

**DOCUMENT 49**– MINUTES OF A HEARING HELD ON JUNE 2, 2015, REPETITIVE PETITION FROM DEVON TUCKER REQUESTING SPECIAL PERMIT TO SELL TWO (2) USED CARS AT 7-9 EAST BROADWAY.

**SUBJECT:** Document 49 – Repetitive Petition from Devon Tucker requesting Special Permit to sell two (2) used cars at 7-9 East Broadway

Present: President John Michitson, Councillor Robert Scatamacchia, Councillor Melinda Barrett, Councillor William Macek, Councillor William Ryan, Councillor Thomas Sullivan, Councillor Mary Ellen Daly O'Brien, Councillor Michael McGonagle, Councillor Colin LePage

City Clerk Linda Koutoulas: Document 49 - Repetitive petition has been received Devon Tucker for Special Permit to sell 2 used cars at 7-9 East Broadway. Specific and material change has been determined to be present by the Planning Board. Related communication from Economic Development and Planning Director, William Pillsbury.

President Michitson: Opened the hearing.

William Early: Good evening Mr. Chairman and members of the Council. By way of background, you may recall that we were back in front of the Council on March 24<sup>th</sup> wherein Mrs. Tucker was desirous of selling 10 vehicles down on East Broadway, the location known as 7-9 East Broadway. Further, by way of background, she previously had an operation at the corner of White and Winter Street for approximately 10 years. In November of 2014, the establishment was sold and she and her husband relocated down to East Broadway. She had previously, at the corner of White and Winter Street, she had permission from the city to sell some 23 vehicles out of that lot at the corner of White and Winter Street. When she went down to East Broadway she had to go before the Board of Appeals to get a use variance to sell automobiles down there. We appeared before the Board of Appeals and she was allowed to sell and store 10 vehicles on the property located at 7-9 East Broadway. Subsequent thereto we came before the Council, there was some opposition, which I am sure there is tonight, as well. There was discussion and the request to sell vehicles down there was denied by the Council. Thereafter, we appeared before the Planning board approximately a month ago and rather than request 10 vehicles to be sold down there at 7-9 East Broadway, we appeared in front of the Planning Board and demonstrated that there was a substantial change and that she was going from 10 vehicles to sell down there to 2, which she is desirous to do at this point in time at that location, 7-9 East Broadway. She does not wish to sell any vehicles out in front of the property. She wishes to store 2 vehicles for sale behind, there's a privacy gate down there and that is what she is looking to do. I know there's going to be some opposition, I respect all the neighbors' concerns and the like. I don't believe this is going to result in any increased traffic concerns relative to the neighborhood. There's no restrictions on the number of vehicles that she can have on the subject property down on East Broadway. There's a lot of vehicles down there. They are all tucked in behind the fence. Some of them are outside but there is no restriction on the number of vehicles which she is trying to do is sell 2 vehicles behind the privacy fence. She'll get up and speak in a moment with the Chairman's permission relative to her marketing endeavors down there. They sell everything over the internet these days. That's what her marketing plan is. There's no banners that are going to be displayed down there. There's no balloons. There's no signs. There's nothing. It's going to be 2 cars that she desires to sell down there behind the gate. By way of background, back in 2004, I believe, the property owner down there got permission from the Council or the licensing authorities to run an inspection station down there. It used to be, this subject property was the old Smith Fire Extinguisher, back in 2004 they were granted permission to issue inspection stickers down there. I know some of the neighbors were concerned about the traffic that that generated because of the beginning of the month and the end of the month there was a lot of traffic going down there for obvious reasons. Mr. and Mrs. Tucker have no desire whatsoever to get inspection stickers down there. They are duly licensed, I might add, to do auto repair down at East Broadway. They are trying to supplement their income. This is not a big automobile operation. This is just as I said it last time, it's a mom and pop operation literally. They are trying to sell a couple of cars per

month down there on East Broadway and we believe that this will not have any detrimental effect on the traffic problem, if there is a problem, traffic impact down on East Broadway. Mrs. Tucker would like to speak.

Devon Tucker, 70 Whittier Street, Haverhill, Mass. We've spoken before I guess, I just want to review what we do to sell cars down there. We don't need to have any for display. They can be behind a privacy gate because 95% of our business, if not, are repeat customer has to do with the internet. We post our cars on line. People make an appointment and they come see them. So there's no need for us to have them out front with obnoxious signs or display, but we need to be able to sell a few cars to supplement our income. It's 50% of our income down there and we cleaned the place up and tried to make it a really nice looking building again. It was an eyesore before and taking this away from us is going to really hurt us.

William Early: Mr. Chairman, I believe there's some people here in support of the request.

President Michitson: Well that's the next step. Is there anybody here that's in support of this would like to speak?

Good evening everyone, my name is Phil Rice. I reside at 427 East Broadway in Haverhill. I was raised at 23 Glines Street. I've lived in Riverside pretty much my entire life. Used to go thru that corner going to the Crowell School, catch my bus going to the Nettle School and used to hang out on the wall. If anyone knows what that means. I am here tonight to have like a little bit of a different look. That whole area has always been commercial. It goes back to the day of Hannah's Market and Blake's Pharmacy, Riverside Memorial Church. It was Smith's Fire Equipment and right behind that venue was McGregor Smith's ironically a car dealership. So it's been there. I look at what Joe and Devon have done. They've been in business for perhaps 15 years. I've been dealing with them for a great part of that. I own a fleet of vehicles. They do all my repair. I've bought 4 vehicles in the last 6 years from them. I look at everything I've done with them has been seamless. When I bought my vehicles it was done by word of mouth per se. I'd call Joe Tucker up directly and I'd let him know what I was looking for. He'd find it, call me and either sell it to me or keep it and sell it. It was seamless. It's been just a great relationship. I think that's important in this society rather than, as they say, the big box stores and the big repair areas and the big car dealerships. You don't get that kind of service. That's what I want. I think it's a value add. As Mr. Early said, the mom and pop shop type of business, entrepreneurial. I think they've taken a big chance at that venue because it's small. It's tiny and they were used to something larger and bigger. They chose that one. All of what I am telling you about them is the reason why I am here tonight. They didn't ask me. I came on my own. I want to continue doing business with them on both regards. I want to be able to buy vehicles from them. I know the reason why they want to sell vehicles is because it is an added bump to their bottom line. People that are in small business, I'm one, I own 3 businesses in this city itself. I have been doing it for 40 years. I know what it's like to make payroll. I know what it's like to not make payroll and have to go borrow. I know what it's like not to take a check. If this is something they need to be successful, I think the city should embrace it. I think the fabric of our community, Haverhill. I love Haverhill, I love Riverside, is what it is about the people. We all work together. It's just a great relationship. Just to give you an example of one thing that happened down at Tilton's corner over the years that I think is impressive and it's a much larger show than what they are demonstrating by diversifying from being a repair shop to a repair shop that sells a couple of cars. As you take a look at Charlie's Variety. In its day, Charlie's Variety was Hannah's Market. It was a butcher shop and it had a market in front. Well, Charlie grabbed onto it and he bought it. He turned it into a market and then one day all of a sudden, he turned it into a market that had a beer and wine license. So I guess he's a market and a liquor store at the same time. And then he furthered his bump to the bottom line by adding the deli and then the next day or next month or the next year all of a sudden there was a few tables and chairs were there. So I guess you could call him a mini restaurant. And then these things came along, they were called scratch tickets. So I guess he was a gambling hall too. Then Keno, ATMs, pay phones. All of these things are entrepreneurial, small business people trying to succeed in life. Trying to make it work. There was no complaints about added traffic because people embraced what he did. I think that that's the same type of look that we have to have for Devon and Joe Tucker trying to make it in Riverside at a place that was in disrepair and vacated. I think that it would be a failure on the city's behalf if we didn't give them

the tools to do that. You look back when they did go to the Board of Appeals. I was present at that meeting. I saw a lot of the faces in the crowd right now tonight that were there that opposed. Okay, they opposed 10 cars. But now they are selling 2 cars that are hidden behind a fence, on the internet and by appointment only. Now, I don't see how that can possibly impact anything including safety, at all. If anything, it's going to be less vehicles that are being able to move because when he buys the cars they are probably going to sit for days until he sells them or she sells them, either one. Bottom line is, I know some of you Councillors, are entrepreneurs in your own right that you literally own small businesses. I am reaching out to that in your thinking because you must be in the same position in some point where it's tough to make ends meet. I just think it's up to the city to work together. It would be real nice for this Council to grant them the right to sell 2 cars behind the fence and give them the necessary tools to succeed. I would ask that you grant them a positive vote tonight please. Thank you.

President Michitson: Thank you very much. Is there anybody else that would like to speak in favor?

Attorney Early: Just as an aside. There is a gentleman who wishes to speak. I was remiss in that there's a bunch of petitions that were signed by neighbors down in the area. I just wanted to bring that to your attention.

President Michitson: Yes, we do have a copy.

Attorney Early: Most, not all, of the people that signed that petition live in the Riverside section of Haverhill.

Good evening, my name is Bob Corthell, I'm Robert Corthell. I live at 142 Groveland Street. I resided there for almost 37 years. Prior to that, my father and his family grew up in Riverside. The area that we are talking about is a commercial area. Always has been. I am a former small business owner here in town. I owned Chandler's Auto School for 25 years. I did business with Smith's. They have my fire extinguishers serviced every year. I was aware of the car dealer or the automotive repair shop that was there. I didn't do business with them. But I've known Joe for the better part of maybe 6-8 years. I've purchased 4 cars from him. I did business with him at Winter and White Streets. The place was always neat. Again, I purchased the cars from him. He did well by me. Treated me well. He services my cars. I have always gone into his place of business it was clean and well kept. I really feel what their changes that they are willing to make are worth giving them approval for the sale of 2 cars on that property. I do know that he has made tremendous improvement in that building. Again, as Mr. Rice had said, McGregor Smith was there, Blake's Pharmacy, Hannah's Market. All businesses that were there have done well and did well in the neighborhood and didn't disrupt the neighborhood. I would like to see a positive vote from the Council. Thank you.

President Michitson: Thank you very much. Is there anybody else that would like to speak in favor? Is there anybody else that would like to speak in favor? Is there anyone opposed that would like to speak?

Michael Hart, attorney, offices at 105 Kenosha Avenue.

President Michitson: Otherwise known as Mr. President.

Michael Hart: No, you're Mr. President. Tonight I am going to speak for some of the neighbors who are in opposition to the granting of this permit. Now I want you to know that I'm doing this Pro Se. I'm doing this because out of concern for the neighbors, I want to help them protect their neighborhood. That's the reason. These neighbors do have great concern for their neighborhood. Concern for preserving the residential nature of it. Now, yes, there is some commercial use down there. The name of the zone is Commercial Neighborhood. Our zoning ordinances subscribe what uses, what commercial uses can go into a Commercial Neighborhood zone. Repair garages and automobile sales are not allowed there. They are just not allowed in a commercial neighborhood zone. I think that the uses in our zoning ordinances, uses in the CN district, and all of our varied districts, I think they should be preserved as much as possible. I don't think we should be just changing them or allowing exceptions to them. I think if we want

to allow something different than what's allowed in there, if that's how we feel, then change the zoning. But don't carve out an exception. When neighbors feel that by doing so you're opening the gate, you are opening the door to other changes. I mean, it's interesting the history of this building. As referred to, it was a commercial warehouse, that was a non-conforming use by the way, and when somebody wanted to turn it into an inspection station they went before the Board of Appeals and they got a finding that said what they wanted to do, which was to have an inspection station and do incidental repair work going along with inspections. They argued that it would not be more detrimental to the neighborhood than the commercial warehouse was and the Board of Appeals agreed with them and gave them their finding and that's how they went into business. I've looked, I haven't seen that another finding was done when this business started up although it really extends things and changes things a great deal. I don't think there was a variance for it and I don't think there was an extension for it or a finding for it. I mean one could argue that they are not even there properly at this time doing what they are doing what they are doing. But I am not here over that, that's not the issue that I am really here about but it is the integrity of the zoning ordinances and the zoning laws. I know they are very nice people. It can get very personal at times. It's like an itsy bitsy thing that they want. But it's really not about them, that's the point. It's not about them. You grant a special permit, you grant it to the land and it's there until abandoned. They could decide to stay there two more months leave and then somebody else could come in and want to sell cars but want to sell them at a different way and they could unless you had restrictions and they were enforced. Now, if you know you want to sell cars, I guess my question is, if you know you want to sell cars, why do you move into a zoning district where you can't sell cars and then ask for help. Say, just let us sell our cars. We absolutely need them. Well, they knowingly moved into this area where they knew they couldn't sell cars. I think to me, it's a self-imposed hardship. You create the hardship and then you go and basically say but you've got to bail me out. I really need this. The Council back in January, when you rejected the last application, the lower of the number of cars to be sold doesn't change the fact that if the permit is granted, one, it's going to set a precedent, the neighbors don't want for this use in this neighborhood; two, the number of cars being sold can't easily be monitored and would be extremely difficult to enforce; three, unfortunately, the applicant can respond to this, but it would appear to me that the applicant's pattern or behavior suggests that the applicant will not absolutely restrict their sales to any number of cars if given permission. And the reason I say this, is, the applicant at least it appears, to be selling cars or to have been selling cars over the internet in April and May of this year. The cars are shown to be located on the property and they don't have a special permit. As a matter of fact they were denied a special permit. I say this because I have this information, I have three items taken from Craigslist. I didn't do the research on this, two of them appear to have been up and running on April 11<sup>th</sup> and this is what they look like. I'll hand them up there if you want to see them first hand, but this is what they look like. They show a picture of an automobile, it gives the date up in the corner. This is April 11, 2015. It shows a picture of the automobile, the price of the automobile and the automobile, is clearly clearly on the side of their building. There's no question about it. It's there. That's where this picture was taken. Now if you want to buy this automobile, you go on the internet and go to joe@idealservicecenter, which happens to be the name of their company. I have another one on April 11<sup>th</sup>, and I have one that's May 15<sup>th</sup>. It's only two cars, it's going to be behind the fence and without a permit they are selling a number of cars not behind the fence, or least when they took these pictures they weren't behind the fence. Clearly on their property with directions to give them a call or email them at their business. So I am not sure they actually need a permit because they are going to sell the cars anyway. I am going to wrap it up because I don't think I need to go on for too long and I know some of the neighbors are going to say a few things. In addition to the neighbors here tonight, please consider the opposition of the Chief of Police who sent a letter of opposition the last application. I have a letter of opposition from the Board of Trustees of Riverside Church which is diagonally across the street, I am going to hand that to the clerk to be part of the record. There was a petition by over 50 neighbors against the last application that somehow disappeared after the Board of Appeals hearing never to reappear. But there were over 50 signatures on that in opposition and these were people that were in that neighborhood. On behalf of all the opposition, I just respectfully request that this application be denied. Your denial won't necessarily stop the selling of cars at the property but it will prevent setting a bad precedent in this neighborhood. Thank you.

President Michitson: Thank you very much. Is there anybody else that is opposed that would like to speak?

I'm Laurie DiFruscio, I hate public speaking. I get very nervous so bear with me. I live at 17 East Broadway. I'm two houses down on the same side of street as the business. I've sent you all emails describing my concerns in the past. It's the same as Mr. Hart said. But I have a new issue. It's towing of vehicles. They are towing vehicles and they are used vehicles for sale, to their property. They are parking in front of my neighbor Chris's house at 11 East Broadway, blocking his driveway. But when they do this they are coming at all hours of the night, lights are flashing, my bedroom is right there. My living room is right there. My dog starts barking and it's like they have total disregard for the neighbors. I know Chris has spoken to the tow truck drivers and they kind of laugh at him. It's disruptive to the neighborhood and it's a quality of life issue. Thank you.

President Michitson: Thank you very much. Is there anyone else opposed that would like to speak? Is there anyone else opposed that would like to speak?

Priscilla Dullea, 28 East Broadway, I've said what I had to say before. I just don't understand why a non-compliant use can be forced upon a neighborhood that's been stable for many years, except for the addition of this gentleman over here who I hope is going to say something. He's bought a large house in the recent past and in 10-15 years Sandra and I probably aren't going to be around but this man has a young family and I feel very badly for him because he's right next door to something that was represented to him accurately when he bought his house and now seems to be going to morph into something very different without your intervention. One other thing, it's hard for me to hear if memory serves me correct and that's all it is and you can tell that memory might be an issue for me, but I believe it was around 1975 that the dealership and repair service was removed from that area and the doctor's offices were put in. And that made a huge difference in the neighborhood. This is a step backwards. Thank you for your consideration.

President Michitson: Thank you very much. Is there anyone else opposed that would like to speak?

Chris Goudreault, 11 East Broadway. I do have a handout. It's okay to pass them out?

President Michitson: Yes

Chris Goudreault: I moved here three years ago. I bought the house during the housing crisis and moved in with my daughter. I'm a single father. I like the neighborhood and I decided to move in. Did my research. I grew up in that area. I was born on Golden Hill Avenue. Grew up on Amesbury Road, I know a lot of people in that area. So I decided to purchase it. It needed some work. Needed some landscaping, driveway, some exterior work. I went ahead and invested in the property. The next door neighbors, the mechanics, they were very nice. I thought it was an asset to the neighborhood. They did registration stickers, repair work. My family owns a repair shop in Haverhill. I've been around and I have no problem with that. The problem I have is selling cars. Like Mr. Hart said, it's a slippery slope once you bring in the permit for two cars, if it doesn't succeed someone else comes in they can come back to the Council and try to get more. Who knows, squeeze out the mechanics out of there and before you know it, it's a big car lot next to my house. And with car lots you have security issues. Soon as the criminal element find out there's a car lot there, you are going to need some parts. We are going to need security camera, security lights, flood lights. If you look at that hand out, the place they are going to put the car lot is going to be 15-20 feet away from my deck. Right next to my yard. With the change from before, they were going to put it out front, which was not that great but this is worse for me in particular. I know lots of car salesmen, people in that business and they told me that most of their purchases occur during the weekends, Saturdays, Sundays, after work. I'm there on my deck having a barbeque with my family and there will be strangers 15 feet away testing out a car, listening to the stereo, whatever people do when they look at a car. Basically, this is too close to my house. When I looked at the property it said desirable neighborhood. When I looked up, I searched on Google and I looked under things under desirable neighborhood, car lots didn't come up. Wasn't there. But I did find a definition of car lots may be held under, and I got this off the internet too. External obsolescence and a definition is an element of depreciation, a defect usually incurable caused by a negative influence outside a site and generally

incurable on the part of the owner landlord or tenant. This is external obsolescence which will decrease the value of my home that I invested into. As far as the neighborhood goes, I don't think it fits it. There's one commercial spot, that's it. It's a good mechanical place. A used car lot, that doesn't fit. Since November I've had numerous numerous neighbors come over. Knocking on my door looking for support on this and I was glad I had the support because I expressed my feeling to them, I didn't want it either. I'd be down the street, there's a young family down the street. A man, a family, they just came back from Afghanistan, he is against it. Elderly coming to my house, just looking for support. I just ask the Council, please, this is not a good fit for the area. It's going to depreciate our values of homes. Please vote no on this. Thank you.

President Michitson: Thank you very much. Is there anyone else opposed that would like to speak? Is there anyone else opposed that would like to speak? With that, I will offer a 5 minute rebuttal for both sides if you wish to take that up.

Attorney Early: Mr. Chairman, my client would like to address some of the concerns that the residents have made.

Devon Tucker: I am sorry, I'm just listening to so much and it's so hard to keep your mouth closed and not start mudslinging with some of these accusations that are made. I'm strictly closed on Sundays. I close at 2 on Saturdays. We're family. We have, and 5 o'clock during the week. We have a 13 year old and a 16 year old, that's our main focus. And for these all hours of the nights, we have no customers there. If a car gets towed in, there's nothing, I am going to have that as a repair shop not just as a car dealership. Although I respect everybody's concerns, they are also kind of not saying the truth which is making me a little, it's hard to listen to when you know they are not speaking for everybody.

President Michitson: Thank you very much. Would somebody like to represent the other view point?

Attorney Hart: Just going to rebut on one minor, not minor but, one of the neighbors in speaking with me said, that Mr. Tucker in having a somewhat conversation but a little bit confrontational, did say to her, if I don't get this you know I am going to be open on Sundays cause I am going to need that Sunday work. She kind of took that as a threat.

President Michitson: Thank you very much. The hearing is completed. We are now going to close the hearing. Council what is your wish?

Councillor Scatamacchia: Move for passage Mr. President.

Councillor Daly O'Brien: Second with discussion.

President Michitson: Motion by Mr. Vice President seconded by Councillor Daly O'Brien.

Councillor McGonagle: Well I have great respect for Councillor Hart, look up to him a lot. Everything he said is correct. And I have concerns and I had concerns when they came before us before. I wasn't willing to bend for 10 car license and we brought it down to 4 and we still weren't able to get it. But the last thing that Councillor Hart said I don't think it's a threat. I went down to Ideal Cars and I spoke with Joe Tucker and I said is there any other way that you can make this business a go. He moved into the property as a repair shop thinking, like many businesses do, they will move in and do their business and hopefully, they'll be able to pay their bills, make their payroll and they found out that they are going to have to do something else. Whether it be try to go back to inspectional services where they can do State inspections, that's one option. Bring in various repairs, tires, oil, whatever they need to do, they are going to try to do. What he does not want to do, and I don't think this was a threat, but he would like to not work Sundays. He would like to be able to sell the cars. He would like to be able to not have the traffic on the street late in the month and early in the month for stickers. Again, that's a lot of excess traffic that you folks have put up with for years and years. I don't think that was a threat. But it is a reality. If a business cannot make ends meet, then one, they have to either extend their hours, find different ways or different avenues

within the automotive industry to have their money or get up and move. They do have some investment in the property. I always thought that reducing or eliminating the inspectional service end of that business would be better for the neighborhood and would be a compromise for them. It is hard to listen to some of the things that were said here tonight knowing that there is sometimes a business run out of a house next door. And that's frustrating to have to sit here and listen to that. But that's another issue. I'm up in the air. I think it would be better for the neighborhood. I will listen to the rest of my peers. Thank you Mr. President.

Councillor Daly O'Brien: I am not sure who can answer this, how long has that property been vacant before?

Joseph Tucker, 70 Whittier Street - approximately two and a half to three years.

Councillor Daly O'Brien: Well, I'll continue asking you. How did you arrive at that property as a choice?

Joseph Tucker: Well, actually it wasn't a choice. What happened was we couldn't come to an agreement where we were at 117 Winter. So we were actually pushed at the time to find a location. We were actually court ordered to get out of there. We only had a certain amount of time and that's the place that we chose that was available for us to get to within that amount of time.

Councillor Daly O'Brien: Because, I really have to say, I think it was a poor choice. I think you were pushed and you had to make a decision very quickly. But, the neighborhood has evolved over the years. Certainly having McGregor Smith leave that area, I remember McGregor Smith being there. I think my dad might have bought a car there when I was young. I think that really did change the flavor of the neighborhood. I can see why the neighbors are not looking forward to that changing even though I think you have probably done a really good job as far as fixing the piece of property up. You've made it look better and it's better than it looked before. I think the business that you've chosen to put there is not a good choice. When I think of other places in Haverhill that could have accommodated you, there's many other streets. Maybe that wasn't a good choice.

Joseph Tucker: Probably wasn't, but at the time it was the choice that we had. The thing is, we've bent over backwards for the neighbors. We cleaned the home. We put a privacy fence up that two cars behind there is not going to have any ill effect on them whatsoever. I mean it's just not going to. It's impossible. With what I run there now, is what they get. There's going to be no more no less, nothing.

Councillor Daly O'Brien: I think when Mr. Hart pointed out that you may have created your own hardship, I think that rang true to me. And I don't think you did it on purpose. I think you were forced to make a very quick decision. I want small businesses to succeed. The fabric of Haverhill has always had small successful businesses. I appreciate the way the people who have supported you and what they say, that doing business with you is better than doing business with a big box store (tape change) Thank you Mr. President.

Councillor Macek: This has gone on for quite some time and it has given me an opportunity to actually do a little more digging, little bit more information gathering and my information is all based on strict review of the history of the property. What's going on zoning wise. What's gone thru the Appeals Board and what we are dealing with tonight. I don't want to make it personal because it's not personal. This application to me, doesn't belong here because there are breaks in the zoning chain, even what was just stated by the applicant. Two and a half years to three years of closure actually negates and wipes out the original Appeals Board decision. It's two years. After two years of non-use that no longer is a valid license. The dots have not been connected properly by even the city and the departments in allowing certain things to be stated as going forward. I think that the first application also did say, it was an incidental use for repairs, repairs associated with an inspection. It was originally, I think, while I don't have the minutes available to review, I think when it was originally opened as an inspection station, it was going to be very undistruptive to the neighborhood because everything was going to be over at the end of the day. It even said no overnight storage of vehicles. It was going to be open field at the end of the night.

A closed up building with no cars is what they said. They also said no towing and that meant no towing in the middle of the night as was just stated by a neighbor, how tow trucks come in, the lights are flashing no matter what time of day. It's bing bang you know, all the clinging and clanging of the metal parts, the chains they need when they tow. It's just not right. It's a bad addition to what's going on down there. It's not personal. I think, I hope you can make a go of it. The fact that there should have been discussion at some level or tonight it could even be attached to this permit. I am not going to be able to support it because I can't find the legality on what's being requested. If it does pass, I hope that my colleagues will suggest maybe hours, maybe times of day. No towing except during regular business hours. Those kind of things should go on this permit. That's the quality decision making that hasn't been done and that's why there's problems. Even the plan that we were given drawn by a local engineering company doesn't properly identify what's even being requested. It doesn't show that there's a fence on the property. It shows that the cars are going to be parked along the building but every time I drive by, they are not parked there. They are parked all over the place and in different locations. I just think, I don't know if people think we are stupid or what, to ask us to do some of the things that are being requested, it's not going to happen. I just tonight, on my phone, pulled up a car for sale on your property on Craigslist by making a Google search because I knew it was there and I was talking to Councillor Ryan about it. I was able to say, look, there's still car sales going on when you shouldn't be doing that. Wait your turn. That's just the way I feel. There's a number of other things. The fact that it's a use variance that is going on here.

President Michitson: Why don't you let Councillor Macek finish.

Councillor Macek: I have so many problems with this. I hope that maybe these wrinkles can be smoothed out but to me, there's too many wrinkles. Too many problems for tonight. I just can't support it.

Joe Tucker: To answer your questions on the cars for sale, Massachusetts state law allows me to sell three cars a year, titled in my name. I can sell three per year whether it's from my business location or my home location. So the cars that you were seeing

Councillor Macek: You may be right. But I think that's more intended for residential selling them off the front of my, not for a commercial location. I think that's for residential. I am getting a head nod from the City Clerk. That's if I want to sell three cars in front of my house.

Joe Tucker: Right, right, and I can sell three cars.

Councillor Macek: But you don't live at the garage.

Joe Tucker: No, your right I don't live at the garage but if you came to me and you wanted to sell a car in your name I could sell it from my garage.

Councillor Macek: No, that's really not the topic at hand. The problem is the enforcement. The oversight. We would almost have to hire a special person to check on a regular daily basis to see what was going on. Because this one just has too many pitfalls potentially. I am going to say that I wish I could, I don't want to put you out of business, I hopefully won't. Well, I am sorry to hear that. I hope that you can run a legal operation and it's not legal to sell cars down there and I can't, with what I've seen what I've done for research, I can't bring myself to vote in favor of this request because I don't think it would be even a legal. I don't even think it's a legal request due to use variances thru the Appeals Board. That's a little bit out in the weeds. I am not going to get into that tonight. I feel very comfortable that I am making the proper decision tonight. Thank you.

Councillor Scatamacchia: I am going to support the permit. I supported the 4 cars. Quite honestly, the 10 I thought wasn't a proper fit but I did think that the 4 cars would not have had a negative impact on the neighborhood. We are talking about zoning down there. One of the reasons why we have an Appeals Board is so we can appeal the zoning. In fact that's why they call it the Appeals Board. It passed the Appeals Board, Mrs. Tucker's application passed there twice. Once for 10 cars and once for 2. I don't have a problem with 2 cars. The 10, like I said, could have had a negative impact on the neighborhood but

it is a commercial area. That's why the Tuckers went to the Appeals Board and it was found that there appeal was granted. We are talking about 2 cars in a commercial zone. I don't see what the impact is going to be. I think Councillor Macek may have brought up a very good point where there could be some regulation as far as what the hours might. I think Mr. Rice brought up some very good points about Hannah's Marker where it started as a butcher shop and then it just perpetuated itself into whatever it is now. This is something that I don't think is going to have a negative impact. There's a business right next door to the garage. It's a landscaping business. I don't think that has a negative impact on the neighborhood. But there are trucks that are there. It doesn't seem to be a big deal. I don't believe. There is a gentleman who lives up the street from me that has a landscaping business. No impact. There are trucks that are out there. It doesn't create any traffic. I don't see what 2 cars is going to be such a detriment to the neighborhood. Quite honestly, I think there are things we could better spend our time on than something like this. We've been here discussing this twice. I am going to support it. I don't have a problem with it for 2. I do hope that Mr. and Mrs. Tucker abide by the rules imposed on the zoning, but I am going to support this. Thank you.

Councillor Ryan: In the previous hearing I abstained from voting because I do use, go into Mr. and Mrs. Tucker's shop on occasion to have repairs. I have a nephew that lives next door so I was kind of boxed in on voting for or against it. I guess. I don't want to call it pressure. I've been at this business too long to be pressured by these kind of things. But I am sensitive to it. I told both of them I'd probably abstain. At the time I did think that the 10 cars, with the car lot out there and I could see flags and lights and all those kind of things, really would have an impact on everybody in that neighborhood. I thought that it was a little over board considering what was there. I think the neighbors really need to think long and hard on this because now is the moment, right now, to put a real restriction on this property. Mr. and Mrs. Tucker both spoke to me, you know, any recommendations. I said you ought to go down to a couple of cars that you will have permit restriction. You will not have any flags, signs or anything displaying that you sell used cars. That they be in the back of the building. That you put up a structure, go way overboard, build a fence for the fellow next door that might look out of his deck. No openings. Restrict Sundays Saturdays close all those things that have been brought up tonight. This is the moment that you can place all of those restrictions. Failing to do that and this goes down tonight, they have to make a living. They are going to sit back and maybe they will be open until 5 or 6 o'clock or evenings. Right now they know they have to be very careful not to alienate the neighbors and aggravate them anymore than they have. They do want to conduct a business. They want to make a living. All of the restrictions that you want will be imposed tonight will be imposed tonight by the Council. If this passes, they really are not going to have a visible business. They are going to have to go on the internet which is what everybody does today. Even the big box auto dealers are on the internet selling. If you ever called up inquiring about a car it's some huge dealership in 114 in Danvers. It's a zero impact. It's actually, it's quieter with this ordinance going thru. This variance, than it will be with the Tuckers going on to expand to try and make a living. Maybe inspection stickers, maybe there in the evenings or Saturdays, whatever days I'm not sure what the restrictions are on Sunday. Maybe adding towing or doing things like that. It's not going to get better it could get a lot worse and it probably will. I know there's going to be a lot of you, are going to say we were better off with the 2 cars stuck out back than with Mr. and Mrs. Tuckers hands tie with a strict ordinance. With a fence, with everything restricting them from doing any more than they are doing now. We had it much better. Now, I know you'll be here up here complaining and you are not going to have any real room to complain because, they are entitled to do the business and they can do it, expand it any way shape or form. I think the best deal for the neighborhood is to grant them the 2 cars and put all these restrictions on them that they've agreed to and hold their feet to the fire. Or look at the other alternatives. I'm trying to do what's best not only for the few people that are here but people who live in that neighborhood all around there. It's there, it's going to be there. I want to make sure that it doesn't impact any more on the neighborhood than it is now. The best way to do that is to take this very restrictive proposal that is before us and vote for it tonight. I have, for a matter of public information, I asked the City Solicitor about going there and also having a relative on the other side. I filed with the City Clerk a disclosure with all of those points which he recommended that I do and the City Clerk officially accepted it. Thank you.

Councillor Scatamacchia: Maybe as a disclosure as well Mr. President, I do use Mr. Tucker's repair shop. I didn't realize that was something that had to be something that had to be disclosed. I do. But that does not enter into my decision at all. Thank you.

President Michitson: Thank you very much. This one is a pretty difficult decision. With the 10 cars, I could see the possible negative impact. With 2 cars, I just can't imagine a major impact. The resident who lives right next door, I feel for him. I think he has the strongest argument against. It. He lives right next door. This isn't about trying to put somebody out of business. This is about allowing this one business owner an opportunity to try to sell 2 cars at one time at the most. I think that Mr. Rice very much articulated my point of view about helping businesses. I just can't look the other way here because I don't believe that it's going to have a major impact. I just can't imagine it having a major impact. If you look at the traffic. You know Charlie's, forget it. Charlie's is busy every day. How many people in Riverside want Charlie's to close because of all the traffic? I don't think there's anybody that wants Charlie's to close. We don't help business people enough in the City of Haverhill. Here's an opportunity to help somebody. It turns out in my opinion, there should be no impact. Although I have to caveat that with I do feel for the neighbor who lives next door, which was a big consideration of mine when voting against the 10 cars. With that, Madame Clerk, please call the roll.

Councillor Daly O'Brien: Mr. President, before we call the roll on this. Should we consider some amendments?

President Michitson: Yes, you can offer some amendments.

Councillor Daly O'Brien: Can we just hold off on that vote because I think Councillor Macek made some really good points about making some amendments as well as Councillor Ryan. I think that's really the way to go. My first proposal that I would like to make to start the ball rolling is that they be closed on Sunday and that there be set hours of business Monday thru Friday, and a lesser amount of hours on Saturday. I am not sure hours.

President Michitson: Maybe they can tell us what their hours are now.

Devon Tucker: We are open 8-5

Councillor Daly O'Brien: I think we can maintain those hours. I think they are very reasonable business hours for Monday thru Friday.

Devon Tucker: Saturday til 2. Closed on Sundays.

Councillor Daly O'Brien: The next amendment that I'd like to make is that the towing only be done during those hours.

Devon Tucker: Okay, that's fine.

Councillor Daly O'Brien: Those are my two amendments that I'd like to add. I don't know if some of my other Councillors have anything else they would like to add.

President Michitson: Are there any further restrictions or constraints that we want to put on this?

Councillor Ryan: Devon, Mr. Goudreault lives adjacent to it, he is my nephew for full disclosure. Is it possible that you would finance the construction of a higher fence so that when he's sitting on his deck or he's in his yard, his view point would be isolated. Is that something you would consider?

Devon Tucker: Of course, absolutely.

Councillor Ryan: Councillor Daly O'Brien would you add that to your list?

Councillor Daly O'Brien: Yes, I would thank you.

Councillor Ryan: Let me just say, further, right now, and I go down there. There's a lot of cars and you can see a lot of activity. Is there a possibility that some kind of fence could be put up. I know you did in your proposal say there was a barrier of some sort. Were you thinking of putting a fence along the front so that people couldn't see into the back yard?

Devon Tucker: We already added that.

Attorney Early: It's not on the street Councillor.

Councillor Ryan: No, but it's back a little bit so cars that are being stored or being worked on anything are all in back so that when people go by they are not going to look all the way to the rear.

President Michitson: I think the height of the fence is regulated by the City. And I am not sure what that height is, is it 7 feet? So whatever the limit is, I guess we could

Councillor Macek: I think it's 6 feet and that might not be sufficient. You can go to the Appeals Board and ask for a higher fence.

President Michitson: Let's do this, let's go to Councillor Daly O'Brien's two amendments, she has three. So you want to add the fence, because I was going to try to pull that one out.

Councillor Daly O'Brien: Okay, you can Mr. President.

President Michitson: That's what I am going to do. Would you like to restate them?

Councillor Daly O'Brien First of all, that their business hours of operation will be Monday thru Friday 8-5, Saturday til 2 o'clock. Closed on Sunday. The second amendment would be that there is no towing to that property outside of those hours.

President Michitson: There's a motion by Councillor Daly O'Brien and seconded by Councillor Barrett.

Councillor Macek: Could I request that motion be voted individually, just in case.

President Michitson: Yes, we are going to do a roll call on all of them. Something controversial, absolutely, roll call. Madame Clerk please call the roll.

Clerk Koutoulas: Councillor Scatamacchia-yes, Councillor Barrett-yes, Councillor Macek-yes, Councillor Ryan-yes, Councillor Sullivan-yes, Councillor Daly O'Brien-yes, Councillor McGonagle-yes, Councillor LePage-yes, President Michitson-yes..9 yeas,0 nays

President Michitson: Now are there any further amendments before we go back to Councillor Ryan?

Councillor Macek: We have to vote on Councillor Daly O'Brien's second motion.

President Michitson: Yes, Councillor Barret did you want to speak now.

Councillor Barrett: I thought maybe lighting issues.

President Michitson: We'll come back. Madame Clerk please call the roll.

Clerk Koutoulas: Councillor Scatamacchia-yes, Councillor Barrett-yes, Councillor Macek-yes, Councillor Ryan-yes, Councillor Sullivan-yes, Councillor Daly O'Brien-yes, Councillor McGonagle-yes, Councillor LePage-yes, President Michitson-yes..9 yeas,0 nays

Councillor Barrett: I'd like to restrict the lighting so it's directed towards their building as opposed towards any of the neighbors; and any spots, they are not shining on the neighbor's property.

President Michitson: Motion by Councillor Barrett, seconded by Councillor Macek. Madame Clerk please call the roll.

Clerk Koutoulas: Councillor Scatamacchia-yes, Councillor Barrett-yes, Councillor Macek-yes, Councillor Ryan-yes, Councillor Sullivan-yes, Councillor Daly O'Brien-yes, Councillor McGonagle-yes, Councillor LePage-yes, President Michitson-yes..9 yeas,0 nays

President Michitson: So we now have three amendments that have passed to the motion. Are there any further amendments?

Councillor Ryan: That the applicant will construct a fence between Mr. Goudreault's property and the auto center to protect the view of the proceedings that are going on next door. Whatever the law allows.

President Michitson: Motion by Councillor Ryan second for discussion. Seconded by Councillor Barrett.

Councillor Macek: I would just like to comment on Councillor Ryan's motion. I support what he is saying but I would also like to add to the motion if he would be willing that, the applicant take all necessary measures to create a privacy fencing including going to the Appeals Board for additional height if necessary.

Councillor Ryan: Yes, I agree to that. Fine.

President Michitson: Does the second agree?

Councillor Barrett: Yes

President Michitson: Madame Clerk please call the roll.

Clerk Koutoulas: Councillor Scatamacchia-yes, Councillor Barrett-yes, Councillor Macek-yes, Councillor Ryan-yes, Councillor Sullivan-yes, Councillor Daly O'Brien-yes, Councillor McGonagle-yes, Councillor LePage-yes, President Michitson-yes..9 yeas,0 nays

President Michitson: Are there any further amendments? Madame Clerk please call the roll on the amended motion.

Clerk Koutoulas: Councillor Scatamacchia-yes, Councillor Barrett-no, Councillor Macek-no, Councillor Ryan-yes, Councillor Sullivan-no, Councillor Daly O'Brien-no, Councillor McGonagle-yes, Councillor LePage-no, President Michitson-yes. 4 yeas, 5 nays,

President Michitson: That fails. Thank you very much.

Attorney Early: Thank you Mr. Chairman and Members of the Council, good evening.

Respectfully submitted,

Barbara S. Arthur  
Administrative Assistant to the City Council

June 12, 2015

**REASON FOR VOTE - DOCUMENT 49**  
**Repetitive Petition for 7-9 East Broadway to Sell 2 Used Cars**  
**June 2, 2015**

**In granting the special permit, those members voting in favor found that the application fulfills all of the general conditions contained in Chapter 255-80 (as applicable) of the Haverhill Zoning Ordinance.**

President Michitson: I voted in favor because I felt it was a reasonable proposal.

Councillor Scatamacchia: I voted in favor because I did not feel it would negatively impact the neighborhood.

Councillor Barrett: I voted against the special permit because the requested use will impair the integrity or character of the district or adjoining zones.

Councillor Macek: The special permit request was inappropriate as it was looking for allowance of a use (used auto sales) which is not permitted under zoning in a CN zone. Additionally, there have been breaks in the permitting that eliminated the 2005 Appeals Board approval due to over 2 years of non-usage of the subject property prior to the current applicant's opening of the auto repair business.

Councillor Ryan: The proposal is amended and would protect the neighborhood.

Councillor Sullivan: The use applied for fails to meet the conditions and required findings for a special permit contained in Chapter 255-80, subsections E (1) (2) (3) and (4) of the City Code.

Councillor Daly O'Brien: I voted no on this special permit because it is not a positive project for this neighborhood. The previous special permit had run out and the existing zoning does not allow for car sales in that area.

Councillor McGonagle: I voted in favor based upon the Planning Board's recommendation and the potential effect that a 2 car sales license would eliminate the need for the petitioner to seek more traffic heavy alternative business options.

Councillor LePage: I did not vote in favor of this special permit application as I believe that an auto dealership is not allowed by any permit, special or not, in the Commercial Neighborhood (CN) zone for Chapter 255, Table and Use and Parking Regulations.