

Zoning Board of Adjustment
September 23, 2022
Public Hearing

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

Others Present: Gail Turilli, Lisa Paul, Susan Chandler, Jason Youzwak, Kathy Youzwak, Amber-Rose McIntyre, Bruce Skaff, Donald Morse, Florence Morse, Pamela Geisler, Mark Geisler, Bill Pajunen, Chris Lingar, Steve Taylor, Laurie Taylor, Tom Conlon, Jim Lanza, Michele Tingley, Alan Tingley, Sheila Johannesen

Roger Whitehouse, Vice Chair, opens the meeting to review the last hearing and site walk minutes as Chairman Stafford is delayed. There will be no discussion of the case continuance until Chairman Stafford is present as Roger was not present for the previous hearing and site walk.

Review of September 7, 2022 minutes:

Chairman Stafford arrives at 8:00pm and there was continued review of the minutes. There are no comments from the Board. Walter **made** and John 2nd **a motion to accept the minutes as written**. All in favor, **motion passes** with a vote of **6-0-1** with Roger abstaining.

Review of September 9, 2022 site walk minutes:

There are no comments from the Board. Walter **made** and Michelle 2nd **a motion to accept the minutes as written**. All in favor, **motion passes** with a vote of **4-0-3** with Jason, John and Roger abstaining. Roger then steps down and turns over the hearing to Chairman Stafford. Roger will remain present to comment and observe until deliberation.

Case 2022-3: Continuance of Special Exception Application for a Customary Home Occupation at 45 Beechwood Drive:

Dave Knight recuses himself from any further questioning as he is not a voting member and feels it will have no impact on the decision. This leaves 5 voting members present. Chris explains that this is a continuance due to having a site walk. If the applicant meets all criteria and the opinion of the Board, the application will pass. Walter mentioned that he spoke with Barry Hantman of the Planning Board in regards to the driveway and if the Road Agent was or should be contacted. Barry's response was that any changes to the driveway with impact to the town's ROW has to be looked at by code enforcement and a new driveway permit must be issued by the Road Agent. Michelle noted that the applicant had removed some trees and put down gravel. The Road Agent was not contacted as there is no driveway permit on file. Jason questioned if the impact is on safety or appearance. Walter stated he is just noting that it was done and the impact is to the town ROW. Michelle thought that this was addressed at the last meeting. Roger questioned needing an approval for anyone who puts in shrubs, flowers, mulch, etc. Chairman Stafford suggests to see if this constitutes a change in the driveway. If a driveway is modified on a town road a driveway permit is needed. Roger feels that putting down stone and gravel would be the same as putting in bark mulch, etc. Jason feels there would be a difference. Michelle doesn't feel there would be an impact as the area is not paved, gravel is not permanent. The Board needs to address

48 if this affects the criteria for the Special Exception. Chairman Stafford now opens the hearing to the
49 public for any new information.

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51 Carol Baird, of 8 Hummingbird Lane, addresses the Board. She reads a statement that she prepared for
52 this hearing and requests that it be kept in the file. A brief synopsis of the statement is as follows: Mrs.
53 Baird feels that this application is somewhat unique due to the request being something that has
54 already occurred where normally, a request is for something that hasn't happened yet. She watched
55 and listened to the last hearing. The property was bought in November of 2020 and at the same time,
56 the applicant filed paperwork with the state to start his excavation business. There has been
57 commercial equipment on the property that did not comply with zoning. The applicant has driven a
58 heavy piece of equipment down Beechwood Drive, a public street, per the neighbor's complaints. It was
59 not until the town had code enforcement in place that residents had someone to contact about what
60 was going on. Mrs. Baird's primary concerns are: criteria 3 which talks about changes to the residential
61 lot that affect the external appearance of the property. This lot has significantly changed and looks like
62 an industrial lot for construction equipment and does not conform with other residential lots in the
63 neighborhood. Criteria 6 states a home occupation shall not be detrimental to the neighborhood due to
64 noise, traffic, hazards, or other disturbances and will be in keeping with the purpose of the ordinance in
65 promoting the health, welfare and safety of the area residents. She feels that if this business is allowed
66 to continue, it has and will continue to be detrimental to the neighborhood and will not promote the
67 health, safety or welfare of those who live there. In regards to the noise disturbance, the applicant's
68 driveway is 500ft or more away from her residence and she can hear the beeping sounds from the dump
69 truck when out in her yard and can only imagine how loud this could be for neighbors that live closer.
70 Safety and welfare is also a big concern. She mentions that she knows of at least one autistic child in the
71 neighborhood, a daycare center and preschool. The number of walking families, kids on bikes, and dog
72 walkers have noticeably dwindled when the applicant's dump truck started speeding around on the
73 neighborhood streets. With it went the neighborhood camaraderie. The elementary school bus stops at
74 both corners of Hummingbird Lane twice a day. She has observed the applicant driving fast and above
75 the speed limit on numerous occasions. She found it unsettling to hear at the last hearing that the
76 applicant doesn't always bring his dump truck to a full stop at stop signs and that it is challenging to shift
77 gears on the truck to slow it down. Mrs. Baird's final concern is about nuisance. She has heard
78 comments that anyone can do what they want on their land and stated that is not completely true.
79 There are nuisance laws in NH and they are actionable. There is also a nuisance regulation in Article VII
80 B of Danville's zoning. She noted that granting a special exception to our zoning is a privilege. The
81 Board has heard from many of the applicant's neighbors that his activities and associated equipment are
82 negatively impacting their homes, lives, and neighborhood. Commercial activity like this is a residential
83 neighborhood is not appropriate and should not be allowed. It would set a terrible precedent for
84 Danville's residential zones.

85
86 Sheila Johannessen mentions to the Board that new cameras and microphones have been installed and
87 to speak up during the discussion.

88
89 Kathleen Youzwak of 66 Beechwood Drive addresses the Board with new information which she has
90 typed up and handed to the Board to keep in the file. Her concern is with Criteria 6 and a synopsis of
91 her statement is as follows: At the previous hearing, the Chairman suggested that the applicant put his
92 best foot forward. The Friday of the site walk, the applicant started a fire in the back yard, no permit
93 was pulled. There is no burning allowed and if a permit was requested, it would have been denied. This
94 is the third time the applicant has had an unauthorized fire on the property and the third time the Fire
95 Department had to intervene. The applicant has continued to break the towns rules which have been

observed by the neighbors for nearly two years. Running a business without a zoning exception, driving recklessly, not stopping at stop signs, no permit for the driveway, parking the truck and trailer on the property even after being ordered not to. There is continued fear of safety, detrimental noise of the truck, and regular disruptions. This behavior will continue or increase if the Special Exception is granted

Jim Lanza of 78 Far View Drive addresses the Board and reads a statement from Robert and Victoria McCaig of 84 Far View Drive as they could not attend the hearing tonight. The statement reads as follows: "Our primary concern lies with the potential safety risks associated with the heavy machinery traffic on our quiet street. We have 2 children under the age of 7, as do several other families on this street alone, and an increase in regular construction traffic would be very detrimental to the current state of the neighborhood. We are in no way against a homeowner operating a business out of their home or on their property, so long as it does not compromise the integrity or safety of an existing residential neighborhood and complies with all current town regulations and criteria.

Mr. Lanza stated that he would like to know what the Board observed at the site walk as he was present. Chairman Stafford then reads the minutes of the site walk. Mr. Lanza feels that the property lines were not established as there are no pins in place. He has looked at the deed and the property lines are not clearly determined. It is his opinion that the driveway has been widened. After a rainstorm, there has been clay and silt going down Hummingbird Lane and Far View Drive. He feels that the Road Agent should investigate this. Mr. Lanza also mentions the safety concern as he had witnessed a mother and her 2 children running around near where the applicant has been seen driving recklessly. He also states that the applicant has done whatever he wants to the property and feels he is asking for forgiveness after the fact. Things change daily and there are materials on the property at some point. A commercial truck shouldn't be in a residential neighborhood. Mr. Lanza asked for an explanation as to who's zoning laws meet the criteria if the Board approves this application. His driveway is at the intersection of Hummingbird Lane, is looking to retire and doesn't want to see a tri-axle truck going through stop signs. He feels that zoning doesn't matter in the Town of Danville, that the Board has the responsibility to the residents of Danville to enforce the zoning laws. He also feels that the Board doesn't have the residents interest at hand if this vehicle is allowed to continue to run in the neighborhood. He states that the Board has been given multiple police reports, documentation from neighbors and god forbid someone gets hurt or even killed as a result of the Boards negligence. He notes that he hopes each and every one of the Board members has a good attorney on retainer. Chairman Stafford closes Mr. Lanza's testimony as he feels this is not new information and asks if anyone else in the public has any new information to share with the Board.

AmberRose McIntyre of 20 Beechwood Drive addresses the Board stating she has a question to something that was brought up at the last hearing. She states Mr. Grover parks the truck for the winter from November to April. She has no issue if the truck was parked elsewhere but, her concern is that if the truck is parked for that period of time and there were a leak that could potentially go undetected, it may affect the well water in the neighborhood.

There are no other questions or comments and at this time Chairman Stafford closes the hearing to the public and the Board moves to the deliberation phase. Jason **made** and John 2nd a **motion to close the public hearing**. All in favor, **motion passes with a 5-0 vote**. A letter from an abutter was dropped off to the Board which was reviewed. Chairman Stafford again states that if the applicant meets all criteria the application will be approved but, if any part of the criteria is not met it will be denied. There was a brief discussion of all criteria needed for this application and the voting results are as follows:

Criteria 1: The accessory use shall require no more than one onsite employee in addition to the owner(s) of the property.

Chris – yes
Jason – yes
John – yes
Walter – yes
Michelle - yes

5 -0 vote (meets criteria)

Criteria 2: Adequate off-street parking will be provided for the employee and potential customers.

Chris - yes
Jason - yes
John - yes
Walter - yes
Michelle - yes

5 – 0 vote (meets criteria)

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.

Chris - yes
Jason - yes
John - yes
Walter - yes
Michelle - yes

5 – 0 vote (meets criteria)

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.

Chris - yes
Jason - yes
John - yes
Walter - yes
Michelle - yes

5 – 0 vote (meets criteria)

Criteria 5: There shall be no commercial motor vehicles 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 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

- 192
- 193 c. The commercial motor vehicle is parked at least fifty feet from any abutting
- 194 property line and at least seventy five feet from any abutting residential
- 195 structure.
- 196 d. The commercial motor vehicle is not repaired or maintained on the
- 197 premises (unless required in order to move the vehicle from the premises)
- 198 e. The commercial motor vehicle is not let idling for more than ten minutes
- 199 nor is any equipment associated with the commercial motor vehicle (e.g.,
- 200 refrigeration units) left on for more than ten minutes while on the premises.
- 201 f. Horns and/or sirens on the commercial motor vehicle are used only in
- 202 emergency situations
- 203 g. Advertising on the commercial motor vehicle is not used to violate the
- 204 intent to the Town's signage restrictions
- 205 h. Generators or other outdoor equipment are not utilized in conjunction with
- 206 the commercial motor vehicle
- 207 i. The commercial motor vehicle will enter and exit the roadway via an
- 208 approved driveway
- 209 j. The commercial motor vehicle is properly registered and inspected
- 210 k. Commercial motor vehicles used for the transport of hazardous materials,
- 211 as defined by Article II.E.4, are prohibited.

212 Chairman Stafford states there are two specific key items in criteria 5 which are section d. that talks

213 about vehicle maintenance, changing of oil. The Board needs to determine if this is compliant with the

214 criteria.

215 Chris - no

216 Jason - no

217 John - no

218 Walter - no

219 Michelle - no

5 – 0 vote (criteria not met)

220

221 Section I that talks about entering and exiting via an approved driveway, gravel has been added and no

222 permit was obtained.

223

224 Chris - no

225 Jason - no

226 John - no

227 Walter - no

228 Michelle - yes

4 – 1 vote (criteria not met)

229

230 **Criteria 6:** The home occupation will not be detrimental to the residential neighborhood due to

231 noise, traffic, hazards, or other disturbances and is in keeping with the purpose of

232 this ordinance in promoting the health, welfare, and safety of the area residents

233 while preserving the values and charm of the Town.

234

235 Chris - no

236 Jason - no

237 John - no

238 Walter - no

239 Michelle - abstained

4-0-1 vote (criteria not met)

Two of the criteria have not been met. Walter **made** and John 2nd a **motion to deny the Special Exception Application**. All in favor, **motion passes with a vote of 5-0**. Chairman Stafford states that a decision letter will be issued within 5 business days. The applicant may address the issues and come back to the Board with another application. The public hearing is closed at this time.

Other Business:

Chairman Stafford asked that the Rules of Procedure be sent out to the Board and will be discussed at the next meeting. Walter mentioned House Bill 1661 to the Board and stated this is something that needs to be looked at as well. The Special Exception criteria will need to be looked at for some clarification on verbiage.

The 2023 Zoning Board budget was briefly discussed. There is one change to line item, Legal Fees, to increase it by \$100. All other line items will remain the same.

Michelle **made** and Walter 2nd a **motion to adjourn**. All in favor, **motion passes**. **Meeting adjourned at 10:00pm**.

Respectfully,
Gail L Turilli