

**Town of Cornish, New Hampshire
Zoning Board of Adjustment
Case 21-01
Public Hearing
February 15, 2021**

The Cornish Zoning Board of Adjustment met on Monday, February 15, 2020, at 6:30 pm in the Cornish Town Offices. Due to the COVID-19/Coronavirus crisis and in accordance with Governor Sununu's Emergency Order #12 pursuant to Executive Order 2020-04, the Chair found that the Board was authorized to meet electronically. Present at the Town Offices was Stu Hodgeman. Attending via zoom were Jason Bourne, Acting Chair, Karim Chichakly, Michael Fuerst, and Kate Freeland.

Also present was Heidi Jaarsma, recording secretary.

Attending via Zoom Merilynn Bourne, Applicant, Bucky Demers, Denis Demers, April Jarvis, Judith Kaufman, Bill Lipfert, Betty Miller, Doug Miller, and Laura Ploof.

Jason Bourne called the meeting to order at 6:30 p.m. Mr. Bourne read the e-meeting checklist, attached.

Case 21-01

Stuart Hodgeman stated that notice had been given that a hearing would be held electronically at 6:30 PM on February 15, 2021, concerning a request by Merilynn Bourne and Christopher Chilton for a Special Exception concerning Article IV, Section B, of the Cornish Zoning Ordinance.

The applicants have proposed an Automotive Repair Garage on property located at 681 Town House Road, Map 6, Lot 19, Cornish, New Hampshire, in the Rural Zone.

Six certified letters were sent. Six receipts had been received. The notice was posted at the Cornish Post Office, the Cornish Town Offices, and the Cornish Elementary School. Notice was posted in the legals section of the *Valley News* on February 5, 2021.

Jason Bourne recused himself and passed the gavel to Karim Chichakly. Mr. Chichakly named the following as voting members: Karim Chichakly, Kate Freeland, Michael Fuerst, and Stu Hodgeman. Michael Fuerst noted that at least three members would have to vote in the affirmative to approve the application since there were only four voting members and added that the applicant had the right to demand an appearance before five members. Ms. Bourne stated that she would like to move forward.

Background

Ms. Bourne explained that she and her son, Christopher Chilton, would like to sell the property to Bucky Demers. Mr. Demers wanted to ensure that an automotive garage could be permitted prior to purchasing the property. Ms. Bourne shared a proposed plan. A new garage will be constructed and the driveway will be re-laid out. The garage would be constructed down the

bank, below the existing mobile home. Bucky Demers, prospective owner, stated that he has been working for Cornish car customers since 1989. He would like to continue to serve Cornish with a small garage. He needed enough space to work on a couple of cars per day in order satisfy the needs of Cornish car owners. Ms. Bourne added that she understood that the operation would be similar to the operation of Straightaway Auto located on NH Route 120. Mr. Demers continued that hours of operation would be from 9:00 AM – 5:00 PM, Monday through Friday. Mr. Demers stated that he would be considerate of his neighbors and the property. Karim Chichakly noted that the proposed plan seemed to show the leach field in a different location and asked if the leach field would be moved. Ms. Bourne stated that the plan was not to scale and that there was no plan to move the leach field. Laura Ploof, an abutter, stated that she fully supported the project. She felt that the proposed automotive garage would be good for Cornish and that the hours of operation were fitting to the neighborhood. Ms. Ploof continued that the garage would serve the community and was an essential need. Betty Miller stated that she and her husband, Doug Miller, were abutters to the property. They supported the project and had absolutely no problems with an automotive repair shop in the location. Mr. Miller concurred. Heidi Jaarsma read a letter received from the Millers on February 11, 2021, into the record:

Re: Zoning Board of Adjustment Case #21-01

We understand that Merilynn Bourne and Christopher Chilton have requested a Special Exception on behalf of Bucky Demers who intends to buy the property and open an automotive repair garage. We would welcome Bucky to live next door to us and operate his business there. As such, we have no objection to this request and in fact do support it.

*Betty and Doug Miller
719 Town House Road*

Mr. Chichakly closed the meeting to public comment. Michael Fuerst asked under what provision of the ordinance was Ms. Bourne requesting a special exception. Ms. Bourne referenced the Article IV.C.7a, Automotive Repair Garage. Mr. Fuerst pointed out that since the application was not for a Multiuse Conversion and the proposed principal use of the property was as an Automotive Garage, the mobile home could not be rented as a residence. Mr. Demers stated that planned to use the existing mobile home as an office space and had no plans to live there or rent it out.

Kate Freeland asked the size of the lot. Ms. Bourne replied that the lot measured 1.9 acres. Ms. Freeland made reference to Article IV.C.7a of the Ordinance regarding storage of oil and antifreeze, which must be stored at least 35 feet from any property line and 75 feet from any well. Bucky Demers stated that it would be absolutely possible. Antifreeze is picked up by Crystal Clean, and all oil is burned in a waste oil furnace. Kate Freeland asked regarding the dimensions of the proposed garage. Mr. Demers replied that the garage would measure 52'x36' and would contain four bays and two lifts.

Stu Hodgeman asked if Mr. Demers intended to sell any cars or would just be fixing cars. Mr. Demers said that he would like to have one or two cars for sale since it would propagate his own

business. Karim Chichakly asked if Mr. Demers was requesting two cars for sale as part of the application. Mr. Demers discussed the advantages of selling cars in conjunction with an Automotive Repair Garage.

Michael Fuerst stated that the ordinance allows a maximum of two cars for sale at any time and that there is to be no dispensing of gasoline or diesel. Mr. Fuerst asked how much repair would be conducted outside the building. Mr. Demers stated that very little to no repair would be done outside other than looking under the hood of a car.

Mr. Chichakly asked if Mr. Demers planned to open the garage on Saturdays. Mr. Demers replied that he had no plans to operate the business on Saturdays.

Michael Fuerst asked Mr. Demers if he were aware that application was for Automotive Repair only. He could not rent out the mobile home, for example. Mr. Demers replied that he understood the application.

Mr. Chichakly asked about possible conditions. He reviewed a-i of Article IV.C.7a General Use Provisions, Automotive Repair. There were no questions from the Board. Mr. Chichakly read from the conditions of the 2003 decision regarding Straightaway Auto. Michael Fuerst noted that the 2003 decision had been a for variance. Mr. Fuerst asked Mr. Demers to describe the storage of liquids and fluids with regard to State law. Mr. Demers stated that all oil was disposed of in his waste-oil furnace. Antifreeze is put in clean 55-gallon drums, and Crystal Clean, an environmental services company, picks up the barrels for recycling. Mr. Chichakly asked if that was in compliance with State regulations. Mr. Demers said that it was. His intention was to keep the garage clean. Michael Fuerst asked if the State allowed floor drains. Mr. Demers said he was not sure, but that regardless floor drains were a bad idea, and his garage would not have one. Kate Freeland asked about employees. Mr. Demers said that eventually he would like to have one employee.

Mr. Chichakly reviewed the conditions to the 2003 approval of Straightaway Auto. Michael Fuerst said that it might be made clear in the conditions to the application before the Board that the mobile home could not be used as a residence without further approval of the Town. Mr. Fuerst asked Mr. Demers if keeping the doors open or closed made sense given the aspect of the building. Mr. Demers said that the side of the building might be visible from one point on Town House Road. Mr. Fuerst asked how inconvenient keeping the doors closed would be. Mr. Demers stated that generally, the doors are shut in the winter time.

Mr. Fuerst asked about signs. Mr. Demers would like a small 3'x3' sign on a pole by the road and a small sign on a building. For inspection stations, Mr. Demers added that the State does have some size requirements for signs. Kate Freeland asked about the sign on the pole. She stated that she felt the sign on the pole was not in keeping with the area. She asked if Mr. Demers would consider just having a sign on the existing barn. Mr. Demers said that the sign was wooden and in good taste: he felt it was a nice sign. He had envisioned having it close to the building and would like to be able to have the sign there. Ms. Bourne noted ABC radiator had a sign in the same location. Stu Hodgeman said that the ABC Radiator sign had not been

obtrusive. Mr. Chichakly stated that it was not so tall as the proposed sign. Mr. Demers said that he would like the sign above snow level at least.

Kate Freeland asked about the use of the existing outbuilding. Bucky Demers said that he intended to use that building for overflow storage, equipment, and his personal car. Michael Fuerst asked how many cars would typically be on the site. Mr. Demers estimated 2-3 personal vehicles and 4-5 customer vehicles for an average of 5-8 vehicles at any given time. If work is backed up, Mr. Demers continued, there could be a be 8-10 vehicles. Merilynn Bourne pointed out that the cars would not be visible from the road. Michael Fuerst asked if Mr. Demers would have to go through Site Plan Review. Mr. Chichakly stated that the Selectboard would require Site Plan Review and added that the Planning Board could not turn the use down, but might add further conditions.

Kate Freeland suggested the same conditions that were made as part of the 2003 Straightaway Auto decision with the addition of specifying no occupancy for the mobile home. Stu Hodgeman asked about Site Plan Review. Mr. Chichakly felt that did not need to be part of the decision. Michael Fuerst suggested that the existing outbuilding not be used for auto repair. The following conditions were suggested.

1. Hours of operation 9:00 AM – 5:00 PM Monday through Friday. Doors to be shut at 5:00 PM Monday through Friday.
2. All repair work is to be done inside the garage with the exception of washing a car.
3. Outdoor car washing is restricted to five cars per week.
4. No tuning testing or revving up of the race car engine is permitted outdoors or inside the garage with the doors open.
5. No body work or painting other than light rust work for state inspection.
6. Washing of auto parts, steam cleaning of engines, etc., is prohibited outside the garage.
7. Small engine repair as well as repairing ATVs, motorcycles and snow mobiles is prohibited.
8. There may be no more than two FTEs including the owners.
9. There are to be no floor drains. All liquids are to be containerized. Oil is to be recycled or used in an oil-fired furnace. Antifreeze is to be recycled.
10. No fumes except exhaust fumes are permitted.
11. Maximum number of cars permitted on the lot for overflow is 10.
12. A 4'x4' road sign, a smaller building sign, and an inspection sign are permitted.
13. Exterior lighting should provide abutters with minimal glare.
14. Conditions of operation cannot lead to excessive noise or glare.
15. The towing service is allowed as an accessory use and is limited to one flatbed car hauler. Flashers are to be turned off once the truck has entered the property.
16. The mobile home cannot be used as a residence without further approval from the ZBA.
17. The front garage cannot be used for auto repair, but can be used for storage.
18. The size of the garage in which repair is to be conducted is limited to 52'x36' and will be one story with lifts.
19. The use must comply with provisions a-i, Article IV.C.7a of the 2020 Cornish Zoning Ordinance:

- a) Must remain at all times in compliance with all State and Federal environmental guidelines.
- b) Lot size shall be at least one acre.
- c) Set backs are to be as per the zone requirements.
- d) Any fuel, oil, or antifreeze shall be stored at least 35 feet from any property line and at least 75 feet from any well.
- e) There shall not be more than 2 access driveways from any road. The maximum width of each driveway shall be 50 feet.
- f) The business shall not
 - i. Generate non-residential levels of vibration, glare, smoke, dust, fumes, odors, or heat.
 - ii. Produce noise of such volume or frequency as to be unreasonably offensive at or beyond the property line. Unreasonably offensive noises, due to intermittence, beat frequency, or shrillness shall be muffled so as not to become a nuisance to adjacent uses.
 - iii. Require the use of on-street parking.
- g) A maximum of 2 vehicles can be offered for sale at any time.
- h) No dispensing or sale of gasoline or diesel fuel.
- i) No major repair work is to be performed outside the building.

Karim Chichakly asked if the size of the garage should be in the motion. Kate Freeland said that it seemed reasonable to say that the size of the building should be as presented. Kate Freeland asked about the height of the building. Mr. Demers said that the lift required 14', so the height of the building would be 14' plus the pitch on the roof. Michael Fuerst said that he did not want to make the dimensions too narrow. There followed a discussion of the reasoning for the dimensions on the current plan. Michael Fuerst said that the original Straightaway Decision regarding cars was due to the surrounding wetlands. He added that there could be a little wiggle room in the decision in the case that the current dimensions did not prove feasible. Karim Chichakly said that typically the approved dimensions are those presented on the plan..

Kate Freeland made a motion to approve the application for a Special Exception subject to the list of conditions, above. Stu Hodgeman seconded the motion.

Karim Chichakly asked the Board to review and make findings regarding the criteria given in Article X.F.1(d). All votes were by roll call:

1. *The capacity of existing or planned community facilities.*
The Board found no adverse effect, 4-0.
2. *The character of the area affected.*
The Board found no adverse effect, 4-0.
3. *Traffic on roads and highways in the immediate vicinity.*
The Board found no adverse effect, 4-0.
4. *Town services and facilities.*
The Board found no adverse effect, 4-0.
5. *Neighboring land uses present and prospective.*
The Board found no adverse effect, 4-0.

6. *Significant wildlife habitat, trails, natural, scenic or historic features.*
The Board found no adverse effect, 4-0.

Mr. Chichakly asked the Board to review and make findings regarding Article X.F.1(e), 1-2:

By a vote of 4-0, the Board found that the site is an appropriate location for the use, giving due regard to such factors as topography, soils, surface and groundwater, vehicular access including internal access and the public road system serving the site, significant wildlife habitat and trails, significant natural, scenic or historic features or sites.

By a vote of 4-0, the Board found that the use will not involve uses, activities, processes, materials, equipment or conditions of operation that will be detrimental to any person or property, or to the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare or odors.

Karim Chichakly asked for a vote on the Special Exception. The vote was by roll call and in the affirmative, 4-0. Michael Fuerst suggested that the motion restate that the Special Exception was granted pursuant to Section IV.B of the Cornish Zoning Ordinance with the conditions listed and made a motion to that effect. Stuart Hodgeman seconded the motion, and the vote of the Board to amend the main motion was by roll call and in the affirmative, 4-0. Mr. Chichakly called for a vote by roll call on the main motion, and the vote of the Board was in the affirmative, 4-0.

Acting Chair Chichakly passed the gavel to Acting Chair Jason Bourne.

Approval of Minutes

Stuart Hodgeman made a motion to approve the September 21, 2020, minutes as written. Kate Freeland seconded the motion. The vote of the Board was by roll call with all voting in the affirmative, 4-0. Michael Fuerst abstained.

Karim Chichakly made a motion to adjourn. Michael Fuerst seconded the motion, and the vote of the Board was by roll call with all voting in the affirmative, 5-0. The meeting was adjourned at 8:04 PM.

Respectfully submitted,
Heidi M. Jaarsma