

## METUCHEN ZONING BOARD OF ADJUSTMENT

### MINUTES

February 10, 2011

The meeting was called to order at 7:44 p.m. by Robert Fair, Vice Chairperson, who read the statement in accordance with the Open Public Meeting Act.

Present:        Suzanne Andrews                                Brian Tobin, Alt. I  
                   Robert Fair, Vice Chairperson                     Jonathan Rabinowitz, Alt. II  
                   Catherine McCartin                                 Robert Renaud, Attorney  
                   Judy Sisko     Kathy Elliott, Engineer  
                   Byron Sondergard                                 James Constantine, Planner  
                   Daniel Spiegel                                       Chris S. Cosenza, Zoning Officer

Late:            (none)

Absent:         Pat Lagay, Chairperson (with notice)

### **NEW BUSINESS**

**10-913**        Hogan Automotive, Inc. – Applicant is seeking site plan and use variance approval to sell used vehicles. The present use is the rental and repair of motor vehicles.

913 Middlesex Avenue        Block 130.01, Lot 48        G-1 Zoning District

John DeMassi, Attorney for Hogan Automotive, Inc. introduced himself to the Board and stated he would have two witnesses: Joseph Caruso, Operating Manager for Hogan Automotive, and Edward Hogan, Owner of Hogan Automotive.

Mr. DeMassi began with an opening statement, describing that the business rents secondary market vehicles. The rental car portion of the business has a fleet of 2006 Ford Taurus and a fleet of 2006-2007 Hyundai's. In total, there are approximately 25-26 rental vehicles, offered not as daily but rather long-term rentals, usually 1-2 or 3 months. These cars are offered to those who do not necessarily have the security (credit or cash on hand) typically required of other rental car companies.

(continued) The business is located in the G-1 Zoning District, set back from Route 27. The proposal is to allow an accessory use at the subject site to sell the rental cars. The business purchases vehicles for the purposes to rent the vehicles as described above. After a period of time, the vehicles become obsolete. Without a license to sell these off-lease vehicles, the business is forced to send the vehicles to an auction. Often at times, rental car customers request to purchase these vehicles but are unable to do so since the business does not have a license.

(continued) According to The State of New Jersey, if more than three (3) vehicles are sold each year, the business must be certified as a licensed used car dealer. As such, the business is requesting approval from this Board in order to obtain the license. The intent is to continue as a leasing company and to sell the vehicles as they come off of the rental lease. According to the

Metuchen Zoning Ordinance, it is stated under the G-1 Zoning District that new car dealerships are permitted, but not used car dealerships. The requirements of a new car dealership states that at least 75% of the sold vehicles must be new, the remaining 25% can be used.

Mr. DeMassi stated that this is an important concept to consider: The G-1 Zoning District is not prohibiting the sale of used vehicles, but rather the businesses that predominately sell used vehicles.

Mr. DeMassi invited his first witness, Mr. Caruso, to approach the Board.

Mr. Renaud requested Mr. Caruso for his first name.

Mr. Caruso stated "Joseph".

Mr. Spiegel requested to interject and Mr. Renaud to describe the circumstances of the subject application.

Mr. Renaud stated that it was his opinion that the current uses have been permitted and appear to be valid non-conforming uses; the uses are not permitted under the current zoning ordinance. The applicants have received zoning permits for the current and previous uses of the property. Therefore, the uses are allowed, but non-conforming. When another use is added or a (non-conforming) use is expanded, it is considered to be a "d" variance. A "d" variance considers a non-permitted use or an expansion of a non-conforming use.

(continued) The applicant shall describe their proposal and explain to the Board why the use should be permitted under the MLUL and Metuchen Zoning Ordinance. The applicant shall meet the "Medici Criteria" which is derived from the case *Medici v. BPR Co.* (1987): In order to use the property for a non-conforming purpose, the applicant should give proof of some kind that this site is particularly suited to the use which is proposed.

Mr. DeMassi agreed with Mr. Renaud and stated that it would effectively be a hybrid between a "d1" and a "d2" variance.

Mr. Caruso, Operating Manager for Hogan Automotive, Inc. was sworn in by Mr. Renaud.

Upon answering the questions raised by Mr. DeMassi, Mr. Caruso stated he is employed at Sensible Car Rental, located at 913 Middlesex Avenue. He has been employed at this location since the company opened, approximately for the past 26 months.

Mr. Caruso stated that Sensible Car is sited at the old Borough Ford property, which is located down a long driveway, across from Bridge Point, at the corner of Bridge Street and Route 27. The facility is not necessarily located on a public road as access is made by way of a driveway, several hundred feet off of Route 27. The facility is essentially behind Honda Powerhouse.

Mr. Caruso described Sensible Car Rental as a secondary car rental agency, providing a valuable service to Metuchen residents by offering affordable vehicles. The fleet consists of 23 vehicles: 11 Ford Tauruses, 10 Hyundai Elantras and 2 Ford F-250 Cargo Vans. The vehicles are of model year mid-2000's: 2005-2006. The vehicles are specifically chosen because of their safety record, which makes them inexpensive to insure. The vehicles are also popular, which makes it inexpensive to maintain as parts are generally available. Repairs are made on site as necessary.

Mr. Caruso stated, for the sake of full disclosure, that the sale of used vehicles has been ongoing since the company started. The vehicles are kept on the premises for a certain amount of time but become a liability even though they are maintained. The insurance company limits the age of the vehicles that can be covered under the policy. As a result, some vehicles were advertised for sale. However, if more than three (3) vehicles are sold in a single year, it sends a red flag to The State of New Jersey. Thus, the business was limited to how many vehicles could be sold. The vehicles are otherwise turned over to the auction, which is disadvantageous to the business.

Mr. Caruso stated that he has made an application to the Motor Vehicle Commission to obtain a used car dealership license. One of the requirements is to obtain approval from the Zoning Official / Municipal Representative prior to licensure. As a reaction to the Commission's requirement for recognizable signage, Mr. Caruso purchased awnings that indicated the site was a used car dealership. Mr. Caruso stated that a State inspector came to view the property and told him to cover the "sales" portion of the sign until and unless approval was received from the municipality. This addresses one of Ms. Elliott's review comments in her report.

Mr. Caruso stated that there are 4 employees that are employed at the business: himself, Edward Hogan and Mr. Hogan's two sons. It was described that "913 Middlesex Avenue" cannot be found on a GPS or maps so the location is relatively unrecognizable. Approximately 50% of the customers physically go to the site; vehicles are generally brought to the customers so as to avoid the trouble of having customers attempt to locate the site. The hours of operation are Monday through Friday from 8:00 AM to 6:00 PM and Saturdays from 8:00 AM to 3:00 PM.

Mr. DeMassi brought to the Board's attention a series of photos, taken by Mr. Caruso, which are labeled and described as below:

**Mark Description**

- A1 Photo "C" depicting the parking lot in the front of the building; there are 26 parking spaces in the front of the building with ten (10) to twelve (12) more parking spaces that wrap around the side and rear of the building for customer parking
- A2 Photo "D" depicting the same area as depicted by A1 at a different perspective
- A3 Photo "F" depicting the site from Route 27
- A4 Night photo depicting the front of the building with entry door and two windows
- A5 Night photo depicting the amount of light shining on the building by the 2,000-watt spot light provided by PSE&G
- A6 Night photo depicting the same area as depicted by A5 at a different perspective
- A7 Night photo depicting the 2,000-watt spot light
- A8 Night photo depicting the 100-watt wall-mounted spot lights
- A9 Night photo depicting the same area as depicted by A8 at a different perspective
- A10 Photo depicting the previous condition of the building prior to occupancy
- A11 Photo depicting the previous condition of the rear area prior to occupancy
- A12 Photo depicting the previous condition of the interior prior to occupancy
- A13 Photo depicting the current condition of the interior waiting area ('after' of A12)
- A14 Photo depicting the previous condition of the site prior to occupancy

Mr. Caruso stated that there are a total of 38 clearly marked parking spaces within the fenced-in inventory pen: (14) 9'-0" in width and 18'-0" in length that accommodate the Hyundai Elantras and (24) 9'-0" in width and 24'-0" that accommodate the larger vehicles. The drive aisle is

approximately 20'-4" in width.

Mr. Spiegel questioned the number of vehicles that are actually parked on the lot.

Mr. Caruso stated that out of the 23 vehicles, there are approximately four (4) vehicles parked on the lot at any given time and no more than ten (10) vehicles parked on the lot at its peak.

Mr. Caruso described the lighting at the subject site as a series of 65- to 100-watt wall-mounted lights located around the exterior of the building. There is a 2,000-watt spot light provided by PSE&G. There have been no security incidents at the site at this time and it was agreed by the Board that the site is very brightly lit at night.

Mr. Caruso clarified that there was no intention in operating the business at night.

Mr. DeMassi began to speak about the operation of the business and asked Mr. Caruso to describe the fleet and future plans.

Mr. Caruso stated that in addition to Ford Tauruses and Hyundai Elantras, mini-vans are coming into the secondary market for the first time as well as the Jeep Liberty and other SUVs. This presents a great opportunity for the rental car portion of the business; however, there is concern that without the ability to sell these vehicles, there is great risk in purchasing them.

Mr. DeMassi began to speak about the site plan.

Mr. Spiegel questioned the legitimacy of the site plan with consideration that the drawing was a re-print of a previously withdrawn application and asked Mr. Renaud for clarification.

Mr. Renaud stated that there is generally a threshold that must be met to qualify the submitted drawing as a site plan for the Board to review; however, it was explained that the site plan brought to the Board's attention is sufficient for the applicant's purpose to explain to the Board the existing conditions at the site. The requirements for a detailed site plan have been waived as there is no plan to do work to the site itself.

Ms. Andrews questioned if there were any vehicles stored in the garages, or inside the building.

Mr. Caruso confirmed that above was both true and correct.

Ms. Andrews questioned how many parking spaces were located inside the building.

Mr. Caruso stated there were three (3) bays, with one of the bays large enough to hold two (2) vehicles if necessary. During bad weather events, vehicles are brought inside the building.

Mr. Caruso described the site plan by explaining that the thick black line drawn on top of the drawing delineates the portion of the property that is subleased to Mr. Hogan.

Mr. Caruso stated that the building located southeast to the subject site is home to several businesses, including: an unknown trucking company, Raymond's Auto Body and a motorcycle repair shop.

Mr. Caruso stated that the subleased property is located approximately 120 feet from Middlesex Avenue. The building itself on the subleased property is located approximately 250 feet from

Middlesex Avenue.

Mr. Caruso indicated that there is an abandoned lot located in between the subleased portion of the lot and Middlesex Avenue. There are two (2) tractor trailers located there at this time.

Mr. Renaud questioned if it was a separate lot.

Mr. DeMassi confirmed that the above was both true and correct.

Mr. DeMassi noted that the site plan was produced in 2008 and asked Mr. Caruso if Mr. Hogan was at the site at that time.

Mr. Caruso could not definitively answer.

Mr. DeMassi noted that there were metal containers on the site plan and asked Mr. Caruso if they were still in existence.

Mr. Caruso stated that the metal containers have been removed and other work to the building was completed. The site is cleared between the fence and Middlesex Avenue.

Ms. Elliott noted that there was a chain-link fence shown on the site plan and requested clarification if the fence at the site is the same fence indicated on the site plan.

Mr. Caruso stated that the above is true except for a portion of the fence that was removed.

Ms. Elliott questioned if the portion of land behind the fence but in front of the black line on the site plan is being used for storage.

Mr. Caruso clarified that his business does not necessarily use this portion of the subleased lot so as to allow for Raymond's Autobody to access their portion of the lot. He further clarified that his landlord has him responsible for maintaining the open area from the large tree towards the end of the lot to remain clear. At times, employee parking is utilized in the portion of the lot.

Mr. Caruso stated that the property, upon entering in a lease agreement with the landlord, was in dilapidated condition.

Mr. DeMassi and Mr. Caruso showed to the Board a series of photos marked A-9 through A-14 to illustrate the improvements completed on the site.

Mr. Caruso noted that there were a series of trucks, equipment, oil tanks and other junk located around the site that has since been cleaned up. There was a white sign with red lettering indicating "913 Middlesex Avenue" lying on the site.

Mr. DeMassi advised Mr. Caruso to address to the Board regarding suitability of the site for the particular use on the site.

Mr. Caruso stated that most of the uses in the immediate surrounding area are predominately related to motor vehicles, including: motorcycle repair shop, car wash supply shop and auto body shop.

Mr. Caruso stated he feels that his particular use, the sale of used vehicles, fits within this

general nature of the types of uses in this area. There is no walk-in customer traffic and the sales portion of the business is incidental or ancillary to the primary function of the business, which is the rental of vehicles.

Mr. Caruso did not envision that the proposed use would not look like a typical used car lot: most business is handled on the Internet, visibility of the site is poor as it is and there will be no change to the appearance of the site whatsoever. There will be no flags or signs advertising used vehicle sales other than what currently exists on the awnings.

Mr. Caruso indicated that there may be the sale of two (2) or more vehicles per year that did not necessarily originate from the rental portion of the business. It is anticipated that this would occur because customers may trade in their vehicles.

Mr. Caruso did not anticipate any change in the number vehicles stored on the site should he receive approval from the Board.

Mr. Renaud requested to clarify to the Board that the application was for the proposed use to sell used vehicles that came off the lease and possibly trade-in vehicles. No vehicles are brought onto the property for the purpose to sell the vehicles.

Mr. Caruso confirmed that the above was both true and correct.

Mr. DeMassi began to address the comments from the Board Planner, Mr. Constantine.

With respect to comment number 4, Mr. Caruso state that he could change the stall lengths of the deeper parking spaces to allow for a 24'-0" drive aisle, but did not feel that it was necessary.

Mr. DeMassi stated that this area was not a parking area, but rather a storage area for vehicles; customers do not access this area.

With respect to comment number 6, Mr. Caruso stated that with no improvements of any kind, as stated before, there would be no alteration of access to the proposed Interstate-287 interchange improvements.

With respect to comment number 8, Mr. Caruso stated that he would remove the sandwich board sign which had been placed in violation of the Zoning Ordinance. There is a large painted sign on the building facing the parking area. There are no other signs are planned to be erected.

With respect to comment number 10, Mr. Caruso stated that no existing trees or vegetation will be removed or replaced, but, in fact, had planted flowers.

Mr. DeMassi stated that it appeared that they had addressed all of comments from the Board Engineer, Ms. Elliott.

Ms. Elliott requested clarification regarding existing vegetation. It was understood that no vegetation was planned to be planted. No existing vegetation is proposed to be removed.

Ms. Elliott questioned the source of the purchased vehicles.

Mr. Caruso stated that his business obtains its vehicles from other franchisees of the Sensible Car Rental franchise and private owners by way of trade-in vehicles.

Ms. Elliott raised a concern regarding how to regulate the number of vehicles at the site.

Ms. Sisko questioned the life-span of such trade-in vehicles.

Mr. Caruso could not definitively answer the above questions.

Ms. Sisko stated she was concerned that trade-in vehicles would be left to die, as the previous business at this location seemed to have allowed.

Mr. Caruso defended his business by stating that he has cleaned up the site and he would ensure that trade-in vehicles would be handled quickly since he did not want his own site to appear to be a junk yard as well.

Mr. Caruso stated that since the founding of the business, there have been no violations reported by NJDEP or the Metuchen Fire Department. There will be inspections made by the Motor Vehicle Commission to ensure compliance with regards to the sale of used vehicles.

Mr. Caruso stated he has maintained the property and vehicles for the past two (2) years and feels that his business is a good addition to the Borough.

With respect to the negative criteria, Mr. Caruso stated that there will be no additional traffic, shoppers and signage as a result of the vehicle sales, other than the removal of the tape on the awning.

Mr. Caruso stated he did not feel that his proposed use would intentionally impair the zone plan or zoning ordinance.

Mr. Renaud interjected by stating that the applicant could not state his opinion on planning matters.

Mr. DeMassi declared that he had no further questions for his witness.

Mr. Fair requested clarification on the size of the lot.

Mr. Renaud stated that the site plan actually came from a planning board application and it would not contain the information requested by Mr. Fair.

Mr. Fair requested clarification from Mr. Renaud regarding how the Board could restrict a use for only a portion of a lot.

Mr. Renaud stated that he felt it could be done. He clarified that the applicant effectively requested for a waiver of a site plan because no site work was proposed. It was up to the Board to decide if that was sufficient.

After a brief discussion regarding the site plan, Ms. Andrews questioned if/how the Board could restrict the vehicles being sold.

Mr. Renaud stated that one of the conditions of approval could state that there would no other sales other than vehicles coming off lease and through the process of vehicles being traded in. Furthermore, other conditions would include no additional signage as well as the removal of the

sandwich sign board.

Mr. Constantine questioned Mr. Caruso if he received a sign permit for the 4' by 60' sign, which is ten (10) times greater than what is permissible under the zoning ordinance.

Mr. Caruso could not definitively answer the question.

Mr. Constantine stated he was appreciative of the work completed by Mr. Hogan and Mr. Caruso to clean up the site and their passion as business owners. He requested that Mr. Caruso to paint over the sign and erect a more conforming wall-mounted sign.

Mr. DeMassi stated that his client would have no problem doing so.

Mr. Constantine requested a review of the lighting situation in a flexible manner. He continued to state that he had a concern regarding the up-coming reconstruction of the I-287 interchange; perhaps the Board should consider only light improvements so as to not raise land value.

Mr. Spiegel stated that he had no issue with the proposal but had concerns regarding the fact that photos show that there are many other vehicles in the area and how to regulate the rest of the uses that do not necessarily foster the intentions of the zone plan. Furthermore, he questioned why the property owner was not present at the hearing to discuss property maintenance issues given that a portion of his lot was going to be granted a use variance.

The Board had a lengthy discussion regarding the above matters among other issues including the Master Plan, Circulation Plan and the Southwest Gateway concept. In the end, the Board agreed that much of the property has been improved and other property maintenance issues are code enforcement issues to be handled by the Zoning Officer.

Ms. Elliott stated she had inspected the site on Monday and noted that there were many vehicles awaiting auto-body repair and appeared to be overflowing onto the cleared portion of the lot.

Mr. DeMassi stated he agreed it was an enforcement issue, but that his client would keep his vehicles in the fenced-in areas.

Mr. Fair opened the hearing to the public for questions.

Gina Kuenseler, 57 Prospect Street, stated that she had no concerns regarding the business itself but had a couple questions. She continued by questioning the applicant if he had any intention of extending the hours of operation.

Mr. Caruso stated he did not.

Ms. Kuenseler stated another concern was regarding the traffic in the area and questioned the applicant if vehicles would be accessing High Street through Prospect Street.

Mr. Caruso stated he did not intend to do so.

Ms. Kuenseler continued by questioning the Board that if the use was granted, if the property owner could begin to sell used vehicles as well.

Mr. Renaud stated that would not be possible.

Mr. DeMassi stated that the used car sales would be accessory to the rental car portion of the business and that the site would not turn into a used car lot.

Ms. Kuenseler questioned if the business performed automotive repairs.

Mr. Caruso stated that the business repairs and maintains its vehicles on site, inside the building. At times, particularly in emergencies, mechanics may work inside the building at night but the office would be closed.

Mr. Fair closed the public portion of the hearing.

Mr. Sondergard questioned the applicant that given the space on the lot, would he be tempted to expand the business in the future.

Mr. Caruso stated that given the 38 parking spaces, his fleet would not increase by more than a few more cars and that it is more effective to keep the business at its current size, citing insurance costs among other issues.

Mr. Fair opened the hearing to the public for further questions.

Mr. Fair closed the public portion of the hearing.

Mr. Spiegel requested that resolution would grant the use variance exclusively for the portion of land subleased to Mr. Hogan. The location has particular suitability given the site improvements performed by the business and other uses in the immediate area.

Ms. Sisko further requested that it be stated that the business is restricted in the number of spaces and/or vehicles permitted on the lot.

Mr. Renaud assured that the above comments would be considered and began to review the history of the application. The applicant had a zoning permit for the rental vehicles with no limitations. Given that the Board has heard the applicant for a use variance, there presents an opportunity to impose limitations to alleviate the Board's concerns regarding overflow of vehicles, property maintenance, among other issues. However, several issues are related to code enforcement.

Mr. DeMassi stated that his client agreed with the above statements. Furthermore, he stated that parking of the rental and used vehicles would be limited to the fenced-in areas while the area outside the fence would be for employee parking only.

At the request of Mr. Renaud, Mr. DeMassi summarized the applicant's proposal to the Board. He brought to the attention of the Board a portion of the Master Plan in which states that "land uses to be encouraged in a development or redevelopment strategy should be appropriate to the area in which they are proposed and should represent an economic benefit to the community." He stated that his client had provided testimony that substantiates these goals of the Borough and is consistent with the Master Plan.

Mr. Constantine reiterated that the applicant should revisit the wall-mounted sign as well as the removal of the sandwich board sign. In regards to lighting, he deferred to the lighting as a code

enforcement matter. This would allow the current lighting to remain unless it became an issue in the future as opposed to placing restrictions at this time.

Mr. Renaud reiterated the conditions of approval to the Board's attention, including language discussing suitability restricted to only a portion of the lot and restriction of sales to rental vehicles coming off lease and trade-ins.

A motion was made to the approve the application by Ms. Sisko, seconded by Ms. McCartin. Roll call vote taken. Motion carried unanimously.

## **CORRESPONDENCE**

### **Minutes from January 13, 2011**

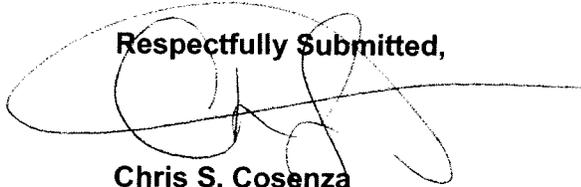
Ms. Sisko requested that two minor corrections be made and provided written comments to Mr. Cosenza.

A motion was made to approve the minutes with the corrections noted by Mr. Sondergard, seconded by Mr. Spiegel. Roll call vote taken. Motion carried unanimously.

## **ADJOURNMENT**

The meeting adjourned at 9:48 p.m.

**Respectfully Submitted,**

A handwritten signature in black ink, appearing to be 'Chris S. Cosenza', written over a horizontal line. The signature is stylized and somewhat cursive.

**Chris S. Cosenza  
Recording Secretary**