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Zoning Enforcement Officer

MEMORANDUM

To: Chairman & Members of the Board
Zoning Board of Appeals **Date:** July 2, 2014

From: Scott A. Mutch, Zoning Enforcement Officer & Assistant Town Planner
Roland Bartl, AICP, Planning Director

Subject: Special Permit #14-05
Petition for Review/Appeal of the ZEO Decision
107-115 Great Road - Wetherbee Plaza II

This latest correspondence is in response to additional information submitted by the Applicant and is based upon my review of such information. The additional information received by this office includes the following:

- Letter from Richard A. Nysten, Jr. of Lynch, DeSimone & Nysten, LLP, consisting of three (3) pages and dated June 11, 2014;
- Northeast Collection, Inc. Pro Forma Cash Flow Projections (1 page);
- The Commonwealth of Massachusetts, Secretary of the Commonwealth, Corporations Division, Annual Report for year ending December 31, 2013 (2 pages);
- The Commonwealth of Massachusetts, Secretary of the Commonwealth, Corporations Division, Business Entity Summary (2 pages);
- Northeast Collection, Inc., Exhibit "A", spreadsheet for automobile recordkeeping (4 pages);
- Registry of Motor Vehicles (RMV) Vehicle Record Form (2 page);
- Letter from Mark T. Donohoe, PE of Acton Survey & Engineering, consisting of two (2) pages and dated May 19, 2014
- Letter from E.J. Rempelakis of E.J. Rempelakis Associates, consisting two (2) pages and dated May 22, 2014.

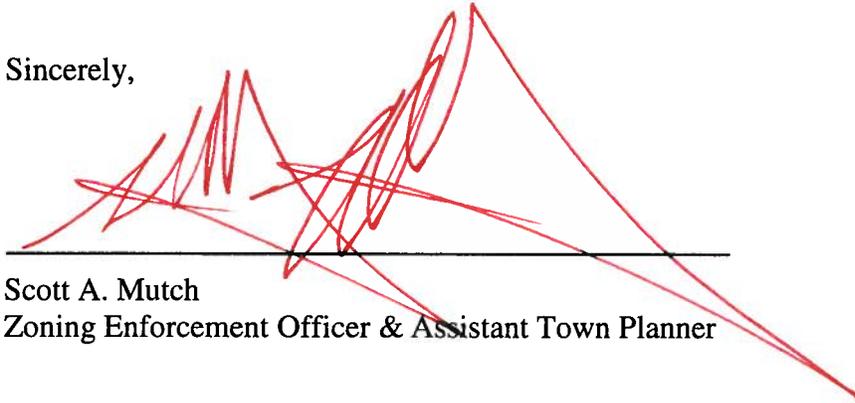
Item #7 identified on page 2 of the letter submitted by Mr. Richard A. Nysten, Jr. indicates that "No more than two (2) classic/specialty cars will be sold each year by Northeast Collection, Inc., from this facility via the internet license." The fact remains that the sale of any automobiles being displayed at this location is problematic. Automobile dealerships are expressly prohibited within this zoning district. As has been discussed previously, there are multiple automobile dealer licenses currently existing on the property for internet sales only with no display permitted. It is counterintuitive to think that automobiles will be on continuous display and then sold, yet somehow the Applicant wishes that this location not be classified as an automobile dealership. Where automobiles are displayed in a showroom, and such automobiles are for sale, even in a limited number, the average person will think of it as a car dealership. Thus, applying the "Duck Test", the

proposed use is probably a car dealership, no matter what its name or description & no matter what license.

Based upon all of the information presented to and currently in front of this office, along with the multiple verbal conversations, it remains our interpretation and determination, that the proposed Use of the property is either 1) an automobile dealership, 2) an automobile repair facility, or 3) both of the aforesaid uses. The 107 Great Road property is located within the East Acton Village (EAV) Zoning District, which DOES NOT allow any automobile dealerships or automobile repair facilities.

In order for the Applicant to display his personal collection of classic and specialty cars at this property, the Applicant can move forward in creating a 501-c-3, not-for-profit educational institution (museum). The creation of this "automobile museum" would therefore be classified as an Educational Use under the statutory "Dover Amendment" and under Section 3.4.2 of the Zoning Bylaw, and the sale of classic/specialty cars would be acceptable and consistent with a museum use which buys and sells pieces in order to further its mission and purpose.

Sincerely,



Scott A. Mutch
Zoning Enforcement Officer & Assistant Town Planner



Roland Bartl, AICP
Planning Director

cc: Mr. Steve Ledoux, Town Manager
Mr. Richard A. Nysten, Jr., Lynch, DeSimone & Nysten, LLP, Attorneys at Law
Mr. Leo Bertolami, Wetherbee Plaza, LLC. & Northeast Collections, Inc.