed McDonough, Chairman
Jason Shover
Kristin Griswold

Absent

Elizabeth Hale, Clerk
Lettie Saheim
Rich Geddis

The Board reviewed the minutes of the 12/8/22 meeting. Kristin Griswold made a motion to accept the minutes as submitted. Jason Shover seconded.
Ayes: McDonough, Griswold, Shover,
Nays: None

PUBLIC HEARING

Chairman McDonough read the public hearing notice:

A PUBLIC HEARING AT THE TOWN HALL, 290 NORTHLINE DRIVE, MELROSE, NY 12121 before the Zoning Board of Appeals of the Town of Schaghticoke will be held on Thursday, January 5, 2023 at 7:05 p.m. to consider the referral by the Town of Schaghticoke Planning Board for a Zoning Interpretation pursuant to Town Zoning Law Section XI[B][1][a] related to property located at 751 New York State Route 40 in the Town of Schaghticoke, Tax Map #51.3-1-6, located in the Hamlet District. The purpose of the interpretation is to determine whether the potential Applicant, Al's Towing and Automotive falls within the provisions of "Motor Vehicle and other junkyards" under Section VI[B][19] of the Zoning Law or "Motor Vehicle/Automotive Service Station/Motor Vehicle Repair" under section VI[B][15] of the Zoning Law. Definitions for both are located in Section XIII of the Zoning Law. The property is owned by Salvatore Melite.

Edward McDonough, Chairman
Zoning Board of Appeals, Town of Schaghticoke

Chairman McDonough asked Mr. Papelion, the owner of Al's Towing and Automotive (the "Company") to start by explaining the nature of his business. Mr. Papelion stated that the Company is a minor repair shop and towing service, seeking approval from the Town after receiving a violation notice to a cease and desist from continuing all dangerous obstructions of NYS Route 40 during loading and unloading activities at the property. The violation notice further provided that the Company was operating a junkyard/scrapyard. Mr. Papelion also stated he was seeking a contract to tow vehicles for the NY State Police. Mr. Papelion maintains that the Company is not a junkyard.

Chairman McDonough then asked if there were any questions/comments from attending members of the community present for the public hearing. Luanne Broderick, 50 Avenue A, Melrose asked what the hours of operation would be. Mr. Papelion's associate, Charles Terry stated they are shut down by 7:00 pm daily. Deputy Attorney Kristin Pratt explained that these details were too specific for purposes of the ZBA's jurisdiction related to the interpretation; however, should the Company move forward with a special use permit application, this issue would be within the purview of the Town Planning Board's jurisdiction. The Planning Board determined that after discussions with Company representatives, it was advisable to request an interpretation to determine the appropriate classification of the Company from the ZBA. Should the ZBA determine the Company is not a junkyard, Mr. Papelion would return to the Planning Board where details such as this would be addressed.

Erin Broderick McKabe, 44 Avenue A, spoke next noting that the junkyard definition appeared to apply as she has noted multiple cars and pieces of vehicles on the property. She provided 4 photos showing multiple vehicles with the dates of 1/4/23 & 1/5/23 written in pen. Mr. Papelion went on to explain he formerly owned a repair shop in Lansingburgh, brought all of his old work with him to Melrose, picked up new jobs and had to regroup after becoming overwhelmed. He referenced taking 3 small jobs daily and though he acknowledged past mistakes thought he was successful.

Charles Broderick, 50 Avenue A, noted there were more cars that appeared to be unregistered than Mr. Papelion stated. Mr. Papelion and Mr. Terry acknowledged a conflict over 6 cars presently on site belonging to Mr. Melite. Jason Shover asked if Mr. Melite was present tonight. Chairman McDonough said he had recently passed away. Chairman McDonough inquired about the lease for the Company to operate at the property. Mr. Papelion is in the process of purchasing the property, commencing with a 2 year lease with the

option to buy. Mr. Melite's son, Mike Melite who has been primarily handling negotiations with the Company was not present. Jason Shover asked who controls the cars without plates, is it written in the lease?

Margaret Jones, 28 Avenue A, expressed concerns with the traffic cones placed on the white lines as it is such a tight turn in the area of Route 40 where the property is located, especially when vehicles with wide loads are traveling this route. Mr. Terry stated the cones were placed there to protect them as they worked. Mr. Papelion noted recent and even fatal accidents had occurred in this vicinity. Mr. Terry noted drivers need to slow down and that the Superintendent of DOT was taking traffic measurements. Kristin Pratt referenced their driveway being on a state road and questioned whether or not they had approval of every connection from NYS DOT as there is only 1 way in and out. Mr. Papelion was unsure stating DOT would be investigating as cars were going too fast. He said backing into the driveway did not work and admitted the cones should not be there. Mr. Papelion referenced a light that was put there 20 years ago, and wondered if that might be addressed. Chairman McDonough asked how often the cones are put out. Mr. Papelion said as of 3 weeks from now there should be none, he will come up with an alternative. Erin Broderick McKabe questioned how then will people be kept safe if cones are gone and submitted a photo of a parked vehicle/truck with its lights on stalled in a lane of Route 40 obstructing the road that was taken on January 5, 2023 which Ms. Broderick McKabe indicated was in the roadway for two hours. Jason Shover noted there is a significant difference with a personal vehicle vs. a large tow truck going around that curve. Deputy Attorney, Kristin Pratt noted DOT has to approve a driveway permit. She questioned whether or not one exists from the previous operation and suggested that the Company investigate this issue with DOT.?

As the ZBA had the 2nd public hearing scheduled for 7:30, Chairman McDonough made a motion to suspend the 1st public hearing temporarily as there were several individuals present who had not yet had the opportunity to comment, Jason Shover seconded. All were in favor.

Chairman McDonough read Application:

A PUBLIC HEARING AT THE TOWN HALL, 290 NORTHLINE DRIVE, MELROSE, NY 12121 before the Zoning Board of Appeals of the Town of Schaghticoke will be held on Thursday, January 5, 2023 at 7:30 p.m. to hear the application of CaseyAnn Jennings for area variances, for property located at 8 Meadowview Drive, Schaghticoke, NY 12154, Tax Map #32.-3-19.12, located in the Highway Commercial zoning district for the following area variances required pursuant to Town Zoning Law Section VI(B)(4) which requires a setback of 50' from any lot line for this proposed use of an existing building:

(1) a 20' front setback variance; (2) a 41.3' rear setback variance; and (3) a 38.1'; side setback variance.

Edward McDonough, Chairman
Zoning Board of Appeals, Town of Schaghticoke

Casey Jennings and Destiny Peters appeared. Ms. Jennings and Ms. Peters are proposing the establishment of a dog grooming business in the former medical building at the corner of NYS Route 40 and Meadowview Drive. They stated they would not be offering any boarding/kennel services. Their business will operate with same day drop off/ pick up. They are renting the building month to month. There are 6-8 parking spaces and 2 handicapped spots out front.

There were no questions from the board, nor anyone attending from the community to comment on the application.

Chairman McDonough made a motion to adjourn the public hearing and open the regular meeting. Jason Shover seconded the motion. All were in favor.

Chairman McDonough and the Board agreed granting the side yard area variances from the 50' required setbacks set forth in the Zoning Code would:

1)not create an undesirable change in the character of the neighborhood, 2)the benefit they seek cannot be achieved by other means, 3)while it could be argued to be substantial, the building is existing and will not have an impact on the surrounding area, 4)there would be no adverse effect on the physical environment as the building is existing and located in a commercial area suited for this business, 5)while self created, the area variances related to an existing building and the application will not alter the existing neighborhood.

Chairman McDonough made a motion to grant the variances. Jason Shover seconded. All were in favor. Miss Jennings and Miss Peters were told that ZBA would send our results to the building inspector and Planning Board.

Chairman McDonough made a motion to reopen the Al's Towing hearing, Jason Shover seconded. All were in favor.

Jennifer Grogan, residing @ 52 Avenue A, with owner Jaime Ortiz, was next to speak. She asked the ZBA if we had the tax maps available as the Company was encroaching on the Ortiz property by using a portion of the property owned by Mr. Ortiz for the Company's operations. Deputy Attorney Pratt, pulled up the tax map, explaining that the tax map is helpful; however, a survey is preferred in determining property lines. Ms Grogan stated she has a survey. Deputy Attorney Pratt had Ms. Grogan approach and showed her the map on her computer. They had a side conversation as the discussion/questions continued.

Chairman McDonough, stated again to the crowd that our job tonight was to clarify for the Planning Board is to determine the appropriate classification of the Company's operations. Any issues regarding traffic lights, lines, etc. are really the concerns of the Planning Board should the determination deem the Company eligible for Planning Board review. . Jason Shover stated he was conflicted as he doesn't feel it is Mr Papelion's intent to operate a junkyard, but this still has to be interpreted under the definitions in the Zoning Law. Mr. Papelion stated when he buys junk cars he brings them right to a junkyard. Erin Broderick McKabe spoke stating, "he doesn't sell car parts?" then submitted an image from Facebook depicting the Company's page. Mr. Papelion looked it over, looking for a date on the image, then stating, "these are not car parts, it's an image of automotive lifts we bought from Kingsley Arms." Chairman McDonough then read from the Facebook image, "We buy cars for scrap, and sell some used repair parts". He expressed confusion, citing again, "so junkyard or automotive repairs?" Chairman McDonough asked Mr. Papelion if he could provide the Board with a record of automotive repairs/maintenance services provided so that the ZBA could have a better handle on precisely what business operations are taking place at the property. Mr. Papelion stated he would provide all receipts/invoices demonstrating automotive repairs/maintenance services provided and that he doesn't put used parts in cars. Chairman McDonough noted this is a tough decision, and expressed the need for the Company to share business records to demonstrate the operations which was requested during the December ZBA meeting and requested again in a letter to the Company after the December ZBA meeting. Chairman McDonough noted our decision affects Mr. Papelion's business, his livelihood so we need to do our homework, and get any records available to aid us.

Chris Kelly, 1-11 Roe Road, asked about DOT issuing a driveway permit to access the property. Her major concern is whether it is safe as she drives this road daily and her concern is for Mr. Papelion and his worker(s). Kristin Pratt explained this issue has been raised with Mr. Papelion and that DOT needs to approve access to this Property as it is located on a State route.. Mr. Papelion expressed he was not looking for a fight, he is upset over the situation, he should have backpedaled, and wishes he could show us pictures of his old business. He states he is "reevaluating".

Amy Bossong, 62 Avenue A, asked if we were determining zoning of the property or the business. She added that junk can pile up, and wondered if the gray area of responsibility fell on the lessee or the owner. She wondered

if the business/property was zoned for all of these cars or not and if the property owner can still stack junk cars and not call it a junkyard. Deputy Attorney Pratt explained this determination is not to determine the zoning district but rather to determine the appropriate classification for the Company and that a junkyard is not permitted in this district. Mr. Papelion was asked what the lease terms are and whether the ZBA can review it prior to issuing a determination. Mr. Papelion stated the whole lot is his, but that Mr. Melite told him he had more acres than he actually did - it started at 2 acres, down to 3/4 acres, then in reality it's actually .4 acres. Chairman McDonough stated that we cannot make the decision tonight, without a copy of the lease and all relevant records that have been requested from the Company. Rather, in order for the ZBA to make a thorough decision after reviewing all the relevant evidence, the public hearing would be continued through the February meeting. Chairman McDonough read the definition of a junkyard from the Town Zoning Law. Amy Bossong and Erin Broderick McKabe stated they both felt the property in question meets this definition. Chairman McDonough restated this is why we need all documents as this is a man's livelihood and the ZBA needs to make a well-reasoned decision based upon the evidence. Jennifer Grogan asked, "how did it get to this point?" Jason Shover explained it just existed, it was there and developed into this other thing. Chris Kelly added that it has always been there. Erin Broderick McKabe stated that when she searches to see if it comes up as registered with DMV it does not come up. Mr. Papelion stated it will come up if you search "Al's Towing". He also stated they need their Certificate of Occupancy before they can get their repair license from DMV. He was under the impression he would be okay to continue operations at the site as long as he was doing repairs in the meantime. He claimed this was inaccurate information provided to him from Mr. Melite, thus everything coming to a stop. Mr. Papelion explained he would have to go back farther than the past 5 months of requested records due to this. Deputy Attorney Pratt said it would be ok for him to provide additional records going back farther and that he should provide the ZBA with all relevant records that would assist the ZBA in making this determination. Jason Shover referenced this to being a "chicken and the egg" situation. Mr. Terry stated some of their services are maintenance services, not repairs, which do not require documentation for the CO application. Luanne Broderick questioned who actually owned the property since Mr. Melite has passed away. It is believed his son, Mike, had power of attorney (pre-death) and may eventually own the property. Chairman McDonough asked Mr. Papelion to break down the percentage of his business into categories. Mr. Papelion stated that the towing was

approximately 65%, and the repairs were 35%. Chairman McDonough pointed out that some of the towing does not involve towing vehicles to the Route 40 property. Erin Broderick McKabe stated that regardless of the decision, standards must be followed and she sees things that aren't happening to support this. Deputy Attorney Pratt explained that the ZBA renders few interpretation determinations as the majority of classifications don't require this process. Rather, this was a situation in which the Planning Board determined that a formal interpretation was required. If the ZBA determines that the Company is not operating a junkyard, and it goes to Planning Board, then they would handle it as a special use permit. Chairman McDonough summed up: if we rule this a junkyard, it's over as it is not allowed at this location. If we rule automotive repair facility, the Planning Board's jurisdiction commences and they will then say, "you need to do X, Y, Z" meaning issues related to parking, access, and noted that there would be a Planning Board public hearing. Mr. Papelion expressed he thought he was "grandfathered in". It was explained that Mr. Melite was, as he was running the business prior to the updated zoning laws and the use had not been expanded; however, the Company's operations have substantially expanded and changed the use. Mr. Papelion questioned if he were to partner with Mr. Melite's son, Mike, then could he avoid going through Planning Board. Mr. Papelion asked if he should change the name of the business. Chairman McDonough stated that doesn't change the fact there are unregistered vehicles on the property. Mr. Papelion stated "those cars" are going regardless - he pays \$3,000 rent per month and he can't do business. Jason Shover reminded him that we are zoned to not have certain types of business for a reason. Chairman McDonough stated that in most cases, this would have gone straight to Planning Board, but we were asked to make this interpretation. He stated that if we rule automotive in February, it will still be a process, an application will then have to be processed with the Planning Board. Mr. Papelion asked if he could still perform his towing services. Deputy Attorney Pratt stated that while under the Zoning Law operations should not be occurring, this does not mean that the Town would take enforcement action and suggested that Mr. Papelion discuss his questions with Code Enforcement Officer, Brian Davidson. Mr. Papelion ended with apologizing to anyone he may have disturbed. Chairman McDonough made a motion to leave the hearing open and re-convene on 2/2/23 @ 7:05. Kristin Griswold seconded. All were in favor. The meeting was adjourned @ 8:45.

Respectfully Submitted,

Date: 1/7/23

Kristin Griswold, Zoning Board of Appeals, Town of Schaghticoke