

## DELMAR, DELAWARE BOARD OF ADJUSTMENTS

July 18, 2017

The meeting for the Delmar, Delaware Board of Adjustments was held on July 18, 2017 at Town Hall. Those in attendance were Mayor Houlihan, Director of Public Works Jerome Reid, Attorney James Waehler, Code Enforcement Officer Bounds, Community Development Coordinator Hardin, and Clerk of Council Fisher. Guests: Attorney Mary-Shreider-Fox, Planning and Zoning Member Eric Catellier and petitioner Lou Alberti.

### *Called To Order*

Mayor Houlihan called this special meeting to order and introduced everyone on the Board as well as those representatives from the Town who are identified above. Attorney Shreider-Fox was introduced as a partner with Town Attorney Jim Waehler.

### *Approval of Minutes*

Mayor Houlihan asked for approval of the October 2016 minutes as circulated. Town Attorney Waehler made a motion to approve the October, 26, 2016 minutes as circulated. Director of Public Works Director Reed seconded the motion which passed with 3 ayes and 0 absent.

At the end of the meeting it was brought to Town Attorney Waehler's attention that the date for the approved minutes should have been October 18, 2016 instead of October 26, 2016.

Town Attorney Waehler made a motion to change the date of the approved minutes from October 26, 2016 to October 18, 2016. The motion was seconded by Director of Public Works Reed and passed with 3 ayes and 0 absent.

### *New Business*

Lou Alberti- Special Exception Request for the use of his property at 504 N. Pennsylvania Avenue, Delmar, DE (zoned light industrial) to be able to be used as a service station and repair garage.

Mr. Alberti informed the Board that he has owned the property at 504 N. Pennsylvania Avenue for 30 years. When he bought the property, there was a business already operating in the building. There are actually 5 sections to the building. One section is for his office, the next bay is empty, the next bay was a tire shop, the area next to this one is abandoned due to the floor caving in. Mr. Alberti said that he ran his refrigeration service company out of one of the sections. As of January 1, 2017, he sold his refrigeration business and it has moved to Seaford. The building is no longer used for his business.

Mr. Alberti continued saying that the back of his building has continually been used by him for the past 30 years for his hobby of repairing cars. It was in the Fall of last year, that the Town cited him for the cars outside the building not being tagged. It was suggested to him that the vehicles be covered so they won't be so noticeable. He said that he is retired and plans to work in his building since he bought it to be his hobby shop. His son has 2 bays in the building that he works on his hobby of race cars. His son has a full time job so it is only after work and on

weekends. The intent of the building all along was to be his hobby shop. He stated that he has rented out sections of the building on numerous occasions.

Town Attorney Waehler asked what the building is being used for besides his restoration of vehicles. Mr. Alberti stated that his son has 2 sections (A & B) of the building where he works on his work vehicle and his race truck. Section C is storage of a collection of items from his rental properties. Section D is the shop that has been rented out several times. The last tenant was a construction company.

He informed the Board that the Town refused to give him a business license for his business, DRI Holdings, until the outcome of this hearing. He still has inventory from his refrigeration business that he needs to sell off.

Town Attorney Waehler said that the Town has an issue with the condition of the property and the storage of the vehicles outside the building.

Mr. Alberti said that since June, 2017, he has sold 4 of the company vehicles that were on the property. The 4<sup>th</sup> vehicle has to be towed off the property. The titles for those 4 vehicles have been signed over.

Mr. Alberti mentioned some of the vehicles he has on the property; a 1976 Nova, 1966 Pontiac and a 1973 Celica. They are not currently tagged but they are titled. He and his son are working on the cars and they are not repaired enough to pass inspections, so they cannot be tagged at this time. He also said that on the property he has a 1965 Ford Fairlane and a 1985 Pick-up truck that are tagged. While working on his cars, comes to a stand-still, due to a part having to be ordered, or having to figure out another strategy, he'll rotate that car out and move another one inside to work on it. He has 10 vehicles on his insurance policy. He was asked if he could get historical tags for the vehicles but Mr. Alberti responded that the vehicles would first have to be inspected and these vehicles are nowhere close to passing inspection.

Town Attorney Waehler said that the Town suggested that he back fill his leading dock. Mr. Alberti said that it has been back filled so vehicles can now be pulled in.

When speaking on how close his shop is to residences, Mr. Alberti said that the homes closer to his shop are located on 2<sup>nd</sup> Street and York Streets. He owns the 2 single-storied homes behind his shop which he rents out.

Town Attorney said that the Town is trying to make improvements to the Town. Mr. Alberti said that all the equipment in the back yard was released to him in April. He knows that all the stuff has to leave. He has had a conversation with the Town Manager and she suggested a time limit of 6 months for everything to be disposed of. He also stated that there is a camper in the back that is his and is titled in his name.

Mayor Houlihan said that Mr. Alberti has been a small business owner for more than 30 years. The look of the property is what concerns the Town. Mr. Alberti said that he has been moving stuff out and bringing it to the scrap yard. The stuff in the back of his yard are scraps he used

when he had his refrigeration business for quick fixes until a part could be ordered. He does agree that it needs to be cleaned up.

Delmar Community Development Coordinator and liaison between the Town and the Board of Adjustments Hardin stated that he has been in conversations with the Town Manager on this issue. She suggested a couple of recommendations should the special exception be granted. The Town is not objectionable to the building being used as office space and for Mr. Alberti's hobby. It is suggested that any vehicles for sale not be advertised for sale on the property. Basically not to use the property as a used car lot. The other recommendation is that the Town would like to see the back yard scrap area be cleaned up within a 6 month period. The clean-up must be in good faith and the property must show progress. If the progress gets to be stagnant, then the Town will remove the scrap and an invoice will be sent to Mr. Alberti for the services rendered.

Mr. Alberti stated that right now he has 2 Ford pick-up trucks for sale on his property. At some point he may liquidate the vehicles and put up a "For Sale" sign on the property. He has an objection to not being able to sell his titled vehicles on his property. He also has a car frame for sale outside of the building. Town Attorney Waehler said that Mr. Alberti's property isn't zoned to sell vehicles. Mr. Alberti said that he has been selling vehicles and car parts from his property for years and years.

Mr. Alberti said that he is actually working on the vehicles to get them to pass inspection. He also mentioned that Mayor Houlihan has vehicles on his business property for sale that does not even belong to Mayor Houlihan. Mr. Alberti stated that this should have been told to him 30 years ago when he bought the property. This was the intended use for the property all along; after he retired to use the building as his hobby shop and work on cars. He also rented those sections out to different people throughout the years. In the Fall of 2016, he was told it wasn't an inherent use anymore. There has been no objections to what he was doing on his property until then.

Town Attorney Waehler said that there are Town Ordinances and uses under Delaware law that must be abided by. The Town is not bound to what was wrongly told to him years back unless he can provide some documentation that the Town actually did make that statement. The property has always been the same zoning.

Planning and Zoning Member Eric Catellier informed the Board that in May, Mr. Alberti did come before the Planning and Zoning Commission due to a zoning issue. P&Z wanted to help Mr. Alberti. The Commission wanted to create a condition where he could obtain a business license so he can clean up his property. The recommendation was that everything he wanted to do and going forward, the Community Business zoning would be more appropriate. It has since come to his attention that he cannot rezone the property. Then a special exception would be needed on the issues of his using the property for an auto repair garage and for whatever other businesses he would be renting to while he is selling his inventory that is located on his property.

If the property were to be rezoned under Community Business, Mr. Alberti would not be allowed to keep the unlicensed motor vehicles left outside nor could he sell those vehicles. CDC Hardin, said in reference to the debris along and behind the building, the Town does have an Ordinance and has enforced that ordinance on another body shop for the same issues for unsightly debris.

Code Enforcement Officer Bounds stated that he started working for the Town in 1990. Mr. Alberti's property was one of the first that he addressed the Town Manager about. Delmar had been in a stagnant period with no major growth. The State Line Plaza was just being built. He was told to allow Mr. Alberti to run his business and to keep his race car on the property with a blue tarp over it. The times have changed. The problem is that he has a lot of stuff in and around his building. Presently, the Town is trying to shift from the Police Department storing towed cars on Town property. They will be impounded by a tow company and will be stored on the tow company's lot.

CDC Hardin said that the storage facility could be run in the Community Business district. He said that Light Industrial is not a good zoning for the Town to have. The Town's well is just to the back side of Mr. Alberti's property. CDC Hardin did say that upon speaking with the Town Manager, it is the Town's full intent to address the issues of tarping cars. There was never an intent to allow that as a policy. The Town is enforcing the unregistered and untagged vehicles being towed from properties around Town.

Mr. Alberti said that he has a problem with him not being allowed to sell his titled vehicles from his own property. Town Attorney Waehler said that the Town is trying to phase out what Mr. Alberti wants to do. There's nothing to say that when Mr. Alberti sells a vehicle, he won't go and replace it with a different vehicle.

Mr. Alberti said that he accepts the time frame of 6 months to clean up his property. Inside the building there are 2 vehicles that he is working on. On the outside there is one car that is untagged that he is working on. All vehicles outside are registered, titled and insured to him but not tagged.

Town Attorney Waehler said that Mr. Alberti will need to be liquidating the various items he has on the outside by the end of the year which would be approximately 6 months. Mr. Alberti said that there will be activity but he can't guarantee that everything will be gone in that time frame.

Planning and Zoning Commission Member Catellier stated that P&Z understood that there are 5 rentable tenant spaces within the building. He wanted to express that P&Z was only considering a special exception used by Mr. Alberti and his son. Any of the rest of the units would still need to fall under the restrictions of Light Industrial.

CDC Hardin said that the first zoning code was established in 1976. Town Attorney said that in the Town's view only the portion of the property being used by Mr. Alberti and his son should be granted the special exception and the rest of the property to be continued to be used in the Light Industrial zoning district.

Mr. Alberti said that he will make a commitment that he will not expand the number of untagged vehicles on the property. He has made phone calls to different businesses to help liquidate his scrap items but he hasn't gotten any feedback.

CDC Hardin stated that having untagged cars sitting outside is a violation to the Ordinance. The Code does not define what zoning is specific to allow the specific use Mr. Alberti is asking for but it shouldn't be expanded more than what it is now.

Town Attorney Waehler made a motion to approve the special exception for Mr. Lou Alberti at 504 N. Pennsylvania Avenue, Delmar, DE with the following conditions:

- 1) The storage of unregistered vehicles on the outside will be alleviated when Mr. Alberti has more space inside the building by removing the inventory and such space is available. The unlicensed vehicles will not be increased in number of a total of 4, although the vehicle model and make will change.
- 2) The outside used HVAC equipment will be removed by the end of this calendar year with a significant portion showing progress being removed by October 15<sup>th</sup> of this year.
- 3) Mr. Alberti can only have one vehicle for sale at a time. If he has more than one vehicle for sale on the property at one time, he would then be in the automotive sales business which he is not licensed to be.

Town Attorney Waehler made a motion to approve the special exception for Mr. Lou Alberti at 504 N. Pennsylvania Avenue, Delmar, DE with the above mentioned conditions and with the contingency that Mr. Alberti does not have any more than 5 unregistered vehicles on the property at any one time, and not more than 1 vehicle for sale at any one time. The used HVAC equipment stored outside in the back of the building is to be removed by the end of this calendar year. Public Works Director seconded the motion which passed with 3 ayes and 0 absent

### ***Adjournment***

Town Attorney Waehler made a motion for adjournment which was seconded by Public Works Director Reed and passed with 3 ayes and 0 absent.

Submitted by:

Cindy Fisher  
Clerk of Council