



Planning Department

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MEMORANDUM

To: Board of Appeals **Date:** January 28, 2014
From: Roland Bartl, AICP, Planning Director *R. B.*
Subject: **107-115 Great Rd. (Wetherbee Plaza II)**
Petition for Review/Appeal of ZEO decision – Hearing # 14-01

The Petitioner seeks to establish at the referenced site a museum related to automotive paraphernalia, which would appear to include, as the prominent feature, the display of automobiles. The proposed venture, as I understand it, would involve the occasional purchase and sale of automobiles. This activity requires an automobile dealer license for this location.¹

The site is in the East Acton Village (EAV) zoning district. Zoning for EAV prohibits car dealerships².

In reviewing the matter with the petitioner and with staff in the Planning Department, I agree with the ZEO's determination that under zoning the proposed automotive/automobile museum venture must be a not-for-profit educational institution, which – borrowing in part from the Statue (MGL, Ch. 40A, S. 3) –the zoning bylaw defines as:

“3.4.2 Educational – USE of land, BUILDINGS and STRUCTURES for providing instruction or education in a general range of subjects, on land owned or leased by the Commonwealth or any of its agencies, subdivisions or bodies politic, or by a religious sect or denomination, or **by a nonprofit educational entity. Such USE may include museums,** libraries, auditoria, athletic facilities, dormitories, administrative offices, or similar facilities and activities whose purpose is substantially related to the educational purposes of the owner.” (highlights provided for purposes of this memorandum).

¹ The petitioner has applied for one or more auto dealer licenses for the subject location. It is my understanding, that as of this date he was granted one or two non-display licenses for the location. Such non-display or internet licenses are also granted to other business where car dealerships are not permitted under zoning, for instance to home businesses in residential zoning districts. As long as there is no visible hallmark of a typical dealership or car rental/leasing place (showroom, cars for sale in an outdoor lot, trade-ins, service department, etc), we deem them as being essentially an office use. The petitioner hopes to eventually obtain a display license for this location.

² Car dealership falls under the ZBL use definition of “Vehicle Sale, Rental”:
“3.5.22 Vehicle Sale, Rental – Facility for the rental, leasing or sale of automobiles, trucks, boats, motorcycles, trailers, recreational vehicles, farm equipment or similar motor vehicles having a maximum gross vehicle weight of 14,000 pounds; including open-air display. The open-air display area shall comply with the standards of Section 6.7 of this Bylaw.” This use is allowed only in the Limited Business (LB) and Powder Mill (PM) Districts

This “Educational” use is one of the Dover Amendment land uses and is allowed in all Acton zoning districts. Museums buy and sell objects to further their mission and purpose. Such objects may be automobiles. The petitioner agrees that Section 3.4.2 – Educational, is an appropriate use category for the proposed museum venture and that a non-profit status would be required for the museum business entity. The petitioner states that the effort to obtain such a status is under way, but that it may take some time to be granted such status.

In the meantime, the petitioner seeks to proceed with the museum plans under a different section of the zoning bylaw: “Commercial Education and Instruction”, defined as:

“3.4.11 Commercial Education or Instruction – A private, for-profit business engaged in providing instruction or training in skills of any kind, including business, data processing, programming, arts and crafts.”

We do not see these two use definitions as interchangeable and disagree with the petitioner’s claim that the proposed museum venture should be allowed under section 3.4.11. Section 3.4.2 (Educational) seeks to broadly accommodate customary educational endeavors specifically including libraries, dormitories, museums, athletic facilities, or similar. Section 3.4.11 (Commercial Education) on the other hand is much more limiting with a narrow focus on instructional activities. It makes no mention of a museum, neither incidental nor primary. If the petitioner’s intent is to provide instruction in the care and maintenance of automobiles, he does not need to display cars in a showroom and he does not need to buy and sell cars. If the zoning bylaw were interpreted as the petitioner pleads, the consequence could be that dormitories, athletic facilities and stadiums would likewise become part of Commercial Education. Having been involved in many rewrites of zoning language over the years, including the sections under review here, I can attest that the separate listing of the two education uses and the distinctions made in the two definitions are deliberate and not accidental. As such, we believe that Town Meeting, when it adopted the definitions as they currently stand, clearly understood the difference: The Acton Children’s Discovery Museum as an example of a private not-for profit educational institution as defined under 3.4.2 – Educational on the one hand, and, say the fairly new-in-Town “Russian School of Mathematics” on the other hand as an example of 3.4.11 – Commercial Education or Instruction, or the wide variety of art classes, computer instructions, music lessons, etc..

For these reasons I urge the Board of Appeals to uphold the ZEO’s decision.

The petitioner further pleads that he should be allowed to proceed with building modifications for the automobile museum venture in anticipation of obtaining the non-profit status in the future. I do not think that the ZEO should make such decisions on anticipated or hoped-for future outcomes. What if the petitioner fails to obtain the required legal non-profit educational status? The renovations and modifications should wait until the business status as a 501-c-3 is approved, and the building permit application for the museum restorations should clearly list such entity as the applicant or owner in charge.

There are related matters that the applicant may present and discuss at the hearing:

1. Various automobile licenses:
Granted, withdrawn, relocated and reissued – hard to keep track of. As stated in footnote 1, it is my understanding that the current licenses on the property are non-display/internet licenses.

2. Since the date of the appeal, the petitioner has filed a separate building permit application for two apartments upstairs in the same building:
The ZEO signed off on this application.
3. Building permit application for garage door in rear-side of the same building:
The ZEO rejected it due to resulting maneuvering aisles becoming insufficient for existing parking spaces and failure to take into account drainage provisions that were part of a prior site plan approval.
4. Sign applications for auto dealer businesses for the same location:
These are under review with decisions pending. The application for one non-display licensed business is, as the applicant tells us, for a space in the building that is still under bankruptcy proceedings on the previous tenant; it is padlocked and cannot be occupied. This may have to wait. The other sign blatantly displays the business as a car leasing operation, which does not seem to match the non-display nature of the business. This sign may have to change its appearance.

cc: Planning Board, Board of Selectmen, Scott Mutch