

TOWN OF WEBSTER, NEW HAMPSHIRE
Zoning Board of Adjustment
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Webster, NH 03303
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Zoning Board of Adjustment Minutes January 14, 2014

Case No. 14-01 Commercial Exception to Article V Section 1.
Of the Zoning Ordinance from COPART of CT., Inc.
in order to comply with current zoning regulations for junk yard
licensing. Property is located at 111 Deer Meadow Road
Tax Map 9 Lot 18-2 in the Residential/Agricultural Zone

Present: Chairman Martin Bender, Members - Robert Drown, Jr., Don Koberski, Barbara Corliss, and Alternates – Secretary, Jaye Terrazzano-Bowe and Guy LaRochelle. Barbara Corliss recused herself. Hence Jaye Terrazzano-Bowe and Guy LaRochelle were appointed as acting voting members. Mr. John Kostro and Ms. Lisa Doherty represented the applicant, COPART of CT, Inc.

7:10 PM: Chairman Bender opened the hearing. Secretary Terrazzano-Bowe took attendance and read the application. Before explaining the public hearing procedure, Chairman Bender stated this was the beginning of the process for junk yard licensure. According to RSA 236:114-115, the ZBA has to let the Select Board, the local governing body, know that COPART is allowed to conduct this type of business. Chairman Bender stated that if COPART gets the commercial exception from the ZBA then the next step for COPART is to go before the Select Board at a public hearing. In summary, he stated it was only up to the ZBA to decide if COPART has the right to have a commercial exception. Chairman Bender started to explain the public hearing procedure by first addressing the agents for COPART. He stated this application is slightly different because the business is already in existence. So, he would assume that COPART would keep doing what it has already been doing for the last couple of years. Chairman Bender continued explaining the procedure. Upon completion he invited Mr. Kostro and Ms. Doherty to present their application to the Board. Ms. Doherty stated COPART wanted to renew the junk yard license to continue operations exactly as how they have been operating. She stated COPART was an online auto auction. They do not dismantle vehicles; they remain whole and they have a sale once a week. COPART picks up cars primarily for insurance companies; stores them and then auctions them via the *Internet* to dismantlers, repair shops and junk yards.

Acting Member LaRochelle asked how many vehicles go through COPART in a week. Ms. Doherty stated approximately 30 per day. Chairman Bender asked if the haulers were coming down Deer Meadow Road. Ms. Doherty answered in the affirmative. Acting Member LaRochelle asked about leaking fluids. Ms. Doherty stated COPART uses an EPA approved spray product which is biodegradable. She added that leaking fluids are rare because by the time COPART picks up the vehicles most of the fluids have been drained.

Chairman Bender asked how long the vehicles remained at COPART. Ms. Doherty stated on average 30 to 60 days, which is the time it takes for the insurance companies to settle their claims and for COPART to process the title paperwork through the State. Chairman Bender asked what happens when nobody bids. Ms. Doherty stated COPART contracts with a junk buyer, *Brandy Brow* in Plaistow.

Member Koberski asked about COPART's hours of operation. Ms. Doherty stated they were open Monday through Friday 8:00 am to 5:00 pm. Member Koberski stated he has seen trucks going in and out of COPART later than those hours. Ms. Doherty stated that was correct; to drop vehicles the haulers can go in later than 5:00 pm and on weekends. Ms. Doherty stated the bullpen area in the front is left open to let haulers to come in anytime seven days a week.

Acting Member LaRochelle asked about the number of vehicles on the lot at any one time; the number of acres of the property and if any groundwater testing had been done. Ms. Doherty answered: approximately 1000 vehicles were on the lot; approximately 16 acres was the lot size and she stated she wasn't sure about the groundwater testing. She stated it had been done prior to the opening of the business, but she wasn't sure if any testing had been done since then. She will find out. Ms. Doherty added that COPART typically would not purchase properties that were contaminated or had environmental issues because they would have to pay for the clean-up.

Member Drown asked if all the vehicles were sold via the *Internet*. Ms. Doherty stated he was correct. She added that people may come to view the vehicles on site but all purchases were done online. Member Drown asked about selling to the public. Ms. Doherty explained that only COPART members may come to the lot and place a bid on site.

Member Drown asked about the heaviest GVW truck servicing COPART. Ms. Doherty stated a 10-car carrier would be the largest to make a delivery. Acting Member Terrazzano-Bowe stated that would be about 60,000 pounds empty. Member Drown asked if there was anyone living on site. Ms. Doherty stated "no".

At this time there were no more questions from the Board.

Chairman Bender asked if anyone wished to speak in favor of the application. No one spoke in favor.

Chairman Bender asked if anyone wished to speak in opposition of the application. Mr. Harold Janeway, Tyler Road, made the point that COPART was a very different business than the previous junk yard. He also pointed out that there were two roundtrips involved for each vehicle coming in and going out of the lot which would be 60 roundtrips every day including Saturdays and Sundays. Mr. Janeway stated he felt the key issue was traffic. He then quoted from the *Zoning Ordinance: Article V, 1. Commercial Exceptions, B. Prohibited Uses*, "...the proposed use shall not adversely affect: 3. Traffic on roads and highways in the immediate vicinity." He stated that some of that traffic goes on Bashan Hollow Road which is a very narrow dirt road with a blind corner. He added that he had seen the haulers go by his house and down Gerrish Road. Mr. Janeway stated the traffic had a greater impact on the Town than a junk yard; traffic that he would rather not see.

Mr. Kern Jackson, Deer Meadow Road, stated he was working outside his house today and over 12 trucks went by. Acting Member LaRoche asked what size trucks. Mr. Jackson stated one of them had 8 cars; most of them were flatbeds with 2 cars. He stated the trucks make a lot of noise. In addition, he stated Deer Meadow Road was a shambles, which could partly be weather-related. Mr. Jackson stated he was really worried about the traffic. He has two grandchildren less than 2 years old and was very concerned when they visit. He also inquired about the proximity of Deer Meadow Brook to the COPART property. In conclusion, he stated his concern about the weight of the trucks on the bridge over Deer Meadow Brook. Ms. Betsy Janeway, Tyler Road, also mentioned Clothespin Bridge.

Mr. Thomas Smith, Bashan Hollow Road, stated he objected to the excessive traffic as well. He stated he had submitted a petition letter from the residents of Bashan Hollow Road and Gerrish Road to the Select Board on November 12, 2013, which he said had not been acted on yet. Mr. Smith offered a copy of the petition to Chairman Bender. Chairman Bender declined, and stated the Selectmen will have to deal with that. Mr. Smith stated the petition listed the reasons the residents did not want the trucks on their roads and their request to post "No Through Trucking". Mr. Smith wanted to know if the recently adopted 10 year road preservation plan in Webster by UNH had taken into consideration this situation with the roads and the effect of that traffic. Mr. Smith had questions about the actual junk yard license. Chairman Bender stated that the Select Board issued the license and renewals not the ZBA. Chairman Bender stated the reason for this hearing was not to issue the license. The ZBA was here to resolve the commercial exception application. He added that whatever restrictions the license has or had was between the Select Board and the license holder, not the ZBA. Mr. Smith stated

another objection he had were the hours. He asked the Board, if possible, to set conditions on the hours of operation.

Barbara Corliss, Deer Meadow Road, stated she was very concerned about the traffic and the road damage. Ms. Corliss referred to ***RSA 236:112. Definitions***. She asked for a point of law clarification from Chairman Bender regarding the definitions of auto junk yard and motor vehicle junk yard. She questioned whether COPART was operating under a junk yard permit, without being a junk yard. Chairman Bender stated the section Ms. Corliss referred to was titled ***Motor Vehicle Recycling Yards and Junk Yards***. He stated in his opinion they were the same.

Mr. Harold Janeway stated the RSA's were probably written before online auctions. He stated this was a new form of business that creates far more traffic than anybody's junk yard. Chairman Bender stated the legislature has not written another statute defining anything in between.

Ms. Corliss stated when COPART first approached the Town and the Select Board had approved them to do business, she contacted LGC. She stated their attorneys told her the business was not a junk yard, but a change of use. Ms. Corliss added that at 6:00 pm today an 18- wheeler went by with 8 vehicles on it. She stated the trucks go by at 6:00 am, 9:00 pm, and the middle of the night on Sundays. Ms. Corliss stated the roads were not made for that kind of traffic and it was a hazard for the people that live on those roads.

Ms. Kathy Abrams, Deer Meadow Road, stated she lives on a hill. She feels her life is in danger because the trucks may not be able to stop if she pulls out of her driveway or if her dog runs in the road. She added the truck brakes were noisy and that her windows rattled.

Ms. Nancy Van Loan, Gerrish Road, stated that Gerrish Road was a scenic road, which should not be for commercial use.

M.J. Turcotte, Webster Lane, asked who controls the routes trucks take coming in to COPART. Ms. Doherty stated the trucking companies coming in to pick up vehicles were not employed by COPART. They were hired by COPART's customers. COPART has no control over those trucking companies.

Ms. Susan Rauth, Bashan Hollow Road, another scenic road, stated traffic goes by her house. People use that road for walking or jogging, etc. She stated she is very concerned about the safety of her neighbors. Ms. Rauth then referred to the *Zoning Ordinance: Article V, 1. Commercial Exceptions, B. Prohibited Uses*, "No business, commercial or industrial venture or use shall be permitted which could cause any undue hazard to

health, safety or property values...” These were some of the reasons for the petition from residents of Bashan Hollow Road and Gerrish Road that was previously mentioned. Ms. Rauth stated she did not mean to deny COPART to do business in Town but, since the lawsuit, COPART has not been allowed to use Concord roads which has caused traffic problems in this area of Webster.

This was the conclusion of all public testimony.

7:56 p.m.: Chairman Bender then opened the discussion for rebuttal from the applicant. Ms. Doherty stated COPART wants to be good neighbors. She said they will try to work with the Town as much as they can. She stated she understood everyone’s concerns. She added that COPART is still working with the City of Concord.

7:57 p.m.: Chairman Bender then opened the discussion for rebuttal from the public.

Mr. Jackson stated some of the trucks use their engine brakes, which are very noisy.

Mr. Bob Gould, Bashan Hollow Road, asked for clarification from Ms. Doherty regarding her statement that COPART was still working with Concord after losing the lawsuit. Ms. Doherty stated COPART’s legal department has been working with Concord – she will find out more.

Acting Member Guy LaRochelle asked Ms. Doherty what had COPART done and what will they do to resolve traffic issues, bonding of the roads and monitoring groundwater pollution issues. Ms. Doherty stated she could not personally respond but she will get the answers. She stated that COPART hired companies to do the groundwater testing on a quarterly basis. She will find out if that has been done. She also stated COPART does not have any bonds with the Town of Webster for roads or bridges.

Ms. Van Loan asked the Board if it was possible for the Town to require COPART to pay to upgrade the roads and not use the scenic roads; could that be a condition for the commercial exception. She added there could also be restricted delivery hours.

Ms. Turcotte stated that in the past there had been some discussion between COPART and the Select Board about care of the roads. Chairman Bender stated that would have to be addressed by the Select Board, the next step in this process. He reminded everyone this ZBA hearing was just the first step.

Ms. Rauth asked if COPART would have to go before the Planning Board for a Site Plan Review. Chairman Bender stated that according to the statute, ***RSA 236: 115. Application for License and Certificate of Approval***, if the ZBA approves the commercial exception for use as a junk yard, then the Select Board decides whether or

not to issue a junk yard license to the applicant. Chairman Bender stated he did not see anything mentioning the Planning Board in this process.

8:07 p.m.: Chairman Bender closed the public testimony and Board discussion began. Acting Member LaRoche pointed out the old junk yard was a “Mom & Pop” business with much less traffic than today. He stated there was no place for that amount of traffic in the community. After a brief discussion, Member Koberski stated they should restrict the hours to 8:00 am to 5:00 pm. Member Drown stated that COPART must know who the independent trucking companies are. COPART could notify those companies to abide by the Town of Webster’s restrictions/regulations.

At this time Chairman Bender recognized resident, Ms. Van Loan. She stated that according to the Zoning Ordinance the ZBA can determine the restrictions regarding the traffic on the road. Chairman Bender stated the Selectmen and the Road Agent are the ones who have the authority to post roads. After a brief discussion, Member Drown suggested the ZBA recommend to the Select Board they would rather not see the trucks operating on Bashan Hollow, etc.

Following the Board discussion, Member Koberski made a motion to approve the commercial exception, restricting the hours of operation to Monday through Friday 8:00 am to 5:00 pm; Saturdays 8:00 am to noon only if there is a receiver on site; attach a recommendation to the Select Board to restrict deliveries from travelling on dirt roads in the Town of Webster; seconded Member Drown.

The Vote: Chairman Bender – in favor; Member Drown – in favor; Member Koberski – in favor; Acting Member Terrazzano-Bowe – not in favor; Acting Member LaRoche – not in favor; motion passed 3 to 2 in favor of granting the commercial exception as stated above.

At this time the Board reviewed the ZBA meeting minutes from September 10, 2013. Acting Member Terrazzano-Bowe moved to accept the minutes as written; seconded by Chairman Bender and unanimously approved.

The meeting was adjourned at 8:40 pm.

These minutes were approved as written at the ZBA meeting of February 19, 2014.

Respectfully,



Jaye Terrazzano-Bowe
Secretary

Posted February 20, 2014