

**Town of Auburn
Zoning Board of Adjustment
April 28, 2015**

Present: Mark Wright, Chairman, Jim Lagana, Vice Chairman, Mike DiPietro, Elizabeth Robidoux and Jeffrey Benson, Members. Robert Beaurivage, Peggy Neveu and Kevin Stuart, Alternate Members. Minutes recorded by Denise Royce.

Absent: None.

Mr. Wright called the meeting to order at 7:06 p.m. Mr. Wright explained the procedures for tonight's hearing and noted that there was full board tonight and proceeded to introduce the Board members to everyone present.

At this time, Mr. Wright asked Ms. Royce to read the first application for the record.

Case #15-08

David and Irene Dulac

Old Candia Road Properties, LLC

205 Old Candia Road – Map 13, Lot 14-1

Zoned Commercial Two

Applicant is requesting a special exception to allow for mixed residential/commercial use in a Commercial Two zone. (Article 4, Section 4.07(5)(m))

Mr. Dulac read his application into the minutes for the record.

Mr. Wright asked if there were any abutters. Mr. Swiatek of 175 Old Candia Road asked Mr. Dulac what the intention of the mixed residential/commercial use was for. Mr. Dulac stated that he would like to sell his property in Gilford, NH and live in the apartment in the summer and buy something in Florida for the winters. Mr. Dulac stated that it would be located within the existing building.

Mr. Connor of 1314 OCR Properties, LLC who owns the lot next to Mr. Dulac that does not have an address yet questioned the Section that was being referred to in the Zoning Ordinance. Mr. Wright explained that there was a typo in the Zoning Ordinance that there was two (2) "L's" and that mixed residential/commercial should be "M". Ms. Royce and Mrs. Rouleau-Cote pointed out that it was a typo in the Zoning Ordinance and it was correct as being "M".

Mr. Wright asked Mrs. Rouleau-Cote if she had any comments. Mrs. Rouleau-Cote stated that she and Captain Saulnier would be working with the applicant with the conversion issues from converting it from business to residential. The only other thing would be that he may need to modify his site plan with some language that now takes away one of the commercial units into a residential unit. Mr. Wright asked if this would

be something that he would need to go before the Planning Board. Mrs. Rouleau-Cote said yes. Mr. Wright wanted to clarify that if the Board were to grant the Special Exception would still require him to go before the Planning Board and then Mrs. Rouleau-Cote would work with the applicant with regard to a building permit. Mrs. Rouleau-Cote stated that it would be a minor site plan review at the Planning Board level because it would not need any additional engineering. It would be just a matter of modifying the recorded site plan which indicates what's really happening on the property.

Mr. Lagana remembered that Mr. Dulac was before the ZBA Board last year for Commercial Establishment correct. Mr. Dulac said yes and that they only want two Commercial Units and one Residential Unit. Mrs. Rouleau-Cote informed the Board that there is nothing to say that he can't rent it out. Mr. Dulac explained that no one wants to rent it out and that they were looking to rent it out to a plumber or electrician.

Mrs. Robidoux asked if they granted this what kind of substantial justice would occur. Mr. Dulac said that they would use the space that they can't rent.

Mr. Wright asked the Board if they had any further questions. Mrs. Robidoux asked the number of bedrooms. Mr. Dulac stated two (2). Mr. Benson reiterated what Mr. Lagana had said earlier that it would be based on the previous approvals. A brief discussion occurred with regard to the previous approval. Mr. Lagana asked Mr. Dulac if he would be satisfied with one portion being commercial and one being residential and cancelling out the previous approval. Mr. Dulac was agreeable with that.

Mr. Lagana made a motion to vote on the application as presented this evening with the condition that there would be one commercial portion and one residential portion of the building exists and site plan review with the Planning Board; Seconded by Mr. Benson. Mrs. Robidoux voted to grant, Mr. DiPietro voted to grant, Mr. Benson voted to grant, Mr. Lagana voted to grant and Mr. Wright also voted to grant. The motion passed in the affirmative.

Case #15-09

David and Michelle Mudge

425 Manchester Road – Map 25, Lot 4

Zoned Residential Two

Applicant is requesting an Appeal from an Administrative Decision that the Building Inspector made regarding repairing and sales of classic cars in a Residential Two zone. (Article 13, Section 13.11)

Mr. Mudge read his application off of a sheet he passed out to each Board member into the minutes for the record. (A copy of which is located in the Zoning Board file) Mr. Mudge believed his use of the shop was being blown out of proportion.

Mr. Wright asked if there were any abutters present. Ms. Piper and Mr. Racino of 423 Manchester Road stated that Mr. Mudge has been nothing but a great neighbor.

Mr. Wright asked Mrs. Rouleau-Cote if she had any comments. Mrs. Rouleau-Cote stated that she has been in contact with Mr. Mudge and has asked him to show her proof that this business has been ongoing for the number of years that he's stated. Mrs. Rouleau-Cote further added that when his wife was before the Board several years ago for her Justice of the Peace business that there was no mention of this business. Mrs. Rouleau-Cote pointed out that there is paperwork about Dave's Repair Shop that Mr. Jore did sign however, she did not believe that Mr. Jore should have signed it because he checked off that it complied with all zoning and reviewed the documents with the Board at this time. Mrs. Rouleau-Cote did not want to be in the same position as Mr. Jore in signing off on something that she felt required a variance to operate. Mrs. Rouleau-Cote also pointed out that, that she has asked Mr. Mudge to provide documentation or anything that would show that this has been going on for that amount of time and to date he has not provided any documentation so that along with testimony he provided at a public hearing when his wife was looking for relief to allow her Justice of the Peace business on the property. Mrs. Rouleau-Cote further pointed out that at that hearing Mr. DiPietro asked Mr. Mudge if there was another business on the property and Mr. Mudge answered by saying that "it was open to interpretation that when he moved in there was a garage and that he would like to keep that opportunity open so when he retired that he could work on lawnmowers." There was no mention at that time that he worked on classic cars so before she would sign off on any form from the State of New Hampshire that could potentially go with the land she believed that he needed to seek a variance or the Zoning Board would need to overrule her interpretation and grant Mr. Mudge his appeal. Mr. Wright asked what caused this to come up now and not two or three years ago. Mrs. Rouleau-Cote stated that she never noticed any business going on there and when Mr. Mudge contacted her from Florida he asked her to write a letter to the state acknowledging his business and she had nothing that acknowledged "Dave's Classic Repair Shop." Mrs. Rouleau-Cote pointed out that she has sent other people before the ZBA with this same thing. A brief discussion ensued with regard to the request from the state.

Mrs. Rouleau-Cote informed Mr. Wright that she believed that Mr. Mudge had to change his business name which is why it came before her. Mrs. Rouleau-Cote reiterated that Mr. Jore denied the first two and then approved the third request. Mr. Wright asked Mr. Mudge what caused the state to request the town to sign off. Mr. Mudge began by saying that as of January 1st the state requires a registered trade name and Dave's Repair Shop was not a trade name because it had never been a requirement for the 17 past years as this was new and now have a registered trade name for Dave's Classic Repair Shop because Dave's Repair Shop was taken so he had to choose a new name. Mr. Wright asked Mr. Mudge that this was something new. Mr. Mudge said he did not have that requirement. Mr. Wright asked to see what he received from the state. Mr. Mudge presented Mr. Wright with his license and the registered trade name. Mr. Stuart asked if the state gave him a sticker annually. Mr. Mudge said yes, annually nonstop. Mr. Stuart asked what was written in the letter that everything was

private. Mr. Mudge said that Mrs. Rouleau-Cote wanted copies but they would not give him copies. A discussion ensued with regard to the state requirements. Mr. Wright asked if Mr. Mudge was operating without a registered trade name for 17 years. Mr. Mudge said yes because it was not a requirement that you could but he never did previously. Mr. Wright pointed out to Mr. Mudge that he did not know what law Mr. Mudge was talking about because the trade name law is RSA 249 which has been in existence for a long time so any business that conducts business other than under their legal name has always been required to register that name as a trade name and did not believe that there was anything unique to automobile businesses. Every business your conducting if it's not under your legal name David Mudge you were always required for many years to go and register your trade name. Mr. Wright believes that what happened was Mr. Mudge never registered his trade name and when he went to register it that the name was already taken and then had to adjust it and then allowed you to register your trade name. Mr. Mudge said that what Mr. Wright said was partially true but what was true was that he was not required to have a state license and to have a registered trade name until this year because it was not required.

Mr. Mudge wanted to address a comment with regard to Mr. Ficek, the previous owner applying for the same permit that Mr. Jore gave him that he knew about that and that he worked very closely with Mr. Jore cause he knew everything that was going on and what happened was that there were many problems with Manchester Water Works with things that he had done at his house without any permits because his septic system was on Manchester Water Works land that he could not buy the house. Mr. Mudge stated that he worked very closely with Mr. Jore and Manchester Water Works and would not have spent the money he did on that house without being able to work in the garage to do classic automotive stuff. Mr. Mudge stated that Mr. Jore knew that it would be a very clean operation and that is why Mrs. Rouleau-Cote did not even know that the business existed. Mr. Wright asked about the three (3) forms that were found in the file where Mr. Jore checked off that it was in compliance. Discussion ensued with regard to the three (3) forms. Mr. Wright asked Mr. Mudge if he was planning to do auto inspections. Mr. Mudge said that was not discussed but said that he was not doing regular auto repair but working on classic cars. Mr. Mudge said no stickers. Mr. Wright asked about the records Mrs. Rouleau-Cote asked for and if he paid a fee each year to renew. Mr. Mudge said yes each year he would pay a fee to renew his license. Mr. Wright asked about the volume of cars from 1998 until now that Mr. Mudge would work on. Mr. Mudge said that the volume was very low because he was one person and that if he was sick or in Florida and that he could spend years on one classic car. Mr. Wright asked that he only worked on classics. Mr. Mudge said 90% but it was not to say that he would not work on a friend's car. Mr. Wright asked Mr. Mudge that from 1998 to present that he has at least been working on one classic car each year. Mr. Mudge said yes. Mr. Wright asked about records. Mr. Mudge said yes that he has to keep them for the state. Mr. Wright asked what type of records. Mr. Mudge stated that when they were bought and when they were sold. Mr. Mudge said that he could not have stayed in business if he was not in compliance with the state. Mr. Mudge talked a little about Mr. Jore and why the previous owner was not allowed to do what he was able to do.

Mr. Stuart asked Mr. Mudge if he had another job from 1998 forward. Mr. Mudge said yes that this was not always a full time job that he would do this on off hours. Mr. Mudge stated that he retired at age 60 and that he was 69 now so for 9 years this was all he had. Mr. DiPietro asked if he ever let his license lapse. Mr. Mudge said never. Mr. Lagana asked about the letter from the Building Inspector dated March 2, 2015 in the last year she stated that "any previous authorization of the use of the property has lapsed because it has ceased continuous use for a period of one year." That was a statement that our Code Enforcement Officer made back in March 2015 and back in 2010 when the Justice of the Peace application came before the ZBA that you were asked then if there were any other activities on the property that the answer was that there was a lawnmower repair business and no mention of a classic car repair business. Mr. Mudge answered by saying that to explain the operation that he does not advertise and that he was only doing classics that it was easier that way. Mr. Lagana believed that it was critically important because there was an awful lot of discussion about multiple commercial uses on this residential property and that he would have to agree that had we heard that the proposed JP business, lawnmower repair and classic auto repair which would be three (3) activities on this single piece of property which would have played an important factor in their decision making. Mr. Mudge stated that he was going for something to allow his wife to do the Justice of the Peace business and not the repair shop and that the lawnmower repair shop had just started because of his disabilities. Mr. Mudge talked about being grandfathered and that it was all interpretation. Mr. Lagana stated that if he had just started to work on lawnmowers that if he was a licensed repair dealer since 1998 that wouldn't it have been more appropriate for him to talk about the existing business that has been going on there for 12 years than to talk about a new lawnmower repair entity just starting up.

Mrs. Mudge wanted to address the Board about the Justice of the Peace and that the reason the question was brought up about the JP business was traffic because there was a neighbor that was concerned about traffic and a lot of people coming and going and they showed where the parking was and that what he was doing did not apply to that issue.

Mr. Beaurivage asked Mr. Mudge if he still had a lawnmower repair shop. Mr. Mudge said yes that it was a repair shop and would be open for interpretation and that if Mr. Jore was alive that this would not be occurring. Mr. Lagana asked Mr. Mudge again about going up to the Dealer desk and asked for copies that they would not give them to you. Mr. Mudge said correct they would not and will go on record and state that. Mr. Lagana asked if he paid for copies would they give them to him. Mr. Mudge said no but if they wanted to call them they would talk to him. Mr. Wright asked Mr. Mudge if he could go back for every year that he has been in business to show them that there has been continuous use for what Mr. Mudge described that he had a vehicle in there every year. Mr. Wright stated that this is what he would like to know and would like to see from Mr. Mudge. Mr. Wright stated that it sounds like Mr. Mudge has been diligent in keeping records and it sounds like the state requires him to do so as well. Mr. Wright further pointed out that any business typically keeps receipts of payment and people dropping things off and what it would cost and would like to see more. Mr. Mudge

stated that he was not working on other people's vehicles and not advertising and doing work for other people and that he buys and fixes classics on his own. Mr. Wright asked about receipts for parts and things that he buys. Mr. Mudge stated that he does not keep records to that point but he is required to keep records for the state. Mr. Mudge further stated that the state would not give him the license if he did not keep records for five (5) years and that is done at the state level. Discussion ensued with regard to Mr. Mudge not keeping receipts because it was a big hobby. Mr. Wright asked Mr. Mudge if he made any money off selling these cars. Mr. Mudge stated that he probably made very little off doing this as it is more of a hobby and he has always had a full time job. Mr. Wright asked how he accounted for it for tax purposes and asked him if he declared income that he made off of these cars and deducted for parts purchased. Mr. Mudge said that if Mr. Wright was the IRS then he would answer that question but did not think his finances were pertinent here. Mr. Wright stated that it had nothing to do with finances but it was regarding running a business. Mr. Mudge stated that the state was the proof. Mr. Stuart asked Mr. Mudge about the state coming in and inspects his records and how often did the state come in to inspect his records. Mr. Mudge said every year. Mr. Stuart asked what type of records they were looking at. Mr. Mudge stated that they wanted to make sure that he had the proper documentation for non inspectable vehicles and VIN number verification forms to prove that they were not stolen. Mr. Stuart said so the state has the documentation. Mr. Mudge said yes but he could not get copies because they were private and all they would give him was that letter. At this time, the Board members reviewed the letter. Mr. Wright asked what type of documentation did the state have. Mr. Mudge stated that they have a checklist that he has checked all the previous sales and did not understand all the hoopla about what he's doing and he just wants to be able to do what he does.

Mr. DiPietro asked how big his building was. Mr. Mudge said 44 by 28 feet and that was just the garage. Mr. DiPietro asked when it was built. Mr. Mudge said 1969 as it was there for the previous owner.

Mr. Lagana asked Mr. Mudge about Mrs. Rouleau-Cote's interpretation that the business lapsed. Mr. Mudge stated that it was because he was not doing much and that he never let it lapse and that it was a wrong interpretation and did not know where she got that information and that she has never seen the inside of her garage. Mr. Lagana believed it was possible from the testimony at the last hearing for the JP business that it was not mentioned. Mr. Mudge said unfortunately that interpretation has caused a problem and could understand that. Mr. Lagana pointed out that there was a lot of discussion that night because of a neighbors concerns because of the multiple businesses on the property. Mr. Mudge said he was concerned and upset about that because of the signage because if the Board looked at Mr. Jore's thing that he could have put a sign out for his garage. That lady put him through hoops because of the JP business and his wife still couldn't do what she wanted to which was marry people by the lake which Manchester Water Works did not have a problem with.

Mr. Benson asked Ms. Royce about the letter from an abutter that he believed should be read into the minutes for the record. Mr. Wright read the e-mail from an abutter,

Kathleen Provost (a copy of which is in the file). Mr. Mudge pointed out to the Board members that she did not even live there and the garage has been there all those years.

Mr. Wright asked about Mr. Jore's paperwork where it stated paperwork sales only and no vehicles outside. Mrs. Robidoux believed it meant he could not bring any vehicles back. Mr. Mudge said that there is one truck on the side of the garage but it was a private truck because he needed the motor to put in his plow truck. Mr. Stuart asked Mr. Mudge when he purchased the property. Mr. Mudge stated that 1998 but that he was there prior to that because it took a lot of work getting it surveyed and stuff. Mr. Wright asked Mr. Mudge if he had any interaction with Mr. Jore after 1998. Mr. Mudge said that it was not necessary.

Mrs. Rouleau-Cote pointed out to the Board members that typically they kind of conditions that Mr. Jore gave was a action that a land use board would have taken and it was not up to her to decide it would be a land use board's decision. Mrs. Rouleau-Cote also stated that town counsel back in March stated that "you have made a zoning determination of which Mr. Mudge can appeal to the ZBA through the normal course. Should the ZBA accept this argument then you can sign off on the state form otherwise, I would advise that it would not be appropriate to sign a form indicating the use complies with the Auburn Zoning Ordinance since it clearly does not and the property owner has not established that he operates this business under any recognized exemption such as preexisting non-conforming use, variance or justifiable reliance on a former Building Inspectors representation." Mrs. Rouleau-Cote further stated that, that was her advice from town counsel and that was why she has not signed any forms. Mr. DiPietro stated that they all saw that. Mr. Mudge commented that, Mrs. Rouleau-Cote is saying that Mr. Jore did not have the right to give him that authorization and said that he found it hard to believe that he would have given it to him if he did not have the right to do so.

Mrs. Robidoux made a motion to enter into deliberations, seconded by Mr. DiPietro. The Board entered into deliberations at 8:17pm.

Mr. Wright began by saying that he believed the Board members had read through the case including the e-mail from Mrs. Rouleau-Cote as well as the letter from town counsel. Mr. Wright stated that Mrs. Rouleau-Cote is put in a position of wanting to be sure before she signed a document that it was legally accurate and can appreciate that and unfortunately that has put the Board in a position to act to resolve this one way or another. Mr. Wright pointed out the e-mail from town counsel where Mrs. Rouleau-Cote read the last part of it that does a pretty good job of laying out those issues. At this time, Mr. Wright opened it up to questions or comments from the Board members. Mrs. Robidoux pointed out Mrs. Rouleau-Cote's letter stating that there was no proof that this business has been operating throughout the years since 1998 so they cannot prove that it is a non-conforming use and he would need a variance. He appealed her decision and she looked up the RSA and there is no proof and Mrs. Robidoux cannot sign off on something without proof. In her opinion, she believes that Mrs. Rouleau-Cote made the

right decision and if the proof can be brought forward then it would be a preexisting use and Mrs. Rouleau-Cote could sign off on it. Mr. Wright thought preexisting non-conforming use is something they could find because in 1998 the ordinance did not permit that in that zone and it's not like the ordinance change and what they were doing was preexisting and became now non-conforming. Mrs. Robidoux stated that she was going more on Mr. Jore's decision. Mr. Wright believed that it was either justifiable reliance and the town is a stopped to deny that he was given permission that he relied on and to his detriment is being asked to stop but could go back in time or a variance. Those are the two pieces that they need to look at. Also, assuming there was justifiable reliance was there a break in the continuity at any point from 1998 forward that would have resulted in that no longer being something. Discussion ensued with regard to a variance and that Mr. Mudge was never given a variance. Mr. Stuart agreed with Mr. Wright's analysis. Mr. DiPietro also agreed with Mr. Wright's analysis.

Mr. Wright stated that as far as he knows that there has not been a change in the trade name statute that would have somehow previously exempted an automobile business that should have been a registered trade name because when you do business under a name other than your own that RSA 249 requires that you to register that name and every five (5) years you pay that \$50 and you register that trade name so that if someone sees that name they have a place to go to find out who is really operating that business. It may have been that the applicant had allowed it to lapse and in between someone else filed for a registered trade name that he had been using for those years or he never registered it and when he went to register it he realized that someone else had been using that name and would not allow him to register under that name. Mr. Wright further believed that if you go to the state and register a trade name and you pay the \$50 and you say that you have been in business since 1950 they will give you a piece of paper with a shiny seal on it which means absolutely nothing factually. It has very little evidentiary value in his opinion. Mr. Wright believed that they ought to be careful not to grant something that runs with the land in the way of a variance. Mr. Wright explained that if the property gets sold and or somehow we get another owner it may be that it doesn't run with the land like a variance would be. If their decision is that he does not get a variance, not that it's preexisting and non-conforming but that the Board is a stopped because a prior Building Inspector told him something that was not true and it put him in a bad spot and he relied on it and he made improvements. This does not mean that the Board will double down on the problem that was created that never should have been there. A brief discussion with the Board ensued with regard to the decision that Mr. Jore made back in 1998. Mr. Wright also pointed out that he could apply for a variance and the Board could grant it or not.

Mrs. Robidoux asked that under estoppel is the Board legally required if the Board finds something that they know to be wrong or something that was incorrect they should not perpetuate that correct. Mr. Wright said the whole point is there was a decision that looking back now was not correct and it was from a town official that had authority and a person who justifiably relied on that authority. Mr. Wright believed that if this was presented to our Code Enforcement Officer now that a different box would have been checked.

At this time, Mr. Wright wanted to hear from each of the Board members on their thoughts with this case. Mr. Stuart agreed with everything Mr. Wright said and thinks that they need to look at whether or not they need to grant a variance or not because of these other facts and they don't have to necessarily reach that conclusion and it may be beneficial not to and reiterated what the applicant had said that he was not interested in passing this on to another owner. Mr. Stuart believed that the document was a very crucial piece of evidence and that the document he produced from the state shows that he has been keeping his license up since this has started but we don't have any evidence proving that this has been going on since 1998. Mr. Stuart also pointed out the testimony made by Mr. Mudge back in 2010 does raise questions about it and believes that Mr. Mudge was trying to minimize what was going on at the property because he was there with his wife trying to obtain the JP business for her.

Mr. Lagana wanted to make a point with regard to the comment about the license renewals. Mr. Lagana sees a different slant on that because Troop G, Division of Motor Vehicles and Department of Safety is in charge of renewals and they have hired a bunch of civilians because the Troop G is overwhelmed because they do not have the time to go out and make sure that the dealer's records are in order. Mr. Lagana suspects that these license renewals are rubber stamped and not as carefully parsed as they should have been. Mr. Lagana talked about when the applicant was before them back in 2010 when there was so much discussion regarding multiple commercial uses on this piece of property and when the applicant was questioned quite heavily on this there was the mention of the intended JP service and the proposed lawnmower repair business and no discussion of an automotive repair facility which would have existed for 12 years up until that time. Mr. Lagana believed it would have been appropriate for the applicant to mention this automotive repair facility that existed for 12 years but the Board did not hear about that. Mr. Lagana believed that maybe the license was renewed appropriately and then it came to surface because of the lapse because it had to be reapproved and that is why the Code Enforcement Officer said no, it's not allowed without a variance and that is why it has come back before the ZBA. Mr. Lagana has a very difficult time believing that if a dealer went to the dealer desk asking to review his dealer file that the file would not be shown to him. Mr. Lagana believes that an internet search would show an awful lot of information on a dealer.

Mr. Wright believed there were two issues that the Board has to think about and decide which is; 1) if there is justifiable reliance and if they find that, do they feel confident that 2) he continuously relied on that representation to his detriment since 1998 by running this business on a continuous and regular basis since then. Mr. Lagana agreed with Mr. Wright entirely and believes it was justifiable reliance but also believes that the use lapsed because there was no mention of it in 2010. Discussion ensued with regard to Mr. Mudge's testimony back in 2010.

Mr. DiPietro agreed with most of what has been said and believes that Mrs. Rouleau-Cote was justified in her action and does believe that based on the license alone that Mr. Mudge has paid his dues. Mr. DiPietro believed that he may also have a

prescriptive right and his alternative may be to go for a variance as he relied on the Building Inspector back in 1998 and believes that Mrs. Rouleau-Cote was justified in her decision. Mr. Wright wanted to clarify what was written in an e-mail from Mrs. Rouleau-Cote that both the decision of whether there was justifiable reliance and whether there was continuous use is within the purview and jurisdiction of the ZBA. Mr. DiPietro believed that in Mr. Mudge's testimony that his license has never lapsed and that there was continuous use is proof enough for him and he did not need to see receipts.

Mrs. Neveu did not have much to add but like Mr. Lagana is confused as to why the town is back having to sign it again if there was continuous use and also recalls the hearing back in 2010.

Mrs. Robidoux believes there was justifiable reliance and also believes there was a lapse in the business. Mr. Wright believes that the Board has to weigh testimony and credibility and look at documents and ask questions and sometimes they're not easy questions and the minutes specifically asked the applicant if he had at least one vehicle each of the years since 1998 that he was working on and his answer was yes and it's up to the Board to decide whether or not it was credible. Mr. Wright wanted to be clear that there was testimony responsive to that issue. Mrs. Robidoux wanted to point out that they could not talk about a variance tonight because it was an appeal of an administrative decision.

Mr. Beaurivage was also concerned with the testimony back in 2010. Mr. Beaurivage believed that he should be able to obtain information from DMV and that he may have to pay for it but it should be available to him.

Mr. Benson added that the Board could Table the matter until the next hearing to allow Mr. Mudge the opportunity to come back and explore the state records more and come back with more information from the state that he has been doing business and did not believe that you can do business and have nothing. Mr. Benson also pointed out that in the testimony back in 2010 when they were before the Board for a variance for the JP business that it was a clear statement that there was no business going on. Mr. Benson further believed that it was on the applicant's side to prove that there was a business.

Mr. Wright reiterated that there is a fairly good argument for estoppel and justifiable reliance based on what's in the file and what they have heard for testimony from the applicant and sensing not so much full agreement as to the second issue which is was there continuous business since 1998 and has asked questions about records and what was there and not sure we got a crystal clear answer. Mr. Wright talked about tabling this matter to give the applicant an opportunity to go to the state to obtain records and if he has to pay for them then he has to pay for them which Mr. Lagana believes is up there and is something that the dealer themselves are entitled to along with receipts. Mr. Wright believes the more information Mr. Mudge obtains would be better so that the Board can make a decision and so that Mrs. Rouleau-Cote is comfortable signing off on it.

Mr. Wright asked what the consensus of the Board was with regard to tabling the matter. The Board members were in agreement. Mr. Lagana added that if the applicant can prove that there was continuous and uninterrupted use as an automotive repair facility since 1998 and that there was no interruption in service then yes there was justifiable reliance.

Mr. Wright asked for a motion to come out of deliberations.

Mrs. Robidoux made a motion to come out of deliberations, seconded by Mr. DiPietro. The Board came out of deliberations at 8:50pm.

Mr. Wright explained to Mr. Mudge what the Board was looking for as he heard the Board's deliberations and what Mrs. Rouleau-Cote was unable to do because of how our ordinance reads as well as what was in the file. Mr. Wright also informed Mr. Mudge that the Board would probable Table the case which means that they would delay their decision on it until next month. Assuming that it gives Mr. Mudge enough time to go up to the state and ask for copies and come back before the Board to show proof that he has been operating his business uninterrupted since 1998. Mr. Wright also pointed out that they would like to see receipts or cancelled checks or hand written receipts or e-mails from somebody. Mr. Lagana asked Mr. Mudge if he was a bonded dealer. Mr. Mudge said yes. Mr. Lagana asked if he could provide receipts of bonds for each renewal. Mr. Mudge said probably and that he did have a letter from the state that he was continuous from 1998. Mr. Wright further stated that the level of operation that has occurred in each year since 1998 that it doesn't tell the Board that. Mr. Mudge said why would it and the state refused to give him any information because they were not public records. Mr. Wright thought it was important information and that the position the Board is in is that they would like more information in order for the Board to make a decision. Mr. Wright wants proof that there was no break in the automotive repair facility and he wanted as much as Mr. Mudge could get. Mr. Wright reiterated more documentation from the state and at home basically as much information as he can obtain. Mr. Mudge asked Mr. Wright if he would take testimony from abutters. Mr. Wright stated that he would listen to abutter's testimony but that the Board would not make a decision based solely on testimony from abutters.

Mr. Wright asked if there were any abutters that wanted to go on record along with name and address he would take that testimony now. Mr. Racino of 423 Manchester Road who lives right next door to Mr. Mudge and he sees Mr. Mudge working in his garage every day. Mr. Racino further stated that he has three (3) classic cars that he has seen him work on.

Mr. Markovitch of Calef Lake Campground, who is not a resident of Auburn stated that he has always had a car that he has been working on for at least the past 10 years that he has known him. Mr. Wright asked Mr. Markovitch if he was a resident. It was determined that Mr. Markovitch was not a resident and it was more important to have abutter's testimony.

Mr. Sowa of 169 Londonderry Turnpike, who is also not a direct abutter, stated that has worked with Mr. Mudge for parts and that he didn't even know it was a garage.

Mr. Lagana made a motion to TABLE Case #15-09 until the next ZBA Hearing scheduled for May 26, 2015, seconded by Mrs. Robidoux. All were in favor, the motion passed unanimously and Case #15-09 has been TABLED until May 26th.

Mr. Wright informed everyone present for this case that this would be their only notice that the case has been Tabled until May 26, 2015. Mr. Wright also informed Mr. Mudge that if 30 days was not enough time and he needed more time to notify Ms. Royce.

Mr. Mudge could not understand why the Board did not accept the proof that he received from the state. Mr. Mudge stated that he would go up to the state tomorrow but they would only give me a letter. Mr. Wright reiterated to Mr. Mudge to get as much information that he could from the state and from his own records as well such as receipts, confirmations, parts that he bought and didn't care what it was but just wanted Mr. Mudge to get as much as he could so that they can do their job.

Mrs. Mudge asked if they had to pay another fee. Mr. Wright said no, the case was just Tabled until next month.

Case #15-10
Michael and Julie Tourville
341 Wilsons Crossing Road – Map 2, Lot 6-3
Zoned Residential One

Applicant is requesting a special exception to allow a daycare center – over 6 persons in a Residential One zone. (Article 4, Section 4.06(3)(e))

Mrs. Tourville began by saying that they have added a large addition to their existing home which was 36 feet by 20 feet and that she has been working with the Building Inspector. Mrs. Tourville further added that since the beginning of their design that they have been talking about adding an in-home child care center.

At this time, Mrs. Tourville read her application into the minutes for the record. Mrs. Tourville added that it would be up to 17 children which is allowed by state licensing but that everything is determined by the age of the children. Mrs. Tourville stated that the hours of operation would be Monday through Friday, 6:30am until 6:00pm. Mrs. Tourville added that there would be no overnight. Discussion ensued with regard to the hours of operation and the possibility of a parent being late due to a snow storm or the like that would not be the norm. Mr. Wright talked about staggering the time.

Mr. Wright asked Mrs. Rouleau-Cote if she had any questions or comments. Mrs. Rouleau-Cote stated that with regard to the use that there may be some questions with regard to parking that would be picked up at a minor site plan review which would be up to the discretion of the Planning Board. Mrs. Rouleau-Cote further pointed out that the

addition is brand new and that she has worked with Mrs. Tourville and her husband with the modification to their house and as far as the life safety issue that she will be working with her and Captain Saulnier of the Fire Department with regard to the child care aspect with the number of children. Mr. Lagana brought up the number of children and believed that they should look at it as being greater than 6 children as opposed to up to 17 children. Mrs. Rouleau-Cote stated that it would go according to who was more stringent cause the state could say up to 24 children. Discussion ensued with regard to number of children. Mr. Wright was more concerned with days of operation, Monday through Friday and maybe it's not restrictive as to hours but up to 17 allows them to account for potentially 17 vehicles showing up at one time. Mr. Wright believed that the Board could say approved state licensed daycare center which then that would cover the Board in terms of how many she has there because if she is licensed that would dictate how many kids she has because it requires how many professionals that need to be there for the ratios to matter. Mr. Wright's view would be to give her the relief for up to 17 children for a state licensed daycare, Monday through Friday and then he was not sure about the hours of operation or to leave it to site plan review. Mr. Lagana believed that they could leave that to the Planning Board.

Mrs. Tourville talked about creating a circular driveway. At this time, the Board reviewed the drawing that Mrs. Tourville had.

Mr. Beaurivage asked about the 17 and if it was based on the licensing rule. Mrs. Tourville said yes, it was based on state licensing.

Mrs. Rouleau-Cote wanted to confirm that it would still be accessory to the home. Mrs. Tourville said correct and that there was access to the kitchen and that if they ever sold the house that it would be fabulous great room.

Mr. Wright asked if there were any abutters present. None were noted. Mrs. Tourville informed the Board members that she had invited the abutters over to her home to see what she was proposing. Mr. Wright thought it was a great idea as it allowed them to ask questions and to see firsthand.

Mr. Beaurivage asked Mrs. Tourville that when the state grants her a license how long was the license good for. Mrs. Tourville said three (3) years and that there would be an annual visit as well as surprise visits.

Mr. Wright asked the Board to condition it on minor site plan review and asked what the Board would like to do.

Mr. DiPietro made a motion to vote on the application as presented with the condition that the applicant go before the Planning Board for Site Plan Review for Tax Map 2, Lot 6-3, Case #15-10, seconded by Mrs. Robidoux. All were in favor, the motion passed unanimously.

General Business

Maverick Re-Hearing Request

Mr. Wright explained that everyone should have received an e-mail from Ms. Royce from an abutter, Kevin Dandrade requesting that the Board grant a re-hearing regarding Maverick Development. Mr. Wright indicated that he has not had a chance to review it and that town counsel was out of town. Mr. Wright indicated that he would like to forward the request to town counsel for review and get some feedback from them and vote on whether or not to re-hear the matter at our next hearing which will be May 26th. Ms. Royce received it by e-mail on the 27th and has not received the certified to date. The Board members all agreed with Mr. Wright.

JMJ Properties, LLC Re-Hearing Request

Mr. Wright pointed out that they received another request for rehearing regarding JMJ Properties, LLC and that Mr. Lagana chaired that case and asked Mr. Lagana to speak on how to handle this matter. Mr. Lagana believed it would be handled the same way as the previous request and that this request was handed to Ms. Royce this afternoon and has not had a chance to review it. Mr. Lagana pointed out that May 26th was within the 30 day timeframe and they could decide on May 26th on whether or not to re-hear the matter and asked Ms. Royce to forward the request to town counsel for review and comment.

Ms. Royce informed the Board that she would forward both requests for rehearing on to town counsel for review and comment.

Minutes

Mr. DiPietro made a motion to accept the minutes of March 31, 2015 as written, seconded by Mr. Lagana. The motion passed in the affirmative with Mrs. Robidoux and Mrs. Neveu abstaining.

ZBA Rules of Procedures

Mr. Wright informed the Board that the Rules of Procedure and election of officers would take place at the Board's next hearing scheduled for May 26, 2015. Mr. Wright also pointed out that the Rules of Procedure has already been noticed once in the Union Leader and will be placed a second time this month. The Board members were in agreement.

Mr. Wright asked if there was any new business. None were noted.

Adjourn

Mr. DiPietro made a motion to adjourn, seconded by Mr. Benson. All were in favor, the motion passed unanimously and the meeting stood adjourned at 9:35 p.m.

The next ZBA Hearing is scheduled for May 26, 2015 at 7:00 pm and will be held at the Town Hall, 47 Chester Road.