

Zoning Board of Adjustment
September 7, 2022
Public Hearing

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

Others Present: Gail Turilli, Bruce Skaff, Lisa Paul, Susan Chandler, Jason Youzwak, Kathy Youzwak, Chris Lingar, Laurie Taylor, Florence (Trudy) Morse, Donald Morse, Lia Marie Pajunen, Bill Pajunen, Jim Lanza, Sheila Johannesen, Amber-Rose McIntyre

Review of August 29, 2022 minutes:

There are no changes noted. John **made** and Walter 2nd a **motion to accept the minutes as written**. All in favor, **motion carries with a vote of 4-0 with Jason and David abstaining**. Michelle has been appointed as a voting member for this hearing. David Knight has recently been appointed to the Board as an alternate and sworn in. He will participate in the discussion tonight but, will not be a voting member.

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

Chairman Stafford opens the hearing stating that last week the Board received some information from one of the abutters, which was reviewed. The request is for a Special Exception to have a Customary Home Occupation at the residence. Mr. Grover addresses the Board stating he is the resident of the premises and also, the owner of the property. Chairman Stafford explains that with a Special Exception, there are specific criteria that need to be met in order to pass. If the criteria are not met, the application is denied. The Board will go through each of the criteria, allow the abutters and members of the public to speak, and have the applicant present his application. Once all of the information is received, the public hearing will be closed and the Board will deliberate. At this time, Mr. Grover addresses the criteria for his application. He states he is a single owner/operator with no employees currently. Customers do not come onto the property as all work is done offsite. There are no hazardous chemicals/materials kept and no outside storage of materials/equipment. The company is just a truck and all materials are obtained once the truck is outside the premises.

Dave Knight asks that the criteria be read for the public as they may not be aware of what they are. Chairman Stafford states he will read each criteria and the applicant can respond.

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

Criteria 2: Adequate off-street parking will be provided for the employee and potential customers. Mr. Grover states there are no customers, work is done offsite.

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. Mr. Grover states no work has been done to the house. He has removed some trees, done some basic grading and is getting ready to put down some loam due to having a limited yard that was heavily wooded. His plan is to power rake and seed it in order to expand the yard. Walter referenced some pictures that had been received stating that it looks like the lot had been cleared and questioned if the purpose was to have

a yard or park the truck. Mr. Grover states he would like to someday have a shop, farm, garden, etc. Walter then stated for the record. that the clearing of the lot wasn't essentially for parking equipment or a truck. Mr. Grover explains that when he purchased the property, he had a Class A vehicle, which he has since sold. He did not modify anything to be able to have equipment on the lot. There has always been enough room to park his dump truck and a trailer. Opening things up does make it easier to park but, it was more for the overall purpose of what he wants his forever home to be. Walter asks to confirm the only equipment is a truck. Mr. Grover states he has a truck and a trailer, no other equipment is on the property unless he is doing personal work on his property. Dave Knight asks if Mr. Grover does his own maintenance on the truck and if there is any storage of hydraulics or oils. Mr. Grover states most of the maintenance work is done by Mahoney's but, he does his own oil changes and tire changes. He currently has a 17 or 18 gallon drum about half full with oil that is sealed. It has been returned little by little to Autozone. Mr. Knight noted that waste oil is used for heating the fire station and that they will accept it. Mr. Grover notes that he only does basic maintenance on the truck and no hydraulic fluid is stored. The truck is under 10 gallons of hydraulics and only needs to be changed once every 10-15 years.

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. Mr. Grover confirms no outside storage of equipment or materials

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 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. Mr. Grover notes that there is enough room to park the truck and trailer so it is not visible from the road.
- b. The commercial motor vehicle is not parked on Town property, including street, parks, and rights-of-way. Mr. Grover confirms that the vehicle is not parked on Town property.
- c. The commercial motor vehicle is parked at least fifty feet from any abutting property line and at least seventy five feet from any abutting residential structure. Chairman Stafford asked if the lot is 150 ft wide to which Mr. Grover confirmed. The vehicle needs to be 50 ft from the property lines on either side to comply. Mr. Grover states he left a 40 ft buffer from the abutting 51 Beechwood Drive property and the other side is wooded. The truck is parked another 20-25 ft from that.
- d. The commercial motor vehicle is not repaired or maintained on the premises (unless required in order to move the vehicle from the premises).

Mr. Grover states he is just doing oil and tire changes. He also noted if anything is brought to his attention that he can change in order to conform with the guidelines, he is willing to do so. Dave Knight asks what comes to mind. Mr. Grover stated maintenance work. Mr. Knight noted that the concern would be more for engine, transmission changes, etc. Walter noted that some people do their own oil and tire changes but usually not on commercial vehicles which is not allowed.

- e. The commercial motor vehicle is not left idling for more than 10 minutes nor is any equipment associated with the commercial motor vehicle (e.g., refrigeration units) left off for more than 10 minutes while on the premises. Mr. Grover states it takes about 10 minutes for the truck to warm up in the colder months but typically doesn't run past November and is parked 5 months total out of the year.
- f. Horns and/or sirens on the commercial motor vehicle are used only in emergency situations. Mr. Grover states that if a kid does the "beep beep" sign, he will oblige but, other than that only in an emergency.
- g. Advertising on the commercial motor vehicle is not used to violate the intent to the Town's signage restrictions. Mr. Grover states that there are decals on either side of the truck but not signage at the house.
- h. Generators or other outdoor equipment are not utilized in conjunction with the commercial motor vehicle. Mr. Grover confirms that no generators are used.
- i. The commercial motor vehicle will enter and exit the roadway via an approved driveway. Mr. Grover states that the driveway has not been modified and he enters and exits via a town approved driveway.
- j. The commercial motor vehicle is properly registered and inspected. Mr. Grover confirms.
- k. Commercial motor vehicles used for the transport of hazardous materials, as defined by Article II.E.4, are prohibited. Mr. Grover confirms he does not transport hazardous materials nor does he have his hazmat endorsement on his license.

Walter asked what materials are typically used. Mr. Grover states, sand, gravel, recycled asphalt, and hauling stumps off a job site. All materials are organic with the exception of recycled asphalt which is bought from a vendor and brought to the job site. Jason Holder asks if any material is stored on the property to which Mr. Grover stated no. The truck and trailer is often left at a job site and not at the home.

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

Dave Knight questioned the specific size requirements for the truck on the application. Chairman Stafford states 15,000 pounds and 2 axles defines a commercial vehicle. Mr. Knight asked about the hours of operation. Mr. Grover states typically he would start around 8am and work until about 5 or 6pm. Hours and days of work vary depending on the job. Sometimes he will have work for a full week and then have 3 weeks off. He does bring his daughter to school in the morning and picks her up when he is able. Walter asks if he rents or leases equipment. Mr. Grover states that if any work is being done at the property, equipment would be rented and if kept on the property, it would be for personal use. Jason Holder asks how often the truck is left on a job site. Mr. Grover states only on a multi-day job he would leave the truck and trailer and commute back and forth in a personal vehicle. John Russo asks if the truck will be parked in the gravel area to the side of the driveway when not working. Mr. Grover provided a picture of where the truck is parked, out in the back of the property. Chairman Stafford asks what the speed limit is on Beechwood Drive to which Walter responded, 25MPH. There have been abutter complaints regarding speed and not coming to a complete stop at stop signs. Chief Parson's had a discussion with Mr. Grover in regards to this, and going forward, Mr. Grover will make more a conscious effort to maintain the speed limit and come to complete stops at stop signs. Chairman Stafford noted that customary home occupations are allowed in town with conditions one of them being the health and safety of the neighborhood, as it is residential. The Board needs to assess if the business can be maintained under the conditions. Jason Holder asked the size of the lot to which Mr. Grover stated just over 2 acres and is a narrow deep lot. Mr. Knight asked what gear Mr. Grover is in when doing a rolling stop to which Mr. Grover stated 2nd gear. Mr. Knight then asks if it's worth coming to a complete stop for the children in the neighborhood to which Mr. Grover agrees and again stated he will make more of a conscious effort going forward. Mr. Knight asks if any of the parents in the neighborhood have come forward stating that they do not allow their children to walk on the road. Mr. Grover stated no but, he did read a report that mentioned an individual who was contemplating coming to speak with him. This individual googled Mr. Grover and found that he had an arrest in 2014 and refrained from approaching him. Mr. Grover states that this hurt his feelings as he has worked hard to get where he is today and considers himself approachable.

The hearing is now open to the public for any questions or concerns. Kathy Youzwak of 66 Beechwood Drive asked for clarification regarding any machinery kept at the home and believes the answer was only a dump truck. Later on she believes she heard on certain jobs that things are kept at the home overnight and feels this is a contradiction. Chairman Stafford states that the criteria is for one commercial motor vehicle and asks the Board if the trailer is considered a separate vehicle. Mr. Grover states that the trailer is 25ft long in total, 7ft wide, and has a 16 ton capacity. The consensus of the Board is that this is considered a motor vehicle. Jason Holder states that there are certain guidelines that need to be adhered to. It seems like the discrepancies aren't so much that they can't be adjusted by Mr. Grover working out some things with his neighbors. For example, no bringing in other equipment, having it out of sight, not using certain materials in his yard, being aware of when he is starting and shutting down the vehicle and where he does it. These are things Mr. Holder feels Mr. Grover can work out with his neighbors and would like to see that approach. Mr. Knight questions the recourse if the Board takes that approach as there is no enforcement authority. When the neighborly practice breaks down, once given the special exception, there is no authority to take it away and it sets a precedence. Chairman Stafford explains that if all of the criteria are met, the special exception is granted, if the criteria is not met, it's a denial. This board decides if the criteria is met or not. If any applicant violates the criteria in the future it would be a matter for enforcement. The enforcement officer in town would have to investigate if the applicant is abusing the granting of the ordinance and special exception. There is always a chance a situation could end up in court.

Concerned neighbor, Chris Lingar of 74 Beechwood Drive , questioned how many Board members have driven by the property in question recently. John Russo drove by last week and Chairman Stafford drove by tonight. Mr. Lingar asked if any members of the Board have seen pictures of the property over time and the changes that have occurred as he is concerned with criteria 3 & 6. He questions the vehicle being 50ft from abutting properties based on heavy rock that was put to the left side of the driveway to accommodate the truck.

Amber-Rose McIntyre of 20 Beechwood Drive states that the driveway was essentially widened to accommodate the truck getting in and out. Criteria 6 specifically is a concern in the neighborhood . Mr. Grover admits that he is unsafe and had to be visited by the police. He uses excessive rates of speed on the street. Someone, like herself, who is legally deaf, when hearing the noise, she cannot tell what direction it's coming from and it's anxiety inducing. She lives in a multi generational household with a 91 year old grandmother who likes to walk up and down the road and a 9 year old daughter who loves to play outside. She hasn't stopped either from doing so but the concern is there and the conversation is ever present in the household.

Mr. Lingar mentions criteria 3 and that there has been significant change to the external property. In reference to criteria 6, the value of the homes have already dropped. Hummingbird Lane typically gets a lot of frost heaves but, is already showing a lot of wear and tear. The culvert across Beechwood Drive, which is only 3 years old, is now crushed and caved in but is being addressed by the road agent. Mr. Lingar believes he heard that the truck sometimes returns hauling equipment on the trailer and/or items inside the truck. Chairman Stafford confirms this statement. Michelle noted that any equipment can be used on a property until the job is complete. Mr. Lingar asks what types of materials are being used/brought in to change the appearance of the property. Mr. Grover, Sr. states mostly gravel and fill consisting of dirt and stone. Mr. Lingar states he has heard asphalt mentioned and asked if that has been brought back on the property to which M. Grover stated no. Mr. Lingar asked if horns are disabled in the neighborhood and if that would be a safety concern. M. Grover stated that there is a back up alarm when reversing the vehicle that is considered a safety feature and cannot be disabled. Chairman Stafford noted the point is that home occupations in a residential area as such have to respect hours of operation. It's a privilege to have a business in the residential zone and the town allows it if the criteria are met but, the neighbors have to be respected.

Susan Chandler of 51 Beechwood Drive addresses the board with her concerns. She has seen truckloads of fill brought onto the property to fill massive holes dug with an excavator. The fill contained asphalt, cinder blocks, etc. Her other concern is if the vehicle is leaking some kind of fluid, has holes that are 8ft deep and filled them with unclean fill, what could this be doing to the well water in the neighborhood. Michelle Cooper states that when she had her driveway done, 50 tons of fill was brought in. She further explains that when taking down trees, fill has to be brought in because as you remove stumps there are deep holes. Ms. Chandler states that Mr. Grover is deliberately digging holes to remove topsoil, takes it off the property and returns with truckloads of dirty fill. Mr. Grover states that he has gotten fill from Torromeo's which consists of sand and clay mixed with large rocks. If he needs to grade where a stump was taken out, he will take out some a little bit of sand, bring in some fill, then put the sand on top in order to grade. Only organic material has been brought in when needed. He assures the Board that he is not digging holes and filling with toxic waste.

Lisa Paul of 51 Beechwood Drive stated that she watched Mr. Grover load his rig with topsoil/material, drive down the street, and dump it onto someone else's property. Mr. Grover stated he had helped out a neighbor with some fill and never drove a machine with steel tracks on the road, machines always had rubber tracks.

Chairman Stafford stated that Mr. Grover mentioned building a barn and asks if he has applied for a building permit. Mr. Grover states he is not ready for that at present moment. Chairman Stafford then asks if he applied for a driveway permit as there have been concerns regarding the widening of the

driveway. Mr. Grover noted that he has taken down some trees to widen the side and back yard, no plans to widen the driveway.

Lisa Marie Pajunen of 38 Beechwood Drive references the minimum impact criteria item 4 outlined in the Zoning Ordinance section 4.a.2.d #5: The home occupation will not generate unsightliness, noise, smells, fumes or other substances that would adversely affect the character or safety of the neighborhood. She states that Mr. Grover's business, which is not approved, has been operating for over 2 years. There is incessant, loud and intrusive alarm beeping and the noise can be heard from several blocks away. The inescapable noise pollution has caused much distress and anxiety for many of the neighbors. There are serious safety concerns regarding the dump truck speeding through the neighborhood. Mr. Grover has succeeded in turning a quiet and tranquil neighborhood into a perpetual construction site with all the noise, mess and damage. What was once a clean, landscaped area has been replaced with a variety of litter on the road and in front of his house. In order to accommodate this oversized vehicle and equipment, he crashed into his own mailbox and fence post leaving the mess behind for several months. On several occasions he damaged an adjacent property with the dump truck creating deep tire tread marks on the perimeter of the lot. The large stone markers were not a deterrent for him as he trespassed and moved them out of his way and continued to cause further damage to his neighbors property. She feels that Mr. Grover has no consideration for his neighbors and his activities are detrimental to the neighborhood and will greatly decrease property values if allowed to continue his excavating business.

Jim Lanza of 78 Far View Drive has been a resident for over 30 years. He bought his property for residential privacy. If the Board allows this operation to happen, when does it stop. This is a residential zone and feels if businesses are allowed, it's not residential.

Sheila Johannessen asks if this would fall under the noise ordinance. Chairman Stafford states that the applicant must comply.

Lisa Paul of 51 Beechwood Drive mentions that there is non-stop noise 7 days a week.

Chairman Stafford asks if any business related work is being done on the property to which Mr. Grover stated never. There are occasional machines on site for personal use on the property and there may be 45 seconds of a beep to pressure wash a machine. Chairman Stafford states that there have been accusations of the property being kept in compliance with the appearance of a residential home, storage of a commercial vehicle within 50ft of abutters, and alterations to the driveway. Suggests the Board consider a site walk.

John Russo mentioned that he drove by the property and it looks as though the driveway has been expanded by the gravel to the left side. Mr. Grover stated that he took down some trees and put the gravel there. He plans to have more gravel out in the back and agrees that it makes it easier to back in the vehicle but the intent is not to park the vehicle there. Michelle Cooper noted that there is nothing in Zoning that states someone couldn't gravel their entire yard or put in stone. Mr. Grover explains that where the existing grass was, coming down from the septic mound, will have extra loam and maybe a 25ft x 25ft area extension of grass. Everything else will be stone.

Jason Holder asks if Mr. Grover can understand where his neighbors are coming from to which Mr. Grover replied he agrees with some things and other things he does not. Jason notes three things he is hearing from the neighbors: 1. Noise factor, 2. Driving, and 3. What he is doing to the property, moving rocks and making marks to neighbors property. He stresses that Mr. Grover needs to take in full consideration of his neighbors.

Don Morse of 57 Beechwood Drive expresses his concerns with the truck on the road. He met him on Beach Plain Road where it meets Happy Hollow Drive on his motorcycle. He states that he couldn't hear him coming until he came around the corner and was looking for a place to ditch as this is a very dangerous road. Michelle Cooper suggests speaking with the road agent about his concerns.

David Knight doesn't feel a site walk is necessary unless the property is the issue. The situation is if the community feels that the ordinance is there to protect them from the hazards of a commercial vehicle in the neighborhood. The issue has nothing to do with the site but with criteria 5. Chairman Stafford reiterated the accusations that property has been changed in a way that's not consistent with the residential zone and a widened driveway. David Knight mentioned that Mr. Grover can't make the turn with the truck if the driveway wasn't widened.

Walter asks if Mr. Grover has had any issues with the police in the last couple of weeks. Chairman Stafford noted that this is not an appropriate question to which Walter states he is concerned with safety. Mr. Grover stated he was visited by Chief Parsons on 8/2/22 as previously stated. One of his neighbors had contacted the police stating that he was discharging a fire arm. When Chief Parsons arrived, it was found to be a BB gun being shot safely.

Kathy Youzwak of 66 Beechwood Drive expressed her concerns with driving the truck at high speeds in the cul de sac. Jason Holder asks Mr. Grover how often the trailer is taken to work. Mr. Grover states that it is about 50/50 depending on the job. Jason then questioned if the back up doesn't need to be on when driving out in the morning. Mr. Grover states that the only time the back up is on would be for about 15-20 seconds a couple times a week no later than 6pm. Jason noted that from the pictures presented to the Board, it looks as though there is room for the truck to turn around instead of backing in from the road. Mr. Grover agrees and that this is something he is willing to do.

Mr. Lingar of 74 Beechwood Drive requests that if a site walk is done, to specifically take into consideration criteria 6, promoting of health and safety to the neighborhood.

Chairman Stafford **made** and Michelle 2nd a **motion to have a site walk**. All in favor, **motion carries with a vote of 5-0. Site walk scheduled for Friday, September 9 at 5:30pm**. Chairman Stafford **made** and Michelle 2nd a **motion to continue the hearing to Friday, September 23 at 7pm**. All in favor, **motion carries with a vote of 5-0**. Certified letters will be sent out as the abutters were no longer present. The truck is allowed on the property in the interim per the code enforcement officer who has spoken with Mr. Grover.

Other Business:

Chairman Stafford mentions that the 2023 budget will be discussed at the next meeting. There was a change to the Rules of Procedure at the previous meeting which was reviewed and signed by the Board. Walter questioned re-hearings and asked that the Board to think about putting some information in our procedures specifically for house bill 1661.

Dave **made** and John 2nd a **motion to adjourn**. All in favor, **motion carries with a vote of 5-0. Meeting adjourned at 10pm**

Respectfully,
Gail L Turilli