

**DOCUMENT 124/2014**– MINUTES OF A HEARING HELD ON MARCH 24, 2015, PETITION FROM DEVON TUCKER, APPLICANT (DBA IDEAL SERVICE CENTER), REQUESTING SPECIAL PERMIT TO SELL 10 USED CARS AT 7-9 EAST BROADWAY

**SUBJECT:** Document 124/2014 - Petition from Devon Tucker, applicant (DBA Ideal Service Center), requesting Special Permit to sell 10 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: Petition has been received Devon Tucker for Special Permit (DBA Ideal Service Center) to sell 10 used cars at 7-9 East Broadway. This has been postponed from February 24, 2015.

President Michitson: Opened the hearing.

Good evening Mr. Chairman, members of the City Council. For the record, Attorney William Early on behalf of Mrs. Tucker to my left. We are here this evening requesting a special permit for 7-9 East Broadway. I'll just give you some background information. Mrs. Tucker and her husband have been operating a repair shop and automobile sales in the City of Haverhill for the past 10 years at approximately 2 or 3 different locations. Prior to their moving down to East Broadway they operated a repair shop and a car sale dealership at White and Winter Street. I believe it's 117 Winter Street. In November of 2014 the structure that they were renting from was put up for sale. Mrs. Tucker and her husband decided to move out of that establishment. I believe it's since been sold but that's neither here nor there. They moved down to 7 East Broadway and took over an establishment that used to be a fire prevention shop, they would fill fire extinguishers. In 2004 the City granted a permit or a variance to conduct automobile repairs down on East Broadway. That establishment worked for a number of years. They had inspection stickers down there. When Mr. & Mrs. Tucker took over the establishment in November of 2014, this past November, they operated a general repair shop down there. Previously, they operated a general repair shop up on the corner of White and Winter Street at 117 Winter Street. They had a license to sell 23 motor vehicles up there. Mr. & Mrs. Tucker went to City Hall here in this building and they were instructed that you have to go to the Board of Appeals if you want to sell vehicles down there. They were allowed to operate a general repair shop down on East Broadway but Mr. & Mrs. Tucker had a license to sell 23 automobiles and they tried to transfer that down to East Broadway. They came to City Hall, Mr. Osborne instructed them before they could go to City Council they had to go to the Board of Appeals because the zoning did not authorize the sale of automobiles down on East Broadway. We went in front of the Board of Appeals back I believe on February 18. It was a lengthy hearing. There was a lot of opposition from the neighbors and a lot of neighbors made some cogent points. We listened to them. The Board listened to them. The license to transfer their automobile license from Winter Street to East Broadway was allowed but with the one provision that they could only sell 10 vehicles down there. It was to be 5 vehicles out on the property and 5 vehicles behind the property. Behind a privacy fence that Mr. & Mrs. Tucker installed. We are here tonight asking the Council for a special permit to sell automobiles. By way of background, this establishment on East Broadway is not a car dealership like we think of like the automile or Route 125 in New Hampshire, Plaistow. This is a repair shop that Mrs. Tucker's husband operates the day to day management on. Mrs. Tucker operates the motor vehicles sales operation. This is nothing more than a repair shop with a couple of vehicles on the side for sale. Nothing more than you'd see at a gas station with a couple of vehicles for sale. There's no banners that they are trying to put up. There's no balloons, no neon lights or anything like that. This is a repair shop that Mr. & Mrs. Tucker operate and they want to sell some cars on the side. And I'll have Mrs. Tucker in a few moments with the Boards permission, talk about the way they market their operation. I know there was some concerns

relative to high traffic and stuff like that. I believe and Mrs. Tucker and her husband would also have this Board or Council believe that there's not going to be a lot of traffic down there based on the sale of the automobiles down there. This is a mom and pop, for lack of a better operation, this is a mom and pop operation that they are trying to make some money with the service repair and they sell a few vehicles on the side; maybe 3 or 4 motor vehicles per month. They are cognizant, Mr. & Mrs. Tucker live down in the Riverside section of Haverhill. They have been life-long residents here of the City of Haverhill. They don't want to jeopardize anybody's safety or well-being. They don't want to cause a detriment to the neighborhood. They want to be good solid citizens and they just want to run a business and hopefully the Council would grant their request. May I have Mrs. Tucker just talk about the marketing vis a vis the traffic?

President Michitson: Yes, name and address for the record.

Devon Tucker, 70 Whittier Street, Haverhill, MASS. The way we sell cars down there isn't what you would think of something like on the automile where people drive by and they see a car and they stop. All of our, 85% of our sales, with the exception of repeat customers is done on-line. I put an add on-line and they get an email. They can also call us. There's no address. But there they just can't show up and start looking at cars. They make an appointment. When they make the appointment we meet them there. It's not an unsafe place where just our address will be put out there to the masses from different areas. I think at the last meeting that they would bring people from less desirable areas into our neighborhood. That just doesn't happen.

President Michitson: Okay, thank you very much.

Attorney Early: With that Mr. Council President, I would be happy to answer any questions. I know there's going to be some questions. There's going to be some opposition too. We will deal with that hopefully.

President Michitson: Is there anybody else in favor that would like to speak?

Bob Ferrick, 163 East Broadway. I've bought and sold cars with Joe and Devon over the years. Haven't had any problems. Everything's been good. It's good to have someone down at that end of town who you do something with and you don't have to go all over the place.

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

Thank you Chairman Michitson and City Councillors for the opportunity to speak. My name is Priscilla Dullea and I live at 28 East Broadway which is, there's one house across the street and then another house and then the building in question. The person that owns the house at 28 Broadway and lives there is Sandra Devellis. Sandra is a Professor Emeritus from Northern Essex Community College where she taught Child Development and Behavioral Sciences. She was the recipient of one of 50 people who made a difference a couple of years ago when NECCO celebrated it's 50 years and part of the reason for that was that she was the Director and founding mother of Pentucket workshop in Georgetown which was defacto lab school for the early childhood program at the college. I mention that because a number of years ago, we thought since we had a lot Haverhill students and since we had a young staff, that we were interested in starting out in a satellite school that it would make sense to come to Haverhill. We had a building on Lincoln Ave. that we thought was appropriate, and we went thru the Board of Appeals process. Betsy Conte was still alive then and we were turned down. Sandra said afterwards that she could certainly understand why the residents would want to do that and the residents certainly had the rights since it was primarily a residential community to make that decision. We regretted the amount of time we

spent in putting the proposal together, but none the less, ours was more of a service organization than it was a profit making business. That's true but that's our own personal history. Within a tenth of a mile from the corner of Groveland and East Broadway, in spite of the fact that there is a church on the corner, less than a tenth of a mile, there are more than 260 years of living from people who have owned their properties from a number of years. This is a stable community. I was listening to the Mayor speak a few minutes ago about how a community is not about building, its' about people. And I thought, wow, this is exactly what I am here to say tonight. These are the same people who were here in 2004, who voiced strong opposition to anything other than a repair shop by Kevin Barrow who is the owner of the property. I went to the Board of Appeals meetings so did Sandra. Sandra is at a church meeting tonight, we had to divide. At that meeting there were some people who said they were glad to come and speak in favor of this kind of a business on East Broadway because they were members of our community. One was Mr. Kimball. I was just really annoyed so I got in my car and I set the trip odometer at 7 East Broadway and I rode out to Kimball Farm and it said 3.9 miles. Then I turned around and came back and reset it at zero. Went out to Groveland Street and then followed the river, Groveland to Water to Merrimack to Washington to River and when I was at 3.9 miles, I was just at the driveway entering the MacDonald's at Westgate Plaza. I thought that's why it seems so wrong to me. That's my first point is that this is a community of residents in a long-standing community who do not want this to change in the type of business that it's been doing for many years. The second point I'd like to make is, the business at the corner of White and Winter Streets, if you stand on that corner and you look around there's nobody who owns the house and lives in it in eye shot. There's past the Episcopal church, there are a couple of residential houses and there are multiple mail boxes on the front and I knew somebody who had one of the apartments. It's not the same type of community. I don't understand why they wouldn't of just bought that building when it became available and kept their business where it had been so successful. Thank you for listening and thank you for your consideration.

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

I'm Laurie DiFuscio, I live at 17 East Broadway. I'm two houses down on the same side from the business. I sent all the Councillors an email because I get very nervous publicly speaking. Most of my concerns are in there. I just did have another concern that was brought up when Attorney Early was speaking. He said that they've run businesses at two or three other places and have moved on from two or three other places. My concern is that they don't own this property that they are located at right now is owned by Kevin Barrow who lives in North Carolina. If you were to grant this, then they move out. Now the business is allowed and we could be stuck with all kinds of auto repair places that come and go like they do on Welcome Street. I've seen five or six of them come and go on short period of time over there. That's my concern that they don't own the property so they could pick up and leave anytime and we are stuck with type of business forever and a constant changing one. Thank you.

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

Attorney Michael Hart: Thank you Mr. President and City Councillors, former City Councillor associates which I know bares no weight tonight. I know I have to present a good case for you. I'm actually here speaking for some of the neighbors who are in opposition to the granting of this permit. They have great concern for their neighborhood and I heard that from the two speakers who came before me. They did an excellent job in presenting that. I know there's a lot more of them that I think would have liked to be here. I am not sure why there aren't even more. I know at the time this went before the Board of Appeals, there was a petition that was signed by 50 residents within that area in opposition to the Board of Appeals action. These were addresses that were right in that neighborhood and they were all opposed to it. Unfortunately, after the Board of Appeals decision when one of the neighbors went down there to just retrieve the petition, it had been tossed. Tossed. This was before the appeal period, so. I never got a

satisfactory answer on that. No one I don't think said whether it was done accidentally or how it was done but it was done. It remains unavailable to this day. Used car sales are allowed in 4 zoning district with a special permit. This is not one of them and repair garages are not allowed in a CN zone nor is almost anything having to do with automobiles allowed in a CN zone. The reason for this is our zoning ordinances, I believe, see that these uses don't fit in a commercial neighborhood. The type of commercial neighborhood that this zone is intended to be. The applicant's business wouldn't be allowed in its location except for a Board of Appeals finding in 2004. Now, I actually have the document from that and contrary what a lot of people would believe or understand this to be, I don't see that a variance was ever granted for this property. The documents that I have in front of me were first of all memorandum from the attorney representing the owner at the time and in it, he was saying, this property is classified as a commercial warehouse and most recently houses the Smith Fire Equipment Company. That business is a non-conforming use. So they went before the Board of Appeals not to get a variance but the applicant wishes to have a find under Chapter 255 Section 53 that the business of an automobile inspection station is not more detrimental to the neighborhood than the present business. No major repairs will be done on the premises. No gasoline sales will be made. Repairs incidental to the inspection business will be provided. That's what the finding was. That given that use, it wouldn't be more detrimental than the prior use and they operated under that. Now I see the decision here, applicant wishes to use the premises for an automobile service station for the inspection of vehicles required by motor vehicles and minor repairs incidental to inspections. They granted it 5 and 0. Their other reasons were no vehicles were to be stored on the premises and there would be no towing of vehicles. No mention of any kind of general repair business. Now the current business, dropped the inspection work which was its main reason for getting the finding in the first place and is evolved into an extremely busy full repair garage. It's operating far in excess of the initial permission granted in 2004 without the benefit of further permission or a variance for the expanded repair garage.

I rode down there today and I just had to take a look at the property and what I saw looked like a very very busy business. I mean to the left of the main building, the main garage there were about 3 cars in that area of the driveway. One of them had the hood up, looked like maybe they had been doing some work on that one. I could see in the rear, they had several more vehicles. I couldn't determine how many. It was in their privacy area, you couldn't see them very much from the road. On the other side there were two cars parked and then a lot of snow. I guess there will be more room there once the snow goes. But it's still a very very tight location for operating businesses. It's hard to imagine how another business is possibly is going to fit in this. It's not purpose in any way to go after the existing business but I am just using this as an example of how hard it is to control an accepted use once it's allowed in. This is, I assure you, you must have a plan in your packet, right? You can take a look at it It's an 11,000 square foot lot with two structures on it. The business that I saw seemed to be like just barely fitting in that lot as it is and they want to add another business. Just a small one. Neighbors will hardly know it's there. Mostly internet run. What I can see here, I don't even know why they would want to even how 4 cars. If they decide that they want to show 4 cars, or I think it's 10 cars they wanted at least before the Board of Appeals. I am not sure I heard the numbers tonight. 10 cars, 4 they would be able to show. There's no place for customers to park. Obviously anybody coming to view those cars is going to have to park on the street. Even today I saw, just in the brief time I was there, I saw a van dropping off auto parts and they were parked in the street. It's definitely going to increase parking in the street if they have a car dealership there. I can't imagine how it wouldn't affect the neighborhood in terms of having that increased parking in the street. I don't believe the neighbors deserve a second non-conforming use accepted into their neighborhood. This is an exception that will immediately become a precedent. As a matter of fact, the attorney for the applicant used the fact that in the past there was an automobile dealership around the corner as precedent for why they should consider giving the dealership here. I believe the applicant is an honorable business man. He had good character references and testimony at the Board of Appeals. That should not be the basis of a decision that the man is a good man. He is a good man. I will take it at their word and probably a very good business man probably a very good automobile repair person and probably runs a very good business. This particular site does not deserve another non-conforming business. The neighbors don't

deserve to have to deal with it. There's been too many times in our City where just these little exceptions get passed. And exception by exception by exception creeps and crawls up upper Main Street being a very very good example of how that happened from the time I was a much younger person to today and what I saw go on. It was like a corner at a time this happened. I am not saying it's necessarily going to happen here. When you have a very very tight good neighborhood you don't want to threaten it with expanding things that our zoning ordinances don't even permit there. That would be the purpose that I would say that we should and why I'm here exactly trying to make my point that this just isn't appropriate at this time. I know this Council takes its job very seriously and will give this matter its full consideration. I hope that you can agree with me that this request is not essential or desirable to the public convenience to the neighborhood which is one of the findings of course that you all know that you have to make in a case like this. That's it. I don't know if you have any questions. Thank you.

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

Sharon Coughlin, I live at 37 Golden Street. The back of my house faces East Broadway and the garage that we are speaking about. The gentleman who just spoke nailed everything that I was going to say tonight. The tight quarters that are there. There really isn't any room for additional business there. The parking, there's no place for people to pull up, park a car and go look at used cars. You're talking parking across the street, in front of Priscilla and Sandra's house. In front of Laurie's house and that road is a busy road. Cars fly up and down East Broadway. Especially that intersection where East Broadway and Groveland Street, cars whip around that corner. I used to take my car to get the oil changed there. The business that was there prior. Just from trying to pull out of the business on to East Broadway is very dangerous. Like I said the gentleman that spoke took my main points was the tight area. We've got houses on either side. Houses across the street and the parking, there's no room for parking. It's dangerous. It's a great neighborhood. I've been there 14 years and I think allowing used cars in there is just opening up a whole new can of worms. Thank you.

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

My name is Christopher Goudreault. I live at 11 East Broadway. I own the house right next to the proposed used car dealership there. Definitely opposed to it due to the fact that the location, I bought the house there 4 years ago. I chose it thru the fact that it was a predominately single family neighborhood. My house actually has an apartment and that was to add income. It was a very expensive piece of property. It's a desirable neighborhood. I wanted to live there. I have a family. I have a 10 year old daughter. I'm very concerned for her safety. When I researched the neighborhood I was concerned that a shop would be there. Auto repair shop that would be disruptive but the realtor assured me that the requirements to repair the repair shop would be there would be no wrecker service and there's no cars being stored overnight so the disruption would probably be pretty limited. After I moved I was assured, after I moved in it was, it was basically kind of a quiet shop. The cars were on the lift for 2 to 3 hours at a time. Now, they are in and out of there. I don't know. They are doing inexpensive oil changes. Cars are in and out all day long. Very busy. Shortly after I bought the house, I did lots of improvements to the building. I put new driveways in on either side. It was gravelly. It was grassy. I put a new lawn in. I had a professional landscaper come in, remove the brush. Install a nice new lawn. I wanted a house to match the other homes in the area that were very manicured beautiful. The landscaper across the street, there's never a blade of grass out of place. My next door neighbors Laurie, beautiful flower beds. I wanted my house to look like theirs. I enjoyed the neighborhood and wanted to be a part of it. I invested almost \$10,000 just on the exterior of the house within 6 months that I moved in. I consider myself a long-term person in the neighborhood. I was born on Golden Hill Avenue. I moved to Amesbury Road but a lot of my friends lived in that area. I consider that area as part of my youth. I believe the business is congested like Attorney Harb said. The business is very congested. Another business inside of it, a used car lot, definitely is going to congest. I was going to bring that point up but he got that. This woman right here

spoke of the danger of pulling out of that auto repair shop with the cars whipping around. Yes, totally agree with that because I am further down. I have a difficult time. You really have to bide your time to pull out. Cars do whip right around there. It's a safety issue where tow trucks will be pulling up on the side of the road. I have a daughter, her friends come over, very worried about that. I am basically a hard working person. I saved up. I bought that house. I plead with the Councillors that please take consideration with this. Please vote no on this. Thank you.

President Michitson: Thank you. Is there anyone else opposed that would like to speak? We'll now give both sides a 5 minute rebuttal.

Attorney Early: I noticed when we put a packet together, did everyone have the photos that we put in the packet. I think Mrs. Tucker took these pictures just to show where these cars would be displayed if the Council would grant this permit. By observation it looks like there's plenty of places to put the cars. We don't even depict the area on the right of the building where there's about 5 spots for employee parking. I believe there's also an aerial photo that is in the packet. I don't know if the members saw the aerial photo. It kind of depicts the area in a nice light and shows how much room there is on the property. There are so many concerns that that neighbors had I don't know which one to address first. This is not, with all due respect to Attorney Hart who I have the utmost respect for, this is not another business that is going to be operating down at this location. This is an ongoing concern down there. The operation, the repair shop. These people were granted, after a lengthy hearing by the Board of Appeals who did a great vetting process. They were granted permission from the Board of Appeals. It is not the City Council but they did a great job vetting their facts. They allowed Mr. and Mrs. Tucker to sell 10 cars down there. It's not another business. It's a supplemental income for Mr. & Mrs. Tucker. They are fully invested in the neighborhood. Fully invested financially and emotionally down there. They are cognizant of traffic concerns down there. Mrs. Tucker just indicated to me 500 feet of this subject property there's a church there which draws a lot of people. There's a convenience store on the corner. There's a hair salon. There's a doctor's office.

Mrs. Tucker: I just get a little frustrated because it's not the only business that's operating down there. It's not a car garage in the center of a residential neighborhood. It's part of a whole residential corner. Second, I don't believe I told you. We live a half a mile away. This is just as much my neighborhood as it is any of the neighbors. They had addressed us saying that we moved our business a couple of times. We are planning on buying this building depending on this permit because this does supplement our income but we can't, we need it to operate. We want to stay there. It's different circumstances. One of our shops went because it was in Monument Square and CVS bought it. This building we didn't buy on Winter Street cause we just didn't feel like it was the right feel we live close to this one and it's where we want to set our roots.

Attorney Early: That completes my presentation. I know Attorney Hart talked at great length about the notice of decision. I have some materials here. I have some letters here from the Licensing Commission. In addition to the letters from the Licensing Commission which basically speaks for itself indicating that there was no show cause hearings on behalf of Ideal Cars. I have a copy of the decision from the Board of Appeals meeting on February 18<sup>th</sup>. The only stipulations that were attached to the granting of the allowance from the Board of Appeals that there's no towing going on down there. Mr. & Mrs. Tucker have no desire to operate a towing operation out of there. They were completely on board with that request that there's no towing going on. That's not to say somebody from AAA couldn't tow a vehicle down to the repair shop. But they can't just tow vehicles around there. Fortunately, the paperwork that I was supplied from City Hall with the notice of decision, there's kind of copious minutes of the meeting that took place that night. If I may approach, I just wanted to make sure you had the letter from the licensing board and the notice of decision from the February meeting.

President Michitson: Yes we have those. Thank you.

Attorney Harb: The point that I would like to address is that we all know that you don't grant a special permit to a person, you grant it to a location. That's what's happening here. If you grant this special permit it's not to them, it's to this location. They are not going to stay there forever. They may stay there a long time. They think they may they may not. They may leave 6 months from now. They are going to sell it to another person. Now we already saw an example of what can happen with what's happened to the property already. It went in as one thing. It is a completely different thing right now without the benefit of permission. Without the benefit of a variance. It's evolved into that on its own. Now you set up a car dealership there. It's a car dealership. They are going to sell the lot, the owner, unless they buy it or them, is going to sell that lot. Who knows what that person is going to use it for. I mean, auto repair or car dealership or both. Who knows how they are going to set up that car dealership. We don't know. By then, lot of people will have forgot the little bit of controls you put on it unless somebody is very very very vigilant and goes after the Building Inspector. The Building Inspector goes out there and tries to enforce what limitations you may or may not put on it. It's a car dealership lot. Cars can be sold there forever and ever and ever to whoever owns it.

President Michitson: Thank you very much. Since we did allow 2 people to speak I'll let you speak. It is a 5 minute rebuttal.

Priscilla Dullea: I know Sandra emailed some of you and I am not sure I remember her saying something about she couldn't email everyone. For the general public, Sandra's concerns as early childhood educator there is some sort of nursery/daycare center that operates in the church. I am not positive how it sets up but I know what's typical for that kind of business because I sat on the board at Pentucket for more than 30 years. There's usually a morning session and an afternoon session. Some kids stay all day. A lot of kids only staff half days especially when they are 3 year olds. There's a lot of traffic going in and out of the church parking lot. The hair salon that is at the corner has a minimum of 6 parking spaces that are on the Groveland Street Side. Art's hair salon has no traffic on the immediate corner which is a good thing because it absolutely would not work. When Auto Alliance was in the repair shop, I don't know how many years he was there, I want to say 10, but I am not positive. We never had any problems with him but very often the parking spaces to the left of the building were occupied by cars that were going to be serviced later on. If you put cars in there for sale that means that people, cars that are in the process of being serviced, there's no other place for them but the street.

President Michitson: Thank you very much. With that I will close the hearing. Council, what is your wish?

Councillor Daly O'Brien: I just would like to ask a few questions before I make any proposals. Mr. Early, is there any way we could consider doing this and not have any car sales there at all? I am just saying, I think that that's the big bugaboo. That's the problem in a nutshell in that neighborhood. Even though you have the doctor's practice in the background and you have the convenience store across the way, there's a lot of little businesses there. I think, if I am understanding what's going on here, I don't think anybody would be opposed to something that didn't involve car sales. Maybe I've misunderstood where people are coming from. But that seems to be the clincher.

Attorney Early: I recognize that. We are here this evening, these people have a going concern down there since November of 2014. Now they are before the Council asking for permission to transfer their license to sell vehicles down there. And your question was, we wouldn't be here, with all due respect.

Councillor Daly O'Brien: With all due respect, the other places that they have had their business were a little more amenable to that kind of business. This neighborhood has gone into an entirely different

direction since the existing car dealership. I grew up in Riverside too. I grew up on Merrill Street. I know Groveland Street. I know just where this is. I remember that car dealership being there and I remember my dad actually buying a car there. It's not like I don't know what was in that neighborhood. I'm very well versed with that. I think the neighborhood has changed as so many things in Haverhill has changed over time. Some places have become more commercial and some places less for one way or another. Certainly we've seen such great development in downtown which was once all shoe shops and now it's light commercial and residents. I can't say everything stays the same and it's not that I am against you having a business. But what I really want is to see if we can come to a compromise. I never like to see anybody totally loose. I never like to see anybody walk out of these doors total losers. If you are going to push us, I think you are going to find that you are not going to get what you want. So you've got to come up with a compromise. That's my opinion.

Attorney Early: I respect your opinion Councillor.

Councillor Daly O'Brien: That's it, that's all I have to say.

Councillor McGonagle: I agree a little bit with Councillor Daly O'Brien and I also hear what the neighbors are saying. My concern, and I've walked this property. I've done business with this company when they were in their other location and this location. But I don't live there so it's different. To have this business succeed, they are coming before us to say that just on their auto repair business on their own they are not going to make it the way they are currently set up. So they are looking for an extension if you will of the automotive business. I do have, to Counselor Hart's point, there was a letter sent to Auto Alliance and Ideal Cars from the Building Inspector saying that the current use permitted on the property is for commercial motor vehicle repair and service station. That was from Inspector Osborne, Jan 9, 2015. When I walked the property and talked to Mr. Tucker his wish is naturally do what they did on the other street. This much smaller footprint in your neighborhood but they are going to have to find a way. The neighbors have already spoken about the oil changes, inexpensive oil changes and the other things that they need to be able to do to pay for their (tape change). Sometimes on days towards the end of the month if you folks remember, those cars were right around the corner. Mr. Tucker told me that's not something he's interested in bringing in. This might off set some traffic if they are allowed to do something else whether it be try to go that route, try to bring in tires sales or some of the other services they don't currently look for. They are going to need to do that. And so I think as neighbors, that's what you have to think of a little bit, is, you have the church across the street that runs a business, it's a daycare, but it's a business. You have the hair salon, they're a business. Across the street is a business. I would think that on that property 10 spaces is a lot to take up, it's just too many. But right now, being able to run a service station we can't dictate how many cars they can have on that. Correct me if I am wrong. They could have 30 cars that need repair on their facility if they can fit them on that lot. I don't know what the number is. I am telling you I don't know what that number is but they can put cars there for service and we don't give them a number. There's not a number on this variance. I would make a motion Mr. President, it's the only way that I would be able to go along with something like this, is if they would take a license for 3 or 4 cars and be able to present them and save these other spaces for repair and parking because these are legitimate concerns. Where are people going to park if they come to look at a car? I know cars aren't sold the way they used to be. You are not going to put up flyers. I realize that but you are going to have, that person is going to come there in a car. They are going to need to park somewhere so you need to have a space. Hopefully, off road. You are still going to do your other business. You are still going to do repair. That would be what I would be willing to support; something on a smaller scale. I would cap it at say 4 cars Mr. President and I'd make that amendment in a motion.

Councillor Daly O'Brien: Second

President Michitson: Let's first bring up the motion. Is there a second on the amendment? There's an amendment proposal by Councillor McGonagle and seconded by Councillor Daly O'Brien. Council Vice President Scatamacchia and Councillor Macek did you want to speak on the amendment.

Councillor Scatamacchia: No I wanted to speak on the permit Mr. President.

President Michitson: Would you like to do that after the amendment?

Councillor Scatamacchia: If the amendment passes I think what I have to say is academic.

President Michitson: Why don't you speak your mind.

Councillor Scatamacchia: I'd support the permit as it is. I've learned being in business the years I've been in business that if there is not enough room for people to park then you are not going to have anybody to park there. I have no problem looking at the area that you have there. It seems to be that most of the cars are going to be in the back. I have no problem with that. One of the things that I see, when you hear the term car dealership you think maybe sometimes of Commonwealth Motors where you have hundreds of cars. You are talking about 10 cars. I just don't see 10 cars having that big of impact on a neighborhood. I just don't. It may have a very minor impact on a neighborhood. I am going to support it. I'd like to see the permit voted on as it is and if it doesn't pass, then I'd prefer to vote on an amendment. I'd hate to see this get shot down per se. I know the Tucker's have been in business for a long time. I do know that they've been very good at doing what they do. They've been very honest. They've been very forth right. I just like to see them get some type of relief for East Broadway.

President Michitson: Thank you very much. Councillor Macek would you like to speak?

I would like to at least get a point of order. Do we have a motion to begin with passage of the special permit?

President Michitson: No we don't. Would you like to make that motion?

For protocol, I will make a motion clean for passage of a special permit and then I think Councillor McGonagle's amendment to the special permit should be voted on and then the special permit would be voted on either with or without the amendment if it passes or fails.

President Michitson: That's correct.

Councillor Scatamacchia: I'll second that Mr. President.

President Michitson: Motion by Councillor Macek seconded by Council Vice President Scatamacchia. Madame Clerk please call the roll.

Clerk Koutoulas: Councillor Scatamacchia-yes, Councillor Barrett-no, Councillor Macek-no, Councillor Ryan-abstain, Councillor Sullivan-no, Councillor Daly O'Brien-no, Councillor McGonagle-yes, Councillor LePage-no, President Michitson-no. 2 yeas, 6 nays, 1 abstain

President Michitson: That fails.

Councillor Macek: We also had a motion made by Councillor McGonagle to reduce the permit to 4 cars, I think that was seconded. Now wouldn't we proceed with that or discuss that at least? Is that motion still on the floor?

President Michitson: It was just voted down.

Councillor Macek: No, the full special permit without being reduced I thought I was voting on. Correct?

President Michitson: That is correct.

Councillor Macek: So it was just voted down at 10. You are saying the issue is closed because it wasn't voted to be amended prior?

President Michitson: That is correct.

Councillor Macek: I understand.

Councillor Scatamacchia: So someone has to move for reconsideration.

Councillor Daly O'Brien: I'll move for reconsideration.

President Michitson: Motion for reconsideration Councillor Daly O'Brien and Vice President Scatamacchia.

Councilor Scatamacchia: I don't know if we can do it today Mr. President.

President Michitson: We can, but what was the final vote?

Clerk Koutoulas: 6 no's, 2 yeas.

Councillor LePage: It has to be someone in the majority

Councilor Scatamacchia: Someone from the majority, is there a waiting period or something?

Councillor LePage: No necessarily, up to 2 days.

President Michitson: No necessarily, we do have a couple of days.

Councilor Scatamacchia: I have no problem with doing it today, I just want to get the procedure right.

President Michitson: You could do it today, right now.

Councilor Scatamacchia: Let's do it.

Councillor LePage: Is there a motion for reconsideration?

Councillor Daly O'Brien: I made the motion.

Councillor LePage: Second.

Clerk Koutoulas: I thought it had to be someone who was voting in the majority. Who is the second?

Councillor McGonagle: Colin

President Michitson: Madame Clerk please call the roll.

Councilor Scatamacchia: This is for reconsideration?

President Michitson: That is correct.

Clerk Koutoulas: Councillor Scatamacchia-yes, Councillor Barrett-no, Councillor Macek-yes, Councillor Ryan-abstain, Councillor Sullivan-yes, Councillor Daly O'Brien-yes, Councillor McGonagle-yes, Councillor LePage-yes, President Michitson-yes. 7 yeas, 1 nay, 1 abstain

President Michitson: Let's make a motion that's before us and not vote on it and then we can make amendments to that before we vote on it. That's the process.

Councillor Ryan: It's been reconsidered so it is before you.

President Michitson: It is before us now. We'll go to Councillor McGonagle for an amendment.

Councillor McGonagle: I amend the special permit to maximum of 4 cars for sale on the property.

President Michitson: Motion by Councillor McGonagle. Is there a second?

Councillor Daly O'Brien: Second

President Michitson: Seconded by Councillor Daly O'Brien.

Councillor Macek: I'd like to just comment in general on the hearing and the request. Not specifically on Councillor McGonagle's amendment. Perhaps Attorney Early would be the best one to try and field this first question that may appear to be somewhat astray but give me a little leeway. As I look at the pictures with the signs. Can you tell me whether or not the sign which we include the sign on the front of the building and the other placard signs that appear to be at two locations tacked onto the building went to the Appeals Board for approval?

Attorney Early: This was presented to the Board of Appeals.

Councillor Macek: No, the signage. I'm talking about the signage. Was the signage approved by the Board of Appeals? Was there a decision rendered by the Board of Appeals for increased signage beyond the maximum allowed under zoning?

Attorney Early: No. We did not get into that Councillor. I thought you asked if these pictures were presented to, no.

Councillor Macek: What I was asking if whether the picture which shows the front of the garage which has a large area above it, Ideal Car Service, and then there's these laundry lists in large signs that are on the side between the regular door and the first door in the middle of the garage. It's my interpretation, while I haven't gone down and measured them but knowing that the maximum allowable zoning without going to the Appeals Board for approval of a larger sign is two 4 by 8 signs and I believe that would be excessive. It just rubs me the wrong way that people do things without finding out if it's legal. You also have to take a permit out, at least with the Building Inspector, and he would have said your signs are too big. It just starts me off on the wrong foot that people that are asking for something beyond what is our zoning ordinance have not followed suit as of yet and it worries me if I trust, as I am being asked to tonight, that we don't have the manpower or the inspectors that was stated earlier and correctly, we can't

constantly go down and have somebody from Inspectional Services checking to see, counting cars or where they parked or what's going on here. Those are all the things that I think I have to consider for the people that elected me to represent what's going on in our city. My concern is that this is a real tight fit and I am going to use the word creep in the way that it's used in zoning. We saw it on upper Main Street. It crept and if we start something in Riverside, I've never lived in Riverside unlike some of my fellow colleagues. I know that I have a high regard for the people of Riverside and how they hold their neighborhood and how they hold Riverside in high regard. I don't want to do something that is going to start any type of creep of what could be wrong for the future of Riverside. I know that this has the potential to go there. I am not sure that the Zoning Board, it's a grey area at best, can do use variances legally. Nobody I believe, has ever challenged a Haverhill use variance and they go on all the time. In my strict interpretation, they can approve an allowable use that's on maybe too small of a lot, has less frontage in the rear or the side or height variances, those kind of things. This here is really cramming onto that lot. It's a postage stamp lot for its current use and to ask that we now add used cars, I mean if we go to 4. If I am going to support going to 4, which maybe an acceptable amount, I've got to ask for a few more conditions. Would you be willing to have the used cars only in the fenced in rear area at all times?

Devon Tucker: If that's what it took to get passed but I mean. I think it's fair to say if we did 4 that would probably be 2 for display and 2 out back. So there would be no more than 2 out front anyway.

Councillor Macek: This is again, strict interpretation what the ZBA did in 2004, but they only permitted an inspection station with minor repairs, incidentals to inspection. They didn't permit even a repair garage. The Building Inspector's letter does say that's again, I believe, along the lines of interpretation, of not of what was originally asked for and agreed to but what's transpired thru metamorphosis over the years. It's become something different than where it began. My concern is that, if kind of like are we opening a pandora's box for something else to come in down there that we didn't bargain for because we are allowing for used cars on top of the other uses that are already being conducted on that site? You say you do your business mainly thru the internet and that people come by appointment more than they come by driving by. Why can't you guide them to the new fenced in area in the rear?

Devon Tucker: We can.

Councillor Macek: It also says in the original 2004 ZBA approval that there was to be no stored cars on the premises and how do you interpretate that? What if you have a car in for a motor job, not going to probably do it in one day or a transmission job and I don't know if you are doing that extent of work, probably wouldn't consider that to be inspection related but we've moved beyond that because now it's just an auto repair place somehow. I'll go along with that. What about the restriction that there'd be nothing at night so I think what the initial intention was that when you went into the residential quiet streets of Riverside at night, you didn't drive by a place that was all jam packed with cars here there and everywhere like some of the pictures I saw. One says, I have to go by what it says, but the garage door in the rear is open and it says the business is closed. That's not a way to allow the neighborhood to appear or lends itself to more problems. The cars on the outside from what I am reading here are supposed to be not stored at night. If you have a car in for repair that is going to take 3 days and you leave it there, that's storage in my opinion. I just think this is a push. It's a push beyond what that commercial neighborhood zoning was intended to be. I can't speak for what's happened before me or in the earlier days when zoning was different, when there was an actual dealership down there on Groveland Street. That probably happened before there was even zoning in the city. But it's no longer there. It became professional offices. I think in keeping with what I want to protect for the neighbors down there, I think it's got to be something very minor at best or it can't exist. That's my feeling.

Attorney Early: Can I follow up Mr. President?

President Michitson: Yes

Attorney Early: Mr. Macek, I mean, we presented these pictures to the Zoning Board of Appeals.

Councillor Macek: You are not at the Zoning Board of Appeals anymore. I can't speak for why they went the way they did. I can only speak for when I try to connect the dots. When I review in depth where this has started and where it's come to, I have concerns about where is it going to go.

Attorney Early: To allay your concerns, I just wanted you to know about these signs and stuff. Nobody broached that subject matter. The Tuckers went thru City Hall. They followed the instructions of all the authorities in this building and now that you have concerns about those signs, it's the first time it's ever been broached. We'll deal with that.

Councillor Macek: Thank you

Councillor Barrett: Councillor Macek covered a lot of my concerns with the creeping commercialism. It started as a commercial warehouse, went to a repair shop, now it's a repair shop it's going to be car dealership of some sort, maybe. It's just seems like we have to take into consideration the neighbors. I mean you buy next to a fire suppression warehouse and now it's a used car dealership. As Counselor Hart said, this creeps and it creeps and it creeps. It happened on 125 both north and south. It's a slippery slope once you start you start down here. Thank you.

President Michitson: The hearing is closed.

Priscila Dullea: I'd like to ask a procedural question.

President Michitson: Yes please. Why don't you go to the mic. Thank you.

Priscila Dullea: I'm sorry. It's been a while since I chaired a meeting. You voted down the question as to whether to allow the use at East Broadway.

President Michitson: Right and then it was reconsidered.

Priscila Dullea: And then it was reconsidered. As I understand you can discuss and reconsider the original motion but could somebody explain to me how you can consider an amendment to a motion that you voted no against.

President Michitson: I am not aware of such a restriction. Right, because you have now opened it up again,

Priscila Dullea: To reconsideration of the original question.

President Michitson: But now that question is on the table as though it was previously to be acted on.

Priscila Dullea: No, you have an amendment.

President Michitson: Right, what I am saying is that after the reconsideration, you are now back to the original motion that can be addressed with an amendment.

Priscila Dullea: All right. That's not I how I understood it. Thank you.

President Michitson: You want to re-propose your amendment?

Councillor McGonagle: The amendment was to restrict the amount of cars for sale to 4 for the East Broadway location.

President Michitson: Is there a second?

Councillor LePage: Second.

President Michitson: Now there's a motion and a second. Madame Clerk please call the roll.

Clerk Koutoulas: Councillor Scatamacchia-yes, Councillor Barrett-no, Councillor Macek-no, Councillor Ryan-abstain, Councillor Sullivan-no, Councillor Daly O'Brien-no, Councillor McGonagle-yes, Councillor LePage-no, President Michitson-no. 2 yeas, 6 nays, 1 abstain

President Michitson: So the amendment fails. But the motion we still need to vote on. The original motion.

Councillor Macek: I would like to amend the original motion to allow for the sale of a maximum of 4 cars in the lot all to be parked at all times in the rear fenced off area.

President Michitson: Motion by Councillor Macek is there a second?

Councillor McGonagle: Second.

President Michitson: Seconded it by Councillor McGonagle. No further discussion, Madame Clerk, please call the roll.

Clerk Koutoulas: Can I just get the clarification it's for 4 vehicles

Councillor Macek: For the sale of maximum of 4 used cars all to be parked at all times in the rear section of the property which is fenced off.

Clerk Koutoulas: Councillor Scatamacchia-yes, Councillor Barrett-no, Councillor Macek-yes, Councillor Ryan-abstain, Councillor Sullivan-no, Councillor Daly O'Brien-yes, Councillor McGonagle-yes, Councillor LePage-no, President Michitson-yes. 5 yeas, 3 nays, 1 abstain

President Michitson: That amendment fails. So now we are back to the original motion.

Councillor Macek: Move for the passage of the original motion. We are back to 10 cars.

President Michitson: Madame Clerk please call the roll.

Clerk Koutoulas: Can I have who's first and second on that?

President Michitson: Councillor Macek was the first and Councillor McGonagle was the second.

Clerk Koutoulas: Councillor Scatamacchia-yes, Councillor Barrett-no, Councillor Macek-no, Councillor Ryan-abstain, Councillor Sullivan-no, Councillor Daly O'Brien-no, Councillor McGonagle-no, Councillor LePage-no, President Michitson-no. 1 yeas, 7 nays, 1 abstain

President Michitson: That fails.

Respectfully submitted,

April 9, 2015

Barbara S. Arthur  
Administrative Assistant to the City Council

**REASON FOR VOTE - DOCUMENT 124/2014**  
**Special Permit for 7-9 East Broadway to Sell 10 Used Cars**

**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 against the permit because the proposal is not consistent with the neighborhood.

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: I didn't support the Special Permit request as I felt the request was not in keeping with the CN zone and that adding used car sales to the small lot that is already congested with activity from the auto repair business would negatively impact the residential character of the area.

Councillor Sullivan: I voted against the special permit for expansion of auto sales services at 7-9 East Broadway to allow ten additional vehicles on site because of the detrimental impact it would have in an already congested residential neighborhood location.

Councillor Daly O'Brien: I voted no on this special permit because the proposed project did not suit the current neighborhood, the proponents were not able to compromise on their requests and it did not provide sufficiently for traffic and parking.

Councillor McGonagle: I voted against the proposed use of selling 10 used cars on this property because the size of lot is not sufficient enough, it is too congested and does not have adequate parking on site.

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.