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August 2, 2016

Ms. Melody Musante
Zoning Administrator for Stafford County
1300 Courthouse Road, P.O. Box 339
Stafford, Virginia 22553

RE: Zoning Administrator Determination Tax Map 21-54F, 2195 Jeff Davis Hwy.

Dear Ms. Musante:

For this property Tax Map 21 parcel 54F, I am requesting a zoning determination and interpretation with respect to Stafford County Code Section 28-35, the table of uses and standards. Specifically, that the B-2 Urban Commercial Zone (a) uses permitted by right which includes "wholesale business," permits by right on this parcel the wholesaling of automobiles which I describe in the next paragraphs.

The conduct of the business, portions of which would occur on the property, is as follows:

- a. A vehicle is acquired. These are usually either (i) a vehicle which has been traded-in at a local retail dealership (for example Leckner Nissan, which is virtually across the road) or (ii) acquired from one of the auto auctions.
- b. Usually the vehicle is brought to the location to enter into inventory; but in rare cases it would never appear on the premises before being resold.
- c. Only vehicles in the owner's inventory (and not vehicles of the general public) are cleaned and have very minor service, such as changing the oil or brakes, and very minor body work or touch-up all of which are ancillary to the principal use.

- d. The vehicle is entered into an online inventory which is disseminated to a short list of local retail dealerships.
- e. A vehicle is usually selected by phone call from a retail dealership's buyer and taken to the retail dealership by the wholesaler's staff. It is possible, but very rare, for the retail dealership's buyer to come to the premises. If a vehicle is not selected by the retail dealerships, then it is taken by the wholesaler's staff to an auto auction.
- f. Therefore, customers almost never come to this location. There is no customer traffic, no retail display, no signage or advertising. There are no retail salesmen or sales manager. Retail sales largely consist of displaying the vehicles, negotiating sales, and arranging financing. That requires retail customers to come to a site, park, test drive vehicles offered for sale, etc. None of that occurs in the wholesale business.
- g. Accordingly, the only people on site are normally the owner/manager, someone cleaning or detailing the owner's vehicles and doing the minor services ancillary to preparing them for wholesale.

I am aware there are apparent conflicts in the Stafford County Code, which I am suggesting should be resolved in favor of the determination that the activity I have described does fall under a wholesale business and is a use permitted by right.

Here is my thinking:

I. Pertinent County Code Provisions

Sec. 28-25. - Definitions of specific terms... When used in this chapter, the following terms shall have the meanings herein ascribed to them:

Ancillary use. A use or structure permitted only in conjunction with a principal use permitted in the same zoning district...

Automobile repair. The maintenance, servicing, repair, restoration, or painting of vehicles. Uses permissible at an automobile repair establishment *include those allowed at automobile service establishments...*

Automobile service. A building or premises where gasoline, oil, grease, batteries, tires, brakes, mufflers and/or vehicle accessories may be installed, supplied or dispensed *at retail*...

Motor vehicle sales facility. A building, structure or land *used for display, sales* or lease of motor vehicles, other than boats...

Retail sale. To sell in small quantities directly to customers for their own use...

Wholesale businesses. Businesses primarily engaged in selling merchandise to retailers; to industrial, commercial, institutional, or professional business users; or acting as agents or brokers and buying merchandise for or selling merchandise to, such individuals or companies...

Sec. 28-31. - Purpose and intent.

The purposes of this article are:

- (1) To ensure that all development is consistent with the goals, objectives and policies of the County of Stafford;
- (2) To ensure a series of permitted uses for each land use district established in this article;
- (3) To ensure that every use within each district is compatible with other uses in that district;
- (4) To take into account the environmental sensitivity of natural resources; and
- (5) To ensure that development is served by adequate public services.

Sec. 28-35. - Table of uses and standards.

- Table 3.1, District Uses and Standards, sets forth the uses and standards for each zoning district in Stafford County. No land or structure shall be used, occupied or developed except in accordance with the standards set forth therein...
- *B-2 Urban Commercial.*

The purpose of the B-2 district is to designate appropriate areas for high intensity commercial uses intended to serve retail sales and service and business and professional

service needs, at a regional or countywide scale. These areas should be located at strategic nodes along arterial and major collector roads where there are adequate utilities and facilities to serve intense development.

(a) *Uses permitted by right: ...*

Wholesale business...

(b) *Conditional use permit: ...*

Auto service...

Automobile repair...

Motor vehicle sales...

II. The Initially Apparent Conflict

The initially apparent conflict in the ordinances is that *wholesale business* is a use permitted by right in the B-2 zone, and *motor vehicle sales* is a use that requires conditional use permit.

I am suggesting that it is only an initially apparent conflict and should readily be construed to mean that the wholesaling of automobiles is permitted by right as a wholesale business and does not require the conditional use permit for motor vehicle sales.

III. Resolution of the Initially Apparent Conflict

The entire zoning ordinance recognizes the drastic differences in the actual activities that occur on a site between a wholesale business and a retail business.

For example:

- The very definitions of “automobile repair” and “automobile service” include that it is being done on a retail basis.
- Retail sales are defined as selling in small quantities directly to customers for their own use, whereas wholesaling is selling to retailers.
- While motor vehicle sales is not a defined term, the ordinance does define a motor vehicle sales facility as a *building structure or land used for display*, sales release of

motor vehicles... This definition must necessarily embrace retail sales, because it is not limited to wholesaling.

In the case of auto sales, there is a huge difference between a retail sales facility where customers come to the site; vehicles are displayed on the site for them, including show rooms. Customers will park on the location, test drive vehicles, and meet with retail salesmen and sales managers, both to negotiate a sale (and often a trade-in) and have financing arranged through the dealership. The facility must be configured and staffed to meet all of those activities. In addition, all retail dealers want literal “curb appeal,” and the planning staff is always trying to anticipate and reign in excesses for such displays.

None of that goes on at a wholesale establishment. And I am suggesting that the building isn’t being used to display or sell the vehicles at all. The facility is a place where much of the inventory is kept and briefly serviced pending sale to a retail dealership’s buyer or disposal at an auction.

- And for the same reasoning, the very minor servicing of vehicles that occurs is only for the wholesaler’s own vehicles. It is plainly not at retail and is simply an ancillary use to the main use.

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IV. Main Rules of Statutory Construction

That the rationale that I have described above best meets the major rules of statutory construction, including:

A. **Obvious main purpose.** “A statute must be construed with reference to its subject matter, the object sought to be attained, and the legislative purpose in enacting it; the provisions should receive a construction that will render it harmonious with that purpose rather than one which will defeat it.” *Stanley v.*

Tomlin, 143 Va. 187, 195, 129 (1925); and

“Potentially conflicting statutes should be harmonized to give force and effect to each.” *Board of Supervisors v. Marshall*, 215 Va.756, 761 (1975).

Because wholesaling is so different in its land use impact than retailing, the only truly consistent way to harmonize these two parts of the ordinance, which have an initially apparent conflict, would be that wholesaling automobiles is, from a land use and therefore a zoning standpoint, no different than wholesaling anything else. In contrast, “motor vehicle

sales” includes retailing, and from land use and therefore a zoning standpoint, it is like “automobile service” and “automobile repair”, both of which plainly intend retail; and it sounds like a defined term, “motor vehicle sales facility”, which means that the configuration of the building and premises will accommodate retail sales.

B. A harmonious, consistent scheme. “[A]s a general rule, where legislation dealing with a particular subject consists of a system of related general provisions indicative of a settled policy, new enactments of a fragmentary nature on that subject are to be taken as intended to fit into the existing system and to be carried into effect conformably to it, and they should be so construed as to harmonize the general tenor or purport of the system and make the scheme consistent in all parts and uniform in its operation, unless a different purpose is shown plainly or with irresistible clearness...” *Prillaman v. Commonwealth*, 199 Va. 401 (1957).

Because zoning is concerned with permissible uses of land, and all of the zoning categories are made with a principal view to the activities that will happen and the kinds of structures necessary to accommodate the activities which are associated with permitted uses, it would be strange indeed to think that every kind of wholesaling is one category; that the retail sale of automobiles is a different category; and that the wholesaling of automobiles should be plucked out of all other wholesaling and dropped in with retail sales of automobiles. That simply would not be a harmonious interpretation or one that makes the scheme of the zoning system consistent in all of its parts and uniform in its operation.

C. More specific applies. “An accepted principle of statutory construction is that, when it is not clear which of two statutes applies, the more specific statute prevails over the more general.” *Peerless Ins. Co. v. County of Fairfax*, 274 Va. 236 (2007).

As applied to wholesaling automobiles, “wholesale business” is the more specific statute than “motor vehicle sales,” because the latter would also allow retail sales.

D. When in doubt, construction favors the liberty of the owner. “It is an ancient maxim of the law that all such statutes must be construed strictly against

the state and favorable to the liberty of the citizen.” *Wither’s Case*, 109 Va. 837 (1909).

Summary: After you have reviewed all of this I am requesting that the determination be that an automobile wholesaling business is a use permitted by right in the B-2 zone as a “wholesale business.”

I am enclosing:

1. The Zoning Administrator’s Determination application form with the list of three adjoining owners;
2. The owner’s letter of consent appointing me as agent;
3. Our firm’s check for \$420.70; here is the breakdown:

\$390.00	Fee
<u>+19.44</u>	<u>6.48 x 3 adjoining owners</u>
\$409.44	subtotal
<u>+ 11.26</u>	<u>2.75% technology fee</u>
\$420.70	enclosed

Kindest regards,



Robert B. “Bob” Goodall

Cc: Yonus Attai

RBG/

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