

1 **TOWN OF SUNAPEE**

2 **ZONING BOARD**

3 **MAY 30, 2012**

4 **PRESENT:** Edward Frothingham, Chair, Dick Katz, Clayton Platt, Daniel Schneider, Aaron Simpson

5 **ALSO PRESENT:** See Attached Sign-In Sheet

6 Chairman Frothingham called the meeting to order at 7:00PM

7 Chairman Frothingham closed the meeting to the public and informed the audience that the Board may
8 ask to open the meeting to ask specific questions from someone and then the meeting will be close to
9 the public after the questions have been answered.

10 Changes to the minutes from the April 12, 2012 meeting:

11 Aaron Simpson made a motion to approve the minutes as presented. Dick Katz seconded the motion.
12 The motion passed.

13 Changes to the minutes from the May 10, 2012 meeting: Change Line 180 to read "Mr. McClay would
14 have to come in..." On Line 198 change "Mr. Simpsons" to "Mr. Simpson".

15 Aaron Simpson made a motion to approve the minutes as amended. Dick Katz seconded the motion.
16 The motion passed unanimously.

17 Changes to the minutes from the May 22, 2012 meeting: Remove "Bill Larrow, Alternate" from the
18 Board Members present.

19 Aaron Simpson made a motion table the minutes until the next Zoning Board meeting. Dick Katz
20 seconded the motion. The motion passed unanimously.

21 **CASE 12-05: PARCEL ID: 0104-0020-0000, ADMINISTRATIVE APPEAL OF ZONING ADMINISTRATORS**
22 **CEASE & DESIST ORDER ON AN AUTO BODY REPAIR BUSINESS IN OPERATION IN A RESIDENTIAL**
23 **DISTRICT WITHOUT PLANNING & ZONING APPROVALS, DONNA DAVIS, 15 PROSPECT HILL ROAD**

24 Case 12-05 has been continued from the May 22, 2012 meeting.

25 Chairman Frothingham suggested that though the Board can make a vote when they have finished their
26 deliberations, he thinks that the Town's attorney should be allowed to write an opinion. He asked each
27 member to present their thoughts backed up with facts. Chairman Frothingham proposed that the
28 Board think about having a meeting June 21st to return with a written opinion that can be read over and
29 voted on. June 14th is the next scheduled meeting though there are six cases on the docket. Chairman
30 Frothingham said that the other date that is available is June 26th.

31 Chairman Frothingham said that he would also like to do the Rules and Procedures as the Zoning Board
32 has been trying to review them for months and has never found the time. Chairman Frothingham said
33 that he wasn't sure if they could get to them tonight or if not then perhaps if they did a meeting on the
34 21st they could start them then.

35 Chairman Frothingham asked the Board members to start with their comments.

36 Daniel Schneider stated that he believes that the Larrows were approved to operate a wholesale auto
37 business at the site and they did not violate the terms of that particular approval. As he understands it,
38 the wholesale approval was for purchase, repair and resale of automobiles without having an onsite
39 auto dealership which he does not believe the Larrows did. Mr. Schneider said that the Larrows
40 complied with the terms of that approval and they had approval for it from the Town and the State. Mr.
41 Schneider conditioned that at some point they began to take in autos from other people for repair and
42 according to the testimony of Michael Marquise the former Zoning Administrator, at that time in order
43 to operate an auto repair business it would have required a Site Plan Review because it involves
44 customers activity at the site. Mr. Schneider said that he believes that the Larrows were unaware of the
45 requirement but even that does not make it less of a violation of that requirement also, Mr. Marquise
46 testified that if he had known about it then he would have believed it was a violation. The fact that Mr.
47 Marquise did not know was testament to the fact that the Larrows were good neighbors because it was
48 fifteen years before the violation was discovered through events that were probably not of there doing.
49 Mr. Schneider stated that he believes the wholesale auto business, which the Larrows had approval for,
50 should be allowed to continue but the auto repair business, being repairing for others, should be found
51 not in compliance.

52 Dick Katz said that he feels that customer activity at the site was beyond what the Larrows were given to
53 do and the expansion of the business, though not a big expansion and might well be appropriate if
54 approved, it still goes substantially beyond the approval given to them. Mr. Katz said that he feels as
55 though the order to Cease and Desist was appropriate. Chairman Frothingham asked if Mr. Katz agreed
56 with Mr. Landry and Mr. Katz confirmed that he did.

57 Atty. Whitelaw asked Mr. Katz that when he says that he believes the Order to Cease and Desist is
58 appropriate does he think that it was appropriate for the wholesale business, for the auto repair
59 business or both. Mr. Katz said that it was going beyond what they were approved for which was the
60 wholesale business.

61 Clayton Platt said that he agrees that the wholesale auto business was an approved use and he believes
62 the retail repair business was a reasonable expansion of that use as it involves same activity. Mr. Platt
63 said that he is concerned about how much retail work was done and how much wholesale work was
64 done as the Board never really got an answer. Mr. Platt said that he thinks that to approve the
65 wholesale repair business a limited amount of retail repair supplemental to the wholesale repair
66 business. Mr. Platt said that it was pointed out to him by Mr. Simpson at the last meeting that on the
67 1996 application for dealer registration, under business hours it says "as required by appointment"
68 which seems to imply someone would be going to site on occasion to do business. Mr. Platt said that

69 the application also asks if the applicants are “principally engaged in the business of purchasing motor
70 vehicles for resale to a dealer in new or secondhand motor vehicles.” It does not say “exclusively” and
71 his thoughts are to put limits on the retail side of the business such that there is a 50% expansion
72 allowed by regulations so such that it could not be more than 33% of the total business. Mr. Platt
73 continued that perhaps there could be restrictions on vehicles left outside the garage, and limits on
74 customer interactions on site, if Mr. Larrow is picking up customer’s cars, bringing them to the shop,
75 repairing them and bringing them back to the customer. Mr. Platt said that it seems to him to be the
76 same activity as buying a car, bringing it to the site, fixing it and taking it off site. Mr. Platt said that he is
77 bothered that this went on for fifteen years and no one complained and that the complaint wasn’t filed
78 against the repair business itself. Mr. Platt stated that he prefer to approve a conditional use of the
79 expansion into the retail repair business.

80 Aaron Simpson said that he shares some of Mr. Platt’s sentiments. Mr. Simpson said that he had the
81 opportunity to go through the letters that people wrote in opposition and many, if not all of them,
82 indicated in the last few years it got much worse and assuming that there is some expansion of the
83 permitted use it seems that scope or magnitude of use for the repair business blossomed after 2000
84 which he feels is not grandfathered. Mr. Simpson continued that though the Board has heard that no
85 employees but there are contractors, he does not believe that there should contractors working for the
86 company nor employees for a home business. Mr. Simpson said that “no customers on site” has been
87 known since the beginning though he agrees that if cars are picked up and taken back to people that is
88 different. Mr. Simpson continued that there are a couple of comments from the letters indicate that
89 there was an expansion with the second driveway with and that an area on the building permit for the
90 garage indicated a wood storage lot and plow blades were stored in the back, it turned into a parking lot
91 and was no longer just wood being stored out back. Mr. Simpson said that it is clear to him that there is
92 more than one or two vehicles on the property that are not the owners that should not be there given
93 the nature of the business that was requested. Mr. Simpson continued that perhaps the Board could
94 say that not more than two vehicles not registered to the owners or occupants of the property that are
95 being repaired. Mr. Simpson said that he also thinks that the tow trucks being on the property are a
96 problem and he does not think they should be on the property as people complained about tow trucks
97 being called out at night which changes the scope and nature of the use of the property. If they are
98 going out at night because someone lives there, given there is nothing definite to say which vehicles
99 were repaired there and which were just brought there and taken somewhere else, cars should not be
100 brought there. Mr. Simpson continued that he thinks that given the representations that have been
101 made from Mr. Larrow and the people that support that there are no signs, no advertising, no telephone
102 numbers listed, no odd hours of operation, those should be continued as a home business, Mr. Larrow
103 set himself up to do wholesale and though it says “business hours as required” Mr. Simpson assumes it
104 is administrative work and that doesn’t suggest that people were coming to the business. Mr. Simpson
105 said that he thinks that the wholesale business was previously permitted given the signature of Mr.
106 Marquise and the indication that it was all that was required of people in 1995 that the form was all that
107 was required to be in compliance. Mr. Simpson continued that he isn’t sure that the Board can’t vote
108 tonight and while he understands the problem with rushing to put it together a decision but he thinks
109 that it should be voted on.

110 There was a brief discussion about the availability of Board members for a future meeting.

111 Chairman Frothingham said that he agrees that the wholesale auto business having been properly
112 applied for and permitted and there is no reason it should not continue as it was originally permitted or
113 approved. Chairman Frothingham continued that the onsite employees or contractors are a problem.
114 Chairman Frothingham said that the biggest problem that has arisen over the years is that Series 2000
115 did not go before the Planning Board when they decided they wanted to do something different. Mr.
116 Marquise was clear in his statement that the Larrows had to conform to Article 1 and that he assumed,
117 and probably rightfully so at the time, that they were in compliance but then all of a sudden they had a
118 small amount of repair work and boats which was clearly not in the approval they received. Chairman
119 Frothingham continued that the Larrows had one page which they needed to adhere to and if it was the
120 whole book and they missed a page and didn't know that what they were doing something wrong he
121 would give them the benefit of the doubt but it was one page that he believes was made very clear to
122 them. Chairman Frothingham said that if the Larrows want to continue their repair business they need a
123 Site Plan Review and to come before the Zoning Board for approval as well. Chairman Frothingham said
124 that as for the dealer plate perhaps they can write a letter to State and tell them that the Larrows were
125 in compliance and try and see if they can help them get it back. Chairman Frothingham said that he
126 thinks that the repair business has created some issues and has gotten busier in the last few years and
127 though the situation that blew the whistle was not their fault but after it was opened up there have
128 been a lot of complaints and the bottom line is the Larrows never went through the proper channels to
129 eliminate the situation they are in as far as the auto repair business and the boat repair business.

130 Chairman Frothingham said that if the Board wants to vote tonight that is their decision.

131 Atty. Whitelaw explained why she suggested a future meeting as a possible way of making the decision.
132 The Board needs to write a written decision because they are denying part of the appeal, if that is what
133 the Board's decision will be. If the Board decides to deny all or part of the appeal, then they need to
134 provide a written decision and the written decision needs to provide the reasons why the Board is
135 denying the appeal. Atty. Whitelaw continued that perhaps the Board can sit and hash out a written
136 decision but if they are not in a situation where they are prepared to do that then sometimes what
137 would happen would be the attorney, if they are involved, and a Board member would be assigned to
138 write a draft decision that would then be distributed by the Zoning Administrator to the other Board
139 members who would look at it before the next meeting, not discuss it with anybody, and then talk about
140 whether they wanted to adopt the decision or make changes to it or throw it out and start again. The
141 reason why you would want to do this is and not vote tonight but to get a sense of the board is once you
142 vote you start the appeal clock for the applicants if they are unhappy with the decision or for anybody
143 else who has the right to appeal the decision if they are unhappy with the decision and the concern is
144 getting the written decision to the applicant and to the public in time to provide them the opportunity
145 to put into the motion for rehearing what they want to put in.

146 Chairman Frothingham opened the meeting to Atty. Moeckel.

147 Atty. Moeckel told the Board that he has prepared something for them to review, it is not an Exhibit or
148 new facts, it is simply a proposal for them to use called Findings and Rulings which are common and
149 sometimes people go through and say yes or no. Atty. Moeckel asked for permission to hand it out to
150 the members to look at to give the Board a sense of where his clients think the Board can go and where
151 it should go based on all the testimony. Atty. Moeckel said that in some respects it would be like the
152 Town's attorney drafting a decision for the Board. There was a general consensus from the Board that
153 they would look at Atty. Moeckel's proposal. Atty. Whitelaw commented that while Atty. Moeckel
154 described the document as a road map for how his clients' believe the Board should find, she thinks it
155 would have been more appropriate to have been submitted prior to the close of the public hearing
156 because she thinks that it is a submission from the applicant but the Board can chose to accept it if they
157 would like.

158 Clayton Platt made a motion to accept the proposal for review. Dick Katz seconded the motion. The
159 motion passed unanimously.

160 Mr. Simpson asked Atty. Whitelaw confirmed that the letters from 2010 that were submitted to the
161 Board by Mr. Landry were part of the record.

162 Mr. Schneider asked Atty. Whitelaw about the dates that have been given and the conflicts. Atty.
163 Whitelaw said that she thinks it is perfectly fine to tonight sit and hash out what they want the written
164 decision to be and to have it typed up and authorize the Chair to sign it on behalf of the Board. Mr. Katz
165 said that he would like that to happen. Mr. Platt agreed. Mr. Simpson said that the Board is not all in
166 agreement.

167 Mr. Platt stated that that it seems to him that there are three members who feel that there should be
168 no retail business on the property without further approval. Chairman Frothingham said that he is not
169 saying that it should not be part of the business but that it should be done through due process which
170 was started once and never seen through. Mr. Platt said with the testimony that he has heard, though
171 perhaps business has increased somewhat, but part of the condition of the approval would be to reign
172 that in. Chairman Frothingham said that to him that is part of the process as he doesn't want to sit here
173 tonight and try and tell them what they can do in a repair business and that they need to go through the
174 right procedure to go before the Zoning Board to get a Special Expansion and to go before the Planning
175 Board for an onsite evaluation and during that process they can make whatever constraints that they
176 want as long as they are reasonable and the Planning Board can do the same. Mr. Platt said that his
177 understanding was that they could put constraints on it now. Chairman Frothingham responded that he
178 does not want to try and put all the restraints on the property for the service repair business as it isn't
179 even legal unless they go through the process. Chairman Frothingham continued that he does not
180 believe the Board has the ability to tell the Larrows that they can go ahead and have a repair business.
181 Mr. Katz said the other questions that he has is who is going to and how will the constraints be
182 enforced. Mr. Katz continued that there is only one enforcement officer which is the Zoning
183 Administrator, and he does not think that the pressures should be put on a Zoning Administrator
184 because of the number of exceptions that have been issued over the years and hopefully others have
185 followed. Mr. Platt said that if the Larrows come back for a Special Exception then the Board would put

186 conditions on then. Chairman Frothingham said the conditions would be voted on by the Zoning Board
187 and then the Planning Board which is how everyone else has to get a Special Exception to be able to do
188 what they want to do. Chairman Frothingham continued that he doesn't even know what the Larrows
189 really want to do. Mr. Platt said that they want to do what they have been doing for the last fifteen
190 years. Chairman Frothingham said that he knows but that there have been a number of complaints
191 recently. Chairman Frothingham continued that the Larrows have to come to the Board and say what
192 they want to do in addition to the wholesale business. Mr. Platt said that there were no complaints until
193 people got notice of the Zoning Board meeting at the start of the case and if you get a notice from the
194 Zoning Board that someone is coming to continue, start or expand the retail of a garage next to you, you
195 are prompted to respond to that, nobody complained about cars in the yard or tow trucks leaving until
196 someone got a notice about a hearing for the Special Exception or Site Plan Approval which he finds
197 bothersome. Mr. Schneider said that he thinks that is right but it doesn't negate that it is a violation.
198 Chairman Frothingham agreed, the Board would not be saying the Larrows can't apply to do what they
199 want to do. Mr. Platt said that he doesn't see the distinction between what they want to do and what
200 they have been doing for fifteen years. Chairman Frothingham said that the Larrows might want to do
201 more. Mr. Platt said that if they want to do more they could then come back to the Board for a Special
202 Exception.

203 Mr. Simpson asked Atty. Whitelaw if an expansion of a non-conforming use has to go before the Board.
204 Atty. Whitelaw asked if Mr. Simpson meant that the Board would have to consider if it is an expansion.
205 Mr. Simpson clarified that if the repair business developed over time but sometime around 2003 or
206 2004 really took off and became the majority of the business. Atty. Whitelaw said that a use does not
207 obtain protection of a non-conforming use unless the use is legal when it starts and legal at the time the
208 Zoning Ordinance was changed. If the Board finds that a use being made on the property prior to 2000
209 was unlawful because it didn't have the required permits, it does not become a non-conforming use in
210 the year 2000. Mr. Simpson said that he is talking about before the year 2000, would they have had to
211 come before the Town for an expansion of the non-conforming use. Atty. Whitelaw said that there was
212 not a non-conforming use prior to the year 2000, there was a wholesale business and you are discussing
213 as to whether or not there was something different where people brought their own vehicles on the
214 property in order to be serviced so if Mr. Simpson is talking about the vehicle repair business, that either
215 was or was not a lawful use before 2000. Atty. Whitelaw continued that as of 2000, you had to get a
216 Special Exception in order to do that use. Mr. Simpson asked Atty. Whitelaw for clarification about what
217 she meant by a permitted use before 2000. Atty. Whitelaw said that it means that the business is
218 permitted and has all the needed permits. Chairman Frothingham said that the Larrows were not
219 permitted. Mr. Simpson said that is why he asked if the Larrows would have to go before the Town
220 again if they were to expand their use from the wholesale business. Atty. Whitelaw said that the
221 Larrows had a wholesale use that was permitted and if they were going to change the use to something
222 that was not a wholesale use, according to Michael Marquise and the regulations that were in place at
223 that time, they had to get Site Plan approval and if they didn't get Site Plan approval, that use wasn't
224 legal in 2000 so it is not protected from having to comply with the changes in the Zoning Ordinance
225 which then required a Special Exception.

226 Mr. Schneider proposed a draft decision with Atty. Whitelaw asking for explanations because “non-
227 conforming use” is a legally defining term which means a use that is protected from a change in the
228 Zoning Ordinance because it was legal at the time the Zoning Ordinance was changed. Atty. Whitelaw
229 also asked questions for clarification. Mr. Schneider’s complete draft after clarification and changes is:
230 the applicants are permitted to conduct a wholesale dealer business as approved in their Wholesale
231 Dealer Registration Application dated 5/8/1996. The vehicle repair business, including automobiles and
232 boats, was required prior to 2000 to have Site Plan Review. Such Site Plan Review was not applied for or
233 obtained and therefore such use was and continues to be, if operated, in violation of the Zoning
234 Ordinance and Site Plan Review Regulation.

235 Mr. Platt said it seems to be the same as the handout Atty. Whitelaw gave the Board at the last meeting.
236 Mr. Simpsons asked if Mr. Schneider was making a motion. Chairman Frothingham asked Atty.
237 Whitelaw to read the proposal from Mr. Schneider again. Atty. Whitelaw did and when asked if it fit the
238 legal requirements, she said that she thinks that Mr. Landry’s Cease and Desist Order should be
239 addressed because what they are saying is that the wholesale order is permitted and that the retail
240 business wasn’t permitted, the Cease and Desist Order said that both activities should stop so what the
241 Board would be finding is that the Order was wrong as to the wholesale business. Atty. Whitelaw said
242 that she thinks that the Board should follow it to the conclusion and state that.

243 Atty. Moeckel asked for and was granted permission to briefly address the Board.

244 Atty. Moekel asked the Board to keep in mind something that he thinks is the issue they are struggling
245 with which is that the 1996 Zoning Ordinance, Section 4.11 says: any use not specifically prohibited is
246 permitted. Atty. Moeckel continued that he knows the Board is spending their time and are thoughtful
247 individuals but he does not want to see this case go where to a place that it does not have to do, it is not
248 him making an argument, it is the Ordinance that was in effect. Mr. Simpson asked if there was a copy
249 of the Ordinance and there was a brief discussion over where to find it.

250 Atty. Whitelaw responded to Atty. Moeckel’s comment by stating that he is correct, if a use was not
251 specifically prohibited, it was permitted. Atty. Whitelaw continued that the auto repair business was a
252 permitted use however it needed Site Plan approval and Site Plan approval was not obtained. Atty.
253 Moeckel said that Atty. Whitelaw is arguing on behalf of the Board and the editorial is that Atty.
254 Whitelaw is directing the Board to make a decision and influencing the Board. Att. Moeckel continued
255 that Mr. Landry is not here, but Atty. Whitelaw is asking the Board to make sure that they cover Mr.
256 Landry’s mistake. Atty. Whitelaw said that she is not asking the Board to cover Mr. Landry’s mistake.
257 Atty. Moeckel continued that Mr. Platt said it correctly that it has been two and a half years up and
258 down to the Supreme Court because someone didn’t do their homework. Atty. Moeckel said that he
259 doesn’t want to do that again and he doesn’t think that he Board wants to do that again, he is asking
260 them to do it correctly. Atty. Moeckel continued that Atty. Whitelaw is putting in her two cents and his
261 clients are asking him to do the same and make sure it is done right. The Town’s Zoning Ordinance in
262 1996 said that if it is not prohibited it is permitted and the hashing of boat repair, auto repair, that was
263 all permitted in 1996, lawfully. Atty. Moeckel said that the only trigger is Section 2 of Article 1 of the

264 Site Plan Review Regulations which is what the Board should decide. Atty. Whitelaw said that she does
265 not disagree with Atty. Moeckel, it is all about the Site Plan Review Regulations.

266 Mr. Platt said that he takes Mr. Larrow's word that if Mr. Marquise told him in 1996 that he needed a
267 Site Plan Review he would have done it. Chairman Frothingham said that if they didn't have to when
268 they made the application because there was nothing to tell Mr. Marquise that they were going to do
269 auto repair and that Mr. Marquise said that what you want to do falls within that but if you want to add
270 to or change the business then you have to do Site Plan Review. Mrs. Larrow said that Mr. Marquise did
271 not say that. Chairman Frothingham said that what Mr. Marquise was trying to be very helpful to Series
272 2000 and he was telling them that they had to adhere to Article 1. Chairman Frothingham continued
273 that the Larrows had every opportunity to look at that and determine that they were making a change
274 and would need to go for a Site Plan Review and he is sure that they would have done it but they didn't
275 and the Board is being asked to say that it is OK and he has an issue with that.

276 Mr. Simpson said that the Board is not considering an expansion of the use which he thinks that they
277 should be though he is hearing that it wasn't legal then so it couldn't have been legal later. Mr. Simpson
278 continued that there is natural expansion and case law, in the handout from Mr. Landry. Mr. Simpson
279 said that he thinks the Board should consider what was the natural expansion and he thinks that
280 bringing people on site in not a natural expansion. Mr. Simpson said that customers and employees
281 onsite, everything in Article 1 of the Ordinance, those things are not a natural expansion but he does
282 think that fixing someone's canoe or boat or car might be a natural expansion, regardless of what the
283 Board is being told is not legal, that is a natural expansion. Mr. Simpson continued that he does not
284 want it go up and down for another two year but that he does not think that the submission from the
285 Larrows was very helpful and it was very self-serving and there were maybe two paragraphs in the
286 whole document that he could approve and move for. Mr. Simpson said that he thinks the Board should
287 be considering, as of 2000, when the Ordinance changed, that the uses that existed did not require
288 anything other than a Statement of Property Usage. Mr. Simpson asked Chairman Frothingham why he
289 believes that a Site Plan Review is required here. Chairman Frothingham responded that it went with a
290 permit or whatever Mr. Marquise gave the Larrows that they have to adhere to Article 1 and if they
291 were going to make a change it had to go for Site Plan Review. Mr. Simpson asked why the other uses
292 that they put the property to beyond wholesaling, which also complied with Article 1, were a problem.
293 Chairman Frothingham asked for clarification from Mr. Simpson. Mr. Simpson stated that Article 1 says
294 things that you cannot have under a home occupation: no employees, no customers on site, no outdoor
295 displays or signs, no increase in traffic, parking requirements, noise, odor, waste disposal, lighting, etc.
296 and Mr. Marquise said he considered the wholesale application a Statement of Usage. Mr. Simpson
297 stated that he does not agree that the Larrows had to go to Site Plan Review to expand to the other uses
298 that also fall within reasonable expansion though maybe he is misreading the law. Chairman
299 Frothingham asked if Mr. Simpson agrees that with the home occupation there should not be customers
300 on site sales. Mr. Simpson said that he agrees that there should not be any customers on site.
301 Chairman Frothingham said that that is what the Larrows have had when they did repairs; they had
302 customers onsite and onsite sales. Mr. Simpson said that he has also heard Mr. Larrow testify that he
303 went and picked up stuff and brought it back to the shop and that would be a reasonable expansion.

304 Chairman Frothingham said that it might be but the other thing is where you draw a line as all the Board
305 has asked the Larrows to do is a Site Plan Review and if they had done it years ago the Board would not
306 be in this hearing. Mr. Platt said that what happened after January 2010 is neither here nor there and
307 to say that the Larrows should have gone to Site Plan Review two years ago should not be part of the
308 discussion.

309 Atty. Whitelaw said that if you read the first part of Article 1 it talks about when Site Plan Review is
310 required and it is required on non-residential uses but it specifically excepts home occupations as long
311 all of the conditions are met and if those conditions are not met then Site Plan approval is required. Mr.
312 Simpson said that he agrees but his point is the natural expansions of use could occur and still meet the
313 requirements meaning some repair on other peoples vehicles as long as the criteria one through five are
314 still met. Mr. Platt said that was how he was thinking, if customers don't go onsite, the amount of
315 repairs to other peoples vehicles is limited to 50% approved for natural expansion per the Zoning
316 Regulations, maybe there is only one vehicle stored outside the garage that is under repair, there should
317 be certain conditions that define the natural expansion of the wholesale automobile dealership. Mr.
318 Platt continued that the Board does not know any information as to how much retail and how much
319 wholesale work was done but they could allow some retail repair work as they did hear through
320 testimony that it happened prior to 2000. Chairman Frothingham said that is why he said that if the
321 Larrows come back for a Special Exception they are going to tell the Board what they want. Mr. Simpson
322 said that the Larrows should not have to come back for a Special Exception under the old Regulations if
323 the Board determines it was a natural expansion and it still complied with Article 1.

324 There was a brief discussion about the Board not knowing the percentage of wholesale, the percentage
325 of boats, etc. and how much it should be. Mr. Schneider asked how the Town would monitor
326 compliance. Mr. Simpson said that there are criteria in Article 1. Mr. Schneider said that they would be
327 making unenforceable restrictions. Mr. Simpson said that Article 1 has a lot of criteria. Mr. Katz said
328 that there are criteria but asked how it would be enforced. There was a further discussion about
329 enforcement.

330 Mr. Platt said that the bottom line is do the Larrows have the right to continue the expansion of use or
331 are they going to do it with the Town's permission that is what you talk about when it comes to Site Plan
332 Review. Mr. Platt continued that if the Larrows were to come for Site Plan Review now it is not
333 inconceivable that they will get notice from the Water Department that they need to put in a treatment
334 system in because there is a well near the property. Mr. Simpson said that if they had the right to do
335 something it is one thing, but if you can do something by the will of the Town, that is what the Board is
336 talking about. Mr. Schneider said that he does not feel as though the Larrows have the right to pollute
337 the water system though he is not implying that they did or will but there are certain things that need to
338 be considered.

339 Chairman Frothingham asked Mr. Platt if what he is suggesting is that the Board tells the Larrows what
340 they can and can't do from their perspective within expansion. Mr. Platt said the Board would define
341 what they see as a reasonable expansion for a wholesale auto business. Mr. Simpson said that the
342 Board has criteria to work from. Mr. Platt said that the Board has heard testimony from the Larrows as

343 to what the business was and his impression is Mr. Larrow was working on one or two cars at a time on
344 the site. Chairman Frothingham said that the Board would have to be very specific, if there will be
345 watercraft what is included such as how big a boat, how small a boat, is Mr. Larrow going to be allowed
346 to do 4 wheelers, are motorcycles going to be allowed, etc. and it isn't that easy and if they came back
347 to the Board with what they want then it would be easier. Mr. Simpson said that there are parking
348 requirements though he is not sure if the Board is allowed to identify whether it is registered or
349 unregistered vehicles that park on the property and that might be a way to limit it. Mr. Schneider said
350 that he doesn't see that as a Zoning issue, it is a Planning issue, a Site Plan Review issue. Mr. Platt said
351 that except to the extent that they are looking at expansion of an approved, legal use. Mr. Schneider
352 said that some of the Board members are and some are not. Mr. Simpson suggested a vote. Mr. Katz
353 said that he would like to vote and asked Atty. Whitelaw to read Mr. Schneider's earlier proposal.

354 Dan Schneider made a motion that the applicants are permitted to conduct a wholesale dealer business
355 as approved on the Wholesale Dealer Registration Application dated May 8, 1996. The vehicle repair
356 business, including automobiles and boats, was required prior to 2000 to have Site Plan Review. Such
357 Site Plan Review was not applied for or obtained and therefore such use was and continues to be, if
358 operated, in violation of the Zoning Ordinance and Site Plan Review Regulation. Dick Katz seconded the
359 motion. The motion passed with three in favor and two opposed.

360 **RULES AND PROCEDURES**

361 Chairman Frothingham said that he would like to start discussing the Rules and Procedures and asked
362 Atty. Whitelaw to stay and advise.

363 Mr. Simpson asked if there is a draft rules and procedure that people recommend that the Board can
364 look through as he believes that there are sometimes draft ordinances and there has got to be better
365 procedure than the current ones. Atty. Whitelaw responded that there are draft or model rules and
366 procedures that the Board could go through and change to be more of what like. Mr. Simpson said that
367 there is a draft in the book that the Board was given from Mr. Landry.

368 Chairman Frothingham asked Atty. Whitelaw if she had any suggestions regarding the Rules and
369 Procedures. Atty. Whitelaw responded that she has not had the chance to look at them but in regards
370 to how a review of regulations is usually done from a legal perspective, the Board does what they want
371 and then Town Counsel reviews to determine if anything is unlawful or if something has been missed.
372 Atty. Whitelaw continued that she would be happy to answer any questions as the Board reads through
373 them but she hasn't had the opportunity to sit down and read them. Mr. Simpson said that he
374 understands where Atty. Whitelaw is coming from as this is time intensive and laborious and arguing
375 about philosophy at some level. Atty. Whitelaw said she can go through the Rules and Procedures in an
376 hour and do legal review of them but that is not what the Board can do, they have to make decisions
377 about how they want them to go. Mr. Simpson said that the OEB Rules and Procedures are so thin that
378 they give no guidance.

379 Chairman Frothingham asked about the way members are elected to Board as it seems as though they
380 always have new members. Atty. Whitelaw responded that it is because of the way the Statute is set up

381 as you are appointed in alternate years so there is never a whole new Board, there may be a couple of
382 new people but not more than that.

383 Mr. Simpson said that the books are maybe a little better than he was thinking though he can't find
384 things in the current book in a timely fashion in order to make a decision. Mr. Simpson gave an example
385 about a recent decision that was made by the Board that should have been handled in a certain
386 procedural manner and the Board didn't do it correctly. Atty. Whitelaw asked if the Board gets a packet
387 of information from Mr. Landry ahead of the meeting. Mr. Simpson said that he wasn't sure as the
388 Board was told to get it offline last time, at least the minutes. Mr. Katz said that the packets are picked
389 up from upstairs. Mr. Simpson said he has gotten it once and once he did not. Atty. Whitelaw said that
390 a thing that is helpful that the Board can ask their Administrator to do is to not only give them the
391 materials ahead of time but to also identify issues including the procedures that have to be followed
392 such as how to do them and where Mr. Landry gets the information from in order for the Board
393 members to agree if that is the way to make the decision.

394 Mr. Simpson said that another problem if the Planning Board the Zoning Ordinance is out of compliance.
395 Mr. Simpson was told that the Planning Board does an annual review. Atty. Whitelaw asked what was
396 out of compliance and Mr. Simpson gave an example using the requirements to get a variance. Mr.
397 Simpson asked if the Ordinance could be written to also say something such as "or is consistent with
398 State Law". Atty. Whitelaw said that one of the problems is that one of the purposes of the Zoning
399 Ordinance is to put the public and the applicants on notice as to what they are supposed to be doing so
400 while on the one hand it would be easier to say go look at the RSA and nothing else but as a regular
401 person it is difficult to determine what an RSA means so it doesn't meet the purpose of providing
402 information. Atty. Whitelaw continued that the application should provide the criteria that someone is
403 supposed to meet.

404 Mr. Simpson asked Atty. Whitelaw and was informed that there can be one person who serves on both
405 the Planning and Zoning Boards though the problem is that any time a Planning Board decision is
406 appealed to the Zoning Board they have to step down.. There was a question about a Zoning Board
407 member making a comment to the Planning Board about a Site Plan Review. Atty. Whitelaw said it was
408 fine as there is no conflict of interest to appear in front of any other Board other than the Zoning Board
409 though what you have to do is make it clear that you are appearing as a citizen and not as a Zoning
410 Board member.

411 Chairman Frothingham asked about criteria for a non-public session. Mr. Simpson said that you need
412 91-a in front of you and you should have the relevant section copied and in your file. Atty. Whitelaw
413 said that there very limited times when the Zoning Board would go into non-public and the only time
414 that comes to mind is if they were going to discuss something that they could honestly say would cast
415 dispersions on someone's character. Donna Nashawaty, Town Manager, said that she would like a 91-a
416 training session and all the Boards will be invited. Atty. Whitelaw said that 91-a still involves the Zoning
417 Board about records and open meetings and subcommittee postings, etc.

418 Chairman Frothingham said he is unsure how to proceed with the Rules and Procedures at this point.
419 Mr. Schneider said that he would like to read the information and try and put it all together. Atty.
420 Whitelaw suggested that the Board have someone, perhaps Mr. Simpson, look into other Town's Rules
421 and Regulations to see if there are any that they like the way that they are set up and if there are types
422 of provisions that work for them. Mr. Simpson said he is happy to see if he can look for other versions
423 and do some research. Donna Nashawaty said that she has access to a list serve with the managers
424 group and if the Board would like she can for copies of rules and procedures from other towns and then
425 forward them to the Board. The Board said they would like her to do that.

426 Chairman Frothingham suggested tabling the Rules and Procedures until another time though it is
427 important to not keep shelving them. Mr. Simpson asked what it was in the Rules and Procedures that
428 people do not like and why they are reviewing them. Chairman Frothingham said that they were last
429 amended in 2001. Mr. Simpson was asked if he was willing to draft Rules and Procedures and Mr.
430 Simpson said no, he would like to wait to see what the Board gets and what they are happy with. Mr.
431 Schneider asked for the Rules and Procedures to be in electronic format. Chairman Frothingham said
432 that he understands that it might take a while to do right and it might be a few months in order to
433 solidify them but it has been two years that he is aware of that the Board has been trying to work on
434 them. Mr. Simpson said that he has volunteered and will bring what he finds back to the Board.
435 Chairman Frothingham said that if the Board has a meeting with only one case or a night with no cases it
436 might be a time to look at them again.

437 Dick Katz made a motion to adjourn the meeting at 8:25 PM. Daniel Schneider seconded the motion.
438 The motion passed unanimously.

439 Respectfully submitted,

440 Melissa Pollari

441

442

443 Edward Frothingham

Aaron Simpson

444

445 Dick Katz

Clayton Platt

446

447 Daniel Schneider