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**Town of Shandaken Zoning Board of Appeals  
Minutes for Regular Monthly Meeting  
December 21, 2022**

**PUBLIC HEARING**

**JOSHUA SLATER :**

Public Hearing was called to order at 6:50 by Chair Loete with the Pledge of Allegiance

Roll called by Secretary to the Zoning Board of Appeals Board Olivia Amantia, attendance was recorded as follows:

Mark Loete Chair	Present
Gary Guglielmetti	Absent
Allen Vella	Present
Christian Lynch	Absent
Henry Williams	Present

Chair Loete ask's if anyone has any comments, or questions for the applicant, with no comment from the public, a motion was made by Board Member Williams to close the Public Hearing, seconded by Board Member Vella, all in favor. Public Hearing was closed at 6:55.

**Roll Call Summary:** 3 Present, 2 Absent

**Others Present:** Zoning Enforcement Officer Grace Grant, Building Inspector Donna Lamoine, Town Clerk Joyce Grant, Town Supervisor Peter Disclafani, Joshua Slater, Henry Stout, Chuck Perez

**Minutes:**

## **Regular Monthly Meeting**

The regular monthly meeting was called to order by Chair Loete at 7:00

Roll called by Secretary Olivia Amantia, attendance recorded as follows:

Mark Loete Chair	Present
Gary Guglielmetti	Absent
Allen Vella	Present
Christian Lynch	Absent
Henry Williams	Present

### **Roll call Summary 3 Present 2 Absent**

Chair Loete began the regular monthly meeting, with the first order of business being the approval of last month's minutes. With no corrections, Chair Loete made a motion to approve the minutes as written, seconded by Board Member Vella, all in favor.

The next order of business on the agenda is, Joshua Slater's application for an Area Variance.

Chair Loete notes how narrow the lot that the applicant would like to build on, he wishes him luck with the build. Chair Loete notes that the property is surrounded by State Forrest. Chair Loete states in the past there have been issues of population and building density. Chair Loete doesn't see any issues with cluster development or overcrowding, or any adverse effect on the community character.

Board Member Williams ask's if the board can approve setbacks that border state property, and the answer is yes.

Chair Loete ask's the Board Members if they have any additional questions, comments, or objections, they do not. Chair Loete makes a motion that to grant the variance as applied for 25 ft in the front 0 feet in the rear, 35 feet on one side and 24 feet on the other side. Motion seconded by Board Member Williams.

### **Roll call vote as follows:**

Mark Loete	Yes
Gary Guglielmetti	Absent
Allen Vella	Yes
Christian Lynch	Absent
Henry Williams	Yes

The next order of business on the agenda is Henry Stout. Mr. Stout is here for an Area Variance, at his business Full Moon Resort. The variance is for a Barn/Garage. Mr. Stout states he's had the business for over 20 years, and his maintenance guys have never had a place to go indoors, during the winter months. As well as being overrun with storage at this

time. The purpose of the building is for his employees to keep warm from the elements and for storage.

The reason for the request for a variance is there is a power line, in addition there is a steep grade. The building is held closer to the road with puts the vehicles behind the building, out of plain sight. In addition, there is a water course, and this is specifically designed to be away from the water course.

Mr. Stout states Full Moon Resort lives and dies on our beautiful serene environment. It's an inexpensive steel structure, and they are going to put significant resources into the exteriority to create the aesthetic of a beautiful traditional barn. The idea is to keep with the aesthetic of the resort, the idea is to enhance the landscape. He also states the grade facilitates this very nicely, as you come up the road, the grade comes up, next to the building it'll be close to 10 ft underground and 14 ft on side, so it'll be sinking in.

Board Member Vella ask's if the building will be behind the already existing fence. Mr. Stout says it'll be the outside wall, and will follow the fence line. He says it is replacing the fence.

Board Member Williams asks how far off the center of the road is the side of the building. Mr. Stout says it's about 20-35 feet wide. ZEO Grant says the set back's that must be met are from the side of the road, not the center.

Mr. Stout says from the center of the road it would be 35 ft at its broadest point, and 15 and 20 ft, because the road goes away from the building, so they gain another five feet. Mr. Stout says he also has approval from the DEP, being verbal approval, he says he may have a letter from them. Chair Loete ask's how many acres in total makes up Full Moon. Mr. Stout says there are a number of properties that make up Full Moon, in total there are over 100 acres.

Board Member Williams makes a motion to set up a Public Hearing for Mr. Stout on Wednesday January 18<sup>th</sup> at 6:45, motion seconded by Chair Loete.

The next order of business on the agenda, is Chuck Perez, here for a special meeting with the board. Mr. Perez is here tonight as a result of court cases, & he was referred to the Zoning Board to discuss it.

Mr. Perez says the court wants some clarification on exactly what either the statue is or, what it is that his business in Big Indian is claiming to be; a preexisting non-conforming business on rte. 28 in the highway business district. Mr. Perez has owned and operated Big Indian Service, since 1980. It was originally built back in the 50's by George Bedell. Mr. Perez purchased the property from Mr. Bedell as a gas station repair shop that was involved in towing.

Mr. Perez says as a result of towing vehicles one acquires junk, he says he acknowledges a lot of the cars are junk. He notes when there are automobile accidents, and he tows the vehicles so some may end up at the shop longer than others. He states he's not always able to get rid of the vehicles, because he doesn't necessarily own them, so it isn't always easy to

get rid of them. He states he's been cited in the past, by former Building Inspector Howie McGowen, at that time he had over 50 vehicles, now he's down to less than 15 vehicles.

He states he continues to work on it, and truthfully, he would like to ultimately sell the property, and he acknowledges it needs to be cleaned up. He has operated the business for over 40 years, when covid hit, it had a significant impact not only on his business, but his health as well, he was diagnosed with cancer last year, and underwent surgery, so he has been dealt some hardships, and is doing what he can when he can.

Mr.Perez says he was before this board last year , and still does not have a decisive answer on the matter. He says it was suggested if he put up a fence around the property, but he does not wish to do that if it would be considered a junk yard, which it is not. He states he's here tonight to be a good neighbor.

Board Member Williams ask's what it is that he wants. He says when the citation is claiming it is a "junk yard" he states it is not a junk yard, he parts out cars and sells them whole. Mr.Perez says he is looking for clarification having been in business for 40 years, before the zoning code existed, he has been told in the past its possibly preexisting non-conforming business. He states he's made an effort to clean up, and will continue to do so. The court ultimately wants clarification from the Zoning Board, where do I stand.

Chair Loete states Mr.Perez was before the Board last year on May 19<sup>th</sup> 2021, as a result of a violation. Chair Loete states they couldn't offer any specific solutions or determinations due to the lack of an application with any kind of variance that the board can act upon which is all they can do.

Mr. Perez says if he does sell the business, he would intend to sell it as a repair shop. Mr. Perez says there are no fuel tanks or hazards on the property and has gotten a clean bill of health from the DEC. He states going forward he will do his best to clean up the business, as he has been, although it may not be as quick as others would like. Ultimately, he is here tonight as a result from going to court, the judge would like clarification from the Zoning Board.

ZEO Grant says Judge Miranda, advised Mr.Perez to come to the board and , that this board would supply the court with a letter stating that the existing junkyard, the use as a junkyard is allowable according to this board. That is what the judge has asked for.

Chair Loete states according to the statues in the Zoning you're operating a junkyard. According to the definition a junkyard is disallowed in every Zone, even in hamlet business. However, I think that argument that you're grandfathered in is relevant.

Board Member Williams ask's if he is registered with the State of New York maintenance or repair station for automobiles. Mr.Perez state yes he is registered as a repair shop. Mr. Perez says he is only allowed two unregistered vehicles on the premises. He states his

business predates the Zoning Code, and heir have been times when there is more then 2, but as a repair shop, he is allowed 12.

ZEO Grant notes if he is an active repair shop, he is allowed 12 vehicles if they are unseen from the public view. Mr. Perez says ultimately, he would like to get out of the business, his kids don't have intrest in it, and he works part time for Town of Shandaken ambulance service as well. He knows it has to be cleaned up, and that's what hes been doing.

Board Member Vella ask's what is stopping him from getting rid of the vehicles. Mr. Perez states if they're junk, he removes them, but some of them have significant monetary value and are not all junk. He states holding onto the with the hope of getting more money for them.

Board Member Vella states, wanting to get rid of vehicles, and doing so, can become an issue for the Town, and does he have a plan or a timeline. Mr.Perez says there was no timeline before, and he came with the assurance that he was going to clean the area up, and he has made progress, it may not be as fast as everyone would like to see, but progress has been made.

Board Member Williams asks ZEO Grant, what her position is on this matter in terms of Zoning, and she replies it's not allowable in any Zone. As far as it predating code, if you read chapter 83 of the Zoning Book, for junkyard licensing when that was passed it gave an existing junk yard 60 days to apply for a license, and then come in yearly for renewals which did not happen. Ms. Grant says her stance here is that a junkyard is simply put not allowed in the Town of Shandaken.

She states she believes the last time Mr. Perez was here, this board said if you applied for a variance of some sort, that we could move forward in that direction. She states in her opinion the only variance that Mr. Perez can apply for from this board is a Use Variance, since what he is doing is not allowed according to code. If this Board was to approve a use variance to operate a junk yard, he would still need to go to the town board and get a license for a junkyard.

Mr. Perez states he would not want to sell his property with the individual being allowed to operate his business as a junk yard, ZEO Grant states a junk yard license is nontransferable.

Mr. Perez states there was an issue at the last discussion that was held, about a fence and his comment was he's not happy about it, but if it will appease the community, he will put up a fence.

Board Member Williams ask's if his business is mainly towing, Mr. Perez says yes for the past 5 years he's been only doing towing. Chair Loete says it sounds like he just needs more time. Mr. Perez states the fact of the matter he's been dealt some hardships but he's here standing before the Board, trying to figure out a solution.

ZEO Grant states if the preexisting non-conforming business uses dormant for five years that grandfathering in ceases it to yes which isn't the case here. He states that not everyone has insurance whose vehicles are at the shop, so they don't have the means to retrieve the car, and therefore he gets stuck with the vehicles. He states there are instances where he's gone out at the request of the police and he's taken three cars from an accident, and then there may be another accident, where he acquires additional cars.

Board Member Williams says isn't there a time limit in which the vehicles are only allowed there for a certain amount of time, and then there are penalties? Mr. Perez says he currently has a 2017 Chevy Tahoe, and someone stole the tires off of it, and its still tied up in litigation and has been there for three years.

Chair Loete states he'd like to find a solution where it does not leave a path for another junkyard, what is that path. ZEO Grant says the court would like a letter saying that this is allowed according to this board, that the property is being used as a junkyard is allowed by the board, with a letter stating that.

Chair Loete ask's Mr.Perez what his ideal outcome would be from the Board. He states the first thing he needs clarification on whether it's illegal or legal what he's doing at his business. He states he will continue to clean up and dispose of junk.

ZEO Grant states it comes down to use and the way the property is being used. The garage and the parcel are being used as a repair shop and the 12 vehicles associated with that repair shop are allowed. But if the use is simply the storage of cars that are not road ready, then that's a junkyard, according to the book and that's the issue, which is illegal in any Zone.

ZEO Grant states a Use Variance is what Mr.Perez needs from this board. ZEO Grant states the bottom line is that this board can says if you're a registered motor vehicle repair shop you can have 12 unregistered vehicles, but unless the parcel is being used to repair vehicles its still going to be in violation regardless of whether or not that is happening there, which is not the case, it all comes back to use.

Board Member Vella says they all want to help, but if the business is not being used for the specific purpose it says then what can they do. ZEO Grant says the Board advised him to apply for Use Variance to operate a junk yard in that Zone, because its not an allowable use.

ZEO Grant says the next appointment with the Judge is January 11<sup>th</sup> . Board Member Williams says he advises him to put in an application, continue to clean the place up, and say it's a maintenance shop, & I've never stopped doing that, and see where thar goes.

Mr. Perez ask's does he need a variance if he's existed for 40 years as a maintenance shop. ZEO Grant states the violation is for a junk yard. ZEO Grant says she understands how difficult this is, but she has to do what she's required to do,

Mr. Perez understands she is just doing her job. Mr. Perez states the area was once a thriving community, but going up and down the valley 30 years ago, there was several bars and restaurants and now the dynamic has changed. If you've been here long enough to see that change, you can appreciate where the change is coming from. Mr. Perez is open to suggestions and appreciates that The Board is willing to give him more time.

ZEO Grant states it's the Judge who needs to give him more time. Chair Loete suggests tabling the discussion until the Board Speaks to the Town Attorney, and they get more clarification on the matter.

ZEO Grant says the Judge is asking this board if this use is allowable because it predates the code, and he's asking for a letter if that is the case. ZEO Grant states if the Board would like to table this until the next meeting, she can contact the court tomorrow and ask if they can push the next appearance back.

ZEO Grant states if there is an agreement, we can push back the court date to the 24<sup>th</sup>. ZEO Grant states if the Board could issue some sort of temporary use, it would clear the violation.

Chair Loete ask's Mr.Perez where he thinks he'll be in a year, will he have these issues resolved. Mr. Perez states he can't say all of them but I'm working towards that.

ZEO Grant says they will reach out to the Town Attorney and see if there is a clear path towards giving Mr.Perez more time. Mr. Perez will come back to the Zoning Board, on January 18<sup>th</sup>.

**Old Business:**

**New Business:**

**Henry Stout**

**Chuck Perez**

**Adjournment:** These minutes were prepared by the Zoning Board Secretary Olivia Amantia.