

CITY OF ROCHESTER, NH
ZONING BOARD OF ADJUSTMENT

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MAY - 4 2011
Planning Dept.

FIDAE AZOURI

Case No. 2011-09

MOTION FOR REHEARING

NOW COMES Fidae Azouri, of 172-174 Milton Road, Rochester, New Hampshire, 03867, by and through his attorney, James H. Schulte, and submits this Motion for Rehearing, as follows:

1. The applicant filed for a variance to obtain a junkyard license with substantial limitations for the property located at 172-174 Milton Road.
2. At the meeting of the Rochester Zoning Board of Adjustment held on April 13, 2011, the ZBA voted to deny the request for variance.
3. The property located at 172 -174 Milton Road contains several uses, including the sale of all types of motor vehicles including "salvage" vehicles as classified by the State of New Hampshire.
4. The applicant proposes to purchase salvage titled vehicles and then sell such vehicles overseas.
5. The regulations of the United States Bureau of Customs permit the export of "salvage" vehicles, but require that the seller be licensed as a junkyard or salvage dealer.
6. The State of New Hampshire does not have a provision for a "salvage dealer".
7. The applicant's business model involves the purchase of "salvage" vehicles at auction, transporting such vehicles to the Milton Road property on trailers for temporary storage, and then transporting such vehicles on trailers to the port for shipment overseas.
8. No work would be done on such vehicles while they are temporarily stored at the Milton Road property. No parts would be added or removed, and no used parts from the vehicles would be sold. No change to the condition or configuration of the vehicles would be performed at the site.
9. The Rochester Planning Board has approved the use of this property for the purpose of

parking up to five trucks or trailers on the property.

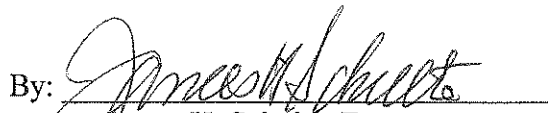
10. The applicant's request for a junkyard license with restrictions is in furtherance of the permission already granted by the City of Rochester to allow the temporary storage of salvage vehicles on trailers on this property.
11. The applicant requires a junkyard license solely because of the requirements of the Bureau of Customs. The actual nature of the temporary vehicle storage on site does not require a junkyard license because the use itself has already been approved by the City. The license requirement comes only from the customs regulations and not from any zoning or planning considerations. The Bureau of Customs requires that the overseas shipment of salvage vehicles come through a licensed junkyard.
12. The applicant is willing accept the restrictions which the City of Rochester or the Rochester Zoning Board of Adjustment might impose on a junkyard license in order to ensure that the approved use of the property does not change from the present situation where vehicles on trailers are allowed to be temporarily stored on the property. Placing restrictions on the junkyard license will ensure that the condition of the vehicles remains intact while they are located on the applicant's property and to ensure that no full scale junkyard operation is conducted on the applicant's property.
13. If the ZBA does decide that a variance is required for the limited use proposed by the applicant, then the variance would be requested because junkyard use is not permitted in this zone even though the applicant is not proposing a use that would be classified as a regular junkyard.
14. The applicant suggests, however, that the ZBA may conclude that no variance is required in order for the applicant to receive the type of junkyard license with restrictions that is being proposed. The ZBA may well conclude that the temporary storage of salvage vehicles on trailers on site is a use which is accessory to the other uses which are permitted for this site, and that the City may therefore issue a junkyard license with restrictions without the need for a variance.
15. If the ZBA does decide that no variance is needed because the proposed use is accessory to previously permitted uses, then the procedure to be followed by the ZBA should be to grant a rehearing in this matter, and to then take a formal vote that no variance is required. Such action by the ZBA would allow the applicant to request the license from the Rochester City Council.
16. The temporary storage of salvage vehicles on trailers will have no impact on the values of abutting properties. The applicant notes that there are two fully operational junkyards located in close proximity to this property and the junkyard uses conducted there are substantially more intrusive than this proposed temporary location of salvage vehicles on

trailers on the subject property.

17. Granting this variance would not be contrary to the public interest because there are other motor vehicle junkyards located nearby and the actual operation conducted on this property will not involve the typical method of operation of a junkyard. The need for a junkyard license is related to Bureau of Customs requirements rather than the operational requirements of this property.
18. Denial of this variance would result in unnecessary hardship to the applicant because granting the variance would have no impact on the property or the neighborhood while denial of the variance would have a substantial negative impact on the applicant's business. The actual storage of vehicles on trailers is already permitted for this site, and that actual use will not change. The variance is needed not because of the actual use but because of the licensing requirements of the Bureau of Customs.
19. Granting the variance would do substantial justice because the actual use to be conducted on the property is already permitted for the property and the need for the variance is due only to the requirements of the Bureau of Customs.
20. Granting the variance is not contrary to the spirit of the ordinance because the actual use to be conducted on the property is accessory to existing uses and the need for the variance is due only to the requirements of the Bureau of Customs.
21. For the reasons stated above, the applicant respectfully requests that the members of the Zoning Board of Adjustment vote to grant a rehearing in this matter, and that following this rehearing, that the members either vote to grant the variance requested by the applicant or vote that no variance is required in order for a junkyard license with restrictions to be granted by the City of Rochester.

Respectfully submitted,

Fidae Azouri

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