

Town of Amherst
Zoning Board of Appeals - Special Permit

DECISION

Applicant: Luke Zbylut

Date Application filed with the Town Clerk: April 4, 2005

Nature of request: Petitioner seeks a Special Permit, under Sections 3.385 and 3.386 of the Zoning Bylaw, to build and operate a vintage and used motor vehicle sales, service and detailing business.

Location of property: 398 Northampton Road, (Map 13D, Parcel 48, B-L Zone)

Legal notice: Published in the Daily Hampshire Gazette on April 13 and April 20, 2005, and sent to abutters on April 12, 2005.

Board members: Tom Simpson, Barbara Ford and Susan Pynchon

Submissions:

Prior to the public hearing on April 28, 2005, the applicant submitted the following documents:

- Corporate Logo for Zbylut Motor Works, Inc., received 4/22/05.
- Catalog information on site lighting by Kim Lighting.
- Preliminary Management Plan.
- Sketch plan of property line survey, prepared by Richard J. LaBarge, received 4/5/05.
- A preliminary site plan based on an aerial photograph, showing the approximate location of the proposed building, parking, lighting and sidewalk.
- A revised preliminary site plan showing the above items plus planting.
- A second revised site plan showing the above items plus planting and a revised lighting scheme.
- Preliminary building plans prepared by Morton Buildings, Inc., dated February 25, 2005.

At the public hearing on April 28, 2005, the applicant submitted a presentation booklet including a sketch of the property line survey, information regarding proposed signs and logo and entry and exit signs, removal of trees and shrubs, proposed planting, vehicular circulation, parking, proposed sidewalk, lighting, pavement and utilities, building.

The Fire Department submitted two memoranda as follows:

1. Memorandum dated April 21, 2005, commenting on access, water supply, fire protection for the building and address display.
2. Memorandum dated May 31, 2005, commenting on the revised plans in terms of the same issues.

The Planning Department submitted three memoranda as follows:

1. Memorandum dated March 29, 2005, reporting on a March 23, 2005, meeting among the Building Commissioner, Planning Department staff and the applicant.
2. Memorandum dated April 21, 2005, commenting on zoning, previous permits, dimensional requirements, Planning Board review, parking and access, landscape plantings and fencing, lighting, easement, sidewalk, signs, drainage and paving.
3. Memorandum dated May 26, 2005, commenting on dimensional requirements, Planning Board review, emergency access, Town Engineer review, landscaping, lighting, sidewalk, signs and architecture.

The Planning Board submitted a memorandum, dated April 15, 2005, commenting on trees, maintenance of the landscaping, hours of operation, reduced setbacks, lighting, drainage and bollards.

The Town Engineer submitted a memorandum, dated May 3, 2005, commenting on the proposed decorative fence and trees, the height of proposed shrubs and curbing.

Prior to the continued public hearing on May 31, 2005, other documents were submitted as follows:

- Site Plan (Sheet L-1) and Planting Plan (Sheet L-2) prepared by The Berkshire Design Group, dated May 16, 2005.
- Final Management Plan for Corporate Automobiles Inc., dba Zbylut Motor Works Inc. received 5/31/05.
- Building Plans showing floor plan and elevations of proposed building with revised door and window locations, received 5/23/05.
- A Final Property Line Survey Plan prepared by Richard J. LaBarge Sr., PLS, dated May 5, 2005.

Site Visit: April 26, 2005

Board member Barbara Ford attended the site visit. Tom Simpson and Susan Pynchon were not able to attend but viewed the site on their own at other times. The following items were noted. The lot is located on a heavily-traveled road, across from a restaurant, gas station and other commercial development located on the north side of Route 9. The property is adjacent to a single-family rental house on the west side and an apartment complex on the east side.

The lot is small, there is extensive pavement and an excavated area in the center of the site (where an underground tank had been removed). There is overgrown vegetation at the edges of the site and the tall evergreen hedge on the east side of the property. There was also glass and debris scattered on the site.

Public Hearing: April 28, 2005.

The public hearing was held in the Town Room, Town Hall. The applicant, Luke Zbylut, presented the petition. He made the following statements about the proposal:

- He had intended to renovate the old gas station that had previously stood on the site and had obtained a Special Permit (ZBA FY2004-00012) from the Zoning Board in order to conduct a motor vehicle sales business there.
- Since that time he has removed the old gas station building and has also removed soils contaminated by leaks from the old underground tank.
- He has submitted a revised site plan showing the new building location, new light locations, a reconfigured parking lot and new plantings.
- The property has been surveyed and the corners of the property have been staked in the field.
- The name of the business will be Zbylut Motor Works.
- The proposed sign will display the name of the business on the building over the garage doors.
- Mr. Zbylut presented a color rendition of the proposed sign which will be 3 feet high by 15 feet long.
- Monument-style entry and exit signs are proposed at the driveways showing that the western driveway is the entry and the eastern driveway is the exit.
- The proposed signs will not be lit. Headlights will illuminate the entry and exit signs.
- There is an easement on the property which runs from Route 9 to the rear of the site.
- Some of the weeds and brush have been cleared from the site, but there will be extensive removal of trees and brush to accommodate the site improvements. A vegetative screen will be maintained along the property edges to protect the abutting properties from headlights and views of the cars.
- New landscaping is proposed to be planted in islands in the parking lot as well as along the sides of the property and the front along Northampton Road. There may also be a decorative fence at the front of the property.
- The applicant will obtain permission from Mass Highway to do work within the state Right-of-Way.
- The trees proposed for the front island are hardy and resistant to salt. They will be maintained at a height below the overhead wires.
- A sprinkler system is proposed to be installed for the landscaped islands.
- Shrubs in the islands are proposed to be no more than 2-3 feet high so they will not obstruct the view of the cars on the site or on the roadway.

- There will be unobstructed circulation through the property for emergency vehicles, with "No Parking" signs posted.
- The driveways in and out are proposed to be narrowed to 20 feet, with the permission of Mass Highway.
- Parking for 2 customers and 2 employees is proposed, plus one van-accessible handicapped space.
- Pedestrian access along the front of the property is proposed to be provided with a sidewalk, constructed to Mass Highway specifications.
- There are two types of lighting proposed for the site. The lights in the front of the site will be operated by traditional electrical connections and the light or lights at the rear of the site will be operated via solar power since the applicant does not want to install permanent electrical power within the easement. The solar-powered light will be motion-activated.
- The lights will be 175 watt, metal halide, Kim Lighting brand, on 12 foot high poles. They will have full cut-offs to prevent light from spilling onto adjacent properties.
- The new pavement within the site will be oil and stone. Most of the existing pavement was removed when the underground tank was excavated.
- The property will be graded towards the front and the 2 existing catch basins will be used to collect storm water. These basins are operational according to the Town of Amherst Department of Public Works and the environmental engineer who worked on the tank removal.
- The building is proposed to be 36 feet x 55 feet.
- The color will be dark green and white.
- There will be two separate bathrooms within the building, one each for male and female use. They will be handicapped-accessible.
- There will be a three-bay garage in the building for restoration and detailing of the cars.
- The floor will be finished with epoxy paint to make clean-up easier.

Mr. Zbylut discussed the proposed Management Plan.

- The business will be open from 8 a.m. to 7 p.m.
- There will be about 15 cars on display.
- There will be no dumpster outside the building. Trash will be kept inside the garage.
- There will be no regular deliveries except for occasional inventory and parts.
- Snow removal and landscape care will be handled by the owner.

Mr. Simpson asked Mr. Zbylut to clarify the number of employees he planned to have on the site and the hours of operation, since the original Special Permit issued in 2004 differed from the current proposal as to number of employees and hours.

Mr. Simpson also noted that the building plans were reversed from what was

shown on the site plan in terms of location of doors and windows. The building plans need to be clarified.

Ms. Ford asked the purpose of the easement. Joan Hart, owner of the property next door at 406 Northampton Road, stated that the previous owner used the easement to gain access to the back lot.

The Board asked the applicant to clarify where the property lines are on the site and on the plan, noting that one of the pins on the site looks like it is on the neighboring property.

The Board discussed the proposed decorative fence and the proposed sidewalk. Mr. Zbylut noted that the sidewalk will be outside the property line, between the property line and the roadway. The Board noted that the Mass Highway will dictate how the sidewalk and curb will be constructed.

Bonnie Weeks, the Building Commissioner, stated that the following issues needed to be addressed:

- The building setbacks being shown on the plans were substantially less than that required by the Zoning Bylaw. The Board may modify the setback requirements as part of a Special Permit. A six-foot setback would be acceptable for Building Code purposes without having to increase the fire rating of the building.
- The amount of lot coverage being shown on the plans exceeds the amount allowed by the Zoning Bylaw. The existing site was non-conforming as to lot coverage and therefore the proposed lot coverage may also be allowed to be non-conforming under a Special Permit.

The Board requested the following:

- That Mr. Zbylut obtain a measured survey plan from the land surveyor who staked out the property lines.
- That the proposed site plan be drawn accurately on the measured survey plan to clarify exactly where the building would be located with respect to the property lines.
- That the parking area and driveway be shown accurately on the plan to provide assurance that emergency vehicles will be able to navigate the site.
- That the existing vegetation be shown on the plan along the property lines or that new vegetation be shown to clarify that the property would be well-screened from the neighboring residential uses.
- That Mr. Zbylut obtain a revised building plan from the Morton Company showing the correct orientation of the building, with accurate locations of windows and doors.
- That Mr. Zbylut submit a revised Management Plan clarifying issues related to hours and number of employees.

- The survey plan needs to be accurate.
- The dimensional requirements for Fire Department emergency vehicles need to be accommodated.

The Board asked if there were any comments from the public.

Joan Hart, owner of 409 Northampton Road, stated that she supports the improvements proposed for the site.

Ms. Ford MOVED to continue evidentiary portion of the public hearing to Tuesday, May 31, 2005, at 8:00 p.m. Susan Pynchon SECONDED the motion. The Board VOTED unanimously to continue the evidentiary portion of the public hearing.

Continued Public Hearing: May 31, 2005

The continued public hearing was held in the Town Room, Town Hall. Michael Liu of The Berkshire Design Group presented the petition for Mr. Zbylut. Mr. Liu made the following statements and comments and presented a new set of plans drawn on an accurate survey plan.

- The building is in approximately the same location as was shown previously.
- There will be 14 parking spaces for display cars instead of 15 spaces.
- There will be 2 parking spaces for customers and 2 spaces for employees.
- The door for people to enter the building will be on the east side.
- There will be 3 garage doors on the front of the building.
- There will be 3 lights on the site, 2 towards the front of the site for the display cars and 1 in the rear for security.
- Lumen plans are shown for each light. One-half footcandle is the typical minimum level for safety of pedestrians. The one-half footcandle limit is shown on the plans.
- The lights will be as manufactured by Kim Lighting and shown in the catalog information previously submitted.
- The trees originally proposed for the front island have been moved away from the overhead wires along Northampton Road and are now shown in islands located at the ends of the front row of display cars. The species of these trees has been changed to Crimson Cloud Hawthorns, which have a red and white flower.
- The tree proposed for the southeast corner of the property is a multi-stemmed River Birch, which has cinnamon-colored bark.
- There are 6 existing arborvitaes in the back (southeast) corner that will remain.
- On the east side a hedge of 37 arborvitaes will be planted to screen the Hawkins Meadow Apartments. The mature trees along this edge will be removed to accommodate construction. Along the west property line, 15 arborvitaes will be planted to screen the house on that side.

- The main sign will be mounted over the garage doors on the building. It will be a carved wood sign.
- The main sign will be lit by 2 gooseneck lamps. There will be one light at the entry door on the east side of the building.
- Entry and exit signs will be installed at the driveways. These signs will be painted wood on wood posts.
- The building will be “country/suburban” in character.
- The planting on the islands is of a type that will spread rather than grow tall.

The Board discussed the building design, the issue of setbacks from the property line and the building’s overhangs with Mr. Zbylut and Mr. Liu. The drawings submitted prior to the continued hearing do not account for the roof overhang in positioning the building in relation to the property line. The 6 foot setback from the property line applies to the roof overhang. Therefore the building may need to be moved forward on the site and also moved to the east to allow for the overhangs.

The Morton Company can design the building without an overhang, but it may be appropriate to maintain the overhang at least on the sides and in the front for aesthetic purposes. The only need for the overhang in back relates to the gutter, which requires a small overhang to work properly.

Mr. Liu suggested maintaining a one-foot overhang on each side, which would require sliding the building one foot to the east. This would require narrowing the 8-foot-wide walkway between the universally-accessible parking space and the building to 7 feet wide. Under Section 7.90 of the Zoning Bylaw the Board can modify the requirement for an 8-foot setback between parking and building. The requirement for a 5-foot wide aisle for a van-accessible parking space would be maintained since the aisle would be 7 feet wide.

Ms. Weeks made the following comments:

- While the Building Code does not require overhangs, an 11 inch overhang is recommended.
- If the building is within 5 feet of the lot line the wall has to be fire rated from the inside and the outside.
- If the building is 6 feet from the property line, the wall only needs to be fire-rated from one side.
- If the building is less than 5 feet from the property line there cannot be any openings such as doors and windows in the wall.
- Fire rating can be expensive and can limit the number and size of openings in a building.

The Board discussed waiving the 8 foot setback from building to property line, thereby decreasing the walk along the east side of the building to 7 feet wide.

The Board discussed the storm water drainage pattern on the site. Water will drain from south to north by sheet flow across the parking lot into the 2 catch basins at the driveways. A roof gutter running along the rear of the building will help direct the water away from the area behind the building. The gutter could be attached to downspouts that would connect to pipes under the driveway and to the catch basins at the front of the site. A 6 inch overhang is required where there is a gutter.

The Board made the following list of changes it wished to see in the plans:

- Move the building forward (to the north) 1 foot and east 1 foot.
- Reduce the overhang on the south (rear) side of the building to 6 inches.
- Add a gutter on the south side.
- Reduce the width of the sidewalk to 7 feet on the east side of the building.
- Add downspouts and tie the gutter into the catch basins with underground drainage pipes.
- Reduce the side of the planted island closest to the building by 1 foot.

Mr. Liu stated that the curbing at the entry into the site would be sloped granite, but that on the site the curbing would be granite cobbles because their look was more in keeping with the country-style. He would recommend setting them in mortar and then paving after setting the curbs.

The Board discussed with Mr. Zbylut and Mr. Liu the details of the main business sign. It is to be a carved wood sign, 3 feet x 15 feet, with a painted logo and painted 1 or 2 inch border, mounted above the garage doors.

The Board discussed the details of the entry and exit driveways and sidewalk. The applicant did not wish to propose painted crosswalks at the points where the sidewalk crosses the driveways because of maintenance problems. The Board and the applicant agreed that the driveway aprons could be concrete since the sidewalk will be concrete. This will help carry the visual line of the sidewalk across the driveways. If the state doesn't accept this solution, the applicant will paint the crosswalks.

The Board discussed the issue of sight distance and whether the plants proposed for the front planting area would impede drivers' views into and out of the site. Mr. Liu described the proposed plants, noting that the only plants that grow taller than 3 feet are the Miss Kim Lilacs. These can be kept pruned to a height of 3 feet. They are to be located in the center of the front island and therefore will not impede drivers' vision since they will be outside of the 25 foot clear sight triangle. Mr. Zbylut noted that the proposed decorative fence has been eliminated from the plan.

The Board inquired about the parking plan. Mr. Liu stated that there would be 14 parking spaces for display cars, a reduction of one from the previous plan.

Ms. Ford inquired about the concerns of the Fire Department with regard to access and the location of the nearest fire hydrant. Mr. Liu responded that he had measured the distance to the nearest fire hydrant and that it was shown on the plan in the front island between the property line and the road. He noted that the location of the fire hydrant would not impede pedestrians or wheelchairs from passing on the sidewalk.

The Board inquired about whether there would be gas pumps on the site. Mr. Zbylut responded that there would be no gas pumps.

Susan Pynchon MOVED to close the evidentiary portion of the public hearing. Barbara Ford SECONDED the motion. The Board VOTED unanimously to close the evidentiary portion of the public hearing.

Public Meeting

At the public meeting the Board discussed the application and possible conditions.

The Board made the following list of items that they would require to be submitted by the applicant for approval at a business meeting:

- A revised site plan showing the relocated building.
- Revised building plans showing the overhangs and the correct compass directions for each elevation (i.e. north, south, east and west).
- The sign design showing the exact graphics, materials, size and colors to be used.

Barbara Ford MOVED to waive the side and rear setback requirement of 25 feet and to allow the building to be setback 6 feet from the side and rear property lines. Susan Pynchon SECONDED the motion. The Board VOTED unanimously to approve the waiving of the side and rear setback requirement.

The Board noted that the revised planting plan as submitted for the May 31st continued public hearing was acceptable.

The Board recapped the changes they wished to see on the revised drawings:

- The building shall move 1 foot to the east and 1 foot to the north.
- The overhang on the south side shall be reduced to 6 inches and a gutter shall be installed on that side, for a total overhang of 11" – 12", including the gutter.
- The overhang on the east and west sides shall be reduced to 1 foot.
- The 2 foot overhang on the north (front) side shall be maintained.
- The walkway on the east side shall be reduced from 8 feet to 7 feet in width.

The Board inquired about the color of the building. Mr. Zbylut stated that the colors of the roof and trim will be dark green and the siding will be ivory.

The Board discussed the revised Management Plan that had been submitted by Mr. Zbylut and noted that the changes included the following items:

- The hours of operation would be from 8 a.m. to 9 p.m.
- There would be up to 3 employees.
- The lights would be on from dusk to dawn.

Findings:

Under Section 9.22 of the Zoning Bylaw the Board found that the lot coverage of the proposed development, while more than the 70% allowed by the Zoning Bylaw, was less than the non-conforming condition that had existed prior to the removal of the underground tank. Therefore the lot coverage could be considered a change in a non-conformity, under Section 9.22 of the Zoning Bylaw and the Board would approve the proposed lot coverage under that Section.

The Board noted that Section 3.385 and 3.386 of the Zoning Bylaw allows the display, service and sales of motor vehicles in a Limited Business District with a Special Permit. Under 10.38 of the Zoning Bylaw, Specific Findings, the Board found that:

10.380 & 10.381 – The proposal is suitably located, since this is a business zone and there are many other businesses in the area, including gas stations, vehicle repair shops and a car wash.

10.382, 10.383 & 10.384 – The proposal will not constitute a nuisance or hazard to abutters or traffic in that the traffic flow will be controlled via narrowing the entrance/exit ways and with signage. The lights will have full cutoff to protect lights from spilling over to adjacent properties. The proposed sidewalk will improve pedestrian safety, and the proposed landscaping will protect the abutters. The building improvements and site layout should create an adequate facility for the operation of auto sales.

10.385 – The proposal will protect the adjoining premises with the extra vegetative screening proposed and the cut-off lights. Because there will be no major vehicle repair on the premises, other than the service, repairs and detailing associated with the sale of the display cars, the business should not create noise over the level of the traffic along Route 9.

10.387 – The proposal provides safe vehicular and pedestrian movement, in that the traffic patterns will be clearly marked, both with monument signs and directional signs painted on the asphalt. With the narrowed entrance/exit ways and sidewalk, the pedestrian traffic will be more defined as well.

10.389 – The operation of the car sales will produce little refuse. Waste and recyclables will be collected within the building. The property is connected to town water and sewer lines. There are catch basins for drainage of surface water on the property.

10.398 – The proposal is in harmony with the general purpose and intent of the Zoning Bylaw because it protects the health, safety, convenience and general welfare of the inhabitants of the Town of Amherst.

Zoning Board Decision

Susan Pynchon MOVED to approve the application, with conditions. Tom Simpson SECONDED the motion.

For all the reasons stated above, the Board VOTED unanimously to GRANT a Special Permit, with conditions, to Luke Zbylut, to build and operate a vintage and used motor vehicle sales, service and detailing business, under Sections 3.385 and 3.386 of the Zoning Bylaw at 398 Northampton Road, (Map 13D, Parcel 48, B-L Zone)

TOM SIMPSON

BARBARA FORD

SUSAN PYNCHON

FILED THIS _____ day of _____, 2005 at _____,
in the office of the Amherst Town Clerk _____.
TWENTY-DAY APPEAL period expires, _____ 2005.
NOTICE OF DECISION mailed this _____ day of _____, 2005
to the attached list of addresses by _____, for the Board.
NOTICE OF PERMIT or Variance filed this _____ day of _____, 2005,
in the Hampshire County Registry of Deeds.

Town of Amherst
Zoning Board of Appeals

SPECIAL PERMIT

The Amherst Zoning Board of Appeals hereby GRANTS a Special Permit to Luke Zbylut, to build and operate a vintage and used motor vehicle sales, service and detailing business, under Sections 3.385 and 3.386 of the Zoning Bylaw at 398 Northampton Road, (Map 13D, Parcel 48, B-L Zone) with the following conditions:

1. The hours of operation shall be 8 a.m. to 9 p.m.
2. The hours of operation of exterior lighting shall be from dusk to dawn.
3. There shall be no more than 3 employees on the site at one time including Mr. Zbylut.
4. There shall be no more than 14 vehicles on display at one time.
5. The owner shall be responsible for snow removal and landscape maintenance. The landscape shall be installed and continuously maintained.
6. Shrubs shall be no more than 3 feet high within the clear sight triangle and branches of trees shall be no lower than 5 feet from the ground.
7. The site shall be managed in accordance with the Management Plan approved by the Board on May 31, 2005.
8. The building shall be built in accordance with the final revised building plans prepared by Morton Buildings, Inc., dated May 20, 2005, approved by the Board at a public meeting on June 23, 2005.
9. The site improvements shall be built in accordance with the final revised site plans, prepared by The Berkshire Design Group, dated June 2, 2005, approved by the Board at a public meeting on June 23, 2005.
10. The concrete sidewalk shall extend across the driveway openings, if permitted by Mass Highway, and curb cut ramps for wheelchair access shall be shown on the plan described in Condition #9 above and built in the field, as per the requirements of the AAB and ADA.
11. Gutters shall be tied into downspouts, connected to underground drainage pipes and tied into the catch basins shown on the site plan.
12. All lighting shall be downcast and shall not shine onto adjacent properties.

13. The street address of the building shall be clearly displayed on the front of the building.
14. The fire lane shall be posted with "No Parking" signs and shall be kept clear of parked vehicles.

TOM SIMPSON, Chair
Amherst Zoning Board of Appeals

DATE