

Zoning Board of Adjustment  
March 1, 2023  
Public Hearing  
7:30 PM

Members Present: Roger Whitehouse, Chris Stafford, Walter Baird, John Russo, Michelle Cooper, David Knight

Others Present: Gail Turilli, Josh Rabenius, John Grover, John Grover Sr.

David, who is an alternate member, recuses himself from tonight's hearing and takes a seat in the audience. Michelle, who is also an alternate member, takes a seat in the audience.

The meeting minutes from 1/18/2023 were reviewed with no comments from the Board. Roger made and Walter 2<sup>nd</sup> a **motion to accept the minutes as written**. All in favor with Chairman Stafford abstaining. **The motion passes with a vote of 3-0-1**

**Case 2022-5 – Grover – 45 Beechwood Drive – Special Exception Continuance:**

Chairman Stafford noted that at the last meeting, Jason recused himself making a 4 member Board. This is a quorum but an even number. In order to pass, 3 votes are needed. In the Rules of Procedure a quorum is considered 3 yes votes. If any Board member is absent from any meeting or hearing, of disqualifies him/herself from sitting on a particular case, the Chair shall designate an alternate member to sit in the place of the absent or disqualified member, and such alternate shall be in all respects a full member while so sitting. In selecting an alternate, the Chair shall first consider which alternates are present, then he/she shall select an alternate on a rotational basis to ensure all alternates get an equal chance to serve.

Chairman Stafford mentions that this case is a little unusual because normally an alternate is selected at the beginning of a deliberation in a hearing, not in the middle. This is a grey area that is subject to interpretation. There is one alternate present who attended the first hearing when all of the discussion and testimony was received. The 2 subsequent hearings were continuances, opened for a technicality to continue but, there was no discussion. Chairman Stafford then asks for some feedback from the Board before making a decision to designate an alternate to bring the Board up to 5 members. Roger feels this is a good idea and John agrees. Walter asks when Jason last had contact with Mr. Grover. Mr. Grover explained that he saw Jason from 2<sup>nd</sup> -5<sup>th</sup> grade at Danville Elementary and that his daughter currently goes there for counseling. Recently, he saw Jason one time when bringing his daughter. Walter feels this affects the situation as Jason never mentioned this when the case started back in August. Chairman Stafford stated that Jason didn't feel it was an issue, made the decision halfway through the hearing and this was made before deliberation or decision. Chairman Stafford feels there is no need for the Board to start over and again asks Walter for his opinion for designating an alternate. Walter responded that he had no issue with that. Chairman Stafford appoints Michelle as a voting member for the hearing as she had been present at the first hearing when all of the discussion took place. Walter noted that Jason did not need to give a reason as to why he recused himself.

Chairman Stafford mentions a few comments prior to deliberation discussion and vote. He feels that this has been an emotional series of hearings. He clarifies that in the zoning of Danville, it is allowed to have a home business if the criteria is met. He further states that you don't always like what your

neighbors do but, as long as it is within zoning regulations, and allowed, it is acceptable. He does not know what the outcome of this hearing will be but the Board will go through the findings, deliberate, and make a decision. There are some people that will or won't be happy if the Special Exception is granted or not. He asks, regardless of the decision, to respect all parties involved and realized that you're neighbors in a neighborhood and have to get along. This does not mean that there needs to be interaction but, try to be civil. The Board will try to be as objective as possible and weigh all of the evidence. He notes that he has gone through every word at every meeting, looked at every piece of evidence, photo, and video. Chairman Stafford is prepared to form an opinion, go through the data and treat this case objectively. The decision will be documented at the end of the hearing and he will do everything to make sure the Board comes to a decision tonight.

Chairman Stafford officially opens the deliberation part of the hearing and shares some notes that he made on the different criteria. In the first hearing on November 30, 2022 the Board went through all of the criteria and briefly shares what was agreed on to see if the Board is still in agreement. There are some criteria that the Board still has some debate on and he would like to further debate and make a decision on.

Criteria 1: The accessory use shall require no more than one on-site employee in addition to the owner(s) of the property. **Board is in agreement with a vote of 5-0**

Criteria 2: Adequate off-street parking will be provided for the employee and potential customers. **Board is in agreement with a vote of 5-0**

Criteria 3: Any changes made to the residential lot as a result of this accessory use that affect the external appearance of the property, the dwelling or any accessory building, shall be in keeping with generally accepted good residential architectural practices and styles and shall conform, in general, to the surrounding neighborhood's architecture.

Chairman Stafford stated he had received feedback from the Highway Department stating that gravel is not a permanent structure and there is no change when entering onto Beechwood Drive. The Board had a brief discussion and Walter feels that this affects the quality of the neighborhood and that the applicant is using the gravel as the driveway. **Criteria is met with a vote of 4-1**

Criteria 4: There will be no outside storage of equipment or materials associated with the home occupation nor will there be any hazardous chemicals used or stored on the premises. **Board is in agreement with a vote of 5-0**

Criteria 5: There shall be no commercial motor vehicles(see definition) nor shall there be more than two non-commercial vehicles used in conjunction with the home occupation except that, where the business takes place primarily away from the primary residence, such as a service tradesman, the business owner may park no more than one commercial motor vehicle related to the business at his/her residence provided that:

- a) There is adequate space for a full off-street parking of the commercial motor vehicle;
- b) The commercial motor vehicle is not parked on Town property, including street, parks, and rights-of-way;

- 96 c) The commercial motor vehicle is parked at least fifty feet from any abutting  
97 property line and at least seventy five feet from any abutting residential  
98 structure;  
99 d) The commercial motor vehicle is not repaired or maintained on the premises  
100 (unless required in order to move the vehicle from the premises;  
101 e) The commercial motor vehicle is not left idling for more than ten minutes nor is  
102 any equipment associated with the commercial motor vehicle (e.g., refrigeration  
103 units) left on for more than ten minutes while on the premises;  
104 f) Horns and /or sirens on the commercial motor vehicle are used only in  
105 emergency situations;  
106 g) Advertising on the commercial motor vehicle is not used to violate the intent to  
107 the Town's signage restrictions;  
108 h) Generators or other outdoor equipment are not utilized in conjunction with the  
109 commercial motor vehicle;  
110 i) The commercial motor vehicle will enter and exit the roadway via an approved  
111 driveway;  
112 j) The commercial motor vehicle is properly registered and inspected; and  
113 k) Commercial motor vehicles used for the transport of hazardous materials, as  
114 defined by ARTICLE II.E.4, are prohibited.

115 The Board had a brief discussion. Roger noted that as long as it is not a business, anyone can drive a  
116 trailer without a CDL. The combination of the truck and the trailer is the commercial vehicle. Walter  
117 stated that loading the truck with the trailer is considered a commercial vehicle. He also feels that the  
118 trailer is considered a commercial motor vehicle per zoning. Dave noted that the rating and weight  
119 level needs clarification. Walter stated that he doesn't feel the applicant has an approved  
120 driveway.

**Criteria is met with a vote of 4-1**

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122 Criteria 6: The home occupation will not be detrimental to the residential neighborhood due to  
123 noise, traffic, hazards, or other disturbances and is in keeping with the purpose of this  
124 ordinance in promoting the health, welfare, and safety of the area residents while  
125 preserving the values and charm of the Town.

126 Chairman Stafford noted that this a subjective assessment based on the various testimonies and  
127 evidence submitted. Abutters have raised concerns regarding speed and "California stops" in the  
128 neighborhood. Mr. Grover has stated that those concerns have been addressed. There have been no  
129 reported police violations since the original application submittal, however, there are some  
130 inconsistencies in what is being reported. There were 4 dash cam videos submitted as evidence.  
131 Chairman Stafford mentioned that he looked at them again today and 3 of the 4 showed adherence to  
132 speed limits and stop signs. One video shows one rolling stop at a stop sign. The videos are available  
133 tonight which Chairman Stafford asks the Board to view. He stated that he would have expected any  
134 evidence submitted to be conclusive of a commercial operation adhering to all traffic safety  
135 requirements. The dash cam video is not conclusive in Chairman Stafford's opinion. At this time, all  
136 Board members viewed the videos that had been submitted. Again, Chairman Stafford stated he was  
137 not expecting to see any violation and this may be a business traffic safety concern.

**Criteria not met with a vote of 2-3**

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140 John made and Walter 2<sup>nd</sup> a motion to deny the Special Exception application as all criteria has not  
141 been met. The application is denied with a vote of 3-2. Chairman Stafford stated that a decision  
142 letter will be drafted and mailed out within five business days.  
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**Preliminary Discussion-Josh Rabenius-34 Colby Road-Lot Line Adjustment/ ?Variance:**

Mr. Rabenius addresses the Board and states that he is here at the suggestion of the Planning Board whom he met with a couple of weeks ago. He is looking to adjust his property line on Colby Road and put frontage on Cub Pond Road. The Planning Board had suggested that he may need a variance. Cub Pond Road is a private way and Roger feels that he may need support from all the residents on that road to approve what he is looking to do. There has been a legal driveway permit pulled to access the road. Chairman Stafford doesn't see any issue with what Mr. Rabenius is looking to do. The Road agent does not issue permits on Cub Pond Road as it is a private road. Chairman Stafford notes if Mr. Rabenius is complying, meeting the frontage and acreage requirements, there is no issue/violation of zoning. It was suggested that Mr. Rabenius find out who owns the road and to speak with the Road Agent and Building Inspector to see if the frontage on Cub Pond Road is enough for a permit to be issued. Chairman Stafford also noted that if the lot is non-conforming, a lot line adjustment would require a variance. 200ft of frontage is required on a class 1-6 road which Cub Pond is not.

**Rules of Procedure Changes:**

Walter has done some research and is proposing changes to the Rules of Procedure in regards to alternates participating at meetings. He also stated that there is a difference between a meeting and a hearing and encourages volunteers to be a part of the ZBA. This Board needs to be formal during hearing and alternates not allowed to sit at the table. During meetings, alternates can participate. Roger mentioned that all questions should be directed to the Chairman. Walter's suggestions for proposed changes are as follows:

Under "Quorum," #2 on second page: delete second paragraph. Deletion will be addressed in a new paragraph 6 under "II.Officers" on page 1.

On page 1 under "Officers", delete second sentence of paragraph 5. Deleted sentence will be addressed in the new paragraph 6 on this page.

**New Paragraph 6 under "II.Officers" on first page:**

**A. Alternate Members' Participation at Meetings.**

1. It is expected and encouraged that Alternates will attend meetings on a regular basis. If the meeting is not a hearing on an application or formal proceeding, Alternates in attendance may sit with the Board, ask questions and participate in discussion for this type of non-hearing meeting.
2. If any Board member is absent from a non-hearing meeting of the Board, or disqualifies himself or herself from a matter being discussed at such a meeting, the Chair may designate an Alternate member to sit in the place of the absent or disqualified member, and such Alternate shall be in all respects a voting member for that meeting. In selecting an Alternate, the Chair shall first consider which Alternates are present, then select an Alternate on a rotational basis to ensure all Alternates get an equal chance to serve.

**B. Alternate Members' Participation at Hearings.**

1. Alternate members are expected and encouraged to attend all hearings where the Board is required to render decisions on applications or other formal proceedings should they be designated as a voting member at some point during the hearings.
2. Alternate members should not sit at the table with the Board during hearings or other formal proceedings unless they have been designated by the Chair to sit in place of a member. They should sit with the public unless they are sitting in place of a member.
3. Alternate members shall have no authority to participate as Board members during a hearing or other formal proceedings unless and until they have been designated to sit in place of an absent or disqualified member.
4. During a hearing or other formal proceeding, Alternates should not ask direct questions of applicants, participate in Board deliberations or vote on applications or formal proceedings unless and until they are designated to sit in place of an absent or disqualified member.
5. In the event a regular member is absent at the first hearing on a case, the Chair may designate an Alternate member who is present to sit in the absent member's place, and the appointed Alternate member shall continue to sit in the regular member's place for the remaining duration of the matter.
6. In the event a regular member who was present when a hearing commenced becomes unavailable for any continued hearing date, the Chair of the Board may designate an Alternate member to sit in that regular member's place as long as the designated Alternate has attended the prior hearing(s). The appointed Alternate member shall continue to sit in the regular member's place for the remaining duration of the matter.

The Board had a brief discussion regarding the changes and Chairman Stafford recommends to take out "all formal procedures" in section B #'s 2, 3, and 4 and to limit this to hearings. Chairman Stafford **made** and Walter 2<sup>nd</sup> **a motion to accept the proposed changes with amendments. Motion carries with a vote of 4-1.** Chairman Stafford stating the Board will finalize the changes at the annual meeting in May. There was a question brought up regarding a Special Exception for an ADU which was discussed. Walter mentioned that there was one more proposal to the Rules of Procedure that he would like to discuss regarding the use of electronics. The proposal is as follows:

Use of electronic devices (computers, phones, watches, etc.) is subject to the Right to Know Laws as described in RSA 91-A. Therefore, use of any personal electronic devices during board meetings by all in attendance, is prohibited.

The Chair shall announce that all personal devices will be turned off at the beginning of the meeting.

Exceptions:

The ZBA clerk and Chairman may use a personal electronic device to record the meeting, contact members and conduct informational research.

In the event that a member has an emergency situation, they may excuse themselves from the table to do so.

The Board had a brief discussion regarding this proposal. Chairman Stafford recommends changing the wording to "silent" instead of "turn off" and to prohibit use except for emergencies only.

238 Roger **made** and Walter 2<sup>nd</sup> **a motion to accept this proposal as amended. All in favor, motion carries**  
239 **with a vote of 5-0**

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241 **Meeting adjourned at 10:00pm**

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245 Respectfully Submitted,

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247 Gail L. Turilli

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