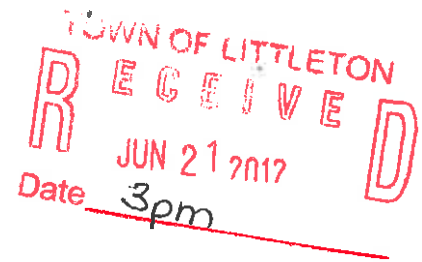




OFFICE OF THE  
LITTLETON BOARD OF APPEALS  
LITTLETON, MASSACHUSETTS 01460



Petitioner: Keith Carroll  
Case No. 807A  
Date Filed: April 23, 2012

The Littleton Board of Appeals conducted a public hearing on May 17, 2012, continued to June 6, 2012, at the Shattuck Street Municipal Building on the petition of Keith Carroll to appeal the Building Inspector's Decision of March 29, 2012, issuing a Cease and Desist Order for operating a "motor vehicle service station" and "open and bulk storage" in a residential zone at 193 Foster Street, Littleton, in violation of Section 173-26 of the Littleton Zoning Bylaws, and/or for a variance to operate a business at the same location. Notice of the hearing was given by publication in the Littleton Independent, a newspaper published in Acton and circulated in Littleton on May 3, 2012 and May 10, 2012 and by mail to all abutters and parties in interest. Present and voting: Sherrill Gould, Chairman, Members, William Farnsworth, John Cantino, Cheryl Hollinger and Jeff Yates. Present and not voting were alternates, Alan Bell and Rod Stewart.

The petitioner presented the history of the property. Petitioner owns the property at 193 Foster Street. The property abuts the Life Care Center, a nursing home, on 2 sides and shares access with the driveway to that building. The property was originally a large working farm and apple orchard, from which the nursing home property was subdivided for development. The property contains several large attached and detached wooden barns, which were always used for storage of farm equipment and construction equipment for the working farm first, and for the development of the nursing home afterwards. Petitioner purchased the property from the developer after the nursing home was completed. The Petitioner showed that his property line extends to approximately the midpoint of the access road to the nursing home. The petitioner lives at the property with his family. The petitioner is in the excavation business and owns several large pieces of equipment, including, among other things, an excavator, dump trucks, a 6-wheeler, and other items. The equipment is usually off site on a job but is brought back to the petitioner's home for occasional parking and storage, either between jobs or off season. The petitioner denied that there is frequent daily truck and trailer activity coming and going from the site and that if equipment is moved it leaves early in the morning and returns at the end of the day. The petitioner has been using the garages and barns for his personal equipment and vehicles since he purchased the property. The petitioner does not have more than one additional employee.

The matter came to the attention of the building inspector when a maintenance worker at the nursing home had a disagreement with petitioner over damage to bushes, along the access drive (which later proved to be petitioner's property), and complained to the Building Inspector. Upon inspecting the site, the building inspector concluded that the presence of the equipment made it appear that there was a motor vehicle service station as defined in the bylaw, or open and bulk storage in violation of zoning and issued his

decision. The petitioner responded immediately by removing the equipment and bringing this appeal.

There were numerous abutters and several interested contractors and construction workers who attended the hearing. Petitioner presented evidence that the nursing home owners were satisfied that the altercation was isolated and not justified in light of the ownership of the land and they wrote letters praising the petitioner as a non objectionable neighbor. All of the neighbors wrote letters in support of the petitioner and attesting to the fact that there is not an apparent business operation at the property. Several contractors spoke in favor of the right to house their equipment at their residences as a necessary accessory use to the rural residential character of a community, which has allowed contracting/landscaping services as a home occupation. No abutters spoke against the petitioner.

The building inspector defended his position stating that the bylaw clearly proscribes "storage of motor vehicles." The building inspector cited as support that the equipment is excessive in size and number than most home occupations, even those used for landscaping and contracting and argued that at this level, Petitioner should be seeking a commercial space for his vehicles. The building inspector also argued against granting a variance to a business in the residential zone as there were no grounds for the hardship necessary for such a use variance.

The Board deliberated at length weighing the severity of overturning the Building Inspector in light of the vague wording of the motor vehicle bylaw. There was a general reluctance by the Board to grant a use variance in the residential neighborhood, so the petitioner requested and was granted the right to withdraw the request for variance without prejudice. There was discussion about whether the storage of equipment may be grandfathered. There was lengthy discussion about whether the facts elevated the petitioner's activities to the definition of "motor vehicle service station" or open and bulk storage.

**FINDINGS:** The Board discussed its interpretation of the bylaw and determined that the premises were not "devoted" to activities, which would qualify as a motor vehicle service station; that at best, the occasional parking and storage were incidental to the primary use as a dwelling. The Board also determined that the activities did not qualify as open and bulk storage, a term which is not well defined in the zoning bylaw. The Board generally favored granting petitioner some relief in recognition of his reliance upon the existence of barns and equipment as grandfathered and his investment into the property.

**DECISION:** The Board voted four to one to GRANT Petitioner's appeal of the Building Inspector's decision.

Appeals, if any, shall be made pursuant to G.L. 40A, Section 17 and shall be filed within twenty days after the date of filing of this Notice in the office of the Town Clerk.

Signed: Jeffrey Yates  
Jeffrey Yates, Clerk

Dated: June 20, 2012  
Certificate of title No. 226958, Book 1265, Page 8.

I hereby signify that twenty days have elapsed since the filing of the above decision by the Board of Appeals and that no appeal concerning said decision has been filed or that any appeal that has been filed has been dismissed or denied.

\_\_\_\_\_  
Town Clerk

True Copy Attest: \_\_\_\_\_

Littleton, Massachusetts

Dated: 6/21/12